



GERMANY¹⁴²

El affiliates

BLBS Bundesverband des Lehrerinnen und Lehrer an Beruflichen Schulen (German Association of Vocational Schools)

GEW Gewerkschaft Erziehung und Wissenschaft (German Union of Education and Science)

VBE Verband Bildung und Erziehung (Association for Education)

Ratifications

- C. 87 Freedom of Association and the Protection of the Right to Organise (1948) ratified 1957
- C. 98 Right to Organise and Collective Bargaining (1949) ratified 1956
- C. 100 Equal Remuneration (1951) ratified 1956
- C. 111 Discrimination (Employment and Occupation) (1958) ratified 1961
- C. 144 Tripartite Consultations (1976) ratified 1979
- C. 151 Labour Relations (Public Service) (1978) not ratified
- C. 154 Collective Bargaining (1981) not ratified

Introduction

There is a Standing Conference of the Ministers of Education and Cultural Affairs of the *Länder* which coordinates education policy at Federal level and a Federal commission which guarantees standardised programmes. However, the education system (from primary to higher and adult education) is under the jurisdiction of the 16 *Länder*, and kindergardens are under the responsibility of municipalities within a legal framework given by the respective *Länder*.

Status of teachers

Teachers are employed either as civil servants (*Beamte*) or public employees (*Arbeitnehmer des öffentlichen Dienstes*). There are around 660,000 teachers with civil servant status and 200,000 teachers with public employee status. The civil servants have a lifelong appointment which also covers a specific pension arrangement and a privileged health care coverage. Legally, they receive maintenance allowances and not salaries.

The proportion of teachers contracted as public employees varies from 100% in Mecklenburg-Vorpommern to under 10% in Baden-Württemberg.¹³⁰ There were no civil servant status teachers in the former GDR, which is why most teachers in the new *Länder* formed after 1990 have public employee status. However, some of the new *Länder* have opted to appoint

¹⁴⁹ Grateful acknowledgements for the written reports, additional contributions from and interviews with Gesa Bruno-Latcha, GEW and Gitta Franke-Zöllmer, VBE on 12.02.2013.

¹⁵⁰ See Annex 1 Chart of the Percentage of Public Employees in the Teaching Workforce in the German *Länder*

some teachers, such as the school leaders, as civil servants, because in the short-term it is financially more advantageous, as civil servants are outside the general health insurance and social security systems. At the moment, this change is spreading through Thüringen, Brandenburg, Sachsen-Anhalt, and Mecklenburg-Vorpommern. In Berlin, before 1990, teachers in West Berlin had civil service status and teachers in former East Berlin were public employees. Since the late 1990's, all new teachers are recruited as public employees.

Freedom of Association and Collective Bargaining

Freedom of association is guaranteed by the German Basic Law and collective agreements are governed by the Act on Collective Agreements. There are no statutory regulations concerning certification of unions as bargaining agents, as German labour law is mostly case law. Civil servants are not permitted to strike nor bargain collectively. However, the umbrella organisations of the civil servants' unions (Deutscher Gewerkschaftsbund DGB and Deutscher Beamtenbund dbb) must be consulted on the general regulations on civil servant law at the federal level under section 118 of the federal law on civil servants (BBG), and in the Länder under section 53 of the law on the status of civil servants. In the case of the recent laws to the public service law (*Dienstrechtsneuordnungsgesetz*) and the law on the status of civil servants (*Beamtenstatusgesetz*) there were consultations with the trade union confederations.¹⁵¹ But there is no provision a consensus must be reached before the regulations come into force.

The exclusion of teachers with civil servant status from the right to strike and the right to collective bargaining has been the subject of a long-standing examination within the ILO. The Government argues that the "legislative regulation of the civil service is a constitutionally endowed traditional principle of the civil service under article 33(5) of the Basic Law, and derives from the civil servants' duty of allegiance and obligation to fulfill their duties .."¹⁵² and therefore collective bargaining and the right to strike are incompatible with these principles. The EI affiliate, GEW argues that the status of civil servants should be modernised to comply with the legal environment of the 21st century, though this view is not shared by all unions.

Teachers with public employee status and teachers in the private sector can conclude collective agreements. Teachers with public employee status are covered by the provisions of the Framework Collective Agreement for the Public Service of the Länder, which is negotiated jointly by the trade unions organizing in the public sector under the leadership of the United Services Union (ver.di.) Teachers are approximately one third of the employees covered by this collective agreement. They negotiate agreements with the Employers Association of the German Länder (TdL) with the exception of Hesse.¹⁵³ In Hesse, there is a separate

¹⁵¹ *Observation Germany ILO CEACR Report adopted 2011, published 2012 Convention 98*

¹⁵² *Observation Germany ILO CEACR Report adopted 2011, published 2012 Convention 87*

¹⁵³ *EIRO Representativeness Study of the European Social Partners; Education Sector-Germany DE 1001019Q Birgit Kraemer and Sandra Vogel Institute of Economic and Social Research and Cologne Institute for Economic Research 21.04.2011; from January 1st 2013, Berlin has rejoined the Employers Association of the German Länder.*

collective agreement, which is very similar. In the case of kindergardens, day care centres, and youth welfare, the public sector unions negotiate with the Municipal Employers' Association (VKA). The agreements are for a two year period and are negotiated in alternate years.

However, since the reforms to the Federal system, it was agreed that each of the Länder would establish their own terms and conditions for civil servants. It was further established that regardless of their employment status, teachers' pay would be regulated in line with civil servants terms and conditions.

