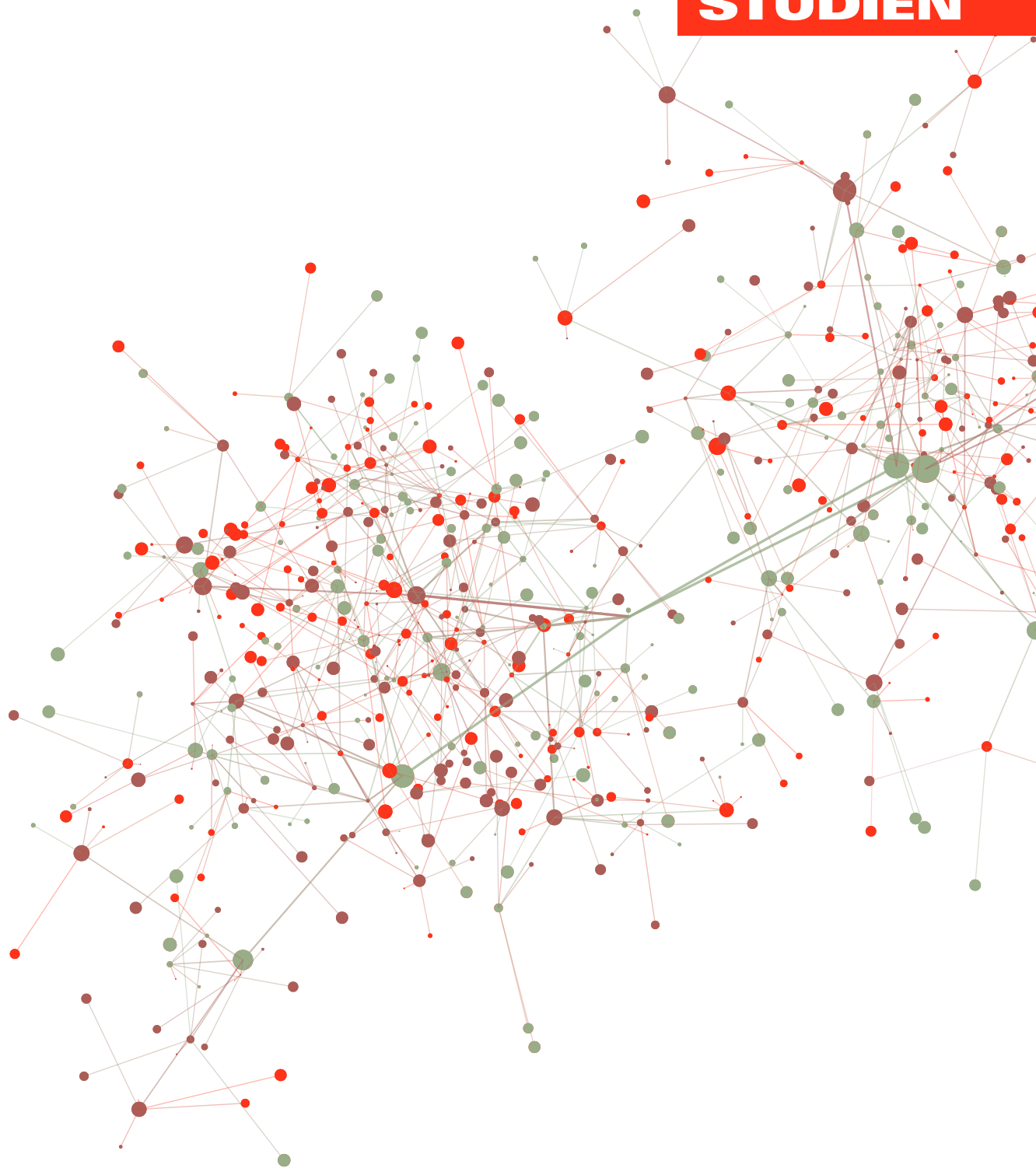


STUDIEN

ROSA LUXEMBURG STIFTUNG



LUCY REDLER

OUR HEALTH, THEIR PROFIT?

CASE STUDIES ON UNION BUSTING
BY HEALTHCARE CORPORATIONS
AND TRADE UNION RESISTANCE

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FOREWORD

The outbreak of the global coronavirus pandemic has dramatically placed the issue of health right in the very centre of our attention. The vulnerability of our own health, as well as the health of people in at-risk groups, became the decisive topic in politics, the media, and in discussions with friends and neighbours almost overnight. But it also quickly became apparent that such medical dangers are essentially linked to the capacity of the health system—to whether, for example, sufficient protective equipment is available, but above all to whether hospitals and nursing homes are equipped with enough beds and staff to provide decent care. It quickly became clear that chronic staff shortages were making it impossible to deal with the increased numbers of patients. But the lack of material resources, such as ventilators or laboratory capacity, was also apparent. The problems and crisis-ridden developments that have unfolded in hospitals and nursing homes in recent years have now been exposed as if under a magnifying glass. We are currently witnessing how cost pressure and incessant cost cutting in the healthcare sector is costing human lives all over the planet. Wherever equipment spending is cut, capacities are decreased, and especially where staff numbers are reduced, not only are working conditions catastrophic, but the very provision of healthcare itself is at risk of collapse: this is true during a crisis as well as under ordinary circumstances.

If we contrast this woeful situation with a different reality, the causes of the problem emerge: in 2019, health companies such as Orpea, Korian, and Fresenius made profits in the millions and sometimes even in the billions. While the provision of healthcare is trimmed for efficiency and cost reductions, multinational, publicly traded companies record profits that they hand on to their shareholders. The dangerous

cuts in the healthcare sector, which have become evident in the present crisis, are thus a result of turning healthcare into a business. For years, health and care services have been transformed into a lucrative market where private companies now compete, sometimes employing extremely questionable methods, for the largest slice of the pie. This is the situation that the present study sheds light on: by investigating the business strategies of four significant, global healthcare companies, it demonstrates how their business model functions at the expense of their staff, and how they systematically attempt to repress and destroy union structures, or do not even allow them to develop in the first place. But the study also shows how workers are not letting this happen without putting up a fight. On the contrary, unions and workers are grasping the increasing influence of private companies and the market-based reorganization of the public health sector as one of the primary sites of social conflict.

The present study not only offers insights into the struggles in the healthcare sector. It also reveals the necessity of putting a stop to privatization and commercialization, and of turning the healthcare sector back into publicly funded, democratic, and social infrastructure. Understanding how the business models of the big players impact the healthcare market makes it possible to identify where to attack and where to intervene, in order to hinder further profiteering from healthcare. With this study, we aim to encourage people to participate in union and civil-society struggles towards a healthcare system that is needs-based and democratically controlled.

Julia Dück, Senior Fellow for Social Infrastructure and Connective Class Politics, Rosa-Luxemburg-Stiftung Berlin, November 2020

SUMMARY

European healthcare companies are aggressively hunting profits and going on shopping sprees. They are buying up other businesses the world over and in doing so they are increasingly changing the healthcare sector as a whole. This often has devastating consequences for workers and patients. There is a total lack of internationally binding social and employment standards. These companies base their business model on maximizing profits. This turns health itself into a commodity and, as we have seen with the coronavirus pandemic, is leaving older people, the chronically ill, and low income earners in the lurch. These changes are by no means new, but the capitalist colonization [Landnahme] of the healthcare sector is taking on new forms. The influence of financial investors from outside the sector¹ on these private companies is continually exacerbating the contradiction between the need for a healthcare system based on the needs of workers, patients, and those in need of care, and the conditions of the healthcare sector in contemporary capitalism.

The present study demonstrates how multinational corporations are increasingly relying on mergers and take-overs (market concentration), diversification of services, and international expansion, in order to maximize profits. A new trend can be identified in the growing number of companies and health and care facilities that have been taken over by private equity firms, which one of the experts cited below describes as the being on “the cutting edge of finance capitalism”.

Private hospital chains and care companies treat union codetermination, collective bargaining agreements, and decent wages and working conditions as a competitive disadvantage, which has led to circumventing collective agreements and social dumping in many cases. As in the healthcare sector overall, workers are overwhelmingly female, and many are immigrants, quite a lot of them work part-time, and the level of union membership is often low. As was already clear, staff shortages lead to higher levels of stress among employees and to health problems and complications for patients and nursing home residents. Turnover among healthcare staff is high due to tough working conditions and inadequate appreciation of their work. A lack of transparency in corporate structures and in the division of responsibility also makes the implementation of collective agreements and

standards even more difficult. The oft-proclaimed goal of corporate representatives and politicians to increase remuneration for care and health work has failed to materialize.

As this study proves, union avoidance or even union busting² tactics are by no means the exception for these companies; indeed they often form part of their very business model. How successful they are in employing such tactics depends on the strength of the unions, legal regulations, and the business strategies of the company. The author concludes that it is no accident that businesses dominated by private equity firms often engage in union busting, not least because sooner or later they will want to sell the business as a profitable one. But international, publicly traded companies in the healthcare sector also intimidate workers active in unions, threaten lay-offs, bribe and in many cases even surveil their employees. Their goal is either to avoid unions and the representation of workers’ interests, or else to limit the effectiveness of existing collective bargaining agreements.

This has repercussions not only for employees in the companies concerned, but also for working conditions and wages in the public sector. Thanks to higher collective bargaining coverage, German, Italian, and Belgian unions are generally in a better position compared with their counterparts in Central and Eastern Europe, the USA, or in the Global South. In countries such as Poland or in the Global South, the arrival of such businesses constitutes a challenge that the unions, often recently established and already struggling with the hollowing out of workers’ rights, are unable to meet with their own resources and means.

But the possibility of doing so lies in stronger international networking between militant union activists, working in coordinated global campaigns for higher wages, better working conditions and standards of care; in effective, conflict-oriented approaches to organizing; and in the politicization of conflicts and disputes in the healthcare sector through the creation and involvement of new social alliances. The expansion of a few firms into Central and Eastern Europe entails serious challenges, but also new possibilities for constructing a lively and militant international union movement, and of creating, with the help of activists and social movements, a new kind of class politics, one dedicated to the issue of care.³

¹ The author does not accept views that distinguish between “good” capitalists and “evil” investors. Capitalism as a whole continually comes up against the limits of valorization for the huge masses of accumulated capital. By its mediation through actors in the financial markets, “capital” is always searching for new investment opportunities, in whatever sector. The duration of particular investments can therefore vary considerably. ² Union busting and union avoidance are explained in chapter 2. ³ Care has a variety of meanings. In the present study it primarily refers to professional care provided to the ill and the aged.

INTRODUCTION

"I cannot work as badly as I'm paid."

Slogan on the cardboard sign of an Ameos employee at a demonstration in February 2020

"If I was sitting with the board in Germany, I would tell them that all my co-workers and I think of the patients first. We're there for patient care. And it feels like Fresenius's main priority is profit and it seems like it comes before patient care."

An employee at Fresenius Medical Care in New York City in May 2017⁴

Private companies in the healthcare sector are nothing new. Yet due to expansions and internationalization, the influence of multinational corporations is growing, both in clinical contexts and in long-term care. The market share of private providers is increasing, competition is becoming more fierce, and employees are continually facing new challenges in the workplace.

Work for this study took place in the midst of the outbreak and spread of the coronavirus pandemic in 2020. The pandemic made manifest and also intensified existing problems such as staff shortages in hospitals and nursing homes. The global impacts of the pandemic fundamentally call into question the neoliberalization and austerity measures in the healthcare sector of the last few decades. Given that a significant amount of coronavirus fatalities to date have occurred in nursing homes,⁵ calls for more staff and better work and care conditions are finally being heeded. But the question of the function of healthcare facilities and of adequate forms of ownership is also being posed anew: how can people be nursed back to health or cared for with dignity? How can we ensure that hospitals and care facilities can counteract social inequality, rather than reproducing and even exacerbating it? And why should hospitals and care facilities be allowed to make profits in the first place?⁶

Even during the Corona pandemic, many companies continued to pay out dividends and sought new ways to make profits. Multinational corporations in the healthcare sector are not going to do anything to change their profitable business model unless they are forced to do so by massive political and union pressure. Their business strategies have impacts on the working conditions and wages across the entire healthcare sector. In order to discuss possible courses of action for unions and social movements in their conflicts with these corporations, it is important to have some knowledge of current trends in the private healthcare markets, and of prevailing business strategies, including how they deal with employees and unions.

This study aims to analyse these market trends and business strategies and to evaluate them from a union perspective. What influence do they have on employees, and what role does union busting play in companies' striving for higher profits? What possible courses of action and strategies for unions emerge from the results of such an investigation?

These questions are answered through four case studies: the globally active DAX-listed company Fresenius, the two major long-term dependency care companies Orpea and Korian, and the hospital company Ameos, whose majority shareholder is the private equity firm The Carlyle Group, headquartered in the USA. Carlyle is active in healthcare internationally. Since its founding, it has invested more than 11 billion US dollars in healthcare businesses.⁷ With Fresenius and Ameos, the study covers two corporations that also run hospitals. With Korian and Orpea, two corporations whose primary activity is long-term care are examined.⁸

Fresenius, Korian, and Orpea were chosen on the basis of their international growth and their dominant market position. The three corporations are leading multinational, publicly traded companies, whose investors include BlackRock, the Allianz insurance group, and Canadian pension funds. With Fresenius Medical Care (FMC), Fresenius is global market leader in dialysis products and services and with Fresenius/Helios it is the largest private hospital operator in Europe. Orpea and Korian are the two market leaders in the aged care sector in Europe. Fresenius is active on all continents, while Orpea is expanding from Europe into Latin America and Asia, and Korian has spread within Europe. While Ameos can only be defined as a multinational corporation in a limited sense, being present in only three European countries, it was chosen as a case study because it is a good example

⁴ New York State Nurses Association RNs and 1199 SEIU Healthcare Workers, "On Fresenius", video, 28 May 2017, <https://www.nysna.org/blog/2017/05/28/video-nysna-and-1199-fresenius#.Xs4Y8ndul2w> (last accessed 26 June 2020); citation from Peggy Vujovich from 4:38. ⁵ According to the Robert Koch Institute, at the end of April 2020, a third of all deaths from Coronavirus occurred in nursing homes. Heinzle, Christoph, "Robert Koch-Institut: Ein Drittel aller Corona-Toten in Heimen", 21 April 2020, <https://www.tagesschau.de/investigativ/ndr/corona-zahlen-heime-103.html> (last accessed 26 June 2020). ⁶ See for example Prantl, Heribert, "Kein Abschied von den Listen", *Süddeutsche Zeitung*, 10 April 2020, <https://www.sueddeutsche.de/politik/coronavirus-gesundheitswesen-kommerzialisierung-1.4873867?reduced=true>; Heine, Hannes, "'Profite Pflügen Keine Menschen!': Berliner Klinikpersonal Demonstriert gegen Missstände im Gesundheitswesen", *Der Tagesspiegel*, 17 June 2020, <https://www.tagesspiegel.de/berlin/profite-pfluegen-keine-menschen-berliner-klinikpersonal-demonstriert-gegen-missstaende-im-gesundheitswesen/25925932.html>; ver.di, "Gesundheitspolitik: Der Fehler Liegt im System", interview with Grit Gender, <https://gesundheit-soziales.verdi.de/themen/gesundheitspolitik/++co++b1907aba-a4ca-11ea-b737-001a4a160100> (all links last accessed 26 June 2020). ⁷ Carlyle, "The Carlyle Group Invests in One Medical, the Largest Independently Held, Technology-Enabled Primary Care Practice in the U.S.", press release, 22 August 2018, <https://www.carlyle.com/media-room/news-release-archive/carlyle-group-invests-one-medical-largest-independently-held> (last accessed 26 June 2020). ⁸ In the following, Orpea and Korian are called care companies for the sake of simplicity. As explained in the company profiles (see sections 3.1 and 4.1), they do not only run nursing homes and offer outpatient care, they also run rehabilitation centres, and in the case of Orpea, psychiatric wards too.

of the growing influence of private equity firms in the healthcare sector. Another reason for the choice was that, as with the other corporations examined here, there have been repeated cases of union busting and union avoidance at Ameos.

Company reports and press releases were consulted in order to gather new insights. In addition, interviews were conducted with employees, active union representatives, volunteer and full-time unionists and other experts, and reports by unions were analysed. In the process, there was extensive international exchange and much discussion with union secretaries from UNICARE, UNI Global Union, and their member unions.⁹ The reports and interviews elucidate and contrast aspects of the results found in the company reports and illustrate some experiences of, as well as possibilities for, taking union and political action against union busting and union avoidance tactics. Quotations from discussions with employees who wanted to remain anonymous were given a codename made from the first letter of the company's name followed by a number.

The study is structured as follows: the first chapter offers an overview of healthcare markets, in which

the four private companies in question are attempting to generate profits and to expand. Union codetermination and collective bargaining agreements are considered as costs by the corporations; hence, the second chapter examines the union-busting and union-avoidance strategies they employ. In the case studies (chapters 3 to 6), the corporations selected for the study are presented, and their business models (market strategies, wages and working conditions, and how they deal with unions) are analysed. In chapter 7, these models and practices are compared and their similarities and differences illustrated. Moreover, the study investigates what relationship exists between a company's business strategies and how it deals with employees and unions. The conclusion discusses the possible courses of action that the study's results suggest for unions working within multinational hospital and healthcare corporations.

The impacts of the present coronavirus pandemic on corporate business strategies in the healthcare sector could only partially be taken into account, as they were not fully discernible at the time the study was completed.

⁹ UNI Global Union is an international federation of unions representing more than 20 million service sector employees from over 150 countries. See UNI Global Union, "About us", <https://uniglobalunion.org/about-us-0> (last accessed 17 December 2020). The UNICARE division represents two million employees at facilities run by private health and social security companies. See the above link.

1 THE HEALTHCARE SECTOR AS A LUCRATIVE INVESTMENT

In this chapter, first I briefly show how the healthcare sector became an attractive market for profit-oriented corporations. Then three significant trends in this market are described. First, I show how these corporations capitalize on an ageing society and on medical and technological progress. Second, I discuss the processes of privatization and concentration in the healthcare sector. Third, I investigate the extent to which this is linked to a marked increase in the number of takeovers of healthcare companies by private equity firms. This represents a particularly profit-driven form of market concentration.

1.1 THE RATIONALIZATION OF HEALTHCARE

It is no accident that private corporations are making a lot of money off health and ageing.¹⁰ It is due to both the rationalization of healthcare and an over-accumulation of capital, which in today's global economy is always seeking new investment opportunities. In Germany, the rationalization of hospitals and their integration into capitalist markets essentially took place in two steps: first, from the mid-1980s through the abolition of the *Selbstkostendeckung* (full cost coverage)¹¹ model and of the prohibition on hospitals turning a profit; second, from 2004 through the introduction of the *Fallkostenpauschalen* (flat rate per case, or Diagnosis Related Groups/DRG) model.¹² These reforms laid the foundations for the existence and massive expansion of private companies in the healthcare sector. The entry of private corporations into aged care was also politically supported by the federal government. With the introduction of statutory nursing insurance in 1995, private, non-profit, and public providers became equal, which increased competition between private and non-profit providers and ended the decades-long dominance of the latter.¹³ Political planning for needs-based structures was completely abandoned. As a result, private multinational corporations in aged care obtained profit-turnover ratios¹⁴ of up to 17 percent, a level that industrial corporations could only dream of.¹⁵ It was not just in Germany that governments developed a healthcare market in the wake of the neoliberal offensive. This also took place in other European countries.¹⁶

The second factor mentioned, increased capital accumulation, resulted from both higher productivity and the increased exploitation of wage-earners, and lower corporate investment levels in the so-called real economy (over-accumulation crisis), which manifested in increased privatization and a bubble in global financial markets.¹⁷ New regulations in the healthcare sector as a result of rationalization open up lucrative new fields of business. The three trends described below do not claim to be an exhaustive presentation, but shed light on crucial changes.

1.2 DEMOGRAPHIC SHIFTS (TREND 1)¹⁸

Demographic prognoses play a central role in the corporations' economic considerations regarding expansion into the healthcare market. In Germany alone, the number of people in need of aged care is slated to reach 3.5 million by 2030 (a 33 percent increase from 2013).¹⁹ According to Orpea, between 2017 and 2050, the over-80 age bracket will grow by 96 percent, which means an extra 100,000 beds will be needed by 2025. For China and Brazil, the increase in the need for beds is estimated at 330–335 percent.²⁰ As a result, long-term care is becoming an attractive investment market for major investors on the hunt for high returns.

New therapies and treatments in the course of medical progress, as well as an increase in multiple illnesses (multimorbidity) and chronic illnesses, mean that corporations are set to make high profits. In its company report, Fresenius estimates the global market for dialysis products and services to be around

¹⁰ See the turnover and profit figures in the profiles of each corporation below, sections 3.1, 4.1, 5.1, and 6.1. ¹¹ A model of funding hospitals by a mix of per diem fees, which were paid for by patients' health insurers, and public funding. ¹² Krankenhaus statt Fabrik, *Das Fallpauschalensystem und die Ökonomisierung der Krankenhäuser: Kritik und Alternativen*, Maintal 2020, p. 19ff. ¹³ See Naegelge, Gerhard, *20 Jahre Verabschiedung der Gesetzlichen Pflegeversicherung: Eine Bewertung aus Sozialpolitischer Sicht*, report for the Friedrich-Ebert-Stiftung Department of Economics and Social Security, Berlin 2014, p. 33ff., <https://library.fes.de/pdf-files/wiso/10541.pdf>; Auth, Diana, "Politikfeld 'Pflege'", *Aus Politik und Zeitgeschichte* 33–34/2019, pp. 4–11, <https://www.bpb.de/apuz/294916/politikfeld-pflege>; the Left party faction in the German Bundestag, "Antrag, Bürgerinnen- und Bürgerversicherung in der Pflege – Solidarische Pflegeversicherung einführen", Bundestags-Drucksache 18/5110, 10 June 2015, pp. 4f., <http://dipbt.bundestag.de/doc/btd/18/051/1805110.pdf>. ¹⁴ The profit-turnover ratio is the share of profits in relation to the turnover during a certain period of time. It can be used to deduce how much profit a company earns per single euro of turnover. If the profit-turnover ratio is at 17 percent as in the above-mentioned example, the company has earned 17 cents profit per euro of turnover. In the present study, the profit-turnover ratio refers to the result obtained before interest, taxes, depreciation, and amortization (the EBITDA margin). Here and in the following, the ratio is adjusted to the International Financial Reporting Standard 16 (IFRS 16). This is an international accounting standard from the International Accounting Standards Board (IASB), which is used to regulate the balancing of lease agreements. On 1 January 2019, it replaced the International Accounting Standard 17 as well as the interpretations IFRIC 4, SIC 15, and SIC 27. The main change in the new standard is the fact that it requires "that leases be placed on-balance sheet by recognizing a 'right-of-use' asset and a lease liability". Wikipedia, "IFRS 16", https://en.wikipedia.org/wiki/IFRS_16 (last accessed 17 December 2020). Because this makes comparison with previous years difficult, key figures (including those used in company reports) have been adjusted to the IFRS 16. ¹⁵ See section 3.1 below. ¹⁶ See for example Gerlinger, Thomas et al., "Gesundheitsreformen: Internationale Erfahrungen", *Jahrbuch für Kritische Medizin* 38, Hamburg 2003. ¹⁷ See for example, Huffs, Jörg, *Politische Ökonomie der Finanzmärkte*, Hamburg 1999; Wolf, Winfried, *Sieben Krisen: Ein Crash*, Wien 2009. ¹⁸ The author of the present study is aware of the often ideological debates about the supposed explosion of costs in the hospital sector resulting from demographic change and medical progress. The argument about increasing costs has long been used in such debates to liberalize the sector, and has rightly been criticized by academics such as Hartmut Reiners. See Reiners, Hartmut, *Mythen der Gesundheitspolitik*, Bern 2011, pp. 57–79. Yet the present study is not about this costs debate, but rather about the profit expectations of private healthcare companies in the context of an ageing society and about how such companies trade in illnesses. ¹⁹ Bünemann, Doris, Sonnenburg, Anja, Stöver, Britta, Wolter, Marc Ingo, John, Melanie, and Meyrahn, Frank, "Struktur des Pflegemarktes in Deutschland und Potentiale seiner Entwicklung", report by the Gesellschaft für Wirtschaftliche Strukturforchung mbH, October 2016, p. 6, https://www.gws-os.com/discussionpapers/Kurzfassung_ProjNr_019_16.pdf (last accessed 26 June 2020). ²⁰ Orpea, "Registration Document 2018", p. 38f., https://www.orpea-corp.com/images/orpeafinance/pdf/Documentation/EN/2019/ORPEA_2018_Registation_Document_f1846.pdf. Korian's planning is based on similar statistics. See Korian, "Registration Document 2018", p. 14ff., https://www.korian.com/sites/default/files/documents/Korian_DDR2018_UK_WEB_0_0.pdf (both links last accessed 26 June 2020).

80 billion euros.²¹ In addition there are new market potentials for private health corporations internationally, particularly in so-called emerging economies in the Global South or in China. The fraction of people with health insurance is growing globally,²² even if the level of service provided by such insurance in many countries is far from being comparable with that found in the Global North.

Private companies in many European countries profit from the fact that care and health services are financed through social security systems, meaning they are more protected from crises than other sectors. The presence of legally mandated support where there is a need for care becomes a location factor: the more that healthcare is well funded by the state or the social security system, and the more the market is liberalized, the more lucrative business will be in that area—for example, it can be assumed that broad sectors of the population will be able to afford a stay in a nursing home or other therapies and treatments.²³

Private companies seek to diversify the services they offer, for example by making inroads into outpatient treatment. According to the Hans Böckler Foundation's Health and Social Security Sector Report: "Increasingly older patients can now be treated, and improvements in the quality of care mean that outpatient treatment is increasingly an option in cases where inpatient treatment was once absolutely necessary."²⁴ And this is not only the case in Germany. Regarding the German market, ver.di observes, "Bulk purchase prices can barely be pushed any lower and the consequences of staff cuts have been made public and are being denounced, essentially as a result of our activities. That's why corporations have recently been primarily seeking solutions in digitization, the transfer of company shares into the service sector, the expansion of outpatient services, and in opening of new areas of company activity."²⁵ There is a clear trend towards diversification at large firms, which is driving market consolidation and concentration.

1.3 MARKET CONCENTRATION THROUGH MERGERS AND TAKE-OVERS (TREND 2)

In the following, the processes of privatization and market concentration in the hospital and aged care sectors in Germany are described and analysed. References to similar developments in other countries demonstrate the international dimension of this process.

1.3.1 Hospitals

Market concentration and a trend toward ever more privatization has already been manifest in the hospital sector for quite some time: a few large hospital operators, such as Fresenius Helios, Asklepios, Sana, and Rhön, all have significant market share and are registering increasing profits, even if it is true that the "privatization frenzy has been somewhat dampened".²⁶ The planned takeover of Rhön by Asklepios is

a further step toward greater market concentration.²⁷ In 2000, non-profit providers had 41 percent market share, and public providers had 37 percent, making them the largest providers of healthcare services. Private providers expanded their market share from 22 percent in 2000 to 37 percent by 2018. In the same time period, bed numbers were in continual decline and the number of hospitals dramatically decreased.²⁸ Yet we should note that public hospitals continue to have the largest share of beds (48 percent), while private hospitals have the lowest share (19 percent).²⁹ At the same time, Germany still has a relatively high number of hospital beds compared with other European countries.

