

Close observation of works council elections 2018

Mistakes can be expensive for employers

By Pauline Moritz

Works council elections are generally held every four years, from March 1 through May 31. A flawed election process can be costly for the employer. Violations of election rules may render the election retrospectively void and trigger a new election. All actions taken and agreements entered into by the works council elected in an invalid election are null and void. Therefore, timely and well-informed intervention, as well as close monitoring of the election process, can save unnecessary costs and at the same time open important doors to exercise influence.

A works council election is left to the employees' initiative. If the employees decide to elect a works council, the employer may not reject or impede the election. An employer who hinders or influences a works council election, for instance by threatening to terminate employment relationships, may face imprisonment of up to one year or a fine. In businesses with an existing works council, the initiative of a single employee can be sufficient to

ensure the ongoing existence of a works council, even if the workforce has no interest in such a representative body.

Election costs

The employer bears all costs of the election. This includes all costs connected to the initiation and execution of the works council election as well as the revision of the election results – but only to the extent that they were necessary for the election.

Necessary costs may include the following:

- costs for providing rooms, information and communication technology as well as equipment, election documents, writing materials, voting boxes, telephone calls, postage, legal texts and commentaries;
- costs for training concerning election provisions for members of the election committee;
- legal costs for advising members of the election committee; and



More than just a show of hands: Flawed elections may be declared null and void.

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- the costs of any legal dispute with the election committee in connection with the works council election.

The employer must also continue to pay salaries for the time that employees need to exercise their voting rights or other →

rights in connection with the election. Members of the election committee who carry out office tasks outside their working hours are entitled to time off or overtime compensation.

Before the election

The election committee, which consists of at least three employees who are eligible to vote, initiates and carries out the election. It is appointed by the acting works council no later than ten weeks – in small businesses with no more than 50 employees who are eligible for election, four weeks – before the end of the acting works council's term in office.

If no or no proper election committee has been established eight weeks before the end of the acting works council's term in office – in small businesses with no more than 50 employees who are eligible for election, three weeks – the relevant labor court can appoint an election committee upon a respective motion by at least three employees who are eligible for election, or by a union represented in the business. The labor court may also appoint union representatives who are not employees in the business in question.

If no works council has yet been established, the election committee is appoint-

ed by the general works council or the group works council in companies with more than one business. If none of these bodies exists, or if these bodies remain inactive, a general staff meeting appoints the election committee. Either three of the business' employees who are eligible to vote, or a trade union represented in the business may call a general staff meeting.

The appointed election committee issues an election invitation and establishes a voter list. The publication of the election invitation marks the start of the official election process. It must be displayed in an easily accessible place throughout the entire preparation phase of the election until the end of the last day of the casting of votes. The voter list contains the names and dates of birth of all employees who are eligible to vote. The employer must provide the election committee with all information and documents necessary to compile the voter list. During this process, the election committee shall ensure that only those employees who are entitled to vote are in fact included in the voter list because this will influence the size of the works council to be elected.

Only employees that appear on the voter list are eligible to vote and be elected. Mistakes in the voter list can justify an

appeal against the works council election and hence result in substantial additional costs for the employer.

Within two weeks of the election invitation and compilation of the voter list, employees may submit nominations for the election committee. At the later works council election, only those employees who have been nominated for election may be voted for. This is an essential phase for the employer because at this point – within the framework of tighter legislative limits and ensuring the free decision-making process of the election – he or she might exert influence over the election with the objective of securing the names of “employer-friendly” employees on the voter list.

Leased employees

Leased employees are entitled to vote if it is clear on the day of voter list compilation that he or she will work in the business for more than three months.

Regularly deployed leased employees are to be taken into account for the thresholds relevant for the size of the works council in the borrowing company.

The election

Works councils may be elected either by the standard or the simplified election procedure. The main difference between the two is that under the standard procedure, which applies to businesses with more than 50 employees who are eligible to vote, votes are cast for candidate lists, whereas in the simplified procedure, individual candidates are elected.

After the election

In practice, most election committees make mistakes but most works council elections nonetheless remain undisputed and not all mistakes render the election void. A successful appeal, however, will lead to the election being declared invalid and trigger a new works council election.

Every breach of material provisions of the right to vote, the eligibility to vote or the election procedure, are grounds for an appeal unless a correction has been made. Three employees acting together, the trade union which is represented within the business or the employer may file an appeal. The appeal has to be declared within two weeks of the announcement of the election results. If an appeal is not lodged within this time period, the works

council is deemed to have been elected validly.

If an election is particularly flawed, it may be declared null and void without an appeal.

Conclusion

Employers should observe the upcoming works council elections closely and follow the election procedure in order to avoid the defeasibility of the election and to work towards – within given legal limits – a favorable election result. ←



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