

**BY ORDER OF THE COMMANDER
UNITED STATES AIR FORCES IN
EUROPE – AIR FORCES AFRICA**

**UNITED STATES AIR FORCES IN
EUROPE – AIR FORCES AFRICA
INSTRUCTION 36-151**



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Personnel

**WORKS COUNCIL PARTICIPATION IN
MANAGEMENT ACTIONS (GERMANY)**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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This instruction implements Air Force Policy Directive (AFPD) 36-1, *Appropriated Funds Civilian Management and Administration*, and AFPD 34-3, *Nonappropriated Funds Personnel Management and Administration*. It provides basic policy and outlines major authorities and responsibilities for complying with the legal participation rights of works councils on management actions affecting local labor in the Federal Republic of Germany (FRG). It applies to United States (US) Forces activities in Germany for which the US Air Forces in Europe act as executive agent for Local National (LN) civilian employment matters. This instruction applies to all United States in Europe-Air Forces Africa (USAFE-AFAFRICA) Regular Air Force. It does not apply to the Air National Guard or Air Force Reserve Command units. Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with (IAW) AFI 33-322, *Records Management and Information Governance Program*, and disposed of IAW Air Force Records Information Management System Records Disposition Schedule. Refer recommended changes and questions about this publication to the Office of Primary Responsibility (OPR) using the AF Form 847, *Recommendation for Change of Publication*. The authorities to waive wing, and unit level requirements in this publication are identified with a tier number (“T-0, T-1, T-2, T-3”) following the compliance statement. See Department of the Air Force Instruction (DAFI) 33-360, *Publications and Forms Management*, for a description of the authorities associated with the Tier numbers. Submit requests for waivers through the chain of command to the appropriate Tier waiver approval authority, or alternately,

to the Publication OPR for non-tiered compliance items, utilizing guidance identified in DAFI 33-360. This publication may not be supplemented or further implemented/extended.

SUMMARY OF CHANGES

This document is substantially revised and must be completely reviewed. Major changes include: Change instruction from USAFEI36-751 to USAFE-AFAFRICA I36-151; Updates office symbols and references; and changes USAFE Form 179 to USAFE-AFAFRICA Form 179.

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1. General Policy. Non-US citizen works council activities are governed by the German Federal Personnel Representation Law (FPRL) as modified by the Protocol of Signature re Article 56, Paragraph 9, Supplementary Agreement to the North Atlantic Treaty Organization Status of Forces Agreement (NATO SOFA) (Protocol of Signature) ([Attachment 2](#)).

2. Roles and Responsibilities. The overriding principle of the FPRL (Section 2, paragraph 1), requires management representatives and works councils to work together cooperatively in mutual confidence and respect, to assure that work and certain social-related employee interests are well maintained, and that such interests are in full consonance with the accomplishment of the USAFE-AFAFRICA mission. Maintenance of sound relations requires that timely and comprehensive information on planned management actions affecting the LN workforce is provided to works councils in order to obtain and consider the council's comments/coordination before finalizing any planned action. Noncompliance with works council coordination obligations or after-the-fact notification on actions impacting the LN workforce could result in labor court challenges and may cause substantial delays or legally invalidate management actions.

3. Legal Status and Structure of Works Councils.

3.1. The FPRL provides the legal basis for the establishment, operations, entitlements, and responsibilities of works councils and their members.

3.2. Works Councils are employee representation groups elected by the workforce concerned for a 4-year term of office. They represent all employees within their respective area of responsibility on internal agency/employment matters.

3.2.1. **A Command Works Council (CWC).** A Command Works Council (CWC) is established at the level of the Highest Service Authority. HQ USAFE-AFAFRICA is the Highest Service Authority for all employees of US Air Force or serviced Department of Defense (DoD) agencies in Germany. The USAFE-AFAFRICA CWC represents all non-US employees working in the “local” agencies within the USAFE-AFAFRICA area of jurisdiction in Germany.

3.2.2. **Local Works Councils.** Local Works Councils are established in agencies as defined by HQ USAFE-AFAFRICA. Unless defined otherwise by HQ USAFE-AFAFRICA, an agency in the meaning of Section 6, paragraph 1, FPRL will be comprised of all military activities of the US Air Force and tenant organizations at a geographical location (for example, an Air Base and off-Base sites in the vicinity thereof, a Military Community area), that are serviced by a USAFE-AFAFRICA Civilian Personnel Flight (CPF).

3.3. CWC and local works councils are separate and independent bodies at different administrative levels. The level of works council involvement is determined by the level of decision-making authority.

3.4. Works councils are independent of trade unions. They have no right to call a strike.

4. Participation Rights and Procedures.

4.1. To a varying degree, works councils have a legal right to participate in organizational and individual personnel matters which impact the LN workforce. Works council consultation rights range from being informed, commenting, or coordinating on management actions up to full co-determination.

4.1.1. **The Co-Determination.** The co-determination right requires works council/CWC concurrence or the establishment of a Conciliation Committee to arbitrate a resolution; i.e., no final decision authority by USAFE-AFAFRICA management (re Section 69 FPRL). Matters subject to co-determination are listed in Sections 75 and 76 FPRL with exceptions as specified.

4.1.2. **The Cooperation Right.** The cooperation right requires that the planned action is being discussed/negotiated with the works council/CWC; however, the final decision rests with USAFE-AFAFRICA (re Section 72 FPRL) Sections 75 through 79, FPRL contain matters subject to cooperation, as indicated.

4.1.3. **Right to be Heard.** The right to be heard requires that management considers the works council's/CWC's comments, but the final decision authority rests with the local or command-level management authority. Matters on which the works councils are to be heard are listed in Section 78, paragraphs 3 through 5 FPRL.

4.1.4. **The Right to be Informed.** The right to be informed entitles works councils/CWC to be timely and comprehensively informed on any actions affecting local labor that are not subject of formal participation rights (Section 68, paragraph 2 FPRL).

4.2. At the level of local works councils participation, for the most part, involves:

4.2.1. Individual personnel actions (appointments, promotions, separations), scheduling of overtime, establishment of work hours/shift schedules, re-arrangement of worksites, etc.

4.2.2. Locally initiated reorganizations/manpower changes.

4.3. At the CWC level, participation normally involves participation actions initiated above the local level, e.g.:

4.3.1. Instructions, directives, command publications establishing policy, procedures, or guidelines on internal, social, or personal matters of the non-US citizen work force.

4.3.2. Plans covering deactivation, reduction-in-force, relocation, reorganizations, or contracting out that may impact non-US citizen employees.

4.3.3. Manpower change actions, which involve the addition, deletion, or realignment of non-US citizen employee authorizations.

4.3.4. Civilian work year cost estimates, which are submitted to Headquarter United States Air Force (HQ USAF) for the purpose of developing the Air Force fiscal year employment financial plan.

4.4. An additional responsibility of the CWC involves negotiating settlements with HQ USAFE-AFAFRICA management on disputed matters of social or personal concern to individuals or groups of employees, which have not been resolved at the local works council level. Either an agency chief or a local works council may elevate such disputes to HQ USAFE-AFAFRICA for resolution.

4.5. The right or extent of works council participation may be restricted:

4.5.1. When plans, programs, or documents are classified for security reasons. Upon declassification of a planned action, or parts thereof, it is essential that works council participation be obtained before release to the public or, in case of a USAFE-AFAFRICA decision, to subordinate organizations. If materials are classified FOR OFFICIAL USE ONLY (FOUO), the restriction does not apply. Works council members entrusted with FOUO are subject to criminal prosecution under German law if disclosure is made to a third party.

4.5.2. Insofar as in individual cases, the right of co-determination is incompatible with military interests particularly worthy of protection.

5. Authorities and Responsibilities.

5.1. **The Chief of the Agency (Dienststellenleiter).** The Chief of the Agency (Dienststellenleiter) is the individual in charge of an agency at which a works council is or is to be established. At major installations that are defined as one works council agency (e.g., Spangdahlem), the Commander of the organization to which a Civilian Personnel Office is assigned (Support Group Commander) will normally act in this capacity. If, due to the

structure/set-up of the works council agency as defined, an obvious individual in charge cannot be identified, the agency chief will be the individual designated by the Commander, United States Air Forces in Europe (USAFE-AFAFRICA/CC) Executive Agent for dealings with the USAFE-AFAFRICA CWC (**paragraph 5.1.2.**).

5.1.1. At local agencies, the agency chief should normally assume this function personally. If the agency chief designates a member of his/her staff to act on his/her behalf, that person, by law (Section 7, FPRL (mod.)), must hold a responsible position in the overall management of the agency and must be authorized to negotiate with the works council to the same extent as the agency chief. Thus, the delegate will normally be the deputy or equivalent level. Designations will be executed in writing and furnished to the works council concerned.

5.1.1.1. The head of the servicing Civilian Personnel Flight (CPF) may be designated to act as the agency's focal point of contact for the works council on routine day-to-day business. The agency chief may especially delegate authority to the Civilian Personnel Officer and/or key members of the CPF staff to sign written USAFE-AFAFRICA Form 179 "*Notification of Proposed Personnel Action*" for the works council on his/her behalf. Wherever feasible, USAFE-AFAFRICA Form 179 will be used as the official document for written communication with the works councils under co-operation or co-determination procedures.

