2. Negotiating employment security: innovations and derogations

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2.1 INTRODUCTION

In the face of imminent redundancies, the bulk of negotiations that have taken place over past decades have dealt with ways to smooth job cuts through measures such as severance pay or early retirement. A brief look into any database on industrial relations confirms that the issue of how to cut back on jobs continues to feature prominently on collective bargaining agendas. By contrast, this chapter highlights attempts to circumvent or diminish redundancies, to save jobs and reduce employment insecurity. While this approach continues to be less common than the traditional mainstream method of easing ways into unemployment, it has become more important over the past two decades. The economic crisis that unfolded in 2008 has pushed endeavours to save jobs, rather than smooth redundancies, to the top of the agenda. Thus, a look at earlier negotiations on employment security may provide useful insights into the potential of collective bargaining in this respect. While there is no doubt that the jobs situation since late 2008 has been particularly threatening, experience gathered over the past few decades offers some important lessons. The arguably most simple and basic amongst these lessons serves as a starting point for the present chapter: there is no “best way”. There are a number of challenges and contradictions associated with collective bargaining on employment security.

The first challenge concerns the balance of power. In the wake of the end of the “golden age” of post-war capitalism in the advanced industrialized world, when unemployment rates remained at unaccustomedly high levels in many of these countries, the fight against unemployment and employment insecurity gradually moved centre-stage as either an implicit precondition or an explicit issue of collective bargaining. Given the fundamental management prerogative on decisions over employment in companies, the incidence of negotiations on issues related to employment insecurity is far from self-evident. Negotiations on this issue will only
take place if labour law in a given country sets certain limits to the “com-
modification” of labour, or if the presence of trade unions, and the cost of social conflict make negotiations on employment insecurity a matter of political rationality. Under such conditions, negotiations may become the preferred option for an industry or company that needs to maintain and improve economic efficiency within an environment of employment insecurity, to the extent that this efficiency will be based on the skills and motivation of the workforce.

On the other hand, it must be noted that an environment of unemploy-
ment and of employment insecurity may limit the potential impact of trade unions. Unions have always proven to be more vulnerable during a downturn as compared with a period of economic recovery and rapid employment growth. It is evident that the post-1970s economic developments mark a shift in the power relationship to the disadvantage of trade unions. Globalization of production and “financialization” of corporate governance (Kädtler 2003) place companies in a favourable position in negotiations with unions because companies can put pressure on unions to make concessions by threatening them with the relocation of production, the outsourcing of certain business units or functions, or by legitimizing higher targets for the rate of return. Reorganization makes employers less dependent on necessarily reaching a collective agreement with a union, but it also makes single employers less dependent on employers’ associations as representatives of collective business interest vis-à-vis the union.

Thus, it is fair to assume that while employers face a need to negotiate on employment security in many cases, the balance of power in these negotiations tends to tip in their favour. This ambiguity involved in negotiations on employment insecurity should be borne in mind as an underlying problem in the whole scale of bargaining issues and approaches discussed in the present chapter.

A second, and related, challenge has to do with identifying what the preconditions of employment security actually are. The problem becomes evident when we look back at the historical evolution of collective bargaining on employment security. It is both confusing and revealing that the preferred terms used in the literature aimed at addressing this issue have changed over time as changes in language followed the dynamics in practice. Arguably the most important starting point for what has developed over recent decades in this respect is the “concession bargaining” in large parts of unionized industries in the U.S., particularly the automotive industry, since the 1980s. This term reflects the distinctive type of bargaining between trade unions and management in which measures to ease or smooth job retrenchment in particular industries or companies is traded against cuts in wages or in the wage package.
In the 1990s, “concession bargaining” spilled over to Europe and in doing so, the concept and practice began to change and expand in scope. As compared to the U.S., and given the diversity of institutional settings across European countries, it is much less obvious in Europe who is responsible or entitled to negotiate with whom at what level and on which issue, and it is equally open to debate which direction negotiations may take. In centralized corporatist environments (Müller-Jentsch 1991), for instance, there may be sectoral or central agreements that foster competitiveness at sector or company levels through wage moderation or by facilitating flexibility at the company level. At the same time, bipartite or tripartite employment pacts may aim to provide greater leeway for local actors to engage in bargaining on these issues, thus opening pathways to decentralized collective bargaining on a large array of issues directly or indirectly connected with the safeguarding or promotion of employment and employment security. Terms coined in the literature of the late 1990s to capture this multifaceted trend in collective bargaining on employment issues include “alliances for jobs”, “local pacts for the safeguarding of employment”, or simply “pacts for employment and competitiveness”. Freyssinet and Seifert (2001: 11) define the latter term, with its shorthand “PECs”, as “collective agreements at sectoral or company level that deal explicitly with the issues of employment and competitiveness, and with the relationship between them, to either safeguard jobs that are at risk or create new ones.” As Sisson (2005: 2) points out, even though there is no “typical” PEC, most of them have two objectives: (1) to minimize employment reductions or to stabilize employment, and (2) to reduce costs of organizations or to improve their ability to adapt. As Ozaki (2003: 1) notes, the ambiguous nature of these agreements reflects the growing ascendancy of enterprise strategies over labour market regulation. While previously labour market regulation (including collective bargaining) aimed at providing equity in working conditions had an important impact on the formulation of enterprise and production strategies, recent collective bargaining outcomes primarily follow enterprise strategies aimed at market performance and competitiveness. Thus, the order of ascendancy seems to have been reversed.

Thus, the assumption that jobs would be created through higher competitiveness may be regarded as an almost consensual starting point for most collective bargaining on employment issues before the current crisis. Therefore, it appears sensible to put the explicit employment pacts at the centre of the present chapter before focusing on emergency jobs pacts for the crisis beginning in 2008. The present crisis has given a new dimension to collective bargaining on employment. In many cases, local pacts on
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employment protection represent alliances for survival. Moreover, given the enormous public resources mobilized for the rescue of large organizations in the financial industry since 2008, it is obvious that there is a strong call for state support amongst the actors involved in many of these alliances. This call is particularly pertinent in negotiations on substantial cuts in working hours accompanied by equally dramatic cuts in wages. Collective bargaining in times of economic crisis, so it appears, displays its potentials as well as its limits.

