

# Chapter 3

## Left alone outside? Works councils' responses to non-standard work in the German metal and chemical sectors

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### 1. Introduction

Standard employment contracts were the paradigm in many industrialised countries after World War II; however, in the last two to three decades, standard employment has come under pressure (Stone and Arthurs 2013). The globalisation of markets has generally increased market competition and thereby pushed companies into using non-standard work as a form of flexibility, though also a form often associated with instability and insecurity. At the same time, protective regulation has been eroded, and new types of mostly temporary contractual relationships have been created. This development has led to a decline in the number of workers covered and protected by standard contracts; and to a growth of those employed on non-standard contracts and possibly experiencing insecurity in their working lives. The use of non-standard contracts has caused controversy in the academic and public debate, because they frequently mean lower wages, a lack of security and restricted access to fringe benefits and training (Banerjee *et al.* 2012). Therefore, non-standard workers tend to be vulnerable.

The erosion of the standard work paradigm is a challenge not only for non-standard workers, but also for workplace employee representatives. While companies are increasingly resorting to non-standard contracts, employee representatives' possibilities to influence the conditions of using such contracts are constrained by a regulatory regime focused on standard employment. The following questions arise: what can local employee representatives do with regard to non-standard work? How can they shape their regulatory interventions? And how can they influence the working conditions of different groups of workers? To study these questions, we examine the workplace and corresponding bargaining processes as

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embedded in the regulatory context. We argue that an employment contract as a regulatory institution is not sufficient to explain the potentially different working conditions across groups. Instead, these conditions are mainly created in the workplace itself (via workplace bargaining between management and employee representation), which is in turn embedded in a particular regulatory context (Osterman 1987; Beynon *et al.* 2002). The criterion for (non-) standard work is employment contract duration, i.e. workers employed on permanent (open-ended) contracts are considered as standard, and those on temporary contracts as non-standard.

We compare wages, training and job security for standard and non-standard workers. When wages are low, job security is lacking and no training is provided, temporary workers tend to have a vulnerable status. Yet, although embedded in the regulatory context, workplace representatives have a certain amount of discretion in negotiating these 'hard' working conditions in Germany, the country studied. The liberalisation of employment in Germany since the 1990s has created scope for companies to use temporary work and differentiate the working conditions of contractual groups (Hassel 2014). This has altered the labour market's structure, with rising numbers of temporary workers and growing inequality.

As regulatory mechanisms exist at national, sectoral and workplace levels, the chapter is based on four cross-sectoral comparative case studies in similar workplaces in the metal and chemical sectors to show up possible intra-country variations and to show how sectoral regulatory provisions can be used in workplace bargaining to protect workers on (non-) standard contracts. Overall, studying how the aforementioned working conditions of different contractual groups are produced is not only theoretically, but also practically relevant in the face of growing (labour market) inequality in Germany.

We start by briefly explaining relevant features of the German context. We go on to develop and explain the underlying research approach. Before focusing on the four cases, we look at our research design and methodology. The article ends with a discussion of the observed variations and a conclusion.

## 2. Relevant features of the German context

The deregulation of temporary work via the Hartz reforms at the beginning of the century facilitated and encouraged its use, leading to higher levels of contractual diversity (for an overview of the German liberalisation trajectory, see Eichhorst and Marx 2011). While the regulation of permanent work remained relatively stable, deregulation focused mainly on what were then marginal forms of employment (ibid. 2011). One major consequence of the reforms was bargaining decentralisation, shifting power from the sector to the workplace level (Hassel 2014).

As regulatory mechanisms exist at national, sectoral and workplace levels, this causes variations between sectors and workplaces. Generally speaking, the investigated metal and chemical sectors have always been characterised by high internal flexibility, but the use of contractual flexibility has grown. This has had repercussions on sectoral bargaining, with flexibility becoming rooted in collective agreements, and plant-level derogations facilitated through flexibility provisions and opening clauses (*tarifliche Öffnungsklauseln*)<sup>2</sup>. As illustrated in Table 1, the chemical sector offers more derogation possibilities than the metal sector. While the metalworkers' union IG Metall has sought to limit opening clauses, the chemical union IG BCE has been open to integrating them in collective agreements. Explaining sectoral variation, these different approaches may stem from union traditions: while IG Metall has a history of militancy and is prepared to engage in conflict if necessary, IG BCE is moderate, pragmatic, and cooperative when negotiating with management (Behrens *et al.* 2002).

