

13th ILERA European Congress, Barcelona, Spain, 8-10 September 2022

T4-S03: TRADE UNIONS IN THE PUBLIC SECTOR

ID ILERA2203919ILERA22

Werner Schmidt and Andrea Müller

Trade union power resources in the public and the private sector: What makes the difference?

The German example

This paper discusses German public sector industrial relations (IR). It suggests that neither the structures nor the outcomes of public sector IR can be sufficiently explained by derivation from IR processes within the private sector. Primarily, the specifics and developments of the public sector explain public sector IR. Differences between the public and the private sector result not least in the distinct relevance and meaning of trade union power resources. It is of fundamental importance whether trade unions operate in a profit-driven market environment or a publicly financed environment that is under public control. The ways in which structural, organizational, institutional, societal, and political trade union power resources work, differ widely between the private and the public sector. This is of relevance to trade union strategies.

Werner Schmidt and Andrea Müller

Research Institute for Work, Technology and Culture (F.A.T.K.), Tübingen, Germany
w.schmidt@uni-tuebingen.de, and.mueller@uni-tuebingen.de

1. Introduction

Although German public sector industrial relations (IR), that is, labour and employment relations, are of particular interest because they differ from IR in the German private sector as well as from public sector IR in many other European countries in several aspects, they are still under-researched. Many German IR scholars ignore public sector IR completely when speaking about IR in general (the most important among the few exceptions is still Berndt Keller, e.g., 2016). The lack of research into public sector IR may have historical reasons dating from the formerly progressive or even revolutionary role attributed to the working class, conceived as primarily manual, male, and factory working. Whether this lack of interest relates to political aspirations, to a fear of riots, or to calculations that discontented and demotivated workers will be detrimental to profitable business, in any case, the private sector has been seen as the place where the action is.

Even though the public sector was a matter of concern from a neoliberal perspective due to its alleged lack of efficiency and excessively bureaucratic inertia, this criticism did not spark substantial research into public sector employment relations and public sector IR. It seems that investigating the functionality and specifics of the public sector was not considered necessary because the solution for most public sector problems was believed to be already known: an adaptation to the private sector. Public sector IR are often seen as a kind of derived, if not deficient, version of private sector IR; wages and salaries in the public sector are regarded as the result of a kind of “pattern bargaining” – even if this is rarely explicated (Di Carlo 2020). Sometimes, merely the public sector’s degree of adaptation or deviation from the private sector was of interest. Apart from some sovereign tasks, from a neoliberal perspective, the best public sector would be small and a copy of the private sector.

The perception of the public sector as deficient and somehow derived is also widespread among IR actors in the public sector. As in other countries, the employers – first, the federal government (*Bundesregierung*); second, the German states (*Länder*) and their collective bargaining community (TdL); and, third, the local authorities with their regional employers’ associations (KAV) and their umbrella organization Federation of Municipal Employers’ Associations (VKA) – were influenced by ideas from New Public Management (NPM), which became popular in the 1990s; Germany differed from other European countries in that austerity started relatively early, before the financial crisis (Keller 2014). Austerity politics were firmly established in Basic Law via the “debt brake” (*Schuldenbremse*).

Counterfactually, the German public sector was criticized as being particularly large, and, in consequence, governments at federal and state level and local authorities tried to economize on and rationalize public expenditure (European Commission 2013). In consequence, cuts in public expenditure and privatization exerted pressure at all governmental levels on the refinancing of expenditure for staff and wages. Employers tried to lower working conditions to the often low levels of private services and job security was reduced when temporary employment was

increased significantly. They also attempted to raise productivity by implementing performance-related pay (PRP) systems, similar to the private sector (or, to be precise, similar to the *idea* of how PRP works in the private sector) (Schmidt/Müller 2013). To be brief, from the perspective of relevant parts of public sector employers, the title “model employer” seemed to be attributed to the private not the public sector, and the normative goal was convergence toward the private sector. Fortunately, theory and practice – or, maybe better, interests – sometimes diverge. In fact, it was not always clear whether adaption to the private sector (and austerity too) was a matter of conviction or only a weird tactic to signal modernity to the public and to politics.¹

From a trade unions’ point of view, austerity and worsening working conditions were of course never an objective. The most prominent trade unions in the public sector, the United Services Trade Union (ver.di) and its predecessor *Öffentliche Dienste, Transport und Verkehr* (ÖTV), and the German Civil Servants Association (dbb), opposed privatization and bad working conditions. Nevertheless, even many ver.di officers as well as rank-and-file members saw public sector IR as in some way derived from “original” private sector IR. Manufacturing seems to be regarded as the battlefield where “capital and labour” exist in the pure form and where “class struggle” is undeniably more than a metaphor.

Expressed pointedly, public sector employers attempted to act like private sector employers, and, sometimes, public sector trade unions tried to copy the behaviour of trade unions in the private sector, particularly the practices of the large IG Metall (metalworking trade union). The game could be called “Playing capitalism in the public sector” or, to be fair to some trade unionists’ intentions, “Playing capitalism and anti-capitalism in the public sector”. Of course, this is an oversimplification. To be fair a second time, the dbb, representing mostly civil servants, is less keen on playing this game (similar to the police union GdP, but the approach of the teachers’ union GEW seems less clear; both are members of the German Trade Union Confederation, the DGB). Of course, ver.di knows that there are differences between the private and the public sector, but if public sector employees are workers like other workers, then they deserve the same pay and working conditions as workers in manufacturing.

