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Promotion of Collective Bargaining

Fifth Item on the Agenda

International Labour Office Geneva
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PREFACE

At its 208th (November 1978) Session the Governing Body of the International Labour Office decided to place on the agenda of the 66th (1980) Session of the International Labour Conference an item entitled "Promotion of collective bargaining".

The question is to be discussed under the double-discussion procedure provided for in article 39 of the Standing Orders of the Conference. Accordingly, the Office has drawn up the present law and practice report and the attached questionnaire, to which governments are asked to reply, giving reasons for their replies. On the basis of these replies, the Office will draw up a second report indicating the main questions that the Conference may wish to consider.

In accordance with the provisions of article 39, paragraph 1, of the Standing Orders of the Conference, the present report must be communicated to governments not less than 12 months before the opening of the 66th Session of the Conference. In order that the Office may have time to determine the replies to the questionnaire and to prepare the second report, which according to the provisions of article 39, paragraph 3, of the Standing Orders must be communicated to governments not later than four months before the above-mentioned session of the Conference, governments are requested to send their replies so as to reach the International Labour Office in Geneva not later than 30 September 1979.

In this connection the attention of governments is drawn to the recommendation addressed to them by the Governing Body at its 183rd Session in June 1971, on the basis of the resolution concerning the strengthening of tripartism in the over-all activities of the International Labour Organisation adopted by the Conference at its 56th Session, "that they consult the most representative organisations of employers and workers before they finalise replies to ILO questionnaires relating to items on the agenda of sessions of the General Conference". Governments are requested to indicate in their replies which organisations have been so consulted. It is assumed that the results of the consultation will be reflected in the governments' replies; under the Standing Orders of the Conference, only replies of governments are taken into account in the preparation of the second report.

It has been found in the past that Members whose law and practice are in conformity with the essential provisions of an international instrument are sometimes unable to ratify or accept that instrument formally by reason of comparatively minor divergences between its precise terms and national law and practice. These divergences may relate to the scope of the instrument: the scope of the relevant national legislation may not completely coincide with the instrument or may define differently the sectors covered by it. Alternatively, they may relate to details of application of the basic principles. It is clearly desirable for difficulties of this nature to be taken into account at the time of the drafting of the instrument, with a view to determining whether it can be rendered sufficiently flexible to meet these difficulties without detriment to its substantive effect. A question has accordingly been included in the questionnaire inviting Members to indicate any particularities of national law and
practice concerning the subject under discussion which in their view are liable to create difficulties in the implementation of an international instrument or instruments as conceived in this report, and to make specific suggestions as to how these difficulties may be met.
INTRODUCTION

The promotion of collective bargaining occupies an important place in the ILO's mandate. The Declaration of Philadelphia concerning the aims and purposes of the International Labour Organisation recognises “the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve [inter alia] the effective recognition of the right of collective bargaining”.

The ILO has been very active in promoting collective bargaining, particularly since the end of the Second World War. Evidence of this is seen in the resolutions and conclusions on the subject adopted by the International Labour Conference, regional conferences and industrial committees.* Furthermore, the ILO has published several studies on collective bargaining and has organised a number of meetings on the subject. Among the most recent of the studies, one in particular relates to industrialised market-economy countries.2 Recent meetings include the Tripartite Advisory Meeting on Collective Bargaining, which was held in Geneva in 1976 and whose participants came from all over the world,3 and various seminars and regional symposia which were held in 1977 and 1978 in Manila, Caracas, Vienna and Colombo.4

On the other hand, the ILO has adopted comparatively few international standards directly related to collective bargaining. The most important are Article 4 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Collective Agreements Recommendation, 1951 (No. 91). Article 4 of Convention No. 98 provides that “Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers’ organisations and workers’ organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.” Recommendation No. 91 is essentially concerned with the legal status of collective agreements and contains provisions on the effects, extension, interpretation and supervision of the application of such agreements.

The scope of the above-mentioned standards calls for some observations. The first comment is that they use the term collective bargaining in a narrow sense from two points of view: first, the two instruments concerned apply only to bipartite discussions intended to result in collective agreements; moreover, Recommendation No. 91 has a somewhat strict definition of the latter since it sees them as “agreements . . . regarding working conditions and terms of employment” (without referring to other possible subjects of negotiation such as the regulation of industrial relations). The second comment is that Convention No. 98, while containing a reference to the promotion of “voluntary negotiation”, is nevertheless confined to affirming the principle without being any more specific. The third comment is that although Recommendation No. 91 goes into detail over certain questions concerning the effect

* The notes will be found at the end of each chapter.
and application of collective agreements, it contains no precise provision on the actual process of collective bargaining. It will also be noted that a considerable number of principles concerning the right to bargain collectively have emerged from the discussions of the Committee of Experts on the Application of Conventions and Recommendations and the Governing Body Committee on Freedom of Association. The most important of these principles are mentioned in the present report which, however, does not give an exhaustive account of them.

The relative paucity of international standards on collective bargaining is in contrast with the manner in which the practice has developed, both quantitatively and qualitatively, over the past 30 years. Evidence of this development is seen particularly in the increase in the number of collective agreements, in the greater number of workers covered and in the broader range of subjects dealt with. Statistics in many countries—both industrialised and developing—on the number of collective agreements concluded and the number of persons covered by them show a very sharp increase which illustrates the importance that the negotiation of collective agreements has now acquired in these countries.

Further evidence of this growth in collective bargaining is seen in the development of various forms of bipartite or tripartite discussions which are not necessarily intended to result in collective agreements but nevertheless aim at reaching compromises directly or indirectly bearing on matters of wages, conditions of work or industrial relations. Examples of this kind of negotiation, in the wide sense of the word, include the discussions which take place in certain countries between central organisations of employers and of workers with a view to the signing of basic agreements or industrial relations charters designed to regulate relations between the bargaining parties. One can also speak of collective bargaining, in the broad sense of the term, in connection with the discussions which take place in certain countries of Western Europe between the government and organisations of employers and of workers with a view to devising policies to combat inflation and unemployment. The same is true of the conversations which take place in the socialist countries between state and the higher trade union bodies in connection with the devising and implementation of economic and social plans. Yet a further form of collective bargaining is to be seen in the discussions held in certain countries as part of the system of works-level consultation or co-decision: in practice these discussions often take the form of a genuine dialogue with the aim of reaching solutions to which all the parties concerned can agree. It should also be pointed out that certain forms of collective bargaining are playing an increasing part in the procedures for settling labour disputes: in a number of countries the idea is gaining ground that the main purpose of these procedures should not be to call in an independent third party to settle the disputes but, on the contrary, to get talks between the parties going again, with the help of a conciliator or mediator, so that the solutions eventually reached will as far as possible have been achieved by the parties involved.

There is yet a further aspect to the development of collective bargaining which concerns the actual bargaining process. Since the end of the Second World War the law and the negotiating parties have in many countries strengthened the institutional and procedural framework of bargaining. Evidence of this trend is seen in the establishment in a number of countries of procedures for trade union recognition and the obligation to negotiate in good faith; in the creation of bargaining bodies at various levels; in the banning of certain practices that might impede the bargaining process;
and in various other measures whose purpose is to provide the parties with certain information that will enable them to negotiate in full knowledge of the facts.

Thanks to the development it has undergone in the past three decades, collective bargaining now plays a considerable role in a number of countries from three points of view. First of all, it has an important standard-setting function in that, together with the law, it constitutes the main source of regulations governing wages, conditions of work and industrial relations. Secondly, it represents an important means of rendering the decision-making process more democratic since, by definition, it implies that the decisions are reached by agreement between all the parties concerned rather than unilaterally by the employers or the public authorities. Thirdly, collective bargaining has in many cases been found to be an effective means of solving disputes that may arise between employers and workers and, sometimes, the authorities. In this latter respect there is no doubt that it represents an element of stability and order in industrial relations.

The fact that, on the whole, collective bargaining has developed considerably since the end of the Second World War does not mean that this development has not varied in extent from one country to another. In some the law still places restrictions on collective bargaining. Moreover, the percentage of workers covered by the various forms of negotiation, and particularly by collective agreements, still varies considerably from one country to another and, within countries, according to the branch of activity and category of worker. In addition, collective bargaining is sometimes impeded by the lack of rules on how it should be carried out or by the inadequacy or unsuitable nature of such rules. Moreover, bargaining sometimes runs into certain difficulties because the parties have not always received adequate training. Finally, it may be pointed out that although collective bargaining has of course enabled a number of problems to be settled, it has also, in certain cases, actually led to a large number of disputes.

