

New bankruptcy law strengthens German employers

Ernst Wolff
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According to figures from the Creditreform agency, 15,200 companies declared bankruptcy in Germany between January and June of this year. The 150,000 workers employed by these companies now confront unemployment—a 36.6 percent increase compared to the same period in 2011.

The situation for workers, however, has not merely deteriorated statistically. Since March 1, 2012, a revised bankruptcy law has been in operation in Germany that significantly weakens the position of workers in the event of a company insolvency.

The preceding bankruptcy law introduced in 1999 by the Social Democratic Party-Green coalition (to replace the bankruptcy law that had existed since 1877) also contained considerable disadvantages for workers. The 1999 law specified that unpaid wages and salaries would be included amongst the general insolvency claims after the opening of proceedings for bankruptcy. This means that workers must register their back pay with a liquidator and are put on a waiting list for payment along with major institutional creditors. In most cases, these creditors have laid claim to the company assets as collateral security, meaning that workers often end up with a substantial reduction in wages due to them.

In 1995, Austria, Switzerland, Finland and Spain ratified the 173rd Agreement of the International Labour Organisation, which provides for preferential treatment of workers in the case of company insolvency. Germany, however, took a different path in 1999. Since then, even those workers who received their wages before the opening of insolvency proceedings cannot be sure they will be allowed to keep

their money. A legal restriction of the bankruptcy law announced in 2009 by the Federal Justice Ministry remains on the statute books and has not been enforced.

Since March 1 of this year, the 1999 ruling has been revised by the “Act to further facilitate the restructuring of enterprises” (ESUG), which is based on Chapter 11 of United States Bankruptcy Code. This is the law used in the US to organise the major bankruptcies carried out by Kodak, American Airlines and General Motors. All of these bankruptcies were characterised by the renunciation of contracts, attacks on pension rights and the limitation of benefits.

The key elements of the new German law are the judicial terms of the bankruptcy proceedings, the establishment of a provisional committee of creditors and the “protective umbrella method according ESUG”, which now applies between the application for bankruptcy and the actual insolvency. It allows companies threatened with insolvency a three-month “self-administered bankruptcy” following approval by a local court.

During this time, the company—protected from all creditors’ claims—can organise the insolvency in collaboration with a liquidator selected by the company management and agreed on by the court. Since employees are now counted among the creditors, the Employment Agency takes over the payment of their net wages during this phase.

One German specialist in bankruptcy law describes the new regulations on his web site as follows: “The new law offers the possibility of cutting staff without a social plan and redundancy notice periods within a

period of three months. In the bankruptcy plan any employee can be dismissed within a period of three months. There are no legal, individual, or contractual stipulations regarding redundancy notice. If the three-month notice period is bridged by insolvency money, then it is even possible to cut staff at zero cost.”

In addition, the Employment Agency makes no account for special payments—e.g., retirement allowances or previous shift allowances. If workers have accepted wage cuts prior to the bankruptcy proceedings, it is these reduced levels that are then calculated into the entire insolvency fund.

In addition to the above material disadvantages for workers, the new law permits a provisional committee of creditors to meet behind closed doors to agree on all the relevant points of the bankruptcy plan—including pay cuts, layoffs and plant closures.

While workers are expected to wait on, or forgo, their wages, the committee of creditors is in the privileged position of being able to draw its salaries immediately from the bankruptcy estate. This process is aimed at the “restructuring” of the company according to the criteria of capitalist profitability—i.e., to maximise the profit of the company in a time of crisis, dispense with the workforce as cheaply as possible, and ensure that any protests against the decisions are strictly limited.

So far, a series of German companies, including Centrotherm Photovoltaics, Solarwatt, Leider, Schuhhof and Neckermann, have already applied for insolvency under the new law. No doubt many other companies will follow in order to “restructure” their operations and dispense with their workforces at “zero cost”.



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