This paper argues that there are pronounced differences between private and public sector IR, and though they operate in the same cultural context of Germany, both sectors’ IR follow their own sectoral logic. Even in cases where working conditions do not differ substantially between the sectors, this paper suggests that the mechanisms causing these similarities are nevertheless different. The paper discusses these mechanisms using the concept of trade union power resources (Schmalz/Dörre 2014; Schmalz/Ludwig/Webster 2018; Gumbrell-McCormick/Hyman 2013). Empirically, it is based on three research projects dealing with particular aspects of public sector IR: wages, PRP, and staff councils. During these projects, interviews as well as postal surveys of employers and staff councils (the workplace representation body of public authorities) were conducted, and in one project employee attitude surveys were also conducted. The paper, however, takes a more general and to some extent theoretical approach, although the

¹ PRP, for example, can be regarded as a symbol for signalling modernity, sometimes without expecting real behavioural changes among employees (Schmidt/Müller 2013).

paper will present some data from a detailed survey of local authorities (encompassing 384 variables) recently conducted in 2022. Altogether 2,211 staff councils from municipalities with more than 10,000 residents (including rural districts, i.e., all *Landkreise* and larger *Verwaltungsgemeinschaften*) received a code for participating in an online survey; 634 staff councils participated by answering at least some of the questions (response rate 28.7%).

2. Public sector IR

Employees and civil servants

German public service IR consists of two different employment systems. The first is the employment system of civil servants, who normally enjoy lifelong employment, but do not have the right to strike or to conclude collective agreements (Keller 2020). Civil servants were once the ideal type of public sector staff (Schmidt/Müller 2018). However, with the expansion of the welfare state, civil servants were outnumbered by “ordinary” public sector employees. Although public sector employees work in a different social context, their legal status is similar to that of private sector employees.

Non-civil servant public sector employees have full bargaining rights. The Collective Agreement for the Public Service (TVöD), which is one of two major national agreements², is negotiated by the minister of the interior for the federal government and the VKA for municipalities on the employers’ side and the bargaining coalition of ver.di and the dbb (the dbb organizes mainly, but not solely, civil servants) on the trade unions’ side. The second major collective agreement, named Collective Agreement for the German States (TV-L), is valid for the state level. It was negotiated between the TdL and the mentioned bargaining coalition of trade unions that are mainly active in the public sector.

Both collective agreements replaced in the first decade of this century the former Federal Agreement for Non-manual Employees (BAT), which was once valid for all three levels, the federal, the state as well as the local level, and two agreements for manual workers (BMT-G II and MTArb). These collective agreements had been valid for about 40 years, but urgently needed reform because they no longer represented changed qualification structures and labour market requirements (Schmidt/Müller 2018). The IR actors in the public sector seemingly agreed with this reform; an overarching reform of both public sector employment systems was intended (Schily/Heesen/Bsirske, 2004). However, in a context of prevailing austerity – which, as mentioned, took place in Germany before the financial crisis – the objectives of employers and trade unions increasingly diverged. The liberal Free Democratic Party (FDP) made no secret of their negative position concerning collective agreements. Trade unions therefore feared that the necessary reform of collective agreements would become impossible in the years to come if the

² TVöD and TV-L are not the only collective agreements, but they are by far the most important. The Collective Agreement on Public Utilities (TV-V) settled in 2000 is another.

FDP became part of the government after the 2005 federal election. This political framing seemed to have played a decisive role.

In this context, the TVöD was concluded in 2005 rather hastily, even though it was not finished and without basic provisions on grading structures (*Entgeltordnung*), which were supposed to be the core of the reform. Although the FDP failed to be part of the government, conflict over the reform of collective agreements was not over. In particular, the TdL tried to use the reform to question working conditions and regulation by collective agreements in general. TdL quit the bargaining coalition, leaving only the federal government and VKA in the employers' coalition; hence, temporarily, no collective agreement was valid for the state level. The TdL also stopped participating in the TVöD negotiations and negotiated a separate collective agreement (the TV-L) for the German states with the trade unions. The TV-L became effective in 2006. In many respects, it resembled the TVöD (Schmidt/Müller/Trittel 2011). New grading structures, which were missing for a few years after the agreements were settled, became effective in 2012 for the TV-L at the state level, in 2014 for the federal level and in 2017 for the local level. Although the new grading rules took a long time, they were not as innovative as intended and, in many aspects, resembled the old rules; therefore, negotiations on grading structures are still not definitely finished.

At first glance, collective agreements and negotiating new grading structures may seem similar to private sector IR. Nevertheless, there are pronounced differences. For instance, the coverage rate of collective agreements is much higher in the public than in the private sector. In 2019, the coverage rate was about 25% for workplaces and 44% for employees for the entire German economy (public sector included). By contrast, the figures for public administration and social insurance amount to 83% and 86%, respectively (Ellguth/Kohaut, 2020). Figures for the realms of TVöD and TV-L only should amount to between 95% and 100%, because although local authorities can quit their KAV membership, they are normally pressured by the states and the KAVs to revise their decision (a few cases exist nevertheless).

Besides negotiations and collective agreements at the sectoral level, employee representation by works councils (mostly private sector) and staff councils (public sector) are an important part of the "German dual system of interest representation" (e.g., Müller-Jentsch, 2004, 2018).³ The figures for 2019 concerning these institutionalized forms of representation diverge in a similar way as the collective bargaining coverage rate: 46% of employees in the private sector are represented by works councils and 89% of employees and civil servants in the public sector are represented by staff councils (Destatis, 2020a; Ellguth/Kohaut, 2020). Although staff councils do not exist in all public authorities, the difference regarding basic IR institutions between the private and public sector is more than significant.

The rationale is, first, that on the employers' side, decisions on IR matters are more centralized in the public sector than in the private sector and, second, that the state as an employer can institutionalize central decisions and enforce their implementation better than a voluntary association of privately-owned companies. Although employers' associations in the private sector

³ Based on the Works Constitution Act, the law for co-determination in the private sector, the "Federal Staff Representation Act" was put into force in 1955 (Schmidt/Müller 2018: 75).

can also try to contain labour market competition by collective agreements, members are free to leave associations and drop out of sectoral agreements if trade unions are not able to force them back. Although the German state is not monolithic and the disintegration of the former common bargaining at all three levels on the employers' side has reduced the effect of centralization and administrative enforcement, it is the state that makes the difference between private and public sector IR.