It can thus be seen that there is still a need for the procedures of voluntary bargaining to be promoted to ensure both an increase in the number of persons and subjects covered by the various forms of collective bargaining and an improved regulation of the bargaining process. Among the means of reaching this double aim are legislative measures—at least as regards the establishment of the suitable institutional and procedural framework—various incentives on the part of the public authorities, and various supportive measures from both the authorities and the parties involved. Such measures could, for example, aim at better training for the bargaining parties.

It must, of course, be recognised that it is not always easy to promote collective bargaining. For one thing, there are several forms of collective bargaining and the same promotional measures may not apply to all of them. For instance, efforts to increase the persons and subjects covered by collective bargaining can relate to any form of bargaining, whereas actual regulation of the bargaining process is possible only in the case of the negotiation of collective agreements.

Again, the promotion of collective bargaining can run into certain difficulties when, as is now the case in a number of countries, the negotiations have to take place against a difficult economic background, characterised by inflation, unemployment or underdevelopment. It may be particularly difficult in such situations to preserve the voluntary nature of collective bargaining since the public authorities tend to intervene to ensure that the negotiations do not jeopardise the general interest.
Despite the difficulties which may arise, the promotion of collective bargaining is nevertheless a worthy aim both in industrialised and in developing countries. As can be seen, steps have already been taken in this direction in the most varied countries. Over the past 15 years, for instance, government commissions have been set up to study the whole question of industrial relations, including collective bargaining, in countries such as Canada, France, India, Sri Lanka, Sweden and the United Kingdom. In several other countries the question of collective bargaining has been re-examined less officially but equally thoroughly. Moreover, important legal texts have been promulgated since 1965 in a large number of countries which include Austria (1973), Bahamas (1970), Belgium (1968), Ethiopia (1975), Ghana (1965), Jamaica (1975), Kenya (1965), Libyan Arab Jamahiriya (1970), Luxembourg (1965), Malaysia (1967), Malta (1976), Mauritius (1973), New Zealand (1973), Nigeria (1973, 1976, 1977), Pakistan (1969), Panama (1972), Peru (1971), Philippines (1974), Portugal (1976), Sierra Leone (1971), Somalia (1972), Spain (1977), Sweden (1976), Tanzania (1967), Thailand (1975), Trinidad and Tobago (1972), United Kingdom (1974, 1975) and Zambia (1971). Furthermore, in French-speaking Africa—where the problem of collective bargaining is traditionally dealt with in the labour code—new codes have been promulgated since 1965 in the United Republic of Cameroon (1974), Congo (1975), Gabon (1978), Madagascar (1975), Togo (1974), Tunisia (1966) and Zaire (1967). New labour codes dealing with the problems of collective bargaining have also been adopted in the German Democratic Republic (1977), Czechoslovakia (1975), Hungary (1967), Poland (1974), Romania (1972) and USSR (1971). It should also be noted that the right to bargain collectively is among the fundamental rights recognised in a number of Constitutions, the most recent examples being those of Greece (1975), Portugal (1976), Ecuador (1977) and Spain (1978).

The present report contains a summary of law and practice in collective bargaining in a number of countries. The report does not attempt to give an exhaustive description of the situation but to describe and explain, by means of examples, the various systems of collective bargaining that are now in existence throughout the world.

The report deals first of all with certain conditions that have to be met in order for the negotiations to be effectively conducted. It goes on to consider the process of collective bargaining, the matters dealt with and the role it plays in settling labour disputes. Lastly, it gives a summary of existing ILO standards relating directly or indirectly to collective bargaining.

The report does not go into questions of the effects, extension, interpretation and application of collective agreements. This is because these matters are already dealt with in Recommendation No. 91 and because, on the whole, the principles contained in this Recommendation may still be considered to be valid.

Throughout the report the term “collective bargaining” is used in the broad sense described above.

The report does not cover persons employed by the public authorities because the procedures for determining the conditions of employment of these persons are dealt with in the Labour Relations (Public Service) Convention (No. 151) and Recommendation (No. 159) of 1978.
Notes

1 See Chapter VI.


3 For the report of this meeting see document TMCB/76/D.6 (mimeographed).

4 The meetings in Manila, Caracas and Vienna gave rise to the following three publications: ILO-Department of Labour Republic of the Philippines-Friedrich-Ebert-Stiftung: Collective bargaining and labour arbitration in the Asian region (Bangkok, Friedrich-Ebert-Stiftung, 1977); ILO: La negociación colectiva en América Latina (Geneva, 1978); ILO: Collective bargaining in industrialised countries: Recent trends and problems, Summary of discussions of a symposium on collective bargaining in industrialised countries (Nov. 1977), Labour-Management Relations Series, No. 56 (Geneva, 1978). The Colombo meeting is to be the subject of a forthcoming publication.

CHAPTER I

THE PREREQUISITES FOR COLLECTIVE BARGAINING

Governments that wish to promote collective bargaining must first ask themselves what are the necessary conditions in which collective bargaining can best flourish. It is, for example, obvious that in order to bargain collectively workers must be represented by an organisation or representatives duly mandated by them and that employers must recognise and be willing to enter into negotiations with the organisations or representatives concerned. While, historically speaking, these basic requirements for collective negotiations have developed spontaneously in some countries, in most cases today they are supported by a legal or contractual framework of rules aimed at ensuring the necessary conditions for collective bargaining to take place freely and on a broad scale.

THE PARTIES TO COLLECTIVE BARGAINING

Collective bargaining as an institution is predicated on the existence of some form of collective representation on the workers’ side mandated by the workers to negotiate on their behalf. In the vast majority of cases, in both industrialised and developing countries, this role is fulfilled by trade unions. On the employers’ side, bargaining may be carried on by single employers, at the level of the enterprise, or by groups of employers; but where negotiations are conducted at the industrial or national level, employers are as a rule represented by their organisations. The latter may also play an important role in providing advisory and other services to employers negotiating at the enterprise level and in co-ordinating bargaining strategy.

Thus, in order for collective bargaining to reach significant proportions and to have a real impact on the development of working conditions and labour relations, the parties need to be well organised. This entails the effective enjoyment of freedom of association and the right to organise and bargain collectively, according to the principles laid down in the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), that is, the ability of both parties to exercise the right to form and join organisations of their own choosing. The respect of civil liberties and trade union rights is the condition sine qua non for the promotion of authentic collective bargaining. Another requirement for successful bargaining is that the organisations on both sides be relatively equal in strength. This may necessitate appropriate promotional measures to protect and strengthen the weaker party.

Workers’ Organisations

On the workers’ side the degree to which they are organised in trade unions capable of representing them at the bargaining table varies greatly from one country
to another. Among the industrialised countries, apart from the socialist countries where practically the entire labour force is unionised, the level of organisation ranges from over 90 per cent of all workers in Sweden and between 70 and 80 per cent in Belgium, Denmark and Finland, to something over 20 per cent in France and the United States. A similarly wide range is found in estimates of unionisation of the labour force in developing countries, although much lower percentages are cited in some cases. These over-all percentages do not, of course, tell the whole story. Referring as they do to workers in wage-earning employment, they leave out of account a vast portion of the labour force in many developing countries who are occupied in small family enterprises or in the “informal” sector. Nor is the rate of organisation evenly distributed over all economic sectors. Rural workers, for example, are frequently less well organised than those employed in industry, due to the dispersal of workplaces, the migratory nature of the workforce in many cases, obstacles of a preliminary nature concerning the holding of meetings and the difficulties of communication in the countryside which hamper recruitment campaigns. An exception to this general rule is the plantation sector which, being characterised by a high concentration of labour, is often one of the better-organised industries. On the other hand there are some industries, particularly in manufacturing, which sometimes comprise a very large number of small and medium-sized or artisan-type undertakings, and where trade unionism tends to be less well implanted. This is also true for certain categories of personnel, in particular supervisory and managerial staff, among whom trade union organisation has not progressed very far in some countries either because of legal obstacles or of the traditional attitudes of these categories of personnel. It must also be noted that government intervention and the reticence of some employers, which may even lead to restrictive action against workers who attempt to organise, is still an important factor impeding the development of strong trade unions in some cases.