Thus, our overview of experiences with negotiations on employment security will discuss this issue from three different angles. In what follows, we first address the major contents of agreements on employment security (section 2.2). Second, since it is virtually impossible to separate the contents of collective bargaining on employment security from the side-effects and their repercussions on the industrial relations systems, we address problems related to the process of negotiation, that is, the actors involved, their place within the architectures of national systems of industrial relations, and the implications of these environments for the capacity of collective bargaining actors to engage in negotiation on employment security (section 2.3). Third, we highlight the need for state support for collective bargaining actors through the example of recent work sharing initiatives. This shows that in a situation of deep economic crisis, potential negotiations on employment security will be limited unless public resources are mobilized to facilitate satisfactory compromises (section 2.4).¹

2.2 WORKING BETTER, OR JUST CHEAPER?
ISSUES ADDRESSED BY COLLECTIVE BARGAINING ON EMPLOYMENT SECURITY

Both historically and systematically there are different reasons and causes for negotiations on employment security. The different causes impact the content of the agreements because of the different rationales and approaches of the actors involved.

The first, and arguably most “classical”, type of negotiation on employment security aims at retrenchment.² It is caused by structural shifts which reflect the loss of competitiveness of major industries in some countries vis-à-vis rising players from other parts of the world in increasingly globalized markets. This was the basic feature of concession bargaining in the U.S. in the early 1980s (Kochan et al. 1994). A second focus may be put on the survival and recovery of enterprises. This type of negotiation is prompted by the business failure of individual companies within highly competitive markets and aims to link the reduction of labour costs with
efforts to increase the flexibility of labour and operations, rather than putting the emphasis primarily on retrenchment of staff. Third, the adaptation of businesses to changing market situations and business strategies triggered by the globalization of business operations in general, and the continuous reshuffling of division of labour within international value chains in particular, is at the centre of many negotiations. This challenge is closely linked with shareholder value oriented corporate governance as “global financial markets-driven capitalism has turned shutdowns from an effect of crises and structural change into a ‘normal’ tool of corporate restructuring” (Detje et al. 2008: 243). Once individual establishments are confronted with the risk of retrenchment or shutdown, even if they are in the black, a wider range of measures geared to improve business efficiency, beyond the simple cut-down in wages or staff, are likely to come into play. Fourth, political pressure is a driver in its own right for negotiations on employment security. For obvious reasons, the direction of this pressure may differ substantially. It may range from government initiatives like the introduction of the statutory 35-hour week in France, which facilitated company bargaining on all sorts of issues, including employment insecurity, that were previously non-negotiable so far in the French context; or tripartite bargaining within an overriding national strategy on employment and labour market issues, as pursued in the Netherlands by the end of the 1990s; to pressure exerted by governments on collective bargaining actors, as was practiced in Germany through the so-called “Agenda 2010” policies in which the Federal government threatened to change the legal framework of collective bargaining if there was no agreement between collective bargaining actors on the so-called “opening” of collective agreements to local deviations or derogations (Lehndorff et al. 2009).

Obviously these drivers of collective bargaining on employment are not mutually exclusive. The same applies to the contents of bargaining to which we now turn.

Employability

The rationale behind measures aimed at the improvement of employability is to prepare redundant workers for a better match in internal or external labour markets. Thus, the line between these measures and the bulk of agreements dealing with downsizing of organizations and staff reductions is blurred. It is thus highly likely that employability-geared measures will gain importance in the present economic crisis.

Concerning the content of agreements dealing with this issue, two (in most cases intertwined) approaches may be distinguished. The first is the establishment of either internal or external staff pools or “job foundations”,

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the scope of which ranges from “internal job centres” (Knuth and Mühge 2008) to public schemes, such as the Italian “cassa integrazione”.

Second, these approaches will be preferably combined with a variety of measures dealing with training. Countries where policies aim to foster continuous training are more likely to take part in tripartite initiatives. This is the case for instance in Denmark (Jørgensen 2004) where further training was combined with what is called “job rotation” schemes in the 1990s. In job rotation models, the company employs substitutes during periods when employees participate in training and educational courses.

Given the current economic crisis, the weak incidence of collective bargaining addressing employment insecurity through training measures indicates arguably one of the most necessary innovations. The issue here is not just about curtailing job losses in the short term, it is also about providing the skills needed in the mid term, that is, in the economic recovery after the crisis. Thus, “retraining – not redundancy” (Bosch 1992) may become a high profile issue on the collective bargaining agenda in the near future.

**Wage Cuts and Working-time Extensions**

As mentioned earlier, wage reductions, or at least wage “moderation”, have been at the core of any employment-oriented collective bargaining strategy. Following the guidelines of supply-side focused economic thinking, wage moderation used to be the ultimate rationale behind both explicit and implicit employment pacts at national or sectoral levels. These approaches practiced in many countries, especially the corporatist environments of small and open economies, such as the Netherlands, are described in great detail by earlier studies on employment-oriented collective bargaining strategies (Freyssinet and Seifert 2001). While the current upheaval in macroeconomic policies may entail a critical review of these approaches, it must be stressed that at the enterprise level, wage moderation and, in many cases, explicit wage reductions have arguably been the most widespread element in employment and competitiveness agreements. At the macroeconomic level, wages must be regarded both as a cost and a demand factor and recent economic debates tend to emphasize the latter more than the former in recent decades. However at the level of individual enterprises, the demand aspect is abstract, while the cost aspect is concrete. Thus, there is no indication that a reversal of mainstream approaches will occur at this level in the near future.

