



## Majority Rules: German Constitutional Court Confirms Constitutionality of Tariff Unity Act

On July 11, 2017, the German Federal Constitutional Court in essence rejected actions by certain smaller trade unions against a "tariff unity" law introduced almost exactly two years before. This is a major setback for trade unions representing small but important key personnel within companies, such as pilots, air traffic controllers, train drivers, and employed physicians. The practical impact of the decision is that unions representing such small but powerful key employee groups will continue to have significant limitations to call for an individual strike in order to push through the interests of their members if there is another union represented in the company with a higher number of members.

The decision is against a historic background: For decades, case law of the Federal Labor Court assumed the existence of a "tariff unity" principle, according to which only one collective bargaining agreement generally could apply in a company or plant, i.e., the collective bargaining agreement concluded with the majority trade union. During the term of the respective collective bargaining agreement, the union behind the applicable collective bargaining agreement could not call for a strike since there would be a "peace duty" during such term, and other unions played no practical role. This situation exposed companies to a relatively low number of strikes and prevented the application of divergent collective bargaining agreements.

Then, in 2010, the Federal Labor Court ruled that without statutory provisions, a tariff unity must not be assumed, since it would inappropriately limit the constitutional rights of (typically small) unions. As a consequence, Germany faced major strike waves from small but powerful niche unions. In response, legislators' ultimately introduced the tariff unity law in 2015, according to which unions representing only a minority of employees in a company had to accept decisive limitations of their strike right.

Now that the constitutionality of the statutory tariff unity has been confirmed, companies again will be in a much better position to deal with only one union and effectively rely on the peace duty once a collective bargaining agreement is concluded.

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