5.1.1.2. Civilian Personnel Officers will assist and advise agency chiefs and other management officials or supervisory personnel in the orderly compliance with the requirements of the FPRL.

5.1.2. HQ USAFE-AFAFRICA/A1K, Unit 3284, APO AE 09094-3284, is the designated Commander, US Air Forces in Europe (COMUSAFE-AFAFRICA) executive agent for dealings and meetings with the CWC, and for acting on other personnel representation issues in accordance with AFI36-129_USAFE-AFAFRICASUP, *Civilian Personnel Management and Administration*. In this capacity HQ USAFE-AFAFRICA/A1K:

5.1.2.1. Maintains technical expertise on all Collective Tariff Agreement II (CTA II), FPRL, and related German labor law matters and provides other HQ USAFE-AFAFRICA staff offices or key representatives of serviced major command (MAJCOM) activities and operating-level commanders with policy and guidance in these areas.

5.1.2.2. Functions as exclusive point of contact (POC) for contacts with the CWC and exercises full Command authority on any actions subject to CWC consultation.

SUSAN M. AIROLA-SKULLY, Colonel, USAF
Director, Manpower, Personnel, and Services

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

AFPD 34-3, *Nonappropriated Funds Personnel Management and Administration*, 13 June 2018

AFPD 36-1, *Appropriated Funds Civilian Management and Administration*, 18 March 2019

DAFI 33-360, *Publications and Forms Management*, 15 December 2018

AFI 33-322, *Records Management and Information Governance Program*, 22 March 2020

AFI36-129_USAFE-AFAFRICASUP, *Civilian Personnel Management and Administration*, 28 January 2020

Protocol of Signature, *NATO SOFA Supplementary Agreement*, 3 August 1959

Collective Tariff Agreement II for the Employees of the Sending Forces in the Federal Republic of Germany, 16 December 1966

Prescribed Forms

USAFE-AFAFRICA Form 179, *Notification of Proposed Personnel Action*

Adopted Forms

AF Form 679, *Air Force Publication Compliance Item Waiver Request/Approval*

AF Form 847, *Recommendation for Change of Publication*

Abbreviations and Acronyms

AFI—Department of the Air Force Instruction

AFPD—Air Force Policy Directive

CPF—Civilian Personnel Flight

CTA II—Collective Tariff Agreement II

CWC—Command Works Councils

DAFI—Department of the Air Force Instruction

FOUO—For Official Use Only

FPRL—Federal Personnel Representation Law

FRG—Federal Republic of Germany

HQ USAF—Headquarters United States Air Force

IAW—In Accordance With

LN—Local National

NATO SOFA—North Atlantic Treaty Organization Status of Forces Agreement

OPR—Office of Primary Responsibility

POC—Point of Contact

US—United States

USAFE-AFAFRICA—United States Air Forces in Europe-Air Forces Africa

Attachment 2

**CITATION OF THE GERMAN FEDERAL PERSONNEL REPRESENTATION LAW
(FPRL) MODIFIED TEXT* OF THE GERMAN FEDERAL PERSONNEL
REPRESENTATION LAW (FPRL) OF MARCH 15, 1974, WITH SUBSEQUENT
AMENDMENTS UP TO AND INCLUDING THE AMENDMENT OF 16 JANUARY 1991,
FOR APPLICATION BY THE U.S. FORCES**

Note: This text has been composed from the German Federal Personnel Representation Law and the Protocol of Signature regarding Section 56 (9) of the Supplementary Agreement to the NATO Status of Forces Agreement. Sections and paragraphs of the law which either are not pertinent to the Sending States Forces or are affected by the Protocol of Signature have been omitted or reworded as needed for practical application. Modified text is reflected in italics.

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PART ONE

GENERAL PROVISIONS

Section 1

Works Councils shall be established in administrative units and establishment of a force or of a civilian component as set up in the territory of the Federal Republic of Germany and defined by the force concerned.

Section 2

(1) Agency and works council shall co-operate in mutual confidence within the framework of law and collective tariff agreements, and in co-operation with the trade unions represented in the agency, for the benefit of the employees and for the accomplishment of the mission of the agency.

(2) In order that the trade unions represented in the agency may perform their duties and exercise their rights as referred to by this law, their representatives will be given access to the agency after the chief of the agency or his deputy has been so informed, unless access to the agency is precluded by absolutely necessary operational requirements, cogent safety provisions or for reasons of military security.

(3) The functions of trade unions, particularly the protection of the interests of their members, shall not be affected by this law.

Section 3

Works council rights may not be regulated in deviation from this law by collective tariff agreement.

Section 4

(1) *Employees within the meaning of this law, shall be salaried employees (Angestellte) and wage earners (Arbeiter) including employees undergoing vocational training.*

(2) (Not applicable)

(3) Salaried employees, within the meaning of this law, are employees who are so defined by the tariff agreement applicable to the agency or who are employed as salaried employees under overtariff conditions. Employees undergoing training for a salaried employee's occupation are also considered salaried employees.

(4) Wage earners within the meaning of this law are employees who are so defined by the tariff agreement applicable to the agency including those who are undergoing vocational training.

(5) The following persons shall not be considered employees within the meaning of this law:

1. Persons whose employment is predominantly based on motives of a charitable or religious nature.

2. Not applicable.

Section 5

Salaried employees and wage earners will form one group each.

Section 6

(1) *Agencies within the meaning of this law are the individual administrative units and establishments of a force or of a civilian component as set up in the territory of the Federal Republic of Germany and defined by the force concerned.*

(2) *Those headquarters which are administratively immediately subordinate to the highest service authority of the force and to which other agencies are administratively subordinate shall be the intermediate authorities. The highest service authority shall be the headquarters of a force, designated by the sending State concerned, exercising final authority over matters that are subject to works council participation.*

(3) Branch offices and parts of an agency which are located at a great geographic distance shall represent independent agencies, if the majority of their employees who are entitled to vote so decide by secret ballot. The decision shall be binding for the subsequent election and the term of office of the works council elected.

(4) (Not applicable)

Section 7

The chief of an agency shall act on behalf of the agency. *He may be represented by a person holding a responsible position in the management of the agency and authorized to negotiate with the works council to the same extent as the chief of the agency.* At highest service authorities, he may designate the chief of the personnel and administrative department, and at intermediate authorities, he may designate the respective department chief to act as his representative. The same applies with respect to other designated representatives, provided the works council agrees to such designation.

Section 8

Persons exercising functions or rights under this law may not be hindered in doing so and may neither be discriminated against nor be given preferential treatment because of their function; this applies also to their professional development.

In order to perform its duties, the works council may be granted access to secure areas to the extent necessary. Insofar as the regulations of the highest service authority of the force relating to military security preclude or restrict such access, access shall be granted under the same conditions under which civilian labor is allowed access.

Section 9

(1) If subsequent to the successful completion of vocational training the employer does not intend to conclude an indefinite employment contract with an employee (apprentice), who is a member of a works council or a youth/apprentice representation and is undergoing vocational training under the Vocational Training Law, the Law on Sick Nursing, or the Midwife Law, he must so inform that person in writing 3 months prior to completion of the vocational training.

(2) If an employee referred to in paragraph 1 submits a written request for employment to the employer during the last 3 months before completion of vocational training, an indefinite employment contract between the employer and the employee undergoing vocational training will be considered as concluded subsequent to successful completion of the vocational training.

(3) Paragraphs 1 and 2 shall also apply, if the vocational training is successfully completed within 1 year after expiration of the term of office of the works council or the youth/apprentice representation.

(4) Within 2 weeks after completion of the vocational training the employer may request the labor court:

1. To determine that an employment contract shall not be concluded in accordance with paragraphs 2 and 3, or,

2. To dissolve the employment contract already concluded in accordance with paragraphs 2 and 3, if, after full consideration of all circumstances the employer cannot be reasonably expected to continue the employment. The works council and, in the case of a member of a youth/apprentice representation also the latter shall be a party in the proceedings before the labor court.

(5) Paragraphs 2 through 4 shall be applied irrespective of whether or not the employer has fulfilled his obligation under paragraph 1.

Section 10

(1) Persons who exercise or have exercised functions or rights under this law are forbidden to communicate to anyone any information on official matters and facts known to them on account of their function. Except for Section 68, paragraph 2, sentence 3, and Section 93, the obligation to preserve silence shall not apply to members of the works council and the youth/apprentice representation vis-à-vis the other members, and for those persons referred to in sentence 1 vis-à-vis the concerned works council; furthermore, it shall not apply vis-à-vis the next higher authority, the works council above the local level established at that authority, and vis-à-vis the joint works council. Sentence 2 shall also apply to the conciliatory committee.

(2) The obligation to preserve silence does not apply to matters or facts which are publicly known or which are of a nature not warranting such restriction.

Section 11

(Not applicable)

WORKS COUNCIL, WORKS COUNCIL ABOVE THE LOCAL LEVEL, JOINT WORKS COUNCIL, PERSONNEL ASSEMBLY

Title One

Election and Composition of the Works Council

Section 12

(1) Works councils shall be established in all agencies which employ, as a rule, at least 5 persons entitled to vote, of whom 3 are eligible for office.

(2) Agencies in which the prerequisites of paragraph 1 are not met shall, in agreement with the higher level works council be assigned to a neighboring agency by the highest service authority.