Wage moderation and reductions at the enterprise level can take different forms and can be either temporary or permanent in nature. Most importantly, they can be the prime instrument geared to regain competitiveness, or they can be combined with other instruments, such as process
or product innovations and investment decisions. In recent years, another distinction has become increasingly important, that is, wage reductions can be either explicit, or implicit, insofar as the monthly wages remain untouched whereas the working-time is extended.

The classic case of employment pacts explicitly focused on wage reductions has been the concession bargaining in the U.S. since the 1980s. Evidence of implicit pay cuts by way of working-time extensions was most marked in Germany over the past few years (Lehndorff 2007). As many of these deals in Germany and some other EU countries interfered with industry standards, they highlight the ambiguous tightrope act between industry standards and employment guarantees. While in some cases industry standards were eventually reinstated after the recovery of the enterprise or establishment, there are also examples of breaches of pay or working-time standards in which the recovery prospects of the enterprise and the return to the standards established by collective bargaining were unlikely.

One high profile example of failure in this respect has been the wage reduction and working-time extension in two mobile phone factories in Germany. In June 2004, a plan by the German-based electronics group, Siemens, to move 2,000 jobs from Germany to Hungary was cancelled as a result of the conclusion of a “supplementary agreement” by management and the German Metalworkers’ Union (IG Metall) at two mobile phone plants. The Siemens deal stipulated that from October 2004 average weekly working hours would increase from 35 to 40 hours for full-time workers without any increased compensation in pay (Funk 2004). The return to the 40-hour week in these plants, pushed forward as an explicit pilot model in 2004 by one of the largest and most powerful German companies, sparked a controversial debate on the alleged need to extend working hours in Germany in order to regain price competitiveness on export markets and to safeguard jobs in manufacturing. In the course of events, the substantial reduction in pay proved to be a token in the sale of the establishments to the Taiwanese company BenQ, which eventually closed the two plants in 2007. Thus, the effect of the 2004 employment pact boiled down to a postponement of dismissals, while its impact on the architecture of the collective bargaining system in Germany may arguably be longer lasting (see below, section 2.3).

Stabilization of Work Force

Reviewing the experience of many European countries with the boost in temporary and agency workers since the “labour market reforms”, it is widely accepted today that these categories of workers experience, on average, less favourable working conditions and compensation than
employees with standard employment contracts (Nienhüser and Matiaske 2006). Most importantly, it has been found that “jobs that score high in terms of the objective job insecurity indicator are also jobs that score poorly in terms of general employability, learning, training opportunities and task rotation” (Pacelli et al. 2008: 35). Hence the obvious need to place measures to curtail job insecurity amongst these categories of workers high on the bargaining agenda.

Basically, as has been established by recent data analyses in Germany and roughly in line with earlier findings (Freeman and Medoff 1984), a positive correlation between job stability and the incidence of collective bargaining continues to exist. Nevertheless, evidence on collective bargaining aiming to curtail employment insecurity of temporary or agency workers is scarce and is sometimes paradoxical. During the “flexibilisation” of labour markets that took place in many countries in the 1990s, there are examples, for instance in Italy, of collective agreements accompanying the moves of government initiatives which facilitated the employment of temporary workers as a means to foster employment growth. Similarly, following the German labour market reforms of 2003, much of the employment growth in the economic upswing starting in 2004 was seen, in certain sectors such as the motor industry, in soaring rates of temporary and agency employment (Dörre 2005). In the beginning of the current slump, these workers are the first to be sacked.

It is true that there are early examples of agreements, as in the Netherlands, which stipulated that temporary workers be made permanent after a certain period of time. However, these agreements continue to be scarce. Interestingly, collective bargaining on this issue tends to benefit from facilitating political frameworks, as is demonstrated by recent moves towards a reduction of temporary employment in Spain where the government, the employer organizations and the trade unions jointly proposed new legislation containing provisions enabling entrepreneurs to reduce their direct taxes on labour and transform some temporary contracts into permanent ones (CIREM Foundation 2006).

Assuming that the poor information available reflects a scarcity in practice, the improvement of employment conditions of temporary and agency staff has not yet become an established collective bargaining issue. It remains to be seen whether recent experience in the current crisis impacts on future approaches of collective bargaining parties.

**Work Sharing**

The policy of working-time reductions aimed at fostering or stabilizing employment is arguably amongst the most traditional approaches
to collective bargaining on employment security. The underlying idea of “work sharing” may be summarized as “a reduction of working time intended to spread a reduced volume of work over the same (or a similar) number of workers in order to avoid layoffs or, alternatively, as a measure intended to create new employment” (Messenger 2009). Other than agreements on implicit wage cuts via working-time extension, agreements on work sharing are most commonly linked to a review of established working-time patterns and working practices, geared to enhance the efficiency and flexibility of the work process.

One flagship example of this approach is the 35-hour campaign of the German metalworkers union. While this campaign and similar (if less distinguished) trade union initiatives in some other European countries were focused on working-time reductions as an issue of collective bargaining, it should be noted that the origins of the underlying concept are rooted in public policies in the U.S. and France in the mid-1930s, which addressed the persistent unemployment problem in the wake of the Great Depression by the introduction of the statutory 40-hour week. More recently, a mixture of both approaches, that is, a link between government policy and collective bargaining initiatives, was practiced in France through the Aubry acts, which introduced the 35-hour week as the statutory standard working week in 1998 and 2000.