While the relative weakness of workers’ organisations in some sectors may hinder the progress of collective bargaining, other problems sometimes arise in connection with the fragmentation of the trade union movement and inter-union rivalry. Trade union pluralism takes many forms. In some countries, such as Australia, Ireland, United Kingdom and the United States, unions with a different membership base exist side by side, i.e. craft unions catering for workers in a certain trade or occupation, industry unions covering all employees in an industry or certain groups of them, such as manual workers or salaried employees, or general unions which include workers in different trades and industries. Another factor of division in the trade union movement in some European and Latin American countries is the grouping of organisations in several central federations which subscribe to different ideologies. In other cases unions may be aligned politically with rival political parties as, for example, in Jamaica. In a number of developing countries where it is legally possible for as few as five or seven workers to band together and register as a union, a proliferation of small organisations has occurred; thus, in India, it was recently estimated that some 17,400 unions were in existence and in the Philippines there were reported to be 5,071 unions in 1974, grouped into over 200 different labour federations.

The problems engendered by a multiplicity of small trade unions have led the trade union movement itself and the public authorities in many countries to seek ways and means of consolidating and strengthening these structures. While the decentralised, autonomous, enterprise-level union probably remains the form of
union organisation most widespread throughout the world, broader and more homogeneous structures based on an industry or branch have emerged in many instances. This is the characteristic pattern of union organisation in most countries of Europe, with the industry-wide organisations being affiliated to one or more central confederations. Industrial unions have also developed in many other regions, either on a voluntary basis or with government help and guidance. In Mexico industrial unions have developed in certain important industries such as mining, sugar and textiles; some industry or branch organisations have emerged in Asian countries, for example in the plantations industry in India, Malaysia, the Philippines and Sri Lanka. In many instances, however, this type of organisation has been promoted by state policy. In Indonesia the process of unification of organisations covering trades or occupations is taking place under government guidance. In Tanzania and Zambia an industrial structure of the trade union movement has been brought into being by statutory means. National industrial unions have also become the typical pattern of organisation as a result of recent legislation adopted in Egypt, Iraq, Libyan Arab Jamahiriya and Turkey.

In a number of countries where problems of union multiplicity and weakness have been particularly acute, governments have also taken indirect measures to encourage the development of an industry-based trade union structure. Statutory requirements for the registration of unions have frequently been established with this aim in view; for example, in Kenya the registrar may refuse to register a union if he considers that another union already registered is sufficiently representative of the whole or of a substantial portion of the workers concerned, or if the union consists of persons engaged in more than one occupation. Similar provisions are found in the rules governing registration of unions in Fiji, Ghana, Indonesia, Pakistan, the Philippines and Tanzania. In Malaysia and Singapore only one trade union may be registered in an industry, occupation or undertaking and sometimes in a given geographical locality; in Malaysia trade unions are required by law to limit their membership to a particular trade, occupation or industry or to similar trades, occupations or industries. In several cases governments have also seen fit to increase the minimum number of workers required to constitute a union. Thus, in Panama the minimum membership required was increased to 50 workers in 1971; and under the 1970 Labour Code of the Libyan Arab Jamahiriya only unions with at least 100 members may be registered and they must cover only workers employed in the same or similar occupations or trades.

The Committee on Freedom of Association of the Governing Body of the ILO has on numerous occasions taken the stand that statutory requirements regarding the registration of unions which have the effect of refusing a union’s application for registration if the authorities consider that a sufficiently representative union for the workers concerned is already registered may, in certain cases, mean that workers are denied the right to join the organisation of their choice, which is contrary to the principles of freedom of association. The Committee has also considered that the establishment of a trade union may be considerably hindered or even rendered impossible when the legislation fixes the minimum number of members of a trade union at too high a figure (for example, 50 founder members).

With regard to the structure of affiliation of unions to central federations or confederations at the national level, two broad patterns are found. On the one hand there are those countries where several central organisations exist. In India, for
example, there are five main labour federations. Most Latin American countries have at least three central organisations which are affiliated to the regional branches of international organisations with different ideological orientations. In most of the industrialised countries of Western Europe and elsewhere there is more than one central labour federation; some of these federations are based on ideological differences while others cater for different occupational groups. In recent years there has been a move within the trade union movement to consolidate union structures at the central level in several countries in Europe—Ireland, Italy and the Netherlands—and in Latin America—Colombia, Costa Rica and Mexico—with a view to improving their powers of effective action.

On the other hand there is a large and growing number of countries where a single central trade union federation is found. Such a pattern has developed spontaneously in a few instances as, for example, in Guyana. In a number of countries it has been achieved with government encouragement and guidance, or by direct state intervention. In most of the one-party States in English-speaking Africa, for example, there is a statutory-based central labour federation, closely integrated into the ruling party. A similar situation exists in Bangladesh and Ethiopia. In the socialist States in Eastern Europe and in other regions only one national trade union organisation exists, which is authorised by law to co-ordinate the action of its subsidiary organisations at the industry, branch and enterprise level within the framework of the centralised economic planning system.

The evolution of trade union structures, on a voluntary basis or by intervention of the government, is directly related to the development of collective bargaining at different levels. The various types of measures taken to consolidate and rationalise these structures are, in the main, designed to strengthen the negotiating power of workers by eliminating inter-union rivalry and conflict. While it has been claimed that such measures have had a salutary effect by cutting down the number of recognition disputes at plant level and promoting broader bargaining structures at industry level in some quarters fears have been expressed that a structure of bargaining imposed by the public authorities may be a means of ensuring government control over the unions, or may prove too rigid to accommodate workers' demands at different levels.

The Committee on Freedom of Association has, on a number of occasions, been called upon to give decisions on questions concerning state intervention in the structure of trade unions. The Committee has stressed that, while both workers and employers generally have an interest in preventing the multiplicity of the number of competing organisations, this consideration does not in itself seem sufficient to justify direct or indirect intervention by the State and that, while it fully understands a government's desire to promote a strong trade union movement, trade union unity imposed by the government runs counter to the principles of Convention No. 87. In the opinion of the Committee, a situation in which an individual is denied any possibility of choice between different organisations, by reason of the fact that the legislation permits the existence of only one organisation in the sphere in which he carries on his occupation, is incompatible with the provisions of Convention No. 87. This principle, it has been stated, is not intended as an expression of support either for the idea of trade union unity or for that of trade union diversity, but the provisions of Convention No. 87 require that such diversity should remain possible in all cases. The Committee has pointed out that there is a fundamental difference between a situation in which a trade union monopoly is instituted or
maintained by legislation and the factual situations which are found to exist in certain countries in which all the workers or their trade unions join together voluntarily in a single organisation, without this being the result of legislative provisions adopted to this effect.5

Other Types of Workers' Representation

While trade unions represent workers in collective bargaining in the overwhelming majority of cases, other types of workers' representation are also found, particularly in negotiations at the level of the undertaking. Some enterprise-level bodies, composed of workers' representatives only,6 are endowed by law or practice with bargaining rights; for example, in the Federal Republic of Germany the works council, a statutory body elected by the workers of the undertaking, is empowered to negotiate with the employer and to conclude agreements on a limited range of matters. Although these councils represent all the workers, whether or not they are union members, they are usually elected on the basis of trade union lists of candidates. Negotiations at the enterprise level also take place through the works councils which represent workers' interests in Austria, while in the French-speaking African countries, this function is carried out by elected staff delegates, who are generally trade unionists. But in all these countries, only the representative trade union federations are empowered to bargain collectively at higher levels.

In a number of countries groups of non-organised workers may, under the law, nominate representatives to bargain with employers on their behalf and conclude collective agreements, in certain circumstances; this is the case, for example, in several Latin American countries (Colombia, Costa Rica, Ecuador, Honduras, Peru, Uruguay and Venezuela), and in Israel, Sri Lanka and Thailand. In most of these cases precautionary measures have been taken by the public authorities to avoid the use of this freedom to negotiate with non-organised workers as a means of undermining the role of the trade unions. In Venezuela, for example, representatives of non-organised workers may negotiate with employers only if they represent 75 per cent of the workers concerned and only in the absence of any trade union.

This absence of trade unions, as a prerequisite for the acceptance of other bargaining agents such as elected workers' representatives, is mentioned in Paragraph 2(1) of Recommendation No. 91 and has been emphasised by the case law of the Committee on Freedom of Association. In one of its decisions, for instance, the Committee observed that Convention No. 98 and Recommendation No. 91 had stressed the role of workers' organisations as one of the parties in collective bargaining and recalled that these instruments refer to representatives of unorganised workers only when there is no organisation. The Committee also considered that direct negotiation between the undertaking and its employees, by-passing representative organisations, where these exist, "might be detrimental to the principle that negotiation between employers and organisations of workers should be encouraged and promoted".7

Employers' Organisations

Employers' organisations are not as a rule subject to the same divisive factors as those which affect trade unions. The most usual pattern of organisation consists of industry-wide associations affiliated to an over-all central organisation. Where
more than one central federation exists they are, as a rule, set up for different purposes and they do not all concern themselves with labour relations or intervene in collective bargaining. However, problems of co-ordination may arise on the employers' side, for example in industries where there is a wide variety in the size and economic strength of undertakings, while in sectors where activity is dispersed among a very large number of small and medium-sized undertakings, as often happens in developing countries, recruitment of membership may be difficult and the organisations may remain weak.

