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Employer Behavior – Grasping a Phantom^{**}

Asked to comment on von Eckardstein's and Konlechner's assessment of employer behavior, I found myself confronted with two problems: Firstly, the topic has not received explicit treatment in the literature pertaining to personnel management, and secondly, my evaluation does not differ appreciably from that of the first speaker. Nevertheless, reflection has led me to several thoughts on the subject which might provide us with some additional impetus.

Marx warned that even the most friendly entrepreneur is nothing more than a „character mask“ which serves only to distract anyone from investigating the iron law of the capitalistic process: the capitalist extracts value from the worker. It is true that in an employment contract the employer finds himself caught in a network of relationships which leads to a particular behavior. Consequently, it does not make much sense to focus on the mentalities or motivations of employers. It is more fruitful to concentrate on the conditions under which they act. Still, there is a lot of room for individual, if not idiosyncratic, behavior of employers in the world of capitalism.

What are the special features of the employment policy practiced by Aldi, Lidl, Schlecker, and the likes? Obviously, it is not a peculiar skinflint, but the market conditions which necessitate a strategy of cost cutting and aggressive pricing. This is also reflected in the pressure such employers exert on both suppliers and employees. The Aldi managers are not singularly bad people. It might be that they simply have no feeling for what they are doing to other people. The readiness to suppress such a feeling could be a crucial selection criterion for those who succeed in getting a well-paid job as a manager.

The culture in companies like these is marked by mistrust, spying and secrecy. A tabloid accused Lidl of using Stasi methods, and, as a result, the head office had to admit to having spied on employees for assumedly inappropriate behavior. The fact that such practices do not go unnoticed by the general public may be an indicator that this type of behavior goes beyond what the public (in Germany) normally expect from an employer. Criticism is even being expressed by consumers who enjoy the bargain prices of their products.

Does character matter? Is it, in the end, up to the consumer to determine how the employer behaves?

Other employers behave quite differently under comparable market conditions. As an example, let us take a closer look at two drug store chains, DM and Schlecker.

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DM has a greater variety of products, is slightly more expensive, employs mostly full-time personnel with permanent contracts, and treats its suppliers, on the whole, fairly. Yet DM is still able to maintain a wide base of satisfied customers.

Does the market strategy of a company, in the end, shape employer behavior? Obviously, one also has to look at corporate governance, the concentration of property rights, and, in some cases, at the personality of the founder to find out how strategies are generated. “Trust ennobles the character”, is one precept followed by the founder of the DM chain who empowers the individual subsidiaries to select their own sortiment of products, and leaves it up to the local personnel as to how they run their store and how they practice control. If sales rise beyond a pre-determined level, the employees receive a certain percentage of the profits. The culture of this company, without a doubt, carries the stamp of its founder. There are no outside shareholders, nor do banks have a decisive influence on business policy.

In the Hoppmann company, whose destiny I have followed over the last few years (most recently, cf., Belitz, 2011), the influence of private capital has been mostly neutralized. Hoppmann is a successful automobile dealer in a fiercely embattled market. Nevertheless, a trust filled relationship among all employees is maintained, and conflicts are usually solved in a fair fashion. There are practically no lay-offs, productivity is high, and wages are above average.

How are the various types of employer behavior reflected in the literature on personnel or human resource management? Are the conditions that shape these behaviors (market conditions, property rights, company charter) taken into consideration when employer behavior and employment policy are described? To find an answer to these questions I have analyzed, in a simplified manner, the current textbooks used in German speaking countries. My first impression is that the employer does not receive any attention, neither as a person nor as an institution. Even though these textbooks are written from an ideal-typical employer’s perspective, with the apparent aim of providing useful practical knowledge, potential conflicts which might arise from applying this instrumental knowledge, for instance, conflicts with employees or their representatives over pay and employment, are not dealt with.

In Scholz’ (1994) and Ridder’s (2007) textbooks the collective bargaining parties, and thus the employer as an actor, are missing completely. Drumm (2008) and Berthel (1995) deal with labor law and co-determination as part of the external framework restricting or obstructing employer behavior which would otherwise ensue. Oechsler (2006) explicitly places personnel management in a labor law framework, however, he restricts himself to a description of the various institutions that might play a role. The older textbooks by von Eckardstein & Schnellinger (1978) and Marr & Stitzel (1979) are the only ones which promise with a conflict-oriented concept the potential to regard as well as criticize employer behavior in its manifold variants. Unfortunately, they refrain from actually performing such an analysis.

I am of the impression that the German personnel textbooks assume a value-free normal situation in which the management instruments (of recruiting, rewarding, evaluating, etc.) can unfold without obstruction, and in which conflicts over employment, wages and working conditions are considered non-existent, or solvable outside the

world of personnel management. For instance, Drumm states explicitly that a detailed consideration of “industrial relations” (employer-employee relations) does not seem necessary in a German textbook on personnel management because this aspect is “to a large extent covered” (Drumm, 2008, p. 3) by collective agreements (“Tarifverträge”) and co-determination (“Mitbestimmung”). The model of “capitalisme rhénan” (Rhenian capitalism) is apparently assumed to be untouchable and beneficial for Germany.

With this tacit assumption the authors of German personnel textbooks ignore the reality that collective bargaining agreements are partly in disarray and, as a result, that a not insignificant segment of employees exist merely as a marginalized precariat. The literature also fails to note that the effective procedures and the positive outcomes of co-determination of employees tend to be true in only a number of special cases, or are only existent in reduced and diverse forms. Consequently, the space which opens itself up for employer strategies and behavior is widening and remains unchallenged. The literature is, thus, if not euphemistic, quite anemic – and on the whole for the most part boring.

