

Dissertation
„Unternehmensmitbestimmung und Gemeinschaftsbetrieb“
by Benedikt Greiwe

Summary

The main aspects of the thesis are two central legal issues with regard to the employees who work in a joint workplace but who do not have an employment contract with each of the companies holding this joint workplace. The first legal issue is whether and, if so, how these employees can be attributed to each of these companies with regard to the thresholds in sec. 1 para. 1 No. 2 of the German Co-Determination Act (*MitbestG*) and sec. 1 para. 1 of the German One Third Participation Act (*DrittelbG*). In each case, meeting these thresholds is the requirement for the applicability of the respective act. The decisive question is whether such an employee can only be taken into account at a company with which he has an employment contract or whether there is legal reason that this employee has also to be taken into account at the other companies holding the joint workplace. The second legal issue is whether such an employee has an active and/or passive right to vote with regard to the employee representatives as members of the co-determined supervisory board of each company holding the joint workplace or whether he only has an active and passive right to vote with regard to the company he has an employment contract with. There is a controversial discussion regarding both legal issues consisting of several contributions by the jurisprudence as well as the legal literature. The thesis wishes to contribute to this discussion.

The contributions of the jurisprudence as well as the legal literature with respect to the different legal issues are presented and studied. In addition to that, further possible approaches are presented and assessed. The finding of the thesis is that with regard to the thresholds in sec. 1 para. 1 No. 2 of the German Co-Determination Act (*MitbestG*) and sec. 1 para. 1 of the German One Third Participation Act (*DrittelbG*) only those employees working in the joint workplace, who have an employment contract with the respective company holding the joint workplace can be taken into account. With regard to the active and passive right to vote, the thesis finds that only those employees working in the joint workplace, who have an employment contract with the respective company holding the joint workplace have an active and passive right to vote regarding the employee representatives as members of the co-determined supervisory board at this company.