The available flexibility provisions and opening clauses (Table 1) are not confined to temporary work, and employers are relatively free to use them. IG Metall put agency work (as one form of temporary work) on the agenda of the 2012 bargaining round and successfully included it in its sectoral agreement (WSI Tarifarchiv 2012a). Specifically, works councils are encouraged to negotiate local agreements on agency work, making use of their co-determination rights. Agency workers receive wage

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2. Opening clauses in sectoral agreements give workplace negotiators the possibility of concluding workplace- or company-specific agreements under the condition that management and works council (and in some cases, the union) agree to the derogation from the sectoral agreement.

premiums on a sliding scale after working six weeks in the same user company and are offered a permanent contract after two years, thereby partially closing the pay gap and offering employment prospects. Shortly afterwards, the chemical industry implemented similar pay premiums (WSI Tarifarchiv 2012b).

Table 1 Selected flexibility provisions and opening clauses

Metal sector (IG Metall)	Chemical sector (IG BCE)
<ul style="list-style-type: none"> <li>- <b>General opening clause (Pforzheim agreement):</b> allows temporary deviations from the sectoral agreement for companies in economic difficulties if jobs are guaranteed</li> <li>- <b>Flexible working time:</b> allows deviations from the 35-hour week; a certain share of staff can work 40h a week; working time can be reduced for companies in economic difficulties; working-time corridors and (lifelong) working-time accounts can be negotiated</li> <li>- <b>Wages:</b> temporary deviations are possible if a wage increase endangers a plant under the condition of safeguarding employment and negotiating a restructuring plan</li> </ul>	<ul style="list-style-type: none"> <li>- <b>Wage corridor:</b> wages can be lowered by 10% to safeguard employment</li> <li>- <b>Competing collective agreements:</b> if units are not competitive and may be covered by collective agreements of another sector (e.g. catering, logistics), other provisions can be negotiated</li> <li>- <b>Lowering of collective bonuses:</b> lump-sum payments can be lowered/delayed at companies in economic difficulties</li> <li>- <b>Optional clause:</b> the annual bonus can be linked to business performance, ranging from 80%-125%</li> <li>- <b>Qualification:</b> Agreements can regulate the cost distribution of training, i.e. employees 'pay' for training courses with time from their working-time accounts</li> <li>- <b>Two-tier wage system:</b> New staff/former apprentices can be paid lower starting wages in their first year</li> <li>- <b>Flexible working time:</b> Possibility of negotiating flexible working-time, working-time corridors, (lifelong) working-time accounts</li> </ul>

Source: own illustration based on WSI Tarifarchiv (2005, 2012a, 2012b), IG BCE (2011) and IG Metall (2014).

While unions negotiated the aforementioned agreements at sector level, workplace employee representation is ensured via elected works councils in Germany. While the latter already have a high degree of discretionary power due to their co-determination rights, the derogation possibilities foreseen in the sectoral agreements increase their autonomy (Deppe 2012). As a result, they can cope with challenges like temporary work through workplace bargaining. In doing so, they not only serve workforce interests, but also those of the company by ensuring the workplace's competitiveness and viability, even when this entails labour cost reductions (Müller-Jentsch 1997). However, a works council's interest in maintaining high wages and good working conditions may be difficult to align with competitiveness considerations. This ambiguity is reflected in the literature: while some studies see works councils protecting the entire workforce (e.g. Doellgast 2010), others emphasise that they contribute to

creating segmentation (e.g. Eichhorst and Marx 2011). The works council's dual role – representing the workforce and ensuring a workplace's viability – may thus influence its regulatory interventions over non-standard work.

### **3. The research approach**

To compare how the working conditions of different groups of workers are produced, the workplace – key to shaping the local terms and conditions of employment – is studied as embedded in the sectoral regulatory context (Osterman 1987; Beynon *et al.* 2002). As a basic regulatory institution, an employment contract alone is not sufficient to explain the working conditions of different contractual groups.

