

Germany: The role of the trade union and works council at Opel

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Immediately following a one-week strike in the autumn of 2004, General Motors German affiliate Adam Opel GmbH summarily dismissed two employees: one was warehouse worker Richard Kaczorowski; the other was Turhan Ersin, a member of the works council (*betriebsrat*).

Both sackings resulted in lengthy legal proceedings, which were only concluded two months ago. One case ended in a bitter defeat for Richard Kaczorowski. After working for the company for 24 years, his summary dismissal was upheld, and he remains without any compensation. In the second case, the summary dismissal of works council member Turhan Ersin was overruled for purely formal reasons.

Both legal rulings were highly political, and the works council and the IG Metall engineering workers union played a key role in each.

The summary dismissal of Richard Kaczorowski was a punitive measure directed against all those workers who had participated in the one-week strike and protest actions at Opel's Bochum plant. Since the management could not dismiss the entire workforce, it picked on one worker to set an example, with the aim of intimidating all the others.

Although the German constitution expressly forbids picking out and punishing individuals at the workplace—establishing that all those working in a factory must be “treated with justice and equity,” and that there should be “no differential treatment,” the Bochum district labour court and the Higher Labour Court in Hamm had no reservations in siding with management.

In the written notice of his dismissal, Kaczorowski was accused of “disturbing the peace in the factory” by holding a discussion with a group of his fellow workers who had worked on Saturday during the protest, under conditions where production was already shut down! He was also accused of “threatening” his co-workers and calling on them to “breach their contracts.”

In the first court case, the judge accepted this accusation, and declared that the dismissal was legal, merely ruling that it should be converted from a summary dismissal into an ordinary sacking with notice. This ruling was given, even though witness statements aimed at backing up the management accusations proved to be highly contradictory and did not sustain the grounds for dismissal—i.e., threatening other workers.

After Richard Kaczorowski had contested this judgement, the appeal judge and assessors at the Higher Labour Court in Hamm forced him to accept a settlement that substantially upheld the judgement of the lower court. The court prevented the Opel

witnesses from facing renewed questioning, which would have subjected their statements to a thorough and objective evaluation, by threatening Kaczorowski with bearing all the court costs of Opel if he insisted on continuing with the trial. As far as the court was concerned, the outcome was as good as certain; his summary dismissal would be reinstated.

The court paid no attention to the detailed testimony filed by Kaczorowski's attorney, which refuted the grounds for dismissal point for point. The court was not interested in the fact that the “factory peace,” which Kaczorowski had allegedly disturbed, had not existed for several days because almost the entire workforce had responded to the announcement of mass sackings by launching protest actions. The circumstances described in testimony by witnesses named by Kaczorowski—that there had been no violence of any kind, nobody had felt threatened and the group of workers who were with Kaczorowski in the factory then calmly left the workshop after a few minutes—were basically ignored by the court.

Instead, in his conclusion, the judge called the spontaneous strike a “wild, illegal action” and left no doubt that the true reason for Kaczorowski's dismissal was that he had taken part in these protest actions and had encouraged others to participate. But so had the vast majority of the 7,000 people employed at Opel in Bochum—and above all the union stewards. However one looks at this judicial ruling, it boils down to the punishment of an individual in order to intimidate the majority—something that is constitutionally forbidden.

If one considers the role of the works council in these legal proceedings, then it quickly becomes clear that such a break with past jurisprudence would not have been possible without its active cooperation. In the first instance, the summary dismissal was only possible because the works council and the IG Metall, unlike in other strikes and disputes, had not negotiated a “non-victimisation clause.” Since the early 1970s, at Opel and in all other large-scale enterprises, following labour disputes, an agreement had been always negotiated that no worker could be punished or victimised because of his or her participation in the dispute.

The fact such an agreement was not made in autumn 2004 was not an oversight in the heat of the battle, as some works council members claimed, but resulted from the opposition of the works council and IG Metall to the strike and occupation. Since they had been unable to prevent the strike, they used all the means at their disposal to limit and strangle it. They even granted an application for Saturday working in the midst of the strike and personally organised the transport of manufacturing modules through the

occupied factory gates. Finally, the failure to secure a “non-victimisation clause” was an invitation to the management to mete out punishments in order to prevent future protest actions developing outside the control of the works council and trade union.

