

# **New labor competition: How processes of deregulation and privatization affect industrial relations in Germany**

*A paper for the 16<sup>th</sup> ILERA World Congress, Philadelphia, Pennsylvania, USA, 2-5 July 2012  
Track 2. Labour and Social Movements Responding to Globalization*

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July 2012

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## 1. Introduction

After the end of the Second World War, the concept of a unified and sectoral labor union prevailed as a structural feature of the German model for industrial relations. Ever since, labor unions in the DGB (German Federation of Trade Unions) have been characterized by party political and ideological neutrality (unity principle) as well as an extensive level of labor union membership of all employees in a given industry sector or trade (sectoral or industry principle) – regardless of their occupation, qualification and status (cp. Hassel 2003: 104f). Since their inception, labor unions have been the key actors in negotiating working and wage conditions on behalf of employees, with sector-specific wage policies geared towards aspects of solidarity. For decades, their dominant position shaped the German model of working relationships und remained unquestioned. Today, however, with the rise of competition from occupational trade unions, this model seems to be up for debate.

Over the last ten years, individual trade associations decided to emerge from the shadow of the DGB labor unions. These small, occupation-orientated associations demanded independent wage policy responsibility for their members, in conjunction with high wage increases. The wage levels established in their occupation-specific pay agreements exceeded the existing wage levels stated in the sectoral pay agreements of DGB labor unions. Against this background, the term *competitive outbidding* by trade associations is also used. Leading the way in 2001, the German Cockpit Association *Vereinigung Cockpit* (VC) succeeded in negotiating an independent pay agreement for Lufthansa pilots. The German Physician's Association *Marburger Bund* (MB) followed in VC's footsteps and achieved a pay agreement for hospital doctors in 2006. Most recently in 2008, the German Train Drivers Union *Gewerkschaft Deutscher Lokomotivführer* (GDL) secured a pay agreement for train drivers employed by Deutsche Bahn.

What is astonishing is not only the fact that these three professional associations suddenly broke out of an ostensibly well established actor and negotiation constellation, but also the very fact that they succeeded. After all, they had to convince both DGB labor unions - which had virtually been solely responsible up to that point – and employers in order to enforce their demands for wage policy autonomy and recognition as a wage bargaining power (cp. Schroeder/ Greef 2008: 346f). The huge public interest in the Marburger Bund and the GDL can be mainly attributed to the lengthy industrial action that was necessary to achieve success. Employers decisively rejected the high wage demands of the professional associations and initially they categorically refused to accept them as negotiating parties. They also involved the labor court in an attempt to prevent strikes planned by train drivers and doctors.<sup>1</sup> The DGB labor unions harshly criticized the actions of the professional associations, claiming that they were using the power of their members to enforce their own particular interests at the cost of other employee groups. Their competitive outbidding would not only disrupt the solidary lobbying by unity and sectoral unions, but would also threaten

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<sup>1</sup> In many cases, the affected employers involved the labor court in an attempt to ban the announced strikes through interim injunctions.

the peace within the workforce, because the validity of different pay agreements in the same company would go against the principle of *collective bargaining unity*.<sup>2</sup> This would involve a “fragmentation of the bargaining structure with negative effects for employees and company alike” (Sommer 2010). Employers also picked up on these arguments and further criticized that “workforces would be fragmented and that a company’s necessary community of solidarity would be destroyed by individual functionary elites and occupational groups” (BDA 2010: 2).

The vociferous criticism by employers and the DGB gives the impression that labor union competition would jeopardize the entire system of labor relations. With verbose rhetoric they predict it would mean the end of industrial peace in Germany. The phenomenon of individual professional associations turning into independent, occupation-based sector unions would soon be happening everywhere, leading to *English conditions*<sup>3</sup> “with constant pay disputes amongst individual occupational groups” (ibid. 2010: 3). This would ultimately have negative effects on German business and industry. Employers and the DGB fear that Germany is well on its way to becoming a strike republic (cp. Sommer 2010; BDA 2010; Gertz 2010).

Although sectoral labor unions have been faced with challenges and problems for decades, so far none of those developments had threatened their dominant position in the German industrial relations model. Today however, according to forecasts by the DGB and the BDA (Confederation of German Employers), it seems that their elevated position is up for discussion. From this perspective, the change within industrial relations resulting from the rise of the trade associations – this change has only been investigated scientifically in very general terms thus far – is highly significant. Because it does not just affect the development of unity and sectoral labor unions, but more importantly it affects how German labor relations will be shaped as a whole in the future. For this reason it is necessary to focus the research interest on the background and conditions in order to explain the unionization phenomenon of professional associations.

This paper will analyze the background and conditions by means of a structural comparison of Marburger Bund, Vereinigung Cockpit and GDL. Their transformation from professional associations into independent labor unions cannot merely be attributed to rational actions. Much more important is a consideration of the environmental conditions and in particular their change and resources. These elements explain why professional associations dared to take the costly and time-intensive step to gain wage policy independence and why they are able to succeed.

## Literature review

The analysis of the phenomenon as a whole is still in the early stages. Although Vereinigung Cockpit already achieved an independent pay agreement by striking in 2001, the subject only began to be fully discussed in social science and law since the Marburger Bund labor dispute in 2005/2006, but predominantly since the GDL strikes. Hence the majority of the first analyses on the matter can be found in contributions and articles published in 2008. The authors produced an initial comparison of the main examples of the competitive outbidding phenomenon (Marburger Bund, Vereinigung Cockpit, GDL). The present paper is based on

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<sup>2</sup> Colloquially, the collective bargaining principle was expressed in the slogan *one company – one pay agreement* (– *one labor union*).

<sup>3</sup> Expressions such as *English conditions* or *the British disease* are references to the industrial relations in Great Britain in the 1960s and 1970s. This period was characterized by a considerable amount of industrial action (including many wild strikes) and a splintered landscape of employee representation with hundreds of individual occupation-based labor unions (cp. e.g. Wrigley 2002: 40ff).

those findings, building on its explanatory factors for the competitive outbidding phenomenon.