Osterman's (1987) employment subsystem framework looks at how jobs in an organisation's internal labour market (ILM) are shaped, identifying two major factors. Firstly, organisational objectives relating to cost-effectiveness, predictability and flexibility as well as technology matter. 'Cost-effectiveness' refers to designing ILMs in a way reducing costs as much as possible, 'flexibility' means using a design allowing for flexible adjustments (e.g. during production peaks and falls) through the varying deployment of labour. 'Predictability'-oriented organisations aim at high levels of stability based on planning future costs, labour supply and product prices. The use of non-standard workers is attractive for organisations pursuing cost- and flexibility-oriented objectives, helping them to cut costs and increase flexibility in reaction to changing market conditions (Lautsch 2002). However, technology – relating to skill levels and the specificity of skills – can constrain the use of non-standard employment, because the higher the demanded (specificity of) skills, the more difficult it gets to find such workers on the labour market. Secondly, ILMs are influenced by 'the role of the government in organising and regulating labour markets' (Osterman 1987: 63). This refers to the impact of national regulation on the terms and conditions of employment. This chapter goes one step further, incorporating sectoral regulation due to its importance in Germany.

The Osterman model is combined with crucial insights created by Beynon *et al.* (2002) when studying employment change. They advocate the use of an 'integrated approach' because 'the ways in which corporations are embedded in broader social and economic institutions have a deep effect

upon the very form of their internal labour markets' (Beynon *et al.* 2002: 25). This 'embeddedness' stresses the dynamic relationship between the workplace and its context, as explained in the following sections.

The selected research approach adds to the aforementioned frameworks in three ways. Firstly, it is not based on the standard-work-paradigm and thus incorporates contractual diversity by comparing standard and non-standard workers. Secondly, it takes a nuanced view of the context by also investigating the sector level, due to its importance in Germany. Linked to this, the approach also incorporates workplace negotiations between management and works councils shaping the working conditions of different groups of staff. Finally, the selected approach is empirically-driven and comparative. In this respect, comparative refers to the study's cross-sectoral research design and its comparison of standard and non-standard workers.

#### **4. The regulatory context**

Legislation plays a major role in shaping ILMs and the working conditions of different groups of workers because it defines the principal framework for employment (Doellgast *et al.* 2009). For example, Mitlacher (2007) analysed agency work in Germany and the USA, concluding that differences mainly stem from regulation and employer strategies, whereby the latter were contingent upon the former. While clear patterns were absent for US employers, their German counterparts used agency work to circumvent dismissal protection for permanent employees, leading to different working conditions across groups of staff. Regulatory systems not only encourage or discourage the use of non-standard work, but also affect job quality. Connell *et al.* (2013) studied agency work in Australia, Singapore and Germany, arguing that Germany's extensive regulation and protection created the best working conditions. In a similar vein, Doellgast *et al.* (2009: 354) refer to 'inclusiveness of labour market institutions' as the extent to which legislation and collective bargaining cover the entire or parts of the workforce. Differences between standard and non-standard workers could thus result from varying levels of 'inclusiveness'. Moreover, regulation is also established in sector-level collective bargaining, which may lead to distinct sectoral rules (Marginson 2005). Bechter *et al.* (2012) indicate that sectoral variation is higher than cross-national variation and therefore, suggest incorporating the sector when studying employment.

Overall, the regulatory system affects ILMs because it sets the general framework for employment and opens up space for or constrains local players' regulatory interventions. It also encourages or discourages the use of non-standard work, and thus influences strategic choices (Doellgast *et al.* 2009).

## **5. The workplace and its internal labour market**

The workplace is key to understanding how the working conditions of different groups of workers are produced, because 'companies choose in a conscious manner among different alternatives for organising work' (Osterman 1987: 53). While the regulatory context and organisational goals influence such choices, Osterman (1987) identified three additional relevant factors.

Firstly 'physical technology' refers to skills and risks. When production requires high company-specific skills for processes associated with a high risk of error, then the use of non-standard work is unlikely because training investments would be needed to minimise risks. In such a case, organisations tend to focus on a high-skilled, loyal, permanent workforce. Secondly, 'social technology' – referring to the production process – determines whether work can be divided into key and peripheral tasks. Where such potential exists, two workforces – as in Atkinson's (1984) flexible firm model – may be employed under differing terms and conditions, with non-standard workers being segmented into the periphery. In this case, the working conditions between groups of workers tend to differ. When peripheral tasks are scarce but non-standard work is used, standard and non-standard workers would have to perform similar tasks, working side-by-side. If working conditions in this situation are not the same, conflicts may arise (Connelly and Gallagher 2004; Bergström 2001). Thirdly, the 'nature of the labour force' determines possible 'supply constraints'. Organisations demanding specific skills could have difficulties recruiting workers, and such workers might not accept non-standard contracts. At the same time, organisations may be interested in permanent arrangements to retain skills. In turn, companies seeking general skills can more easily recruit workers, possibly with the help of work agencies (Vlandas 2013).