The outstanding, and arguably unique, series of working-time agreements in France cannot be described in detail here (for such details see Bilous 2000). What has to be understood, however, is their basic framework. The statutory 35-hour week was implemented at the establishment level by local agreements. As soon as these agreements stipulated certain provisions on the safeguarding or creation of jobs, the respective companies would receive exemptions from social security contributions (this linkage was given up in the second phase of the implementation). Following these acts, the number of enterprise-level agreements soared, and so did working-time as a subject of decentralized negotiations (Bloch-London et al. 2008). As Gubian (2000) found in his matched-pairs comparison of establishments with and without working-time reduction, the employment growth in the former enterprises substantially exceeded that of the latter enterprises of the same size and industry. The overall assessment attributed an employment effect of roughly 7% triggered by a working-time reduction of 12%. A different econometric computation by the OECD (1999: 126) concluded that within a period of five years, the working-time reduction would boost employment growth by a rate of an additional 0.3 to 2 ppts.

Next to the employment effects, the boost in working-time flexibility was a major outcome of the working-time reductions in France. In
this respect, the French enterprises followed the example of enterprises in other countries or industries, where in many cases (such as those in Germany) enterprises took working-time reductions as an opportunity to review the local arrangement of working-time and operating hours (Bosch and Lehndorff 2001).

It must be noted that the French case represents an explicitly “proactive” approach to general working-time reductions and was introduced within an environment of economic growth, thus reinforcing the employment growth in that period. The current economic crisis, however, gives rise to a different agenda setting. Presently, as far as working-time related initiatives are concerned, all endeavours are focused on the safeguarding of jobs. Therefore, section 2.4 of this chapter is dedicated to these most recent practices of work sharing.

**Process or Product Innovation**

The safeguarding of jobs is tightly intertwined with management decisions on investment, product lines and the organization of the work process. Given that these decisions are at the heart of management prerogative, the issues are not easily nor automatically the subject of collective bargaining. Nevertheless, negotiations in a number of countries increasingly deal with production issues.

High-profile examples that are widely discussed in the media are most often cases from the motor industry, such as the “company-level alliance for jobs” agreement between management and the works council in 2006 at Ford Germany. This deal envisages the investment required for the modernization and adaptation of production facilities and stipulates, in return for wage concessions (primarily in a way that industry-wide wage increases in the future are to be set off against company-specific payments), that dismissals be banned at German sites until 2011 (Stettes 2006).

Given the fierce competition in the motor industry and its current deep crisis, this kind of agreement, linking either the retrenchment or the safeguarding of jobs with restructuring and investment plans, has become frequently used in Europe. These agreements may be particularly complex and include the whole array of measures highlighted earlier in the present chapter. They may link employability-geared instruments or wage moderation and working-time reductions with job guarantees and investment plans, and they may even envisage new product lines. The complexity of these restructuring agreements is illustrated by the case between the Swedish based electrical appliances company Electrolux and the metalworking industry unions in Italy. They produced an agreement that includes a wide scale of instruments, ranging from state-supported...
short-time working schemes accompanying the sale of one of the plants, internal job pools, and a three-year investment plan for the remaining plant. A particularly interesting aspect here is that the investment fund – which acquired one of the plants – was involved in the negotiations. The negotiations also addressed product innovation prospects for that plant (Rinolfi and Paparella 2008).

The dynamics involved in these approaches may lead collective bargaining parties to initiatives that are “retrenchment” or “survival” oriented. Some of the instruments addressed, however, are taken from the “adaptation” tool box. One example for an innovative approach is the recent and ongoing “better, not just cheaper” campaign launched by the German metalworkers union IG Metall (Wetzel 2007). It aims to replace relocation and the undercutting of collective agreements with product and process innovation on the bargaining agenda within the respective enterprises. The initiative originates from union concerns over the future architecture of the collective bargaining system in Germany due to the continuous breaches in industry-wide standards brought about by local employment pacts (see below, section 2.3).

Conclusion

The different thematic emphases across collective agreements on employment and competitiveness presented in this section suggest that their expected employment effects greatly depend on the type of agreement reached. “Retrenchment” pacts may be at best protective, if temporary, in nature. The protective character of “survival” agreements may exceed a merely temporary time horizon. At worst, they may postpone layoffs, while at best they may contribute to the recovery of individual enterprises. At first sight, “adaptation” agreements may yield the most sustainable employment effects.

Unfortunately the plausible assessments cannot be supported, with the notable exception of the introduction of the 35-hour week in France, by sound evaluations. What does exist are evaluations of the actors involved and the individual case studies, which provide insights into the development of employment figures in establishments covered by PECs (Zagelmeyer 2000). While assessments of actors are predominantly positive, the picture reflected in numbers of workers is fuzzy (Büttner and Kirsch 2002). There are good reasons to believe that it will remain difficult to move onto safer grounds.

Arguably the most substantial reason for this difficulty is the problematic assessment of side-effects of local pacts on other enterprises competing in the same markets, or on the economy as a whole. Safeguarding of jobs
based on cost cutting in one enterprise may be harmful for employment levels in competing enterprises. Hence, zero-sum games are most likely. However, the side-effects of local agreements substantially differ depending on the nature of the approach adopted.

As suggested by Freyssinet and Seifert (2001: 21), “defensive” or reactive strategies may be distinguished from “proactive” approaches. The core criterion here is whether agreements are geared only towards reducing labour costs or if they aim to reduce labour costs in connection with improvements in work organization and other factors of competitiveness. More precisely, the reduction of labour costs is always a key component of collective agreements dealing with employment and competitiveness and it would be hard to find any agreement which tackles employment insecurity without addressing ways to reduce labour costs. However, the crucial question is how to attain this objective. Is the approach based primarily on the retrenchment of staff, wage cuts, or the extension of working hours? Or is the reduction of labour costs a target defined relative to turnover, that is, to be met by gains in efficiency of operations or other process and product innovations? Thus, the distinction between defensive and proactive approaches to collective bargaining on employment insecurity may also be flagged by the commonly used terms of “low vs. high roads” towards business success or towards economic and employment success of socio-economic models. The rationale behind the latter approach is an increase in international competitiveness of both individual enterprises and, on the average, whole industries in a given country. In theory, the latter rationale has been elaborated and tested within the “varieties of capitalism” approach (Hall and Gingerich 2004). In their cross-country computation on the positive relationship between productivity and stability of workforce, the findings of Auer at al. (2005) support this argument.