One of the structural problems which may have repercussions on collective bargaining is the question of the representation of public-sector undertakings. In some countries this matter has long been settled, either by law or in practice; for example, in Italy and Sweden public-sector undertakings are represented by their own organisations, while in Austria and the United Kingdom they are usually affiliated to the same organisations as private undertakings. There are, however, many countries where this question is a matter of serious concern and much hesitation on the part of employers' organisations, particularly in many developing countries where the state-owned or state-participation sector covers a large portion of the economy. Differences in the legal status and administrative methods of public-sector and private undertakings have led to the exclusion of the former from organisations of private employers in some instances, while in other cases the public-sector enterprises have been unable to participate effectively in the activities of such organisations even where they are admitted to membership. Whatever the solution chosen, public and private-sector undertakings are faced with basically similar problems in the field of labour relations and their respective approaches to these problems are bound to exercise a considerable influence on each other, particularly with regard to collective bargaining.

The Government

The government as an employer is directly involved in negotiations concerning the public service and public enterprises. The modalities of government involvement in negotiations with public-service employees' unions were discussed in a recent ILO report. The main problem as regards the government's role in negotiations concerning public enterprises relates to the locus of decision-making power. In some cases the administrations of public enterprises enjoy full autonomy to engage in negotiations with the trade union concerned, while in other instances they are obliged to obtain the authorisation of the ministries responsible for supervising the economic sector concerned before they can negotiate binding agreements.

Going beyond their role as employers, the public authorities have become involved as a party to collective bargaining at the national level on a number of occasions in recent years, in connection with efforts to deal with the problems of inflation, economic recession and development. As the national level has tended to become a favoured forum for discussions of wage movements, central governments have increasingly come to play an important role in negotiations. In certain European countries, in particular Belgium, the Netherlands and Norway, and in a number of developing countries, tripartite agreements have been signed, or bipartite agreements negotiated under the aegis of the public authorities, on wages and many other industrial relations matters. These developments will be discussed in further detail below.
Recognition of Trade Unions for the Purposes of Collective Bargaining and the Obligation to Negotiate

There can be no collective bargaining until such time as the parties have mutually recognised each other for the purpose. Although there are very close links between the recognition of trade unions and the obligation to negotiate—since recognition of a trade union normally entails the obligation to negotiate with it—to facilitate the discussion the two subjects will be dealt with in separate sections.

Recognition of Trade Unions

Problems of Trade Union recognition

The problems that can arise as regards recognition are mainly of two kinds. Some are due to the fact that the employers’ side refuses to deal with the existing union or unions, either because it is against the principle of trade unionism or because it considers that the claimant unions are not sufficiently representative. Recognition problems of another kind may arise when there are several unions: if more than one union claims to represent the same category of workers and if, as is generally the case, it is decided not to negotiate with all the unions involved, there may be the problem of choosing between rival unions.

The extent of the difficulties that may occur as regards recognition depends on a number of factors. These include the political system of the country concerned and certain characteristics of its industrial relations system, particularly the strength of its trade union movement, the structure of the latter and the level at which negotiations take place. On the latter point, it can be found that in a number of countries employers are more inclined to recognise a union at the national or industry level than at the enterprise level.

In several countries today hardly any difficulties remain as regards trade union recognition. This is true in the Federal Republic of Germany, Norway and Sweden, where the trade union movement is strong and structured along sectoral lines and where collective bargaining takes place mainly at the level of these industrial sectors.

In principle there is no difficulty either in the socialist countries, whatever the level at which collective bargaining takes place. This is due essentially to the system of economic and social organisation adopted by these countries which is characterised by a single trade union structure grouping practically all the workers and by the general obligation to negotiate collective agreements with the representatives of this union.

Nor are there any problems regarding recognition in countries such as Zambia, Tanzania and several other developing countries where there is a single political party and a single trade union closely linked to it, and where the employers are directly or indirectly obliged to negotiate with the union.

In other countries, on the contrary, disputes regarding recognition are still a more or less dominant characteristic of the industrial relations system.

Such disputes, for instance, are far from exceptional in Canada, the United Kingdom and the United States. In Canada and the United States, where collective bargaining is concentrated almost exclusively at the enterprise level and where the unions are not organised on the basis of one single criterion, it is not unusual for
an employer to refuse to recognise the union or unions which want to negotiate with him or for it to be impossible to negotiate because several unions claim to represent the workers in the undertaking. Refusal to recognise unions and competition between rival unions are also quite frequent in the United Kingdom. In practice these difficulties only affect enterprise level negotiations, however, and do not prevent branch level bargaining, which still occupies an important place in this country.

Problems of recognition occur frequently also in a number of countries in Asia, Latin America and the Caribbean, particularly those where collective bargaining takes place mainly at the enterprise level, as is still most common in these countries. In some, such as Malaysia, Mexico, Singapore and Venezuela, difficulties arise only if the employer disputes the representativity of the claimant union. In other countries, such as India, Pakistan and Sri Lanka, where union multiplicity is very widespread, the problems of refusal of recognition are compounded by an often high number of disputes due to inter-union rivalry.

Procedures for Recognising Trade Unions

Since disputes regarding recognition can disrupt collective bargaining considerably, it is of the utmost importance, if this bargaining is to be promoted, to take measures to overcome the difficulties. The ideal, of course, would be to be able to avoid disputes regarding recognition altogether but that would imply strong and rationally structured unions and a general atmosphere conducive to dialogue between employers and workers. Since these are objectives that are hard to attain, many countries which are unable to avoid difficulties in the field of recognition have set up procedures to resolve these difficulties as appropriately as possible. This no doubt is in line with the spirit of the decisions of the Committee on Freedom of Association which, on several occasions, has emphasised " the importance which it attaches to the principle that employers . . . should recognise for collective bargaining purposes the organisations representative of the wage earners employed by them ".10 In many countries, moreover, these procedures have turned out to be very effective and have done much to facilitate collective bargaining.

Voluntary and Compulsory Recognition Procedures

A distinction is often made between " voluntary " recognition procedures, that is to say procedures for which provision is made in a bipartite or tripartite agreement or which, more simply, correspond to an established practice, and " compulsory " procedures, that is to say procedures for which statutory provision is made and which, as the term implies, oblige the employer to recognise a union or unions under certain conditions. It should also be emphasised, however, that in a number of countries some disputes due to inter-union rivalry are partly resolved by internal union procedures.

Among countries which now have voluntary procedures are India, Kenya and Sri Lanka. Experience has shown, however, that voluntary procedures have not always had the desired effect. This is why in India the National Commission of Labour (set up in 1966 by the Government to examine the industrial relations situation) recommended in its Report 11 that the question of recognition should be settled by compulsory procedures, and why the Industrial Relations Bill, submitted to Parliament in August 1978,12 makes provision for such procedures. Above all, it explains why in
some countries the problems of recognition have long been resolved by compulsory procedures and why procedures of this kind have recently been adopted in a number of other countries. Among those now applying compulsory procedures are Canada, Ghana, Malaysia, Mexico, Nigeria, Pakistan, the Philippines, Singapore, Trinidad and Tobago and the United States.

Nature of Recognition Procedures

Although there are of course many differences between the recognition procedures in force in various countries, there are also many common characteristics. Some are encountered both in the voluntary and in the compulsory procedures and the most important concern the criteria for recognition. As a rule the main, if not sole, criterion for recognition is the representativity of the claimant union or unions. It will be noted, moreover, that the Committee on Freedom of Association has stressed the importance of this principle in a large number of its decisions. Furthermore, the Committee of Experts on the Application of Conventions and Recommendations has indicated that it is important that the determination of the most representative trade union should be based on objective and pre-established criteria, so as to avoid any opportunity for partiality or abuse.

In addition to the features that are common to all recognition procedures, there are a number of others which, while included in the voluntary procedures, are nevertheless far more pronounced in the compulsory procedures so as to make the latter as effective as possible. Thus it is customary, under compulsory procedures, for difficulties as regards recognition to be referred as soon as they arise to authorities independent of the parties directly involved for their ruling. Likewise, it is common under the compulsory procedures for the right to resort to direct action to be limited. In Canada, for example, federal laws and most provincial laws stipulate that problems of recognition must be settled through the procedures laid down for the purpose, without resort to strikes or lockouts. Similarly, in Malaysia the law provides that workers may not strike for any reason whatsoever either while the recognition procedure is under way or if the application for recognition has been rejected by the competent authority.