Whereas a capitalist “under penalty of ruin” cannot ignore competitors' behaviour, even if wages and working conditions are not the only parameter, the state can guarantee not only stable employment relations but also IR stability due to less market exposure. However, this pertains only as long as responsible politicians perceive stable employment and IR as feasible and as institutions worthy to preserve. However, if the state is seen as being completely dependent on taxes and the public sector is seen only as an inefficient way to deliver services, then cuts and austerity become crucial political objectives. If there is political will and societal acceptance, the state can also lay-off employees (at least non-civil servants), worsen employment conditions and withdraw in one move from collective bargaining (as the states did temporarily). Thus, at first glance, there can be very similar phenomena, but the effective factors are very different.

In the private sector, there has been an erosion of collective agreement coverage for years (erosion, not collapse, because each company decides for itself); IR in the realm of public sector employees are much more stable. However, the split in bargaining cooperation between the TdL on the one hand and the federal and local government on the other hand, as well as the time period between BAT and TV-L when no collective agreement was valid, show, first, that full coverage and complete breakdown of institutionalized IR are in some respects two sides of the same coin, and second, that political decisions play a major role.

Even more distinct from the private sector are the employment system and IR of the civil service. Because the basic employment and working conditions of civil servants are regulated by law at federal or state level, the relevance of political decisions to the civil service and its system of employment seems obvious. However, the employment system for civil servants is only completely unilateral at first glance, because civil servants have – below the level of formal industrial action – some formal and informal ways to participate, including rights of participation, consultation and informal lobbying and the option to go to court in order to enforce their rights (Keller 1981, 2020; Schmidt/Müller 2018). Civil servants have the right to organize collectively and therefore are also an IR actor, represented by the DGB and the dbb or by their affiliates.

Keller highlighted that “civil servants have traditionally constituted a disproportionately high percentage of MPs in general and members of the responsible Home Affairs Committee (Innenausschuss) in particular. Therefore, specific interests of this status group are directly represented within parliament, and its most important committee for all civil service matters” (Keller 2020: 119). This is a phenomenon which, referring loosely to Walton/McKersie (1965), could be regarded as a very intense form of “attitudinal structuring” by overlapping IR actors. MPs are members of dbb or DGB-member unions. Albeit that influencing other actors' attitudes works in both directions and, therefore, contributes to soften the opposite positions (one of the

reasons why, in particular, the dbb is not everywhere accepted as a pure, real trade union), the employment conditions of civil servants are, all aspects considered, no worse than those of public sector employees (even better concerning employment security and pensions). The special IR system for civil servants seems to work for both sides, civil servants and the state. Otherwise, the long tradition of the professional civil service in Germany, which survived various forms of government (Prussian monarchy, Weimar Republic, National Socialism) and was continued in the Federal Republic, would not have been so persistent. Even if this is surprising from a (neo)liberal perspective on the state, it seems that the performance of the civil service⁴ is the fundamental shelter of civil servants.

Moreover, in the Federal Republic, the Basic Law protects public servants: “The law governing the public service shall be regulated and developed with due regard to the traditional principles of the professional civil service” (Basic Law, 33/5). In consequence, as long as there is no amendment to this article, even the parliaments are not really free in their decisions on civil servants’ employment conditions. The Federal Constitutional Court decides in cases of differing interpretations whether a decision of parliament or government is legal. The rights and duties of civil servants are institutionalized to a great degree, conflicts are disputed at court.

Although the civil service shows pronounced stability, the federalist reform of 2006 (*Föderalismusreform I*) introduced significant decentralization in the regulation of civil servants’ salaries and working conditions, career systems included; it was, to some degree, a throwback to former decentral constellations that were overcome in the 1960s/1970s. At this point, the regulation of the employment conditions of civil servants were centralized at federal level, not least because the employers’ side intended “to finish competition in working conditions of civil servants (such as teachers) that existed not only with private industry but also within the public sector” (Keller 2020: 121). The more recent decentralization “was supposed to initiate the transformation from ‘cooperative’ to ‘competitive’ federalism (by the change of Article 74 of the Basic Law)” (Keller 2020: 122).

This time public employers and their organisations were, in contrast to their strategy some decades ago, strictly in favour of the federalisation, or to be more precise refederalisation, of working conditions. In contrast to their previous choice in the early 1970s, employers intended to stimulate and not to eliminate competition on labour markets. In other words, this change indicated a complete U-turn of former unanimous preferences that was initiated because the basic preconditions of their collective action had changed. In both cases unions and interest organisations opposed the changes but were finally unable to prevent them. (Keller 2020: 122)

Both changes seemed to be induced by two major factors: the hegemony of distinct ideas about modernity and fundamentally differing concepts of labour market policy. Whereas employers demanded or at least supported both changes, centralization first and decentralization later, there was disapproval on the side of trade unions in both cases. At first glance, this may seem

⁴ The performance of the civil service, however, may be defined by politics in way loyalty is an included feature.

an expression of changing ideological orientations or prejudiced by the changing *zeitgeist*; however, when considering both actors' conflicting interests under changed labour market power, some rationality cannot be denied.

These changes affect the relations between the two public sector employment systems and IR and therefore the way civil servants' salaries and working conditions are determined. Centralization favoured a synchronization of civil servants' salaries and conditions with the results of national bargaining in the realm of public sector employees. Decentralization only makes sense if there is an intention of deviating from the national agreement.

Public sector employers searched for the shelter of strongly institutionalized rules without much leeway when trade unions gained membership increases and they searched for the opposite as union density declined. Centralization prevents leapfrogging and decentralization fosters it – by both actors, but depending on their relative strength. To be clear, although both variants of public sector IR are structured around very different arenas and procedures, and decentralization of the determining of salaries and working conditions in the civil service is more pronounced than in the public employees' realm, there is still a substantial overlapping in the outcomes between both variants of public sector IR. “A transfer of pay increases and working time arrangements from the collective agreements for non-civil servants of the public sector, which used to be common until the mid-2000s, can now no longer be taken for granted, albeit they still represent a crucial orientation mark” (Schmidt/Müller 2018: 74).