Osterman (1987) also acknowledges the role of power in shaping ILMs and operationalises it as potential struggles between employers and employ-

ees (individually or collectively). Osterman's (1987: 63) model says 'little about the role of unions', instead focusing on managerial decisions on the design of ILMs. However, in Germany many policies and practices governing ILMs result from workplace bargaining and are thus not the outcome of unilateral management decisions. Therefore, workplace bargaining processes are key to the research approach, because local players have discretion to shape employment locally. However, their choices for one option rather than another may be influenced by company-internal (physical and social technology, nature of the workforce) and company-external (regulatory system) factors. As neither the regulatory nor the workplace context alone can explain how working conditions of contractual groups of workers are produced, both dimensions should be examined.

## **6. Research design and methodology**

We applied a cross-sectoral intra-country comparative research design to explore how the working conditions of standard and non-standard workers were produced in two sectoral contexts, and how works councils coped with the challenge of non-standard work locally. This is because companies are likely to organise work according to sectoral particularities, emanating from workforce characteristics, technology and collective agreements. We compare metal and chemical sector workplaces because both sectors are important pillars of Germany's export-oriented economy and the labour market, employing several million people. Furthermore, both sectors have undergone restructuring in the past two decades due to the globalisation of markets and the subsequent need for greater flexibility (e.g. via temporary work), forcing the sector- and workplace-level social partners to negotiate on such issues. Finally, trade union presence in both sectors is high, with metal sector collective agreements having a trailblazing effect on other sectors.

In each of the two sectors, we study two workplaces using similar physical technology and whose workforces have a similar nature to capture intra-sector variation (see Table 2). These workplaces are at R&D-oriented multinationals, employing a predominantly high-skilled workforce. The chemical companies use the same production techniques to manufacture almost identical products. The metalworking companies share a similar level of technological sophistication to offer customised products, highlighting the need for a multi-skilled workforce. Finally, all workplaces employ a mix of standard and non-standard workers.

The data was collected between 2012 and 2014. The analysis is based on 26 semi-structured interviews (about one to two hours) in the workplaces (n=21) and with sectoral union officials (n=5). Interviews involved strategic and operational HR managers to understand workplace practices and the way they were negotiated, and works councillors to comprehend their positions in local negotiations. Interviews at sector level focused on overall developments in both industries. Field notes resulting from site visits and observations as well as documentary material (e.g. company- and workplace-level agreements, annual reports) were also analysed to draw a comprehensive picture of the cases. NVivo was used to systematically code and analyse the data.

Table 2 Plant characteristics

	Metal1	Metal2	Chem1	Chem2
Product	Customised high-tech products for the aerospace industry	Customised high-tech products for the transport sector	Wide range of different (petro-) chemical products	Wide range of different (petro-) chemical products
Total workforce (rounded)	70,000	90,000	110,000	120,000
Workforce (plant)	4,300	2,800	35,000	10,000
Skill profile	High	High	High	High
Union membership in the workplace	25%	75%	60%	40%
Country of origin	France	France	Germany	Germany

Source: own illustration based on interview data.

## 7. Evidence from the four workplaces

### 7.1 The case of Metal1

*Metal1* employed about 95% of its staff on permanent and 1.5% on fixed-term contracts. The remaining 3.5% were agency workers. Three interrelated reasons explain the small percentage of non-standard workers: 1) *Metal1's* company policy focused on skill retention; 2) the workplace faced recruitment problems because of a skill shortage

regarding the demanded profiles (e.g. radio frequency engineers; 3) the required profiles were practically unavailable in work agencies.

‘We have huge problems recruiting the highly-skilled workforce we need; we have more than 200 vacancies. To succeed, we offer attractive packages –in terms of salary and training – and focus on permanent employment to tie employees to *Metal1* as early as possible.’ (European HR Manager, *Metal1*)

In the face of this skill shortage, management and works council negotiated various workplace agreements covering standard workers that were more favourable than the sectoral collective agreement in order to increase *Metal1*’s attractiveness as an employer. The company offers higher salary levels, lifelong working-time accounts and a generous occupational pension scheme; employees can buy company shares at a discounted price; and childcare facilities are available. An in-house ‘university’ offers training programmes, and a well-developed foreign assignment programme enables employees to work abroad. Former apprentices can go on to study at university or technical schools, receiving a monthly stipend while studying. Job security is high and employees often spend their entire working lives at *Metal1*. However, rising orders and recruitment difficulties were causing problems in arranging work internally. Working time was thus increased in two ways via a sectoral opening clause. Firstly, the number of 40-hour contracts (instead of 35 hours) rose from 18% to 30%. Secondly, 30 hours (instead of 20 hours) overtime per month were allowed. In view of management’s ongoing recruitment efforts, the works council agreed not to jeopardise shipments. However, they rejected demands for an even higher 40-hour contract quota.