Section 13

(1) Entitled to vote shall be all employees who, on the day of election, have completed their 18th year of age, unless, by court decision, they do not possess the right to vote on public matters. Employees who, on the day of election, have been on leave without pay for more than 6 months shall not be entitled to vote.

(2) An employee detailed to another agency shall be entitled to vote in that agency as soon as the detail has exceeded a period of 3 months; at the same time he shall lose his right to vote at the old agency. This shall not apply to employees who are released from regular duties as members of a works council above the local level or a joint works council. Sentence 1 also shall not apply, if it is certain that the employee will return to his old agency within another period of 6 months.

(3) Employees undergoing vocational training shall be entitled to vote only at their parent agency.

Section 14

(1) Eligible as candidates shall be all employees entitled to vote who, on the day of election,

1. Have worked in the area of jurisdiction of their highest service authority for 6 months, and
2. Have been employed with administrative units and establishments *of the forces and their civilian components* for 1 year.

An employee who, by court decision, does not possess civic rights shall not be eligible as candidate.

(2) Employees who work regularly less than 18 hours per week shall not be eligible as candidates. The employees referred to in Section 13, paragraph 3, shall not be eligible for election to a works council above the local level.

(3) The persons referred to in Section 7, as well as employees who are authorized to make independent decisions in personnel matters of the agency, shall not be eligible for the election to the works council of their agency.

Section 15

(1) If the highest service authority or the agency has been in existence for less than 1 year, the prerequisite of Section 14, paragraph 1, number 1 shall not apply for eligibility to office.

(2) The prerequisite of Section 14, paragraph 1, number 2, shall not apply where there are not at least five times as many eligible employees of each group as shall be elected under Sections 16 and 17.

Section 16

(1) The works council shall consist, in agencies employing as a rule:

5 to 20	employees entitled to vote,	of one person,
21 to 50	employees entitled to vote,	of three members,
51 to 150	employees entitled to vote,	of five members,
151 to 300	employees entitled to vote,	of seven members,
301 to 600	employees entitled to vote,	of nine members,
601 to 1,000	employees entitled to vote,	of eleven member.

The number of members shall be increased in agencies employing 1,001 to 5,000 persons by two for each 1,000 employees or part thereof, and in agencies employing 5,001 and more persons by two for each 2,000 employees or part thereof.

(2) The maximum number of members shall be 31.

Section 17

(1) If members of different groups are employed in the agency, each group must be represented in the works council proportionate to its strength, provided the council consists of at least three members. In the case of equal group strength, decision shall be made by lot. If a group does not make use of its right to be represented in the works council, the group shall lose its claim to representation.

(2) The election committee shall compute the distribution of seats among the groups in accordance with the principles of proportional representation (“Verhältnswahl”).

(3) One group shall be allotted at least:

if less than 51 members of the group	one representative
if 51 to 200 members of the group	two representatives
if 201 to 600 members of the group	three representatives
601 to 1,000 members of the group	four representatives

1,001 to 3,000 members of the group five representatives

3,001 and more members of the group six representatives

(4) (Not applicable)

(5) A group consisting normally of not more than five employees shall be given a representation only if it comprises at least one twentieth of the employees of the agency. If a group is not given a representation but the election is carried out by groups (Gruppenwahl), any employee of the group not represented may join the other group by making a statement to that effect to the election committee.

(6) The works council should be composed of representatives of the various job categories.

(7) Both sexes should be represented in the works council proportionate of their numbers

Section 18

(1) The distribution of the members of the works council between the groups may be regulated in deviation from Section 17, provided each group so decides by separate secret ballot prior to the new election.

(2) For each group, also employees of the other group may be nominated. The elected candidates shall be considered council representatives of the group for which they were nominated. The second sentence shall also apply to alternate members.

Section 19

(1) The works council shall be elected by secret and direct election.

(2) If the works council consists of more than one person, salaried employees and wage earners shall each elect their representative (Section 17) by separate ballot, unless the employees of each group who are entitled to vote have decided by separate and secret ballot, prior to the new election, that a joint election will be held. The decision requires the majority of votes of all employees entitled to vote in each group.

(3) The election shall be carried out in accordance with the principles of proportional representation. If only one slate is submitted, election shall be by individual candidates (Personenwahl). In agencies where the works council consists of one representative, he shall be elected by simple majority vote. The same applies to an employee group that is entitled only to one representative in the works council.

(4) The employees entitled to vote and the trade unions represented in the agency may submit slates for the election of the works council. Each slate of the employees must be signed by at least one-twentieth of the number of group members entitled to vote, but not less than a minimum of three persons entitled to vote. In any case, the signature of 50 members of a group entitled to vote shall suffice. Employees not eligible for office in accordance with Section 14, paragraph 3 may not submit or sign any slates.

- (5) If joint elections have been decided upon, each slate of the employees must be signed by at least one-twentieth of the employees entitled to vote; paragraph 4., sentences 2 through 4, shall apply mutatis mutandis.
- (6) If, in the case of a joint election, employees of one group are nominated for the other group, the slate must be signed by at least one-tenth of the number of group employees entitled to vote of the group for which they are nominated. Paragraph 4, sentences 3 and 4 shall apply mutatis mutandis.
- (7) Any one employee can be nominated on one slate only.
- (8) If in an agency a works council does not exist, the trade unions represented in the agency may submit slates for election of the works council. Paragraphs 4 through 6 shall not be applied to these slates.
- (9) Each slate of a trade union must be signed by two designated representatives; the designated representatives must be employees of the agency, and be members of a trade union represented in the agency. If questions arise concerning the designation, the election committee may require that the trade union confirm the designation.

Section 20

- (1) No later than eight weeks before the expiration of its term of office, a works council shall appoint 3 employees entitled to vote as the election committee, and one of them as chairperson. If members of different groups are represented in the agency, each group must be represented in the election committee. One representative each of the trade unions represented in the agency is entitled to participate, in an advisory capacity, in the meetings of the election committee.
- (2) If six weeks before the expiration of a works council's term of office no election committee exists, the chief of the agency, upon request of at least three employees entitled to vote or upon request of a trade union represented in the agency, shall convene a personnel assembly for the election of an election committee. Paragraph 1 shall apply mutatis mutandis. The personnel assembly shall elect a chairperson of the assembly.

Section 21

If in an agency which meets the prerequisites of Section 12, a works council does not exist, the chief of the agency shall convene a personnel assembly for the election of an election committee. Section 20, paragraph 2, sentence 3 shall apply mutatis mutandis.

Section 22

If no personnel assembly (Section 20, paragraph 2 and Section 21) is held or if the personnel assembly does not elect an election committee, the chief of the of the agency, upon request of at least three employees entitles to vote or upon request of a trade union represented in the agency, shall appoint the election committee.

Section 23

(1) The election committee shall initiate the election immediately; it should be held after six weeks at the latest. If the election committee does not fulfill this obligation, the chief of the agency, upon request of at least three employees entitled to vote or upon request of a trade union represented in the agency, shall convene a personnel assembly for the election of a new election committee. Section 20, paragraph 2, sentence 3, and Section 22 shall apply mutatis mutandis.

(2) Immediately after conclusion of the election, the election committee shall, publicly, count the votes; prepare a protocol on the result of the election and posting a notice of the result for information of the employees of the agency. The chief of the agency and the trade unions represented in the agency shall receive a copy of the election protocol.

Section 24

(1) No one may obstruct or interfere with the election of a works council in a manner which is contra bonos mores. In particular, no person entitled to vote may be restricted in his right to vote or in his right to be elected. Section 47, paragraphs 1 and 2, sentences 1 and 2 shall apply mutadis mutandis to the members of the election committee and to candidates.

(2) The costs of the election shall be borne by the agency. Loss of work hours necessitated by voting, attendance of personnel assemblies (Sections 20 through 23), or functioning in the election committee, shall not result in loss of pay. Section 44, paragraph 1, sentence 2, and Section 46, paragraph 2, sentence 2 shall apply mutatis mutandis to the members of the election committee.

Section 25

A group of at least three employees entitled to vote, any trade union represented in the agency, or the chief of the agency, may contest the election at a labor court within a period of twelve workdays from the day of publication of election result, if substantial provisions concerning voting entitlement, eligibility for election, or the election procedure, have been violated and no correction has been made, unless such violation could not have altered or affected the election result.

Title Two**Term of Office of the Works Council****Section 26**

The works council's regular term of office shall be four years. The term of office shall commence on the day of election or, if a works council still exists on that day, on the expiration of the latter works council's term of office. It shall expire not later than on 31 May of the year in which the regular elections of the works councils, in accordance with Section 27, paragraph 1 are held.

Section 27

- (1) The regular works council elections shall be held every four years during the period 1 March through 31 May.
- (2) Outside this period, the works council shall be elected if:
 1. After twenty-four months from the day of election, the number of regular employees has increased or dropped by one-half, but at least 50, or
 2. The total number of works council members, even though all alternate members have assumed office, has dropped by more than one-fourth of the prescribed number, or
 3. The works council has decided to resign by majority vote of its members, or
 4. The works council has been dissolved by court decision, or
 5. A works council does not exist in the agency.
- (3) In the cases of paragraph 2., numbers 1 through 3, the works council shall continue to function until a new works council has been elected.
- (4) If an employee group in the agency, which had so far been represented in the works council, is no longer represented by a member of the works council, this group shall elect new members.
- (5) If a works council has been elected outside the time period established for regular works council elections, the next election of that council shall be held during the next time period for regular works council elections, which follows the election of the council. If, at the beginning of the time period for regular works council elections, the term of office of the works council has been less than one year, the works council shall be newly elected during the next succeeding period for regular council elections.