Although the IR systems of employees and civil servants differ markedly and wages and working conditions differ to some degree, in both structures by and large the same actors on the employers' side (municipalities are excluded as employers of civil servants) as well as on the trade unions' side are active. Between public sector collective bargaining (“public stage bargaining”, Schmidt/Müller 2018) and “bargaining” in the realm of the civil service (“political stage bargaining”), some kind of (more or less hidden and with some limitations) “intraorganizational coordination” takes place – at least on the trade unions' side. However, whereas at federal level, government and parliament are responsible for collective agreements and civil servants respectively, at the state level the TdL negotiates a national agreement with the trade unions about wages and conditions, but on civil servants' salaries and conditions, each state decides for itself.

However, as Keller (2020: 121) with reference to Di Carlo stated, this is a structure “different from the frequently made (but empirically wrong) assumption that ‘pattern bargaining’ takes place in export sectors (metalworking industry and chemicals) and others, including the public sector, go along by ‘pattern following’. Such strict spillover mechanisms do not exist (Di Carlo, 2019).” No effective mechanism of the public sector is influenced by the private sector or the quoted export sectors. Of course, both sectors' employers must compete inter-sectorally to some degree on a national, and partially a European or an international labour market, but this is not a rationale for regarding public sector IR and its outcomes as actually derived. Even though there is no public sector wage premium in Germany (Müller/Schulten 2015), labour market competition is at best a mechanism of mutual adaptation, but wage differentials persist, nevertheless.

Staff councils

Staff councils are committees of staff representatives at workplace level. It is stipulated by law that staff councils ought to be established and details of basic structures as well as rights and duties are defined (Müller/Schmidt 2022). Although related to very different systems of employment and IR, and mostly elected in separate election procedures, civil servants, like employees, also have the right to take part in the election of staff councils. In municipalities with civil servants, in about 85% of cases separate elections were held (according to our own survey on staff councils in municipalities); however, staff councillors of both groups are nevertheless members of the same staff council.

At local authorities' level, staff councillors of both groups mostly cooperate with each other without many problems; for example, 96% of staff councils reported that cooperation between representatives of employees and civil servants works “very well” (78%) or “well” (18%), and only 1% rated it “bad” or “very bad” (findings of own survey 2022). When asked the same question about the quality of cooperation concerning staff councillors working in different areas of activity, like core administration (*Kernverwaltung*) or social and educational services (*Sozial- und Erziehungsdienste*) the answer is also positive, but slightly more reserved: 53% “very well” and 38% “well”. These figures suggest that there is clearly no special problem of cooperation between employees and civil servants. Likewise, the cooperation between members of different election lists (trade union lists or other independent lists) is far from bad, but it is not as unproblematic as the relation between representatives of both status groups. Such lists exist only in a minority of local authorities. In most cases, not entire lists (*Listenwahl*), but single persons can be elected (*Personenwahl*). *Personenwahl* is usually more popular and the turnout is higher, because one can choose persons and not only complete lists.⁵

It is remarkable that in local authorities, more civil servants participated in staff council elections (about 70% turnout) than employees (about 60% turnout) – this may be influenced by the circumstance that often only a small number of civil servants actually work in local authorities. Another important factor could be that at some local authorities most civil servants are fire fighters – often a group with *esprit de corps* but without fulfilling the stereotype of a civil servant habitus. Another reason for the comparably high turnout of civil servants may be that because of their often small group, *Personenwahl* happens more often for civil servants. In any case, these figures show that civil servants are not less open to staff councils and common interest representation than ordinary employees.

Staff councils (elected by all staff members) and trade unions (consisting of members) have legally different rights and duties and fulfil different functions within the twofold “dual system of IR” in the public sector. Because of the differences between the employment and IR systems

⁵ The electoral processes for staff councils of the states are quite similar but differ in some cases. In Baden-Wuerttemberg, voters can select single candidates by awarding up to three votes to one candidate (cumulate) and carry over candidates from the other list (panachage) in cases of a *Listenwahl* (§ 33, Electoral rules for the staff representation act of Baden-Wuerttemberg, LPVGWO).

of employees and civil servants one could speak of “two dual systems” of public sector IR, “or, since these two ‘dual systems’ overlap at the level of staff councils, of a ‘trimorphic system’ of interest representation” (Müller/Schmidt 2022). This is not only because there is an overlap between the employment and IR systems of employees and civil servants in staff councils, but also because of the phenomenon of “pattern following” (nowadays with deviations) within the sector and trade unions’ attempts to coordinate and to steer interest representation; therefore, speaking not only of a *trimorphic* but also of only *one*, all encompassing, but in itself heterogeneous public sector IR system seems applicable. Perhaps also the term “hybrid system” (compare Di Carlo 2019: 100 with reference to Jacobi/Keller/Müller-Jentsch 1992) may not be completely wrong.

In any case, speaking of a *system* is more correct for the public than for the private sector, where because of erosion the boundaries of the IR system are not clear-cut. Schroeder (2014), for example, spoke of “three worlds of IR” with varying degrees of institutionalization. Already before these changes, public sector IR and private sector IR were different. However, in a way, decentralization, NPM and austerity made public sector IR more similar to the IR of the private sector. Temporary employment increased in the public sector even more than in the private sector. However, this is not the complete picture. Because privatization found its victims primarily among employees rather than among civil servants, the number of employees decreased and the proportion of civil servants rose (Schmidt/Müller/Trittel 2011). In this sense, public and private sector IR diverged more than before. However, since the financial crisis 2007/09, employment in the public sector increased and primarily employees were recruited again (Destatis 2020b), for example, in pre-school education.

From a trade union’s perspective, interest representation at all three main arenas, workplace representation by staff councils, collective bargaining, and influencing legal decisions on civil servants (“political stage bargaining”) should be coordinated by their respective organizations. Even if this needs a lot of intra- and interorganizational bargaining (Walton/McKersie 1965), the DGB, ver.di, and the dbb try to coordinate all three arenas of public sector IR at least to some degree. However, because of trade union competition and due to the fact that not all staff councils participate in trade unions’ coordination efforts, this attempt works but only with limitations.