Turning now to the differences between the recognition procedures in force in the various countries, it will be seen that these concern first of all the authority responsible for administering the procedures. In many countries the power of resolving disputes regarding recognition lies with the ministry responsible for labour. In other countries the power is vested in bodies independent of the Ministry of Labour such as the National Labor Relations Board in the United States, the Labour Relations Commission in Japan, the Advisory, Conciliation and Arbitration Service (ACAS) in the United Kingdom, the Registration, Recognition and Certification Board in Trinidad and Tobago and the Conciliation and Arbitration Commissions in Mexico. Some consider that the creation of independent bodies should be encouraged because this would allay suspicions—even unjustified ones—of politicisation of the recognition procedures and would consequently help to increase the confidence of the parties concerned in these procedures.

Recognition procedures also differ considerably as regards the determination of the representative union or unions. The differences relate mainly to the number of unions that can be recognised. In some countries, particularly those where negotiations take place mainly at the level of the enterprise, it has been considered that to facilitate
collective bargaining it is indispensable for a group of workers to be represented by one union only. This is the case, for example, in Honduras, Pakistan and the United States. In other countries, on the other hand, such as Ireland, Mauritius and Sri Lanka, it is not unusual for a group of workers to be represented by more than one union even in undertaking-level negotiations.

Differences concerning the determination of representative unions relate also to the conditions of representativity that the union or unions must meet in order to be recognised. The two main criteria in this connection, which are sometimes combined in mixed systems, are the number of members of the union or unions concerned and the support they enjoy among the workers, whether unionised or not, of the bargaining unit as a whole. In the former case (the number of members) the representativity is in principle established by checking the lists of members and, in the latter case, the support enjoyed is usually ascertained by a secret ballot of all workers. The first system is applied in India, Mexico and Sri Lanka, and the second in Singapore and the United States. The point has been made that it is difficult to check lists of members if the lists are not kept carefully and that the fact of checking is no safeguard against irregularities; another view is that secret ballots are often expensive and preceded by electoral campaigns which are characterised by unrealistic promises and that the ballots discourage unionisation because non-union workers can take part in them. As regards the degree of representativity necessary for a union to be recognised, the most frequent requirement is that the absolute majority of the workers in the bargaining unit should be members of the union or vote for it (which means that if no union meets this requirement no union will be recognised within the bargaining unit).

However, there are many exceptions to this rule. For example, a degree of representativity of 15, 25, 33 and 40 per cent is sufficient in certain circumstances in India and in Sri Lanka. At the other end of the scale, a degree of 60 per cent is required in certain circumstances in the Dominican Republic and in Panama. In certain other countries, such as the United Kingdom, the authority responsible for administering the recognition procedures has certain discretionary powers to determine the representative union or unions. In discussions regarding the degree of representativity, it has often been pointed out that if these figures are too high, they may result—in countries where trade unionism is not deeply rooted—in making collective bargaining altogether impossible. However, it has also been found that if these figures are too low they can lead to undue fragmentation of the bargaining units. The Committee on the Application of Conventions and Recommendations has had occasion to examine certain aspects of this question and has expressed the opinion “that while the legislation of a country may provide for the certification of a union as the exclusive bargaining agent for all the workers in a given unit, this should not lead to a situation in which, if the requirements as regards minimum membership or workers’ support for a union for granting such a certification are not met, all bargaining rights (even no behalf of their own members) are denied to all unions that may exist in that unit.”

The Obligation to Negotiate

As already pointed out, trade union recognition and the obligation to negotiate are closely linked. In principle the recognition of a trade union implies the obligation to negotiate with it, even if this is not explicitly stated in any legal text or collective agreement. The relationship between the two notions is also illustrated by
the fact that in certain legislations, particularly in Latin America, the issue is dealt with in provisions which make no mention of the term "trade union recognition", merely stating that in certain circumstances there is an "obligation to negotiate".

It might therefore be thought that there can be no difficulties regarding the obligation to negotiate in countries where there are procedures in respect of the compulsory recognition of trade unions. Difficulties have nevertheless arisen in a number of countries due sometimes to the fact that the obligation to negotiate is not clearly defined and sometimes to the fact that the obligation, although clearly defined, is not effectively enforced.

One may well ask what exactly is the extent of the obligation to negotiate. In some extreme cases there is no doubt: for example, an employer certainly could not refuse all contact with a recognised trade union; nor, on the other hand, could he be obliged to accept all the claims made by the union. Between these two extremes there is however a whole range of intermediate situations where it is much harder to draw the line.

Among the legislations that make explicit reference to the obligation to negotiate, there are many which do not define the obligation in detail but merely specify that the parties must meet, when necessary, within a given period of time. For example, the laws of Luxembourg, Madagascar and Trinidad and Tobago confine themselves to providing that "an employer who is requested by the authorised representatives of his staff to open negotiations with a view to the conclusion of a collective agreement may not evade the obligation to open such negotiations", that "the conclusion of a collective agreement shall be compulsory in undertakings normally employing more than 50 workers", and that the recognised union and the employer "shall...treat and enter into negotiations with each other for the purposes of collective bargaining". In Thailand, Ethiopia and Ghana the law provides that the party which has been duly invited to negotiate must begin negotiations within a period of 3, 5 and 14 days respectively. It should also be noted in this connection that in one case where the legislation contained a provision whereby a time-limit of up to 105 days was fixed within which employers had to reply to proposals by the workers, and a time-limit of six months (which could be prolonged, once, for a further six months) fixed within which collective agreements had to be concluded, the Committee on Freedom of Association "expressed the view that it would be desirable to reduce these periods...".

In other, far less numerous countries, the law defines the obligation to negotiate more precisely. In the United States, for example, the Taft-Hartley Act of 1947 provides that the obligation to negotiate implies "the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment", it being understood, however, that neither party is compelled to agree to a proposal or required to make a concession. There are definitions which are similar in a number of respects in other laws, particularly the Labour Code of the Philippines of 1974 and that of Antigua of 1975. In Portugal it is stipulated that the parties "shall, in collective negotiation procedures, respect the principles of good faith, for example by replying briefly to proposals and counter-proposals and sending representatives to contacts and meetings held to prevent or settle disputes".
In some countries the nature of the obligation to negotiate has been made even clearer through the decisions taken by the bodies responsible for administering the procedures of trade union recognition. In the United States, for instance, the National Labor Relations Board has, in connection with various disputes submitted to it, taken a series of decisions concerning the frequency and duration of discussions between the parties, the presentation of counter-proposals, the extent of the powers of the negotiators and the banning of certain bargaining practices that were resorted to in the country at a certain time (one of these, "Boulwarism", consisted in the employer making a "take it or leave it" offer in negotiations and extensive direct communications with the workers). The Canada Labour Relations Board and the Japanese Labour Relations Commissions also took a number of decisions on the exact extent of the obligation to negotiate.22

Alongside the difficulties that may arise because the obligation to negotiate is not defined sufficiently precisely, there may be a number of others which are due to the lack of adequately rapid and effective penalties for failure to observe the obligation. In some countries, such as Malaysia and Mexico, the difficulties that result from a refusal to negotiate are resolved through the usual procedures for settling labour disputes. In other countries non-observance of the obligation to negotiate carries specific penalties, the nature and effectiveness of which vary moreover according to the case. In many countries, including Argentina, Canada, the Dominican Republic, Panama, the Philippines and the United States, failure to respect the obligation to negotiate is seen as an unfair labour practice 23 for which there are special sanctions, which in principle are penal sanctions. In the United Kingdom, when an employer refuses to negotiate with the union whose recognition has been recommended by the Advisory, Conciliation and Arbitration Service, the union can go to arbitration to secure the fixing of the wages and conditions of work in the bargaining unit concerned.

The Committee on Freedom of Association has had occasion to examine a number of cases relating to the obligation to negotiate. In the decisions that it has taken on the subject, the Committee has pointed out "the importance which it attaches to the principle that both employers and trade unions should bargain in good faith making every effort to come to an agreement." 24 It must, however, also be emphasised that, "A refusal by an employer to bargain with a particular union has not been regarded by the Committee as an infringement of freedom of association appropriate for consideration by the Committee; it has adopted this attitude on the basis of the principle that collective bargaining must, if it is to be effective, assume a voluntary character and not entail recourse to measures of compulsion which would alter the voluntary nature of such bargaining." 25

Notes

2 Ibid., paras. 47 and 48.
3 Ibid., para. 17.
4 Ibid., para. 19.
6 See below, Chapter II, for discussion of enterprise-level negotiating organs of bipartite composition.