Section 28

- (1) Upon request of one-fourth of the employees entitled to vote, or of a trade union represented in the agency, the labor court may decide to exclude a member from the works council or to dissolve the works council, because of gross neglect of legal rights, or gross violation of legal obligations. For the same reasons, the works council may request the exclusion of the one of its members. The chief of the agency may request the exclusion of a member from the works council or the dissolution of the works council, on the grounds of gross violation of legal obligations.
- (2) If the works council has been dissolved, the presiding judge of the labor court shall appoint an election committee. It shall initiate a new election without delay. Pending the new election the election committee shall assume the rights and duties vested in the works council by virtue of this law.

Section 29

- (1) Membership in a works council shall end by:

1. Expiration of the term of office,
2. Resignation from office,
3. Termination of employment,
4. Separation from the agency,
5. Loss of eligibility for election,
6. Court decision pursuant to Section 28,
7. Establishment of the fact that the elected person was not eligible for election, after expiration of the time limit in Section 25.

(2) Membership in the works council shall not be affected by a change of the group to which the member belongs; the member shall remain the representative of the group which elected him.

Section 30 (Not applicable)

Section 31

(1) If a member leaves the works council, an alternate member shall take his place. The same applies whenever a member of the works council is temporarily prevented from performing his functions.

(2) Alternate members shall be taken, in proper order, from among the non-elected employees nominated on the same slates as were the members to be substituted. If the member who leaves the council, or is prevented from attending his functions, was elected by simple majority vote, the nonelected employee with the next highest number of votes shall accede as alternate member.

(3) Section 29, paragraph 2 shall apply mutatis mutandis to a change of the group to which the alternate member belongs, before the alternate member accedes as regular member of the works council.

(4) No alternate members shall accede in the case of Section 27, paragraph 2, number 4.

Title Three

Conduct of Business of the Works Council

Section 32

(1) The works council shall form an executive committee from among its members. The executive committee shall consist of one member of each employee group represented in the works council. The representatives of each group shall elect their member of the executive committee. The executive committee shall conduct the daily business of the works council.

(2) The works council shall determine, by simple majority vote, which member of the executive committee will take the chair of the works council. At the same time, it shall determine the representation of the chairperson by his deputies. In this connection, the group to which the

chairperson does not belong shall be considered, unless the representatives of that group waive their respective entitlement.

(3) The chairperson shall represent the works council within the scope of the decisions made by the council. In matters which concern only one group, the chairperson - unless he belongs to the same group - shall represent the works council together with a member of the executive committee belonging to that group.

Section 33

If the works council consists of eleven or more members, it shall, by simple majority vote, elect from among its members two additional members into the executive committee. If members of the works council have been elected from slates of different designations and if there are no members of the executive committee from the slate that received the second largest number of votes - but at least one-third of all the votes cast by the employees of the agency - one of the additional executive committee members shall be elected from this slate.

Section 34

(1) No later than six workdays from the day of election, the election committee shall convoke the members of the works council to hold the prescribed elections and shall chair the constitutional meeting until the council has elected a person to be in charge of the election ("Wahlleiter") from among its members.

(2) Subsequent meetings shall be convened by the chairman of the works council. He shall establish the agenda and preside over the proceedings. The chairman shall invite the members of the works council to the meetings in time and inform them of the agenda. Sentence 3 shall also apply to the invitation of the representation of the severely handicapped employees, the members of the youth/apprentice representation and the representatives of the temporary employees, inasmuch as they are entitled to participate in the meeting.

(3) Upon request of one-fourth of the members of the works council, the majority of the representatives of one group, the chief of the agency, the representatives of the severely handicapped employees in matters that specifically concern handicapped employees, the majority of the members of the youth/apprentice representation in matters specifically concerning employees specified in Section 57, the chairman shall convene a meeting and shall place on the agenda the matter on which the discussion has been requested.

(4) The chief of the agency shall participate in council meetings which are convened upon his request, and in meetings to which he is specifically invited.

Section 35

The meetings of the works council shall not be public; as a rule they shall be held during hours of work. The works council, when convening meetings, shall give due consideration to the operational requirements of the agency. The chief of the agency shall be notified in advance of the time of the meeting.

Section 36

Upon request of one-fourth of the members or of the majority of one group of the works council, a representative of a trade union represented in the works council may attend the meetings in an advisory capacity; in this case, the trade union shall be notified in due course of the time and agenda of the meeting.

Section 37

(1) The decisions of the works council shall be made by simple majority vote of the members present. Abstention shall be deemed rejection. In case of parity of votes, a request is disapproved.

(2) A quorum of the works council shall require the presence of at least one-half of the council members; deputizing by alternate members shall be permissible.

Section 38

(1) The works council shall deliberate and decide jointly on matters of common concern to salaried employees and wage earners.

(2) On matters concerning one employee group only, the matter shall be jointly deliberated in the works council but only the group representatives are authorized to render a decision. This shall not apply, however, to a group which is not represented in the works council.

(3) (Not applicable)

Section 39

(1) If the majority of the representatives of one group or of the youth/apprentice representation considers a decision of the works council to seriously prejudice important interests of the employees whom they represent, the decision shall be suspended, upon their request, for a period of six working days from the date the decision was made. During this period, attempts should be made to reach an agreement; assistance may be given by trade unions represented in the works council or in the youth/apprentice representation, if appropriate. The suspension of a decision according to sentence 1 shall not result in the extension of any time period.

(2) After expiration of the time period, a new decision shall be made regarding the matter. If the first decision is confirmed, the request for suspension may not be repeated.

(3) Paragraphs 1 and 2 shall apply mutatis mutandis when the severely handicapped employee representative considers a decision of the works council to seriously prejudice important interests of the severely handicapped employees.

Section 40

(1) A representative of and nominated by the youth/apprentice representation and the severely handicapped employee representative may participate, in an advisory capacity, in all meetings of the works council. In discussions of matters concerning specifically employees mentioned in

Section 57, the entire youth/apprentice representation may participate in an advisory capacity. In the case of decisions of the works council which predominantly affect employees mentioned in Section 57, the youth/apprentice representatives shall be entitled to vote.

(2) The representatives specified in Section 65, paragraph 1, may participate, in an advisory capacity, in the discussion of matters that particularly concern the interests of the temporary employees.

Section 41

(1) Minutes shall be taken on all discussions of the works council; at minimum they shall include the wording of the decisions and the number of votes by which they were adopted. The minutes shall be signed by the chairman and another member. An attendance list signed personally by each participant shall be attached to the minutes.

(2) If the chief of the agency or representatives of a trade union have participated in the meeting, a copy of the appropriate part of the minutes shall be submitted to them. Objections to the minutes shall be made immediately in writing and attached to the minutes.

Section 42

Other provisions on the conduct of business may be established in rules of procedure to be determined by the works council by simple majority vote of its members.

Section 43

The works council may establish consultation hours during hours of work. Time and place shall be decided in agreement with the chief of the agency.

Section 44

(1) Costs arising from the activities of the works council shall be borne by the agency. *In case of duty travel necessary for the performance of their functions, members of the works council shall be paid travel expenses pursuant to the tariff provisions governing travel expenses for salaried civilian employees of the force, but at not less than the second highest rate.*

(2) For the meetings, consultation hours, and the conduct of regular business, the agency shall provide the necessary space, office supplies and clerical support.

(3) Suitable space for announcements and the posting of notices shall be made available to the works council in all agencies.

Section 45

For its purposes, the works council may not collect or accept dues from the employees.

Title Four

Legal Status of Works Council Members

Section 46

(1) The members of the works council shall perform their office without remuneration in an honorary capacity.

(2) Loss of working time that is necessary for the orderly performance of works council functions shall not result in a reduction of pay. If, in the performance of their functions, works council members are kept occupied beyond regular work hours, they shall be given an appropriate amount of compensatory time off.

(3) Members of the works council shall be released from their regular duty if and to the extent - depending on the size and type of the agency - this is required for the proper performance of their functions. When selecting members for release from regular duty, the works council must give first consideration to the members of the executive committee elected pursuant to Section 32, paragraph 1, thereafter to the additional members elected pursuant to Section 33, and finally to the other members. In case of the release of further members, the votes corresponding to the individual election slates must be given consideration by applying the maximum number system (“Höchstzahlverfahren”) if the works council’s election was based on the principles of proportional representation (“Verhältniswahl”) (Section 19, paragraph 3, sentence 1); in doing so, the number of the members of the executive committee released pursuant to sentence 2 has to be deducted from the number of releases authorized per slate. In case of a personal election (“Personenwahl”) (Section 19, paragraph 3, sentence 2, the order of precedence of further members to be released from regular duty shall be determined by the number of votes cast for them at the works council election. If the members of the groups represented in the works council have been elected partly in accordance with the principles of proportional representation and partly on the basis of individual candidates and further members are to be released from regular duty, the groups must be given consideration according to the number of their members according to the maximum number system; within the groups, further releases will be determined, by applying sentence 3 mutatis mutandis and sentence 4, depending on the election procedure,. Release from regular duty shall not result in the impairment of the professional advancement of the works council member.