Privatization and market consolidation are also proceeding apace elsewhere in the world. There were 1,412 hospital mergers in the USA between 1998 and 2015, around 40 percent of which took place between 2010 and 2015.³⁰ In metropolises in Sub-Saharan Africa such as Nairobi, private clinics and hospitals are being bought up by private equity firms. There is also an increasing influence of Chinese and Indian capital in the region. As a journal assured US investors regarding the African healthcare market: "Consolidators are also well positioned to deploy emerging technologies in their platforms to dramatically magnify their reach, improve customer experience, enhance quality, better

²¹ Fresenius, "Geschäftsbericht Fresenius 2019", p. 46, https://www.fresenius.de/financial_reporting/Fresenius_Geschäftsbericht_2019.pdf (last accessed 26 June 2020). ²² An example from sub-Saharan Africa: of the approximately 338 million inhabitants of Ghana, Kenya, Nigeria, Rwanda, and South Africa, 63 million have health insurance. In 2018, the International Finance Corporation of the World Bank estimated this fraction will increase exponentially. See Mohandas, Biju, "Healthcare in Africa: Reflections on a Decade of Transformation", *Private Healthcare in Emerging Markets: An Investor's Perspective*, March 2019, pp. 3–6, https://www.ific.org/wps/wcm/connect/ffc1f8ac-3819-4bf0-909f-11c805f5a903/Healthcare-NewsletterZ_March+2019_final.pdf?MOD=AJPERES&CID=mCxPNrc (last accessed 26 June 2020). ²³ See for example, Sengupta, Amit, Bodini, Chiara, and Franco, Sebastian, *The Struggle for Health: An Emancipatory Approach in the Era of Neoliberal Globalization*, edited by the Rosa-Luxemburg-Stiftung, Brussels Office, Brussels 2018, p. 25, <https://www.rosalux.eu/kontext/controllers/document.php/392.7/2ccb4ad.pdf> (last accessed 26 June 2020). ²⁴ Conrads, Ralph, Holler, Markus, Kistler, Ernst, Kühn, Daniel, and Schneider, Daniela, "Branchenanalyse Gesundheits- und Sozialwesen", Hans-Böckler-Stiftung, Working Paper, Düsseldorf 2016, p. 142. ²⁵ Ver.di, *Bundesfachbereich Gesundheit, Soziale Dienste, Wohlfahrt und Kirchen*, report from 31 January 2015 to 31 December 2018, Berlin 2019, p. 13, https://gesundheits-soziales.verdi.de/+file++5e287177bc91d0b31f5447c6/download/2018_Geschäftsbericht-FB3_SCREEN.pdf (last accessed 26 June 2020). ²⁶ Krankenhaus statt Fabrik, *Das Fallpauschalensystem*, p. 109. ²⁷ Dpa/ aertzteblatt.de, "Krankenhausfusion: Asklepios greift nach Rhön-Klinikum", 28 February 2020, <https://www.aerzteblatt.de/nachrichten/110736/Krankenhausfusion-Asklepios-greift-nach-Rhoen-Klinikum>; ver.di, "Rhön-Kliniken: Shoppingtour genehmigt", press release, 27 May 2020, <https://gesundheits-soziales.verdi.de/tarifbereiche/rhoen/+co++f162bcb8-a022-11ea-ab9b-001a4a160100> (last accessed 26 June 2020). ²⁸ On this, the previously cited booklet by Krankenhaus statt Fabrik says: "Between 1991 and 2017, 469 hospitals closed in Germany, and the number of beds was reduced by 168,383. These reductions primarily took place in public and non-profit hospitals [...] while the number of private hospitals increased" (p. 183). According to Winfried Wolf, in Germany between 1971 and 2015 the number of hospitals decreased by 53 percent, and the number of beds by 43.1 percent. See Wolf, Winfried, "Quartalslüge: 'Die Corona-Epidemie konnte in Deutschland so gut eingedämmt werden, weil der Abbau der Bettenkapazitäten hierzulande moderat war', Tabelle: Krankenhäuser und Krankenhausbetten DDR, BRD und gesamtdeutsch 1971–2015", *Lunapark21*, June 2020, 50, p. 4. ²⁹ Statistisches Bundesamt, "Grunddaten der Krankenhäuser, Vorläufige Eckzahlen der Krankenhäuser 2018 nach Trägern und Bundesländern", <https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Gesundheit/Krankenhaeuser/Tabellen/vorlaeufige-eckzahlen-krankenhaeuser.html> (last accessed 26 June 2020). ³⁰ Gaynor, Martin, "Examining the Impact of Health Care Consolidation: Statement Before the Committee on Energy and Commerce Oversight and Investigations Subcommittee, U.S. House of Representatives", Washington, D.C., 14 February 2018, p. 6, <https://docs.house.gov/meetings/IF/IF02/20180214/106855/HRG-115-IF02-Wstate-GaynorM-20180214.pdf> (last accessed 26 June 2020).

utilize scarce medical talent, and reduce costs.”³¹ The market share of privately-run hospitals has been growing for a number of decades in various parts of the world. It is also clear that this is linked to a trend of reductions in hospital capacity and of combining different hospitals into a single corporation. Particularly in countries like Spain and Italy, the coronavirus pandemic revealed such reductions in capacity to be a disaster.

1.3.2 Aged care

Things are slightly different with aged care facilities. Long-term residential care has similar characteristics in all European countries: it is dominated by public and non-profit operators, which account for between 59 and 90 percent of current bed capacity. Germany tops the list of countries with high levels of private operators. They have 41 percent, non-profit facilities have 54 percent, and public facilities 5 percent of beds. In other countries, the share of private companies is much smaller. In Belgium it is 33 percent, in France 22 percent, in Austria and Poland it is 10 percent, and in the Netherlands 4 percent. This is where multinational healthcare corporations like Orpea and Korian come into play. They have a considerable interest in taking over more nursing homes. According to Orpea’s 2018 company report, “the private commercial sector remains highly fragmented, with numerous independent operators with ageing premises, requiring consolidation over the next few years”.³²

The claim that the privatization of long-term care would lead to decent working conditions and improve the quality of care has turned out to be false. A few years ago, *ver.di* estimated that in Germany, for every euro of turnover in public nursing homes, 62 cents would be spent on staffing costs. In private care businesses, the figure is only 50 cents. Saving on staffing costs therefore serves to increase profits: while public nursing homes’ overall return on investment³³ is at 2.8 percent, for private facilities it is at 8.2 percent, almost three times higher.³⁴ The reason for this is simple: private nursing home operators employ fewer people and pay them less money.

Nonetheless, the general conditions for private businesses operating in aged care are continually improving. Legislation that liberalizes markets, an ageing population, high profit forecasts, and increasing real estate prices all make aged care an attractive industry. Despite private operators having a high market share in Germany compared with other European countries, there is still a high potential for mergers and buy-outs by large providers. This is due to fragmented forms of ownership, increased willingness to sell, and high investment requirements in real estate management and facility modernization.

A study (Bünemann et al.) on the structure of the aged care market in Germany confirms this trend: “Furthermore, increasing market concentration can be observed in the past and predicted for the future — i.e.,

more and more nursing homes are owned by fewer and fewer companies. The number of businesses offering live-in care and support services is continually decreasing. This reduction is mainly driven by the nursing home industry, where the number of businesses has contracted by 21 percent.”³⁵ This presents new challenges for trade unions and social movements. But it also offers the chance to implement higher standards for employees of large, market-dominating healthcare enterprises.

1.4 THE ENTRY OF PRIVATE EQUITY FIRMS INTO THE HEALTHCARE MARKET (TREND 3)

As explained in the previous two sections, there is a clear trend of privatization and market concentration in both the nursing home and hospital sectors. But in both cases it is also true there are significant differences among privatized facilities. On the one hand, corporations from other sectors like Amazon or Walmart are increasingly entering the healthcare market.³⁶ On the other hand, there is a significant increase of takeovers in the healthcare sector by private equity firms. Christoph Scheuplein, author of the “Private Equity Monitor” commissioned by the Hans Böckler Stiftung, sees a new kind of privatization and financialization³⁷ of public services.³⁸ He aptly describes private equity as “the cutting edge of financial capitalism”.³⁹

31 Mohandas, “Healthcare in Africa”, p. 5. **32** Orpea, “Registration Document 2018”, p. 40. In 2019, the Statistische Bundesamt published slightly different figures for the end of 2017: “The majority of homes (53 percent or 7,600) were independently run (for example by Diakonie or Caritas); the share of private operators was 43 percent, and is thus lower than for inpatient care. As in inpatient care, public operators have the smallest share (5 percent).” Statistisches Bundesamt, “Pflegerstatistik 2017, Deutschlandergebnisse”, p. 2, https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Gesundheit/Pflege/Publicationen/Downloads-Pflege/pflege-deutschlandergebnisse-5224001179004.pdf?__blob=publicationFile&v=5 (last accessed 26 June 2020). **33** The overall return on investment is measured through the ratio of profit and interest on borrowed capital to the equity and borrowed capital invested at the beginning of the period calculated. The ratio shows how efficient the investment of capital was within a given time frame. **34** The differences also appear similar in hospitals. In public hospitals, 70 percent of revenue is spent on staff, while in private hospitals the figure is 60 percent. Accordingly, the return on equity (the profit attained, measured against the equity capital at the beginning of a given time frame) for private clinics is 14 percent, while for public ones it is at minus two percent. Behruzi, Daniel, “Pfoten weg! Gewinnmaximierer im Gesundheitswesen”, *drei.66* (newspaper of *ver.di* Department 3), no date, <https://gesundheit-soziales.verdi.de/service/drei/drei-66/++co++86e54b52-84eb-11e8-bb4d-525400f67940> (last accessed 26 June 2020). **35** Bünemann et al., “Struktur des Pflegemarktes”, p. 10. **36** Boyle, Matthew, “Checkup for \$30, Teeth Cleaning for \$25: Walmart Gets into Health Care”, *Bloomberg*, 25 February 2020, <https://www.bloomberg.com/news/articles/2020-02-25/walmart-takes-on-cvs-amazon-with-low-price-health-care-clinics>; Alashe, Oyindamola, “Amazon ist ein Healthcare-Provider im Experimentiermodus”, *Health Relations*, 4 December 2019, <https://www.healthrelations.de/neu-amazon-testet-gesundheitsberatung-via-app/>; on Amazon’s potential in the healthcare sector see also: CBInsights, “Amazon in Healthcare: The E-Commerce Giant’s Strategy for a \$3 Trillion Market”, <https://www.cbinsights.com/research/report/amazon-transforming-healthcare/>; and Amazon Care, <https://amazon.care/> (all last accessed 26 June 2020). **37** The concept of financialization refers generally (and not only in relation to private equity firms) to the development, from around 1980 until the present, of a kind of capitalism driven by financial markets, where indebtedness increased relative to equity capital, and financial services made up an increased amount of gross national product compared to other sectors. **38** Scheuplein, Christoph, “Private Equity Monitor 2018”, Codetermination report, 49, 3/2019, Institute for Codetermination and Corporate Governance (I.M.U.) of the Hans-Böckler-Stiftung, Düsseldorf, 2019, p. 24, https://www.boeckler.de/pdf/p_mbf_report_2019_49.pdf (last accessed 26 June 2020). **39** Scheuplein, Christoph, “Wie Private Equity es Sich im Deutschen Wirtschaftsmodell Einrichtet”, *Attac Theorieblog*, 31 December 2017, <https://theorieblog.attac.de/wie-private-equity-es-sich-im-deutschen-wirtschaftsmodell-einrichtet/> (last accessed 26 June 2020).

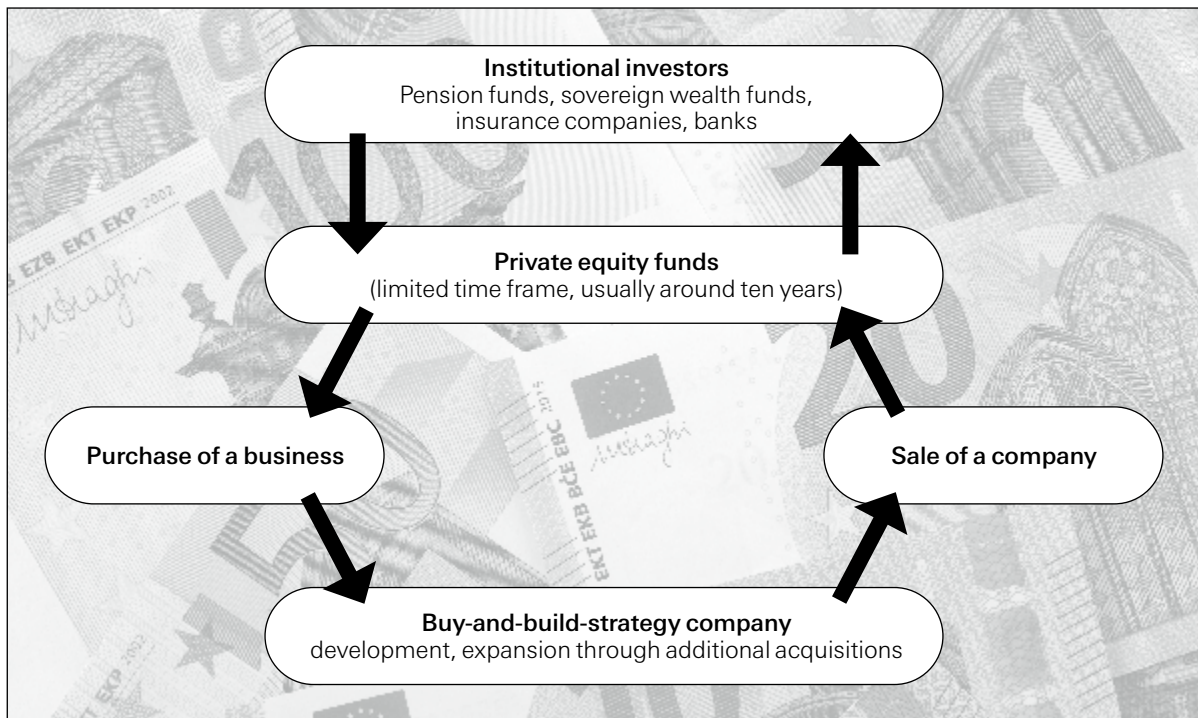
Many readers are probably wondering how private equity works. The business model of such firms consists in acquiring the property rights to businesses for a limited time (buy-out), generating profits, and then offloading the business (exit). “In public debate, private equity firms are sometimes represented as a kind of buyer that is barely any different to other private investors. But we need to note that the business model of private equity firms aims at taking ownership only for a limited amount of time, only pursues purely financial interests, and that their core competencies lie in business acquisitions and financial optimization.”⁴⁰

What does this mean exactly? First, a “limited time” means that capital from external investors must be paid back, such that a sell-off (exit) is intended from the outset. Second, “purely financial interests” are distinct from those of say “strategic investors”, who have an interest in the business they have bought because it is somehow linked to their own business. Private equity firms only invest with the aim of obtaining high profits through a sell-off. In this sense it doesn’t matter if it is a healthcare corporation or a stationary manufacturer. Third, “business takeovers as a core competency” means that private equity firms are different to other kinds of financial investors because they buy entire businesses, while others acquire parts of businesses such as shares, real estate, currency, and so on. A fourth characteristic is the fact that a private equity firm becomes the owner of a business in order to control

it, unlike stock funds or hedge funds, which generally only acquire parts of business and so are unable to control them. A private equity firm having a minority share in a company is fairly rare.

Private equity firms primarily rely on a buy and build strategy—on the foundation, development, and expansion of a business through the acquisition of other businesses. Rather than growing organically, the value of the business increases primarily through acquisitions. This happens through economies of scale,⁴¹ as it is easier for larger businesses to save on costs through synergistic effects. It also happens through an expansion of their existing portfolio and the integration of new competencies into the existing business. The Dutch financial investor Waterland Private Equity Investments, which owns hospitals and nursing homes in Germany, explains its buy and build strategy as follows: “Once an initial investment in a ‘platform company’ is made, Waterland will actively support the management with the execution of an agreed-upon growth strategy. [...] In the pursuit of a targeted ‘buy-and-build’ strategy, ‘add-on’ acquisitions are subsequently integrated into the platform company to expand the investment cluster and strengthen its market position.”⁴² In the words of Rainer Bobsin, an expert on private equity investments in the healthcare sector, this means “buying what the market offers, merging and trimming in the name of profits, such that when it is later sold, interested parties will ideally outbid one another”.⁴³

⁴⁰ Scheuplein, Christoph, “Stellungnahme zum Antrag ‘Kapitalinteressen in der Gesundheitsversorgung Offenlegen’ (BT-Drs. 19/14372) Anlässlich der Öffentlichen Anhörung des Ausschusses für Gesundheit des Deutschen Bundestages am 4. März 2020”, Institut Arbeit und Technik der Westfälischen Hochschule Gelsenkirchen, p. 1f., https://www.bundestag.de/resource/blob/684186/d2b89fd5f760cca9fb796479ea9ac207/19_14_0143-1-_ESV-Dr-Scheuplein_Kapitalinteressen-data.pdf (last accessed 26 June 2020). ⁴¹ Economies of scale refers to how the average cost per piece produced decreases as the total number of pieces produced rises. ⁴² Waterland Private Equity Investments, “Über Waterland: Unsere Investmentstrategie”, no date, <https://www.waterland.de/de/about/our-investment-strategy> (last accessed 2 May 2020). ⁴³ Bobsin, Rainer, “Der weiße Finanzmarkt: Pflege als Spekulationsobjekt”, *express: Zeitung für sozialistische Betriebs- und Gewerkschaftsarbeit*, 4/2018, https://express-afp.info/wp-content/uploads/2018/04/2018-4_Bobsin_Der-wei%C3%9Fe-Finanzmarkt.pdf (last accessed 25 November 2020).

Figure 1: A schematic outline of capital flows in private equity investments⁴⁴

How has the involvement of private equity firms in the healthcare sector developed worldwide? There has been an increase in such activity primarily in North America and Europe, but it has also accelerated in the Asia-Pacific region. For the year 2018, the appraisal company Bain & Company estimated the total value of private equity firms in the healthcare sector worldwide at 63.1 billion US dollars, the highest level since 2006.⁴⁵ While the largest transaction volumes were recorded in the USA, the disclosed total value of transactions in Europe grew 40 percent from 2017 to 2018.⁴⁶ In the Asia-Pacific region, the transaction value was estimated at 15.8 billion US dollars in 2018, with China, Australia, and India responsible for more than four-fifths of the total. The year 2018 showed more activity by private equity firms in the healthcare sector than in any previous year.⁴⁷

According to Rainer Bobsin, the global policy of low, zero, or negative interest rates in recent years led “so-called institutional investors (pension funds, sovereign wealth funds, insurance firms, banks) increasingly to entrust their capital to private equity funds in the hope of attaining above-average returns. [...] Private equity funds are being confronted with the problem of having more money than they can spend”.⁴⁸ With its seemingly inexhaustible growth potential, the continually expanding healthcare sector has therefore become an attractive market for these businesses. Figure 2 depicts the increase in takeovers by private equity funds in the healthcare sector from 1998 to 2019 in Germany.

A remarkable example of the lively activity of private equity firms in the care sector is the Casa Reha chain,

which is now owned by Korian. Casa Reha was sold multiple times between 1998 and 2015. In 1998, Equity Capital Management and JP Morgan bought in, followed by the US private equity fund Advent International in 2005 and then by HG Capital three years later. In 2015 Casa Reha was finally sold to the Korian corporation.⁴⁹

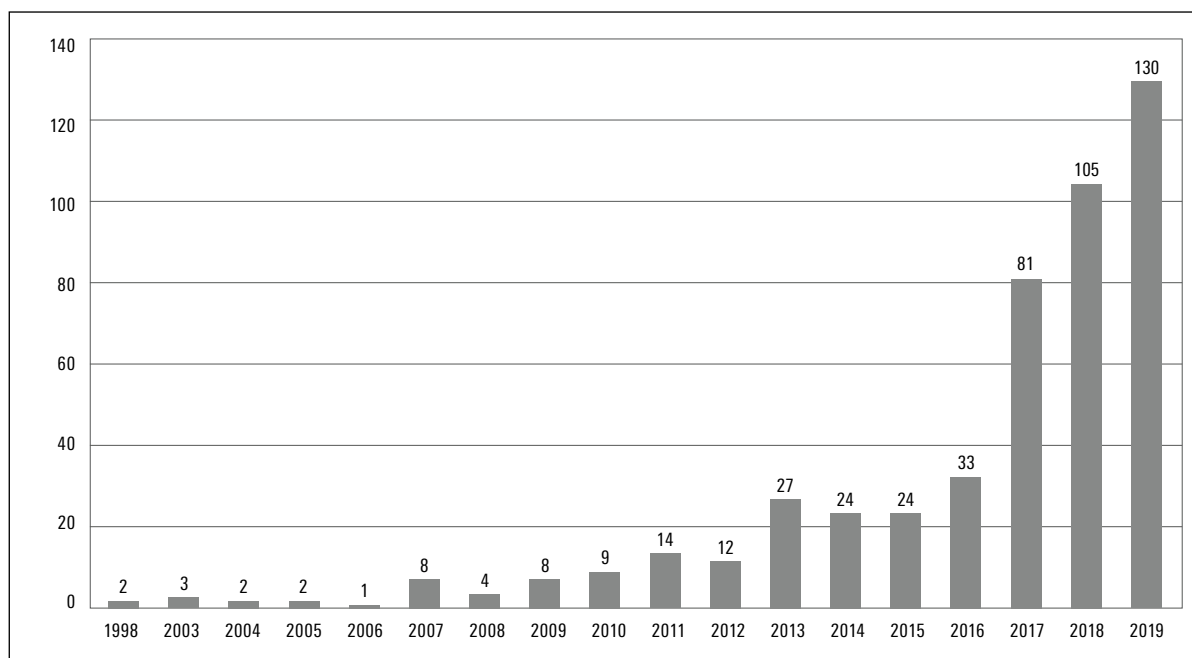
What consequences do such buy-ins by private equity firms have for employees? The purely financial interests involved, and the firms’ desire to sell the acquired company as soon as possible, mean that businesses are trimmed for profitability, which in most cases means saving on staff costs. Private equity companies tend to decisively intervene in the companies they have taken over. The internationalization of ownership, and ownership structures that are often opaque to employees and their unions, make codetermination and collective bargaining more difficult. In the USA, where private equity firms are more widespread than in Germany, the *New York Times* reported in May 2020 on a study by Atul Gupta et al., which established a negative correlation between the takeover of nursing homes by private equity firms and the nursing homes’ working conditions and quality of care. Gupta and his

⁴⁴ Pfligestimme.de (based on work by Rainer Bobsin), “Private Equity”, video, graphic at 6:50, <https://www.youtube.com/watch?v=gFxlbnvFC8&feature=youtu.be> (last accessed 25 June 2020). ⁴⁵ Bain & Company, *Global Healthcare Private Equity and Corporate M&A Report 2019*, p. 8 and p. 14, https://www.bain.com/globalassets/editorial-disruptors/2019/healthcare-pe-report/bain_report_global_healthcare_private_equity_and_corporate_m_and_a_report_2019.pdf (last accessed 26 June 2020). ⁴⁶ Ibid., p. 20. ⁴⁷ Ibid., p. 23. ⁴⁸ Bobsin, Rainer, *Private Equity im Bereich der Gesundheits- und Pflegeeinrichtungen in Deutschland (Update)*, Hanover 2020, p. 14. ⁴⁹ Ver.di, “Ziel: Profitmaximierung”, no date, <https://gesundheit-soziales.verdi.de/+co++c01267fc-1d3f-11e8-a646-525400940f89> (last accessed 26 June 2020).

colleagues investigated 119 transactions between 2000 and 2017 and found that private equity owners tended to put “high-powered profit maximizing incentives” first. The researchers found “that after private equity stepped in, nursing staff hours per patient fell 2.4 percent, and staff quality as measured by federal

regulators fell 3.6 percent”.⁵⁰ The reason care centres had high profit levels after being taken over by private equity firms, according to the researchers, was due to a high bed-occupancy rate resulting from increased patient numbers, combined with staff reductions, leading to a reduced staffing ratio.⁵¹

Figure 2: The number of takeovers by private equity firms in the healthcare sector in Germany, 1998–2019⁵²



To summarize the three trends described in this chapter with the help of the well-known pie metaphor: the first trend (increased numbers of older and multimorbid people) leads to the pie (the market on the basis of which profits can be pursued) growing in size. The second trend (market concentration) is the struggle for the redistribution of the existing pie in the form of ever-larger slices (rather than many smaller ones). The third trend (the buying-in of private equity funds) refers to a not completely new, but now very common instrument in the hands of investors: they employ ever more ruthless methods to assure themselves a slice of

the pie. As we shall see in the following case studies, the corporations investigated generally behave in a more or less rational way, and in accordance with the developments in the healthcare sector sketched in this chapter, conditioned as they have been by a capitalist healthcare policy. In Germany, private hospital corporations do exactly what the *Fallkostenpauschale* (Diagnosis Related Groups) model encourages them to. In other words: it makes economic sense to take action against employees. The scale at which this occurs will be shown in the following chapter on union busting and union avoidance.

⁵⁰ Goldstein, Matthew, Silver-Greenberg, Jessica, and Gebeloff, Robert, “Push for Profits Left Nursing Homes Struggling to Provide Care”, *New York Times*, 7 May 2020, <https://www.nytimes.com/2020/05/07/business/coronavirus-nursing-homes.html> (last accessed 26 June 2020). ⁵¹ Gupta, Atul, Howell, Sabrina T., Yannelis, Constantine, and Gupta, Abhinav, “Does Private Equity Investment in Healthcare Benefit Patients? Evidence from Nursing Homes”, New York University Stern School of Business, February 2020, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3537612 (last accessed 26 June 2020).

2 UNION BUSTING AND UNION AVOIDANCE

Before turning to the case studies of how the different corporations deal with unions, we need to present and explain the concept of union busting (section 2.1) as well as the various known union-busting methods (section 2.2).

2.1 DEFINITION AND ORIGIN OF THE TERM

Union busting refers to systematic resistance to trade unions and to the representation of workers' interests in the workplace. It originated in the USA at the end of the nineteenth century, and since the 1970s it has evolved new forms. The term as used today refers not only to directly combating (or even destroying) trade union organizing, but also to the avoidance and prevention of the representation of workers' interests. The present study uses the terms union busting and union avoidance to make clear that there are different levels of intensity in action taken against unions and workplace representation of workers' interests, even if these often cannot be clearly distinguished.

A good overview of the history of union busting and its employment in the USA and Germany is provided by the Otto Brenner Foundation's study "Union Busting in Deutschland", and the book *Die Fertigmacher*, both authored by Werner Rügemer and Elmar Wigand in 2014.⁵³ The authors rely on the research of Kate Bronfenbrenner (Director of Labor Education Research at Cornell University's School of Industrial and Labor Relations), John Logan (Professor at San Francisco State University), and others. Martin Behrens and Heiner Dribbusch have researched the extent of the attacks on workers' codetermination in Germany for the Institute of Economic and Social Research (WSI).⁵⁴ In a more recent study, Elena Koch has described the legal consequences of union busting in Germany.⁵⁵ A synthesis of these results will be useful to unions, social movements, and others in effectively counteracting such methods.

In the USA, only unions represent the interests of workers in a given workplace. Works councils such as those in Germany are lacking in the USA (and in many other countries). Only when 30 percent of employees in a workplace sign a petition in support of the creation of a union can such a union apply for recognition by the National Labour Relations Board (NLRB) and hold union elections. If it wins a majority in the elections, it is permitted to represent staff in collective bargaining negotiations. Without this approval the union is not allowed to do anything in the workplace. We can assume that this high hurdle is one reason why systematic union busting techniques first developed in the USA, as a way of avoiding majority votes in elections on the recognition of unions.

The union busting industry has been booming in the USA since the 1970s. In the 1980s, John Logan put the number of union busting consultants at 1,500. US

businesses spent around one billion dollars on their services in the 1990s.⁵⁶ This anti-union sector encompasses specialist law firms, business consultancies, PR firms, industrial relations institutes, think tanks, and lobby groups such as the National Right to Work Committee (founded by business owners in the South in the 1950s). In Germany, the union busting network is made up of employer-financed university institutes, media law specialists, business consultancies, foundations, corporate investigation agencies, PR firms, law firms, yellow unions,⁵⁷ and employer's associations.⁵⁸

While US union busters often concentrate on preventing workplace unionization, German union busters focus on fighting works councils and preventing them from forming. This is a result of the particular employment protection enjoyed by elected works council members. The works council is not a formal union body and its members are not obliged to be union members, but the existence of a works council is usually a condition for developing a union presence in a workplace. As part of a WSI study, Martin Behrens and Heiner Dribbusch surveyed union secretaries from the trade division of ver.di, the Nahrung-Genuss-Gaststätten (food, gastronomy, and restaurants, NGG) union, as well as the metalworkers, mining, chemicals, and energy unions (IGM and IGBCE). Fifty-nine percent of those polled admitted that "they are aware of attempts at hindering or preventing works councils in their sector".⁵⁹

⁵² The figure shows purchases of hospitals, medical, and dental clinics (including medical laboratories and medical service centres), physiotherapy clinics, rehabilitation clinics, and nursing homes and services (according to research by Rainer Bobsin, as of May 2020). These purchases are not to be confused with the sale of single sites, which would make the figures significantly higher, as one sale often includes numerous sites. See also Bobsin, "Private Equity", p. 10. ⁵³ Rügemer, Werner, and Wigand, Elmar, "Union-Busting in Deutschland: Die Bekämpfung von Betriebsräten und Gewerkschaften als Professionelle Dienstleistung", a study by the Otto-Brenner-Stiftung, *OBS-Arbeitsheft* 77, Frankfurt a. M., 2014; Rügemer, Werner, and Wigand, Elmar, *Die Fertigmacher: Arbeitsrecht und Professionelle Gewerkschaftsbekämpfung*, Köln 2014. ⁵⁴ Behrens, Martin, and Dribbusch, Heiner, "Arbeitgebermaßnahmen gegen Betriebsräte: Angriffe auf die Betriebliche Mitbestimmung" *WSI Mitteilungen* 2/2014, pp. 140–148. ⁵⁵ Koch, Elena, "Rechtsfolgen des Union Busting: Erscheinungsformen, Schutzmechanismen sowie Vorschläge zur Effektiveren Begrenzung", *Berliner wirtschaftsrechtliche Schriften*, Band 8, Berlin 2017. ⁵⁶ Rügemer and Wigand, "Union-Busting in Deutschland", p. 15; original source: Logan, John: "Consultants, Lawyers and the 'Union Free' Movement in the USA since the 1970s", *Industrial Relations Journal* 3/2002, pp. 197–213. ⁵⁷ Yellow unions are often financially supported by companies, present pro-business views, and are known for refusing industrial action and the widespread use of the various legal courses of action available to works councils. ⁵⁸ Rügemer and Wigand, "Union-Busting in Deutschland", p. 5. Broader reporting on union busting in the German media began in 2007, when public knowledge grew about the anti-works council cases of the legal firm Helmut Naujoks. The *Süddeutsche Zeitung* reported these cases, but Günter Wallraff, in *Aus der Schönen Neuen Welt: Expeditionen ins Landesinnere*, also described the practices of union-busting consultants, the Naujoks law firm, and Dirk Schreiner, using the idea of "bossing" (bullying by the boss). Prior to this, politics professors like Bodo Zeuner in 2001 and unionists such as Angelo Lucifero in 2002 had drawn attention to the issue. See *ibid.*, p. 19ff. ⁵⁹ Behrens and Dribbusch, "Arbeitgebermaßnahmen", p. 143. In contrast to the USA, there is no centralized recording of union busting cases in Germany. In the USA, bodies such as the National Labor Relations Board are responsible for the protection of union rights. Applications for the recognition of unions are made to them, and they are notified of rights violations. In Germany there is no such comparable research, but only isolated studies, mostly from the last 10 years. On this, Martin Behrens and Heiner Dribbusch write: "Decidedly anti-union action on the part of employers and management is not commonly contextualized. Inhibiting the actions of works councils is forbidden, and subject to penalties. Yet recent years have seen increasing numbers of reports that that is exactly what is happening." *Ibid.*, p. 140.