Hence, the collective agreements exclude two fundamental issues: teachers' working hours and teachers' assignments to pay groups (Eingruppierung), which determine actual wages. Both EI affiliates, the GEW and VBE have been campaigning since 2006 to include these issues in collective agreements. GEW has put forward a demand that there should be federal negotiations on teacher remuneration leading to a collective agreement.¹⁵⁴ However, this has not been successful in the 2013 pay negotiation round again. But the unions have stated they will continue to put forward this demand. Issues covered by the framework collective agreements in the public sector include wage levels, wage groups, general working conditions, holidays, part-time arrangements, special payments, payment in the event of illness, qualifications, and working hours (except for teachers).

Bargaining parties ¹⁵⁵	SCOPE OF THE AGREEMENTS		
	Sectoral	Type of employees	Territorial
ver.di, dbb ,VBE ¹⁵⁶ , GEW – VKA, federal government	Public sector, federal and local level, municipalities	All sector-related employees employed by the federal state or local municipalities	Germany
ver.di, dbb,VBE, GEW – TdL	Public sector Länder level	All sector-related employees employed by the Länder (apart from Hesse and Berlin)	Germany apart from Hesse
ver.di, dbb, VBE, GEW – Hesse	Public sector level	All sector-related employees employed by Hesse	Hesse
ver.di; GEW Training – BBB The collective agreement is extended by the federal government and covers only minimum working conditions.	Continuous training establishments and organisations working for the labour market policy agencies	Employees in continuous training institutions and organisations	Germany

Collective agreements cover all public employee status teachers. The level of coverage in the private sector is hard to estimate and there are some private schools which refuse to negotiate collective agreements.

¹⁵⁴ Germany: Teacher unionists on a warning strike over working conditions (28 November 2012) http://www.ei-ie.org/en/news/news_details/2380 accessed 3.03.2013

¹⁵⁵ idem EIRO Representativeness Study of the European Social Partners; Education Sector-Germany

¹⁵⁶ VBE forms part of the bargaining committee although dbb is the official bargaining partner.

Trends since the financial crisis

There were major financial restrictions on the education sector since the early 1990s (following German unification) with a major restructuring of the public sector, and a general stagnation in public sector wage levels. After 2008, the German economy recovered relatively quickly from the financial crisis and has been quite stable, and employment and tax revenues have developed favourably. Germany was one of the few countries that adopted a stimulus package which included a school building programme and human resource training. However, the situation may well change in the near future, as a new Constitutional provision has now imposed binding legal restrictions on the Länder public deficits, which will result in public expenditure reduction, as the Länder do not have the right to introduce higher income tax or VAT rates. The Länder have to reach a zero public deficit level by 2020. As education represents a high proportion of Länder expenditure, it is anticipated that this will impact education funding.

In 2009, when the VKA agreement on social services (including pre-primary education) was renegotiated, it was necessary to stage high-profile strike action in order to obtain a new wage grading system to provide for higher wages and better occupational health and safety protections.¹⁵⁷

Over the last few years, there has been an increasing wage differential for civil servant teachers in different Länder. The wage differentials between Länder are now about 12%, which has also led to “competition” between Länder to recruit teachers. Some Länder have also increased working hours, which as mentioned above is also regulated by law and legal ordinance.

In Saxony, where salaries are among the lowest in the country, there was strike action in 2012 to demand wage increases, improved early retirement arrangements and better staffing levels.¹⁵⁸ In all Eastern German Länder, 90% of teachers are over 40 years old, 40% are over 55 years old.

One of GEW's main concerns has been the need to modernise the status of civil servants, and through federal legislation, extend the scope of collective bargaining to include remuneration and working hours for all teachers. GEW has also supported legal cases in the German courts concerning the right of teachers with civil service status to participate in strike actions, with the aim of processing the case to the European Court for Human Rights in Strasbourg. In a case concerning disciplinary measures against a teacher with civil service status, who had participated in a teachers' strike, the Dusseldorf Administration Court in North Rhine-Westphalia, ruled in December 2010 that the general strike prohibition for civil servants was probably contrary to the European Convention on Human Rights because the civil servant in question was not exercising authority in the name of the State. This view was supported by the ILO CEACR¹⁵⁹. Since then, several other courts have ruled on

¹⁵⁷ “New package of agreements for social and child care workers” EIRO DE 09090191 Heiner Dribbusch, Institute of Economic and Social Research 29.09.2009

¹⁵⁸ *idem* Germany: Teacher unionists on a warning strike over working conditions (28 November 2012)

¹⁵⁹ ILO CEACR Germany Observation Convention 87 adopted 2011 and published ILC 2012



similar cases, some in favour and some against striking teachers. The cases are now to be decided by the Federal Administrative Court and the German Constitutional Court.

The VBE focuses more specifically on lobbying the Länder parliaments and the ministries which regulate the working conditions of the civil service on the following main issues:

- attractive employment offers
- part-time possibilities for older teachers
- employment for all trainees
- pay-rise for trainees
- no worsening regulations for holidays
- investment in education
- further training for teachers

Education expenditure and GDP growth

% of government expenditure on education	% GDP spent on education	GDP % Growth
2007:		2.5%
2008: 10.4%	4.6%	1.0%
2009: 10.5%	5.1%	-4.7%
2010:		3.5%
2011:		3,1%

Source World Bank/IndexMundi