According to Freyssinet and Seifert (2001: 17), most agreements so far have been focused on “a lowering of labour costs and/or an increase in levels of flexibility and length of working time in the organisation”, whereas only “a minority of agreements have been more innovative”. This labour cost bias of most agreements may entail substantial implications for industrial relations and collective bargaining systems. One fundamental rationale behind multi-employer bargaining systems is to take certain attributes of human labour power, wages in particular, out of competition in the labour (and respective product) market. In doing so, competition will shift to other aspects, such as efficiency of the production process, or product quality. While “defensive” agreements draw primarily on wage cuts that may trigger a race-to-the-bottom in their respective markets, innovation-oriented agreements may push competitors to
the same “high road”. The more local employment pacts question this fundamental implication of collective bargaining, the less likely it will be that other employers in the same industry take the “high road”. Thus, the crucial question is to what extent local pacts establish a combination of temporary concessions by employee representatives in terms of wages or working hours on the one hand with measures promoting process and product innovations, and an enhancement of the employability of workers on the other.

This reasoning underscores the importance of an *integrated* assessment of the contents of agreements on the one hand, and their implications for the architecture and processes of collective bargaining on the other. It is to these implications that we now turn.

### 2.3 DAMAGING THE ARCHITECTURE OF INDUSTRIAL RELATIONS? RISKS OF NEGOTIATIONS ON EMPLOYMENT SECURITY

It is a widely shared view that local, enterprise-centred negotiations on employment security are part of a process of organized and controlled decentralization (Ozaki 2003; Sisson 2005). Unfortunately, this statement is frequently made without analysing the process in detail. If, in contrast, the process is an uncontrolled one, decentralization might damage the “institutional architecture” of collective bargaining by undermining existing central or sectoral levels of collective bargaining, the capacities of their actors and the norms and standards established at these levels. In an environment of globalization and shareholder value capitalism, the process of decentralization induces tension between standards and the desire to undercut the same standards. Thus, the control of decentralized bargaining on employment is a critical issue for unions and the architecture of industrial relations as a whole in collective bargaining systems with multi-employer collective bargaining.

Two dimensions of control can be distinguished in the process of decentralization. The first is the problem of coordination between collective bargaining actors at different levels (Crouch 1993). New actors of collective bargaining may emerge at the local level, particularly the management of the establishment, the local union organizations and/or works councils, and also occasionally the individual employees. Organized decentralization means that these new actors are well integrated into the bargaining strategies of higher organizational levels of collective bargaining associations. The second is the relationship between the different levels of collective bargaining. For this dimension, organized decentralization means
that lower level agreements are compatible with higher level ones to the extent that they respect higher level norms.

In fact, the control of local bargaining is mainly dependent on the efforts of the unions. Normally employers’ associations have an interest in higher level bargaining only if a single-employer bargaining strategy of the unions yields higher labour costs in important parts of an industry than multi-employer bargaining. However, employment concessions are based on a situation of relative union weakness vis-à-vis single employers. Therefore in this situation, decentralized bargaining can become favourable for companies and the preservation of central collective bargaining works against the interests of many of the employers’ associations own members.

**Derogations from Collective Bargaining Agreements**

The problems of control are gaining in importance because of the shift in the character of employment pacts witnessed over the past decade. In the 1990s, the pacts could convincingly – of course depending on their character as high or low road agreements – be regarded as new forms of integrative bargaining combining new topics of collective bargaining with safeguarding the interests of both employers and employee representatives. At the turn of the millennium, conditions changed in some of the countries where local employment pacts were common practice. Since then the pacts have been increasingly based on legal or collective regulations, which open the door to derogations or deviations from collective bargaining norms such as (mostly temporary) hardship clauses or more general “opening clauses”. These pacts have increasingly become instruments for undercutting standards agreed at industry or national levels. As the nature, and logic, of multi-employer collective bargaining systems rest on the establishment of sector-level or even national employment standards, this kind of undercutting of standards calls into question the rationale of the bargaining system as a whole.

Thus, the distinction between decentralization and deviations from collective agreements, the former being consistent with the rationale of the bargaining system, whereas the latter may imply its destabilization, has become blurred. To begin with, informal agreements have developed in some countries as a result of uncoordinated cooperation between local actors which undercuts standards agreed at higher levels (these local breaches of sectoral standards may, as in Germany, even violate legislation on collective bargaining). While the actual spread of this type of informal and uncoordinated bargaining is not clear, arguably more important in a number of European countries are so-called hardship, opening or opt out clauses, which allow for local deviations from industry standards in specified cases.
In this case, the practice of deviating from higher level agreements is formalized. This affords unions the opportunity to coordinate and control these practices in order to avoid the more general deterioration of employment and labour standards. We concentrate our analysis on these deviations from collective bargaining agreements (DCBAs). The derogation or opt out clauses on which DCBAs are based can have different forms. They can define certain procedures and competencies and they can determine the conditions or the scope of local shortfalls of collective bargaining norms.

**DCBAs in the German Metalworking Industry**

Although there is some information about countries where collective regulations favour local employment pacts based on concessions (for an overview see Visser 2004), we know very little about the actual spread of their usage within these countries, the respective concessions that are made by the bargaining parties, or the processes of coordination between agreements and levels of organization. In the case of Germany, however, we are able to present recent findings from our own research on derogation clauses and DCBAs in the metalworking industry (Haipeter 2009). Focusing on less entrenched works councils and union organization patterns in Germany may serve as an example for what may become standard in other countries. As Raess and Burgoon (2006) argue, to take Germany as a “role model” for analysis is empirically justified by the example of other countries, such as the Netherlands. Based on their judgement, the fact that globalization places tension on the links between local and industry bargaining levels (also observed in Germany) is “a general and important part of contemporary industrial relations in developed economies.”