2.2 UNION BUSTING TACTICS⁶⁰

According to Rügemer and Wigand, law firms and other union busting consultants offer a smorgasbord of tactics that can be combined in various ways to prevent union elections, prevent the founding of works councils, and resist established union activists and works councils. Five different strategies can be distinguished.

The first is the intimidation of active members of unions and works councils, or of candidates for their respective elections. This includes threatening to shut down the workplace, fire employees, or cut wages, threatening to take unionists or works councils to court over public statements they have made, false claims about the links between establishing a works council and job losses, as well as one-on-one discussions and so-called captive audience meetings,⁶¹ where pressure is placed on those wanting to join a union or establish a works council in order to dissuade them. More aggressive forms of intimidation include: using private detectives to observe people's private lives, workplace "social death" via employers orchestrating the complete isolation of individual workers from their colleagues, and pathologizing those interested in joining a union or those already active. In the latter case the person's desire to join a union and to resist oppression is characterized as sick and any workplace injustices are individualized.

A second form of union busting is the use of warnings, dismissals, or leave of absence for those involved in union organizing. The responsibilities of a union buster also include fabricating grounds for dismissal, such as through the use of hidden cameras or mystery

shopping (a.k.a. "ghost shopping") by private detectives in the retail sector. This results time and again in summary dismissals, notwithstanding that these frequently contravene labour laws. Yet the courts can often take years to reverse such dismissals, years in which new facts can be made up and the victims give up the fight. Rügemer and Wigand call this illegal practice "legal nihilism". Thirdly, active union members are threatened with reductions in pay or bonuses, or a worsening of working conditions, or else they are offered bribes or other favours for ceasing their activities. A fourth tactic is to establish alternative representative bodies allied with the employer, yellow unions, or management-backed opposition lists in union or works council elections, in order to exert influence over the composition of such bodies. The fifth tactic is the attempt to sabotage either the preparations for or the carrying out of union or works council elections. In Germany, §219 of the Works Council Constitution Act prohibits obstructing either the activities or the election of works councils. Yet such breaches of the law are rarely criminally prosecuted. A further way to oppose union organizing is to dissolve the works council or to apply for union jurisdiction to be annulled.

According to Elena Koch, dismissals and intimidation are the main areas of anti-union activity in Germany. In both Germany and the USA, the focus is on preventing works council or union elections.⁶² Behrens and Dribbusch also conclude that action is more often taken against works council elections than against already elected works council members. The most widespread approach is the intimidation of candidates.⁶³

⁶⁰ Unless otherwise noted, this section is based on Rügemer and Wigand, "Union-Busting in Deutschland", pp. 44–65. ⁶¹ According to Kate Bronfenbrenner, in the USA between 1999 and 2003, such captive audience meetings making use of anti-union propaganda were the most commonly used union-busting technique during elections on the recognition of a union in a workplace. Bronfenbrenner, Kate, "No Holds Barred: The Intensification of Employer Opposition to Organizing", EPI briefing paper #235, Economic Policy Institute, May 2009, p. 10, <https://www.epi.org/files/page/-/pdf/bp235.pdf> (last accessed 26 June 2020). In Germany such meetings are prohibited by § 219 of the Works Constitution Act, although they are rarely reported. See Rügemer and Wigand, "Union-Busting in Deutschland", p. 59. ⁶² Koch, "Rechtsfolgen des Union Busting", p. 84. ⁶³ Behrens and Dribbusch, "Arbeitgebermaßnahmen", p. 144f.

FOUR CASE STUDIES

The preceding chapters discussed major trends in the healthcare market and union-busting strategies. In what follows, case studies of Orpea, Korian, Fresenius, and Ameos illustrate how these corporations respond to such trends and how they employ union-busting or union-avoidance tactics. Each case study opens with a company profile, then discusses the predominant business strategies, followed by the pay and working conditions, and finally the company's approach to works councils and union organizing is illustrated with numerous examples.

3 ORPEA: HEALTHCARE CORPORATION WITH A REAL ESTATE DIVISION

3.1 COMPANY PROFILE

Orpea is a publicly-listed multinational care and real estate corporation founded in 1989 and headquartered in Paris. It specializes in the building, buying, and running of nursing homes and hospitals. The company owns aged care homes, post-acute recovery and rehabilitation clinics, and psychiatric hospitals, all usually in the upper price range. In the last few years Orpea has also attempted to expand beyond its core business into other profitable fields. It has invested heavily in home-based care services and in the establishment of assisted living facilities for seniors. In Europe, Orpea is a market leader, standing only behind Korian. Orpea also operates in Brazil, Columbia, Mexico, Uruguay, and Chile in Latin America, and since 2016 the company has been expanding its presence in China.⁶⁴

According to a company statement, as of 31 December 2019, its investors were: the Canadian pension fund CPPIB,⁶⁵ which owns a 14.5 percent share and has two members on the board of directors; the French investment fund FFP Invest, which has a 5 percent share and one member on the board, and which is linked to the Peugeot family through the Etablissements Peugeot Frères business;⁶⁶ and the Belgian investment fund Sofina SA, which at the time of the report held only a 2 percent share but which still has a member on the board. According to official Orpea declarations, 78.4 percent of shares are publicly floated.⁶⁷

Orpea runs 1,014 facilities with a total of 104,234 beds (of which around a quarter are still under construction) in 22 countries.⁶⁸ The company owns the real estate of almost half of the centres that it operates. At the end of 2018, 59,571 people were employed by Orpea, and according to their own figures 82 percent were on permanent contracts, while 62 percent were employed full-time.⁶⁹

As mentioned above, aged care is booming, and in this context Orpea benefits from both its size and its diverse activities. Compared with 2018, company turnover grew 9.4 percent to 3.74 billion euros in 2019, with a return on sales of 17.4 percent. Yet it must be kept in mind that almost half of the growth recorded in 2019 was due to acquisitions. In 2019 and in previous years, earnings performance only went in one direction: up. Profit before tax⁷⁰ was 340.8 million euros in 2019, an increase of 10.1 percent over the previous year.⁷¹

The growth of Orpea in Germany, too, is essentially due to acquisitions. Orpea Deutschland arose out of the takeover of the Silver Care Group in 2014, before taking over Celenus Hospitals (from Auctus Private Equity) and the Residenz Gruppe in 2015, and the Vitalis Group in 2016. The newly acquired nursing homes and hospitals often continue to operate under their old names, for example Vitalis.⁷² In doing so, the

group of companies operates like a holding company with various brands (as does Korian). A byproduct of this strategy seems to be that if one of its brands suffers scandals or other problems, it can be sold off or renamed, without the parent company incurring significant costs.

3.2 MAIN BUSINESS STRATEGIES

In this section, what I take to be the company's four main expansion strategies are presented: wide-ranging acquisitions, the construction of new facilities, increasing its share in real estate, and rapid international expansion. The first pillar of Orpea's expansion strategy consists in buying up aged care companies and their infrastructure, and squeezing out independent private operators. "In France, for example, the top five operators [...] account for 55% of the private sector, with a total of 132,000 beds. [...] In Germany, ten groups with over 4,000 beds have a combined share of just 21% of the private commercial sector. As a result, around 275,000 beds, or over 30% of the sector's total capacity, are owned by small regional groups or independents."⁷³ Companies such as Orpea or Korian see an opportunity here for a market shake-out. Karol Florek, an expert on the Orpea corporation at UNI Global Union, explains: "We are seeing a consolidation, as smaller operators are being forced out of the competition because they either find the regulatory aspects too difficult or because the owner-operated companies are being bought up by big corporations, particularly when their founders retire."⁷⁴

⁶⁴ Orpea, "Full-year 2019 Results", 18 March 2020, p. 3 and p. 19, https://www.orpea-corp.com/images/orpeafinance/pdf/dernieres_presentations/uk/2020/Pres_ORPEA_2019_Results_ENG_final_07c52.pdf (last accessed 26 June 2020). ⁶⁵ According to CEO Mark Machin, CPPIB increasingly invests in firms that are set to profit from digitalization, climate change, and demographic shifts as well as the economic power shifts in Europe, Asia, and North America. Investment in Orpea should be seen in this light. Shecter, Barbara, "Understanding the Implications of Disruption at the Heart of CPPIB's Investment Strategy, Machin says", 20 November 2018, <https://business.financialpost.com/news/fp-street/understanding-the-implications-of-disruption-at-the-heart-of-cppibs-investment-strategy-machin-says> (last accessed 26 June 2020). ⁶⁶ FFP, Orpea Group, <https://www.groupe-ffp.fr/en/actif/orpea> (last accessed 26 June 2020). ⁶⁷ Orpea, "Full-year 2019 Results", p. 48. Publicly floated shares in a publicly floated company refer to the sum total of shares available for trade on the stock market. For CPPIB, FFP Invest, and Sofina, special rules for subscribing for shares and representation on the executive board have been in place since 2014. Moreover, the voting rights of the three institutional investors is significantly higher than their share of company stocks. See Orpea, "Registration Document 2018", p. 193 and p. 270. ⁶⁸ Orpea, "Full-year 2019 Results", p. 12. ⁶⁹ Orpea, "Registration Document 2018", p. 108. According to the company, freelance workers in Poland are not included in the statistics. See also section 3.4 and *ibid.*, p. 140. ⁷⁰ In contrast to Korian and Fresenius, Orpea usually seems to report profit before tax rather than profit before tax and interest. This should be kept in mind when comparing them. ⁷¹ Figures on turnover and profits have been adjusted to IFRS 16. Orpea, "Full-year 2019 Results", pp. 23–27. Regarding the figures given in the "Full-year 2019 Results", Orpea provides an audit in progress. There may be small divergences in the figures. At the time of publication, the full figures were only available in the French version of the 2019 company report. See https://www.orpea-corp.com/images/orpeafinance/pdf/Documentation/FR/2020/ORPEA_DEU_2019_FR_final_f4d0c.pdf (last accessed 26 June 2020). ⁷² Florek, Karol, "UNI Global Union", internal document, 11 August 2018; Orpea Deutschland, <http://www.orpea.de/index.php?link=orpea-gruppe> (last accessed 26 March 2020). ⁷³ Orpea, "Registration Document 2018", p. 40. ⁷⁴ Karol Florek, personal communication, 26 March 2020.

The construction of new facilities in desirable locations is the second pillar of Orpea's growth strategy. According to company reports, 25 percent of Orpea's bed capacity is under construction.⁷⁵ In 2019, Orpea invested around 343 million euros in real estate acquisition and a further 375 million euros in construction.⁷⁶ According to Karol Florek, the focus is on premium locations that offer "strong growth potential" (an ageing population and growing unsatisfied demand) and "many development opportunities" (lucrative prospects for the construction and purchase of real estate due to increasing real estate prices, often in inner-city areas).⁷⁷ Orpea is using acquisitions and construction to position itself as a high-value, premium provider: as of 2019, 65 percent of the bed capacity currently under construction is premium. The daily occupancy price for premium beds at Orpea is at least 15 percent higher than the average daily price in a given country.⁷⁸

Orpea's third strategy is increasing its ownership share in the real estate of the facilities that it operates. From the point of view of such companies, it is very practical to avoid paying out their profits in rents, and to avoid having to negotiate new rent prices. Owning more real estate enables them—especially in times of rising real estate prices—to not only save on rent costs, but also to improve their access to credit and passively profit from the growth of their assets. According to Orpea, since 2015, "it has endeavoured to raise its real estate ownership rate by acquiring the properties it operates, by selling fewer properties, and by focusing its acquisition policy on opportunities where there is scope for gaining ownership of properties".⁷⁹ At the end of 2019, Orpea owned 49 percent of the properties it operated, which amounts to an asset value of over six billion euros.⁸⁰ Orpea can thus be considered a real estate business with a care division.

The board of Orpea summarizes the benefits of this approach as follows: "This strategy of owning part of its real estate benefits the Group in several ways: it underpins its profitability and secures its long-term cash flows; it gives it greater flexibility to go ahead with extensions or redevelopments, without increases in property costs; it strengthens the Group's balance sheet; it increases the Group's portfolio value."⁸¹ Orpea finances this approach through long-term loans and leasing agreements with the option of buying the property at the end of the contract. This strategy also offers the flexibility of divesting such real estate assets later on (the corporation is also able to sell assets to its own real estate investment fund, Amuni Immobilier, established in 2018), or of restructuring ownership forms to Orpea's advantage.

The value of its real estate in turn enables Orpea to obtain new credit to generate further capital to finance its expansion. While Korian concentrates on the European market, Orpea—and this is the fourth pillar of its growth strategy—relies on rapid international expansion. In the 1990s, the company operated only

46 facilities in France. It was floated on the stock market in 2002. In 2012, only 20 percent of the company's beds were abroad. By 2017 the figure had risen to 58.5 percent, and in 2019 to 67 percent.⁸² Between 2015 and the end of 2019, Orpea locations were established in 14 countries.⁸³ Orpea thereby became a multinational healthcare corporation. The current focus of its expansion is in Eastern Europe and Latin America.⁸⁴ At the end of 2018, the company declared in one of its publications that "Orpea is now primed for expansion in 35 countries".⁸⁵ This will present new challenges for trade unions.

3.3 WAGES AND WORKING CONDITIONS

Orpea executives claim that they take their social and ecological responsibilities seriously and fulfil the associated obligations, boasting that their mission is to develop long-term employment policy. The company also presents itself as a high-quality provider: luxurious facilities, friendly and well-trained staff, and satisfied residents.⁸⁶ The name Orpea stands for openness, respect, presence, attentiveness, and carefulness. Orpea says it "pursues a dynamic, long-term and job-creating human resources policy. The aim is to make staff loyal, develop their skills and provide the best possible work conditions to enable them to flourish".⁸⁷ This is contradicted by a staff turnover rate of more than one fifth. In 2018, 11,440 employees with permanent contracts left the company.⁸⁸ Ver.di reports that 50 percent of employees in Poland only have fixed-term contracts and that there have been numerous conflicts in Spain, for example because the company was not abiding by legal regulations on working hours or collective bargaining agreements.⁸⁹

But Orpea is not only cutting staff costs in countries where unions are in a weaker position. Bart Thys, union secretary of ACV-PULS—the largest healthcare union in Flanders—and thus responsible for the Orpea centres in Antwerp, points to a discrepancy between the fancy facilities and the actual care conditions: "Many of the new facilities look great, but when you look at the care itself, a clear contrast emerges." Orpea saves on staff costs in order to make profits.⁹⁰

⁷⁵ Orpea, "Full-year 2019 Results", p. 15f. ⁷⁶ Ibid., p. 28. ⁷⁷ Karol Florek, personal communication, 26 March 2020. ⁷⁸ Orpea, "Full-year 2019 Results", p. 17. ⁷⁹ Orpea, "Registration Document 2018", p. 37. ⁸⁰ Orpea, "Full-year 2019 Results", p. 32f. ⁸¹ Orpea, "Registration Document 2018", p. 37. ⁸² Orpea, "The Group: Growth", <https://www.orpea-corp.com/en/2011-12-21-17-32-45/growth> (last accessed 2 May 2020). ⁸³ Orpea, "Full-year 2019 Results", p. 12. ⁸⁴ Ibid., p. 45. ⁸⁵ Orpea, "Registration Document 2018", p. 8. ⁸⁶ The Group conducts an annual survey of residents. The 2019 results for Orpea Deutschland, according to its own information: "The results of the latest residents' survey illustrate the high quality Orpea Deutschland provides: 94.3 percent of residents were either 'satisfied' (57.7 percent) or 'very satisfied' (36.6 percent); 96.2 percent would recommend the home they live in to others." Orpea Deutschland, "Feedback der Bewohner", <http://www.orpea.de/index.php?link=feedback> (last accessed 26 June 2020). ⁸⁷ Orpea, "SRI: Orpea, a Player Committed to Social and Environmental Responsibility", <http://www.orpea-corp.com/en/2011-12-21-17-32-45/sri> (last accessed 4 May 2020). ⁸⁸ Orpea, "Registration Document 2018", p. 109. This turnover rate is above the average, which according to the French Libault report is at 9.3 percent. See Kepler Cheuvreux (Blotière, Elsa): "Long-term Care Nursing Home", *Thematic & Impact Investing*, 18 September 2019, p. 22. ⁸⁹ Ver.di, "Orpea: International Brutal", <https://gesundheit-soziales.verdi.de/tarifbereiche/celenus/+co++628b2856-957d-11e8-8903-525400423e78> (last accessed 26 June 2020). ⁹⁰ Bart Thys, personal communication, 15 May 2020.

On 10 March 2020, union-affiliated nurses went on strike in the French-speaking part of Belgium in order to draw attention to dangerously low staff levels, after having repeatedly approached management to no avail. “Often one staff member will be caring for 15 residents on their own, from 7:00 to 11:00. Concretely that means 16 minutes to bring someone their breakfast, help them eat, clean the bedroom, and clean up after breakfast,” explained local union representative Claudia Reckinger.⁹¹

There has also been discontent due to staff shortfalls at Senevita Schweiz, an Orpea subsidiary. Relatives of residents and Senevita staff repeatedly contacted the Swiss union UNIA and reported catastrophic conditions. A letter of protest from May 2017 states: “The concerns raised within Senevita retirement homes are extremely serious: homes are understaffed and employees suffer poor working conditions. They are subject to constant pressures and stress, and it is only thanks to the workers’ spirit of sacrifice that the welfare of the residents has been guaranteed so far. This cannot continue!”⁹²

Examples of dangerous care due to short staffing can be found all over Europe. In many countries, unions keep detailed records about staff shortfalls and precarious working conditions.⁹³ In the next section, different examples of union busting at Orpea are presented.

3.4 UNION BUSTING AT ORPEA

Orpea claims to respect the norms of the International Labour Organization (ILO) and to highly value the rights of its employees. “[F]reedom of association, freedom of expression, freedom of assembly and the right to information are essential components of social stability and economic development.” The company also notes that that it “fully involves any local employee representative bodies in its development”.⁹⁴

In light of the company’s rapid growth, its managers know that quality standards can vary significantly across different countries. In order to take this into account, the Orpea Group has published a code of conduct. The interests of employees are not its main concern, yet it still contains the following: “We condemn all forms of discrimination with regard to hiring or pay, whether it is based on gender, age, disability, family status, sexual orientation, origin, religion, political views, trade union activity or whistleblowing.”⁹⁵

How do these noble standards appear in reality? How does the company treat those who work for it? According to Adrian Durtschi, chairman of UNICARE, “Wherever it operates, Orpea only [aims at] expansion and profit maximization [...]. We have seen countless reports from numerous countries illustrating that the company does not hesitate to violate workers’ fundamental rights”.⁹⁶ According to information provided by ver.di secretary Matthias Groß, while the coronavirus pandemic was unfolding the board of Orpea Deutschland sent a letter to the works councils

in all Orpea nursing homes in Germany, asking them to refrain from and postpone all works council activities.⁹⁷ Given the urgent need for worker codetermination and discussions about protecting health and jobs in the context of the pandemic, this demand, were it to have been followed, would have curtailed the democratic rights of employees and set the wrong standards for future crises.

3.4.1 France: Spying and Cover-Ups⁹⁸

This report on concrete union busting activities begins with experiences in the company’s country of origin. The case described below is a particularly blatant example of how cynically Orpea deals with the rights of trade unions. According to media reports, in 2010 the company placed three moles among workers in three facilities in France (mainly at Clinea, one of Orpea’s subsidiaries), located in L’Haÿ-les-Roses, Andilly, and Lyon. Their task was to gather information and hand it on to the company directors. Reports indicate that the whole operation cost Orpea around 14,000 euros per observer. A total of 16 weekly reports were sent to Orpea’s human resources department between 22 March and 4 September 2010.

⁹¹ UNI Global Union, “Belgium: Care Workers Call Out Dangerous Levels of Understaffing in Orpea Nursing Homes”, 11 March 2020, <https://uniglobalunion.org/news/belgium-care-workers-call-out-dangerous-levels-understaffing-orpea-nursing-homes> (last accessed 26 June 2020). ⁹² UNIA, “Unhaltbare Zustände in Senevita-Pflegeheimen”, <https://actionsprout.io/24F28A/>; UNI Global Union, “UNICARE Stands in Solidarity with Senevita (Orpea) Workers in Switzerland”, 24 May 2017, <https://uniglobalunion.org/news/unicare-stands-solidarity-senevita-orpea-workers-switzerland> (both links last accessed 26 June 2020). ⁹³ A few more examples regarding the two cases mentioned are: “Des Maltraitements Dénoncés dans une Maison de Retraite”, *Le Parisien*, 7 January 2015, <https://www.leparisien.fr/espace-premium/seine-et-marne-77/des-maltraitements-denoncees-dans-une-maison-de-retraite-07-01-2015-4423987.php>; Rondonnier, Marine, “Echillais (17): Les Résidents de l’EHPAD et Leurs Familles Dénoncent des Cas de Maltraitements”, *France 3: Nouvelle Aquitaine*, 5 July 2017, <https://france3-regions.francetvinfo.fr/nouvelle-aquitaine/chairente-maritime/la-rochelle/echillais-17-residents-ehpad-leursfamilles-denoncent-cas-maltraitements-1292231.html>; Roland, Carolin, “Niort: Journée de Grève à l’Ehpad Orpea Sevre”, *France 3: Nouvelle Aquitaine*, 15 November 2017, <https://france3-regions.francetvinfo.fr/nouvelle-aquitaine/deux-sevres/niort/niort-journee-greve-ehpad-orpea-sevre-1366709.html>; G., M.-A., “Paris: Manifestation Devant l’Ehpad Saint-Jacques”, *Le Parisien*, 11 July 2018, <https://www.leparisien.fr/paris-75/paris-manifestation-devant-lehpad-saint-jacques-11-07-2018-7816692.php>; Sud Salariés Korian, “La Grogne chez Orpea Belgique Continue”, 11 March 2015, <https://korian.sudantsociaux.org/2015/03/11/la-grogne-chez-orpea-belgique-continue/>; “Schiltigheim: Soupçons de Maltraitance à la Maison de Retraite de l’Aar”, *France 3: Grand Est*, 16 December 2016, <https://france3-regions.francetvinfo.fr/grand-est/bas-rhin/schiltigheim-soupcons-maltraitance-maison-retraite-aar-1156739.html>. The following video also gives a sense of what working conditions are really like at Orpea in a number of countries: EPSU: Care workers – Orpea and Korian, “Elderly Care: The Commodification of the End of Life”, 8 October 2019, <https://www.youtube.com/watch?v=nswHN7mt3oo>, (all last accessed 26 June 2020). ⁹⁴ Orpea, “Registration Document 2018”, p. 118 and p. 113. ⁹⁵ Orpea, “Our Code of Conduct”, <https://www.orpea-group.com/le-groupe/quality-and-ethics/our-code-conduct> (last accessed 26 June 2020). ⁹⁶ Ver.di, “Orpea: International Brutal”. ⁹⁷ Matthias Groß, personal communication, 9 March 2020. ⁹⁸ Unless otherwise noted, this section is based on the following sources: Goanec, Mathilde, and Mathieu, Mathilde, “Health Firm Offered ‘4 Million Euro Deal’ for French Union’s Silence over Workplace Spies”, *Mediapart*, 24 April 2015, <https://www.mediapart.fr/en/journal/france/240415/health-firm-offered-4-million-euro-deal-french-unions-silence-over-workplace-spies?onglet=full>; Goanec, Mathilde, and Mathieu, Mathilde, “Espionnage de Salariés: Un ‘Deal’ à 4 Millions d’Euros Proposé à la CGT”, *Mediapart*, 23 April 2020, <https://www.mediapart.fr/journal/economie/230415/espionnage-de-salaries-un-deal-4-millions-deuros-ete-propose-la-cgt>. The entire article can be viewed here: “Orpea Propose 4 Millions d’Euros à la CGT pour Abandonner les Poursuites”, *DomaNews*, 2015, <http://domanews.com/news/orpea-propose-4-millions-deuros-a-la-cgt-pour-abandonner-les-poursuites/>; NPA, “Repression Syndicale un Acharnement Politique”, <https://npa2009.org/arguments/repression-syndicale-un-acharnement-politique>; Benz, Stéphanie, Haquet, Charles, and Meignan, Géraldine, “Ces Barbouzes qui Espionnent les Salariés”, *L’Express*, 28 March 2012, https://lexpansion.lexpress.fr/entreprises/ces-barbouzes-qui-espionnent-les-salaries_1438013.html (all last accessed 26 June 2020).

French journalists reported that the three spies the company used were employees of a business called the Global Synergy Group, which had allegedly already been involved in similar activities at Ikea. In an interview with the author of the study, Philippe Gallais, head of the CGT collective of Orpea and Clinea members,⁹⁹ indicated that the Global Synergy Group had mainly employed out-of-work actors for the Orpea/Clinea case.¹⁰⁰ When CGT members spoke to the company directors about the spying, they reportedly claimed that the information gathered had “no other aim than to improve working conditions”, and only aimed “to clarify to the Group’s board of directors the type and extent of psycho-social risks run by employees”.¹⁰¹ When the CGT then declared it would take the matter to court, the company offered to do a deal, with a monetary value of the order of four million euros. The list of concessions offered by Orpea in exchange for refraining from legal action and dropping the accusations, included: a bonus for all employees with more than three months service, allocating a budget for each representative union organization, including the management-aligned union ARC en Ciel,¹⁰² the creation of a charter on union rights, and the creation of regional works councils.

Due in part to pressure from its rank-and-file, the CGT refused the offer. Gallais recalls: “The CGT members, employees of Orpea/Clinea, mainly refused this ‘deal’ because the Group was trying to ‘buy its immunity’, the 150 euro employee bonus was too small and a one-off, and because the confidentiality agreement would have definitively hushed-up the scandal. In short: they were trying to pay us off!”¹⁰³ Yet due to the statute of limitations, the charges that the CGT brought against the company were not pursued. Moreover, a preliminary investigation had been held, but the bankruptcy of the Global Synergy Group in the meantime meant that an essential piece of evidence that had disappeared, a computer, could not be found.¹⁰⁴

3.4.2 Germany: Brutal Practices at Celenus in Bad Langensalza

One of Germany’s most serious anti-union campaigns was waged against staff at the Celenus rehabilitation clinic in Bad Langensalza, Thuringia, in 2018. Celenus operates 18 rehabilitation clinics in Germany and has been part of the Orpea Group since 2015. Around 130 staff members work at the Bad Langensalza centre, of whom 60 percent are union members.

Prior to the conflict over a collective bargaining agreement (2017), Orpea paid staff at Langensalza 42 percent less than staff in clinics operated by Deutsche Rentenversicherung. This means monthly earnings of 1,750 euros gross for a physiotherapist. After the establishment of an in-house collective bargaining agreement on working conditions in 2015–16, staff members were no longer willing to put up with such precarious wages. In 2017, ver.di called on Celenus to negotiate on a collective remuneration

agreement. But (as with Ameos in Sachsen-Anhalt, see section 6.4) management declared that they were only willing to conclude a company collective agreement with the works council,¹⁰⁵ which a majority refused.¹⁰⁶

In two strike ballots in 2017 and 2018, staff decided, and then confirmed their decision, to fight for higher pay by means of an indefinite strike. In order to prevent the conflict, Celenus went to court, represented by the law firm Beiten Burkhardt. On its website, this firm advertises its services related to collective bargaining law as follows: “A focal point of our labour law activities is consulting our clients in all issues of collective bargaining law, including the law of labour disputes. [...] In the event of union strikes, we develop a resistance strategy and take the necessary steps to safeguard the interests of the business. In particular, our activities include: resistance to industrial action and consulting during ongoing labour disputes.”¹⁰⁷ Celenus lost the case.

After Celenus failed to stop the strike, it set its sights on some individual union activists. In the spring of 2018, masseur Carmen Laue and physiotherapist Heike Schmidt, both of whom had been employed at Celenus’s Bad Langensalza facility for over 20 years, were dismissed without notice. At the time, both were members of the ver.di collective bargaining commission. They were accused of putting flyers explaining the strike in patients’ mailboxes after hours and out of uniform. Heike Schmidt recalls the incident: “Management had also informed the patients beforehand. When we wanted to inform them ourselves, the head doctor came and asked us to stop. I refused and continued distributing the flyers. Shortly afterwards, Carmen Laue was dismissed without notice. After she finished work, she was informed of her dismissal, she was accompanied to her locker, had to collect her things and leave the premises immediately. The same happened to me a week later, also after the end of my shift—after 20 years service, from one day to the next. They targeted us because we opened our mouths,

⁹⁹ CGT stands for Confédération générale du travail, a French trade union federation, which was long close to the French Communist Party (PCF). ¹⁰⁰ Interview with Philippe Gallais, 8 June 2020. ¹⁰¹ NPA, “Repression Syndicale un Acharnement Politique”. ¹⁰² ARC en Ciel (rainbow) is a yellow union, which is only active at Orpea. According to UNSFO union secretary Franck Houllatte, they poached specific unionists and have been given secure union positions that were formerly organized by the CGT and Force Ouvrière (FO). Franck Houllatte, personal communication, 14 May 2020. ¹⁰³ Interview with Philippe Gallais, 8 June 2020. ¹⁰⁴ Ibid. ¹⁰⁵ Private companies’ attempts to avoid negotiating with unions, by engaging only with the works council, are an everyday occurrence. Ameos behaves similarly, as detailed in section 6.4 regarding Saxony-Anhalt. Ver.di lists more cases: Median attempted to force ver.di, which was party to a collective agreement, out of the workplace, and to replace the collective agreements with different agreements concluded with the works councils. Asklepios likewise calls for works councils to conclude works council agreements on work and social regulations, and for abandoning collective agreements. See ver.di Bundesfachbereich Gesundheit, Soziale Dienste, Wohlfahrt und Kirchen (ver.di Federal Department of Health, Social Services, Well-being and Churches), “Company Report”, 31 January 2015 to 31 December 2018, p. 20. ¹⁰⁶ Ver.di, “Union Busting in Bad Langensalza”, ver.di dossier, as at January 2019, https://gesundheit-soziales.verdi.de/++file++5b7a8630086c2605b087f252/download/2019-Januar_CELENUS_Dossier.pdf (last accessed 26 June 2020). ¹⁰⁷ Beiten Burkhardt, “Arbeitsrecht”, <https://www.beiten-burkhardt.com/index.php/de/kompetenzen/arbeitsrecht> (last accessed 3 April 2020).

because we were defiant. We were only alternate members of the works council and so it was easier for them to fire us.”¹⁰⁸ The old unionist saying of the Industrial Workers of the World is apt here: “An injury to one is an injury to all.” One suspects that the goal of this attack on core union activists was to intimidate all employees who wanted to exercise their basic right to strike.