Keller (2008a, 2008b) also examines the conditions, backgrounds and consequences of competitive outbidding. He emphasizes that the aim of the trade associations was not just wage policy independence but that securing the continued existence of the organization played a key role as well (Keller 2008b: 166). Lesch (2008a, b) on the other hand analyzes the conditions and effects that the rise of occupational labor unions entails. Looking at it from an economic perspective, he examines its impact on industry-wide pay agreements and the pros and cons of different competitive labor union constellations from the employer's point of view. He cites the negative development of wages as one of the reasons for the rise of occupational labor unions, which the DGB labor unions are at least partially responsible for owing to their restructuring pay agreements. According to Lesch, the inception of ver.di played a role as well (Lesch 2008b: 315ff). Müller-Jentsch (2008: 62) also points out the negative implications of this mega-merger with regards to the integration of specific occupational groups and special interests. Müller und Wilke's (2008) arguments run along the same lines. They examine how the solidary wage policy of multi-sectoral labor unions fits in with vocational aspirations, which were previously thought to have been overcome but which are, in fact, still of importance according to the authors. Bispinck and Dribbusch (Bispinck/ Dribbusch 2008; Dribbusch 2009, 2010) provide a general outline of the subject matter. They begin by making a clear distinction between competitive outbidding by professional associations and underbidding by Christian labor unions in particular. They then examine the different wage policy challenges for the DGB that arise out of this distinction. However, there is to a great extent a lack of qualitative-empirical examinations of the phenomenon of competitive outbidding by professional associations.

## 2. Methodology and theoretical Framework

This paper presents the findings of three comparative case studies (cp. Schroeder/ Greef 2008; Schroeder/ Kalass/ Greef 2008; 2011) about organizations that have dared to take the step into wage policy independence. As part of this step, all three bodies have transformed themselves from occupation-orientated professional associations into independent occupational labor unions. The three organizations chosen for this examination represent the leading examples for the new phenomenon of competitive outbidding by professional associations.

### Research Design

The chosen method of analysis for the Marburger Bund, Vereinigung Cockpit and GDL is based on their type as objects of study; all three of them are collective organizations. In political as well as social sciences, organizations are – according to system approach and theory – described by means of organization variables<sup>4</sup> and organization environment<sup>5</sup> (cp. Edrueit 2004: 97; Easton 1957: 384-387). The chosen method is aimed at capturing all of the factors that fall into these two dimensions.

„The case to be studied is a complex entity located in a milieu or situation embedded in a number of contexts or backgrounds. Historical context is almost always of interest, but so

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<sup>4</sup> Goals, instruments, conditions, structures, functions and behavior.

<sup>5</sup> An organization is linked to its environment through input and output as well as mutually influencing factors.

are cultural and physical contexts. Other contexts often of interest are the social, economic, political, ethical, and aesthetic”(Stake 2005: 449).

Two methods have been predominantly used: document-based content analysis and half-open, structured expert interviews. A large spectrum of materials was used to conduct the document analysis. Relevant association publications and documents included minutes from the general meetings, wage agreements, member magazines, association chronicles, newsletters and publications on association websites. Expert interviews took place on different organizational levels (state level, national level, etc.), and with different status groups (full-time / honorary etc.). The selection criteria for the interview partners were aimed at obtaining comprehensive insights into the organizations and their transformation processes from several viewpoints.

## Theoretical Framework

The sudden or comprehensive change of organizations in general and the transformation from professional associations into labor unions in particular are phenomena that need to be explained (cp. e.g. Hannan/ Freeman 1989: 66ff), because, as a rule, organizational structures are characterized by inertia. Established procedures and routines are the characteristics of institutionalized, social unions. The restriction of organizational changeability caused by inertia is expressed in the concept of *path dependency*, because a supposed path dependency cannot be made solely responsible for the inertia or absence of changes within an organization. Therefore path dependency cannot be “equated to a lasting inflexibility” (Duschek 2010: 227). Organisations are only change-resistant up to a certain point. Even when the conditions of path dependency apply it is possible for organizations to develop or change.

Following on from the concept of path dependencies, the association changes need to be explained. The theoretical-conceptual approach applied in this paper to explain and interpret the transformation from occupational-orientated professional associations into occupational labor unions is the theoretical construct of the *opportunity structure*. This construct was introduced by the authors in the debate about the phenomenon of unionization of professional associations in 2008 (cp. Schroeder/ Gref 2008; Schroeder/ Kalass/ Gref 2011). The starting point was the realization that organizational change cannot be explained with the *rational choice approach* alone. It can without a doubt be used to explain the ultimately strategic decision by the association or its management level for organizational change. But it does not illustrate which factors led to this decision and why it happened at this precise moment in time. Neither does it allow conclusions about the conditions for the success of or the trigger for the transformation (cp. Tarrow 2003: 72). In order to answer these questions a different approach is necessary. Contrary to the concept of *critical junctions* that is used in path dependency research and illustrates abrupt fractures from which point the path is left, transformations are driven by the interaction of different processes of change. “Rather than abrupt and discontinuous, they find transformative change often to result from a accumulation of gradual and incremental change” (Streck/ Thelen 2005: 18).

„Political actors [...] encounter constraints and are presented with opportunities configured by the institutional arrangements and the prevailing patterns political power which are the inescapable context of political action.“

(Rootes 1999: 75)

Strategic decisions are always dependent on the environment – its conditions and the institutional actors that construct it – or they are at least influenced by it. Not only does the probability of success and failure have to be weighed up against possible gains and potential

losses, but the reactions of other actors and any effects on broader areas of the association's work have to be taken into account as well. In other words, the structural dimension of individual and collective actions has to be considered, because this action can be understood as a "collective answer to a favorable political opportunity structure" (Tarrow 1991: 647). In the following section the opportunity structure approach will be systematized and its three underlying theoretical concepts *political opportunity structure*, *resource mobilization theory* and *window of opportunity* will be introduced.

### *The Concept of the opportunity-framework*

One of the underlying concepts of the theoretical construct applied in this paper is the *political opportunity structure* (POS), developed in the 1970s by Eisinger (1973) in an attempt to explain the occurrence and success of protest movements. Other authors revisited and expanded on this concept, first of all Tilly (1977: 1-11) who used it as a foundation for examining the riots in England in the 18<sup>th</sup> century:

„Opportunity concerns the relationship between a group and the world around it. Changes in the relationship sometimes threaten the group's interests. They sometimes provide new chances to act on those interests.”