About 77% of surveyed staff councillors reported that one or more of them were a member of a trade union. If this is the case, then in 55% of staff councils’ the chair is a member of ver.di, in 16% a member of Komba (the most important dbb affiliate at local authorities), and about 2.5% belong to other trade unions. In 26% of these cases, the chair is not a trade union member. With regard to *all* staff councils, at least a third of staff council chairs are not organized in a trade union.

Actually, coordination of trade union and staff council activities seems less pronounced than chair membership suggests. To the question “Is there regular cooperation of the staff council with full-time or voluntary trade union officers from outside the administration?”, 14% answered very positively with “Yes, on a regular basis”, 38% replied “Yes, but rather rarely”, and 24% answered “Sometimes we use (trade union) materials, but direct contacts do not exist”.

Finally, 24% said “No, there are no contacts and we do not use any materials”. However, 51% reported cooperation with other staff councils from other local authorities.

Although staff councils do exist in nearly all public authorities (far more than work councils in the private sector), only a minority takes part in regular cooperation with a trade union. Moreover, asked, “how strong trade unions’ influence on staff council decision” is, on a scale from 1 (“very strong influence”) to 5 (“no influence”), 59% of staff councillors chose the 5, 20% the 4, and about 8% took the options 1. Altogether the average was 4.3; hence, quite near to “no influence” on staff councils’ decisions.

The cooperation of trade unions and staff councils is therefore rather loose, in many cases even decoupled. Nevertheless, some trade union members among staff councils are very active in supporting union activities. In the cases where staff councils cooperate “regularly” or even only “rarely” with trade unions, staff councillors nevertheless support “in their role as trade union members” trade union activities. In such cases, 71% staff councillors support trade unions by mobilizing for collective bargaining rounds, 61% by recruiting trade union members, 57% take part in trade union bodies, 34% act as shop stewards or participate in internal trade union groups, and 9% work as a trainer or support trade union training.

Although only about half of staff councils cooperate in some way with trade unions – and we know from interviews that even in such cases the cooperation is not always very close – all staff councils can gain advantages through collective bargaining because it can make staff members aware of the relevance of interest representation. However, not all staff councils supported this perception: 32% of all staff councillors answered “Yes, bargaining conflicts show that interest representation is important”, 6% answered “No, bargaining conflicts rather damage the reputation of the staff council in the eye of staff members”, and 62% denied any nexus.

Even if in most cases both trade unions and staff councils would gain advantage from mutual support, survey figures showed that regarding staff councils generally as the “ground troops” of trade unions or their shop floor representatives is wrong. However, it would also be misleading to assume fundamental differences between staff councils and trade unions. Asking the 48% of staff councils without any contact with trade unions for an explanation, only 2% said that they opposed trade union involvement in principle and 5.5% did not see any practical benefit in cooperation, whereas more than 82% signalled no general refusal. In addition, 20% answered that until now no trade union had actively approached them and 72.5% answered that they did not generally reject trade unions, but that cooperation “just did not turn out”. Hence, a potential for union cooperation seems to exist, but, from the perspective of staff councils, the rare contact or the lack of contact with trade unions seems to be the main obstacle. Out of all the staff councils, whether they cooperated with trade unions or not, 81% saw “insufficient attendance on-site” as a weakness of trade union support for staff councils. The point – or perhaps more aptly, the vicious circle or irony – is that the rarity of trade union presence is mostly itself a consequence of trade union weakness and lack of capacity due to membership losses.

To sum up: Albeit public sector IR were often regarded as somehow derived from the private sector, this is true to some degree but only for the transfer of ideas, for example, there is some

similarity between the works constitution act (BetrVG) and staff representation laws (PersVG), and concerning the perception of public sector IR by the actors. In comparing the *modus operandi* of the public sector with the private sector, one can say, by and large, that the public sector IR system is completely different from the private sector IR system because it is impacted by different things. Public sector wages and salaries, for instance, are neither derived from private (export) sector pay developments nor are they influenced by the same factors.

3. Trade union power resources

Not only are the systems and the outcomes of public sector IR empirically different from the private sector, but differences also emerge from the factors shaping trade union power. Even in cases where the wages of civil servants and employees of the public and of the private sector develop similarly, the causes are not the same.

Wages in the private sector mainly depend on *employers' ability and necessity to pay*. Whereas the first is a result of the success in the commodity and service markets (sometimes stock markets), the second depends on labour market supply and demand (influencing labour market mobility, particularly employees' exit options), trade union pressure (voice), and on the institutionalized rules of labour market competition. In the public sector, employers' ability to pay is not a market effect but depends on tax revenues. Taxes in turn depend not only on economic development, but also on political decisions, as well as on politically given rules for indebtedness, politicians' beliefs in monetary theories, and whether the implementation of austerity policies seems unavoidable or not.

Although the ability to pay from the perspective of a single local authority's treasurer seems a factual constraint, the state as a whole can more or less decide on its ability to pay by setting taxes or incurring debts. This paper cannot pursue the ongoing complex debate on economic principles; however, it is obvious that political decisions on taxation can reduce or extend the scope for wage decisions.

In the public sector, employers' *necessity to pay* is at first glance a phenomenon similar to that in the private sector. Labour market shortages play a role, but the established rules (collective agreements and salary laws) do not allow wages or salaries for single employees or civil servants to be increased, even if a single employer would like to pay more. Strong labour market demand therefore affects wages less immediately than in the private sector.

Even if hidden deviations from the rules (*verdeckte Entgeltspanne*, Schmidt/Müller/Trittel 2011: 218) sometimes occur, for example, because otherwise some positions with strong labour market shortages could not be staffed,⁶ labour market effects have to be perceived, discussed,

⁶ In a survey of staff councils on collective bargaining, conducted 2010/11 before the new TVöD-grading structures came into force, informal better classifications of single or all jobs were not so rare, but attracting new staff was not the only cause, among others the honouring of loyal employees and personal or political relations were also reported (Schmidt/Müller/Trittel 2011: 218).

negotiated, and subsumed under generalizable rules. Besides single, informal cases, labour market effects become actually real only via decisions in the IR system.

