

BRINGING UNEMPLOYED PERSONS TO NEW JOBS - AN OUTLINE OF SOME GERMAN EXPERIENCES

by

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I. The labour exchange system

From 1926 to 1994 Germany had a state monopoly in the field of labour exchange. Private agencies were not allowed. An employer was, however, free not to go to the state agency but to hire on a voluntary basis the persons he desired. In newspapers, one could always find a lot of advertisements referring to vacancies and job seekers. In so far, the German system is quite different from the Italian one: In the latter the employer has to address the state administration which is the only authority to send him job-seeking people.

In 1994, the state monopoly was cancelled in the sense that private agencies are now admitted. They need, however, a state authorisation, which is given by the Federal Employment Agency if the person has a solid background. A lot of such authorisations were given until now (August 1995) but the practical importance of the private agencies and their economic success is extremely low. Normally, their list of job-seekers is very limited; on the other hand the price employers have to pay is rather high, the law forbidding that the "fees" are shared by employers and employees. For both reasons, employers continue to address themselves to the state agency or to hire on their own. Before and after 1994, about 35 % of the labour exchange placements were realised by the state and 65 % by direct contact between employer and employee.

II. The Federal Employment Agency (Bundesanstalt für Arbeit)

Labour Exchange is one of the main tasks of the Federal Employment Agency. It is a big body of state employees which has local subsidiaries ("Arbeitsämter"), regional subsidiaries ("Landesarbeitsämter") and a headquarter located in Nürnberg. Its legal basis is the Labour Promotion Act of 1969 ("Arbeitsförderungsgesetz") whose name makes clear that the Agency does not only deal with labour exchange. Its second main task is unemployment insurance including the collection of contributions and the payment of benefits. Its third task is organising and financing of supplementary vocational training of unemployed persons.

The organs of the Federal Employment Agency have a tripartite composition. In its main body, the administration council, one third of the members comes from the employers, one third from the trade unions and one third from the Labour Ministry. The administrative council elects the board of directors which can be considered to be in some way the "government" of the Agency. This structure exists on the federal as on the regional and the local level. However, the power of decision is concentrated on the federal level.

Some words about financing of the Agency. Both employers and employees have to pay 2.15 % of the wages as contributions. 4.3 % may seem to be rather a lot of money but we should keep in mind, that the Agency has a lot of tasks outside labour exchange.

III. The citizen's right to go to the Federal Employment Agency

Everybody has the right to go to the Agency and ask for a job. It is not necessary that the person has worked before and has therefore paid contributions. People aged more than 65 years are excluded as are youngsters who are still obliged to attend school. Another exception is much less convincing: only persons seeking for a job of at least 18 hours a week are admitted. In practice that rule discriminates indirectly against women.

A direct discrimination is practiced against foreigners coming from outside the EC and the EEA: There is a priority of German nationals in comparison with these people as to labour exchange. "Priority" in this sense means that the Agency offers a vacant job to such a person only if, after two or three months, it had not found any German or EC-national willing to take the job. In some fields, the period may be shorter because it is well-known that German citizens cannot be found for certain jobs e.g. in hotels or restaurants. EC-nationals and citizens of the EEA-states are treated like Germans.

The discrimination has been criticised because the priority-principle applies even to persons who have paid their contributions to the unemployment insurance during a lot of time; why should they get minor rights? To exclude these people is considered to be arbitrary. The courts have, however, confirmed the rule which is completed by the fact that this group of migrant workers gets unemployment benefits for only one year.

IV. Measures to facilitate the reintegration

1. The limits to the employer's right to ask questions

Since the fifties, German labour courts restrict the employer's right to ask questions to a candidate. According to court rules, he may only know circumstances which are related to the job and which he is entitled to know for a "justifying reason". He has e.g. the right to ask for diplomas and certificates about former activities. Illness must not interest him if it has no repercussions on the actual ability to work. A woman cannot be asked whether she is pregnant or not; there is only one exception, if health and safety rules forbid pregnant women to work at the future workplace of the candidate. People who have been punished can deny this fact of the crime has nothing to do with the job. Behind these rules are two ideas: On the one part, the protection of the individual's personality, on the other part the prevention of structural discrimination on the labour market: if there would be no right to conceal certain facts, pregnant women or former prisoners, for instance, would never have a chance to get a job. Recently, the Federal Labour Court has included sexual orientation.

These restrictions do not only apply to job interviews but also to screening made by the company doctor and to inquiries made in contacting former employers. One should doubt, however, whether in the last case the rule is always observed.

2. State subsidies to employers

In some cases, the employers gets subsidies if he hires a person who needs adaptation to the requirements of the job or a person belonging to certain groups of unemployed.