Tilly considers the "mobilization model" used thus far as insufficiently complex, because it does not put adequate emphasis on environmental factors. "It [the mobilization model; A/N] deals only with the capacity to act, not with the immediate incentive or opportunity to act" (Tilly 1977: 4-1). The POS concept was introduced to adequately incorporate these environmental incentive structures. In the following years the concept was used extensively for the analysis of conditions that affect the success or failure of social movements (cp. McAdam/ McCarthy/ Zald 1996, Meyer 2004, Kitschelt 1986 or Tarrow 2003). Tarrow (1994: 85) provided the definition of the POS concept, which has been widely used ever since:

„By political opportunity structure, I mean consistent – but not necessarily formal or permanent – dimensions of the political environment that provide incentives for people to undertake collective action by affecting their expectations for success or failure.“

In the following discussion, the term opportunity has been used very broadly. This broad scope includes every aspect that positively influences the choice of a possible decision option. This is the case where either the probability for a successful implementation of a decision is increased, where an alternative decision option or not making a decision becomes more expensive, or where a (new) decision option emerges in the first place. The concept of the political opportunity structure is very suitable for explaining what influence environmental conditions and the structures surrounding the actor have on his decision possibilities. However, with its focus on structure and environment, the POS theory is only suitable to a limited extent when it comes to establishing the actor's prerequisites for his actions. For this reason, the resource mobilization theory has been integrated in the theory construction of this paper.

The *resource mobilization theory* (RMT) is the older counterpart to the opportunity structure, which was also aimed at explaining the occurrence and progression of social movements. What the two approaches have in common is that they both establish relationships between certain factors and incentives (cp. Tarrow 1991: 651). While the opportunity structure deals with organization-external factors, the resource mobilization approach deals with association-internal factors.

First of all, an organization needs resources in order to be able to act. RMT ties in with the problem of public good formulated by Olsen (1965). Actors are not completely free when

making decisions. Even if their surrounding structure offers certain decision possibilities, the question remains whether they can indeed be used. This strongly depends on whether the actor has the necessary resources to support the cost of his actions. These resources can be of a material (money, payment in kind, human resources) or an immaterial nature (organizational experience, strategies, moral or cultural resources). The existence of resources within the association does not necessarily imply that these are actually readily available to the association. A considerable part of the resources can be tied directly to the members. Mobilizing these resources therefore becomes an essential task for the association.

„But the simple availability of resources is not sufficient; coordination and strategic effort is typically required in order to convert available pools of individually held resources into collective resources and to utilize those resources in collective action.“

(Edwards/ McCarthy 2004: 116)

The second and at least equally as important level therefore consists of the strategies for mobilizing the existing, but not immediately available resources. McCarthy and Zald (1977: 1217) also point out that the association environment plays a part. This environment can *directly* deliver a part of the resources as well as *indirectly* influencing the resource facilities and the ability to mobilize. This is where the possible combination of POS and RMT becomes apparent.

„Scholars have tended to study only one aspect [...] – for example, the effect of expanding political opportunities or the organizational dynamics of collective action. The challenge, of course, is to sketch the relationships between these factors.“

(McAdam/ McCarthy/ Zald 1996: 7)

Resource (mobilization) and opportunity structures are mutually dependent on each other and therefore have to be examined together. In order to establish the conditions and factors that enabled a successful transformation of the Marburger Bund, an additional third dimension has to be taken into consideration. There is a specific (perceived) timeframe for action. In this timeframe, the environmental conditions – the opportunity structure – and the actor's existing resources and their potential for mobilization coincide in such a way that the overall constellation for the chances of success of a course of action is evaluated as positive. In research, this timeframe is referred to as *window of opportunity*.

Kingdon introduced the window of opportunity concept in 1984 as part of his *multiple streams model* in order to explain the element of *agenda setting* in the *policy-making process*. Similar to the POS approach, the multiple streams model assumes that there are process levels or streams that are independent but related to one another. These streams exist permanently and change frequently. Therefore it depends on their respective constellation whether an *issue* will become a *policy* at a specific moment in time. Windows of opportunity describes a point in time or a timeframe at, or during which, the streams are aligned or compatible with each other. According to Kingdon, this window of opportunity can be used to successfully add a topic to the political agenda – as long as the actors recognize the existence of the window of opportunity. “The policy window is an opportunity for advocates of proposals to push their pet solutions, or to push attention to their special problems” (Kingdon 1995: 165). Recognizing and making use of the window of opportunity is the final necessary condition that enables the triad of POS, RMT and WOO to become an opportunity structure.

### 3. Findings

#### Vereinigung Cockpit

The association of airline pilots and flight engineers in Germany (Vereinigung Cockpit or VC), which represents the interests of the entire cockpit crew, takes a special place within the phenomenon of new labor union competition. Achieving an independent pay agreement by striking in 2001, it led the way for other professional associations (like those of doctors and train drivers). The high qualification and veto level of its members and the homogenous makeup of the membership were the foundations that contributed to the association's success.

#### *History and Development*

VC was founded in 1969 as a trade association for Lufthansa pilots. Since 2001, it has been representing the wage policy interests of 8,200 pilots but continues to refer to itself as a professional association. The majority of pilots that are VC members (approx. 70%) are Lufthansa employees. Its tasks focus on wage policy and influencing legislation, particularly in the areas of training, working conditions and flight safety. Cockpit also strives for a strong positioning in the field of operational and corporate co-determination. Organizationally, the association is only a federal association due to its low number of members and the relevance of less big airlines (with direct VC representation through the employee organization). The highest decision-making body is the annual general meeting. Wage policy negotiations and their preparation are the responsibility of the VC wage policy commission.

VC's membership numbers have been developing positively. Between 2000 and 2007 alone, the number of members grew from 6,000 to 8,200. The biggest increase (50%) coincides with the beginning of its independent wage policy (1999-2001). In 2006, the association achieved a level of membership of 80 to 90 percent, and even 95 percent with regards to Lufthansa Cargo (cp. Würfel 2001). This very high level of membership results in the claim to sole representation of pilots by VC, which is, however, not recognized by ver.di, even though ver.di hardly has any cockpit crew amongst its members (cp. Lesch 2008b: 151).