Schmidt said of their reaction: “We kept at it. We couldn’t just sit at home. We did various actions, there was a wave of solidarity throughout Germany and Europe. It also became political; politicians even had their photos taken with us, but they didn’t actually do much. What they should have done was prevent private companies from making profits. Management treated us like stupid children, they wouldn’t let us earn more. Unfortunately not a lot of solidarity was expressed from the population of the region around Langensalza. The longer we were on strike, the less support we received.”¹⁰⁹

In October 2018, the dismissals were overruled by an industrial tribunal. Yet initially the two employees were not allowed to return to work, but were rather put on leave. The strike was not over, but the employer continued with warnings and intimidation, and locked out 12 employees who had taken part in the strike in two stages. The works council chairperson was also barred from the premises and put on unpaid leave. Management even attempted—without success—to cancel the health insurance of two of those locked out.¹¹⁰ Grit Hasselmann from Mitteldeutscher Rundfunk (Central German Radio), Thuringia made the apt observation: “A lock out like this is permissible, but it seems like a relic of the past. It was last applied in Germany in 1988.”¹¹¹

For one of the active employees, the lock-out came as no surprise: “The company wanted to prevent the signing of a collective bargaining agreement on wages at all costs. The use of the lock-out fits with Orpea’s strategy. If they allowed employees to successfully organize, and if that caught on and 10,000 people joined forces, then things would not look too good for Orpea. If they didn’t get the situation under control, then they wouldn’t be able to buy 30 new centres a year. The company is globally active. It’s about profit, more and more profit, they’re competing with Korian and others and they want to use their power to stop employees from organizing.”¹¹²

The employer’s next escalation was to outsource the cleaners, costing twelve workers their jobs. Alongside the physiotherapists, the cleaners were the group with the highest levels of participation in the strike. Ver.di suspects that the outsourcing was a response to the strike.¹¹³ But management’s campaign failed to prevent the strike and the signing of the agreement. In the meantime, public solidarity had become significant and it strengthened the resolve of the remaining strikers. Employees at different centres got to know one another in a company organized in such a way

that people often do not know which other facilities it owns. But the intimidation and the attempt to drive a wedge into the workforce had an impact, and over time participation in the strike crumbled. Attempts to qualitatively expand the strike failed. The dismissals and lock-outs of a few of the core activists prevented the necessary degree of exchange and discussion with those who were still going to work. One staff member recalls how the director manipulated people and offered them promotions to pull them out of the strike. “The union activists were turned into pariahs, represented as people who were ruining the business.”¹¹⁴ Month-long legal conflicts were gruelling. The fact that a minority on the works council were on the side of the employer made the conflict even more difficult. Finally an agreement was achieved for the coming year, of between 1.5 and 2.25 percent and a one-off payment of 190 euros.¹¹⁵

The active unionist cited above, who wanted to remain anonymous, offered the following assessment: “From a material point of view, the agreement was modest, but it was of enormous importance. It introduced a real, absolute minimum. In concluding it we also showed that it is possible to implement an agreement with a union, while others had worked toward an employer–works council agreement. The main reason that management was ultimately forced to relent was the damage to their public image. That had an impact on Orpea’s share prices, they started falling. Overall, Celenus and Orpea wanted this case to serve as a warning. We can see this in the fact that the legal conflicts are still ongoing. Meanwhile there has been a judgement to the effect that the company must pay back wages to the locked-out employees. But instead of doing so, management are appealing and trying to prevent the payment. I would not rule out the possibility that they will go all the way to the European Court of Justice, to defend their right to lock people out without pay. If they succeeded, it would make strikes more or less impossible. Actually all healthcare workers need to take a stand. Then we would already have proper collective bargaining agreements and the companies would be publicly owned. In my view, private enterprises should have no place in healthcare.”¹¹⁶

In the end, Heike Schmidt left the company: “I always did a good job, and happily so. But I refuse to offer my labour power to an employer that makes use of such tactics. They ruined my career after 41

¹⁰⁸ Heike Schmidt, personal communication, 24 April 2020. ¹⁰⁹ Heike Schmidt, personal communication, 24 April 2020. ¹¹⁰ Ver.di, “Union Busting in Bad Langensalza”. ¹¹¹ Hasselmann, Grit, “Sie Können Mich Aussperren, Aber Nicht Aufhalten: Jacqueline Althaus aus Bad Langensalza”, *MDR Thüringen*, 19 November 2018, <https://www.mdr.de/thueringen/nord-thueringen/unstrut-hainich/frauenwahlrecht-jacqueline-althaus-100.html> (last accessed 26 June 2020). ¹¹² Interview with Colleague O1, 28 April 2020. ¹¹³ Ver.di, “Union Busting in Bad Langensalza”. ¹¹⁴ Interview with Colleague O1, 28 April 2020. ¹¹⁵ Ver.di, “Celenus: Tarifkonflikt Beigelegt”, press release, Berlin, 15 February 2019, <https://gesundheit-soziales.verdi.de/tarifbereiche/celenus/+co++210ee782-30ff-11e9-991f-52540066e5a9> (last accessed 26 June 2020). ¹¹⁶ Interview with Colleague O1, 28 April 2020.

years. But we are all proud of our struggle, and given the chance, we would do it all again. Finally, there is a blanket pay rate set by collective agreements, and the companies that do not abide by it are no longer allowed to receive public funding.”¹¹⁷

This story of repeated court cases against the right of employees to strike, two union activists dismissed without notice, the lock-out of twelve employees, including the works council chairperson, the outsourcing of cleaning and the dismissal of twelve cleaners, shows what Orpea was willing to do in Germany. In the following section, we take a look at Poland.

3.4.3 Poland: Fighting Unions From Day 1¹¹⁸

Orpea’s approach to employees and unions in Poland stands in contrast to the company’s glossy brochures, which depict satisfied care workers doing their jobs without stress. The majority of Orpea employees in Poland do not have a fixed contract, but work as quasi-freelancers on so-called civil contracts,¹¹⁹ which limit their right to union organizing. Nevertheless, on 3 December 2018, employees in the facility in Konstancja came together to form a company union. During the founding process, the director of the centre fired a nurse named Magda Zdyra. The reason: she had been active in trying to organize her co-workers into a union. Because she was only on a civil contract, the union had no recourse to lodge an objection to her dismissal. But that was not the end of the conflict. The day after the union was founded, the new union representative Anna Lefeld was notified of a pay cut. Active union members suspect that she was being reprimanded for the founding of the union. But the union managed to prevent the pay cut through a petition, signed by 70 percent of the workforce.

In early January 2019, the manager of the centre was replaced with someone even more hostile to unions.

To intimidate them, the new director began asking employees, in one-on-one discussions, one after the other, whether they were members of the union. He also gave more shifts to employees who were not union members, attempting to drive a wedge into the workforce. After a second union representative had been intimidated, the union named Anna Bacia as new representative on 25 February 2019, who from then on was given special protection against dismissal. Shortly thereafter, on 8 March, another anti-union campaign began against her and her colleagues. After having criticized a coworker, Anna Bacia was accused of workplace bullying. In Polish labour law, workplace bullying is said to have occurred when the incidents have taken place systematically over 6 months. But Anna had only worked with this particular colleague for a few days. The unions countered that all accusations against Anna Bacia were fabricated, and accused Orpea management of contravening Polish labour law and ILO conventions in this and other cases.¹²⁰

On 10 April, Anna Bacia, who had been employed for 16 years as a physiotherapist at Orpea Konstancja and who is a single mother with two children, was dismissed. Anna Bacia is certain she was fired for openly being a union representative and for wanting to improve the working conditions of all Orpea employees. The campaign to have her re-hired was therefore not only in her interest, but in the interest of all Orpea employees and patients.¹²¹

Rafal Tomasiak, directory of the Central European Organizing Centre COZZ, summarized the situation as follows: “For years we have not seen a company as hostile to unions in Poland as Orpea, with so many dismissals, the intimidation of active union members, and lawsuits to prevent recognition of the union. Even the department of public prosecutions was notified and has begun investigating the company’s anti-union activities.”¹²²

¹¹⁷ Heike Schmidt, personal communication, 24 April 2020. ¹¹⁸ The following section on Orpea Poland is based on discussions with Rafael Tomasiak, director of the Central European Organising Center (COZZ), on 25 May 2020. COZZ is an independent NGO, made up of organizers and educators with experience in union campaigning and who assist unions to grow. COZZ was founded in order to support the revival and development of unions in Poland, the Czech Republic, Slovakia, and Hungary. ¹¹⁹ In Poland, there is a basic distinction between employment based on work contracts, which are based on labour law, and those with civil contracts. The latter are contracts on the fulfilment of certain tasks, such as services and agency contracts. Civil contracts have less strict provisions (no stipulations on working hours, less complex dismissal procedures), which is why businesses are interested in replacing regular work contracts with them and thereby saving on staffing costs. See L&E Global: Poland, “Legal Framework Differentiating Employees from Independent Contractors”, <https://knowledge.leglobal.org/eic/country/poland/legal-framework-differentiating-employees-independent-contractors-15/> (last accessed 17 June 2020). ¹²⁰ UNI Global Union Europa, “Brief von UNI Europa an das Polnische Management von Orpea”, 29 March 2019. ¹²¹ UNI Global Union TV, “We Support Ania”, video, https://www.youtube.com/watch?v=-Q_b7T3UzYI (last accessed 18 June 2020). ¹²² Rafael Tomasiak, personal communication, 25 May 2020.

4 KORIAN: HEALTHCARE CORPORATION HUNTING FOR PROFITS IN EUROPE

4.1 COMPANY PROFILE

Like Orpea, Korian is a healthcare corporation founded in France. It describes itself as an “ageing-well specialist” and it was publicly floated in 2006. Founded in 2003, the company claims to be market leader in Europe. Korian employs 56,000 people in six European countries; it runs 893 facilities with 82,675 beds in France, Germany, Belgium, and Italy, and since 2019 also in Spain and the Netherlands.¹²³ Korian has four business divisions: nursing homes, rehabilitation clinics, outpatient care services, and live-in care/aged-care communities. Part of the company’s diversification strategy involves paying close attention to the last two of these sectors, which reflects a more general trend of older people wanting to remain in their familiar surroundings for as long as possible.

As of December 2019, investors in the Korian Group that are also on the board of directors are: Predica, a subsidiary of the French insurance corporation Crédit Agricole Assurances, with a 24.4 percent share, and Malakoff Médéric Group, a French insurance company, with a 7.7 percent share. Investissements PSP, a Canadian pension fund, owns 6.5 percent of shares, and 61.4 percent of shares are publicly floated.¹²⁴

In 2019, annual turnover was similar to Orpea: 3.6 billion euros. This is an 8.3 percent increase on the previous year, of which the company says 3.8 percent is due to organic growth. In 2019, its return on sales was 14.8 percent. For 2020, turnover is expected to increase by 9 percent. Korian has big plans: in 2021, its turnover is slated to reach 4.2 billion euros, with a return on sales of 15.5 percent. Earnings before interest and tax¹²⁵ were 337.7 million euros in 2019.¹²⁶

4.2 MAIN BUSINESS STRATEGIES

Korian’s growth model is focused on the consolidation of its market power through strategic takeovers within Europe. It also relies on the development of its real estate business and on further diversification of its care and health services.

Korian only attained its above-average growth through takeovers of its competitors within Europe. In 2013–14, Korian bought the Medica Group for 1.1 billion euros and thereby became the largest European healthcare company, with a leading position in Germany, Belgium, and France. “Through diverse takeovers, the Group increased its turnover sixfold within ten years, to around three billion euros.”¹²⁷

The German market is particularly significant; with its 2013 takeover of Curanum, Korian became its leading nursing home provider.¹²⁸ As of the end of 2018, 35 percent of the company’s staff are in Germany alone, with 7,800 new people being hired that year.¹²⁹ This can be put down to the fact that the German population is on average older and wealthier than its Euro-

pean neighbours. But it is also because the percentage of public care centres in Germany is comparatively low, at five percent (in Italy: 45 percent; in Belgium: 30 percent; in France: 49 percent).¹³⁰ Because of this, growth opportunities remain high.

In France, Korian has grown in urban centres and high-income regions, similarly to Orpea. The parent company Korian serves as owner of the providers it acquires. But from the outside, it is often only the turquoise flowers, or the colours or fonts used, that belie the fact that a given facility is owned by the Korian Group. Often the facilities Korian acquires continue to operate under their previous name and company form. This likely makes it easier for the parent company to avoid employing a unified strategy regarding works councils and unions. Often employees do not even know which facilities and chains belong to “their” corporation. If there is a scandal, it doesn’t affect the brand as a whole, as Korian is only the owner. With this, the logic of the market and of finance enters the healthcare sector. A split occurs that has long been observed in many businesses controlled by finance capital: that between management or company directors, and the owners.

Korian’s real estate business is not as comprehensive as Orpea’s, yet its value has increased through the founding of a company-wide real estate division in 2016, and the Korian 2020 Plan.¹³¹ On its website, the company writes, “[We build] properties to regroup existing facilities on new premises, move our facilities closer to a hospital, or place ourselves in the midst of healthcare resources. [We also extend] properties to add more bedrooms or outpatient areas.”¹³² At the end of 2019, the company owned 22 percent of its own facilities, with an estimated value of two billion euros, which is double its 2016 value.¹³³ This all indicates that

¹²³ Korian, “Über uns”, <https://www.korian.de/unternehmen-2/> (last accessed 28 May 2020); Korian, “Document d’Enregistrement Universel 2019: Rapport Financier Annuel et Rapport Intégré”, 7 May 2020, p. 8, https://www.korian.com/sites/default/files/documents/07.05.2020%20KORIAN_URD%202019_mise%20en%20ligne%20web_0.pdf (last accessed 26 June 2020). ¹²⁴ Korian, “The Board of Directors, General Management Committee”, <https://www.korian.com/en/governance> (last accessed 10 April 2020); on the breakdown of its investors, see Korian, “Document d’Enregistrement Universel 2019”, p. 317. ¹²⁵ Earnings before interest and taxes (EBIT) is a figure commonly used in business to measure the operative profit in a financial year. ¹²⁶ The figures are adjusted to IFRS 16. Korian, “2019 Annual Results: Korian Benefits from the Success of its Diversified and Local Growth Model”, press release, 27 February 2020: https://www.korian.com/sites/default/files/documents/27.02.2020%20Annual%20results_PR_EN_FOR%20RELEASE_2.pdf (last accessed 26 June 2020). ¹²⁷ Behruzi, Daniel, “Altenpflege: Raubritter in der Pflege”, <https://gesundheit-soziales.verdi.de/mein-arbeitsplatz/altenpflege/+co++6ed4adfc-80f3-11e7-bf44-525400423e78> (last accessed 26 June 2020). ¹²⁸ Pfllegemarkt.com, “Die 30 Größten Pflegeheimbetreiber 2020”, 13 December 2019, <https://www.pfllegemarkt.com/2019/12/13/die-30-groessten-pflegeheimbetreiber-2020/> (last accessed 22 September 2020). ¹²⁹ Korian, “Registration Document 2018”, p. 67, https://www.korian.com/sites/default/files/documents/Korian_DDR2018_UK_WEB_0_0.pdf (last accessed 26 June 2020). ¹³⁰ Orpea, “Registration Document 2018”, p. 40. ¹³¹ Korian, “Registration Document 2018”, p. 21. ¹³² Korian, “Property Designed for Healthcare”, <https://www.korian.com/en/property-designed-healthcare> (last accessed 10 April 2020). ¹³³ Korian, “Annual Results 2019”, press release, 27 February 2020.

Korian is a growing real estate business. But the designation 'real estate business with a healthcare division' is still reserved for Orpea.

Korian is also an example of how the major care facility operators are diversifying in order to expand the services they offer and thereby secure themselves a greater market share. This is propelled by takeovers (for example in 2019 Korian became the majority shareholder of the telemedicine business Omedys),¹³⁴ the establishment of its own Korian Academy, and digitalization offensives (Korian Solutions). The expansion of outpatient services and home-based care led to a doubling of patient numbers in just three years.¹³⁵

In France, Korian took over the outpatient care service Petits-Fils in 2018; earlier it bought up Âges & Vie, a provider of housing communities for seniors. Korian also "developed the Korian Home concept, which combines under one roof, long-term care units for those losing their autonomy, apartment, as well as service centres and outpatient care facilities".¹³⁶ Karol Florek considers the development of retirement villages by healthcare corporations to be a global trend: "It enables the companies to rent apartments to residents who are not dependent on nursing care, which means that, in contrast to the operation of nursing homes, they generate an income with very low labour costs. They then have a 'tied market' to which they can sell additional services and eventually channel them into care for highly dependent people."¹³⁷

4.3 WAGES AND WORKING CONDITIONS

Korian makes even more effort than Orpea to cultivate its image as an employee-friendly and responsible company, which stands for balanced growth rather than "growth at any price". Management itself writes: "For Korian, ensuring a safe, pleasant and caring work environment is a priority. The Group is attentive to its employees' needs and is constantly improving their working conditions to ensure not only their health and safety, but also their well-being and satisfaction."¹³⁸

As with many multinational corporations, every two years management conducts an internal survey on the general satisfaction of its employees. Korian even presents its results as a major success, but on closer inspection they appear very average. For example, 74 percent of staff members say they plan to still be working for Korian in two years' time. But that also means that more than a quarter of all staff would be willing to leave the company at short notice. Seventy-one percent say that they would recommend Korian as an employer, but that also means that 29 percent would not do so.¹³⁹ Even according to a survey conducted by Korian, which one might assume would garner less critical responses from employees than an equivalent survey conducted by a union, employee dissatisfaction is high. Also, the levels of satisfaction reported by the company itself do not appear especially high in comparison with other studies. Wolfgang Schroeder from the University of Kassel conducted

an enquiry into satisfaction levels among aged care workers in Germany in 2018, finding that 72.4 percent of those surveyed were satisfied or very satisfied, compared with 92.6 percent in 2013.¹⁴⁰

Ver.di secretary Philipp Motzke, too, relates how the management of Curanum AG (which became Korian Deutschland AG in January 2020) has attempted to present itself as especially employee-friendly. When the minimum wage for nurses increased in Germany, employees received a letter in which Curanum AG presented itself as a great employer and also announced that it would be reducing working hours without loss of pay. "That meant Korian would not have to pay more, and employees end up doing more overtime."¹⁴¹

Korian's general principle is "positive care". But various examples show that what goes on is often nothing of the sort. In June 2019, 60 employees of a Korian nursing home near Clermont-Ferrand went on strike. They accused the company of continually worsening their working conditions and compared their work to working at the Michelin factory. "We have ten minutes to take residents to the toilet, ten minutes for their meals, and five minutes to prepare people for sleep." The employees accused the company of "institutional abuse".¹⁴²

Conditions in a nursing home in Augsburg, which were made public by relatives of residents in the summer of 2019, also contradict the principle of "positive care". Bayerische Rundfunk (Radio Bavaria) reported on their calls for help: "An emergency doctor was brought in at my request", a woman whose mother is resident in the facility said. "He was shocked at her condition and said my mother could have bled to death."¹⁴³ The union secretary responsible for the home, Robert Hinke, said that it was only possible to achieve the kinds of profits Korian does "by outsourcing, avoiding collective bargaining agree-

¹³⁴ Businesswire, "Korian and Omedys Develop the first Neighborhood Teleconsultation Network in France", 17 December 2019, <https://www.businesswire.com/news/home/20191217005653/en/Korian-Omedys-Develop-Neighborhood-Teleconsultation-Network-France> (last accessed 26 June 2020). ¹³⁵ Korian, "Annual Results 2019", press release, 27 February 2020. ¹³⁶ Korian, "Registration Document 2018", p. 160. ¹³⁷ Karol Florek, personal communication, 28 May 2020; see also Milligan, Brian, "Retirement Villages: Nice Places, but What's the Catch?", *BBC News*, 13 November 2015, <https://www.bbc.com/news/business-34808285> (last accessed 26 June 2020). ¹³⁸ Korian, "Registration Document 2018", p. 66. ¹³⁹ *Ibid.*, p. 70. ¹⁴⁰ Schroeder, Wolfgang, "'Den Teufelskreis durchbrechen!': Herausforderungen und Handlungsmöglichkeiten für Beschäftigte und Interessenvertretungen in der Altenpflege", presentation at the ver.di colloquium "Zukunft Altenpflege" (The Future of Aged Care) in Göttingen, 3 September 2018, p. 11. Wolfgang Schroeder compares the figures on satisfaction he obtained with those from a study by Wittig, Peter, Nöllenheidt, Christoph, and Brenscheidt, Simone, "Grundauswertung der BIBB/BAuA-Erwerbstätigenbefragung 2012 mit den Schwerpunkten Arbeitsbedingungen, Arbeitsbelastungen und Gesundheitliche Beschwerden", Dortmund 2013, p. 43, https://www.baua.de/DE/Angebote/Publikationen/Berichte/Gd73.pdf?__blob=publicationFile (last accessed 18 December 2020). ¹⁴¹ Phillip Motzke, personal communication, 14 April 2020. ¹⁴² Mediacoop, "Le Personnel de l'Ephad Korian à Clermont-Ferrand Est en Grève pour Dire 'Stop à la Souffrance au Travail'", 20 June 2019, <http://mediacoop.fr/le-personnel-de-lephad-korian-a-clermont-ferrand-est-en-greve-pour-dire-stop-a-la-souffrance-au-travail/> (last accessed 26 June 2020). ¹⁴³ BR24, "Pfleageskandal in Augsburger Heim: Erschreckende Zustände", 2 July 2019, <https://www.br.de/nachrichten/bayern/pfleageskandal-in-augsburger-heim-erschreckende-zustae-nde,RUzURvw> (last accessed 26 June 2020).

ments, using as few trained staff as possible, and when in doubt, tightening up the staff ratio”.¹⁴⁴

In November 2019, *Der Spiegel* gave an in-depth report on extreme staff and care shortages in an aged care home run by Korian at Zernsee near Potsdam.¹⁴⁵ As early as 2016, the head of Korian in Germany, Ralf Stiller, in an interview with the industry journal *Care Invest*, demanded a lowering of the quota for skilled workers, currently at 50 percent, as “the employment of staff at a level of less than 50% skilled workers could be adequate”.¹⁴⁶ Translated, that means: hiring less-qualified nurses to save costs. At the end of 2019, the proportion of all fixed-term contracts at Korian, according to the company, was at 18 percent, while in Germany it is at 23 percent.¹⁴⁷ Ver.di reported on one of the company’s facilities in Hesse, in which working conditions and wages were arbitrarily set, according to employee contracts and market conditions.¹⁴⁸

It is noteworthy that since 29 April 2019, Korian is the first healthcare company to have concluded an agreement on the establishment of a European Works Council (EBR).¹⁴⁹ Yet that should not obscure the reality of low wages and precarious working conditions. In an April 2018 meeting with employee representatives in preparation for the founding of the EBR, there was an exchange of views on working conditions in the Korian Group’s centres in Europe. “This revealed that the company is keeping wages low and staffing levels to a bare minimum while increasing the competition between facilities of European operators. Despite the fact that Korian is highly profitable, inadequate pay, part-time contracts and precarious working conditions are commonplace.”¹⁵⁰

4.4 UNION AVOIDANCE AT KORIAN

In the following section, first the situation in care facilities in Belgium, France, and Italy is briefly described, then conditions in Germany are presented in more detail, as experiences differ significantly from country to country. Yet in general we can say that Korian tends to use “embracing” and union avoidance tactics rather than outright union busting.

4.4.1 Overview of the Situation in Belgium, France, and Italy

As secretary of ACV-PULS, the largest union of healthcare workers in Flanders, Luc De Lentacker is responsible for the Senior Living Group (SLG, Korian in Belgium). He confirmed this assessment in an interview: “When I want to talk to a manager from SLG, he or she is always open and listens, but it leads nowhere, most things stay the same after the conversation.” However, he emphasizes that as union secretary he is allowed to enter any institution and that there are also works councils in every region. “The main problem with the company is always that after taking over facilities, in meetings with the colleagues, they put pressure on them to adopt the SLG collective agreement instead of keeping their old collective agreement. We want,

on the other hand, that the employees can choose the contract that is best for them.”¹⁵¹

Franck Houlgatte, general secretary of the UNSFO,¹⁵² gives an account of the situation of unions at Korian in France: Force Ouvrière and the CGT are represented there,¹⁵³ but management repeatedly attacks particularly engaged unionists. “The method is subtle. They don’t attempt to prohibit strikes or fire people. When there are elections for union representatives in the firm, or nominations for replacements, management attempts to discourage the more militant workers. Minor details are turned into scandalous accusations in order to block particular nominations at the tribunal. Another practice is that unionists are often disadvantaged relative to other employees in terms of rostering.” Franck Houlgatte indicates that Korian has been severely impacted by the coronavirus pandemic, and there have been fatalities among its employees. The UNSFO and the CGT made this public, and were then criticized by management for maligning the company. “Generally, strikes are very difficult at Korian, also because staff fluctuation is high.”¹⁵⁴

In Italy, there are no known cases of open union busting at Korian. Dario Campeotto, from the union FIST-CISL,¹⁵⁵ explains this in part as being due to the high existing levels of union membership in the 45 facilities that Korian has bought up. Union rights are also federally regulated in Italy. National collective bargaining agreements set minimum standards alongside contracts with the company. “So with Korian and Orpea it is no worse than with other businesses. In addition, [healthcare] is also a sector that is publicly funded. If the big private companies behave badly, they stop receiving money.”¹⁵⁶ The following section makes clear how the strategy of union avoidance is more marked in Germany than in Belgium or Italy.