Although trade unions have lost members, in the public sector as well as in the private sector, trade union power is still relevant. In recent years, the trade union power resources approach (e.g., Schmalz/Dörre 2014; Gumbrell-McCormick/Hyman 2013) has often been used and it has proved to be a helpful instrument. Structural, organizational, institutional, societal and – in our approach – political power resources (Schmidt et al. 2019) are more or less important for the exertion of trade union pressure. However, due to the differences between the private and the public sector, it is unsurprising that there are also differences in the context and thus the possibilities of using different power resources.

A first and important point of difference between the sectors concerning trade union power resources is the role of industrial action. Most obvious is that because civil servants are not allowed to go on strike, union pressure cannot rely on fully developed industrial action (also staff councils have no right to strike). In consequence, at least concerning some realms of the public sector, the effectiveness of strikes by employees is weaker because civil servants are required to substitute for striking colleagues. A further point is the character of industrial action. As Keller stated, “the bargaining power of the pressure groups in the public sector is based on their ability to incur political costs on their employers, whereas in the private sector the bargaining power of the unions lies in their potential influence on the economic costs borne by employers” (Keller 1981: 351). Yet, where the production of profits cannot be interrupted, how is it possible to cause political costs for the employer? The traditional answer is “through the effects of such action on a third party to the conflict, i.e., the consumer” (ibid). However, since it is not determined whether the consumers or citizens address anger against the state or the trade union, this is a risky strategy. Moreover, possible outcomes are influenced by hegemonic interpretive frames, which can be, for example, used by the media but also by the IR actors themselves. Perrone noted, “It has now become very common to conceptualize strikes not only as an economic test of strength with the employer, be he or she single or collective, but as a resource to spend in a political market place where the major interlocutor is the state” (Perrone 1983: 420).

Both authors’ findings are still of fundamental importance for the special character of strikes and the power resources of trade unions in the public sector. The differentiation between the strike “as an economic and political weapon” (ibid) and the mentioning of consumers as a relevant third party are important; however, recent strikes in the social and educational services in Germany were not primarily aimed at harming service customers but rather wanted their support.

Nowadays, ver.di applies public sector strikes primarily as a kind of “political weapon” by means of revealing deficiencies not only concerning the pay and working conditions of employees, but also by highlighting deficiencies of service delivery resulting from bad working conditions. In such cases, though the state as employer is the final recipient, the public is also addressed. For example, parents of children in day care centres were approached. Citizens and consumers were targeted as alliance partners, not as opponents or victims of the strike. This

may sound well-founded, nevertheless, pre-school parents experienced the negative consequences of a strike. Such a strike strategy is therefore unlikely to be successful without public relations activities by trade unions and without at least some overlapping of interest between staff and customers. This is a significant constraint.

Industrial action does not function in cases in which public sector staff and their trade unions frame industrial action as only serving themselves and their members, unless there is a fundamental discrimination against public sector staff which can be regarded as a fundamental matter of fairness by citizens. This may lead to a rejection or rare application of a purely member-oriented strategy and/or to a strategy of strengthening “public service motivation” or “public sector motivation” (Wright 2001) by employees and trade unions. The more their work serves the citizens, the more this alliance works. To be clear, not all contradictions disappear in consequence of trade unions’ strategic decisions, however, as can be shown in the example of the development of the pre-school realm, if the support of citizens and politicians is strong enough, then additional demands can be made. Societal recognition legitimizes further demands.

Two versions for a successful use of such a trade union strike strategy can be distinguished. First, the version we called “political stage bargaining”, a strategy which crucially tries to exert pressure on the employers or to convince them of the just cause of the trade union demand. Theoretically, “political stage bargaining” can be supported by industrial action too, but this strategy seems most useful in the realm of civil servants where strikes are banned. Of course, it is helpful if a trade union-friendly government is in office and alliances therefore more likely. Examples are the SPD-supported introduction of statutory minimum wage in 2015 (coalition of CDU and SPD), or the introduction of the full co-determination staff representation law in 2019 by the red-red-green state government in Thuringia. However, actually, party politics often makes no difference for public sector IR. Here, an example is the divergence of civil servants’ salaries in different German states (Dose/Wolfes/Burmester 2020, Keller 2020). Nevertheless, not least for civil servants and their trade unions, the use of “political power resources” is of fundamental importance. “Political stage bargaining” includes lobbying and other soft forms of bargaining. Although private sector trade unions can also try to receive support from the state via lobbying, their objective is to get support by *the third party of IR*, and not directly by *the state as the employer*.

The second version of strike strategy can be termed “societal stage bargaining” or, as formerly termed, “public stage bargaining” (Schmidt/Müller 2018). As already described, this strategy aims to enforce trade union demands through societal pressure. This strategy of using “societal power resources” is not restricted to trade union activity in the public sector, since demands for corporate social responsibility offer the possibility of also using it in the private sector; however, it makes a difference whether societal discontent is directed at an elected government or at a company.

Nevertheless, the most important difference from the private sector remains the irrelevance of “economic bargaining” because civil servants are banned from industrial action and because of the functional difference of a strike in a non-profit context for employees. Though labour market power, budgets, financial leeway, and the power to disrupt work processes (“structural

power resources”) are also important in the public sector, they are modified by political and societal influences; this is one reason why “societal” and “political power resources” are more important for the public sector.⁷

Civil servants are protected by German Basic Law and by constitutional courts’ interpretation of the “traditional principles of the professional civil service”. The dbb and the DGB use this extensively as a kind of “institutional power resource”. However, whereas the DGB demands the right to strike for civil servants, the dbb regards this as unnecessary. The institutionalized tradition of the working conditions of public sector employees being secured by collective agreements is a further aspect of the relevance of “institutional power resources” in the public sector. However, the field of collective bargaining is not only a trade union power resource but also in itself an arena of dispute and negotiation. Both institutionalized collective bargaining and the traditional status of civil servants have historically developed, but whereas collective bargaining can be traced back to concessions to the labour movement (Däubler/Kittner 2020), the special status of the civil service dates back to the pre-democratic state (Wehler 2008). Neither their origins nor their current legal constitution guarantees the further existence of these institutions, though legally solidified interests normally retard rapid changes.