#### *Changing Sector*

The aviation sector has dramatically changed over the last two decades. Lufthansa reacted very hesitantly to the liberalization of the aviation industry, which already started in the mid 1980s. Given its monopoly status in a sector strongly regulated by the state, the company presumably hoped to be able to ignore certain developments or get by with a policy of "small steps". By concentrating on "technical excellence" instead of "commercial innovation", it soon fell behind its new, strongly market-oriented European competitors. In 1992, the step-by-step privatization of the aviation industry began to take its course, with the government gradually withdrawing as co-operator of airports and airlines. The interplay of its hesitant reaction to new market conditions, privatization and the beginning of the recession in the US in the 1990s, dramatically worsened Lufthansa's economic situation (cp. Lehrer 2001: 361f, 372ff). A significant reaction to this situation was Lufthansa's restructuring policy, including collective agreements on employment protection that put a particularly heavy financial burden on its highly skilled employee groups. Seifert (2001: 204ff, 424) cites earning losses through wage renunciations of around 30%. By outsourcing divisions, fully privatizing and turning into a corporation, Lufthansa managed to become profitable again in the years that followed.<sup>6</sup> However, competition within the industry continues to increase steadily, so that further restructuring measures and consequences for the workforce can be expected.

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<sup>6</sup> In 2006, Lufthansa's turnover was 19.8 billion Euros (profit: 803 million Euros), an increase of 77.3% compared to the previous year (Lufthansa 2008).

The developments described above particularly affected the professional status of pilots who felt increasingly demoted to “bus drivers of the skies”. This doesn’t just refer to the fact that pilots were no longer paid appropriate to their responsibility<sup>7</sup> and merit (cp. Range 2003: 90). It also refers to the fact that in the 1990s, pilots had participated in Lufthansa’s wage policy concessions during its restructuring phase, but were not rewarded when the company became more competitive again and the conditions in the industry<sup>8</sup> improved. Compared internationally, wages of Lufthansa pilots were approximately 27% below average (Kolf 2001: 19). For this reason, the VC demanded an average wage increase of over 30%.

### *Collective Bargaining*

From 1973 to 1999, the VC cooperated with the German Employees Union (Deutsche Angestellten Gewerkschaft or DAG), which represented the wage policy interests of pilots during that time. When it became clear that DAG would become part of the new labor union ver.di, Vereinigung Cockpit decided to reposition itself in terms of its organizational and wage policy. In the 2001 pay round, it didn’t strive for a cooperation agreement with ver.di, but for an independent wage policy position. In this collective bargaining round, ÖTV/DAG achieved a pay increase of 3.5% for ground and cabin crew. This result fell far short the pilots’ expectations and VC rejected applying this increase to cockpit personnel. As a result, VC negotiated independently with the company for the first time. However, the initial rounds of negotiation failed – the pilots demanded a wage increase of over 30%, Lufthansa was prepared to offer 8.7%. After several (warning) strikes, an arbitration process began led by the former foreign minister Hans-Dietrich Genscher. At the end of the negotiations, the parties agreed on a basic pay increase of 20% as well as variable profit sharing, which combined together constituted a pay increase of approximately 28% in 2001 (cp. Handelsblatt 2001: 5).

DGB labor unions criticized VC’s wage settlement, especially because of its eroding effect on solidarity (cp. Bispinck 2001: 424). In addition, cargo-pilots were paid significantly less than passenger-pilots – a differentiation that, following pressure by ver.di, has also been a discussion point for the VC wage policy commission since 2007 (Tarp 2007).

### *Opportunity-Framework*

VC’s wage policy success was not just down to organization-internal factors such as the high level of membership and its qualification-based veto power. The moment in time when it established itself as a wage bargaining power (1999-2001) is also characterized by a special opportunity structure that was of considerable importance for this success. The inception of ver.di – the biggest structural change to German labor unions since 1945 – had far-reaching effects on other actors. DAG, which had thus far been the negotiation leader for VC member pilots, was completely absorbed by the newly founded multi-sectoral labor union. VC itself emphasized that the founding of ver.di led to labor unions being “strongly occupied with their own problems” and, owing to a lack of reaction from other labor unions, this made the split from DAG relatively easy (cp. Sturm 2000). At the same time, the imminent fusion was worrying for the status-orientated VC amidst fears that its clientele’s concerns would go unheeded in the new union merger.

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<sup>7</sup> This responsibility is reflected in the trust that is placed in pilots. According to a Reader’s Digest survey in 2007, in a question about very/fairly high trust, pilots scored 93%, placing them just below firemen (94%), but above doctors (86%).

<sup>8</sup> While turnover growth within the aviation sector was still at 8-11% in the 1980s, in the 1990s it shrunk to 3-5% and then below 1% in 2001/2002. Since 2003, turnover growth has increased again to 9-10% (Stat. Bundesamt: Luftfahrtunternehmensstatistik).

The separation of the pilots was also furthered by the strategies of the Lufthansa management, who wanted to continue the low restructuring wage agreements from the 1990s, despite the fact that Lufthansa's financial situation had recovered. The pilots, on the other hand, did not see any reason to maintain restructuring contributions (cp. Bispinck 2001: 423f). Separating from ver.di created the necessary prerequisites for an independent wage policy. At the same time, VC moved away from its own solidarity and corporate based wage policy. Despite its wage policy successes, VC continues to consider itself mainly as a professional association and, to a lesser extent, a labor union.

## **Marburger Bund**

Marburger Bund (MB) is the professional trade association for employed and civil servant doctors in Germany and since 2006 it is also recognized as their labor union representation. Similar to the aviation sector described above, the health and hospital industry has been hard hit by organizational, economic and workplace-related processes of change and privatization measures, which also involve a change of the occupational image and a loss of status for doctors. To a certain extent, MB's move to become a wage bargaining power took course in the wake of Vereinigung Cockpit's successful establishment as a wage policy representative.

### *History and Development*

The Marburger Bund was founded in 1947 in Marburg/Lahn as "Marburger Gemeinschaft" in conjunction with the medical association. Its main goal was the improvement of working conditions, particularly with regards to working hours. Just one year after its inception, it split from the medical association and formed the bargaining union Marburger Bund (cp. Marburger Bund 2008). The association is made up of 14 regional associations. The small and large bargaining commissions decide on the measures of labor dispute, wage policy and the entering and cancellation of pay agreements. In comparison to the large labor unions, the Marburger Bund hardly employs any full-time personnel, with the exception of the executive secretary and the president of the federal association, the executive secretaries of the regional associations, a few lawyers and secretarial staff. The district associations are composed exclusively of volunteers.