The metalworking industry is the traditional lead sector of industrial relations in Germany, but it is also a vanguard in implementing derogation clauses. The “Pforzheim Agreement” of 2004 famously offers local actors a broad scope for deviations provided that they contribute to employment security or growth through agreements on investment plans that enhance innovative capacity and improve competitiveness.

**Control of procedures**

Shortly after implementation, the arrangements in the Pforzheim Agreement proved unsuited to help and respect the standards laid down in collective agreements. It soon became evident that the employers’ associations had no interest in controlling derogations and, in many cases, were merely acting as advisers to companies engaged in negotiations. Consequently, it remained within the trade union’s interest and jurisdiction to exercise control. However, IG Metall’s confidence in its own ability...
to control derogations had already received bitter blows as a result of a rapidly sprawling practice of wildcat cooperation between local actors. One particularly high-profile case was a deal struck at the Siemens mobile phone division where the works council agreed to management’s demand for a working time increase without a compensatory pay increase to keep production in Germany before the union was even asked for its opinion or invited to take part in the negotiations.

From this experience, union leadership concluded that effective control required tighter procedural standards than those laid down in the collective agreement. Consequently, internal coordination guidelines established in 2005 stipulate that: first, the process be coordinated by the union’s regional headquarters; second, negotiations be carried on by enterprise-level collective bargaining committees elected by the local union members, with periodic consultation meetings of these members; and third, the outcome of the negotiations be communicated to the union executive who has to authorize and take responsibility for the agreement.

According to collective bargaining experts from the unions and employers’ association, the union executive’s coordination guidelines actually led to extensive standardization of procedures. Standardization also gave way to a professionalization of the bargaining procedures, which moderated procedural conflicts and enabled the two sides to engage in businesslike discussions on the topic, which does not imply the absence of local conflicts. At the same time, the extent and contents of derogations has been made transparent. The union executive now has a comprehensive database on derogation agreements and their contents. Moreover, according to the union and employers’ associations, the wildcat decentralization, which had been increasing up to 2004 (and was one of the reasons the union agreed to the Pforzheim rules in combination with strong political pressure by the government), has been curtailed as derogations have increased and procedures have been standardized.

**Control of contents**

Between the enactment of the Pforzheim Agreement in 2004 and the end of 2006, a total of 850 derogation agreements were concluded in the metalworking industry. Out of these, about one fifth were concluded in 2004, almost half in 2005, and roughly one third in 2006. Approximately one in every ten enterprises covered by collective agreements in the sector negotiated an official derogation from the relevant agreement in 2006.

The material concessions made in the agreements are clearly dominated by working time and wage issues. The single most important issue in the derogations was the extension of working time without a compensatory pay increase. There were longer working hours stipulations in 58.5% of
all derogation agreements. Other working time issues, such as working time flexibilization or working time reduction, lagged behind significantly. However, the average length of agreed working time extensions decreased from 3.7 hours in 2004 to 3.3 hours in 2005 and 2006. Moreover in an increasing number of cases, provisions were made to gradually cut back working time extensions over the lifetime of the agreement (28.6% in 2006). Both developments suggest that trade union control over weekly working time increases has improved. Nevertheless, this control did not suffice to prevent average working hours from rising remarkably, due to overtime and contractual working-time extensions, while the number of workers employed by the industry continued to drop (Figure 2.1).

The second issue addressed in the derogations is wages. Next to cuts in (or the moderation of increases of) monthly wages, many agreements stipulate cuts in single payments such as Christmas bonus and holiday pay. As with agreements on working time, some pay agreements provide for staggered reductions of these cuts over the lifetime of the agreement. Such provisions are included in 16% of derogation agreements on wages, showing a clearly upward trend, albeit from a modest level.

To what extent are the material concessions made by employees matched by counter-concessions offered by employers and what are the
issues addressed by such reciprocal concessions? The share of agreements stipulating counter-concessions rose markedly between 2004 (70.7%) and 2005 (86.9%), before stabilizing in 2006 at 84.5%. The dominant issue addressed in these counter-concessions is employment security. Lagging behind this are counter-concessions on issues such as co-determination/trade union activity, investment, protection of production sites or training (Figure 2.2).

The increase in the rate of counter-concessions can be interpreted as an important indicator of improved union control over the substance of the counter-concessions. Even within the individual issues, the quality of the provisions has in some cases been considerably improved. This can be demonstrated through the example of employment security. The forms of employment security that have risen in importance are those that either totally exclude redundancies for business reasons or at least make such redundancies subject to the acceptance of the trade union and the works council. Conversely, the share of agreements in which the exclusion of such redundancies is linked to economic or other criteria has declined from about 30% to 22%.

**Trade union revitalization**

The importance of derogations for the union’s collective bargaining policy and its role as an actor in the collective bargaining system can hardly be

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**Figure 2.2** Share of counter-concessions by issue in all derogation agreements in metalworking industry, Germany 2004–06
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overstated. The accelerating decline in trade union density, in which gross density figures slumped by more than 10 percentage points from 2000 to 2006, makes derogations from the industry-wide collective agreement appear initially to be a defensive reaction on the part of the trade union. However, this interpretation accounts for only one aspect of the derogations, which against the background of declining union density, can also be viewed from another angle, namely as a launch pad for a membership offensive aimed at strengthening union density. This question has been discussed within IG Metall with increasing intensity and approval (see Huber et al. 2006). Local collective bargaining is increasingly seen as an opportunity to demonstrate the necessity for derogations by turning it into a membership offensive (see also Schmidt 2007).