Some 1.5% of the *Metal1* workforce was made up of fixed-term workers, mostly replacing employees on parental leave. Though their working conditions were practically the same as those of standard workers, their job security was lower. However, in many cases, skilled fixed-term workers were offered permanent employment after their initial assignment.

*Metal1* used two groups of agency workers (3.5%): The larger group of low-skilled workers performed logistics tasks, not working side-by-side with standard workers and mainly hired for cost reasons; while a smaller group of skilled agency workers working together with standard workers were considered a ‘recruitment pool’.

'Since we have problems recruiting staff, we started hiring agency workers with potentially suitable profiles to train them for a career here. However, numbers are very low because we hardly find such workers in agencies.' (Works councillor, *Metal1*)

Both groups were covered by the sectoral agreement for work agencies (setting lower wages and working conditions compared to the metal agreement), but treated differently in the workplace. While low-skilled agency workers merely received on-the-job training and had few job prospects, skilled agency workers were likely to stay on with the company after a 'trial period' of six to twelve months. Furthermore, they were able to take courses to broaden their skills.

Overall, standard workers had good working conditions due to the shared interests of management and the works council. Potential (skilled) standard workers – employed on fixed-term or agency contracts – could take training and had good chances of being hired on a standard contract. Low-skilled agency workers, however, had worse working conditions and hardly any job prospects, and works councils showed no desire to change this as they worked separately from the standard workforce.

## 7.2 *The case of Metal2*

*Metal2's* 2,800 staff consisted of 80% permanent workers, and 10% respectively of fixed-term and agency workers, in line with a workplace agreement.

Standard workers had good working conditions established through the many workplace agreements negotiated over the past years; e.g. above-average wages, an annual performance bonus, and working-time accounts with varying durations and giving employees control over their working time. Training and development programmes were widely offered by *Metal2's* global 'university', and apprentices were given the opportunity to go on to further education, receiving monthly stipends when studying at technical college or university. *Metal2* stressed retention and job security, as formalised in an employment guarantee for standard workers.

*Metal2* also employed fixed-term workers (10%) to replace employees on long-term leave and for project work. These employees had almost the

same working conditions (salary, working-time accounts, training) as permanent staff, but did not receive bonuses.

‘There is no restriction on training employees with fixed-term contracts. As such contracts can be extended, we benefit when they participate in training. If it is necessary to train an agency worker, we will do so, too. Regarding training, we do not group employees into agency, fixed-term and permanent categories.’ (HR Manager, *Metal2*)

Agency workers (10%) were mostly hired for assignments of at least one year, and many worked side-by-side with core workers, performing the same tasks. Since they were covered by the work agencies’ sectoral agreement, they earned about a third less than standard workers before the 2012 introduction of wage premiums through the metal sector collective agreement. Furthermore, they had no working-time accounts, no performance bonus, and lower Christmas and holiday allowances. The gap between standard and agency workers made the works council reconsider its initially passive strategy by limiting agency work to 10%, and by negotiating an agreement on training to retain a high-skilled workforce. Moreover, while we were collecting data, negotiations on employment paths were taking place with a view to giving contractual upgrades to skilled agency workers.

‘It was a learning process. At first, we were against agency work. Then we saw that their numbers were increasing. Their qualifications are good and the company saves a lot of money by hiring them. We learnt that they are part of the workforce and we now try to integrate them in our processes. The more regulation we agreed on, the less agency work was asked for.’ (Works councillor, *Metal2*)

The 2012 metal sector agreement helped the works council close the (pay) gap between standard and agency workers through empowering them to negotiate local agreements and introduce wage premiums, thereby increasing the price of agency work.

‘Our leeway has been considerably reduced since the 2012 agreement. Agency workers have become quite expensive. In fact, it no longer makes any sense to use them.’ (European HR Manager, *Metal2*)

In sum, standard and fixed-term workers had similar working conditions, but there was a gap compared to agency workers. Therefore, the works council engaged in closing this gap by strengthening regulation on agency work.