4.4.2 Germany: Keeping Works Councils Small and Preventing Collective Bargaining Agreements

Korian first entered the German market in 2007 with its purchase of the Phoenix Group. This was followed by buy-outs of Curanum, Evergreen, Casa Reha, and

¹⁴⁴ Ibid. ¹⁴⁵ Schmergal, Cornelia, “Ausgeliefert”, *Der Spiegel*, 47, 16 November 2019, pp. 76–79. ¹⁴⁶ Göpel, Holger, “Korian Deutschland: Hochtouren Managen. An Interview with Ralf Stiller”, *Care Invest*, 25/26, 9 December 2016, pp. 1–3. ¹⁴⁷ Korian, “Document d’Enregistrement Universel 2019”, p. 87. ¹⁴⁸ Ver.di, “Mehr Geld, Mehr Personal”, <https://gesundheits-soziales.verdi.de/mein-arbeitsplatz/altentpflege/++co++0a30f352-f96d-11e9-97a6-52540066e5a9> (last accessed 26 June 2020). ¹⁴⁹ EBR-News, “Erste EBR-Gründung in der Pflegebranche”, issue 2/2019, 1 August 2019, <https://www.ebr-news.de/022019.htm> (last accessed 26 June 2020). ¹⁵⁰ EPSU, “Workers Get Organized to Set Up a European Works Council in Social Services Multinational Korian”, 17 April 2018, <https://www.epsu.org/article/workers-get-organized-set-european-works-council-social-services-multinational-korian> (last accessed 26 June 2020). ¹⁵¹ Luc De Lentacker, personal communication, 11 May 2020. ¹⁵² Union Nationale des Syndicats Force Ouvrière de la Santé Privée. ¹⁵³ In France, a union must be supported by at least 10 percent of staff in order to count as “representative”. ¹⁵⁴ Franck Houlgatte, personal communication, 14 May 2020. ¹⁵⁵ FIST-CISL was founded in 2014 through the amalgamation of FISASCAT-CISL, the Italian Federation of Commercial and Related Services and Tourism, with FELSA-CISL, the Union of Freelancers and Temporary Workers. It is the largest union within the Confederazione Italiana Sindacati dei Lavoratori (Italian Confederation of Workers’ Trade Unions, CISL). ¹⁵⁶ Dario Campeotto, personal communication, 30 April 2020.

finally of Sentivo and Helvita. Curanum AG served as the parent company and its name was changed to Korian Deutschland AG in January 2020.¹⁵⁷ Ver.di secretary for Korian Deutschland Matthias Gruß explains: “In the past, Orpea was conspicuous for its tough union busting. Korian evidently follows a different strategy. Management relies on a tactic of embracing. They prefer to pay their employees a little more, if necessary, to avoid collective bargaining agreements.” There are works councils in only around 20 percent of its centres in Germany, and only three facilities have an in-house collective bargaining agreement. The works councils don’t feel like they are taken seriously. “In order to block the establishment of bodies endowed with rights, such as a company works councils and regular works council assemblies, in Germany the employer installed an assembly called the Interessengemeinschaft Pflege (Care Interest Group, IGP). In the IGP, works councils are able to meet, and the costs are borne by the employer, but this assembly has no rights.”¹⁵⁸

Michaela Feldrappe, who was works council chairperson at Curanum Jena Lobeda from 2016 to 2018, attended two meetings of the general works council of Curanum Betriebs-GmbH:¹⁵⁹ “I experienced the meeting of the general works council as a complete sham. Management lulls the works councils into it, but they also let themselves be lulled. The meetings are held in company headquarters, with accommodation in chic hotels, everything high-end and super posh. I had a different idea of works council work, but I just hit a brick wall. The meetings of the IGP, which is an assembly for care workers, were usually held in parallel with Curanum’s general works council meeting. That way the IGP had an influence on the works councils.”¹⁶⁰

One nursing home in which an in-house collective bargaining agreement was signed is the Curanum facility in Schwanenteich, Zwickau, in Saxony. A wage agreement has been in place there since 2014. Simone Bovensiepen, the centre’s ver.di secretary, recalls the strike that preceded the agreement: “It lasted 23 days. The employer attempted to avoid an agreement by arguing that wages elsewhere in the region are also low. That wasn’t very convincing, because VW also operates in Zwickau. We received a lot of media attention, there were also reports on national television. In the end, Curanum had to act, because the pressure was too high. Concluding the agreement was a big step for the workers. Negotiations about a general collective agreement on working conditions were supposed to follow. But then the employer said that we should let it be, and offered everyone a 200 euro monthly pay increase. Such decisions were not being made locally, but at headquarters in Munich. They always pay enough for the employees to be satisfied and so that Curanum can avoid bad publicity or even strikes.”¹⁶¹

Given the low wages in the sector, it is hardly surprising that employees in Zwickau accepted the

offer. But that is precisely what makes things difficult for unions. Asked whether company management was also aiming to avoid strikes catching on elsewhere due to the situation in Zwickau, Simone Bovensiepen answers: “Yeah, that’s what we assume. Zwickau is always a topic of discussion at company headquarters in Munich. But I also know the methods of Celenus/Orpea in the region. They are also trying to placate their workers. They even went as far as to give an employee a television. The difference between Celenus/Orpea and Curanum/Korian in the region is that Celenus/Orpea doesn’t leave it at that, but is actually willing to engage in outright union busting. A further difference is that unlike Celenus/Orpea, Curanum/Korian does not reject negotiations wholesale.”¹⁶²

Apart from the facilities with their own agreements, in Germany Korian follows the employment contract guidelines (AVR) of the Bundesverband privater Anbieter sozialer Dienste e. V. (National Federation of Private Social Service Providers e. V., BPA), which counts many private healthcare companies among its members and which is headed by the former leader of the FDP (Free Democratic Party) in the German Bundestag, Rainer Brüderle. Its board is made up of representatives of private healthcare companies, including one from Orpea.¹⁶³ According to the BPA, the guidelines consist in “federally consistent general regulations and state-specific pay scales. They are minimum conditions. Adoption of the guidelines is voluntary.”¹⁶⁴ Therefore they cannot be compared with a binding collective bargaining agreement. They should be understood as a one-sided declaration of intent, which can be implemented in concrete contracts by individual facilities, but need not be. Often employees in nursing homes are not even aware the guidelines exist. As works council member, Michaela Feldrappe had little to no information on what the guidelines covered and to what extent they were implemented. “The works council was excluded. Maybe the Curanum AG general works council knows. At the workplace level, we had no idea. It was secret knowledge.”¹⁶⁵ According to Matthias Gruß, other works council members at Korian report that the guidelines play no role in determining working conditions or are not adhered to. The bluff with the guidelines shows how urgently necessary collective bargaining agreements are. They protect employees and contain binding requirements.¹⁶⁶

¹⁵⁷ In the following, Curanum AG is used when referring to the time period before it was renamed Korian Deutschland AG. ¹⁵⁸ Matthias Gruß, personal communication, 9 April 2020. ¹⁵⁹ According to Matthias Gruß there is only this single general works council at Curanum AG (Korian Deutschland AG since January 2020). ¹⁶⁰ Michaela Feldrappe, personal communication, 14 April 2020. ¹⁶¹ Simone Bovensiepen, personal communication, 21 April 2020. ¹⁶² Ibid. ¹⁶³ According to the 2017–18 company report, the representative of Curanum AG was Michael Reitzenstein. Bpa Arbeitgeberverband, “Gremien des bpa Arbeitgeberverbands”, following the members’ assembly of 17 September 2019, <https://www.bpa-arbeitgeberverband.de/Gremien.581.0.html> (last accessed 26 June 2020). ¹⁶⁴ Bpa Arbeitgeberverband, “Arbeitsvertragsrichtlinien (AVR)”, <https://www.bpa-arbeitgeberverband.de/Arbeitsvertragsrichtlinien-AVR.625.0.html> (last accessed 26 June 2020). ¹⁶⁵ Michaela Feldrappe, personal communication, 14 April 2020. ¹⁶⁶ Matthias Gruß, personal communication, 9 April 2020.

Union Banned in Jena

In Autumn 2018, Korian opened a new care facility at Lobeda West (Curanum) in Jena, Thuringia. Most employees, who were due to move to the new facility, were previously employed at the Phoenix Care and Social Centre at Lerchenfeld in Jena (which also belongs to the company). There was a works council there affiliated with ver.di. Ver.di secretary Philipp Motzke recalls how the move, which took place as part of a business transfer, led to concerns among employees; a core group of five to six women began organizing. "They were militant, there was momentum. I notified the company in advance that I as union secretary would visit the new site together with some voluntary union members in order to discuss current working conditions with employees and to distribute flyers. On 11 November we entered as announced. But we were immediately sent to management, who banned us from the premises. We were not even informed in writing. Management then later claimed that we had not been banned, but only that the visit was poorly timed on account of the move."¹⁶⁷

But that was not the end of it. Korian made another attempt to dissuade its employees from union

activity by promising them a pay rise. "In December 2018, ver.di and thirty colleagues from Lobeda, Jena held an aged care action day. All employees who did not take part in it later received a pay rise."¹⁶⁸ Michaela Feldrappe, the centre's former works council chairperson, found the action day to be a big success, but its consequences bitter: "It was a great action. Thirty out of eighty people took part. But management later told some of the participants who were not in the works council, that they and the others who participated could prepare for their dismissal. Management's strategy was a success. Rumours spread through the workplace. Anxiety spread too, workers retreated from action because things got too hot for them. Unfortunately the split that they wanted worked. As works council chairperson, I was accused of incitement, of instigating people. And that was not an isolated case either. Their approach was always to pester militant people with warnings. When I left the company at the beginning of 2019, I had had three warnings. When my colleagues bowed to pressure and retreated in 2018, it was a real kick in the guts for me, and one of the reasons I left."¹⁶⁹

¹⁶⁷ Philipp Motzke, personal communication, 14 April 2020; ver.di, "Hausverbot für Gewerkschaft ver.di", press release, 12 November 2018, <https://sat.verdi.de/presse/pressemitteilungen/+co++7f7a8098-e64e-11e8-98f0-525400ff2b0e> (last accessed 26 June 2020). ¹⁶⁸ Philipp Motzke, personal communication, 14 April 2020. ¹⁶⁹ Michaela Feldrappe, personal communication, 14 April 2020.

5 FRESENIUS: FROM BAD HOMBURG TO THE WORLD, WITH QUESTIONABLE PRACTICES

5.1 COMPANY PROFILE

Fresenius SE & Co KGaA (hereafter Fresenius) is a globally leading medical technology and healthcare corporation, founded in 1912 and publicly floated since 1986. Headquartered in Bad Homburg, the company specializes in products and services for dialysis, managing and running hospitals, and outpatient care. According to Fresenius, it employs 294,000 people in over 100 countries (56 percent of which are in Europe, and 26 percent in North America; 71 percent of which work in services, and 14 percent in production), and in 2019 its annual turnover was over 35.5 billion euros. Earnings before tax and interest were 4.6 billion euros in the same year, which the company boasted was its “16th record year in a row”.¹⁷⁰ Shareholders continually enjoy high dividends and payouts. “Within ten years, Fresenius has more than tripled its dividends. In 2018, the healthcare company from Bad Homburg increased its dividend per share for the 26th time in a row. Despite high costs as a result of the failed takeover of its US competitor Akorn, they are working on their ‘27th dividend increase’, Fresenius boss Stephan Sturm told the press.”¹⁷¹ But these profits were only possible because of the hard work of hundreds of thousands of employees.

The goal of the company is to attain an annual turnover growth of four to seven percent by 2023.¹⁷² Fresenius’s geographic focus is on North America and Europe, but the company is also active in Asia, Latin America, and Africa. The company’s largest shareholder is the Else Kröner Fresenius Stiftung, founded by former Fresenius owners, with 27 percent, which therefore holds a blocking minority.¹⁷³ According to its own statements it is the largest private foundation in Germany, and was named after the foster-daughter of Fresenius’s founder, who inherited the company in 1946. Taken together, institutional investors hold 62 percent of shares (including small percentages held by the US investment corporation BlackRock, DWS Investment GmbH, Allianz Global Investors GmbH, and The Vanguard Group),¹⁷⁴ while private investors hold only five percent.¹⁷⁵ The foundation wields the most influence, followed by the institutional investors.

The company is split into four independently operating businesses. Fresenius Medical Care (FMC) is the world’s largest dialysis provider, with 45 production sites for dialysis machines and accessories. Today one out of every two dialysis machines used worldwide comes from FMC. As the largest arm of Fresenius, FMC employs over 120,000 people (or 44 percent of the company as a whole), and accounts for almost half of the company’s overall turnover.¹⁷⁶ The focus of FMC’s activities is North America, the source of 70 percent of its turnover.¹⁷⁷ The company runs 2,500 dialysis centres in the USA, treating over 211,000 people.¹⁷⁸

As of the end of 2019, FMC treated a total of 345,000 dialysis patients in almost 4,000 centres.¹⁷⁹ In Europe and in a few countries outside Europe, the production division (FMC) is separate from the dialysis services division, which is called NephroCare in a few countries, including Germany, France, and Poland. Most FMC employees are skilled medical staff such as nurses, dialysis specialists, nursing assistants, and technicians.

Fresenius Helios is the largest private hospital operator in Europe, and with 27 percent of the firm’s turnover it is the second-largest division of Fresenius. It employs around 110,000 people (36 percent of Fresenius’s staff). The company attained this position mainly through the purchase of the German Helios Group in 2005, and the takeover of the Spanish hospital operator Quirónsalud in 2016–17. Fresenius Helios also became the largest private hospital operator through the purchase of 40 hospitals and 13 medical care centres from Rhön Klinikum AG in 2014. With the purchase of clinics in Peru (from 2016) and Columbia (from 2018) through Quirónsalud, Fresenius Helios is now active in the Latin American market. In Germany alone, Helios operates 87 hospitals, 123 outpatient clinics, and seven preventative clinics, employing 66,000 people. In Spain, Quirónsalud operates 51 hospitals, 71 outpatient clinics, and 300 preventative clinics.¹⁸⁰

Fresenius Kabi employees around 40,000 people (14 percent of all Fresenius employees), and contrib-

¹⁷⁰ Figures adjusted to IFRS 16. Fresenius, “Investor News”, 20 February 2020, p. 1, https://www.fresenius.de/media/FSE_IN_Q4_2019_d.pdf; Fresenius, “Geschäftsbericht 2019”, p. 44 and p. 115, https://geschaeftsbericht.fresenius.de/wp-content/uploads/sites/3/2020/03/Fresenius_Geschäftsbericht_2019.pdf (both links last accessed 26 June 2020). ¹⁷¹ Ver.di, “Fresenius: Immer mehr für Aktionäre”, <https://gesundheits-soziales.verdi.de/service/drei-drei-70/++co++bdce0dfc-e44e-11e9-a4fe-525400f67940> (last accessed 26 June 2020). ¹⁷² Fresenius, “Investor News”, 20 February 2020, p. 2. This figure incorporates the IFRS 16 measure. ¹⁷³ Like many other foundations linked to companies floated on the German stock exchange (DAX), the Else-Kröner-Fresenius foundation is not uncontroversial. The foundation’s goal is to support biomedical research and humanitarian medical aid. Yet it has come under heavy criticism for reportedly feeding a lot of its funds back into the company it is linked to. See Salz, Jürgen, “Medizintechnik, Stiftung Fresenius in der Kritik”, 4 February 2012, <https://www.wivo.de/unternehmen/industrie/medizintechnik-stiftung-fresenius-in-der-kritik/614494.html> (last accessed 26 June 2020). ¹⁷⁴ DWS Investment GmbH is a fund manager owned by Deutsche Bank, Allianz Global Investors GmbH belongs to the Allianz insurance corporation. On the AllianzGI Health Sciences Fund website, three reasons are given for investing in healthcare businesses: first, spending on healthcare in the USA is expected to outstrip GDP growth, second, demographic shifts and the ageing of society mean that “healthcare consumption” will increase, and third, new markets are emerging in newly industrializing countries. Alliance global investors/AllianzGI Health Sciences Fund A (RAGHX), “Investing in Companies that Benefit from the Rising Global Demand for Better Health and Wellness”, <https://us.allianzgi.com/en-us/products-solutions/mutual-funds/allianzgi-health-sciences-fund-a-raghx> (last accessed 29 April 2020). ¹⁷⁵ Fresenius, “Aktionärsstruktur”, <https://www.fresenius.de/aktionaeersstruktur> (last accessed 25 May 2020); MarketScreener, “Fresenius SE & Co. KGAA”, <https://www.marketscreener.com/FRESENIUS-SE-CO-KGAA-436083/company/> (last accessed 28 May 2020). ¹⁷⁶ Fresenius Medical Care, “Geschäftsbericht 2019”, p. 2, https://www.freseniusmedicalcare.com/fileadmin/data/com/pdf/Media_Center/Publications/Annual_Reports/FME_Geschäftsbericht_2019.pdf (last accessed 26 June 2020). ¹⁷⁷ Ibid., p. 44. ¹⁷⁸ Fresenius, “Der Gesundheitskonzern”, <https://www.fresenius.de/weltweit> (last accessed 31 May 2020). ¹⁷⁹ Fresenius, “Der Gesundheitskonzern, Fresenius Medical Care”, <https://www.fresenius.de/fresenius-medical-care> (last accessed 31 May 2020). ¹⁸⁰ Fresenius, “Geschäftsbericht 2019”, p. 26f.; Fresenius: “Fresenius Helios”, <https://www.fresenius.de/fresenius-helios> (last accessed 28 June 2020).

utes almost 20 percent of the company's turnover. It sells medicines and infusion, transfusion, and clinical nutrition products. The products and services are used in the treatment of severely and chronically ill patients. In 2019, Kabi took further steps in the development of biosimilars (similar versions of biopharmaceuticals).¹⁸¹

Fresenius Vamed is the smallest company division, employing almost 19,000 people (or six percent of total staff). In 1996, Fresenius bought a majority stake in Vamed AG. Vamed concentrates on project management and services for health centres: "from project development, planning, and turnkey construction, via maintenance and technical management, to total operational management."¹⁸² In Central Europe Vamed is a leading provider of post-acute treatment services.¹⁸³ Vamed is increasingly active in rehabilitation, and currently carrying out Europe's largest public-private-partnership project at the University Medical Center Schleswig-Holstein.¹⁸⁴

5.2 MAIN BUSINESS STRATEGIES

Fresenius is aggressively expanding and aims to become the world's leading provider of products and therapies for severely and chronically ill people. In its own estimation, the company's core competencies are quality, innovation, increasing profitability, and a global presence. With a diversified portfolio, it aims to achieve a "leading position in each of the healthcare markets and areas it is active in". FMC's share of the dialysis services market is already at ten percent (38 percent in the USA), and for dialysis products it is at 36 percent. Overall market volume is at 80 billion euros.¹⁸⁵

Markets in Africa, Latin America, and the Asia-Pacific region, especially China, are particularly significant for FMC and Fresenius Kabi. In its company report, Fresenius claims to be planning "not only to grow organically, but also to selectively seek out small- to medium-sized acquisitions. These should complement our existing portfolio. We are always on the lookout for new, attractive growth opportunities in developing countries and newly-emerging economies."¹⁸⁶

At its core, Fresenius's growth and profit strategy rests on five pillars.¹⁸⁷ The first is the acquisition of facilities and businesses. With the exception of Fresenius Kabi and Vamed, the company does not generally construct new facilities, but rather grows through the purchase of other firms that have already shown some strength. According to Jason Ward from the Centre for International Corporate Tax Accountability and Research, "the company's organic growth essentially rests on increasing demand due to increasing numbers of ill people".¹⁸⁸ Following the acquisition of Quirónsalud and its entry into the Latin American market, Fresenius Helios is considering entering a third hospital market in Europe, according to its 2019 company report.¹⁸⁹ In Spain, Helios is also continuing to make purchases in the private hospital sector. Growth at any cost seems to be the order of the day. In individual business areas a similar trend can be observed as

with Korian and Orpea. That is, they attempt to exploit economies of scale and to diversify their products and services. For example, in order to profit from the home dialysis market, in January 2019 FMC bought the home dialysis company NxStage for 1.7 billion euros.¹⁹⁰ International Helios Health boss Francesco De Meo expects further market consolidation to result from the coronavirus pandemic and sees further growth opportunities primarily in outpatient care and digital services.¹⁹¹

Second, the company is profiting from its singular vertical integration. Fresenius is an all-in-one provider, and makes use of synergy effects across its broad range of offerings. By purchasing products and services from other divisions of the same company, third-party providers are being left out.

Third, according to Arvid Muller, Fresenius invests most heavily in areas where the company is already in a leading position.¹⁹² This is because the market is not yet saturated, as is shown by the six-percent global increase in dialysis patients in 2019.¹⁹³ To increase its profit margins, Fresenius is striving for more market power in various areas and market segments. This means that the four divisions of the business develop not only in concert, but independently as well. So for example Helios continues to buy up hospitals in Columbia, whereas FMC is strong in Argentina. Investment pragmatically goes where profits beckon.

Fourth, Fresenius employs targeted strategies to avoid taxes. The Centre for International Corporate Tax Accountability and Research and the Tax Justice Network reported that Fresenius is present in 16 of the world's 20 biggest tax havens. While the company mainly makes its revenues in countries with business tax rates of over 30 percent, the company's real declared tax rate in 2018 was only 18.2 percent of its earnings.¹⁹⁴ Tax evasion by multinational corporations such as Fresenius is made possible by the founding of subsidiary or shell companies (with little to no economic activity) in tax havens, and through tax laws that allow these subsidiaries to write one another invoices for services, loans, and product deliveries. Profits are thus shifted to countries with low tax rates. Vertical integration and Fresenius's global presence put it in a good starting position. According to estimates by the aforementioned tax justice organizations: "If Fresenius had paid tax on its profits at the rates in Germany or the USA for the last ten years, it would

¹⁸¹ Fresenius, "Geschäftsbericht 2019", p. 24f.; Fresenius, "Fresenius Kabi", <https://www.fresenius.de/fresenius-kabi> (last accessed 28 June 2020). ¹⁸² Ibid., p. 28f.; Fresenius, "Fresenius Vamed", <https://www.fresenius.com/fresenius-vamed> (last accessed 26 June 2020). ¹⁸³ Post-acute treatment services refers to the medical and nursing care received in the wake of an acute illness. ¹⁸⁴ Fresenius, "Geschäftsbericht 2019", p. 29. ¹⁸⁵ Ibid., p. 35ff. and p. 46f. ¹⁸⁶ Ibid., p. 38f. and p. 70. ¹⁸⁷ This breakdown is partially based on conversations that took place in April and May 2020 with Arvid Muller, who conducts research as part of the campaign for a global framework agreement at Fresenius. ¹⁸⁸ Jason Ward, personal communication, 4 May 2020. ¹⁸⁹ Fresenius, "Geschäftsbericht 2019", p. 15. ¹⁹⁰ Ibid., p. 38f. ¹⁹¹ Telgheder, Maike, "Der Neue Alltag in den Helios-Kliniken", *Handelsblatt*, 3 June 2020, p. 22. ¹⁹² Arvid Muller, personal communication, April and May 2020. ¹⁹³ Fresenius, "Geschäftsbericht 2019", p. 46. ¹⁹⁴ Center for International Corporate Tax Accountability and Research/Tax Justice Network, Deutschland (ed.), *Fresenius: Ungesunde Geschäftspraktiken: Globale Steuervermeidung eines Multinationalen Gesundheitskonzerns aus Deutschland*, Januar 2020, p. 1.

have an additional tax bill of 1.4 to 2.9 billion euros.”¹⁹⁵ Such practices help the company achieve a competitive advantage. Fresenius has also repeatedly been accused of corruption.¹⁹⁶ “In 2019, Fresenius Medical Care reached a settlement with the US Government under the US Foreign Corrupt Practices Act because of systematic corruption and bribery in the awarding of government contracts. But even after this agreement, Fresenius Medical Care continues to evade US Government attempts to obtain information regarding new accusations of deceit and exorbitant fees for government programmes.”¹⁹⁷

Fifth, and this is the crucial point for the present study, the company has grown very rapidly, and this has meant that there is neither monitoring of practices in individual facilities, nor common standards for wages and working conditions. According to Jason Ward, Fresenius tends to abide by low local or regional standards both for wages and working conditions and for patient safety, rather than ensuring high global standards for all activities. Here is what this sounds like in the language of the company: “In dealing with local worker representatives and unions, primary responsibility lies with the respective business divisions at the regional or local level. Our focus in discussions with such representatives is on local and regional conditions.”¹⁹⁸ Fresenius thereby participates in a race to the bottom, by declaring the prevailing, enforceable conditions in a particular place to be sufficient.

Fresenius has likewise stated elsewhere: “This also includes the voluntary duty to abide by international labour and social standards, contained in our code of conduct and in the declaration of human rights.”¹⁹⁹ How accurate this is explained in sections 5.3 and 5.4.

5.3 WAGES AND WORKING CONDITIONS

In general, company representatives argue that everything that they do is in accordance with the law.²⁰⁰ In Europe, 77 percent of employees are covered by collective bargaining agreements.²⁰¹ There are no comparable figures for Fresenius employees outside of Europe. But it is to be assumed that the level of collective bargaining coverage there is significantly lower.

According to Arvid Muller, Fresenius, and in particular FMC, does as little as possible to protect workers’ rights. “There are no unified standards. Locally, the company orients itself to the lowest standards that it must abide by. They rely on what are often legal forms of union busting and tax evasion. The business model of Fresenius Medical Care is based on low wages. In their dialysis centres in the USA, they employ many patient care technicians who earn less than registered nurses do. As there are few regulations regarding the level of registered nurses employed relative to patient care technicians, FMC is able to reduce costs. Staff turnover levels at FMC in the USA are also high. This makes it easier to fight against unions.”²⁰²

With the exception of New York City and a few other places (see the section on Alabama, below), there are

no collective bargaining agreements at FMC in the USA, and as a consequence entry-level wages are markedly lower than those regulated by collective agreements.²⁰³ Two FMC employees from New York, where the union succeeded in implementing a collective bargaining agreement, describe their view of the company as follows: “They have no respect for people who have worked for them for so many years, and there’s no loyalty.” For the unionists, a collective bargaining agreement is a central pillar in the defence of their rights. “I feel like it’s important to have a contract to protect the workers and the patient care. Solely because I feel if there is no contract in place Fresenius can come in and do what they want.”²⁰⁴

While there are often no collective agreements at FMC, with the exception of a few countries, Fresenius Helios also gets around them through restructuring and the creation of spin-off companies. According to ver.di, in Germany Helios aims for a “maximum fragmentation of staff, dividing them into up to 14 subsidiary companies per hospital”.²⁰⁵ To date there is also no unified pay schedule. Each hospital has different wage regulations and classification tables. In the numerous Helios subsidiaries there are often no collective bargaining agreements in place. Helios is made up of over 400 legal entities. Creating subsidiaries is one of its business strategies. According to §613a of the Betriebsverfassungsgesetz (Works Council Constitution Act), one year after the founding of a spin-off company, previously existing collective agreements no longer apply, and dismissals with the option of working under new conditions are possible. Currently there are more than 10,000 Fresenius employees without a collective agreement.²⁰⁶

In Latin America too, Fresenius cuts costs at the expense of staff. After the takeover of hospitals in South America by Helios/Quirónsalud, the same thing

¹⁹⁵ Ibid. ¹⁹⁶ On p. 4 of the “Ungesunde Geschäftspraktiken” report on Fresenius, a whole series of cases is listed: “At the start of 2000, Fresenius Medical Care (FMC) pleaded guilty to having been involved in cases of fraud in public health programmes in the USA, and made an agreement with the US Justice Department to pay a fine of 496 million US dollars”. Further cases pertain to subsidiaries of FMC in the USA in 2007, and subsidiaries of Fresenius Kabi in Chile in 2018. Another case in Germany in 2019 received a lot of publicity. The *Süddeutsche Zeitung* reported on 21 October 2019: “Between 2007 and 2016, there has been systematic bribery of doctors and clinic managers in 17 countries. This took place in nephrology wards and related also to the purchase of dialysis products. With almost 4,000 treatment centres, FMC is one of the largest providers in the world. The bribe money was often disguised as being for commissions or consulting fees.” Fresenius paid a fine of 231.7 million US dollars to settle the case; see <https://www.sueddeutsche.de/gesundheitspolitik/gesundheitskorruption-ermittlungen-gegen-fresenius-mitarbeiter-dpa-urn-newsml-dpa-com-20090101-191021-99-380819> (last accessed 26 June 2020). ¹⁹⁷ Jason Ward, personal communication, 4 May 2020. ¹⁹⁸ Fresenius, “Geschäftsbericht 2019”, p. 120. ¹⁹⁹ Fresenius, “Ein Attraktiver Arbeitgeber Sein”, <https://www.fresenius.de/mitarbeiter> (last accessed 26 June 2020). ²⁰⁰ Fresenius, “Compliance”, <https://www.fresenius.de/compliance> (last accessed 5 March 2020). ²⁰¹ Fresenius, “Geschäftsbericht 2019”, p. 120. ²⁰² Arvid Muller, personal communication, 22 April 2020. ²⁰³ Ver.di, “Fresenius: Atmosphäre der Angst”, 2018, <https://gesundheits-soziales.verdi.de/++co++4a27b56e-e5aa-11e7-915b-525400940f89> (last accessed 5 March 2020). ²⁰⁴ New York State Nurses Association RNs and 1199 SEIU Healthcare Workers, “On Fresenius”, video, 28 May 2017, citations of Charmaine Cole and Lisann Caesar from 2:45, <https://vimeo.com/219109139>, German version: <https://vimeo.com/219149603> (both links last accessed 26 June 2020). ²⁰⁵ Ver.di, “Helios, Rückendeckung für Helios-Kolleg*innen”, <https://gesundheits-soziales.verdi.de/tariffbereiche/helios/++co++d40f0b52-3e7c-11e9-bbe0-525400f67940> (last accessed 26 June 2020). ²⁰⁶ Ver.di union secretary Michael Dehmlow, personal communication, 19 March 2020.

happens almost everywhere: company agreements are no longer abided by, overtime and night shift premiums are no longer paid. Employees can take legal action, but the judiciary in the relevant countries is often weak. When Helios/Quirónsalud takes over a new hospital, everything comes under scrutiny: what must Helios pay for, and what costs can be cut?²⁰⁷ At an international meeting of unionists in May 2019, Peruvian nurse Sofia Spinoza reported on what it was like when her clinic was taken over by Fresenius a few years earlier: “Since then everything has changed. Basic rights are being trampled on!” There was “complete chaos”. This was the case in all departments. She was held personally responsible for the consequences of a labour dispute and was threatened by management.²⁰⁸ Helios/Quirónsalud renews temporary contracts every three or four months, replaces staff, and unpaid overtime is also common. Spinoza reported at the meeting that the union had called in the ministry of labour for these reasons.²⁰⁹

During the first wave of the coronavirus pandemic, FMC came under criticism for doing too little to protect the health of its employees. A report by the Fundación Sol published in May 2020 shows that FMC provided employees with inadequate protective equipment.²¹⁰ For example, N95 masks (the equivalent of FFP2 masks in Europe) were only distributed to management and not to healthcare workers in direct contact with patients. Ana Galván, a nurse and secretary of the NephroCare union, explains: “The union sent an email asking for more protection and security measures, but the company replied that they were not going to do it because there were no infected employees.”²¹¹ A similar picture emerged in Columbia at the beginning of the pandemic. As reported by the Escuela Nacional Sindical, in some hospitals there were inadequate supplies of protective equipment and safety regulations were not followed.²¹² The situation seems to have subsequently markedly improved thanks to the efforts of unions in Columbia and Chile.

5.4 UNION BUSTING AT FRESENIUS

“No one may be discriminated against in the workplace for being a member of a union or workers’ representative body”, a Fresenius company report reads.²¹³ But on taking a closer look, it becomes clear that union busting is an international phenomenon at Fresenius. According to the acting general secretary of UNI Global Union, Alke Boessiger, Fresenius consistently violates workers’ rights and exploits all the legal loopholes it can around the world.²¹⁴ It tends to be the union-busting strategies developed in the USA that make their way through the rest of the company.

Section 5.4.1 discusses the union busting methods used at FMC in the USA in more detail, with examples from facilities in Alabama and California, as well as conditions for union organizing in Chile.²¹⁵ Section 5.4.2 is concerned with measures used to combat unions at Fresenius Helios in Germany.