The basic idea behind enterprise-level collective bargaining is to use company agreements to achieve greater involvement of members in local labour disputes and bargaining since they have hitherto had limited involvement in centralized collective bargaining. This makes the trade union more attractive to current and potential members and increases union density in the workplace. Thus, collective bargaining at the enterprise level has some characteristics of a participatory organizing strategy (Dörre 2007). Participation includes individual member involvement in collective bargaining committees, the continuous provision of information to members (as opposed to non-members) in local union meetings and, above all, the vote on the acceptance of the outcomes of local bargaining. The experts interviewed note that where these participatory practices have been introduced, the union has been successful in recruiting new members and, more generally, in consolidating its organizational power.

Conclusion

The membership offensive of the German metalworking union in conflicts over collective bargaining at enterprise or establishment level can be regarded as a form of union revitalization or strategic unionism in line with the institutional features of the German system of collective bargaining (Frege and Kelly 2003). Unlike the organizing campaigns of trade unions in Britain or the U.S. that are exemplified by a situation where unions have to fight for local representation and recognition, membership offensives in local conflicts on derogations in Germany seem to be an adequate approach to union revitalization due to the continued (albeit already eroding) institutional power of the union and the institutional backing by works councils for local union representation. Thus, membership participation in local conflicts over the derogation from industry standards may be regarded as a choice for unions in a situation where the
architecture of collective bargaining has been destabilized in the face of employment insecurity.

2.4 BRIDGES OVER TROUBLED WATER: STATE SUPPORT FOR COLLECTIVE BARGAINING

As already noted in section 2.2, work sharing returned to the collective bargaining and government policy agenda during the present jobs crisis.

Local Bargaining on Work Sharing

The arguably most famous example of collective agreements on working-time reductions geared to prevent or reduce mass redundancies at company level is the so-called four-day week agreement that Volkswagen, when hit by its deepest crisis, instituted in 1993. The Volkswagen AG agreement stipulated a 20% working-time reduction for the company’s entire workforce and triggered a broad range of activities aimed at greater working-time flexibility over the 1990s. It was also the starting point for various other efficiency enhancing agreements on work processes of the company. As such, it may still run as a flagship example of the close association between working-time reduction on the one hand, and working-time flexibilization and reorganization of work processes on the other. Concurrently, they have been intertwined from the beginning and even more so in recent years with the indirect wage cuts used to gradually adapt the wage levels at Volkswagen to the lower standards in the metalworking industry agreements (pay levels at VW used to be substantially higher than the industry standards in the metalworking industry as this company has its own collective bargaining regime outside of industry bargaining).

However it should be noted that in the case of Volkswagen, while cuts in hours and pay amounted to almost 20%, monthly wages remained virtually stable. Pay issues were crucial in the negotiations. The bargaining actors achieved this by negotiating (1) a minor pay compensation conceded by the company, and (2) a redistribution of annual premia, which had been part of earlier pay agreements, from annual to monthly payments. Thus, monthly wages remained roughly unchanged.

It must be noted that the existence of this pay leeway may only be expected in flourishing companies or sectors of a given economy. Even in the case of Germany, wage drift, that is, when local agreements provide extra pay beyond industry standards, has been reduced substantially over the past decade. It cannot be taken for granted that cuts in working hours by 20 to 30% or more, accompanied by wage cuts of the same
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magnitude, can be digested by the majority of workers affected by the imminent threat of redundancy. This problem has come to prominence in recent approaches to work sharing in the U.K. where work-sharing deals were struck in several large companies in the beginning of autumn 2008 (Carley 2008; Glassner and Galgóczi 2009). Financial support for short-time working arrangements out of public budgets is nonexistent in the U.K. Thus, local work-sharing pacts may impose substantial pay cuts to workers. Given this institutional background, it is noteworthy that the British Trade Union Congress (TUC) and the Federation of Small Businesses (FSB) have jointly suggested the introduction of short-time working subsidies for around 600,000 workers per year with a replacement rate of 60% of the income lost (TUC 2009).

This initiative points to the biggest dilemma for any major work-sharing agreement in the present situation: the need for dramatic cuts in both working hours and pay (from the employers' perspective). The more the pay cuts are in line with company needs regarding the survival of the crisis, the less tolerable they become for workers. The only way out of this dilemma is a public subsidy. This need is acknowledged to some extent in the "short-time working" or "temporal unemployment" schemes existing in some European countries.5

The German short-time working scheme, which has been revised and flexibilized recently, may serve as a flagship example here (Figure 2.3). It allows working-time to be reduced by 10 to 100% for all or part of the workforce. The maximum duration short-time working can be temporarily extended was increased from 6 to 24 months. The hours not worked are compensated by the labour administration (short-time allowance) at 60%
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(or 67% for workers with children in the household). The social security contributions for the hours not worked are reduced to 80%: 50% of which is paid by the labour administration while the rest is paid by the employer. Along with the temporary extension of the scheme, the latter payment is borne by the labour administration from the seventh month onwards.

Collective Bargaining and Public Support

Recent experience gathered within the broad approach of work sharing in the current crisis suggests three general lessons.

First, work sharing in the current economic situation will, in most cases, be only feasible in combination with public subsidies. These subsidies will be crucial irrespective of the concrete organization of work sharing. It may be organized within a public scheme, as is the case in Germany, or it may be organized within the framework of multi-employer or single-employer bargaining. Thus in current work-sharing activities, the boundaries between public schemes and collective bargaining based schemes may become blurred. However, regardless of the actual type of scheme, it will not work without the interplay of collective bargaining actors and the state.

Second, as pay compensation issues play a crucial role, it is more likely that work sharing will become a major policy issue in countries with dismissal protection and unemployment insurance systems than in countries with systems in which the “decommodification” of labour is less developed. This is not to say that it is impossible to strike local deals on work sharing in countries with, by European standards, lower levels of worker protection. This has been demonstrated by some recent work-sharing initiatives at the company level in the U.K. Yet, the level of wage compensation (short-time working allowances or work-sharing benefits) will most likely depend on the level of other public allowances, such as unemployment benefits, and on the costs borne by employers in the case of dismissals (to be regarded, in a neoclassical perspective, as opportunity costs for employers or public budgets respectively). The less developed these provisions and opportunity costs, the less pronounced the potential compensatory payment for workers linked with work-sharing agreements. The ultimate motivation for employers to agree on work-sharing deals will, apart from the power relationship at local level, depend on the skill base of the workforce and the potential costs of retraining of new staff in the recovery phase.