(4) In accordance with paragraph 3 the following full time releases from their regular duties shall be granted in agencies employing as a rule:

300 to	600 employees	one member	5,001 to	6,000 employees	seven members,
601 to	1,000 employees	two members,	6,001 to	7,000 employees	eight members,
1,001 to	2,000 employees	three members,	7,001 to	8,000 employees	nine members,
2,001 to	3,000 employees	four members	8,001 to	9,000 employees	ten members,
3,001 to	4,000 employees	five members	9,001 to	10,000 employees	eleven members.

4,001 to 5,000 employees six members,

In agencies with more than 10,000 employees, one additional member shall be released for each additional 2,000 employees or a part thereof. Deviations from sentences 1 and 2 are authorized in agreement between the works council and the chief of the agency.

(5) Works council members who are released full time from their regular duty shall be paid a monthly expense allowance. Works council members who are released part time, but not less than half of their regular working time, shall be paid one half of the expense allowance in accordance with sentence 1. The Federal Government determines the amount of expense allowance by means of a legal ordinance which is not subject to the approval of the Upper House of Parliament ("Bundesrat").

(6) Works council members shall be released from duty with pay for attendance of training and educational courses if they provide knowledge necessary for the performance of functions in the works council.

(7) Without prejudice to paragraph 6, each member of the works council - during his regular term of office - shall be entitled to release from duty with pay for a total of 3 weeks for attendance of training or education courses, which are recognized as suitable courses by the Federal Central Office for Political Education. Employees who assume the office of a works council member for the first time and have not been members of the youth/apprentices representation before shall be entitled to a total of 4 weeks in accordance with sentence 1.

Section 47

(1) Extraordinary notice for termination of employment to members of the works council who are in an employment status shall require the approval of the works council. If the works council refuses its approval or does not comment within 3 workdays after receipt of the request, the labor court may - upon request of the chief of the agency - grant approval in lieu of the works council, if taking all the circumstances into account, the termination of employment with extraordinary notice is justified. The employee concerned shall be a party in the proceedings before the labor court.

(2) Involuntary transfer or detail of members of the works council is not authorized unless inevitable for important operational reasons, also giving due consideration to the works council membership. Reassignment within the same agency connected with a change of the permanent duty station shall also be considered a transfer within the meaning of sentence 1. The commuting area within the meaning of the legal ordinance on moving expenses shall be considered to belong to the duty station. The transfer or detail of works council members shall require the approval of the works council.

(3) Paragraphs 1 and 2, and Sections 15 and 16 of the Protection against Dismissal Act shall not apply to employees undergoing vocational training. Paragraphs 1 and 2 also shall not apply in the case of transfer or detail of these employees to another agency after completion of vocational training. The works council membership of employees referred to in sentence 1 shall be suspended without prejudice to Section 29 for the time they are transferred or detailed to another agency in accordance with the requirements of their training.

Title Five

Personnel Assembly

Section 48

- (1) The personnel assembly shall consist of the employees of the agency. The chairman of the works council shall preside over the assembly. It is not public.
- (2) Sectional meetings shall be conducted, if a joint assembly of all employees cannot be held because of operational requirements.

Section 49

- (1) Once in every 6 calendar months, the works council shall present an activity report at a personnel assembly.
- (2) The works council shall be entitled and, upon request of the chief of the agency or of one-fourth of the employees entitled to vote, be required to convene a personnel assembly and to place the subject requested for discussion on the agenda.
- (3) The works council shall - upon request of a trade union represented in the agency - convene a personnel assembly pursuant to paragraph 1 within 12 workdays after receipt of the request, if no personnel assembly or no sectional meetings were held within the preceding 6 calendar months.

Section 50

- (1) The personnel assemblies referred to in Section 49, paragraph 1, and those convened upon request of the chief of the agency, shall be held during hours of work, unless operational requirements necessitate another arrangement. Participation in personnel assemblies shall not result in loss of pay. If personnel assemblies as described in sentence 1, for operational reason, must be conducted outside duty hours, the participants shall be granted an appropriate amount of compensatory time off. Travel expenses resulting from attendance of personnel assemblies, as described in sentence 1, shall be reimbursed in accordance with tariff provisions governing travel expenses for civilian employees of the force.
- (2) Other personnel assemblies shall be held outside hours of work. Deviation from this provision shall be permissible in agreement with the chief of the agency.

Section 51

The personnel assembly may submit proposals to the works council and may take a stand on the council's decisions. The assembly shall be entitled to discuss all matters that directly concern the agency or its employees, particularly tariff and social matters as well as questions concerning the development of women and the compatibility of family and job. Section 66, paragraph 2, and Section 67, paragraph 1, sentence 3 shall apply mutatis mutandis to the personnel assembly.

Section 52

(1) Representatives of all the trade unions represented in the agency shall be entitled to participate in the personnel assembly in an advisory capacity. The works council shall inform the trade unions mentioned in sentence 1 of the convening of a personnel assembly. A designated member of the works council above the local level or the joint works council as well as a representative of the authority at which the works council above the local level exists, may participate in the personnel assembly.

(2) The chief of the agency may participate in the personnel assembly. He shall participate in assemblies which have been convened upon his request or to which he has been specifically invited.

Title Six**Higher Level Works Councils and Joint Works Councils****Section 53**

(1) For the area of jurisdiction of commands with several levels of administration, district works councils shall be established at the intermediate command authorities and head works councils at the highest service authorities.

The highest service authority shall be the headquarters of a force, designated by the sending State concerned, exercising final authority over matters that are subject to works council participation. Those headquarters which are administratively immediately subordinate to the highest service authority of a force and to which other agencies are administratively subordinate shall be the intermediate authorities.

(2) The members of the district works council shall be elected by the employees working within the scope of jurisdiction of the intermediate command authority, whereas the members of the head works council shall be elected by the employees working within the scope of jurisdiction of the highest service authority.

(3) Sections 12 through 16, Section 17, paragraphs 1, 2, 6, and 7, Sections 18 through 21, and 23 thru 25 shall apply mutatis mutandis. Section 14, paragraph 3 shall apply to the employees of the authority at which the works council above the local level is to be established. No personnel assembly shall be held for the appointment of the district or head election committee; instead, the chief of the authority at which the works council above the local level is to be established shall exercise the right of appointing the election committee pursuant to Section 20, paragraph 2., Sections 21 and 23.

(4) If, in a command, the local works councils and the higher level works councils are elected simultaneously, the election committees existing at the agencies shall carry out the election of the works councils above the local level on behalf of the district or head election committee; otherwise, on request of the district or head election committee, the works council or, if none exists, the chiefs of the agencies shall appoint the local election committees for the election of works councils above the local level.

(5) Each employee group shall be given at least one representative in the works councils above the local level. If the works council above the local level consists of more than nine members, each employee group shall be given at least two representatives. Section 17, paragraph 5 shall apply mutatis mutandis.

Section 54

(1) Sections 26 through 39, Section 40, paragraph 1, Sections 41, 42, 44, 45, 46, paragraphs 1 through 3, and 5 through 7, and Section 47 shall apply mutatis mutandis to the higher level works councils unless indicated otherwise in paragraph 2.

(2) Section 34, paragraph 1 shall apply with the proviso that the members of the works council above the local level shall be convoked to hold the prescribed election not later than 12 workdays after the day of election.

Section 55

In the cases of Section 6, paragraph 3 a joint works council shall be established in addition to the individual works council.

Section 56

Section 53, paragraphs 2 and 3, and Section 54, paragraph 1, first half of sentence 1 shall apply, mutatis mutandis, to the joint works council.

YOUTH AND APPRENTICE REPRESENTATION AND YOUTH AND APPRENTICE ASSEMBLY

Section 57

Youth/apprentice representations shall be established in agencies in which works councils exist, and employing, as a rule, at least five employees who are under 18 years of age (juvenile employees), or who undergo vocational training and have not yet completed the 25th year of age.

Section 58

(1) All employees referred to in Section 57 shall be entitled to vote. Section 13, paragraph 1, shall apply mutatis mutandis.

(2) Employees who on the day of election are not yet 26 years of age shall be eligible for election. Section 14, paragraph 1 sentence 1, number 1, and sentence 2, paragraphs 2 and 3 shall apply mutatis mutandis.

Section 59

(1) The youth/apprentice representation shall consist in agencies employing as a rule:

Employees referred to in Section 57	Number of Representative(s)
5 to 20	1
21 to 50	3
51 to 200	5
201 to 300	7
301 to 1000	11
More than 1000	15

(2) The youth/apprentice representation should consist of employees named in Section 57 representing the various job categories found in the agency.

(3) The sexes should be represented in the youth/apprentice representation proportionate to their numerical strength.

Section 60

(1) The works council shall appoint the election committee and its chairperson. Section 19, paragraphs 1, 3, 4, sentence 1, paragraphs 5, 7 and 9; Section 20, paragraph 1, sentence 3 and 4; Section 24, paragraph 1, sentences 1 and 2, paragraph 2; and Section 25 shall apply *mutatis mutandis*.

(2) The regular term of office of the youth/apprentice representation shall be 2 years. It shall commence on the day of the election, or, if a youth/apprentice representation still exists at that time, upon the expiration of its term of office. The regular elections of the youth/apprentice representation shall be held every 2 years during the period of 1 March through 31 May. The term of office shall expire no later than on 31 May of the year in which the regular elections of the youth/apprentice representation are held in accordance with sentence 3. Section 27, paragraph 2, numbers 2 through 5, paragraphs 3 and 5, shall apply, *mutatis mutandis* to the election of the youth/apprentice representation outside this period.