### 7.3 *The case of Chem1*

*Chem1* employed about 31,000 standard workers (mostly permanent, but also some fixed-term staff waiting for a permanent contract), 3,000 trainees, and 800 fixed-term employees working for *Chem1*'s internal work agency (IWA). While these workers had contracts with *Chem1*, there were two additional 'external' layers of 1,700 agency workers and a fluctuating number of staff from contractors (between 1,000 and 10,000).

Standard workers had good working conditions in line with a series of workplace agreements, including (but not limited to) flexible working-time models, working-time accounts, initiatives to improve health and safety at work, work-life balance (e.g. company-run childcare facilities), extensive training and development opportunities (e.g. a foreign assignment programme to enhance international experience), an annual performance bonus and a generous occupational pension scheme. Moreover, there was a site agreement including an employment guarantee and a commitment for future investments. As a condition for renewing the site agreement, the works council demanded better regulation of fixed-term work, clarifying that the use of such contracts should be the exception and not the norm.

'Flexible employees secure the jobs of the core workforce. Market developments are forcing us to restructure; technically, we sometimes needed to make employees redundant. But we can do so without dismissals because the fixed-term and agency workers provide us with a buffer.' (HR Manager, *Chem1*)

Fixed-term workers were mostly hired by IWA on one- to two-year assignments; however, a sectoral opening clause enabled four-year assignments if the works council agreed. IWA was set up a decade ago to pool temporary functions in one unit to increase flexibility. The works council agreed to its establishment under the condition that IWA staff was covered by the chemical sector agreement. Working conditions were thus similar to those of standard workers, but employment prospects depended on management's headcount requirements. Previously,

production workers were more likely to get contractual upgrades than employees in commercial functions.

‘The salary is the same. But fixed-term employees are not entitled to bonuses, occupational pension provisions or profit-sharing. There is no agreement regarding training. Nevertheless, their situation is much better than that of external agency workers.’ (Works councillor, *Chem1*)

Most workplace agreements did not originally cover fixed-term staff, but the works council worked to have them extended to other legal entities within the group, such as IWA. As a result, IWA staff became able to enjoy working-time accounts, and an agreement on training was being envisaged by the works council while we were collecting our data.

*Chem1*’s 1,700 external agency workers had two profiles: high-skilled staff for project work, and low-skilled workers for the logistics and catering units. As already mentioned, agency workers were not covered by the chemical industry’s sectoral agreement. The high-skilled agency staff had specific skills, leading to high salaries and good working conditions. Conversely, low-skilled agency workers had to cope with lower wages, worse working conditions and less job security. Since these workers were deployed to cut costs, the works council struggled to protect them. Agency workers mainly worked in logistics and catering. These units were still in-house, as the works council had successfully opposed outsourcing, fearing deteriorating working conditions for the workers concerned. Hence, permanent staff in both units were covered by the chemical agreement, setting higher standards than the logistics and catering sector agreements. The outsourcing of both divisions was avoided in three ways. Firstly, on the basis of a sectoral opening clause, catering and logistics employees had to work 40 instead of 37.5 hours a week without wage adjustment. Secondly, new staff hired for both departments got lower wages in accordance with another opening clause. Thirdly, the use of agency workers increased in both departments.

‘*Chem1* could easily have decided to outsource the logistics and catering sections. We could have protested, but this wouldn’t have stopped management. That’s why we need to compromise. But the employees feel awful. They still have their jobs, and despite the reduction in salary they still come under the sectoral agreement and this is definitely something to be happy about.’ (Works councillor, *Chem1*)

Catering and logistics workers with a *Chem1* contract had better working conditions than if they had been outsourced. Yet, the concluded compromise established different working conditions between them and other standard workers. Moreover, the agency workers in catering and logistics suffered from worse working conditions, and employment prospects at *Chem1* were virtually non-existent.

Finally, a fluctuating number of workers were hired from contractors. Most of them were highly-qualified specialists who sold their services at a high price, coming along with good working conditions.

Overall, the employees' working conditions depended on the layer they belonged to. While those of the core workforce were good, they deteriorated from layer to layer. This complex layered and internally fragmented approach of organizing work constituted a challenge for the works council, which faced difficulty in protecting staff in the outer layers.

#### 7.4 *The case of Chem2*

*Chem2* employed about 10,000 standard workers, 660 trainees, 200-300 fixed-term staff and approximately 100 agency workers. Generally, about 5% of workers were hired on non-standard contracts. *Chem2* underwent restructuring in the early 2000s, transforming itself into a group consisting of several affiliates and service agencies.