5.4.1 Combating Unions at Fresenius Medical Care

Professional union busting in the USA

In the USA, FMC not only schools its local managers in union busting techniques, it also hires external union busting agents. One of these firms is Cruz & Associates, which Donald Trump hired to stop a union from organizing in one of his Las Vegas hotels. Regarding this, in June 2019 the *Deutsche Ärzteblatt* wrote: “An FMC advertisement for a human resources manager in Knoxville requested candidates able to provide support for training in ‘union avoidance activities’. Other job offers for human resources in Atlanta and Charlotte refer to candidates who will guide other managers in union avoidance. For years, Fresenius has hired consultants to obstruct unions, workers’ representatives report. They include the US firm Cruz & Associates, which itself declares that its services include ‘responding quickly and effectively to union activities’. Official documents reveal that Fresenius has spent at least 410,000 US dollars on consultants, in order to impact advances in union organization.”²¹⁶

Fresenius’s actions are either legal or in a legal grey zone.²¹⁷ Management even makes aggressive use of US labour law, arguing that it allows for companies to actively inform their employees about union-related issues.²¹⁸ In recent years, two of FMC’s most well-known union busting actions occurred in Alabama and California.²¹⁹

²⁰⁷ Ibid. ²⁰⁸ Cited in Platen, Heide, “Multinationaler Konzern Setzt Beschäftigte Unter Druck”, <https://www.verdi.de/themen/gesundheit/+co++80de37d8-997a-11e9-8007-525400b665de> (last accessed 26 June 2020). ²⁰⁹ Hochstrat, Anne-Katrin, radio report for “Den Tag” in Hessen, hr-INFO (Hessischer Rundfunk), 16 May 2019, 20:15, https://mp3podcasthrdl-a.akamaihd.net/mp3/podcast/der_tag_in_hessen/der_tag_in_hessen_20190516_81607150.mp3 (last accessed 26 June 2020). ²¹⁰ Fundación Sol is a non-profit institution that does research and consulting on education and work in Chile using a critical development approach. Doniez, Valentina, and Gálvez, Recaredo, “One Life Over Another: Arbitrariness in the Context of a Pandemic: The Case of Four Dialysis Clinics of the Multinational Fresenius in Chile”, working paper, May 2020, <https://fundacionsol.cl/blog/estudios-2/post/one-life-over-another-english-version-2020-6168> (last accessed 26 June 2020). ²¹¹ UNI Global Union, “New Report: Chilean Fresenius Workers Lack of Proper PPE While Treating High-Risk Patients”, 20 May 2020, <https://uniglobalunion.org/news/new-report-chilean-fresenius-workers-lack-proper-ppe-while-treating-high-risk-patients> (last accessed 26 June 2020). ²¹² Escuela Nacional Sindical is a Columbian NGO that supports unions and workers in Columbia. Echeverri, Juan Alejandro, “¿Cuánto Vale la Vida de los Trabajadores de la Salud en Colombia?: Así Son las Condiciones de los Hospitales de Fresenius en Colombia”, 8 April 2020, <http://ail.ens.org.co/informe-especial/cuanto-vale-la-vida-de-los-trabajadores-de-la-salud-en-colombia-asi-son-las-condiciones-de-los-hospitales-de-fresenius-en-colombia/> (last accessed 26 June 2020). ²¹³ Fresenius, “Geschäftsbericht 2019”, p. 131. ²¹⁴ Platen, “Multinationaler Konzern”. ²¹⁵ A further case at FMC/NephroCare France can be found here: Fédération CGT de la santé et de l’action sociale, “Menaces et Discrimination chez Nephrocare (Groupe Fresenius)”, 28 June 2018, <https://www.sante.cgt.fr/Menaces-et-discrimination-chez-Nephrocare-groupe-Fresenius> (last accessed 22 March 2018); a further case at Fresenius Kabi in Italy can be found here: RovigoOggi.it, “Attacco Frontale dei Sindacati alla Fresenius”, 4 October 2019, <https://www.rovigooggi.it/n/91891/2019-10-04/attacco-frontale-dei-sindacati-alla-fresenius> (last accessed 22 March 2020). ²¹⁶ Dpa/Deutsches Ärzteblatt, “Fresenius Liegt mit Gewerkschaften im Streit”, 12 June 2019, <https://www.aerzteblatt.de/nachrichten/103805/Fresenius-liegt-mit-Gewerkschaften-im-Streit> (last accessed 26 June 2020). ²¹⁷ Grey zone here refers to the fact that there are no clear legal guidelines or that there is no clear jurisdiction. ²¹⁸ Dpa/Deutsches Ärzteblatt, “Fresenius Liegt mit Gewerkschaften im Streit”. ²¹⁹ The present study focuses on these two examples in the USA. But workers in New York, where the level of unionization is higher, also report anti-union tactics. See ver.di, “Fresenius vs. Gewerkschaften: Ein Gespräch mit Kolleginnen der New York State Nurses Association”, <https://gesundheits-soziales.verdi.de/mein-arbeitsplatz/krankenhaus/+co++a881363a-8c18-11e7-857e-525400f67940> (last accessed 26 June 2020).

Alabama²²⁰

FMC operates 95 dialysis clinics in the US state of Alabama, where so-called “right to work” laws are in place. These have nothing to do with the right to a job, but are rather a set of laws designed to suppress the power of unions.²²¹ Efforts to develop union structures have nonetheless grown in recent years, including at FMC. At the beginning of 2017, FMC employees turned to the Retail, Wholesale and Department Store Union (RWDSU) because of low wages, understaffing, and unsafe working conditions, which also put patients at risk.²²² At seven locations, a majority of employees joined the RWDSU and applied to the National Labour Relations Board (NLRB) for union elections to be held.

FMC management first responded with a divide and conquer strategy, by offering wage increases to all employees except for those at the seven sites where union elections were to be held. This enabled management to “convince” staff at three of the seven clinics to cancel the elections. But that was not the end of it. In the remaining four clinics, harsher union busting techniques were then applied. Employees were forced to attend captive audience meetings. At these meetings, anti-union speeches and videos were presented, and job losses and hospital closures were threatened if the union won the vote. In order to strengthen this message, management made employees attend one-on-one meetings between superiors and workers. Active union members were particularly scrutinized.

Despite these attempts at intimidation, employees at two sites, Dauphin Island Parkway and Azalea (both in the Mobile region) voted for union representation. As a result, employees at these sites were denied the wage rises given to those at the others. Local management also refused to let them be dispatched to sites with severe staff shortages and with no union representation. Such dispatches are completely normal and many employees are financially dependent on the bonus shifts associated with them.

That was still not enough: ultimately FMC refused to recognize the election, declaring it void. It was another year before the NLRB overruled this objection. Management’s delaying tactic was gruelling for many employees. It was not until April 2019 that FMC concluded a collective bargaining agreement with the union in Azalea, and a month later entered into negotiations with union representatives at the Dauphin Island Parkway clinic.

The collective bargaining agreement at Azalea should be counted a major success, as it is the first such agreement at a Fresenius site in the American South.²²³ The campaign organizer put this down to the workers’ refusal to be intimidated and to the fact “that ver.di and the works councils in Europe brought up the dispute with Fresenius bosses.”²²⁴ This makes clear the importance of international union work. In the mandatory accounts bill given to the US Department of Labor, Fresenius declared that it paid PJF Consulting more than 80,000 dollars to carry out anti-union campaigns

in clinics in the Mobile region in August and September 2017.²²⁵

California

There is no collective bargaining agreement for the approximately 3,000 employees in 185 FMC dialysis clinics in California. Many of them work a second job to keep their heads above water. When management wanted to extend nurses’ shifts from ten to twelve hours, employees began organizing in the service union SEIU-UHW²²⁶ and agitating for a collective agreement. Once again, this was met with union busting tactics. Employees report that since they unionized they have been repeatedly placed under surveillance in the workplace and that some activists were intimidated.²²⁷ According to Cass Gualvez from the SEIU-UHW, FMC hired external firms to obstruct workers’ representation on its sites. “They asked employees why they wanted to found a union, and claimed that unionized clinics would have to close.”²²⁸ As in Alabama, the consulting firm used an anti-union video to call on new employees “to contact their superiors if they heard their colleagues speaking about the union”. Those active in the union were also intimidated in one-on-one meetings or were passed over for pay rises.²²⁹

In a statement of solidarity with FMC employees in California, Rainer Stein declared on behalf of the group works council (KBR) at Helios Kliniken GmbH: “The KBR at Helios Kliniken GmbH is shocked by reports from our colleagues in the USA [...]. In particular, management must desist from showing anti-union films and asking employees to denounce the union activities of their colleagues, pressuring individuals, and/or preventing employees from pursuing their legitimate desire to improve their working conditions and defend their own interests. We will not acquiesce to threats of legal action against workers who take part in demonstrations or who join unions.”²³⁰

²²⁰ Unless otherwise indicated, the section on Alabama is based on information from AFL-CIO, “The Double Standard at Work: European Corporate Investment and Workers’ Rights in the American South”, 2019, pp. 40–44, https://aflcio.org/sites/default/files/2019-10/EuroSouth_Oct2019_FINAL.pdf (last accessed 26 June 2020). ²²¹ There are now “right to work” laws in 27 of the 50 US states, primarily in the South, but also in the Midwest. ²²² A union that originally represented workers in retail and wholesale, but has expanded to include those in food, the public sector, and healthcare. ²²³ UNI Global Union, “Breaking Through for Alabama Fresenius Workers”, 30 April 2019, <https://uniglobalunion.org/news/breaking-through-alabama-fresenius-workers> (last accessed 27 June 2020). ²²⁴ Ver.di, “Gewerkschaftsnetzwerk, Grenzenlose Solidarität”, <https://gesundheit-soziales.verdi.de/tarifbereiche/helios/++co++9be0cf4e-7b9f-11e9-b469-525400f67940> (last accessed 27 June 2020). ²²⁵ AFL-CIO, “The Double Standard at Work”, p. 93. ²²⁶ Service Employees International Union – United Healthcare Workers West is a union active in healthcare, with more than 97,000 members in California, including both workers and patients. ²²⁷ Ver.di, “Fresenius: Atmosphäre der Angst”, <https://gesundheit-soziales.verdi.de/++co++4a27b56e-e5aa-11e7-915b-525400940f89> (last accessed 27 June 2020). ²²⁸ Dpa/Deutsches Ärzteblatt, “Fresenius Liegt mit Gewerkschaften im Streit”. ²²⁹ Ver.di, “Fresenius: Atmosphäre der Angst”. ²³⁰ Declaration of solidarity by the KBR Helios Kliniken GmbH, 20 December 2017.

Chile: Exploiting union impotence

The tough reality in Fresenius's Chilean dialysis clinics has been described in a ver.di report by employee Gloria Flores. She reports on numerous violations of applicable regulations. "In her country, Fresenius speculates on the relative impotence of the small, fractured unions, pitilessly exploits legal loopholes, or simply doesn't abide by the regulations in place. [...] Overtime is arbitrarily planned, employees are made to do work they are not trained in, union members are obstructed, harassed, and 'implicitly threatened'."²³¹

According to the head of the Chilean NephroCare union Ana Galván, Fresenius treats unions as its enemies and ignores the concerns of its employees. Galván also reports on company violations of the collective bargaining agreement. For example, Fresenius continually attempts to increase the number of patients that can be cared for by technical care staff. "They are increasing workloads without coming to an agreement with the workers." In order to assure that the union is respecting its employees, the union has carried out more than 40 inspections.²³²

5.4.2 Anti-Union Tactics by Fresenius Helios in Germany

In union discourse about Fresenius, mention is often made of how the company tramples on workers' rights in the USA, while respecting them in Germany. It is true that unions and works councils in Germany have more rights than those in the USA. It is also true that Fresenius does not violate union rights in Germany in the same way as it does in the USA. But in this country, too, there are continual attempts to make the life of unionists more difficult. Fresenius Helios abides by the law, but wherever there are no rules or jurisdiction, the principle of "no plaintiff, no case" holds sway. And they exploit everything that they can in the pursuit of their interests.²³³

Achim Teusch, who was works councillor and ver.di activist at Fresenius Helios in Siegburg until 2017, tells how Siegburg Hospital is perhaps an exemplary case of how Fresenius Helios deals with unions. In 2002, the former public hospital was taken over by Fresenius. Management annulled the existing in-house collective agreement and outsourced various parts of the workforce. But the company did not attempt to prevent union action. "That changed when Fresenius bought Helios in 2005. I had always understood Helios to be a healthcare company that uses Lidl methods.²³⁴ Fresenius Helios did then renegotiate our collective agreement. But it was clear that their idea was to give us money so that we would turn a blind eye when they axed jobs. But when they noticed that we were unwilling, then there was only struggle, feuds, confrontation. The fact that the works council and the union represented the vast majority of workers was of no interest to them."²³⁵

That anti-union measures are no exception at Helios is made clear in the following example of how Helios

subsidiary Damp dealt with employees in 2012, how the company cooperated with law firm Allen & Overy, and its campaign against a unionist in Salzgitter in 2015.

Firing 1,000 Damp service workers in Northern Germany in 2012

Shortly after the hospital group Damp Holding AG was taken over by Helios in 2012, the new management picked a fight, firing 1,000 service workers who had previously taken part in warning strikes. How did it come to this?

From March 2012, hospital employees of Damp AG and the Damp Central Service Company (ZSG) went on a warning strike in Schleswig-Holstein and Hamburg for a 7.5 percent pay rise, Christmas bonuses, and a ban on forced redundancies. But the employer did not budge. Then in June 2012, ver.di led a ballot on an unlimited strike, which was approved by 86 percent of union members (and 90 percent of those in the service sector). The employer promptly responded by summarily firing, along with the works council, 1,000 ZSG employees. Jörg Reschke, Helios Regional Manager for North West Germany, justified the step by saying that the "due to the strike, the ZSG is no longer in a position to fulfil its contractual obligations".²³⁶

This caused a storm of outrage. Ellen Paschke from ver.di made the following criticism: "This aims solely at preventing workers from exercising their right to strike in the current round of collective negotiations at Damp as well as in the upcoming collective negotiations at Helios. [...] With the firing of the most vulnerable employees in the company, the employer wants to make an example and also to send a message to all remaining employees about what is in store for them if they make use of their constitutionally guaranteed right to strike."²³⁷

The employer consigned half of those fired to unemployment and offered the other half contracts in new service companies. According to ver.di, this would have meant wage reductions of up to 37 percent.²³⁸ So it is no wonder that the whole conflict was extremely polarized. At the Fresenius management meeting, 200 to 300 employees stormed the stage in protest at the firings. Helios then filed charges for disturbing the peace and halted discussions with ver.di. A few

²³¹ Platen, "Multinationaler Konzern". ²³² Interview with Ana Galván, 18 June 2020. ²³³ Michael Dehmlow, personal communication, 31 May 2020. ²³⁴ Teusch here refers to Lidl's anti-worker and anti-union tactics, which made headlines in the 2000s. See Schramm-de Robertis, Ulrike: "Ihr Kriegt Mich Nicht Klein!" *Eine Discourter-Angestellte Kämpft um Ihre Rechte*, Köln. ²³⁵ Achim Teusch, personal communication, 30 March 2020. ²³⁶ Dpa, "Verträge mit Service-Gesellschaft Gekündigt: 1000 Mitarbeiter Betroffen", 22 June 2012, <https://www.kn-online.de/Kiel/Vertraege-mit-Service-Gesellschaft-gekuendigt-1000-Mitarbeiter-betroffen> (last accessed 20 April 2020). ²³⁷ Ver.di, "Fresenius/Helios: Beschäftigte Gehen Gegen Einschüchterungsversuche vor", press release, 25 June 2012, <https://www.verdi.de/presse/pressemittellungen/+co+133d-b46e-beae-11e1-7454-0019b9e321cd> (last accessed 27 June 2020). ²³⁸ Ver.di, "Klinikonzern Fresenius-Helios Setzt Gekündigte Service-Beschäftigte in Damp Weiter Unter Druck", press release, 27 June 2012, <https://www.verdi.de/presse/pressemittellungen/+co++7fefcc64-c043-11e1-4ec7-0019b9e321cd> (last accessed 27 June 2020).

years later, the codetermination board was abolished and the goal of spinning off all “non-white sectors” was announced.²³⁹ Ver.di continued the strike and filed charges over the illegal dismissals. “After ver.di had sought an agreement with the company and the dismissals were withdrawn, Helios proceeded to outsource further aspects of Damp as well, and on a grand scale. Helios is a leader of such behaviour in Germany, and this broke the social partnership between Helios and ver.di. Things had never been so wild,” as ver.di union secretary Michael Dehmlow put it.²⁴⁰

Achim Teusch, the former works council chairperson at Siegburg Hospital, suggests that there never was any such social partnership at Fresenius Helios. Since the takeover of their hospital, local management always simply did the bidding of the company bosses. “If they wanted 12 percent profit before tax and interest, then they would reduce staff and staff costs until the company’s goal was reached, with no concern for the impacts this had on working conditions and patient care. A manager once said to me that they learn in their trainee programmes that what has been recognized as right must absolutely be carried out. That they do that by violating laws, collective bargaining agreements, company regulations, or work contracts doesn’t seem to bother them. ‘Social partnership’ is not something I have ever experienced at Fresenius Helios.”²⁴¹

Excursus: Allen & Overy

Helios took another step against strikers at numerous north German hospitals (including at the Ostseeklinik Damp and the Helios Klinik Kiel) in 2018. During collective bargaining agreement negotiations, among other things for higher pay, the company repeatedly applied for an interim injunction to ban strikes, and was successful in two cases. The company was represented by the law firm Allen & Overy.²⁴² The interim injunction submitted to the court claimed that the strike would lead to unforeseeable threats to the life or physical condition of patients. At the same time, Helios refused an emergency services agreement proposed by ver.di.²⁴³ In December 2017, the same legal firm had represented the company against a strike of employees at the Helios Amper Klinik in Dachau and Indersdorf, presenting over 190 pages of anti-strike arguments and obtaining an interim injunction in the Munich industrial tribunal.²⁴⁴ In the author’s view, along with Beiten Burkhardt, Allen & Overy is one of the foremost union-busting law firms.

Salzgitter 2015: Helios vs. Jana

The case of a works councillor at the Helios Klinikum Salzgitter a few years ago gained more publicity. In 2015, there was a particularly serious staff shortage at the hospital. It was not uncommon to have only one nurse per station.²⁴⁵ But instead of dealing with the shortage, a works councillor who had drawn attention to the problem was targeted. A nurse had been

responsible for 34 patients on the night shift with only one other trainee, while regulations state two trained nurses are required. The works councillor, Jana, helped her colleague to fill out a workplace hazard complaint and forwarded it to the trade supervisory authorities on her behalf. In response, the employer applied to have Jana removed from the works council. The reason: the works councillor had supposedly acted unlawfully in forwarding the complaint of her colleague without their permission. After discussions with the acting nursing manager, the colleague began having misgivings about whether to uphold her complaint. Yet the works council decided to pursue the complaint, given the danger the matter constituted to both staff and patients.²⁴⁶

In section 2.2, some of the nastier forms of union busting were described, for example “social death” in the workplace, whereby management organizes for other workers to avoid someone to the point that they become totally isolated. This aptly describes what nursing management did to works councillor Jana in Salzgitter. They launched a petition in defence of company management and against Jana, which 100 of 800 employees signed. “This attempt to isolate and exhaust her really demoralized her. This was followed by a so-called statement from a fraction of employees against the union and Jana. It claimed that everyone was part of Helios, and that ver.di and the works council would give the company a bad name. Jana was on the brink of giving up, but she held out.”²⁴⁷

The Braunschweig industrial tribunal denied the application to have Jana removed from the works council on 9 August 2016, an important signal to all employees who take a stand against staff shortages nationwide. The Helios board of directors also failed in a second elimination attempt, this time against union secretary Jens Havemann, who had reported on Jana’s case.²⁴⁸ In 2018, the Braunschweig industrial tribunal ordered Helios Salzgitter to pay 135,000 euros in fines for 27 cases of unlawful rostering changes. Helios had repeatedly changed rosters without the consent of the works council and pulled employees “out of their

²³⁹ “White” sectors refers to all occupations that are directly involved in patient care (doctors, nurses), while “non-white” sectors refers to service sectors like cleaning, cooking, transport, etc. ²⁴⁰ Michael Dehmlow, personal communication, 19 March 2020. ²⁴¹ Achim Teusch, personal communication, 30 March 2020. ²⁴² Allen & Overy, “Norddeutsche Helios-Kliniken Verhindern Warnstreiks mit Allen & Overy”, 30 May 2018, <https://www.allenoverly.com/de-de/global/news-and-insights/news/norddeutsche-helios-kliniken-verhindern-warnstreiks-mit-allen--overy> (last accessed 27 June 2020). ²⁴³ Michael Dehmlow, personal communication, 19 March 2020. ²⁴⁴ Bracht, Christiane, “Gericht untersagt Streik der Pfleger”, *Süddeutsche Zeitung*, 5 December 2017, <https://www.sueddeutsche.de/muenchen/dachau/vor-der-naechsten-verhandlungsrunde-gericht-untersagt-streikder-pfleger-1.3779723>; Allen & Overy, “Helios Kliniken Verhindern mit Allen & Overy Streiks für ‘Tarifvertrag Entlastung’”, 5 December 2017, <https://www.allenoverly.com/de-de/global/news-and-insights/news/helios-kliniken-verhindern-mit-allen--overy-streiks-fuer-tarifvertrag-entlastung> (both links last accessed 22 September 2020). ²⁴⁵ Ver.di, “Solidarität mit Jana”, <https://gesundheit-soziales-bb.verdi.de/themen/nachrichten/++co++68a9b70e-771a-11e5-a0e5-52540077a3af> (last accessed 27 June 2020). ²⁴⁶ Ibid. ²⁴⁷ Michael Dehmlow, personal communication, 19 March 2020. ²⁴⁸ Havemann, Jens, “Helios-Konzern Scheitert mit Ausschlussverfahren Gegen Betriebsratsmitglied Jana”, *Infodienst Krankenhäuser* (ver.di Department 3), 74, September 2016, p. 22.

free time” due to low staff levels. The works council prevailed against Helios in the federal industrial tribunal.²⁴⁹

During the completion of this study, there was another case of union busting in a hospital run by Helios with around 100 employees. Here too we see a similar pattern of threats and attempts to isolate an employee. The person concerned works in the physiotherapy department, which employs five people. He

was elected to a company works council committee and had to be given leave four times per year to participate in three-day works council meetings. The manager asked him to step down, and threatened him with the outsourcing of physiotherapy if he refused. Here too there was an attempt to turn other employees against their colleague. Ver.di was also successful in this case, but the example shows again “how Helios ticks”.²⁵⁰

²⁴⁹ Ver.di Federal Department of Health, Social Services, Well-being and Churches, “Company Report”, 31 January 2015 to 31 December 2018, p. 36. ²⁵⁰ Michael Dehmlow, personal communication, 19 March 2020.

6 AMEOS: SWISS HOSPITAL COMPANY MAJORITY-OWNED BY A PRIVATE EQUITY FIRM

6.1 COMPANY PROFILE

The Swiss group of companies Ameos was founded in 2002 by Axel Paeger, who is today chief executive of Ameos Holding AG and of the private equity firm Quadriga Capital, headquartered in Germany.²⁵¹ Ameos runs both somatic and psychiatric hospitals, acute care hospitals, medical care centres (MVZ) as well as care and rehabilitation centres, primarily in Germany. According to its own figures, the group runs 95 facilities at 51 sites, with 10,000 beds and 15,700 employees. Ameos has a declared annual turnover of 900 million euros.²⁵² Its profits are not declared.

The precise ownership structure of Ameos has also not been made public. It can be assumed that the private equity firm the Carlyle Group obtained a majority share in Ameos in 2012, with Axel Paeger and Quadriga Capital retaining a share and Omnes Capital (Crédit Agricole) also buying in.²⁵³ Ver.di notes that according to its own figures, Carlyle is one of the world's largest private investment companies and is involved in hospitals via the Carlyle Europe Partners III fund. "It manages a total of 223 billion US dollars in assets (as of October 2019)."²⁵⁴ The investors include pension and retirement funds, including a North American teachers' pension fund.²⁵⁵ The Carlyle Group led the list of the top ten private equity firms on the German market for patient care from 2013 until the middle of 2018.²⁵⁶

Ameos Holding AG does not operate in Germany as a parent company. Business divisions with less than 2,000 employees operate as independent units within the group. This enables the corporation to get around German laws on codetermination, the establishment of a group works council, and an evenly occupied supervisory board. There is also no company reporting, as the company is not listed on the stock exchange. This strategy of using affiliate companies is described in further detail in section 6.3.

6.2 MAIN BUSINESS STRATEGIES

An essential component of Ameos's business strategy consists in the buy and build strategy described in chapter 1. Facilities are bought up and integrated into the company with a promise to the local municipality that they will be refurbished. But Ameos also buys private and non-profit hospitals, the most recent example being the Catholic Hospital in Oberhausen. According to Ameos founder Axel Paeger, 2002 was the "perfect time" to start a shopping spree in Germany: "In 2003 the DRG (Diagnosis Related Groups) model was introduced, which only arrived in Switzerland in 2012. This led to many German public hospitals getting into trouble. For us it was not just a matter of taking over two or three hospitals and showing how things could be better. People would regularly ask us if we could help."²⁵⁷

For Ameos, local and district public hospitals that were to be transferred to private ownership were of particular interest.²⁵⁸ Ameos says that its philosophy consists in "breaking out of regulated, traditional hospital structures and transforming them into competitive, efficient healthcare centres".²⁵⁹ Paeger is well aware that the privatization of individual hospitals has had a significant impact on the region: "We prefer being the 'top dog' in the region, but also in order to increase overall efficiency in a region with three hospitals, you only need one that is privately run, and the others will catch up. [...] It's almost a rule of thumb: if a third of the market is privately run, then the public sector functions completely differently."²⁶⁰

What he means here is that in such a market environment, public hospitals also begin to adapt themselves to the competitive conditions, aiming to save costs or even to change their legal form from public to private. It starts a race to the bottom. In the eyes of private hospital companies, this improves the prospects for cutting costs at the expense of staff and the provision of care, and also spurs competition. If a hospital is bought by Ameos, it will be made, as ver.di puts it, "profitable as quickly as possible, via increased occupancy levels, specialization, and networking". "Networking here means the outsourcing of all service and administrative departments to regional subsidiaries."²⁶¹

²⁵¹ Quadriga Capital, "Krankenhausgruppe", <https://www.quadriga-capital.de/de/referenzen/krankenhausgruppe/> (last accessed 27 June 2020). ²⁵² Ameos, "Daten und Fakten", <https://www.ameos.eu/unternehmen/ueber-uns/daten-fakten/> (last accessed 8 June 2020). Most Ameos centres are located in Germany, including many in Saxony-Anhalt, Lower Saxony, Bremen, and Schleswig-Holstein. There are only a few sites in Austria and Switzerland. Ameos, "Die Ameos Regionen", <https://www.ameos.eu/unternehmen/ameos-regionen/ueber-die-regionen/> (last accessed 8 June 2020). ²⁵³ Princess Private Equity Holding Limited, "Half-year Report 2012: Unaudited Financial Statements for the period from 1 January 2012 to 30 June 2012", p. 17f.; Bundeskartellamt, "Fallbericht des Bundeskartellamtes vom 2. Mai 2019: Rücknahme der Anmeldung des Erwerbs der Sana Kliniken Ostholstein durch Ameos", <https://www.bundeskartellamt.de/SharedDocs/Entscheidung/DE/Fallberichte/Fusionskontrolle/2019/B3-157-18.html>; Omnes Capital, "Ameos/Healthcare: April 2012 – Omnes Capital Invested EUR 10 Million Alongside Carlyle and German Fund Quadriga Capital as Part of a Secondary LBO Involving Ameos, the Fifth-Largest Private Hospital Group in Germany", newsletter 22, October 2012, p. 14; European Commission: Case Nr. Comp/M.6453, Carlyle/Dr. Axel Paeger/Quadriga Capital IV/Ameos. Regulation (EC) Nr. 139/2004 Merger Procedure, 22 March 2012, electronic copy available on the EUR-Lex website as document number 32012M6453; Pöhner, Ralf: "Der stille Riese: Das will Ameos in der Schweiz", 14 September 2017, <https://www.medicins.ch/de/post/der-stille-riese-das-will-ameos-in-der-schweiz> (both links last accessed 27 June 2020). ²⁵⁴ Ver.di, "Ameos: Gesundheitspolitik auf dem Rücken von Beschäftigten und Versorgungsqualität. Ein Überblick", internal ver.di dossier, 27 January 2020. ²⁵⁵ Ver.di, "Carlyle Europe Partners III: Known Limited Partners per LP Source", internal ver.di dossier, July 2016; Walter, Alexander, "Ameos: Rendite auf Kosten der Mitarbeiter?", 17 January 2020, <https://www.volksstimme.de/sachsen-anhalt/ameos-rendite-auf-kosten-der-mitarbeiter> (last accessed 27 June 2020). ²⁵⁶ Scheuplein, Christoph, Evans, Michaela, and Merkel, Sebastian, "Übernahmen Durch Private Equity im Deutschen Gesundheitssektor: Eine Zwischenbilanz für die Jahre 2013 bis 2018", January 2019, p. 21, https://www.iaf.eu/discussionpapers/download/IAT_Discussion_Paper_19_01.pdf (last accessed 27 June 2020). ²⁵⁷ Fels, Florian, "Ohne Druck Keine Veränderung: Interview mit Dr. Axel Paeger, Gründer und CEO der Ameos Gruppe", *Heime und Spitäler*, 4 October 2018, <https://www.heimeundspitaeler.ch/archiv-redaktion/2018/4-oktober/interview-axel-paeger/> (last accessed 27 June 2020). ²⁵⁸ Ameos, "Warum Wird Privatisiert", <https://www.ameos.eu/unternehmen/privatisierung/> (last accessed 27 June 2020). ²⁵⁹ Ameos, "Unsere Vision", <https://www.ameos.eu/unternehmen/strategie/> (last accessed 27 June 2020). ²⁶⁰ Fels, "Ohne Druck keine Veränderung". ²⁶¹ Ver.di, "Ameos: Sanieren auf Kosten von Versorgung und Beschäftigten", February 2020, <https://gesundheitssoziales.verdi.de/tarifbereiche/ameos/+co+co+193f78fe-e4b3-11e6-ac4f-525400afa9cc> (last accessed 27 June 2020).

Ver.di observes that Ameos has become somewhat more careful due to the publicized criticism it has received: "While for a time many facilities were being bought up, there has been a temporary decrease in new acquisitions. Not least because public owners have become more reluctant to sell to Ameos, due to fierce criticism of how staff have been treated following privatization. Ameos was then able to start acquiring a few sites again due to an increase in hospital insolvencies, but in the case of the insolvency and sale of the Burgenlandklinik in Saxony-Anhalt, a non-profit operator took over, again due to the ongoing criticism of Ameos."²⁶² Ameos claims that its surpluses are not paid out to stockholders, but flow back into the business.²⁶³ This claim is not verifiable due to the lack of company reporting, but may well be true, as private equity firms primarily achieve their profits through re-selling assets at higher rates.