According to article 49 of the Employment Promotion Act the employer may get 30 % of the remuneration for a period of six months if the hired person was unemployed or threatened by unemployment before and needs an adaptation to the job ("Einarbeitungszuschuss"). The Federal Employment Agency is obliged to pay such a subsidy when the person has taken care of her children or of ill members of the family. In exceptional cases, the amount may go up to 50 % and be given during one year. The employer has to pay the subsidy back if the employee is dismissed during

six months (in the "exceptional case" during one year) after the end of the period the subsidy had been granted.

Another important case concerns old-aged unemployed people. There is a very flexible notion of "old-aged": According to the general rule, from fifty five years onwards you are old-aged. Until the year 2000, this stage begins already at fifty years. If an old-aged person in this sense had been unemployed during 18 months without having a reasonable chance to get a new job in the near future, and if he or she is hired by an employer, 50 % of the remuneration will be paid by the Federal Employment Agency for one year; the following year the subsidy will go down to 40 %, the subsequent year to 30%; after that year, it will come to an end. In exceptional cases, 75 % can be paid during eight years.

V. The Second Labour Market

Jobs in the so-called second labour market depend completely on state financing; hiring is made on criteria which have nothing to do with competition but follow social considerations.

Unlike the situation before 1969, nearly all second labour market relationships are governed by the rules of labour law. The measures are normally taken in favour of long-time unemployed, young people without vocational training and handicapped workers.

There are three main cases.

The most important one means the so-called measures of job-creating ("Arbeitsbeschaffungsmaßnahmen"). In 1993, up to 130 000 people had such a job, and in 1992, even 400 000 people were covered by one of these measures. According to the articles 91 to 96 of the Employment Promotion Act, the jobs have to be "additional" in the sense that they would not be done without these measures. This principle tries to prevent that normal workplaces are transformed into second labour-market workplaces. To give you a positive example: In Bremen, the regional court for social security hired some unemployed young lawyers who had the task to analyse the decisions of that court under different aspects and find out e.g., in how many cases the plaintiffs were successful. This was recognised to be an "additional" activity whereas in many other cases the situation is not at all clear; normally, the Federal Employment Agency is quite generous in recognising the special character of the work to be done. The same is the case with the second condition, that the activity is useful for the common good.

These measures of job-creating can be organised by the public service, by non-profit organisations and by private enterprises. The latter play, however, in practice absolutely no role in this field. One of the reasons is, that the organiser of the measure cannot select the employees; he has to accept the persons sent to him by the Federal Employment Agency. The Agency keeps the right to revoke the person without notice, if there is a job on the first labour market for him or if he will participate in an additional vocational training.

The employer gets a state subsidy whose amount is between 50 and 75 % of the "income to be considered". In regions where unemployment is at least 30 % above the average level in the Federal Republic, 90 % can be given. Since 1994, the "income to be considered" is the equivalent of 90 % of the salaries fixed by collective agreement. This was criticised as being in contradiction to the constitutional guaranty of collective bargaining because the legal rule creates a de facto constraint to pay lower wages and undermine by this way the effect of collective agreements. Even before, people working on the second labour market were discriminated against in many regards: e.g. they normally got a lower job classification than employees doing the same or a comparable job on the first labour market. In a certain way, the conditions on the second labour market are thus situated between those of an unemployed and those of an employee in the traditional sense.

The second case of work under second labour market conditions are programs of the municipalities or the "Länder" which cover about 20 000 persons. There is an additional fiscal reason to organise these programs: Unemployed people who have never worked a sufficient time in the legal sense, have a right to get social aid ("Sozialhilfe") which has to be paid by the municipalities. If a person has worked at least one year paying contributions to the unemployment insurance, he will get out of the municipality's responsibility: From that time onwards, the Federal Employment Agency has to pay unemployment benefits and the so-called unemployment aid ("Arbeitslosenhilfe") which covers the basic needs and which is given for an indefinite time. The person will therefore depend on the Federal Budget. His legal status is normally comparable to that of a person who is the "beneficiary" of a job-creating measure described above.

The third case was developed on the territory of the former German Democratic Republic. Social partners, local governments, enterprises and trade unions have created about 300 so-called occupation companies (Beschäftigungsgesellschaften) where people organise measures for the improvement of the environment and social services. The legal basis is now § 249 h of the Employment Promotion Act. People working within this framework normally earn only 80 % of the salaries paid for a

comparable work on the first labour market. There is no percentage in the subsidies given to the projects, but the Federal Employment Agency gives the sum it would have to pay if the persons concerned would be unemployed. Under these circumstances, the initiators need some other financial sources to pay at least 80 % and to make the enterprise function in an adequate way.

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