9 See below, Chapter III.

10 ILO: Freedom of association, op. cit., para. 270; see also para. 271.


12 Industrial Relations Bill (No. 137) of 1978.


15 Ibid., para. 161.


18 Industrial Relations Act, 1972, ibid., 1972—Trin. 1, section 40.


21 Legislative Decree No. 164-A/76, dated 28 February 1976, to regulate collective labour relations, ibid., 1976—Por. 1, section 10 (1).

22 The decisions regarding the obligation to negotiate taken by the bodies responsible for administering the recognition procedures also relate sometimes to questions such as the distinction between negotiable and non-negotiable issues and the information that the employer should give the workers. See Chapter III.

23 See Chapter II.


25 Ibid., para. 268; see also paras. 244, 261, 266, 267 and 269.
CHAPTER II

THE COLLECTIVE BARGAINING PROCESS

Collective bargaining can be on a very informal basis or be part of a more or less elaborate institutional and procedural framework. The main questions that come into mind in this connection have to do with the negotiating bodies, the determination of the negotiable issues, the bargaining procedures and the level of negotiation.

THE NEGOTIATING BODIES

In this section "negotiating bodies" are taken to mean the various institutions within which the parties concerned meet to negotiate.

Although in some countries, especially Scandinavian, North American and a number of Asian and Latin American countries, negotiating bodies have played a relatively unimportant role, elsewhere they have contributed a great deal to the spread of collective bargaining.

Many of these operate at the level of the branch of activity and are generally bipartite, although they sometimes have a chairman who is independent of the negotiating parties and often an official of the Ministry of Labour. Typical examples are the joint committees of Argentina and Belgium, the trade group councils of Sierra Leone, the joint councils of Zambia, the joint industrial councils of the United Kingdom and the joint committees of France and a large number of French-speaking African countries. In Argentina, Belgium, Sierra Leone and Zambia these are permanent bodies set up under legislation, in the United Kingdom permanent bodies established on a voluntary basis, and in France and French-speaking African countries ad hoc bodies convened under the law by the public authorities for negotiating collective agreements that can be extended. Where the activities of the joint committees in France and French-speaking Africa do not as a rule go beyond the conclusion of such agreements, the other bodies mentioned here also engage in all kinds of discussions between the representatives of the employers and workers.

Most negotiating bodies probably operate at the level of the industry, but some are also to be found at the national and enterprise level. In the Netherlands many of the nation-wide discussions that have sometimes led to the conclusion of actual agreements take place at the Labour Foundation, a bipartite body set up on a voluntary basis, and in the Economic and Social Council, a tripartite body established by law which mainly exists to advise the Government. In Ireland most nation-wide negotiations take place in the Employer-Labour Conference, consisting of an independent chairman appointed by the Government and representatives of the employers, workers and the Government in its capacity as an employer. All the national wage agreements that have been concluded in Ireland since 1970 were negotiated through this body. In Fiji discussions between the Government and the central employers'
and workers' organisations, which recently led to several wage agreements, usually take place in a body known as the Tripartite Forum, which was created on a voluntary basis in 1977. The many other central negotiating bodies include India's Labour Conference, Pakistan's Tripartite Labour Conference and the Labour Advisory Committee in the Ivory Coast.

A fair number of countries also have negotiating bodies at the level of the undertaking; made up of representatives of the management and workers, these are often known as works committees or works councils. As a rule, the workers' representatives are elected to these bodies by the entire staff, whether union members or not, though often the unions play a very prominent role. Generally speaking, the works committees or councils have broad advisory powers. In some countries they also have a right to co-determination in several areas and are authorised to conclude agreements with the management on a limited number of issues. Works committees or councils of this type are particularly common in Belgium, Burundi, France, Iraq, Netherlands, Norway, Pakistan, Uruguay and Zaire.

Countries with works committees or similar bodies may encounter the problem of determining how responsibilities are to be shared between them and the trade unions. This is particularly likely to happen when, side by side with the works committees, there are plant-level union representatives appointed by the trade unions or unionised workers alone and representing only the latter. Usually, the basic principle that is advocated in such circumstances is that the unions or their branch offices should be mainly responsible for concluding collective agreements and that the works committees should function essentially in an advisory capacity. For all this, however, trade unions have sometimes been quite apprehensive that the works committees might weaken their own position. The question of the relationship between union representatives and works committees and the like is referred to in Article 5 of the Workers' Representatives Convention, 1971 (No. 135), which reads as follows: "Where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures shall be taken, wherever necessary, to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives and to encourage co-operation on all relevant matters between the elected representatives and the trade unions concerned and their representatives."

Negotiating bodies at the level of the undertaking have an important role to play in Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Romania and the USSR. They include the general assemblies and permanent production conferences of Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary and the USSR, the economic committees of Bulgaria and the workers' councils of Romania. Some of these have a very large membership. In the USSR, for instance, the permanent production conferences include manual workers, employees and representatives of the union committee, party organisations, technical and scientific societies and the Society of Inventors and Efficiency Experts. In Romania the workers' councils are made up of the manager of the enterprise, members of the supervisory staff, workers' representatives, the chairman of the union committee, the secretary of the party section, the secretary of the youth organisation and the chairman of the women's committee. All these bodies come under the union committee and share with it, according to criteria that are not always the same, a large number of functions, including that of consultation and co-determination in respect
of the preparation and implementation of the plan, the organisation of production, 
social planning and staff policy.

THE DETERMINATION OF NEGOTIABLE ISSUES

Once any preliminary problems of recognition have been solved and the parties 
come together to negotiate, one of the first questions that arises is what issues are 
to be covered by the discussions.

The reply depends first of all on the claims submitted by the unions. Normally, 
whether these claims are negotiable or not is decided in each case by negotiation 
between the parties and, if no agreement can be reached, the matter is resolved by 
the normal procedure for the settlement of labour disputes.

In a number of countries, however, what is and is not negotiable also depends, 
least in part, on certain laws or agreements. These laws or agreements are discussed 
below. The question of which issues are in effect taken up in the course of the collective 
bargaining, within the framework of these laws and agreements, will be dealt with 
in Chapter III.

The laws and agreements with which we are concerned here fall into three cate­
gories: those which require that certain matters be discussed so as to oblige the 
parties to settle the major problems that affect them directly themselves; those 
which prohibit the discussion of certain matters in what is considered to be the 
general interest or for reasons of public policy; and those that determine what is 
or is not a prerogative of the management. From a strictly formal point of view, 
the laws and agreements concerning management prerogatives can also be looked 
upon as requiring or prohibiting the negotiation of certain issues and, as such, be 
classified in one of the first two categories. However, this might mean grouping in one 
category provisions with very different objectives. For example, provisions requiring 
that wages and hours of work should be dealt with in collective agreements or pro­
hibiting the negotiation of "closed shop" clauses do not in fact touch upon any of the 
prerogatives of the management. On the other hand, provisions which require an 
employer to negotiate any major change in working conditions with the union or 
which prohibit any negotiation on matters of recruitment, transfer and reduction 
of staff do raise this issue directly.

There are all kinds of provisions requiring the parties to discuss certain subjects. 
In Mexico the Federal Labour Act provides that every collective agreement shall 
state, inter alia, the hours of work, rest days and vacation leave and wage rates. 
The regulations adopted in pursuance of the Philippines Labour Code provide that 
a collective agreement can only be registered by the Industrial Relations Office if 
it contains provisions relating, among others, to the promotion of family planning, 
co-operation between the parties with a view to increased productivity and the shar­
ing of the ensuing advantages, workers' education, measures to reduce the monotony 
of work, leisure activities and job enrichment.

Provisions that require certain matters to be dealt with in collective agreements 
figure particularly large in the laws and regulations of Eastern European socialist 
countries. The USSR has very detailed provisions to the effect that collective agree­
ments must, inter alia, contain certain clauses concerning hours of work and rest 
periods, remuneration and inducements to work in the form of material advantages,
and labour protection. They also provide that collective agreements must set out the mutual commitments on the part of the management and personnel, specifically as regards fulfilling production plans, improving the organisation of production and labour, increasing productivity, promoting socialist emulation, consolidating labour discipline and further training. Moreover, collective agreements must stipulate the commitments of the management and works committee in such areas as participation of workers in production management, labour protection, safety and health, social services for the workers and educational and cultural promotion for the masses.