(3) If a youth/apprentice representation consists of three or more members, it shall elect a chairman and his deputy from among its members.

Section 61

(1) General tasks of the youth/apprentice representation are:

1. To propose actions to the works council that are for the benefit of the employees referred to in Section 57, particularly in matters of vocational training,

2. To ensure that the laws, regulations, provisions for accident prevention, collective tariff agreements, shop agreements and administrative instructions that are in force for the benefit of the employees referred to in Section 57, are implemented,

3. To receive proposals and grievances from employees referred to in Section 57, particularly in matters concerning vocational training, and - if they appear justified - to see that the works council works for their redress; the youth/apprentice representation shall inform the employees concerned of the status and of the result of the negotiations.

(2) The co-operation of the youth/apprentice representation with the works council shall be governed by Section 34, paragraph 3, and Sections 39 and 40, paragraph 1.

(3) To enable it to carry out its functions, the works council shall keep the youth/apprentice representation informed comprehensively and in due time. The youth/apprentice representation may request the works council to make available all documents necessary for the performance of its functions.

(4) The works council shall call in the youth/apprentice representation to the discussions between the chief of the agency and the works council according to Section 66, paragraph 1, if matters specifically concerning employees referred to in Section 57 are to be discussed.

(5) After informing the works council, the youth/apprentice representation may convene meetings; Section 34, paragraphs 1 and 2 shall apply *mutatis mutandis*. A works council member designated by the works council may participate in the meetings of the youth/apprentice representation.

Section 62

Sections 43 through 45, Section 46, paragraphs 1, 2, 3, sentences 1 and 6, paragraphs 6, 7, and Section 67, paragraph 1, sentence 3 shall apply, *mutatis mutandis*, to the youth/apprentice representation. Section 47 shall apply, *mutatis mutandis*, with the proviso that the extraordinary notice for termination of employment, the transfer and the detail of members of the youth/apprentice representation shall require the approval of the works council. Section 47, paragraphs 1, 2, sentence 1 and 2 shall apply, *mutatis mutandis*, to members of the election committee and candidates.

Section 63

The youth/apprentice representation shall convene a youth/ apprentice assembly once every calendar year. If possible, it shall be held immediately before or after an ordinary personnel assembly. The chairperson of the youth/ apprentice representation shall preside over the assembly. The chairperson of the works council or another member designated by the works council should participate in the youth/ apprentice assembly. The provisions concerning personnel assemblies shall be applied *mutatis mutandis*. In addition to the youth/ apprentice assembly referred to in sentence 1, another assembly - not convened upon the request of the chief of the agency - may be held during hours of work.

Section 64

(1) For the area of jurisdiction of commands with various levels of administration - where works councils above the local level exist - district youth/ apprentice representations shall be established at the intermediate command authorities, and head youth/ apprentice representations at the highest service authorities. Section 53, paragraphs 2 and 4, and Sections 57 through 62 shall apply mutatis mutandis to youth/ apprentice representations above the local level.

(2) In the cases of Section 6, paragraph 3, a joint youth/ apprentice representation shall be established in addition to the individual youth/ apprentice representations. Paragraph 1, sentence 2 shall apply mutatis mutandis.

CHAPTER FOUR REPRESENTATION OF TEMPORARY EMPLOYEES

Section 65

(1) If, during a works council's term of office, the number of employees increases temporarily by more than 20 persons whose employment probably will not exceed 6 months, the temporary employees shall elect by secret ballot:

for 21 to 50 temporary employees	one representative,
for 51 to 100 temporary employees	two representatives,
for more than 100 temporary employees	three representatives.

The works council shall appoint the election committee and its chairperson. The provisions of Section 13, paragraphs 1 and 3, Sections 14, 17, paragraphs 6 and 7, Sections 19, 24, paragraph 1, sentences 1 and 2, paragraph 2, and Section 25 shall apply to the election of the representatives, with the exception of the provisions governing the length of employment in the area of jurisdiction of the highest service authority and *with administrative units and establishments of the forces and their civilian components*.

(2) The term of office of the representatives referred to in paragraph 1, shall end upon termination of employment of the temporary employees, or when the prerequisites for their election cease to exist. Section 26, sentence 2, Section 27, paragraph 2, numbers 2 through 4, paragraph 3, and Sections 28, 29 and 31 shall apply mutatis mutandis.

(3) Sections 43 through 45, Section 46, paragraphs 1, 2, 3, sentence 1, and Section 67, paragraph 1, sentence 3 shall apply mutatis mutandis to the representatives referred to in paragraph 1.

(4) The representatives referred to in paragraph 1 shall participate in the works council meetings in accordance with Section 40, paragraph 2.

PARTICIPATION OF THE WORKS COUNCIL

Title One

General Provisions

Section 66

(1) The chief of the agency and the works council should meet at least once each month for discussion. At these meetings the organization of operations, and particularly all matters essentially affecting the employees, shall be discussed among other things. On questions in dispute, both parties shall negotiate in good will to achieve agreement, and make proposals for the settlement of controversies.

(2) The agency and the works council shall refrain from any action that may cause disturbance of work and peace at the agency. In particular, the agency and the works council shall refrain from any industrial actions against each other. Labor disputes between parties eligible for collective bargaining shall not be affected by this provision.

(3) Appeals to authorities outside the agency may be made only if agreement within the agency could not be reached.

Section 67

(1) The agency and the works council shall ensure just and fair treatment of all employees in the agency and, in particular, that there is no discrimination against employees because of descent, creed, nationality, origin, political or union activities or views, or sex. In this connection, they must conduct themselves in such a manner that the confidence of the employees in their impartiality and neutrality when carrying out their functions is not affected. Within the agency, both the chief of the agency and the works council shall refrain from any partisan political activities; the dealing with tariff and social matters shall not be affected hereby.

(2) Employees carrying out functions under this law also shall not be restricted within the agency in activities for their trade union.

(3) The works council shall stand up for the protection of the employees' freedom to organize.

Section 68

(1) General tasks of the works council are:

1. To propose actions which serve the agency and its members;
2. To ensure that the applicable laws, regulations, collective tariff agreements, shop agreements, and administrative instructions which are for the benefit of the employees, are observed;
3. To receive proposals and grievances from employees and, if they appear justified, to work for their redress through negotiation with the chief of the agency;
4. To promote the integration and vocational development of severely handicapped persons, and of other persons needing protection, particularly elderly persons;
5. To propose measures for the vocational development of the severely handicapped;
6. To promote the integration of foreign employees into the agency, and the understanding between them and the German employees;
- 7 To closely co-operate with the youth/apprentice representation for the purpose of promoting the interests of the employees referred to in Section 57.

(2) For the purpose of carrying out its function, the works council shall be informed comprehensively and in due time. The records necessary for carrying out its functions shall be made available to the works council unless they are classified for security reasons. Official personnel folders may only be perused with the employee's consent, and only by members of the works council designated by the employee. Performance appraisals shall be presented to the works council at the request of the employee.

Title Two

Types and Procedures of Co-determination and Co-operation

Section 69

(1) To the extent that an action is subject to the works council's co-determination, it may only be taken with the council's concurrence.

(2) The chief of the agency shall inform the works council of the planned action and request its concurrence. The works council may demand that the chief of the agency justify the planned action; except in personnel matters the works council may also demand a written rationale. The decision of the works council on the requested concurrence shall be conveyed to the chief of the agency within 10 workdays. The chief of the agency may, in urgent matters, reduce this period to 3 workdays. The action shall be considered approved if the concurrence is not refused in writing by the works council within the mentioned period, by stating the reasons. If complaints and allegations of a factual nature are made in this connection which adversely affect an employee or may be of disadvantage to him, the employee shall be given the opportunity to comment; the comments shall be made a matter of record.

(3) If no agreement is reached, the chief of the agency or the works council may submit the matter through official channels within 6 workdays to the higher authorities where works councils above the local level exist. Paragraph 2 shall apply *mutatis mutandis*. If, in accordance with sentence 1, the chief of the agency submits the matter to the higher authority, he shall so inform the works council by stating his reasons.

(4) If the highest service authority and the head works council established at its level cannot reach an agreement, the conciliatory committee (Section 71) shall decide; in the matters of Section 77, paragraph 2, it determines whether or not a reason for nonconcurrence exists. The conciliatory committee shall decide within 2 months of the declaration of one of the parties requesting a decision of the conciliatory committee. In the matters of Section 76, the conciliatory committee passes a recommendation to the highest service authority if it does not concur with the opinion of the highest service authority. The highest service authority subsequently renders a final decision.

(5) In the case of actions which, owing to the nature of the matter involved, cannot be postponed, the chief of the agency may make preliminary arrangements pending the final decision. He shall inform the works council of such a preliminary arrangement, stating the reasons, and shall initiate or continue the procedure pursuant to paragraphs 2 through 4 without delay.

Section 70

(1) If the works council requests an action which is subject to its co-determination according to Section 75, paragraph 3, numbers 1 through 6 and 11 through 17 (*except 13*), it shall propose such action in writing to the chief of the agency. If the latter does not consent to the request, the subsequent procedure is governed by Section 69, paragraphs 3 and 4.

