

Calls in Germany for legal restrictions on right to strike

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3 April 2012

Last week, Germany's highest circulation daily newspaper, *Süddeutsche Zeitung* (SZ), published a commentary by Professor Bernd Rütters, who demanded "new rules" covering labour disputes. In his article, Rütters not only attacks smaller "sector unions" but challenges their right to strike.

Rütters is an emeritus professor of civil law and legal theory at the University of Constance. He has worked for the federal government and for some years as a member of the labour advisory board to the executive of the German Trade Union Federation (DGB).

Rütters's argument begins by referring to strikes by what he terms "functional elites" who, he says, have achieved "spectacular improvements in their working conditions" in recent years. He complains that the small train drivers' union (GDL), the flight crew union (Cockpit), and, more recently, the union covering ground crew at Frankfurt airport (GdF) were in a position to "force the employer to give in".

In reality, none of the strikes to which Rütters refers resulted in "spectacular improvements" for workers. On every occasion, the conservative professional organisations that organised the strikes by train drivers or pilots were fiercely attacked by the government, the courts and the DGB trade unions, and were settled with very modest results. None of these smaller unions was willing to oppose the government's austerity measures.

For Rütters, however, the very fact that these small unions engage in a "competition" with the large DGB unions, putting the latter's contract bargaining cartel in question, is unacceptable. The bargaining authority of the DGB has served for years to impose cuts on workers and impose restrictive contracts. The mere thought that workers might break out of the straitjacket of the DGB unions and impose their interests through a strike is unacceptable for the professor. He asks:

"Society and government can be blackmailed. What can one do about it?"

Rütters demands a legal ruling. Legislators cannot "stand idly by" if sector unions harm employers or unrelated third parties.

He attacks the Federal Labour Court, which has relaxed restrictions on the right to strike and thereby made "arbitrary strikes" more easy to call. Eighteen months ago, the court had assured the smaller unions of their right to exist and granted them more freedom to act.

From the professor's perspective, the experience with the sector unions poses the question of "whether in the field of supplying the population with essential goods and the protection of fundamental civil rights, labour disputes are still an appropriate means of contract bargaining." It is necessary to examine "whether industrial action should be replaced by other forms of balancing [various] interests". As a "substitute", he proposes "legally established collective bargaining arbitration committees with equal representation", "whose verdict would be binding for both parties".

Rütters tries carefully to formulate his theories legally. In essence, his argument is a frontal attack on smaller trade unions and the right to strike in general. "Conciliation committees" would consist of employers and representatives of their lackeys in the DGB trade unions, who would dictate the cuts to workers. Workers should then be required by law to accept these wages dictates; whereby strikes would be banned.

The major trade unions and employers have worked for a long time towards this objective. In the penultimate paragraph of his commentary, Rütters refers explicitly to a joint call by the DGB and the Confederation of German Employers' Associations (BDA) for "collective bargaining unity".

A first draft law on “collective bargaining unity” was presented by DGB president Michael Sommer and BDA president Dieter Hundt in June 2010. Sommer made it unmistakably clear that the joint initiative aims to stifle opposition to the possible consequences of the economic crisis and the associated social attacks.

Sommer described the aim of collective bargaining unity as an “anchor of stability” and said, “Trade unions and employers’ representatives take on responsibility in the crisis. They work together where possible and necessary.” Hundt added that collective bargaining unity was “indispensable”, because “we cannot afford multiple and continuous labour disputes in the workplace”.

As an experienced lawyer, Rùthers knows that draft legislation by Hundt and Sommer stands in sharp contrast to constitutionally guaranteed democratic rights.

The right to strike and freedom of association are guaranteed by the United Nations, the European Convention on Human Rights and the German constitution. Article 9, paragraph 3 of the German Constitution expressly grants everyone the right “to form associations to safeguard and improve working and economic conditions”, which in turn have the right “to conduct industrial disputes”.

Rùthers ended his commentary by pointing out that so far, it is the DGB and the employers who have prevented any legal regulation of labour rights. He warns that the strengthening of the larger organisations might place in question “the constitutional order through the use of the power of the [union and employers’] associations”. He is for strong unions as a force for order, but against trade unions representing the interests of employees.

Rùthers’s comment in the *SZ* is part of an intensive campaign against the sector unions and the right to strike. The DGB is the driving force alongside the mainstream media and the employers’ associations.

During the strike of the ground crew at Frankfurt airport, the major union Verdi organised a smear campaign against the striking workers. Verdi accused the ground crew, organised in the Air Traffic Control Union (GdF), of endangering workplace peace, and went so far as to call on the employers “not to yield to the exaggerated claims of GdF”. Verdi itself threatened to strike if the employers gave in to pressure from the

strikers.

The offensive of the DGB, the employers’ organisations and their supporters in the media and in mainstream politics for a statutory restriction of the right to strike is part of preparations for massive social and political attacks. Every fight in defence of wages, social standards and democratic rights faces increased suppression and criminalisation.



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