Over the last forty years, MB was able to increase its membership from 17,000 (1967) to 107,000 (2011). Up to 90% of its members are employed in hospitals; the remaining members come from the outpatient sector, government agencies and private companies. Ver.di take a critical view of MB's membership structure: firstly, doctors could remain members even after their retirement (i.e. after their employment relationship has come to an end); and secondly, employed senior consultants also carry budgetary responsibilities, making them "[...] senior doctors in an employer function [...]" which does not comply with a labor union's prerequisite of 'freedom from opposition' and therefore renders the association unable to participate in collective bargaining (Dielmann 2006: 14). With overall 158,000 doctors working in hospitals in Germany, MB reaches a membership level of over 67% amongst hospital doctors (cp. Bundesärztekammer 2009: fig. 1).

MB's strong organizational and conflict capabilities are largely due to the doctors' considerable willingness to become organized (cp. Schmitt 1966: 17-84) and the high level of homogeneity of its membership, which cannot just be attributed to a long university education. The almost exclusively hospital-based employment of its members brings with it similar occupational situations, structures and problems. Furthermore, German doctors are connected by a "[...] a relatively strong ideological coherence against the background of liberal-conservative world views and similar sets of interests [...]" (Bandelow 2007: 284) and the common pledge of the Hippocratic oath. The result is a large for conflict and power

potential that can be leveraged in external relations. At the same time, there are considerable differences in income and status amongst the association members, reflecting the hierarchical structures in hospitals. MB's members encompass all employee groups from junior doctors to consultants, senior physicians and medical superintendents. The main conflict exists between the medical superintendents and other doctor groups. Medical superintendents find themselves in the middle of a structural clash of interests between solidarity with other doctors and corporate budget responsibility.

### *Changing Sector*

Since the mid 1990s, hospitals have also been increasingly confronted with processes that have changed the conflict and organizational conditions of employees and therefore led to a shift in MB's role. Firstly, the privatization of hospitals<sup>9</sup> meant that wage policy became a company-internal affair since private clinics cancelled public service pay agreements in favor of internal or group-wide pay agreements (cp. Böhlke/Schulten 2008: 25f). Secondly, the Health Care Structure Act (Gesundheitsstrukturgesetz or GSG) implemented in January 1993 led to a cap of hospital budgets and the introduction of per-case flat rates (treatments are remunerated according a flat-fee basis instead of the costs actually incurred) (cp. *ibid.*: 25; Simon 1997: 3f, 13f). The consequence of these two developments is, on the one hand, an increased financial pressure for employees as cost-cutting measures usually focus on staff costs, which make up 60% of the expenditure.<sup>10</sup> On the other hand, the common occupational image of the medical profession changed as the focus of hospital management shifted from the "latest scientific knowledge and the medically necessary" to prioritizing economic thought and action patterns. On top of medical tasks, employees were faced with continuously increasing amounts of administrative tasks such as cost and performance accounting as well as record-keeping obligations for medical insurance companies. As part of this administrative management type medical superintendents were tied in with their own budget responsibilities (cp. Simon 1997: 25, 45; Tödtmann 2005: 1).

The co-occurrence of pay cuts and administrative efficiency pressures contributed to a subjective loss of status by the doctors who felt that they were being degraded from "half-gods in white" to "skilled workers in healthcare" (Martens 2008: 20ff). In addition, cost control in the healthcare sector automatically leads to resource allocation conflicts as soon as one group tries to broaden its radius. Another contributing factor is the rise in doctors who work in an outpatient setting (rising from 92,000 doctors in 1990 to 158,000 doctors in 2009) (cp. Bundesärztekammer 2009: table 1). In this context, not only access to, but also career opportunities within the hospital hierarchy had been strictly limited. In addition, the alternative of setting up private practice had been relativized in the light of budget restrictions that were applicable in that area as well (cp. Busch/Stamm 2006: 17f).

It is especially the young doctors who feel the financial consequences of these developments. According to a study by DIW Berlin<sup>11</sup> (Spengler 2004), the monthly average net income of young, full-time employed doctors in the public service has decreased from 2,170 Euros (1993) to 2,009 Euros (2002); at the same time, the weekly labor time increased from 45 to 46.3 hours: this development equates to a reduction of their hourly rate from 12.10 to 10.8 Euros. Looking at all public service doctors together, their net income has increased, but not

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<sup>9</sup> The amount of publicly funded institutions decreased from 46% (1991) to 30.5% (2010). At the same time, the amount of private clinics increased from 15% to 32.9%.

<sup>10</sup> For example, the amount of official overtime (only official overtime was compensated) was greatly reduced. However, the number of actual extra hours worked did not change, as these extra hours were deemed necessary from a medical point of view or were considered appropriate to the employees' qualification level.

<sup>11</sup> The study was based on data from the official micro-census from 1993 and 2002.

because of a better hourly pay but because of an increase in working hours. According to a study by NERA, this means that German hospital doctors are at the lower end of the wage scale in comparison to other European countries<sup>12</sup> (NERA 2004: 6).