(2) If the works council requests an action that is subject to co-determination according to provisions other than those in paragraph 1, sentence 1, it shall propose it in writing to the chief of the agency. If the latter does not consent to the request, the subsequent procedure is governed by Section 69, paragraph 3; the highest service authority shall make a final decision.

Section 71

(1) *The conciliatory committee shall be established at the highest service authority. It shall consist of two members, one to be appointed by the highest service authority and one by the appropriate works council of that authority, as well as an impartial chairman to be agreed upon by both sides. If no agreement can be reached on the chairman, the appointment shall be made by the Secretary General of the North Atlantic Treaty Organization, unless the parties jointly request the President of the Federal Administrative Court or the Secretary General of the Western European Union to make the appointment. The highest service authority may insist upon the members of the conciliatory committee being cleared to handle classified material. At the request of the force or works council concerned, standing or ad hoc conciliatory committees may be established if warranted by the circumstances.*

(2) The proceedings shall not be public. The highest service authority and the appropriate works council shall be given the opportunity to state their views orally. In agreement with the parties concerned, such views may be stated in writing.

(3) The conciliatory committee shall decide by resolution. It may meet the requests of the parties concerned only in part. Resolutions shall be passed by majority vote. *Conciliatory committee decisions shall be within the framework of legal provisions, including the budgetary laws and regulations of the sending State, binding upon the highest service authority of the force.*

(4) The resolution shall be delivered to the parties concerned. It shall be binding on the parties concerned, apart from cases of Section 76, to the extent that it contains a decision within the meaning of paragraph 3.

Section 72

(1) To the extent that decisions are subject to the works council's co-operation, a planned action, prior to its implementation, shall be discussed with the council in time and in detail, in order to reach an understanding.

(2) If the works council does not respond within 10 workdays, or in discussions does not uphold its objections or proposals, the planned action shall be considered approved. If the works council raises objections, it shall inform the chief of the agency of the reasons. Section 69, paragraph 2, sentence 6 shall apply *mutatis mutandis*.

(3) If the agency does not, or not fully, meet the works council's objections, it shall notify the works council of the decision in writing by stating the reasons.

(4) Within 3 workdays from receipt of the notification, the works council of a subordinate agency may refer the matter through official channels to the higher authorities where works councils above the local level exist, and request a decision. These authorities shall decide after negotiations with the works council that exists at their level. The works council shall furnish a copy of its request to its agency.

(5) If a request pursuant to paragraph 4 has been made, the planned action shall be suspended until receipt of a decision from the higher authority.

(6) Section 69, paragraph 5 shall apply *mutatis mutandis*.

Section 73

(1) Shop agreements may be concluded only insofar as they are expressly provided for in this law. They shall be concluded jointly between the agency and the works council, and shall be established in writing, signed by both parties, and published in a suitable manner.

(2) Shop agreements which apply to a larger area shall take precedence over shop agreements which apply to a smaller area.

Section 74

(1) Decisions in which the works council has participated shall be implemented by the agency, unless agreed otherwise in individual cases.

(2) The works council may not interfere with the agency's operations by unilateral action.

Title Three

Matters Subject to Works Council Participation

Insofar as in individual cases the right of co-determination provided for in the Law is incompatible with military interests particularly worthy of protection, the extent of the right of co-determination may be restricted. The highest service authority shall communicate in writing the reasons for the restriction on the right of co-determination and shall specify the extent of such restriction. Where the disclosure of reasons would cause a danger of serious detriment to the security of the sending State or its force, the highest service authority may establish this by means of a formal declaration to be confirmed by the President of the Federal Labour Court. In those cases the co-operation procedure shall apply.

Section 75

(1) In personnel matters concerning salaried employees and wage earners, the works council shall co-determine (*except numbers 1 and 2*) with regard to the following items:

1. Appointment. *The co-operation procedure shall apply in this case.*

2. Assignment of higher or lower level duties, upgrading or downgrading, initial grading. *The co-operation procedure shall apply in this case.*

3. Transfer to another agency, reassignment within the agency if it is connected with a change of the permanent duty station;

4. Detachment for a period of more than 3 months;

5. Extension of employment beyond the retirement age;

6. Instructions which restrict the employee's free choice of domicile;

7. Denial or withdrawal of approval for a second employment;

(2) In social matters the works council shall co-determine with regard to the following items:

1. Granting of welfare support, advance payments, loans and corresponding social allowances;

2. Assignment and cancellation of quarters which are at the disposal of the agency as well as establishment of conditions for their use.

If an employee has applied for a benefit pursuant to number 1, the works council shall participate only at his request; upon request of the employee, only the executive committee of the works council shall co-determine. The agency shall, after the end of each calendar quarter, submit a summary to the works council of the support compensation and corresponding social allowances granted. In this summary, requests and payments made shall be compared. Information as to the reasons stated by the employees shall not be disclosed in such a summary.

(3) The following matters (*except number 13*) shall be subject to the works council's co-determination, if appropriate by conclusion of shop agreements, to the extent that they are not regulated by law or collective tariff agreement, *or are usually regulated by agreement in accordance with sub-paragraph (a) of paragraph 5 of Article 56, Protocol of Signature*

1. Establishment of the beginning and end of daily work hours and breaks, as well as the distribution of work hours over the individual weekdays;

2. Time, place and method of payment of salaries and wages

3. Setting up the leave plan; scheduling the time periods for annual leave of individual employees if no agreement has been reached between the agency chief and the employees concerned.

4. Questions regarding the wage structure within the agency, particularly the establishment of pay policy, the introduction and application of new pay methods and the changes thereof, as well as the determination of piece work and premium rates and corresponding remunerations based on performance, including money factors;

5. Establishment, management, and discontinuation of social facilities *maintained exclusively for civilian labour*, regardless of their legal nature;

6. Implementation of vocational training for salaried and wage grade employees;

7. Selection of employees for participation in further educational training measures;

8. Contents of personnel questionnaires for salaried and wage grade employees. *Insofar as the contents of personnel questionnaires concern questions of military security, the co-operation procedure shall apply.*

9. Procedures for employee performance appraisals;
 10. Appointment of physicians of trust or company physicians as employees;
 11. Measures to prevent on-the-job accidents and other damages to health;
 12. Principles for the evaluation of accepted suggestions within the scope of the agency's suggestions program;
 13. Establishment of social plans including retraining plans for the compensation or mitigation of financial disadvantages caused by rationalization measures; *the co-operation procedure shall apply in this case.*
 14. Determination not to advertise vacancies which are to be filled;
 15. Regulations concerning good order within the agency, and conduct of employees;
 16. Layout of the work places; *where members of both the force or the civilian component and civilian labour are employed in the same facility or involved in the same program, and the number of civilian labour involved does not predominate the co-operation procedures shall apply.*
 17. Introduction and application of technical means designed to control the conduct or the performance of employees.
- (4) If because of requirements that cannot be foreseen by the agency, the daily work hours (paragraph 3, number 1) for certain groups of employee must be scheduled irregularly and at short notice, the works council's co-determination is limited to laying down the principles for the establishment of duty schedules, in particular for the ordering of stand-by time, additional work, and overtime.
- (5) Remunerations and other employment conditions which are regulated by collective tariff agreement shall not be subject to a shop agreement (paragraph 3). This does not apply, however, when a collective tariff agreement specifically permits the conclusion of supplementary shop agreements.

Section 76

- (1) (Not applicable)
- (2) The following matters shall be subject to the works council's co-determination (*or co-operation, as indicated*), if appropriate by conclusion of shop agreements, to the extent that they are not regulated by law or collective tariff agreement, *or are usually regulated by agreement in accordance with sub-paragraph (a) of paragraph 5 of Article 56, Protocol of Signature*
 1. – 4. (Not applicable)
 5. Measures to increase the work performance and to facilitate the work flow;
 6. General questions concerning advanced training of employees;
 7. Introduction of basically new working methods; *the co-operation procedure shall apply in this case.*

8. Issue of guidelines for the selection of personnel in case of appointments, transfers, regradings, and notices of termination of employment;

9. Claims for compensation of damages against an employee.

In the cases of number 9 the works council shall co-operate only upon request of the employee; the latter shall be informed in advance and in due time of the planned action.

Section 77

(1) In personnel matters of the employees referred to in Section 14, paragraph 3, and of employees performing work of a predominantly scientific or artistic nature, the works council, pursuant to Section 75, paragraph 1, shall co-determine *or co-operate* only upon their request.

(2) In the matters covered by Section 75, paragraph 1, the works council may refuse to give its consent, if

1. The action constitutes a violation of a law, an ordinance, a provision of a collective tariff agreement, a court decision or an administrative instruction, or a guideline within the meaning of Section 76, paragraph 2, number 8,

or

2. Anxiety exists, justified by facts, that the action will be of disadvantage to the employee concerned or other employees without this being justified for operational or personal reasons,

or

3. Anxiety exists, justified by facts, that the employee or applicant, by anti-social or illegal conduct, will disturb the peace of the agency.

Section 78

(1) The works council shall co-operate in the following matters:

1. Preparation of administrative instructions of an agency on internal, social, and personal matters of the employees within its area. *The head of the agency shall submit administrative instructions to the works council prior to their being issued, except in circumstances in which paragraph 6 of Section 72 applies in conjunction with the fifth sentence of Section 69 of this Law.*

2. Deactivation, curtailment, relocation or merger of agencies, or essential parts thereof, unless co-operation is incompatible with the military mission of the force.

