



RESOLUTIONS OF THE WORKS COUNCIL

CATCHING UP WITH THE BASICS



OLD FASHION OR DERNIER CRIE?

- Before the pandemic, works councils could never, never, never pass resolutions by video. But that's all changed now.
- The Works Constitution Act now also allows resolutions to be passed by video or even handier: telephone conferences.
- That means: You can certainly pass resolutions by Zoom or Teams or other video platforms. Or you pick up your mobile phone and do conference call 😊.

THE FOUR PILLARS OF A RESOLUTION

- Some rules remain though. A proper resolution has four pillars:
 - I. A good invitation with an agenda
 - II. The list of attendance (Quorum)
 - III. Voting in a works council meeting usually in person and in secret
 - IV. Sufficient minutes

THE INVITATION

- You as chairperson or vice-chairperson invite the other members of the works council. Section 29 Works Constitution Act states:
 - „The chairperson shall draw up the agenda and conduct the proceedings. He shall notify the works council members of the meetings in good time, informing them of the agenda.”
- So, the chairperson invites
 - ... **in proper time** with at least three days in advance (if possible). The invited members should be able to **prepare** themselves for the discussion and the decision needed in the meeting. That means: A longer time for preparation is needed if you vote on agreeing to a social compensation plan than agreeing to hiring a new staff member. The notice can be very short in immediate cases (extraordinary dismissals).

+ THE AGENDA

- ... and you make shure that you **always** send an agenda. Only what's on the agenda can be discussed and decided upon.
- Do not label the resolutions or topics too broadly. You cannot hire a lawyer under the bullet point „miscellaneous“! We will run through proper agendas this afternoon!
- You are able to amend the agenda even **on the day of the meeting**. For this the **majority of the works council members** need to be present (this used to be different). And you need some kind of **consent** of the majority that new topics are added to the agenda. This consent does not need to be shown by a resolution itself, but I would always recommend it. Then there are no questions to be asked.
- Best is to email the invitaiton and the agenda. If you print it out, you are able to proof when you sent it (proper time) and to whom you sent it (right number and right persons). **Hack:** Do not add the agenda in an attachment. This only leads to speculations wether the attachment in the email was the agendy or not ...

WHO TO INVITE

- You make shure ...To invite **all** members of the works council. Or if they are absent accordingly **all** subs needed to replace **each** member. But **do not invite all the subs** just in case!
 - See section 29 Works Constition Act: „If a member of the works council ... is unable to attend a meeting, he shall inform the chairperson without delay, indicating the reasons for his absence. The chairperson shall then invite the substitute to replace the said member of the works council ... in his absence.“
- Note: A member is not automatically absent when she or he is ill or on holiday. In these cases you still ask the member to attend. Only if you know that they will not come to the meeting you invite the sub instead. Do you have to invite a sub when the member just does not turn up to the meeting? No! That is not a case of absence, but a case for just not attending.
- How do you pick the subs? Keep in mind that you look **strictly** at the **list that sends** the member. You pick the sub from exactly that list. **Exception:** If the **gender in the minority** is not on your list, you have to replace the absent member by a sub with the „right“ gender from the next list that has gotten most of the votes.

LIST OF ATTENDANCE

- The list of attendance is to be passed around at the beginning of the works council meeting. It needs to be signed with the **own handwriting** of the works council members. Important: This list proves that enough members were present in order to be able to take a resolution!
 - Section 34 Works Constitution Act: *„They (the minutes) shall be accompanied by a list of the members present, in which each member shall personally enter his name.“*
- The works council can only decide with a resolution if at least half of the members of the works council is present.
 - See section 33 Works Constitution Act: *„At least one-half of the members of the works council must take part in a vote to constitute a quorum; members may be replaced by substitutes.“*
- And since the number of the works council members is almost always uneven, you usually represent the majority with this requirement.
- Please note that you cannot invite less than the number of members or subs to begin with. If a member does not show up, that's a different story. But you cannot start with less than the required number by law!