Of all the textbooks I examined, it is only Dieter Sadowski’s (2002) book which offers the chance to investigate the aforementioned developments and to study their pre-conditions and consequences. The problem with this particular book is, however, that it is seemingly void of consideration of distinct personnel policies and techniques, which abound in all the other textbooks. This is, indeed, a pity because a) only a detailed assessment of instruments used by employers, b) their origin (how did a particular instrument originate, for instance, the assessment center or job classification and evaluation methods; what primary interests are being served) and c) their effects (who is affected to what extent and how) could fill the proposed framework with life, and, thus, become a basic and critical text of personnel management.

I propose that industrial relations and their changes as well as the general economic and political context be incorporated in personnel management textbooks. It is only in this way it would be possible to grasp employer behaviors in the real world of business. In Germany, the employer is certainly not only party to a labor contract with the employee, he is, within the context of the work constitution act, also an institution which constitutes law. He concludes company agreements (“Betriebsvereinbarungen”), hereby creating rules which bind his behavior and steer the behavior of employees and their representatives into foreseeable channels. But what if the employer does not have an interest in such rules? What if he has the enhanced power, partly supported by the easing of statutes, to circumvent such rules simply because they hinder his aggressive market strategy? What if an employer does everything he can to completely circumvent the seeming blessings of the work constitution act, for instance, by obstructing the founding of a works council? What form does personnel management assume in a virtually unlegislated realm?

First of all, the world of small and medium-sized enterprises (SME) would certainly be a sphere worth investigating. The problem is that with regard to most findings in this area hardly anything can be generalized. There are, however, a few studies on companies without a works council or with substitutes for works councils (cf., Ell-

guth, 2005). This appears to be a promising field for further studies by personnel scholars of employer behavior.

I would like to concentrate on a couple of examples which prove the usefulness of investigating personnel management, and employer behavior in particular, within the context of industrial relations. First I will look at strategies pursued by employers to avoid the founding of a works council or to obstruct its actions. These include cases which deviate from the norm of trustful collaboration which the personnel literature usually assumes.

To illustrate a case in point I would like to use McDonald's as an example. Research by Tony Royle, who has studied the fast-food industry intensively, serves as a basis for my observations. Royle gained an insight into the work situation and employer behavior of this company in a rather subversive fashion. I will not go into details, which would almost be hilarious if they were not representative of the depressing reality of many employees there. Here I will refer only to the typology of "avoidance strategies" which Royle developed on the basis of his studies. Generally, like in many American companies with subsidiaries in Germany (cf., Wächter et al., 2003), even the initiative to found a works council is viewed as a management failure, and is usually held against local management as a sign of bad recruitment and faulty deployment of personnel. The avoidance strategies include a wide range of tactics: applying planned illegal measures (harassment, wrongful dismissal), making extensive use of regulatory lacunae, buying-out or bribing potential works council members, and recruiting employees who are poorly informed on labor law or do not speak German proficiently (Royle, 1998, p. 1040).

On the European level McDonald's also steps out of line. Their European Works Council (EWC) would be – according to Kotthoff's typology (2006) – a type 5, a marginalized EWC. The employer succeeded, despite the resistance of the labor union and the existing works council in Germany, in placing members on their councils who are particularly loyal to the management group (cf., Royle, 1999, p. 344). It once again appears that it is always about control or fear of losing control.

The lack of employer behavior being viewed within the context of political and economic conditions, particularly within an industrial relations environment, can be illustrated with an additional example. This case shows the limits of the German tradition of collaborative labor relations when confronted with the pressure of aggressive employer behavior. Ingrid Artus (2007) studied the personnel policy of a German discount retail chain in both Germany and France. In this study she shows how the strategies of "Aldi-lecker" confront works councils and labor unions in Germany with unsolvable problems. The culture of bargaining and consent, so prevalent in Germany, proves to be ineffective. In France, where a comparable law like the work constitution act does not exist and where union density is lower than in Germany, the conflict-oriented strategies of employee representatives and their allies inside and outside the company – for instance, the customers of the retailer – prove to be much more effective in pushing through workers interests. The state-enforced representation of "délégués du personnel", and the conflict-prone union representation ("délégués syndicaux") seem to be more functional in articulating and asserting employee interests than the German work constitution based on co-operation and trustful collaboration.

What should be a consequence of all this with respect to research and teaching in the field of personnel administration? There are several propositions.

The field should drop the assumption of a functioning of the “German model” of capitalism and should instead focus on deviations from and alterations to this model. As a consequence, the “unpleasant” sides of employer behavior would then gain more attention. There may be sectors in which the traditional German system still functions, but other industries where one is used “to playing hardball” will emerge. Should we ignore these realities? Should we delegate these questions to the field of business ethics, whose disciples might appeal to the moral obligations of employers or the responsibility of consumers?

It appears to me that further research in this area should be in the form of field studies, particularly in extreme cases. The insight gained through the case studies I have cited are indeed noteworthy. It goes almost without saying that trying to extract representative data from “Aldidlecker” seems basically pointless.

We all need to accept that the field of personnel is deeply imbued with conflicting interests. It should be possible to address these conflicts without taking a position from the start. The field of labor law, where a researcher is very quickly labeled as either an employer-advocat or an employee-advocat, should serve as a warning. Following a similar course would make it extremely difficult for us to pursue any meaningful scientific discourse.

The term “Personalpolitik” (personnel politics/policy) seems to me to be more appropriate for and applicable to our field. It better reflects the true nature of our discipline than the conventional expressions “Personnel (or Human Resource) Management” or “Personnel Economics”, because it more clearly delineates the “terrain of contest” (Burawoy) surrounding and within the employment relationship. It should, by now, be clear that conflicts are not only about employment, wages and working conditions, but also about attributed meanings and interpretations: What is a “crisis”? How is it defined? And by whom?

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