As depicted above, staff councils, regulated by staff representation laws, are an important institution of public sector IR. The legal rules, which differ slightly between states, as well as the composition and practice of staff councils work, are themselves a matter of negotiation and dispute. Institutional power resources are very important for trade unions, but to rely only on them would be rather risky. Without self-strength based primarily on membership (“organizational power resources”) and secondarily on societal support, trade unions would entirely depend on the support of governments and local authorities.

In Germany, union density also decreased in the public sector, however, not uniformly for all groups of public sector employees. Whereas, for example, ver.di observed membership losses in the realm of core administration, the organization gained members among employees in social and educational services. In recent years, strike action in the public sector was often driven by educational or nursing staff. These are encouraging experiences for trade unions. However, trade union capacities to support staff councils seem to be scarce and the coordination of an integrated public sector IR system with staff councils seems at risk.

Conclusions

Although in European comparison the neoliberal inspired discourse of NPM, flexibility, efficiency, austerity, and privatization brought Germany an unusual lean state (European Commission, 2013; Gottschall et al., 2015) and affected IR, wages and working conditions of the private

⁷ Schmalz/Dörre (2014), whose approach is broadly perceived (not only) in the German language area, do not distinguish between “societal” and “political power resources” (similar to Lehndorff/Dribbusch/Schulten 2018). However, as long as it makes sense to differentiate between society and state, this distinction should be helpful – not only with regard to the public sector.

and the public sector and the conditions of civil servants and employees in a negative way, developments differ also in the course of time. Since the financial crisis 2007/09, neoliberalism and austerity lost its momentum and a moderate growth of staff and public expenditure returned.

Trade union power resources in the private sector are not always stronger than in the public sector – and *vice versa*. How trade unions in export-driven industries or the public sector perform depends on both, markets and politics. In some constellations, private sector trade unions must compete with globalized market pressure, whereas the public sector seems to be sheltered. Globalization, financialization, austerity, the financial crisis, the Covid-pandemic, and also distinct concepts of fiscal policy or reorganization concepts like NPM can have a varying impact.

At least three crucial trade union bargaining strategies should be distinguished:

The first one is “economic bargaining”. In case pure negotiations are not successful, trade unions try to coerce employers to fulfil their demands by a strike, which disrupts production processes and impairs profits. This is an adequate strategy for the private sector but ignores the special, often non-profit conditions of the public sector. Such a bargaining strategy could cause for trade unions in the public sector not only a defeat in a single strike, but a loss of societal recognition.

A coerced or voluntarily chosen alternative is the appeal to already existing rights and a mix of consulting, negotiating and so on with politics (“political stage bargaining”), practiced especially in the civil service. In parts, one could even speak of a “court strategy”. “Political stage bargaining” works in the public sector. But without societal support and goodwill of the state, also strongly institutionalized rights can be eroded. The dbb’s waiver of demanding the right to strike for civil servants maybe actually reasonable in order to safeguard pensions and employment security, however, in the long or even medium term, this may turn out to be disadvantageous.

A third, strategy often pursued by ver.di and its public sector predecessor, the union ÖTV⁸ conceptualizes bargaining as a societal process (Di Carlo 2019). This strategy addresses the democratic state in its double function as elected parliament and government on the one side, and as an employer on the other side. By mobilizing societal support or even fuelling discontent with politics, pressure is developed independent from politics and does not indirectly depend on the employers’ side. This is a demanding bargaining strategy for trade unions, but the suitable one for the public sector.

Mobilizing societal support for trade unions functions better on a long-term basis, and not merely applied ad hoc in case of conflict. At the core of such a sustainable strategy must be a better appreciation of public services. The example of care and medical services during the Covid-19 pandemic suggests that an appreciative perception of the public sector and its personnel is possible. However, because in still hegemonic economic theories, society is more or less reduced to economy and the state is seen as a kind of parasite financed by taxes, a sustainable

⁸ ÖTV (Public services, transport and traffic) was one of five trade unions which merged and became ver.di in 2001 (Keller 2021, 2005).

recognition of work done by the state needs a fundamentally changed interpretive frame of productive work. Concepts like the “entrepreneurial state” (Mazzucato 2018) and or the “foundational economy” (Foundational Economy Collective 2018) offer new theoretical perspectives for a redefinition of productive work. The trade union strategy of “societal stage bargaining” in alliance with a theoretical approach superior to neoliberalism can constitute a kind of “progressive public sector strategy” targeting on good services, good working conditions and an extension of a democratically controlled world of work.

References

Basic Law (1953): *Basic Law*, last amended 29 September 2020, translated for and edited by the German Bundestag 2020.

Däubler, W./Kittner, M. (2020): *Geschichte der Betriebsverfassung*. Frankfurt am Main: Bund-Verlag.

Destatis (2020a): *Arbeitnehmervertretungen*, available at: <https://www.destatis.de/DE/Themen/Arbeit/Arbeitsmarkt/Qualitaet-Arbeit/Dimension-5/arbeitnehmervertretungen.html> (access 22 July 2021).

Destatis (2020b): *Fachserie 14, Reihe 6: Finanzen und Steuern, Personal des öffentlichen Dienstes*. Statistisches Bundesamt.

Di Carlo, D. (2019): *Together we rule, divided we stand: public employers as semisovereign state actors and the political economy of public sector wage restraint in Germany*. PhD thesis, University of Cologne.

Di Carlo, D. (2020): Understanding wage restraint in the German public sector: does the pattern bargaining hypothesis really hold water? *Industrial Relations Journal* 51 (3): 185–208.