3.-5. (Not applicable)

(2) (Not applicable)

(3) Prior to submission of manpower requirements in connection with the budget estimate, the works council shall be heard. If the works council of a subordinate agency gives its comments on manpower requirements, they shall be sent to the next higher authority together with the manpower requirements. This shall apply *mutatis mutandis* to personnel planning.

(4) Paragraph 3 shall apply mutatis mutandis to the new construction, alterations and expansions of offices/duty facilities.

(5) The works council shall be heard prior to basic changes in working procedures and work flows.

Section 79

(1) The works council shall co-operate in the case of ordinary notice of termination of employment given by the employer. The works council may raise objections to the notice of termination of employment if, in its view,

1. Social aspects were not or not sufficiently taken into account in the selection of the employee who was to be given notice of termination of employment,
2. The notice of termination of employment violates guidelines within the meaning of Section 76, paragraph 2, number 8
3. The employee who is to be given notice of termination of employment can continue to be employed in another position within the same agency, or in another agency of the same appointing authority (Verwaltungszweig) within the same duty station including its commuting area,
4. The continued employment of the employee is possible after reasonable measures of retraining or further training, or
5. The continued employment of the employee is possible under changed employment conditions and the employee has agreed to it.

If the employee is given the notice of termination of employment, although the works council, pursuant to sentence 3, has raised objections to it, the employee shall be provided a copy of the works council's comments together with the notice of termination of employment, unless the works council above the local level does not uphold the objections in the proceedings under Section 72, paragraph 4, sentence 2.

(2) If the employee, in the case of paragraph 1, sentence 4, has, under the Protection against Dismissal Act, initiated action for declaratory judgment (Feststellungsklage) that the employment is not terminated by the termination notice, the employer must - upon request of the employee - continue the employment of the latter after the expiration of the notice period under unchanged employment conditions until the final, legally binding, conclusion of the lawsuit. On request of the employer, the labor court may release him by means of an injunction (Einstweilige Verfügung) from the obligation to continue employment pursuant to sentence 1, if

1. The employee's lawsuit does not have sufficient prospect of success or appears mischievous, or
2. The continued employment of the employee would lead to an unreasonable economic burden for the employer, or
3. The works council's objections were obviously unjustified.

(3) Prior extraordinary notices of termination of employment, the works council shall be heard. The chief of the agency shall justify the proposed action. If the works council has objections, it

shall inform the chief of the agency of those immediately, but not later than within 3 workdays, in writing by stating the reasons.

(4) A notice of termination of employment shall have no effect if the works council has not been allowed to participate.

Section 80

A member of the appropriate works council - as designated by the council - may attend, in an advisory capacity, examinations conducted by the agency for its employees.

Section 81

(1) The works council shall, in the prevention of hazards that may cause accidents or damage to health, assist the authorities responsible for occupational safety, the carriers of statutory accident insurance and the other authorities concerned, by making suggestions, giving advice and information, and promoting the implementation of the provisions for occupational safety and accident prevention in the agency.

(2) In all inspections and questions connected with occupational safety or accident prevention and investigations of accidents, the chief of the agency and the authorities mentioned in paragraph 1 shall be required to consult with the works council - or members designated by the council of the agency in which the inspection or investigation takes place. The chief of the agency shall inform the works council immediately of the requirements and instructions of the authorities referred to in paragraph 1 concerning occupational safety and accident prevention.

(3) Works council members appointed by the works council shall participate in meetings between the chief of the agency and the safety representatives or safety committee.

(4) The works council shall receive the minutes of the investigations, inspections, and discussions in which it is to be consulted under paragraphs 2 and 3.

5. The chief of the agency shall submit to the works council a copy of the accident report to be signed by the works council.

Title Four

Participation of Higher Level Works Councils and the Joint Works Council

Section 82

(1) Instead of the local works council, the higher level works council established at the appropriate higher authority shall participate in matters which the local agency is not authorized to decide.

(2) Before making a decision in matters which concern individual employees or agencies, the higher level works council shall give the works council an opportunity to comment. The time limits established in Section 69 and 72 shall double in this case.

(3) Paragraphs 1 and 2 shall apply *mutatis mutandis* to the division of responsibility between the local works council and the joint works council.

(4) Sections 69 through 81 shall apply *mutatis mutandis* to the rights and obligations of the higher level works councils and the joint works council.

(5) Where, in the area of jurisdiction of commands with various levels of administration personnel or social measures are taken by an agency at which no works council responsible for participation in these measures is provided for, the works council above the local level at the next superior agency to which the deciding agency and the employees affected by the decision belong, shall be called in for participation.

COURT DECISIONS

Section 83

(1) Besides the cases referred to in Sections 9, 25, 28, and Section 47, paragraph 1, the labor courts - in the third legal instance the Federal Labor Court - shall decide on:

1. Eligibility to vote and to be elected;
2. Election and term of office of works councils and of the representatives mentioned in Sections 57 and 65, as well as the composition of works councils and youth/apprentice representations;
3. Competence, conduct of business, and legal status of works councils and representatives referred to in Sections 57 and 65;
4. Existence or nonexistence of shop agreements.

(2) The provisions of the Labor Court Law concerning the decree proceedings (Beschlussverfahren) shall apply. *The Federal Republic shall act in the court proceedings in the name of a force or a civilian component at their request.*

Section 84 (Not applicable)

PROVISIONS FOR SPECIFIC ORGANIZATIONS AND THE HANDLING OF CLASSIFIED MATERIAL

Sections 85 through 91 (Not applicable)

Section 92 (*applies mutatis mutandis*)

In lieu of Section 82, paragraph 5, the following provisions shall apply within the area of responsibility of the Ministry of Defense:

(1) When an agency, at which no works council for participation is provided for, takes personnel and social measures affecting employees of an agency not subordinate to it, the works council of that agency shall be called in by its chief after agreement has been reached between the agencies on the intended measure.

(2) When an agency, at which no higher level works council is provided for, establishes committees to prepare decisions pursuant to Section 75, paragraph 2, sentence 1, number 2, and paragraph 3, number 5, which have an effect on other agencies, the agency shall discuss the planned action with a member of the council at the next higher authority of the agencies referred to. This member shall be designated by the council at the next higher authority. Number 1 shall not be applied.

Section 93

(1) If a matter subject to works council participation is classified at least “VS - Vertraulich/Confidential,” a committee shall take the place of the works council. The committee shall consist, as a maximum, of one representative of each group represented in the council and elected by corresponding application of Section 32, paragraph 1. The committee members must be cleared, under pertinent regulations, to handle classified material at the appropriate secrecy level. Works councils at agencies subordinate to intermediate authorities shall not establish a committee; instead the committee of the district works council shall take its place.

(2) If the appropriate committee is not established in time, the committee of the highest service authority shall participate in the matter.

(3) In the cases of paragraph 1, sentence 1, the members of the conciliatory committee (Section 71) and its chairperson must be cleared to handle classified material.

(4) Sections 40, 82, paragraph 2, and the provisions of Sections 36 and 39, paragraph 1, governing the participation of the trade unions shall not be applicable. Matters classified at a secrecy level of at least “VS - Vertraulich/Confidential,” shall not be discussed in the personnel assembly.

The head of the agency shall not be required to submit to the members of the council, to the committee referred to in this section of the Law and to the conciliatory committee any material which is classified for security reasons; the same shall apply to information therefrom.

SECOND PART

(Not applicable)

THIRD PART

Penal Provisions

Effective 1 January 1975, Sections 110 and 111 of the German Personnel Representation Law have been replaced by the following provisions (extracts) of the German Criminal Code:

Section 203

Breach of Private Secrecy

(1) and (2) *Whoever, without authorization, discloses the secret of another, in particular a secret which belongs to the realm of personal privacy or a business or trade secret, which was confided to or otherwise made known to him in his capacity as a person exercising duties or authorities under the law of Personnel Representation shall be punished with imprisonment not exceeding 1 year or a fine.*

(3) Not applicable

(4) Paragraphs 1 and 2 shall also be applicable if the offender, without authorization, discloses the secret of another after the death of the person concerned.

(5) Whoever commits the act with the intent of enriching himself or another, or of harming another, shall be punished with imprisonment not exceeding 2 years or a fine.

Section 353b

Breach of Official Secrecy

(1) Whoever, without authorization, discloses a secret which has been confided, or become known to him as a person exercising duties or authorities under the law of Personnel Representation, and who thereby endangers important public interests, shall be punished with imprisonment not exceeding 5 years or a fine. If, by the act, the offender has negligently endangered important public interests, then he shall be punished with imprisonment not exceeding 1 year or a fine.

(2) Not applicable

(3) The attempt to commit any such act shall be punishable.

At the request of a force or a civilian component, the agency designated by the Federal Republic of Germany shall apply for the institution of a criminal prosecution in respect to a breach of secrecy (Verletzung der Schweigepflicht) in accordance with the penal provisions of the law.

FOURTH PART

Final Provisions

Section 115

For the purpose of regulating the elections referred to in Section 12 thru 25, 55 through 57, and 65, the legal ordinance issued by the Federal Republic pursuant to Section 115 of the law on Personnel Representation shall apply mutatis mutandis.