Among provisions that exclude certain matters from the scope of collective bargaining for reasons of general interest or public policy, in a fairly large number of countries there are prohibitions on certain union security clauses or clauses providing for forms of discrimination among workers that are considered unacceptable. In the United States the law prohibits "closed shop" clauses and in Trinidad and Tobago those which reserve the benefits accruing from a collective agreement to the members of a specific union. Since most of these problems are directly or indirectly a question of freedom of association, with which this report is not specifically concerned, they need not be discussed in greater detail here.

There are sometimes broader restrictions whereby the legislative authority alone is empowered to fix certain conditions of work. In Malaysia and Singapore collective agreements concluded with "new enterprises" may not, on certain points connected with working conditions, contain clauses that would be more advantageous to the workers than the legal provisions currently in force. This holds for the first five years of operation of the enterprise, although exceptions can be made by the competent minister. The Committee on Freedom of Association, which has been called upon to give its opinion on several provisions of this kind, has stated that "legislation establishing that the Ministry of Labour has powers to regulate wages, working hours, leave and conditions of work, that these regulations must be observed in collective agreements, and that such important aspects of conditions of work are thus excluded from the field of collective bargaining is not in harmony with Article 4 of Convention No. 98." 2

A particularly important type of restrictive provision is to be found in the often recent legislation of a number of countries in which the public authorities have found it necessary to curtail the negotiating rights of employers and workers in order to tackle such major economic problems as underdevelopment and inflation. These restrictions, which are in principle temporary and usually concern wages, will be examined in greater detail in Chapter III.

Whereas the provisions which require or prohibit the negotiation of certain matters that have been looked at so far apply to all levels of negotiation, it is essentially at the level of the enterprise that the problem of management prerogatives arises, since it is at this level that unions tend to challenge the powers of the management.

The point has already been made that the question whether a union claim is negotiable or, on the contrary, is one of the management's prerogatives is normally itself settled through negotiation between the parties.

In some countries, however, this approach has led to numerous difficulties that have sometimes seriously hampered the bargaining process. In certain cases, therefore, the legislative authority and the bargaining parties have taken steps to resolve the problem.
Sometimes the provisions stipulate explicitly that certain issues can or must be the subject of negotiation or, on the contrary, are part of the prerogatives of the management. In a number of countries, such as Malaysia, Panama, Singapore and Sweden, these provisions are contained in legislation. In Sweden the Act of 10 June 1976 respecting co-determination at work, which has limited the prerogatives of the management considerably, stipulates that "the parties to a collective agreement on wages and general conditions of employment shall normally, if the workers' side so requests, also conclude collective agreement on the workers' right of co-determination in matters relating to the conclusion and termination of contracts of employment, the organisation and assignment of work and the conduct of activities in general". The Act also states that an employer is bound, whether on his own initiative or at the request of the union, to negotiate with the competent workers' organisations before deciding on any important change in his activity or in the working conditions or conditions of employment of workers belonging to the organisation and before he takes or implements a decision affecting a member of the organisation. In Malaysia and Singapore collective agreements are not allowed to deal with the promotion, transfer, dismissal and re-employment of workers, recruitment, reductions in staff or assignments of work. In Panama a recent amendment to the 1971 Labour Code prohibits negotiations on matters connected with the size of the staff.

In other countries the distinction between negotiable issues and the prerogatives of the management is dealt with in agreements drawn up by the parties themselves. In some English-speaking African countries the employer and the recognised union frequently take up this matter in the "recognition agreements" which are generally concluded at the level of the enterprise. Elsewhere, for example in Cyprus and Fiji, the issue is settled in agreements at the national level, usually in fairly broad terms. In Cyprus the 1977 Industrial Relations Code states that a distinction must be drawn between issues proper for collective bargaining, those proper for joint consultation and those considered as prerogatives of management. The Code does not define the issues but recommends that they should be specified, if possible, in collective agreements. The Industrial Relations Code of Practice adopted in Fiji in 1973 provides that, with certain reservations, management should initiate and accept primary responsibility for employment policies.

Though laws and agreements of the kind described above have often helped to clarify the distinction between negotiable issues and management prerogatives, they have also come in for a certain amount of criticism. The point is sometimes made that conceptions differ so much in time and in space that it is difficult to devise general provisions on the subject, particularly in the form of legislation. A number of countries, albeit limited, have therefore opted for another approach to the problem. In the United States, for example, if an employer refuses to discuss a particular issue that he considers his prerogative, the union can appeal to the National Labor Relations Board on the grounds that the employer is not respecting his legal obligation to negotiate. If the Board deems the complaint receivable, it rules that the disputed issue must be considered as negotiable. Over the years the Board's judgments have come to make up an extremely detailed body of case law. Accordingly, a distinction is made between matters on which bargaining cannot be refused, those on which it is prohibited and those on which it can only take place with the agreement of the parties concerned. This case law has also contributed towards extending
the sphere of negotiable issues to such new areas as profit sharing, supplementary pensions, merit schemes, certain bonuses, subcontracting, safety at work and relocation of plant.

**Bargaining Procedures**

Most countries have official regulations or agreements or, at least, well-established practices with respect to the procedure to be followed during collective bargaining. In a great many cases these rules and practices have done much to facilitate negotiations and to promote collective bargaining.

**Prohibition of Certain Practices**

The first rules of procedure that should be mentioned here are those prevailing in a number of countries which prohibit certain practices on the part of the employers and workers that are liable to hamper the collective bargaining process. These are usually known as "unfair labour practices", or some such term. This kind of ban is particularly prevalent in countries where collective bargaining normally takes place at the enterprise level. At the industry or nation-wide level, employers' and workers' organisations are generally less liable to resort to such practices than at the enterprise level, not just because there is often a sufficient balance of forces between the organisations but also because they tend to be more deeply convinced of the intrinsic value of collective bargaining as an institution.

The countries where certain practices liable to hamper collective bargaining are banned include Antigua, Argentina, Canada, Dominican Republic, Ethiopia, Ghana, Jamaica, Japan, Malaysia, Pakistan, Panama, the Philippines, Singapore, Spain, Thailand, Trinidad and Tobago, the United States and Zambia.

Although the number and nature of prohibited practices naturally differ from country to country, they almost invariably include behaviour looked upon as a threat to the principle of freedom of association and which, even if not necessarily directly connected with the collective bargaining process, is nevertheless liable to have a detrimental effect on it. In most of the countries mentioned above, for instance, detailed provisions exist to prohibit various forms of anti-union discrimination.

Other unfair practices are more directly concerned with the actual bargaining machinery. The refusal to negotiate in good faith, whether on the part of the employer or on that of the union, is very often cited as an unfair practice. In Pakistan the law includes among unfair practices the use of "intimidation, coercion, pressure, threat, confinement to, or ouster from, a place" in order to attempt to compel the other party to accept any demand. Ethiopian legislation qualifies as an unfair practice the use of pressure by any party to force or induce the representatives of the other party to accept a proposal.

Other provisions may prohibit steps that the parties might be tempted to take in the course of disputes arising over collective bargaining or may seek to guard against non-compliance with the agreements reached. In the United States workers are forbidden by law to engage in certain forms of boycotting and picketing and, in Pakistan, employers are, in principle, prohibited from recruiting workers to take the place of strikers; the Philippines' Labour Code qualifies any infringement of a collective agreement as an unfair practice.
The enforcement of unfair-practice regulations varies from country to country. In some cases, special procedures exist to oblige the parties to put a stop to such practices and, as far as possible, to make good the prejudice caused. The procedure generally takes place through special bodies such as the National Labor Relations Board in the United States, the industrial relations committees in Japan and the Unfair Labour Practices Tribunal in Ghana. In other countries, such as Ethiopia, Jamaica and Singapore, the law stipulates that the courts can impose penal sanctions on persons guilty of unfair practices. Elsewhere, and specifically in the Philippines, complaints arising from the use of unfair practices by one or other of the parties are settled through the normal channels for labour disputes.

The Collective Bargaining Process

Provisions stipulating the way in which discussions between the parties should take place are much less common than those prohibiting certain bargaining practices. This is hardly surprising since collective bargaining is supposed to be applicable to all kinds of different situations and objectives and cannot therefore be tied down by a set of precise rules and regulations, especially as, like any discussion with a view to arriving at a compromise, it has psychological and tactical overtones that cannot easily be spelled out in detailed provisions.

Among the more common provisions that may have a direct influence on the bargaining process are those in force in a number of countries which require the parties to negotiate in good faith.