6.3 WAGES AND WORKING CONDITIONS

The company's slogan is "We work for your health". The letters of the name "Ameos" stand for *außergewöhnlich, menschlich, engagiert, offen* and *sozial* (exceptional, humane, engaged, open and socially engaged). In the author's opinion, the reality for both employees and patients is completely different. In recent years, there have been repeated complaints about poor working and care conditions at Ameos, resulting from ongoing staff shortages.²⁶⁴ Ameos workers could write a whole book about staff cuts. An employee from the Klinikum Schönebeck complained that the staff-patient ratio on the night shift could reach one nurse for 30 to 40 patients. Another tells of hundreds of hours of accumulated overtime.²⁶⁵ According to ver.di, the company uses numerous strategies to save on staff costs: "From outsourcing ever more service sectors to subsidiaries not covered by collective bargaining agreements, and that are constantly undergoing restructuring, [...] to the wholesale deployment of cheaper nursing and other staff with no collective agreements, employed by companies run in parallel to those that are bound by collective agreements, in the form of so-called 'joint ventures'. Works councillors who concretely resist this have a tough time at Ameos. Ameos has been repeatedly accused of union busting and hostility to works councils, as for example during the 2019–20 collective bargaining dispute in Saxony-Anhalt."²⁶⁶

Gisela Neunhöffer, who is responsible for Ameos at ver.di at the federal level, notes that in Germany Ameos "has more than 80 different companies. Cleaning, technical support, and other sectors are outsourced almost everywhere; they run separate companies for these services, some of which operate nationally. But this is also the case in the area of medical therapy staff, there too there are multiple companies providing services in almost every facility." This extensive outsourcing and restructuring strategy will be delineated in the following using the example of Ameos's operations in

Lower Saxony. To outsiders, the network of subsidiary companies is invisible, as there is no overall company reporting. Formally, it is a group of companies, rather than a parent company with subsidiaries, but in practice the divisions act as independent affiliate companies that are all owned by Ameos in Switzerland. And there are various Ameos companies in Switzerland as well. As already mentioned, continual restructuring and spinning-off has led to numerous companies with less than 2,000 employees, allowing the company to circumvent codetermination laws. "There is no comparable example of a healthcare company that has done so much to avoid transparency."²⁶⁷

6.4 UNION BUSTING AT AMEOS

In this author's estimation, Ameos is one of the healthcare companies in Germany with the most extreme union busting tactics: from threats of mass lay-offs, to staff transfers, to summary dismissals of employees who are active in unions. The following examples of union busting occurred in Lower Saxony and Saxony-Anhalt.

6.4.1 Restructuring as Tactic, and Targeted Intimidation in Hildesheim, 2016

In 2005, the CDU-led state government in Lower Saxony decided to sell eight out of the state's ten public psychiatric hospitals. Two of the clinics, in Hildesheim and Osnabrück, were sold to Ameos in 2007. Ver.di had implemented a transitional collective bargaining agreement with the state government (100 percent of the collective agreement for public service, TVöD), which Ameos terminated at the end of 2013. Michael Krömker, then works council chairperson in Osnabrück, recalls how Ameos refused to negotiate with ver.di: "They connected it with certain individuals on the negotiation team, whom they claimed were a red flag for them and with whom they would not negotiate. In 2014, we went on strike for seven weeks. It was not primarily about increasing the wages in the collective agreement, but about the freedom to collectively bargain as such, with the goal of bringing the employer to the negotiating table."²⁶⁸ Finally a deal was reached that was a few percentage points below the TVöD. But according to Krömker, the biggest problem was not the remaining wage gap, but the fact that Ameos had circumvented the collective agreement. The employer set up a temping agency, where employees were not paid in accordance with the collective agreement

²⁶² Ibid. ²⁶³ Ameos, "Daten und Fakten", <https://www.ameos.eu/unternehmen/ueber-uns/daten-fakten/> (last accessed 8 June 2020). ²⁶⁴ See for example Bock, Michael, and Richter, Franziska, "Ameos-Klinikum: Tote Liegt Stundenlang Neben Patienten", 19 December 2018, <https://www.volksstimme.de/lokal/stassfurt/ameos-klinikum-tote-liegt-stundenlang-neben-patienten/>; Von der Ahé, Denise, "Ameos-Kliniken Bremerhaven: Personalmangel Spitzt Sich zu", 7 August 2018, <https://www.nord24.de/bremerhaven/Ameos-Kliniken-Bremerhaven-Personalmangelspitzt-sich-zu-20915.html> (both links last accessed 27 June 2020). ²⁶⁵ Cited in Baureithel, Ulrike, "Klinik am Limit", *Der Freitag*, 13 February 2020, p. 3. ²⁶⁶ Ver.di, "Ameos: Sanieren auf Kosten von Versorgung und Beschäftigten". ²⁶⁷ Gisela Neunhöffer, personal communication, 10 March 2020. ²⁶⁸ Michael Krömker, personal communication, 27 February 2020.

pegged to the TVöD, but rather the rate given in the Temporary Work Association (iGZ) agreement. After many complaints and the reform of the German Law on Temporary Employment, which stipulated a maximum time frame of 18 months, Ameos changed tactics and declared the latter company, the “Krankenhausgesellschaft Niedersachsen-Bremen mbH” (Lower Saxony and Bremen Hospitals), to be a in a “joint venture” with the original companies in each location. In Hildesheim and Osnabrück for example it was in a joint venture with “KHG Niedersachsen GmbH” (Lower Saxony Hospitals). All new employees now worked for KHG Niedersachsen-Bremen. They were no longer temp workers, but they would continue to work under the iGZ agreement. The “joint venture” construct enables the employer to circumvent the German Law on Temporary Employment and in particular the principle of equal pay. Existing employees, who had contracts with KHG Niedersachsen (the operator of the two clinics in Hildesheim and Osnabrück) were paid according to the collective agreement.²⁶⁹

Michael Krömker expects further restructuring soon: “Each location has its own company. Ameos founds one company after the next to circumvent codetermination laws and to save on wage costs.”²⁷⁰ Gisela Neunhöffer comments: “Ameos is unbelievably nihilistic regarding the law. In Hildesheim for example, works councils refused hirings due to unlawful temporary work, and then one week later you would have the same employee hired for the same position. Ameos ultimately lost the cases at the labour tribunal, but in doing so they buy themselves time to continue their schemes.”²⁷¹

After an initial seven-week strike in 2014, employees in both hospitals went on strike for 12 weeks in 2016—for keeping the agreement pegged to the TVöD, limits on temp work, and protection against forced redundancies. For a long time, Ameos did not put forward a negotiable offer, but instead fired a long-term employee in Hildesheim, claiming that he did not have “the right attitude for Ameos’s business goals”.²⁷² Other employees, chosen at random, were offered termination agreements which effectively served as threats of dismissal. As Ver.di reported: “Ameos is clearly aiming to spread anxiety and uncertainty, in order to intimidate workers. Such employers give the idea of ‘anxiety-free spaces’ a completely new meaning.”²⁷³

Yet after 12 tough weeks, a result comparable to the TVöD was achieved. In an interview with ver.di, Michael Krömker said of this: “The dismissal protections are valid for three years. [...] This was the main demand for many workers. Because elsewhere the company has shown itself willing to stoop to forced redundancies, in part without compensation agreements or welfare plans. We absolutely wanted protection from that. [...] In Osnabrück there was no disciplinary action, but in Hildesheim there was. During the strike, dismissals and staff transfers were announced, for example of

temp workers. But the workers merely did what is written in the law as well as in the collective agreement: they refused strike-breaking. Of course with the conclusion of the collective agreement we insisted that the dismissals be annulled, which they were.”²⁷⁴ The regional manager at the time, who also appears as a union buster in the next section, was Lars Timm.

6.4.2 Dismissals and Threats of Closures in Saxony-Anhalt, 2019–20

Ameos made a similar attempt in Saxony-Anhalt, where the Swiss group of companies employs over 3,900 people in the Salzland district’s formerly public hospitals. In 2012, Ameos took over the hospitals at Aschersleben-Staßfurt, Bernburg, and Schönebeck (one year later, the hospital in Haldensleben was also bought up). One of the first official actions taken by the new management was threatening to dismiss workers with the aim of concluding new contracts with worse working conditions, shorter working hours and therefore lower pay levels, and a term of five years. These took the form of regulatory agreements between Ameos and the works council. As the employer is not permitted to conclude any agreement resembling a collective bargaining agreement with the works council, the regulatory agreement served to ensure that the works council would recommend that employees sign the work contracts.²⁷⁵ The employer prevailed: wages were frozen, collectively agreed wages were refused, holiday pay and Christmas bonuses were cut. A worker from Bernburg recalls the pressure used by the employer. They threatened staff by saying: “You have to sign, otherwise a lot of you will be sent home.”²⁷⁶ Anxious about losing their jobs or the closure of the facility as a whole, staff accepted these cuts. As a result, staff at Ameos centres in Saxony-Anhalt earn up to 500 euros less than other nurses in the region.²⁷⁷ At the beginning of 2020, workers’ wages at Ameos Ost were 15 percent lower than collectively agreed wages.²⁷⁸

Because no new staff were hired, the shortening of working hours from 40 to 35 hours a week also led to a “crazy increase in workload”. “Nurses who retired, stopped working, or were fired were not replaced. Staff turnover was high. Then nurses were replaced by auxiliary nurses, who do a good job but who do not have the

²⁶⁹ For more information on the “joint venture” construct, see: ver.di, “‘Gemeinsame Betriebe’ bei Ameos”, 2016, <https://gesundheit-soziales.verdi.de/mein-arbeitsplatz/psychiatrie/+co++565c28bc-e16c-11e6-b104-52540077a3af> (last accessed 27 June 2020). ²⁷⁰ Michael Krömker, personal communication, 27 February 2020. ²⁷¹ Gisela Neunhöffer, personal communication, 10 March 2020. ²⁷² Ver.di in Ameos, “Für Sichere Arbeitsplätze und Gerechten Lohn in der Psychiatrie”, pamphlet by ver.di Department 3, June 2016, https://www.labournet.de/wp-content/uploads/2016/07/ameos_soli2016.pdf (last accessed 27 June 2020). ²⁷³ Ibid. ²⁷⁴ Behruzi, Daniel, “‘Unheimlich Kreativ’”, interview with Michael Krömker, *drei.39* (ver.di department newspaper), <https://gesundheit-soziales.verdi.de/service/drei/drei-59/+co++1ecd412a-d36f-11e6-9353-52540066e5a9> (last accessed 27 June 2020). ²⁷⁵ Gisela Neunhöffer, personal communication, 10 March 2020. ²⁷⁶ Interview with Colleague A1, 3 March 2020. ²⁷⁷ Ver.di, “Ameos, Heuschrecke als Mutmacher”, <https://gesundheit-soziales.verdi.de/tarifbereiche/ameos/+co++d24f6ae-4324-11ea-aed1-525400f67940> (last accessed 27 June 2020). ²⁷⁸ Walter, “Ameos: Rendite auf Kosten der Mitarbeiter”.

same responsibilities as nurses do. Work conditions got worse every year. [...] For us the worst thing was that we also lost our Christmas bonus. That was a real sticking point for everyone. The union had always said that they weren't allowed to do that. But the majority of us didn't listen. I'm someone who thinks: the employer makes the rules, and I have to follow them. First I had to learn that that is not always the case. Then we began legal proceedings to get our money back. After five years, those who did bring charges received the money. This was a wake-up call for a lot of us. As *Ossis* (East Germans) we were brought up differently: conscious of our duties, discipline, order, they say you have to be there and you show up. This is now slowly changing [...], finally."²⁷⁹

Similar cuts had been made at the Haldensleben psychiatric hospital, which was been taken over by Ameos and turned into a limited liability company (GmbH) in 2003. After the outsourcing of numerous aspects of the centre (technical staff, kitchens, laundry), staff were intimidated into voting for an in-house collective agreement: "In 2006, due to incessant claims by Paeger that the clinic was financially in a bad position and risked closure, we voted for an in-house collective agreement that entailed serious cuts. We all accepted less working hours and pay in order to keep the clinic running", an employee and union member from Haldensleben noted.²⁸⁰

Conflict under the magnifying glass

The Ver.di secretary responsible, Bernd Becker, told *ver.di publik* that the conflict with Ameos had highlighted "the negative impacts of privatization on working conditions and incomes". Since the takeover, 300 care jobs have been lost.²⁸¹ "Every privatization that I have experienced involved saving costs in terms of wages and working conditions. I don't know of any privatization where incomes and working conditions improved relative to municipal operators."²⁸²

Due to a variety of factors—continued worsening of working conditions, the first legal successes such as in Bernburg, a new generation of works councillors, a nationwide network of employees, local organizing work, and also a change in the social climate in the former East Germany—with time the mood gradually changed.²⁸³ Workers in Bernburg, Schönebeck, Aschersleben-Staßfurt, and Haldensleben increasingly saw the pay differences as unjust.

In July 2019, ver.di called on the employer to join collective bargaining negotiations, and the first warning and rolling strikes for a collective agreement began in November and December 2019 in Bernburg, Schönebeck, Aschersleben-Staßfurt, and Haldensleben. Ameos refused to negotiate with the union, claiming that collectively agreed wages put the continued operation of the hospitals in danger. Instead the company bosses declared themselves only willing to negotiate with the works council on individual, informal agreements. In an employee

information newsletter from 7 November 2019, Ameos Ost's regional manager Lars Timm claimed that ver.di's demands and the strike would "have a massive impact on job security at the hospital locations", and "departmental closures [could] no longer be ruled out." Employees were told in a newsletter: "So you will decide on Friday whether to give us a future together or to go on strike, which will force us to make massive, irreversible business and operational decisions."²⁸⁴

Timm threatened to dismiss 800 workers in the eastern region, if the works council did not accept the so-called "future packet" offered by the company.²⁸⁵ Timm told the MDR: "That was not at all meant as a threat, but simply an indication of what we would be forced to do to keep the business running."²⁸⁶ At the same time, in December 2019, management began making good on its threats, summarily dismissing at least 14 employees who had participated in the warning strikes. In an interview, one of them said: "After 38 years as a nurse, I have been fired."²⁸⁷ The dismissals were worded in exactly the same way as those in Hildesheim in 2016.²⁸⁸ "My letter of summary dismissal didn't even state the reason. I only found out via the works council secretary, who had been handed the letter, that the reason was 'unfriendly conduct toward management and endangering of patients'. The latter reason was a disaster for me personally. But it was never given to me in writing."²⁸⁹

"The Wild East"

The works council refused to negotiate with Ameos, as such negotiations, and in serious cases the holding of a strike, is the responsibility of the union. To fight for better pay, a wage agreement pegged to the TVöD, and to resist the employer's intimidation campaign, workers at the formerly public Salzland hospitals as well as those from Haldensleben went on an indefinite strike on 27 January 2020 at all four locations. A total of 99,7 percent of ver.di members had voted for the strike. At the same time, the Marburger Doctors Federation called for a strike in solidarity with nurses. On the first day of the strike, the regional manager left the company. The hashtag #ausgelarst did the rounds.

The strikers received a huge amount of solidarity. A delegation of employees from Ameos Osnabrück visited them during the strike and brought with them

²⁷⁹ Interview with Colleague A1, 3 March 2020. ²⁸⁰ Interview with Colleague A2, 3 March 2020. ²⁸¹ Skambraks, Maren, "Der Patient als Werkstück", *ver.di publik*, 1/2020, health special issue, p. 4. ²⁸² Interview with ver.di union secretary Bernd Becker, 6 April 2020. ²⁸³ Gisela Neunhöffer, personal communication, 10 March 2020. ²⁸⁴ Ameos Ost, "Interne Mitarbeiter-Info", 7 November 2019. ²⁸⁵ Mangiras, Andreas, and Joo, Enrico, "Ver.di-Forderung Wird 800 Stellen Kosten", an interview with regional manager Lars Timm, 22 November 2019, <https://www.volksstimme.de/lokal/schoenebeck/warnstreik-bei-ameos-verdi-forderung-wird-800-stellen-kosten> (last accessed 27 June 2020). ²⁸⁶ MDR, "Streit Zwischen ver.di und Klinikbetreiber: Kündigungen bei Ameos: Wer Was Sagt", 21 December 2019, <https://www.mdr.de/sachsen-anhalt/ameos-streiks-kuen-digungen-wer-sagt-was-100.html> (last accessed 27 June 2020). ²⁸⁷ Interview with Colleague A1, 3 March 2020. ²⁸⁸ Interview with Colleague A3, 3 March 2020. ²⁸⁹ Interview with Colleague A1, 3 March 2020.

a massive, home-made locust, symbolic of Ameos (the German word for locust, "Heuschrecke", also means corporate raider). Local, state, and federal politicians of various parties, workers from many other hospitals and other healthcare centres, as well as workers from other industries also showed their solidarity. From the very beginning the strike was not only about better wages and working conditions, but also about the defence of the freedom to collectively bargain as such and also about the question of whether privatized hospitals should be returned to municipal ownership, because

many employers in the region think they can still play the "Wild East" here.²⁹⁰

At the same time, employees at Ameos Halberstadt won a six-year Federal Labour Tribunal case against Ameos, which was fought over the interpretation of their in-house collective agreement. The judgement forced Ameos to pay out millions in wages.²⁹¹ Those dismissed were also later reinstated. The company's anti-union tactics, including the announced dismissals, had made things so unbearable for at least one of the core union activists that she left the company.²⁹²

²⁹⁰ The formulation "playing the Wild East" comes from an article by Baureithel, "Klinik am Limit". ²⁹¹ Interview with Colleague A3, 11 June 2020. ²⁹² Originally, the two parties to the collective bargaining agreement made an interim agreement at the end of May 2020. The goal of a collective agreement based on the TVöD was not yet achieved. See ver.di Saxony, Saxony-Anhalt and Thuringia, "Erstes Zwischenergebnis in Tarifverhandlungen Erzielt", press release, 29 May 2020, <https://gesundheit-soziales-sat.verdi.de/tarifarbeit/ameos/++co++123f8346-a189-11ea-926d-001a4a160119>. But the interim agreement was then torpedoed in June 2020. See ver.di, "Ameos Torpediert Zwischenergebnis", <https://gesundheit-soziales.verdi.de/tarifbereiche/ameos/++co++08a56290-b072-11ea-ab6c-525400b665de> (both links last accessed 27 June 2020).

7 COMPARATIVE EVALUATION: COMMON TRENDS AND CONNECTIONS

The following chapter presents some similarities and differences among the companies discussed, in terms of main business strategies (section 7.1), wages and working conditions (section 7.2), and strategies against unions (union busting and avoidance, section 7.3). The author investigates how the companies' strategies to improve their market position and maximize profits are connected with the way they deal with employees and the measures they take against unions. Finally, four theses are offered in this regard.

7.1 MAIN BUSINESS STRATEGIES

Only qualified generalizations regarding the business strategies of the four companies can be made, as there are not only similarities, but also significant differences regarding their areas of activity, market position, and ownership structure. Varying national legislation further complicates comparison.

The four companies differ in terms of their main activities: Fresenius Helios and Ameos concentrate on hospitals, Korian and Orpea on aged care, and FMC and Fresenius Kabi on medical products and services. Overlaps do appear in the rehabilitation market (Fresenius Vamed, Orpea, Korian, and Ameos). Regarding market position, Korian and Orpea are the two largest care providers in Europe, Fresenius Helios is the largest hospital operator in Europe, FMC is the world's largest supplier of dialysis machines, and Fresenius is one of the biggest international healthcare corporations. By contrast, Ameos is a mid-sized hospital company active in three European countries.

Fresenius, Orpea, and Korian are publicly listed companies and differ from Ameos in terms of their ownership structure. Ameos is one of the companies controlled by the Carlyle private equity firm. This means that a single investor has a major influence on strategic decisions; also, private equity firms usually make investments with limited time frames. Publicly traded companies are also under pressure to return profits and are influenced by investors. Yet unlike private equity firms, dividends are continually paid out to shareholders, and investors have limited influence on company decision-making. Their share is usually well below 25 percent. Yet the example of Orpea makes clear that the amount of shares owned does not necessarily directly translate into influence over the company. For example, the investment fund Sophia is still represented on the board of Orpea, despite having only a two percent share.

Commonalities: Market concentration through acquisitions, expansion, and diversification

An increase in acquisitions is what stands out in the profiles of all of the companies. This is likely because the possibilities for increasing profits organically,

without purchases, are often exhausted. It is often easier for companies to make use of the infrastructure and competencies of an already existing management team, rather than trying to build them up from scratch. At the same time, the companies, especially Fresenius and Korian, rely on an increased diversity of products and services. This also includes expanding digitalization.

Fresenius and Orpea are leading the race to expand internationally and develop new markets abroad. Due to its size, Fresenius is in another league relative to Orpea. Fresenius is market leader in dialysis, but it is also active in many countries through its ownership of technologies and patents. This position will be maintained and consolidated through further expansion. Orpea is well-established only in a few countries, although it is rapidly expanding internationally. Korian and Ameos are also banking on rapid expansion. Korian's development is limited to Europe, while Ameos is focused on further growth through purchases in German-speaking countries.

Commonality: The influence of financial investors

Despite differences in ownership structures, the common element of all four companies is the influence of major financial investors who have nothing to do with healthcare, but only aim to secure profits, with negative consequences for employees and unions. In all of the business models, money (in the form of social security contributions and taxes) is extracted from the healthcare system in order to satisfy the profit expectations of financial investors, whether in the short term (continually in the case of publicly listed companies) or in the long term (with the exit of a private equity firm). This reduces the quality of care, increases the supposed pressure to rationalize operations, and leads to cost cutting measures the consequences of which are usually borne by employees and patients. The example of Fresenius demonstrates tax evasion strategies. These and other measures are what give private companies a competitive edge over public ones.

7.2 WAGES AND WORKING CONDITIONS

Thesis 1: The goal of rapid expansion, increased competition between companies for market share, and the influence of financial investors are factors that increase the pressure to save on staffing costs. This mainly occurs through the avoidance of collective agreements, through spin-offs or other means of avoiding collective agreements, and through reducing staff. High staff turnover levels limit the effectiveness of unions such that these strategies are more able to be used against workers. This all leads not to a higher value being placed on care work, but a lower value.

All four companies rely more or less on cutting staff costs by avoiding collective agreements, the use of temp workers or short-term contracts, low wages, and/or understaffing. Unless legally mandated, in many departments there are no collective agreements. Instead there are individual work contracts or in some cases in-house collective agreements. Not only internationally, but also within a particular country, there is often a patchwork of agreement regulation in one and the same company. In the case studies, it was shown that Ameos alone has 80 different companies, and continually resorts to restructuring to push down wages and avoid codetermination rules. This affects not only the departments that are often first to be outsourced in a hospital, such as laundry, cleaning, kitchens, or technology. Fresenius Helios is made up of over 400 different legal entities, and the creation of subsidiaries is part of Ameos's strategy for lowering wages and avoiding collective agreements. At Korian and Orpea, but also at Fresenius Medical Care, there are few or even no collective bargaining agreements in some countries, such that it is not even necessary to create subsidiaries.²⁹³ There is also a particularly high staff turnover level due to the tough working conditions, which makes developing unions even more difficult, and makes it easier for the company to implement their strategies.

Thesis 2: A lack of transparency in company structures has the effect of making the implementation of collective bargaining agreements and standards even more difficult.

Orpea and Korian often do not appear as the owners after a takeover, instead they continue to operate the newly acquired facilities under their old name. For patients, unionists, and employees, the links between the parent company and the local company are obscured. A lack of transparency also makes it tougher to bring employees of different centres together. Unlike Orpea and Korian, Ameos does appear as the owner of its hospitals, but it organizes all the divisions of the group of companies as independently acting subsidiaries, with no overall company reporting. This hampers the exercise of legally stipulated codetermination possibilities and networking among employees of the various parts of the group of companies.

7.3 UNION-BUSTING AND UNION AVOIDANCE

In the four case studies, we analysed to what extent union avoidance and union busting are elements of the business models of all four companies. We can speak of open union busting in centres run by Orpea, Fresenius, and Ameos, while Korian's approach is better described as union avoidance. Yet the boundaries between these are blurry. The set of anti-union tactics employed ranges from the systematic holding of one-on-one talks with employees (at Orpea Poland

and elsewhere) and captive audience meetings (at FMC in the USA), threats of dismissals (at Korian in Germany) and mass layoffs (at Ameos Germany in Saxony-Anhalt), discrimination against union activists (at FMC in the USA, Orpea Poland, Korian France and Korian Germany) and material concessions (at Korian Germany and elsewhere), to the surveillance of employees (Orpea France), supporting yellow unions (Arc en Ciel at Orpea France) and other such structures (such as the creation of IGP at Korian Germany), the isolation of individual workers (Helios Germany in Salzgitter), to firing those active in unions or those who participate in strikes (Orpea Germany in Bad Langensalza, Ameos Germany in Saxony-Anhalt) or even mass layoffs (Helios/Damp Germany). These and other tactics amount to the union busting tactics presented in section 2.2. Moreover, during a labour dispute at Orpea in Bad Langensalza, company divisions were outsourced and employees locked out. According to the Helios group works council, at FMC in the USA video presentations and discussions were used to call on employees to report their colleagues who were active in the union. (see section 5.4.1).

As seen in the case studies, some of the main union activists left their employer at the end of a conflict, as they found the situation unbearable or were no longer willing to work for such a company. What factors determine how far a company is willing to take its union busting tactics? Are the anti-union tactics depicted in the case studies linked to the companies' business strategies? The case studies have shown that anti-union tactics are more common at Fresenius, Orpea, and Ameos than at Korian. The following two theses attempt to explain this difference.

Thesis 3: There is likely a link between aggressive international expansion strategies at Fresenius and Orpea and anti-union tactics.

The rapid international expansion of Orpea and Fresenius may explain why there are more cases of union busting at these companies than at Korian, which is only active in Europe. For one thing, both companies are more active in countries where unions and worker protections are relatively weak. This offers them more scope to ignore workers' rights and their unions, or to exploit legal grey zones. Recall how things are for Fresenius in Latin America, described in section 5.3.

²⁹³ Low collective bargaining coverage like at Korian and Orpea is not an isolated case in aged care in Germany: "While according to their own information, only 17 percent (for outpatient care) and 23 percent (for inpatient care) of private facilities offer pay according to a collective agreement, for non-profit operators these figures are at 80 percent (outpatient) and 89 percent (inpatient) (TNS Infratest 2017, pp. 213, 330). This includes collective agreements in the common sense as well as so-called Arbeitsvertragsrichtlinien (work contract guidelines, AVR), Arbeitsvertragsbedingungen (work contract conditions, AVB) and to a lesser extent church-based collective agreements." Evans, Michaela, and Ludwig, Christine, "Zwischen Aufwertung, Abwertung und Polarisierung: Chancen der Tarif- und Lohnpolitik für eine Arbeitspolitische 'High-Road-Strategie' in der Altenpflege", Hans-Böckler-Stiftung, working paper Forschungsförderung 128, Düsseldorf 2019, p. 14.

After hospitals were taken over by Helios/Quirónsalud, the entire operation was scrutinized in order to see what had to be paid for and what could be cut. The FMC case study also made clear how there is more opportunity for companies to engage in union busting in the USA, and higher hurdles for union activities in the workplace there.

It can also be assumed that an international strategy of “rapid growth at almost any cost”, which the author considers to be employed by Fresenius and Orpea, also motivates them to curtail the rights of employees and unions. An oft-cited passage from Karl Marx seems somewhat appropriate: “With adequate profit, capital is very bold. A certain 10 percent will ensure its employment anywhere; 20 percent certain will produce eagerness; 50 percent, positive audacity.”²⁹⁴

Thesis 4: Companies like Ameos that are dominated by private equity firms have less interest in protecting their image and engage in aggressive union busting, because the profitable sale of the company is only a matter of time.

We saw in chapter 1 how the purely financial interests of investors in private equity firms and the short- or medium-term imperative to sell the company taken over ensure that private equity firms systematically cut costs in the facilities they take over. A company like Ameos is dominated by Carlyle, which has a massive influence on company policies. We would expect this to have a negative impact on how it deals with works councils and unions. It explains why cases of union busting at Ameos are on the rise.

Yet we cannot deduce from the four case studies that companies owned by private equity firms generally behave more aggressively toward unions than those that are publicly listed on the stock exchange, such as Fresenius or Orpea, which likewise act ruthlessly.

However, the extent to which companies are successful in their anti-union activities depends not only on their own strategies, but also on those of the unions, and on how willing staff are to defend themselves against union busting and to organize. The main task was explained as follows by a Celenus employee (see section 3.4): “If they [management] allowed employees to successfully organize, if it caught on and tens of thousands of people joined forces, then things would not look too good for Orpea. If they didn’t get the situation under control, then they wouldn’t be able to buy 30 new facilities a year.” The more organized staff are, the harder it is for them to be divided. The extent to which workers’ and union rights are legally guaranteed in different countries, and how powerful the respective workers’ movement is, also plays a role. It can be assumed that the lower levels of problems with Orpea and Korian in Italy and with Korian in Belgium are mainly due to the strength of the workers’ movements there. The willingness of unions to take up a struggle and to draw public attention to it is crucial for staving off attacks, as the case studies make clear. An offensive campaign can both limit anti-union tactics and provoke harsher reactions on the part of the company. The latter depends in turn on the company’s strategy, and what the stakes are.

²⁹⁴ In a footnote, Karl Marx quotes the English trade union functionary T.J. Dunning. See Marx, Karl, *Capital Vol. 1*, Chapter 31, Penguin, 1992, p. 926, n.15.

