

# German Legal Order to Strike —Analysis of the Background of Judge-Made Law 1950-1980

*Chia-Ho Lin*

College of Law, National Chengchi University  
No. 64, Sec. 2, ZhiNan Rd., Wenshan District, Taipei 11605, Taiwan  
E-mail: bubupapa@nccu.edu.tw

## Abstract

In the absence of any statute, the legal framework governing the legality of striking in West Germany was determined entirely from judge-made law, known of prejudication. The question was not settled through the usual give and take of social actors—including trade unions—that typically shapes legislation subsequently interpreted by the courts. Instead, the court, not the legislature, established the legal order governing the right to strike in Germany. Three important decisions by the German Federal Labor Court, in 1955, 1971, 1980, can be seen, today, as major contributors to German law on strikes, though the influences of different social actors can also be observed. As social actors, labor and capital, are likely to play an important role in shaping industrial affairs, as is the growing importance of economic globalization. Should the old legal order governing industrial action be maintained, new judge-made law be accepted, or should a new legal order be adopted through the legislature?

**Key Words:** German Labor Law, Strike, Labor Court, Trade Union Movement