Third, it is fair to assume that employers will request a reduction in the remaining staff costs, including (as in the German case) the employers’ social security contributions. Any linkage with training makes sense,
but is not easy to implement in practice. Nevertheless, as a general rule, the optimal approach is to link public subsidies to local or industry-wide work-sharing initiatives incorporating training measures. Continued vocational training should be regarded as an indispensable element of any work-sharing activity. It is also an instrument to reduce potential free rider effects.

2.5 CONCLUSIONS

To briefly conclude, we suggest three policy lessons based upon recent experience with collective agreements on employment and competitiveness.

The first lesson is about the contents of agreements. It is not just that the contents are manifold – collective bargaining actors at both industry and local levels have conquered a wide area of expertise in issues relevant to curtailing employment insecurity. The most important lesson is about the potential dynamics in bargaining on these contents. The more collective bargaining actors are engaged in this process, the more likely they will need to go beyond short-term “survival” oriented measures. The shortcomings and contradictions involved should not be overshadowed by the need to bargain over employment security. There are interesting and groundbreaking “proactive” agreements aimed at the “adaptation”, rather than mere “survival” through “retrenchment”. However, the collective bargaining practices geared to strengthen the skills base of the workforce (“training, not redundancy”) and to pave the way to process or product innovations (“better, not just cheaper”) continue to be scarce. The “high road” is not too busy.

It has been argued that in the era of “financial market capitalism”, local concession bargaining will lead to a dead end (Detje et al. 2008) as survival becomes an everyday challenge for the healthy – and not just those who are ailing. Hence, the urgent need for innovative and proactive type agreements. While this view continues to be quite realistic, it may be overtaken by the current crisis. Illness may spread rapidly, and if it turns into an epidemic, it may infect many of the healthy and wealthy as well. Hence the probability of increased local bargaining on concessions which undercut national and/or sectoral employment standards.

This reasoning leads us to the second policy lesson: collective bargaining for innovative and proactive agreements on employment and competitiveness requires the capacity of local actors to tackle this wider set of issues and of local union organizations and employee representations in particular to acquire both the necessary expertise and support of their constituency to attempt to walk on higher ground. However at the same time, their
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capacity to bargain continues to rely to a large extent on their ability to safeguard minimum employment standards. The more they engage in local bargaining involving concessions on these standards, the more fragile this general platform of standards may become. The diversification of collective bargaining actors and levels may damage the architecture if it brings about a permanent violation of employment standards, thus opening the door towards a general deterioration of employment and labour standards in a given country. Thus, the link between the contents and processes of collective bargaining on employment and competitiveness is close and the dilemma for the trade unions in particular is obvious. Innovative bargaining agendas may alleviate the dilemma, but for the time being, the majority of bargaining strategies go in the opposite direction.

The third policy lesson concerns the link between the necessary build-up of capacities on the one hand, and the practical and democratic involvement and voice of local actors on the other. Recent examples of innovative bargaining agendas confirm Sisson’s (2005: 7) conclusion that, “if PECs are to be a key ingredient in the modernisation process”, a “prerequisite for the successful negotiation of PECs is support for involvement of employees and their representatives.” The paradoxical lesson for unions in particular is that their engagement in bargaining on employment and competitiveness at the local level may either undermine them or force them to revitalize their membership base. If the latter is true, the coordination between the different levels of negotiation will prove to be crucial. However, if they are too weak to seriously engage in “conflict partnership” (Müller-Jentsch 1991) at the local level, they might end up as a scapegoat for unpopular retrenchment measures.

It is fair to assume that the present crisis will produce a bargaining agenda that includes the full set of issues presented in this study. The handling of this agenda requires the full capacities of actors to bargain at the local level. If these actors are paralysed in the face of the crisis such that their capacities to bargain are hindered, then employee involvement and activation may prove to be the key to revitalization.

NOTES

1. The present authors are aware of the limitations of the empirical foundations for this paper given its bias on a certain range of developed capitalist economies. In fact, the chapter draws primarily on a review of databases and existing research into the incidence of collective bargaining on employment security in Europe and, to some extent, in the U.S. For much of the information on the issues addressed in negotiations, the European Industrial Relations Observatory database (EIROnline) of the European Foundation for the Improvement of Living and Working Conditions has served as a
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valuable source of information, while evidence on the interaction between contents and architectures of collective bargaining for the example of Germany, which is presented in this chapter, is based on our original research on deviations from collective agreements (Haipeter 2009).

2. We owe the branding of this and the following two emphases in collective bargaining to Sisson (2005).

3. Thus, employment insecurity may not just become an issue of collective bargaining because there is such insecurity, it may also become an issue because major actors utilize employment insecurity as a vehicle to bring about changes in the architecture and the functioning of the collective bargaining system in a given country. It is in this vein that Ozaki (2003: 14) holds that, “one of the factors strengthening the pressure (towards decentralization of collective bargaining) is the predominance of neo-liberal economic thinking among policy makers”.

4. Procedural agreements on the retrenchment of staff (for example severance payments, early or partial retirement schemes) are not covered in the present brief overview as they are geared to downsizing of staff, rather than avoiding redundancies in the first place. For more details on key examples of individual types of agreements see Haipeter and Lehnndorf (2009).

5. For recent “work sharing” or “short-time working” initiatives and the respective regulatory frameworks in selected European countries see Glassner and Galgóczi (2009), Bosch (2009) and Eurofound (2009). For a general overview see Messenger (2009).

BIBLIOGRAPHY