CONCLUSION: CHALLENGES AND METHODS FOR UNION COUNTER-STRATEGIES

The entry of multinational corporations into the healthcare sector poses new challenges for unions; as this study has shown, such companies usually try to prevent the sector from becoming unionized and attempt to hollow out existing collective bargaining agreements. How can the knowledge gained in this study inform union strategies? What would successful union organizing look like in companies with low levels of existing union organization, high staff turnover levels, and ruthless company strategies such as social dumping, circumventing collective bargaining agreements, and union busting? Are there examples of successful international solidarity campaigns and union networking?

Before presenting four methods of how union counter-strategies can gain leverage, we need to take a look at the changing situation for workers in the healthcare sector.

The changing situation of hospital and aged care workers

The coronavirus pandemic exposed how dire conditions already were in health systems in many countries before it broke out. During the pandemic, the populations of whole countries had to go into lockdown not only because of the risk of infection, but also because of the risk of the over-burdening or even collapse of healthcare systems that have long been organized around cost cutting. Nursing homes became coronavirus hotspots. According to information from the World Health Organization, up to 50 percent of coronavirus fatalities in Europe were due to an infection in a care facility.²⁹⁵ The life-threatening conditions in the healthcare system did not just appear out of nowhere, they have a long history. They result from a neoliberal, profit-oriented approach to healthcare, and from the attempt to extract value from care work under capitalism.

But at the same time, the crisis has demonstrated the importance of care workers, cleaners, and others who work in nursing homes and hospitals to billions of people. They, and not the company shareholders and managers, are essential workers. Traditional union issues like occupational health and safety, wages, staffing levels, and working hours are matters of life and death. Hundreds of thousands of people applauded these everyday heroes from their balconies or windows every evening. Outrage over bad working conditions and political inaction, often while dividends continue to be paid out, is justifiably high.

This general social sentiment, together with hospital workers' increased willingness to fight over the last few years, indicates the significant potential for union organization and for winning improvements.²⁹⁶ For many years, the sector was considered difficult to

organize, given the centrality of patient care and the particular professional ethos of medical and nursing staff. But this has changed. We should recall a slogan from the large strike at the Charité – Universitätsmedizin Berlin in 2015 for a collective agreement on staff levels, which encapsulates this new attitude: "Strikes don't endanger patients, normal working conditions do."²⁹⁷

Since then, the social status of healthcare workers has improved, their self-consciousness has advanced, a lot of experience in labour disputes has been gained, and strategies have been further developed. Yet it is also true that it is often more difficult to win over employees of private companies to labour struggles, due to lower levels of experience with union organizing, the absence of blanket collective bargaining agreements, and the splitting up of the workforce into subsidiary companies. Health and care facilities owned by private companies have been neglected by unions for too long; they have been content with the high level of union organization in the public sector. As a result, private and non-profit operators have often grown as union-free companies, while public hospitals and care facilities are now under pressure coming from the private sector. In aged care, there is also the fact that experience with collective forms of representation are generally much rarer than in the hospital sector. So there remains a great deal of potential for improving the social situation of these workers.

Yet some factors can also be identified that strengthen the position of workers in the private sector. Firstly, the rationalization of the healthcare sector also means that unions and employees have new leverage

²⁹⁵ Redaktionsnetzwerk Deutschland, "WHO: Hälfte der Todesfälle in Europa in Pflegeheimen", 23 April 2020, <https://www.rnd.de/gesundheit/corona-halfteder-todesfaelle-in-europa-in-pflegeheimen-who-warnt-vor-lockerungen-VPT5WN-OIJQ52DZJZSLI6TIYKWA.html> (last accessed 14 September 2020). ²⁹⁶ See for example, Dück, Julia, and Schoppengerd, Stefan (eds.), "Krankenhäuser in Bewegung: Internationale Kämpfe für Gute Versorgung und Arbeitsbedingungen", *Materialien* 35, Rosa-Luxemburg-Stiftung, Berlin 2020, https://www.rosalux.de/fileadmin/rls_uploads/pdfs/Materialien/Materialien35_Krankenhaeuser.pdf. There were even protests during the coronavirus pandemic: for example, in Iceland in June 2020, 2,600 nurses voted to go on a kind of general strike if their demands for a higher base wage were not met. See Trodler, Dagmar, "Krankenschwestern Stimmen für Generalstreik ab dem 22. Juni", *Iceland Review*, 5 June 2020, <https://www.icelandreview.com/de/politik-2/krankenschwestern-stimmten-fuer-generalstreik-ab-dem-22-juni/>. In France in June 2020, over 10,000 hospital employees protested for qualitative pay rises. See Balmer, Rudolf, "'Weiße Kittel, Schwarze Wut'", *die tageszeitung*, 16 June 2020, <https://taz.de/Krankenhaus-Protest-in-Frankreich/!5692987/> (both links last accessed 27 June 2020). In Belgium on 13 September 2020, up to 7,000 workers protested for better working conditions, higher pay, and for access to decent, humane healthcare for all. See La santé en lutte, "Bilan de la Manifestation", 14 September 2020, <https://lasanteenlutte.org/bilan-de-la-manifestation/> (last accessed 22 September 2020). ²⁹⁷ On the Charité workers' strike, the first time hospital workers had gone on strike in the name of collective agreements on staff levels in the history of the Federal Republic of Germany, see ver.di Department 3, Berlin-Brandenburg, "Mehr von Uns Ist Besser für Alle! Der Kampf um Entlastung und Gesundheitsschutz an der Berliner Charité", Berlin 2016; Redler, Lucy, "Zehn Tage, die die Charité erschütterten", 3 July 2015, <https://www.sozialismus.info/2015/07/zehn-tage-die-die-charit-erschuetterten/>. An overview of struggles over staffing levels in Germany in recent years is provided by ver.di Department 3, "Entlastung per Tarifvertrag", December 2019, <https://gesundheit-soziales.verdi.de/themen/entlastung/+ +co+ +b9ccf964-dfaa-11e9-9abe-525400423e78> (both links last accessed 29 June 2020).

to pursue their interests. Unlike in productive industries, services and healthcare cannot be sent offshore so easily.²⁹⁸ In addition, public criticism and strikes can do economic damage, leading to a reduction in profits. This was vividly described by a worker at Orpea/Celenus in Bad Langensalza (see section 3.4.2).

Second, due to corporate and political decisions, the healthcare sector suffers from a shortage of trained staff. Historically unions have used such situations to win higher wages, better working conditions, and more recognition for particular occupations. But shortages in trained staff also mean that workers change jobs more often, which makes union organizing in the workplace more difficult. The presently potentially strong position of nursing staff on the labour market must be used strategically by unions, in order to win better recognition, higher wages, and better working conditions.

Developing union leverage

In the following, four kinds of leverage for workers' organization and for the expansion of union power in multinational healthcare companies are described: first the use of militant organizing methods, which make workers themselves the point of departure for struggles, overcome isolation, help resist division, and educate workers on how to effectively resist attempts at union busting. Second, the creation of solidarity and publicity beyond the workplace or industry, and the creation of new affiliations. Third, the politicization of labour conflicts. And fourth, the development of international campaigns and networks. These recommendations for action are not only directed at employees in private hospital and care companies, but they are particularly important for them, as well as those working in private crossover sectors, as is explained in the following.

1. Deep organizing in order to develop union power in industries with low levels of organization and to educate employees on defending against union busting

According to the UNI Global Union, organizing methods are necessary for increasing worker power in the workplace, to strive for new industry-wide collective bargaining agreements, or develop and improve existing ones. In Central and Eastern Europe, and in South America, where younger unions have often had difficulty organizing employees in the private sector, UNICARE, the organizing centres COZZ and COE,²⁹⁹ and member unions succeeded in founding new unions and increasing membership levels during the coronavirus pandemic by using petitions about how their occupations need to be more highly valued. The unions achieved this mainly through the use of targeted organizing methods. The organizers drew on the deep organizing methods of the US union federation Congress of Industrial Organizations (CIO)³⁰⁰ from the 1930s, as well as on local methods developed

over years of organizing experience. According to the UNI Global Union, COZZ, COE, and UNICARE use self-empowerment techniques for employees in the workplace and democratically involve employees in collective bargaining negotiations and in conflicts, thereby re-defining the role of union power in the workplace and in the industry. These organizing processes also include the creation of new alliances, which can contribute to the consolidation of left-wing power in the long term.³⁰¹

Such methods have been used in the healthcare sector for decades by the union division SEIU Local District 1199 New England, which is a member of UNICARE, and became relatively well-known in the German-speaking world thanks to Jane McAlevey's book *No Shortcuts: Organizing for Power in the Gilded Age*.³⁰² Thanks to online seminars held by the Rosa-Luxemburg-Stiftung these ideas have been made accessible to thousands of people worldwide.

In her book and seminars, the US union organizer and author Jane McAlevey calls on people to take up the deep organizing methods of the CIO. She recommends the self-empowerment of workers, and also that collective bargaining negotiations are made open and transparent to all union members, that unions should be class organizations for working people, and for workers' to link up with communities around the workplace, in order to achieve a higher degree of assertiveness through a connective class politics. McAlevey advocates the use of these methods to strive for success even in situations where conditions are tough. In her book, she describes how the union division SEIU Local District 1199 New England began to implement such a militant organizing strategy in Connecticut in 2001. With years of grassroots work and many strikes, it succeeded in winning substantial improvements in privately-run nursing homes and to involve sites that did not have active unions beforehand. They "achieved strong contracts that substantially increased pay *and* benefits and greatly expanded on-the-job protections, resulting in the highest standards in the United States among nursing-home workers".³⁰³ McAlevey contrasts these positive results with the rather meagre results from strategies oriented toward social partnership or co-management used by other unions. The important

²⁹⁸ Yet what occurs in this area is a huge brain drain and loss of "human capital" in poorer countries. In Germany for example, there is a lot of targeted recruiting of nurses from abroad (mainly from Eastern and Southern Europe), who are often employed here under worse conditions and on the basis of questionable contracts, thus having fewer rights than other workers. The impacts this has on the healthcare systems in their home countries is also devastating. ²⁹⁹ COZZ is an independent NGO bringing together people who have experience with union campaigning. COZZ was founded to support the revival and development of unions in Poland, Czech Republic, Slovakia, and Hungary. In recent years, COZZ in Poland, along with Polish and European unions linked to UNI Global and UNI Europe, successfully carried out a pilot project on organizing and a series of training workshops and conferences. COE is a sister organization of COZZ, founded in Columbia in 2020. ³⁰⁰ CIO was founded as a militant union federation in the USA in the 1930s during an upsurge in class conflict. After the Second World War it merged with the AFL to become the AFL-CIO. ³⁰¹ Mark Bergfeld, director of UNICARE at UNI Global Union Europa, personal communication, 20 May 2020. ³⁰² Translated as McAlevey, Jane, *Keine halben Sachen: Machtaufbau durch Organizing*, Rosa-Luxemburg-Stiftung, Hamburg 2019. ³⁰³ *Ibid.*, chapter 3: Nursing Home Unions: Class Snuggle vs. Class Struggle, p. 91.

thing with this approach is to prepare workers for possible union busting tactics. Workers need to learn “how to stay ahead of and beat the professional union busters. [...] For that, you need excellent teachers who can school workers on the stages of an employer fight and coach them through what the workers’ side must do before and during each stage of it.”³⁰⁴

The goal is to enable workers themselves to build strong union structures in care facilities and hospitals, which also continue to exist when collective bargaining disputes are over. Such organizing campaigns can be used in all kinds of sites, regardless of the legal form of the operator. But it is precisely in industries where union membership is low, and in centres owned by multinational corporations, where these or similar conflict-oriented methods can make a significant contribution. They can help workers turn themselves into the lynchpins of campaigns and into decision-makers regarding tactics, strategies, and especially regarding collective bargaining. They can become an effective means of resisting management attempts to divide and intimidate workers. In a given workplace, it is crucial to identify and win over those who are most trusted by their colleagues, and who are therefore so important for successfully engaging in a conflict.

Inclusive organizing approaches can also be useful for building networks. In the case studies, the examples of Orpea and Korian make clear how there is often a complete lack of contact between workers at different locations owned by the one company. Organizing methods can help workers join forces with those from other locations, show them their own power, and make visible the links between economic, political, and social power.³⁰⁵ Gisela Neunhöffer, who we heard from in the Ameos case study (see section 6.4), suggests that the nation-wide level of connections between workers, and active organizing work in the workplace, were among the decisive factors contributing to ver.di being able to change the mood of workers at Ameos in Saxony-Anhalt and increase their willingness to put up a fight.

As the case studies also show, because companies are willing to resort to the outsourcing of parts of the operation in order to inhibit the development of union power or that of works councils, we also need to take a look at organizing in subsidiary companies. The goal of union action must be to re-integrate these back into the parent company. This means giving new life to the old precept of “one company: one union”.

2. From workplace struggles to industry-wide solidarity, generating publicity, and new alliances

The organization of nursing staff and other workers in centres owned by private companies is in the interest of all healthcare workers, as former works council chairperson at Helios Siegburg Achim Teusch explains: “By now, the methods used in private hospitals are spreading to church-owned and public ones. The is

the real meaning of the rationalization of healthcare: the politically initiated competition forces everyone to behave as if they were private. Their high profit margins and the intense levels of pressure they place on workers become a model for all. The ultimate goal is a fully-privatized hospital sector.”³⁰⁶ This means that there is objectively a common interest for workers of public and private centres, and all (potential) patients and their relatives, to defend against a further worsening of conditions in the private sector, and to work to improve both working conditions and levels of care there. This needs to be our starting point.

It is precisely in the private sector, which is dominated by multinational healthcare corporations and marked by low levels of union membership among employees, a lack of experience in labour struggles, fixed-term contracts, widespread anxiety about layoffs as well as drastic union busting tactics, that generating publicity and the organization of industry-wide solidarity campaigns can help. Doing so strengthens the resolve of workers, and joining forces with better-organized colleagues often increases their level of engagement, as well as the amount of political pressure in public. It can be very meaningful to concentrate on a particular case of union busting in a company, where the outcome is expected to have an impact throughout the whole industry. Such a struggle can be exemplary, and the significance of the outcome made clear to other workers in a way that builds militancy, and thus a high level of support can be won. Such conflicts can be linked to wide-ranging demands for general collective bargaining agreements in aged care, or to the re-integration of subsidiaries into parent companies.

Good experience with organizing industry-wide solidarity and generating publicity was gained during the campaign supporting the workers at Orpea/Celenus in Bad Langensalza who were threatened with lock-outs and dismissals, and also during the campaign for the reinstatement of Anna Bacia at Orpea in Poland (see sections 3.4.2 and 3.4.3). The latter saw various national unions, UNICARE member unions from other countries, and Polish human rights organizations join forces to demand reinstatement. Regarding the conflict in Bad Langensalza, a Celenus worker in the Orpea case study (see section 3.4) reported that “the main reason management ultimately relented” was “the damage done to their public image”.³⁰⁷

At Korian/Curanum in Zwickau, the generation of publicity was also a significant factor, without which the implementation of a collective agreement may not have occurred (see section 4.4). At the Ameos strike in Saxony-Anhalt (see section 6.4) unions began a LabourStart campaign, which was translated into various languages. The workers involved received a real wave of solidarity from workers in various indus-

³⁰⁴ Ibid., p. 111. ³⁰⁵ Ibid., p. 12f. ³⁰⁶ Achim Teusch, personal communication, 30 March 2020. ³⁰⁷ Interview with Colleague O1, 28 April 2020.

tries.³⁰⁸ In accordance with the motto “an injury to one is an injury to all”, attacks on single unionists or entire workforces were understood as attacks on unions and workers in general, and were responded to with solidarity actions, including solidarity strikes.

Yet sometimes there is a lack of union structures, or of resolve or willingness on the part of union secretaries to organize industry-wide campaigns. Networking and the good cooperation of militant colleagues remain decisive. But social solidarity alliances or associations for more staff in hospitals can also support workers in industry-wide organizing campaigns, without however replacing them. In the case of services that involve working closely with people, such as nursing, it is advisable to join forces with those who the workers are in contact with, or with associations for people who care for relatives, or with those who have relatives in care and are particularly dependent upon a well-functioning inpatient healthcare system. Such people have often been affected by catastrophic working and care conditions or know that they could be, and often have an interest in supporting labour struggles.

An exemplary case of this kind of broader support work was the Solidarity Committee for CFM Workers, founded in 2011. CFM stands for Charité Facility Management, then a half-privatized subsidiary of the Charité – Universitätsmedizin Berlin, which Vamed was also involved in. The CFM workers were fighting for a collective bargaining agreement and the re-municipalization of their company. The solidarity committee cooperated closely with the workplace and union actors. At the peak of activities, 350 colleagues took part in a solidarity event, and one thousand colleagues from various industries and other supporters took part in a solidarity demonstration for the workers.³⁰⁹ The CFM workers had a major success in 2019, when the three private owners (including Vamed) left the subsidiary due to the pressure, and the ownership of the CFM was wholly restored to the state of Berlin. Yet after 14 years of struggle, they still do not have a collective bargaining agreement, although one was promised them as part of the 2016 Berlin coalition agreement.³¹⁰

3. The politicization of labour struggles

The revelation of the healthcare crisis by the coronavirus pandemic, the changed position of employees, and the refusal of political decision-makers to act, are some of the reasons why unions need to make the conflicts they engage in more political in future. This does not mean lobbying before elections, but the politicization of industrial and union conflicts. All employees would benefit from this, but especially those in centres and workplaces that have bad conditions for collective resistance from the outset. Strikes in the healthcare sector always have a political aspect, and this is how it should be. In Germany for example, it is time for the unions to develop an offensive strategy for the abolition of the Diagnosis Related Groups model and make these and other such demands heard both in

and beyond conflicts around collective bargaining agreements. The abolition of the Diagnosis Related Groups model and the introduction of a full cost coverage model as well as a prohibition on hospitals turning profits would create the conditions for decent working conditions and higher wages in the long term, and would stop the advance of private companies in the healthcare sector.

At the strike of Ameos employees in Saxony-Anhalt, the demand to re-municipalize came from both workers and representatives of political parties. This is no accident at companies like Ameos, which are controlled by private equity firms and which have a heightened pressure to become profitable due to their planned resale in future. Conflicts such as those at Ameos can only benefit from unions aggressively raising the issue of ownership, either in order to really achieve a change in the form of ownership or at least to use the threat of re-municipalization to achieve better working conditions from within a private company. In a declaration of solidarity with the striking Ameos workers, the Verein demokratischer Ärztinnen und Ärzte (Association of Democratic Doctors, VdÄÄ) wrote: “To facilitate a democratic and needs-based hospital policy, and to protect workers and patients from bad working conditions, the pursuit of profits in hospitals must stop. The state governments are responsible for providing healthcare according to the needs of the population. Because this is threatened by private companies such as Ameos, governments need to act, and take steps towards re-municipalization.”³¹¹ The benefits of municipally owned companies, which can be democratically controlled locally, rather than expanding internationally and eluding control like Orpea, are obvious.

A former member of the strike organizers at the Charité, Stephan Gummert, made the nature of the challenge clear in 2017 when he spoke of “systemic failure”: “Conflicts in hospitals are drawing more public attention, and both sides are fighting much more fiercely than beforehand. The social and media resonance shows that we are plunging into a fundamental conflict against the rationalization of the healthcare system. The public can see and sense that the system is failing. The existential task of unionists and socialists remains to recognize and make use of this conflict potential.”³¹²

³⁰⁸ LabourStart Campaign: “Deutschland: Ameos Feuer Beschäftigte und Verweigert Tarifvertrag”, [https://www.labourstartcampaigns.net/show_campaign.cgi?c=4298;ver.di,“Ameos,Welle der Solidarität”,https://gesundheits-soziales.verdi.de/tarifbereiche/ameos/+co++2633cca4-469e-11ea-aa72-001a4a160100](https://www.labourstartcampaigns.net/show_campaign.cgi?c=4298;ver.di,“Ameos,Welle%20der%20Solidarit%C3%A4t”,https://gesundheits-soziales.verdi.de/tarifbereiche/ameos/+co++2633cca4-469e-11ea-aa72-001a4a160100) (both links last accessed 27 June 2020). ³⁰⁹ Solidaritätskomitee für die CFM-Beschäftigten and ver.di Berlin, Department 3, *Schwarzbuch CFM: Der Kampf um Einen Tarifvertrag in Einem Dienstleistungsunternehmen*, Berlin 2011. ³¹⁰ Redler, Lucy, “Rekommunalisiert mit Niedriglöhnen”, *Analyse und Kritik* 663, 15 September 2020, <https://www.akweb.de/bewegung/rekommunalisiert-mit-niedrigloehnen/> (last accessed 19 December 2020). ³¹¹ Verein demokratischer Ärztinnen und Ärzte (Association of Democratic Doctors), “Sie Verdienen Respekt für Ihre Arbeit”, 26 January 2020, <https://gesundheits-soziales-sat.verdi.de/tarifarbeit/ameos/+co++77a34f06-4752-11ea-9efd-001a4a160100> (last accessed 27 June 2020). ³¹² Gummert, Stephan, “Nächste Runde an der Charité”, 28 October 2017, <https://www.sozialismus.info/2017/10/naechste-runde-an-der-charit/> (last accessed 27 June 2020).

The issue of the nature of the overall system must also be posed for aged care. All over the world, working conditions in aged care are precarious. That is why UNICARE launched a global nursing home campaign in autumn of 2020, one of the goals of which is to resist the rationalization of healthcare and to develop national funding systems that places people's well-being ahead of financial incentives.³¹³

4. Global union networks

A further instrument for developing and strengthening union power in multinational corporations is the building of international networks of workers employed by the same company. There is already a certain degree of exchange taking place between European or company-level works councils, to the extent that they exist in multinational corporations. But what is needed beyond that is the development of networks of rank-and-file union members, and of international campaigns.

Example 1 for building networks:

*Orpea Solidarity Network*³¹⁴

In Europe, unions founded by UNICARE, with the help of the Orpea Solidarity Network, are attempting to unionize workers and strengthen union alliances. The network builds on the most recent successes of organizing new unions at Orpea in the Czech Republic and Poland. According to UNICARE, they represent an historical step forward for workers in private clinics. At the first meeting of the Orpea Solidarity Network in 2019, participants identified and discussed the common problems faced by workers and their unions. They agreed to carry out a Europe-wide survey on working conditions and to put out a regular newsletter reporting on local conflicts and calling for solidarity actions. This expands the ability of unions to act locally and at the European level, as now workers can see that there are similar problems in other countries, and the newsletter gives them ideas on how to respond to the challenges they face and develop union responses to them. Oliver Roethig, regional secretary of UNI Europe, explains the need for the network as follows: "Orpea is a company that is internationally active. As unions, we need to ensure that company bosses don't play workers from different countries off against each other. This is why we are building a strong coalition of unions from all over Europe. Our response is to act in unison, and join our forces together in the name of a common goal."³¹⁵

Example 2 for building networks:

The Global Fresenius Alliance

On 16–17 May 2019, a new global union network was founded in parallel with the main Fresenius assembly. It is the first coalition of different union federations in a multinational healthcare corporation and a response to Fresenius's gross contempt for workers' rights. The main demand made by around 50 workers' represent-

atives and 21 unions from Europe, North and South America, Africa, and Asia is that Fresenius must negotiate and conclude a global framework agreement with them, in order to guarantee basic worker and human rights all over the globe.³¹⁶ They are also demanding union access to all sites and workplaces, a guarantee that they can do their work in them unhindered, and the cessation of all anti-union activities.³¹⁷ The alliance is coordinated by the union federations Public Services International (PSI), UNI Global Union, and IndustriALL.³¹⁸ Regardless of whether they succeed in concluding a global framework agreement, the mere fact that workers at the company from 21 countries came together to form an alliance of numerous union federations is of major significance for building international networks, organizing, and mutual support.

Global union campaigns

Global campaigns enable unions to put pressure on multinational corporations that are hostile to unions or to human rights, especially in countries where national industrial legislation is relatively weak and workers partly suffer under miserable working conditions. Such campaigns can make companies' bad practices public, question or damage a company's public image, and highlight the profit-oriented nature of the healthcare industry. Global campaigns are particularly effective when run in conjunction with the development of an industrial union base, not in isolation from it.³¹⁹

The possibilities and limits of global framework agreements

Global framework agreements are made between international union federations and multinational corporations, and cover the implementation of international working norms and workers' rights. The intention behind this is to implement and make effective international work and worker protection standards in countries where the legal status of unions is fragile and where union membership levels are low.

³¹³ Mark Bergfeld, personal communication, 20 May 2020. ³¹⁴ The following section is based on Mark Bergfeld, personal communication, 20 May 2020. ³¹⁵ UNI Global Union, "Orpea Solidarity Network Launched: Towards a Global Social Dialogue", 22 March 2019, <https://uniglobalunion.org/news/orpea-solidarity-network-launched-towards-a-global-social-dialogue> (last accessed 6 July 2020). ³¹⁶ Ver.di, "Internationale Solidaritätsbotschaft", <https://gesundheit-soziales.verdi.de/tarifbereiche/helios/++co++6a6b6ea2-df62-11e9-8b0b-525400423e78>; UNI Global Union, "Fresenius: Parallel zur Fresenius-Hauptversammlung gründet sich am 16./17. Mai in Frankfurt am Main ein weltweites Gewerkschaftsnetzwerk", 14 May 2019, <https://www.uniglobalunion.org/de/news/fresenius-parallel-zur-fresenius-hauptversammlung-gruendet-sich-am-1617-mai-frankfurt-am-main> (both links last accessed 27 June 2020). ³¹⁷ Ver.di, "Gewerkschaftsnetzwerk, Grenzenlose Solidarität". ³¹⁸ Public Services International (PSI) is a global union confederation incorporating 650 unions in 165 countries with a total of 33 million members. In healthcare and social services, PSI represents more than 12 million workers. IndustriALL is a global federation of industrial unions, which was formed in 2012 out of the amalgamation of three international union councils from the metal, chemical, energy, mining, and textile processing industries. IndustriALL represents around 50 million workers from 197 unions. ³¹⁹ In his foreword to the German edition of Jane McAlevey's book *No Shortcuts*, Florian Wilde of the Rosa-Luxemburg-Stiftung writes the following of the Lidl campaign: "In 2004–5, ver.di started a campaign against the Lidl corporation inspired by US tactics, which centred on the *Lidl Black Book* and media attacks on the company. Yet the Lidl campaign was more like what Jane McAlevey calls an "air campaign": one primarily aimed at successful attacks in the media, but where the role of workers remains minor."

The is the case in the healthcare sector in the Global South, where many workers often have no access to healthcare themselves, or to pension insurance and job security. Global framework agreements could help to specify standards in accordance with ILO conventions and to support union organizing campaigns. Unlike unilateral codes of conduct for businesses,³²⁰ for which there is no real possibility of oversight and which are therefore no more than one-sided symbolic gestures, global framework agreements are negotiated with unions. They can therefore be a union-based means aimed at binding agreements on health and workplace protections and on the protection of the right to free assembly and to organize, which workers can invoke during conflicts.

Yet such framework agreements should not be confused with enforceable collective bargaining agreements with a global scope. An agreement of the latter kind was concluded in 2000 by the International Transport Workers' Federation (ITF) with the International Maritime Employers' Committee (IMEC).³²¹ While a company might commit to a global framework agreement—for example, in response to a successful international networking effort by unions and strong union organization among the workers in the company's home country—local implementation and adherence to it remains an ongoing process that is subject to various problems.³²² There is often a lack of sanction mechanisms to force companies to adhere to the agreement. For example, Volkswagen, or its factory in Chattanooga, Tennessee, did not adhere to

such a global framework. Ultimately the agreement was cancelled by IndustriALL.³²³ Often multinational corporations only aim to use global framework agreements to improve their own image. This means that companies can also use such agreements as white-washing.

In conclusion, campaigns for global framework agreements can be a component of militant union policy if their employment entails the expansion of real union self-empowerment, and is combined with political campaigns and union protests and strikes. In this, the development of union strongholds in the company's home country is of major importance.

There is clearly no royal road to union organizing in multinational corporations that are increasingly determining the nature of the healthcare sector. It is important to attend to the different legal contexts, worker conditions, and level of union development in different countries. We cannot assume that workers and/or their union leaders are always everywhere willing to counter anti-union behaviour and the actions of companies with militant organization campaigns and counter-strategies. But a lot of experiences, methods, and encouraging examples from various countries could also be interpreted in an international context and made use of. This study was written in the hope of making a small contribution to this process. Hopefully the information and arguments given here will be useful not only for workers engaging in union conflicts and organizing efforts at the companies discussed, but for others also.

³²⁰ Some of these voluntary guidelines have already been discussed in the case studies. Regarding Fresenius, they can be consulted on pp. 130–33 of the 2019 company report: https://geschaeftsbericht.fresenius.de/wp-content/uploads/sites/3/2020/03/Fresenius_Geschaeftsbericht_2019.pdf. ³²¹ Nowak, Peter, "Allein auf Hoher See", *neues deutschland*, 14 September 2018, <https://www.neues-deutschland.de/artikel/1100371.allein-auf-hoher-see.html> (last accessed 27 June 2020). ³²² See Hajagos-Clausen, Christina, "Globale Rahmenabkommen: Eine Antwort auf die Globalisierung der Unternehmen", 11 January 2020, <https://saubere-kleidung.de/2020/01/globale-rahmenabkommen/>; see also Helfen, Markus, "Globale Rahmenabkommen: Grundstein einer Globalen Arena der Arbeitsbeziehungen?", presentation at the WSI Autumn Forum "Social Rights in Europe: Expand, Strengthen, and Implement", 29–30 November 2017, Free University Berlin, p. 11ff., https://www.boeckler.de/pdf/v_2017_11_30_helfen.pdf (both links last accessed 27 June 2020). ³²³ Boewe, Jörn, "Volkswagen ohne Feigenblatt", *neues deutschland*, 23 January 2019, <https://www.neues-deutschland.de/artikel/1110666.vw-in-den-usavolkswagen-ohne-feigenblatt.html> (last accessed 27 June 2020).