### *Collective Bargaining*

Since MB's inception, the association's activities have included wage policy. But because its right to participate in collective bargaining had been denied by ÖTV and employers, MB had to find a co-operation partner who could assert the association's interest on its behalf; for many decades, DAG was this partner. Through the cooperation agreement with DAG (1950), MB was able to influence wage negotiations and successfully participated in the collective agreement for salaried federal employees (Bundesangestelltentarifvertrag or BAT) from 1959 to 1961. In 1971, the first independent strike action took place in answer to the on-going conflict issue of working hours for doctors. MB rejected the step-by-step reduction in working hours – which had been accepted by ÖTV and DAG – and declared the collective bargaining negotiations had failed. This pressure resulted in the employers including MB in the next round of negotiations. In 1976, Marburger Bund, DAG and public sector unions and associations collective (“Gemeinschaft von Gewerkschaften und Verbänden des öffentlichen Dienstes”) split from ÖTV to form an independent wage negotiation league. This cooperation agreement lasted until 2001 when DAG was dissolved and absorbed by ver.di (cp. Marburger Bund 2008). But in contrast to the pilots, in 2001 there was not yet a separation of wage policy for doctors. The break between MB and ver.di happened during the time when pre-negotiations for the public service pay agreement (Tarifvertrag Öffentlicher Dienst or TVöD) took place. Marburger Bund considered the new pay structure a one-sided financial betterment of other occupational groups at the expense of doctors, because “doctor-specific interests were only insufficiently taken into consideration [by ver.di] in the public service wage negotiations” (Marburger Bund 2006: 9). The rise within the individual pay grades was no longer to be dependent on age and family status (seniority principle), but would be replaced by a performance-related evaluation of work experience and length of service. Special allowances in the form of Christmas and holiday bonuses were also to be reduced. Ver.di was generally open to co-operate with the employers on these points, which, from MB's point of view, made it impossible to continue working together (cp. Lindhorst 2007: 1). In June 2006, 14,000 doctors downed their tools to strike for an independent pay agreement. The Employers Association representing the federal German states (Tarifgemeinschaft deutscher Länder or TdL) was the first actor to give in. This was followed in the August by a pay agreement with the municipal employers after 17,000 doctors went on strike.

Ver.di criticizes the doctor's pay agreement, stating that the excessive wage demands put a strain on other occupational groups, leading to a loss of solidarity amongst employees and therefore promoting a division amongst employees. Ver.di further accuses MB of having achieved its excessive pay increase by effectively agreeing to longer working hours, which, instead of improving working conditions, has made them worse instead (cp. Dielmann 2006:14).

### *Opportunity-Framework*

In contrast to Vereinigung Cockpit, MB initially accepted ver.di as negotiation leader and only became independent in the autumn of 2005. There were several reasons for their separation: on the one hand, the sectoral changes of the ten preceding years had increased budgetary restrictions and performance requirements for doctors, led to an increase in administrative tasks and put pressure on wage developments. On the other hand, these

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<sup>12</sup> The wage range in Germany was 35,000-56,000 Euros in 2003. In comparison, France's wage range (2001) was 93,000-107,000 Euros (cp. NERA 2004: 5).

processes – in conjunction with a stronger growth of the number of doctors – led to fears about an increasing loss of status. In addition, doctors were discontent with the bad working conditions such as long working hours and overtime, and as of 2005, the prospect of further financial losses with the change from the BAT to the TVöD pay agreement. This proposed realignment of the wage and salary structure was probably the actual motivation for the decision to leave the collective bargaining collective. In September 2005, MB's general meeting voted to reject the TVöD pay agreement and revoked ver.di's authority to negotiate in order to demand an independent pay agreement for doctors under the slogan "BAT + 30%". This was preceded by a strike of assistant doctors who had been affected by overtime without compensation, particularly in university hospitals after some federal states had simply cancelled the current BAT pay agreement. MB harnessed this discontent and put itself at the front of the strike movement (cp. Busch/Stamm 2006: 17f; Martens 2008: 33).<sup>13</sup>

With its independent wage policy success in 2006, MB has moved significantly towards a labor union profile, but the association will continue to be occupation-orientated. Indicative factors are disputes with other hospital employee groups as well as the hierarchical organization of doctors. This insistence on remaining an occupation-based association is strengthened by the interest in maintaining its own status with respect to the other medical associations as well as by the longstanding tradition of strong professional medical associations. In his study of doctor strikes, Martens (2008: 47) also reaches the conclusion: "Its own profile is still blurry [...]", but the debate on how it could and should continue is in full swing.

### **Gewerkschaft Deutscher Lokomotivführer**

The German Train Driver's union (Gewerkschaft Deutscher Lokomotivführer or GDL) represents the interests of train drivers and, since 2002, also the interests of on-board staff. So far it is the last association to have successfully established itself as a new occupation-based union with an independent pay agreement. The labor dispute that led to its success in 2008 has to be highlighted for two reasons. On one hand, this conflict went on for longer than those in the aviation and hospital sectors, lasting for almost one year, fighting against employers and – more strongly than in the other two sectors – against the labor union Transnet, the dominant union in the rail sector. This conflict was to a great extent battled out in and via the media and so took place in the immediate public eye. The public dealt with this conflict in a fair manner – a phenomenon that had occurred in a similar fashion during the doctors' strikes (cp. Astheimer 2007). On the other hand it showed that a high veto and enforcement potential does not necessarily have to be based on a high level of qualification such as that of doctors and pilots.

#### *History and Development*

GDL was founded in 1867 as German Train Driver Association (Verein Deutscher Lokomotivführer or VDL) to provide support to train drivers in need as well as their families. Later on, the focus shifted towards occupation-orientated lobbying. When it began to carry out labor union work, the association's name was changed to German Train Drivers Union ("Gewerkschaft Deutscher Lokomotivführer" or GDL). As a type of occupation-orientated labor union that held its ground against the sector's big labor union "Gewerkschaft der Eisenbahner Deutschlands" (GdED), GDL was one of the exceptions in the German labor

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<sup>13</sup> Another factor was the very high public appreciation for doctors. On the "job prestige scale", doctors consistently rank number one by a long way. Whilst their prestige decreased slightly between 1991 and 2005, it increased (after the successful doctors' strikes) by 6% in 2008 (Institute for Opinion Research Allensbach).

union model (cp. Streeck/Seglow/Wallace 1981: 315). Another particularity is the dominance of East German functionaries within GDL. Since 2008, the association's three most important top-level functionaries are from East German federal states. GDL has been a member of the German Civil Servants Association "Deutsche Beamtenbund" (dbb) since 1948, which led to a situation during the wage dispute where the dbb supported better pay for train drivers on one side (and in case of any strike action would have had to support them with strike benefits) and on the other side rejected GDL's actions because they lacked a sense of solidarity (cp. Die Welt 2007; Tenbrock 2007: 4).

GDL is the smallest of the three labor unions in the rail services.<sup>14</sup> Within Deutsche Bahn, GDL achieves a level of membership of 80% amongst train drivers and approximately 33% amongst on-board staff (cp. GDL 2008). All in all, GDL represents around 35,000 members. However, due its history as a civil servants' union, a large number of its members are pensioners (up to 50%). In the course of the 2007 strike, GDL was able to recruit 1,000 to 2,000 new members or poach them from Transnet (cp. Der Spiegel 2007). The association's nimbus achieved through the strike led to a subsequent membership growth from regional transport companies such as the Berlin Transport Association (Berliner Verkehrsverbund).