The sectoral agreement's provisions were complemented by a series of workplace agreements covering standard workers. Agreements covered flexible working time, working-time accounts, a generous occupational pension scheme, various health and safety initiatives, bonus payments, extensive group-wide training and development programmes, childcare facilities and 'caregiver leave' (for employees caring for a sick family member). Job security for standard employees was high, but *Chem2's* process of fragmentation was ongoing, leading to a threat of outsourcing. As a result, the works council had negotiated an employment guarantee, which was important during the outsourcing of the CAB division in 2014.

'Management wanted us to agree to the outsourcing, so we presented our conditions: job security as negotiated in an earlier agreement, including a ban on dismissals for operational reasons; a higher number of trainees and a better system for employees

whose jobs were lost but needed prospects in Chem2.’ (Works councillor, *Chem2*)

The works council proactively accompanied the outsourcing, ensuring job security for the affected employees and negotiating a one-year transition agreement, which contained arrangements similar to those in *Chem2*’s workplace agreements. The ongoing restructuring resulted in a high employee turnover, with 50% of staff leaving despite a stable headcount in the past. Outsourcing also fragmented labour power, because each new legal division founded its own works council.

*Chem2*’s two service divisions had faced outsourcing threats for ten years, but the works council convinced management to keep them in-house. Based on a sectoral opening clause, service divisions were covered by separate workplace agreements with a more performance-driven wage policy.

‘Faced with the threat that 200 jobs would be lost, we agreed to alter the labour agreement. We preferred to retain 200 jobs at this site under less favourable conditions rather than making 200 employees redundant. We even preferred using opening clauses rather than seeing the company making our colleagues redundant.’ (Works councillor, *Chem2*)

*Chem2* also employed 200-300 fixed-term workers covered by the chemical sector agreement and by most workplace agreements (except for those on occupational pensions, bonus payments and childcare). An earlier workplace agreement stipulated mandatory two-year contracts; and most workers received permanent contracts thereafter. Consequently, differences between permanent and fixed-term employees were limited.

Furthermore, *Chem2* used 1-3% agency workers, mainly to cover peaks in demand, especially in the packaging department. Skill requirements were low, and assignments hardly exceeded six months. Due to their worse working conditions (coverage by a different sectoral agreement) the works council attempted limiting their use and negotiating better regulation. One agreement specified that only staff from work agencies respecting the German Trade Union Federation’s (DGB) collective agreement were to be used. Another one granted pay premiums exceeding those in the sectoral agreement to partially close the pay gap

between agency and standard workers. While we were collecting our data, negotiations were taking place on limiting the number of work agencies to be better able to control them, and the works council envisaged an agreement on contractual upgrades for skilled agency workers to enable transitions.

In sum, standard and fixed-term staff had good working conditions, but faced an imminent risk of outsourcing. The small share of agency workers had worse working conditions, but the works council engaged in negotiations to improve their situation.

## 8. Explaining the observed diversity

The empirical part illustrates that permanent and fixed-term workers mostly enjoyed good working conditions, whereas agency workers had worse conditions (Table 3). The main reason for the latter was their coverage by a different sectoral agreement, setting worse standards than those in the metal and chemical sector agreements. However, there were differences in working conditions across workplaces resulting from works councils' regulatory interventions.

Works councils across workplaces were challenged by the use of non-standard contracts. The ongoing restructuring in the chemical sector has led to higher fragmentation, with non-core functions being outsourced and the affected workers no longer being covered by the chemical sector agreement, for the most part leading to a deterioration in working conditions. Works councils in both workplaces thus sought to avoid the kind of outsourcing producing downward pressure on working conditions, and to keep as many workers as possible within the chemical sector agreement. Specifically, the sectoral opening clause on 'competing collective agreements' was used by both works councils to keep non-chemical functions in-house. Based on the opening clause and some concessions, *Chem1*'s logistics and catering divisions were kept in-house. Although working conditions deteriorated, the affected workers were still better off than if outsourced and covered by worse sectoral agreements. Similarly, *Chem2*'s works council negotiated a separate collective agreement subject to a different pay scale for its two service agencies to keep them within the chemical sector's representation domain. The workplace agreements based on the sectoral opening clause made the outsourcing of non-core work less attractive and ensured that the affected