The fact that for months after he was sacked, Richard Kaczorowski was left to himself and received not a cent from the strike fund administered by the works council was no coincidence, but was also part of the punishment.

The works council behaved completely differently in the case of Turhan Ersin, however.

He had also been sacked for calling on his fellow workers to strike, allegedly using “force” and “threats.” As a works council member, however, unlike Richard Kaczorowski, he could not be immediately sacked. Once the works council refused to uphold his sacking, Opel was forced to pursue a court case in order to implement the dismissal.

The court cited a formal defect in the management’s handling of the case in order to reject the dismissal. His written dismissal notice lacked two of the necessary signatures, nullifying its legality from the outset. In the meantime, the period allowed to rectify this legal mistake had elapsed.

Turhan Ersin had supported the strike and its goals and, unlike most other works council members, had not called for a return to work. He later spoke out in an interview with the *World Socialist Web Site* for the works council to mount a strong defence of Richard Kaczorowski.

Nevertheless, the whole works council rejected his dismissal. Several times, works council chairman Rainer Einenkel stressed that the attack on Turhan Ersin was an attack on the entire works council, and he was personally involved in the defence of Ersin before the court. During the proceedings, Einenkel sat as the representative of the works council alongside Ersin and his attorney at the defendant’s table.

The case elaborated by Ersin’s lawyer Michael Dornieden stressed that his client, like the entire works council, had always represented the common interests of the enterprise. As proof, he cited the fact that after the end of the strike—which had been organised against the resistance of many employees—the management had praised the works council for its “measured conduct.” As part of the works council, Turhan Ersin was also deserving of this praise; therefore, his dismissal was completely unjustified. In court, Opel representatives did not deny praising the works council, but merely stated that it had not included Turhan Ersin.

In so far as the arguments of the defence were not limited to purely formal matters of procedure, which determined the outcome of the case in the end, their content was to stress the moderating and appeasing role played by the works council in the interests of management, and in which Turhan Ersin as a works council member had been involved.

Although the substantive arguments were not crucial for the judgement, in the end, all those involved in the proceedings—the lawyer, works council chairman and to a certain degree the judge—made clear that the works councils would be needed in coming disputes, playing an important role for management in

preventing or quickly ending any independent actions by the workforce. In this, it also had to be accepted that a certain division of labour exists within the works council, with some members acting more radically than others, because otherwise the works council would not have any influence over the workforce.

Whereas the court ruling against Richard Kaczorowski was a brutal punishment, to set an example and intimidate other workers who might take part in any future independent actions, the verdict in Turhan Ersin’s case was a shot across the bow for the works council. The message is clear: the leadership of the works council needs to keep all its members on a short leash. Above all, those who, under the influence of a mobilised workforce, criticise the conduct of the works council majority should be made to recognise how quickly they would be dropped and lose their protection against dismissal if they do not go along with the works council majority.

Both verdicts contain important political lessons for those at Opel and the working class in general. Above all, the opportunist and conformist conduct of the works council members should not be regarded as merely a personal weakness that can be tackled by the election of “more combative colleagues.” Rather, it means clearly understanding the political programme on which the union leadership and the works councils rely. Their limited, nationalist orientation makes them accomplices of management in playing off one location against another, extorting the workforce to accept ever-greater concessions.

It is now some years since a former works council chairman at Opel Bochum admitted, “We can even be extorted to the point of accepting child labour!” In light of the globalisation of production, this statement acquires enormous actuality. Today, German and west European workers confront the low wages paid in Poland, Ukraine and China. To oppose extortion by management and their representatives in the works councils, a new political orientation is necessary, which proceeds from the common interests of all workers in all locations and is opposed to the logic of the profit system.

There is no short way out of a profound crisis that brings news of job losses virtually every day—for example, the recent announcement that 20,000 jobs are in danger at Volkswagen autos. What is necessary is the building of a new socialist party organised on an international basis. We therefore urge workers at Opel, and all our readers, to develop and build the influence of the *World Socialist Web Site*.



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