### *Changing Sector*

A crucial part in understanding the wage dispute is the EU-driven liberalization of the railway sector. As a result of the deregulation the privatization of the Deutsche Bahn started in 1994. Back then, the transformation began from a state-owned large business focused on national public services into a profit-oriented, internationally focused corporation. In contrast to the postal labor union – which in the 1980s made far-reaching, strategic considerations in order to prevent the process of privatization and economization of the post and telecommunications sector – Transnet constructively supported this privatization strategy and tried to co-design the company's restructuring in a socially acceptable manner (in terms of comprehensive job security). GDL saw this cooperation, which was also reflected in the close personal relationship between Bahn boss Mehdorn and Transnet's chairman Hansen, as "wheeling and dealing" with the employer (cp. Müller/Wilke 2008: 29). This cooperation led to a linking of wage, industry and privatization policy. Over the course of 13 years, extensive job losses ensued with an estimated 250,000 jobs being cut, which constituted a halving of Deutsche Bahn's workforce between 1994 and 2007 (cp. Krummheuer 2007: 10). At the same time, Deutsche Bahn thinned out its rail network to make it more profitable and invested in markets that seemed to prosper, such as long distance routes and international logistics. The aim was for the company's full privatization to coincide with its floatation on the stock market planned for 2008. However, numerous social groups grew skeptical and opposed this. On top of sectoral changes, there was also a shift in the actor constellation of labor unions within the rail sector. After the German reunification, GDL was more successful than other rail unions in integrating employees in East Germany<sup>15</sup>. The salaried colleagues from the East represented a new resource for GDL's fighting abilities, which in 2007 would form the basis for its path towards wage policy independence.

### *Collective Bargaining*

The constellation of actors within the rail sector is characterized by three labor unions. Since 1945, GDL had repeatedly sought recognition as a collective bargaining power, but failed to achieve this due to resistance from Deutsche Bundesbahn. In 1963, GDL merged with the

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<sup>14</sup> Transnet: approx. 240,000 members (DGB member statistics 2007), of which approx. 100,000 were employees of Deutsche Bahn AG. GDBA: approx. 50,000 members.

<sup>15</sup> In contrast to other labor unions, GDL mainly focused on setting up new local groups and founded a new local GDL association, which it merged with in 1991 (cp. Doll 2007; Müller/Wilke 2006: 35).

Christian Rail Workers Union (Christliche Eisenbahnergewerkschaft or CGDE) and the German Public Service Rail Workers and Trainees Union “Gewerkschaft Deutscher Bundesbahnbeamter und -anwärter” (GDBA) (which was part of dbb) to form the collective bargaining union TGM (cp. Müller/Wilke 2006: 271). This was possible because GDBA – in contrast to GdED (since 2000 Transnet) – didn’t constitute a competitor for GDL whose membership, at that moment in time, was limited to train drivers and did not include on-board staff (cp. Streeck/Seglow/Wallace 1981: 313). Although GDL was allowed to be part of wage negotiations, its actual influence on pay agreements was only marginal. Bahn’s first point of contact was GdED, which meant that the outcome of the wage negotiations was already pre-structured, leaving GDL with little room for maneuver. Ultimately, a joint pay agreement was always agreed upon (cp. Müller/Wilke 2006: 248). The TGM union lasted until 2003 when GDBA joined Transnet (since 2005 a collective bargaining union) (cp. Frankfurter Rundschau 2007).

The so-called “DB Regio-Ergänzungstarifvertrag” from October 2002 provided the trigger for GDL’s first attempt at demanding an independent pay agreement. GDL was not willing to accept the conditions of this supplementary pay agreement, which included job security in return for unpaid extra work. There was also open opposition from Transnet and GDBA members against the pay agreement, which had already been signed by their union leaders. After GDL irrevocably rejected the agreement and some members had left Transnet to join the train drivers union, Transnet’s management board distanced itself from the outcome of its own negotiation. This was followed in 2004 by GDL’s attempt to establish an independent occupation-specific pay agreement for on-board staff. With a warning strike and a subsequent arbitration ruling, GDL was able to enforce a “separate annex to Bahn’s rate structure” for train drivers, which allowed re-examination, but failed in its attempt to create a separate agreement. By joining the industry-wide pay agreement “Flächentarifvertrag Schiene” one year later, GDL continued to be responsible for all issues related to train drivers, but had to take a subordinate role to Transnet as lead negotiator – a mistake that it wanted to rectify with the new round of wage negotiations in 2007 (cp. Müller/Wilke 2006: 30, 257, 279-287).

In 2007, GDL approached Deutsche Bahn AG as an independent wage bargaining actor from the beginning. Its demands were summarized in a pay agreement for on-board staff that wasn’t in line with Transnet’s wage goals. The demand for a pay increase of up to 30% and the intense and personified conflict constellation between Bahn’s boss Mehdorn (stock market launch without consideration) and GDL’s chairman Schell (enforcement of a separate pay agreement by any means) lead to months of struggle. The fierce resistance was therefore not just down to the GDL’s high demands but also the chosen moment in time (flotation on the stock market). GDL repeatedly resorted to industrial action while Bahn’s board of directors involved the labor court several times in order to clarify the GDL’s right to strike action, before an agreement was finally reached end of 2007 / beginning of 2008 (cp. e.g. Kazim 2007). GDL was able to enforce an independent pay agreement for train drivers with a pay increase of 11% over two stages, but had to dispense with the right to represent on-board staff. The question of whether the right to represent shunting locomotive crew lies with GDL or Transnet also remained unsolved at the time (cp. Der Spiegel 2008; Handelsblatt 2008: 5). Therefore, the behavior of GDL’s leadership was – as was that of the Marburger Bund – focused on establishing an independent labor union (cp. Keller 2008b: 57).