Table 3 Working conditions of different groups of workers

	Metal1	Metal2	Chem1	Chem2
<b>Contractual breakdown</b>	95% permanent, 1.5% fixed-term, 3.5% agency workers	80% permanent, 10% fixed-term, 10% agency workers	93% permanent, 2% fixed-term, 5% agency workers	95% permanent, 5% fixed-term and agency workers
<b>Core workforce</b>	Very good	Very good	Very good	Very good
<b>Fixed-term staff</b>	Good, transitions likely for skilled staff	Good, training provision	Good, but no training, medium job security	Good, transitions likely
<b>Agency workers</b>	Worse, but transitions possible for skilled staff	Worse, but (envisaged) workplace agreements on employment paths, training	Worse, hardly any job prospects	Worse, but workplace agreement on pay
<b>Others</b>			Catering/logistics employees covered by different agreements (lower pay)	Service division employees covered by different agreements (different pay system)

Source: own illustration.

workers remained covered by the chemical collective agreement. In contrast to *Chem1*, *Chem2*'s works council did not generally oppose outsourcing and actively accompanied such processes for entire business divisions. On the one hand, such divisions remained within the chemical sector agreement, and on the other hand, the works council could push through certain demands (e.g. a higher number of trainees) in exchange for its consent. In doing so, the works councils pursued a strategy of 'controlled' outsourcing on the condition that coverage by the chemical agreement was maintained. Differences were also manifest regarding agency work. While *Chem1*'s works council tolerated the relatively high use of agency work at worse conditions in exchange for keeping non-chemical functions in-house, its counterpart in *Chem2* engaged in better local regulation.

Fragmentation between core and non-core functions was less of an issue in the metal workplaces. In *Metal2*, works councils' regulatory interventions focused on agency work. As a growing number of agency workers worked side-by-side with permanent staff, the works council reacted, avoiding potential conflicts by limiting and better regulating the use of agency work. However, the relatively large gap between the

provisions of the metal and agency work sector agreements made it difficult to achieve equal treatment. Furthermore, sectoral resources such as those found in the chemical industry were not available at the time of data collection, since the corresponding collective agreement focused on protecting standard workers. However, the 2012 metal sector agreement gave institutional support to works councils: wage premiums limit the use of agency work as they increase the price of agency labour, and co-determination rights have been strengthened by encouraging the negotiation of corresponding workplace agreements. In contrast to *Metal2*, *Metal1*'s works council remained passive on the issue of agency work. The fact that the 'social technology' allowed the small percentage of agency workers (3.5%) to be separated from standard workers did not induce the works council to act.

Overall, the sectoral regulatory context played a role in shaping the differences between contractual groups of workers, though without determining their working conditions. The way works councils used their available resources in their regulatory interventions was at least equally important. Hence, local players shaped the ways institutions worked in practice (Mahoney and Thelen 2010). The observed intra-country variations stress the added value of cross-sectoral comparisons and emphasise that institutional change can occur below the country level.

## 9. Conclusion

This study illustrates works councils' responses to the challenge of non-standard work in the German metal and chemical sectors. Inter- and intra-sector differences in the working conditions of standard- and non-standard-workers were observed, and explained with the help of the selected research approach, studying the workplaces as embedded in the regulatory context.

The study highlights that working conditions are not simply a function of an employment contract or the regulatory context, but that works council interventions matter. Intra-sector differences illustrate that works councils use their discretion differently in local negotiations in similar companies. In the chemical workplaces, works councils' main concern was to limit the ongoing fragmentation and to keep as many workers as possible in standard employment, covered by the favourable chemical sector agreement. To do so, a sectoral opening clause was used as a

resource (in combination with some concessions in *Chem1*) to make outsourcing less attractive for management. Fragmentation and keeping standard workers within the sectoral agreement was less of an issue in the metal sector. *Metal2*'s works council successfully limited the growing use of agency work and negotiated better regulation to avoid potential conflicts between contractual groups. The 2012 sectoral agreement encouraging workplace regulation on agency work may help the introduction of further workplace regulation in the future. *Metal1*'s works council, however, remained passive because production technology allowed a separation between standard workers and a low number of agency workers, making conflicts between groups unlikely. Such inter- and intra-sector differences emphasise the benefits of studying the workplace as embedded in its (sectoral) regulatory context.

The study has one major limitation. It only involved high-tech, market-leader companies, where works councils have a high degree of power, facilitating their role in local bargaining. This could be different in contexts of pressure and exposure to competition, reducing their power. Future empirical research should therefore also deal with such company contexts.

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