LIST OF ATTENDANCE-EXAMPLE

List of Attendance,
works council meeting, May 20th, 2022

Participant	Time	Signature
Mr. Schneider	From 9 to 12 o'clock	
Mr. Müller	From 9 to 10 a.m.	
...		

VOTING

- If you vote the majority **present** has to decide with a „yes“.
 - See section 33 Works Constitution Act: „Unless otherwise provided in this Act, the decisions of the works council shall be deemed to be adopted if the majority of the members present vote in favour. In the case of a tie the motion shall be taken to be defeated.”
- Important: Only votes with “yes” count for the resolution. Abstentions do count like a “no”!

THE MINUTES

- Minutes seem difficult, but they are not at all, indeed.
- Let's have a look into the few words of section 34 of the Works Constitution Act: „Minutes shall be kept of all proceedings of the works council, giving at least the text of all decisions taken and the majority by which they were adopted. The minutes shall be signed by the chairperson and one other member.“
- These words mean: You do not have to summarise the discussion of the works meeting. It is sufficient to put down what you decided upon.
- The easiest way is to write every resolution on one paper. You start with „Resolution / Beschluss“ in the headline. Then you note the „date / Datum“, the „time / Zeit“, the text of the resolution in English and German (otherwise a German court cannot accept it without a translation). You put down the vote: „Yes / Ja“, „No / Nein“, „Abstention / Enthaltung“. In the end the chairperson and one other person signs in her or his own handwriting. That is important! Only your own handwriting will do the job. You add the list of attendance and print out your email with the invitation and agenda. You're done 😊.

EXAMPLE FOR TEXT OF THE MINUTES

Resolution / Beschluss

Berlin, 16th November 2020, 10.45 am/

Berlin, 16. November 2020, 10.45 Uhr

The works council decides to go to drink a coffee. / Der Betriebsrat beschließt, einen Kaffee trinken zu gehen.

Yes: / Ja 9, No/Nein: 0, Abstention/Enthaltung: 0

Chairperson

Signature

Other member

signature

MEETINGS AND RESOLUTIONS VIA VIDEO

- Until the pandemic a works council meeting couldn't be held via video or telephone conference. But **thanks to an amendmend** it's possible now.
- What **were** the problems for video-conferencing?
 - I. Members had to be **present** in the meeting.
 - II. The meeting had and has to be secret:
 - III. The list of attendance had to be signed with **handwritten** signatures.
- All these doubts were kind of **washed away** during the pandemic. Now you can invite to a video or telephone conference based on section **30 subsection 2 WCA**.
 - You only have to make shure ...
 - ... that you are keeping the meeting **secret** (no one should be in the room with you while you are sitting in front of the computer),
 - ... that you are receiving the **attendance info via email** (from your fellow members when the session starts),
 - ... that you **still sign the resolutions** after you took them and send them off to one more person to let them signed and
 - ... to **not record** the session!

SECTION 30 WORKS CONSTITUTION ACT

- Here is the text of section 30 subsection 2 WCA:

„In derogation from paragraph 1 sentence 5 participation in a works council meeting may take the form of a video or telephone conference provided

- 1. the prerequisites for such a form of participation **have been laid down in the standing orders** while ensuring that face-to-face meetings have priority,*
- 2. not less than a quarter of the members of the works council **submit their objection** to the chairperson within a period to be determined by the chairperson and*
- 3. it is ensured that **third persons cannot take note** of the content of the meeting.*

Recording of the meeting is **not allowed.**“

VIDEO RESOLUTION. HOW DOES THAT WORK?

- How do video resolutions work?
 - I. You **add to your internal procedures** that video meetings and telephone meetings are okay, and that you still rather do it face to face.
 - II. The **chairperson decides** on a certain day that the meeting / resolution should be made by video.
 - III. At the meeting, members **email the chair**: "Hello, I am now present." This replaces the attendance list. Please beware that it's best when all members do access in the same way—either with their picture showing or not.
 - IV. When voting, you have a choice. Either do it with email—or just raise your hand as usual.
 - V. The chair writes the **minutes as with the old-fashioned resolution**. If it goes really great, she has another member sign a bit later also in the original and staples the attendance emails behind the minutes.
- That's it!