### *Opportunity-Framework*

The opportunity structure that contributed to GDL’s establishment as an independent wage bargaining power after almost a year of controversy with Bahn AG constituted three main aspects. Firstly, there was Transnet’s policy, defined by a close cooperation with Bahn’s

management and a lack of commitment to modernize pay agreements (facilitation of special concessions for situations and groups within the framework of existing pay agreements). Secondly, the public was largely skeptical about the negative consequences of privatization and stock market flotation and was of the opinion that the wages of German employees had not been adequately increased compared to increased profits and workload. Against this background, GDL was not only able to recruit new members but could also partially justify its demands to the public. Throughout the duration of the strikes, it was able to achieve an overwhelming public acceptance, which grew even stronger over the course of the conflict.<sup>16</sup> One contributing factor was that train drivers, in contrast to doctors and pilots, do not belong to high-earning occupation groups.<sup>17</sup> Thirdly, the privatization policy of Bahn's board of directors led train drivers to see themselves as the losers of a development that would not only lead to financial losses by way of job-securing pay agreements but would also lead to a loss of status. The fear of being demoted to "rail truckers" explains the vehemence and dismay with which they fought for their demands. GDL's perseverance was not only inspired by the desire for better working conditions and pay, but also by the aim of securing its independent organizational existence (preservation of the status quo) as well as expanding it (strengthening) (cp. Keller 2008b: 56).

As the analysis of the three scenarios has shown, becoming an independent wage bargaining power had been a primary, long cherished organizational goal for all three associations and took precedence over other competing goals. At the same time, a number of obstacles had to be overcome along the way. Important opportunity structures were necessary in the context of which the associations were able to establish themselves as independent collective bargaining actors.

#### **4. Discussion and Conclusions**

The emergence of occupation-specific unions is neither arbitrary nor cogent. The specific constellations in which the professional associations examined here managed to establish themselves as independent wage bargaining collectives show that their successes were very much dependent on certain prerequisites (cp. e.g. Keller 2008a: 164; Müller-Jentsch 2008: 62; Lesch 2008b: 147). One crucial aspect of these demanding preconditions is an established organizational base that can make recourse to well-founded material resources and ideological commonalities. In addition, small and homogenous employee groups are more willing to organize themselves and get involved in the association. With this in mind, a larger concurrence of interests can be assumed compared to heterogeneous groups (Olson 1965: 29, 34). All three associations examined have a comparably high level of membership. They are able to offer individual goods to their members, which are a direct incentive for membership (ibid.: 130-133). Due to this high level of membership, the associations can, under certain circumstances, transfer the key position of representing employees in the work process to a high conflict ability of the association. The number of existing associations and employee groups with a similarly high potential is small, limiting the number of possible imitators. Another factor is that all three associations can look back on a long organizational history, including long stretches of playing a passive role in wage negotiations (in terms of allied

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<sup>16</sup> At the beginning of October 2007, 57% of people were empathetic to the train drivers' strike. In November, this number increased to 66% (and amongst people directly affected by the strike, the number was even higher at 71%) (Infratest dimap: DeutschlandTREND 2007).

<sup>17</sup> With a gross hourly rate between 19.60 and 21.77 Euros (2006), train driver incomes are only just above the average income of 19.70 Euros (for example, the average income in manufacturing is 25.15 Euros). (Brenke et al 2007: 622).

associations). This meant that the associations benefitted from sophisticated procedural knowledge about wage policy, even before their establishment as labor unions, which eased their way into wage policy activities.

On their own, these prerequisites cannot serve to explain the transformational process from professional association to collective bargaining union. After all, these structures have existed in similar constellations for several decades. At the same time, whilst the comparison of the three occupation-based unions has shown that similar circumstances played a decisive role in their decision to become independent wage bargaining powers, it is the particularities of each case that are respectively responsible for the specific conflict dynamics. In this respect, evaluations judging it “unlikely that there will be many imitators in the short term” (Bispinck/Dribbusch 2008: 162) are plausible, because “a larger trend for the formation of occupation-based unions is hindered [...] by legal and organizational obstacles” (Lesch 2008b: 147). For this reason, the following section addresses the similarities and differences of these cases that can be classed as opportunity structures. Based on the case studies at hand, there are several noteworthy findings that can be identified as similar preconditions in the examined transformation process:

- Occupation-orientated employee associations and occupation-specific labor unions gain momentum when the traditional job profiles of these employee groups are devalued in the course of sectoral and business structure changes or technological changes.
- Competitive outbidding by professional associations can be predominantly found in government-related sectors. Comparing the successes of VC, Marburger Bund und GDL, it becomes apparent that these examples of successful competitive outbidding took place in companies that were increasingly subjected to changes resulting from their transition from state-owned to private companies and because their sector was being liberalized. As part of this, not only the sector itself changes, but with it the job profiles and the position and status of individual occupational groups.
- Wage policy and collective bargaining competition can be predominantly found in highly qualified employee groups as they are harder to reach because of the representation logic of a single consolidated union – especially when they have the impression that their distributional scope cannot be fully exploited over longer periods of time.

The insights gained in this paper show that not many other occupational groups are expected to dare the move towards wage policy independence and to be successful with it. It was only because of their very specific circumstances and conditions that Marburger Bund, Vereinigung Cockpit und GDL were able to transform themselves from occupation-orientated professional associations into occupation-based labor unions. These circumstances cannot be easily transferred to other occupation groups or professional associations. Instead, the preconditionally dependent transformation process can be seen as evidence that the unionization phenomenon is an exception to the rule. A change of the entire German system of industrial relations is far from likely. Based on the latest findings, an extension of the phenomenon to professional associations in other sectors and especially the core areas of the German model is not the case (cp. Schroeder/ Kalass/ Grief 2011: 272f).

Nevertheless, the occurrence of further competitive outbidding by trade associations cannot be ruled out categorically, as the example of the aviation sector demonstrates. Following on from Vereinigung Cockpit pilots, other occupation groups tried to establish themselves as occupation-based labor unions. Although the success of the professional associations Unabhängige Flugbegleiter Organisation (UFO) and Vereinigung Boden (VB) was limited, it contributes to the exacerbation of the conflict constellation (cp. Grief 2009: 70f). For DGB labor unions, this finding means that they have to take the developments surrounding

Marburger Bund, GDL, et al seriously. In this context, closer attention and a more sensitive approach to professional interests, particularly – but not exclusively – with regards to highly qualified employees seems to be indispensable.

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