Dose, N./Wolfes, F./Burmester, C. (2020): *Kleinstaaterei im Dienstrecht der deutschen Bundesländer. Probleme bei der Bundesländergrenzen überschreitenden Mobilität von Landesbeamten nach der Föderalismusreform I*, Nomos, Baden-Baden.
DOI:10.5771/9783748907237

Ellguth, P./Kohaut, S. (2020): Tarifbindung und betriebliche Interessenvertretung: Aktuelle Ergebnisse aus dem IAB-Betriebspanel 2019. *WSI-Mitteilungen* 73 (4): 278–285.

European Commission (2013): *Industrial Relations in Europe 2012*, Brussels.

Foundational Economy Collective (2018): *Foundational Economy. The Infrastructure of Everyday Life*. Manchester University Press.

Gottschall, K./Kittel, B./Briken, K./Heuer, J./Hils, S./Streb, S./Tepe, M. (2015): *Public Sector Employment Regimes: Transformations of the State as an Employer*. Springer.

Gumbrell-McCormick/(R./Hyman, R. (2013): *Trade Unions in Western Europe: Hard Times, Hard Choices*. Oxford University Press.

- Jacobi, O./Keller B./Müller-Jentsch, W. (1992): *Germany: codetermining the future? Industrial Relations in the New Europe*, in Ferner, A./Hyman, R. (eds) Oxford: Blackwell Publishers.
- Keller, B. (1981): Determinants of the wage rate in the public sector: The case of civil servants in the Federal Republic of Germany. *British Journal of Industrial Relations* 19: 345–360.
- Keller, B. (2005): Union formation through merger: the case of Ver. di in Germany. *British Journal of Industrial Relations* 43 (2): 209–32.
- Keller, B. (2014): The continuation of early austerity measures: the special case of Germany, *Transfer* 20 (3): 387–402.
- Keller, B. (2016): *Germany: Retrenchment Before the Great Recession and Its Lasting Consequences*. In: Bach, S./Bordogna, L. (eds): *Public Service Management and Employment Relations in Europe: Emerging from the Crisis*, New York/London: 191–217.
- Keller, B. (2020): Employment relations without collective bargaining and strikes: the unusual case of civil servants in Germany. *Industrial Relations Journal* 51 (1/2): 110–133.
- Keller, B. (2021): *Ver.di wird 20 – was wird aus ver.di?* in: Wirth, C, (ed): *Konkurrenzen und Solidaritäten, Festschrift für Anton Kobel zum 75. Geburtstag*: 81–106.
- Lehndorff, S./Dribbusch, H./Schulten, T. (eds) (2018): *Rough waters European trade unions in a time of crises*. Second editon, Brussels.
- Mazzucato, M. (2018): *The Entrepreneurial State, Debunking Public vs Private Sector Myths*. Penguin Books.
- Müller, A./Schmidt, W. (2022): Staff councils and their power resources – Workplace representation in German municipalities. *Employee Relations* (accepted and to be published).
- Müller, T./Schulten, T. (2015): *The public-private sector pay debate in Europe*. ETUI Working Paper 2015.08, Brussels.
- Müller-Jentsch, W. (2004): *Theoretical approaches to industrial relations*, in: Kaufman, B.E. (ed): *Theoretical Perspectives on Work and the Employment Relationship*, Cornell University Press, Ithaca, NY: 1–41.
- Müller-Jentsch, W. (2018): Seven decades of industrial relations in Germany: Stability and change through joint learning processes. *Employee Relations* 40 (4): 634-653.
- Perrone, L. (1983): Positional Power, Strikes and Wages. *American Sociological Review* 49 (3): 413–421.
- Schily, O., Heesen, P., & Bsirkse, F. (2004): *Neue Wege im öffentlichen Dienst, Eckpunkte für eine Reform des Beamtenrechts*.
- Schmalz, S./Dörre, K. (2014): Der Machtressourcenansatz: Ein Instrument zur Analyse gewerkschaftlichen Handlungsvermögens. *Industrielle Beziehungen* 21: 217–237.
- Schmalz, S./Ludwig, C./Webster, E. (2018): The power Resources Approach: Developments and Challenges. *Global Labour Review* 9 (2): 113–134.

Schmidt, W./Müller, A. (2013). *Leistungsorientierte Bezahlung in den Kommunen: Befunde einer bundesweiten Untersuchung*, Reihe Modernisierung des öffentlichen Sektors. Sonderband 42. Berlin: Edition Sigma.

Schmidt, W./Müller, A. (2018), 'Germany: an intertwined two-part system of unilateralism and collective bargaining'. *Labor History* 59 (1): 71–86.
DOI:10.1080/0023656X.2017.1375596

Schmidt, W./Müller, A./Ramos-Vielba, I./Thörnqvist, A./Thörnqvist, C. (2019): Austerity and public sector trade union power: Before and after the crisis'. *European Journal of Industrial Relations* 25 (2): 129–145. DOI:10.1177/0959680118771120

Schmidt, W./Müller, A./Trittel, N. (2011): *Der Konflikt um die Tarifreform des öffentlichen Dienstes. Verhandlungsprozesse und Umsetzungspraxis*. Berlin: Edition Sigma.

Schroeder, W. (2014): Perspektiven der industriellen Beziehungen in der deutschen Exportwirtschaft und die Rolle der Finanz- und Wirtschaftskrise. *Sozialer Fortschritt* 63: 21–30

Walton, R. E./McKersie, R. B. (1965): *A Behavioral Theory of Labor Negotiations. An Analysis of a Social Interaction System*. McGraw-Hill, New York, London.
DOI:10.3828/hsir.1999.8.7

Wehler, H.-U. (2008): *Deutsche Gesellschaftsgeschichte, erster Band 1700–1815*. Erste, durchgesehene Studienausgabe. München: C. H. Beck.

Wright, B. E. (2001): Public-Sector Work Motivation: A Review of the Current Literature and a Revised Conceptual Model. *Journal of Administration Research and Theory* 11: 559–586.