Other provisions may set a time-table for the discussions. In Denmark, for example, the central employers' and workers' organisations have drafted a set of Rules for Negotiation setting out in detail the time-table for the industry and nation-wide negotiations that take place periodically in the country. In Fiji and Malaysia the industrial relations codes of practice that were adopted in 1973 and 1975, respectively, both stipulate that employers and workers should, at their level, reach agreement on appropriate procedural provisions. Elsewhere, and especially in developing countries, the legislation itself sometimes sets out the time-table for negotiations in great detail. Often, only a very short period is set aside for direct discussion between the parties. In the Philippines and in Peru it is stated that, if the employer and workers fail to reach agreement within 10 or 20 days, resort is normally had immediately to dispute-settlement procedures.

There are also detailed laws and regulations for collective bargaining in socialist countries. In the USSR collective agreements must be concluded each year, no later than February. Draft agreements must be prepared by the management and the Trade Union Committee, along with the enterprise's draft annual plan, in collaboration with the permanent committees of the Trade Union Committee, the Committee of the All-Union Lenin Young Communist League, the Permanent Production Conference, the organisations of the Scientific and Technical Society and of the All-Union Society of Inventors and Efficiency Experts and various voluntary workers' associations. Provision is also made for workers' suggestions regarding collective agreements to be submitted by April of the previous year and, between October and December, for the draft agreement to be brought into line with the enterprise's plan for the following year (approved in the meantime), with the trade union's budget estimates and with the state social security budget. The draft agreement must then be submitted to a general assembly of workers for discussion and approval.
Collective bargaining can also come up against obstacles if the negotiators do not have wide enough powers and therefore have to refer back to their principals too often. This sometimes happens in the private sector when those who have the decision-making power for collective bargaining purposes do not take part in the discussions themselves and refuse to delegate sufficient powers to their representatives. It is, however, a more common occurrence in public-sector enterprises, since the clauses or regulations governing them frequently grant the management only very limited autonomy as far as collective bargaining is concerned. Very often, therefore, there are considerable delays in concluding or implementing agreements. One of the many countries with problems of this nature is Japan, where agreements concluded by public-sector enterprises have to be approved by the Diet whenever they entail expenditure beyond the enterprise’s official budget. On the subject of the bargaining autonomy of public enterprises, the point has often been made that the public authorities must have the right to oversee negotiations in these enterprises because they are ultimately responsible for their management. It has, however, also been pointed out and again that the slowness of these negotiations in many countries could be avoided without any detriment to the right of the public authorities to have their say. The Committee of Freedom of Association, which has had occasion to examine certain aspects of this question, has pointed out “that the reservation of budgetary powers to the legislative authority should not have the effect of preventing compliance with collective agreements entered into by or on behalf of that public body”.

Supporting Measures

The public authorities and employers’ and workers’ organisations in some countries have adopted measures which, though not, strictly speaking, procedural rules, are intended to facilitate the collective bargaining process. For the most part they are designed to provide the parties to the negotiation, and especially the workers, with a certain amount of information so that they can negotiate in full possession of the facts and to create certain institutions for promoting collective bargaining.

Informing the Parties to Collective Bargaining

Collective bargaining can be made a lot easier if the parties possess relevant information on the economic situation of their negotiating unit, on the wages and working conditions of certain neighbouring units that can be used for comparison and on the general economic situation of the industry or country concerned. With this information, the parties are in a better position to negotiate advisedly and to avoid certain arguments about points of fact.

One such measure is, of course, the publication by the public authorities of statistics on wages and prices, on other major economic and social indicators and on the conditions of work provided for in collective agreements. Some governments, however, do not limit themselves to publishing statistics in their efforts to make information available, particularly regarding the country’s general economic situation and the problems this may provoke. In Norway a tripartite body responsible for discussing the trend of wages and prices, through which the Government keeps workers’ and employers’ organisations regularly informed about the current economic situation, foreseeable trends and its intended measures, has existed since 1962. In the Federal Republic of Germany similar information is available in the periodic notices put out
by a committee of independent experts set up by an Act of 1963, and in the annual economic reports published by the Federal Government itself and through the "concerted action" arrangements. The latter term refers to periodic meetings presided over by the Federal Minister of the Economy and attended by representatives of the central employers' and workers' organisations, delegates from the Federal Bank and members of the committee of independent experts mentioned above. At these meetings the economic problems of the day are examined and possible ways of solving them discussed. 7

Other provisions require the direct exchange of useful information between the parties to the negotiation. In the Eastern European socialist countries this matter is usually taken up in fairly general provisions of laws or regulations dealing with workers' participation. In the USSR the 1973 Rules for Permanent Production Conferences stipulate that, "so that the matters that come before the Permanent Production Conference can be studied from every angle, the administration of the undertaking, institution, workshop or other subdivision is responsible for assisting in their preparation, informing the members of the Permanent Production Conference of the actual situation and supplying the necessary information". 8 Similarly, Chapter II of the German Democratic Republic's Labour Code, entitled "Management of Undertakings and Workers' Participation", stipulates that "the manager of an undertaking shall promptly inform the community of workers of the requirements to be met in fulfilling its targets and of any special problems. When so doing, he shall explain the political and economic context and answer the workers' questions". 9

In other parts of the world the provisions generally define in detail the exact nature of the information to be made available. In the United Kingdom the Employment Protection Act of 1975 provides that it shall be the duty of the employer to disclose to the representatives of a trade union, on request, "all such information relating to his undertaking as is in his possession, or that of any associated employer, and is both (a) information without which the trade union representatives would be to a material extent impeded in carrying on with him such collective bargaining, and (b) information which it would be in accordance with good industrial relations practice that he should disclose to them for the purposes of collective bargaining". 10 The Act goes on to state that no employer can be required to disclose, inter alia, any information the disclosure of which would be against the interests of national security, any information which has been communicated to him in confidence, any information relating specifically to an individual or any information "the disclosure of which would cause substantial injury to the employer's undertaking for reasons other than its effect on collective bargaining". 11 A trade union that considers that an employer has not fulfilled his obligations can appeal to the Central Arbitration Committee, set up under the same Act, which may call upon the employer to do so. Should the employer again refuse, the union may ask the Committee to determine by arbitration the wages and working conditions to be observed in the negotiating unit concerned. These legal provisions were supplemented in 1977 by a Code of Practice prepared by the Advisory Conciliation and Arbitration Service. 12

Under Sweden's 1976 Act respecting co-determination at work, "a party which, in the course of negotiations, cites a written document, shall make it available to the other party if the latter so requests". 13 It goes on to state that "an employer shall keep a workers' organisation in relation to which he is bound by a collective agreement continuously informed of developments in the production and financial aspects
of his business and also of the principles on which his personnel policy is based. He shall likewise afford the organisation an opportunity of examining any books, accounts and other documents relating to his business, to the extent that the organisation requires to do so to safeguard its members' joint interests in relation to him."

Furthermore, "a party which is required to provide information shall have the right to discuss with the other party as to the secrecy to be observed in connection with the information provided". Where no agreement is reached, the Labour Court may be asked to rule on the matter.

In Denmark and Italy, among other countries, the disclosure of information to the parties to the negotiation is dealt with in collective agreements rather than through legislation. Denmark's Rules for Negotiation, to which reference has already been made, state that in the case of nation-wide negotiations "the central organisations shall, together or separately, provide economical-statistical documentation, including data illustrating the past and expected future trends of production, as well as technical and sectional data". Several industry-wide agreements have recently been concluded in Italy which stipulate that enterprises must supply the workers with information on a number of matters, including investment plans (and their effect on employment and the criteria used for selecting the investment site) and subcontracting work.

In the United States, where neither the law nor most collective agreements have any provisions requiring the employer to disclose information to the workers for the purposes of collective bargaining, the National Labor Relations Board has built up a body of case law wherein an employer who refuses to communicate certain information to the trade unions is considered to have violated his obligation to negotiate in good faith. It has accordingly been decided that an employer who maintains that union claims are beyond the financial capability of the undertaking must prove the grounds for his claim.

Provisions relating to the disclosure of information to the negotiating parties, though quite common and detailed in industrialised countries, are more exceptional and usually less specific in developing countries. Laws and agreements of this kind do, however, exist. According to the 1976 Labour Code of Antigua, for instance, an employer's refusal to supply a recognised union with the information it requires to be able to negotiate in full possession of the facts is considered to be tantamount to a refusal to negotiate and carries the same penalties. Jamaica's 1976 Labour Relations Code and Fiji's 1973 Industrial Relations Code of Practice call upon the parties to the negotiation to meet all reasonable requests for information from the other party and, specifically, urges the management to make available to the workers the information which is supplied to shareholders or published in annual reports.

In addition to provisions regarding the disclosure of certain information to the trade union organisations, there are those that require certain types of information to be made available, for example, to the works committees. In some cases, the main objective is to keep all the members of the staff informed of their rights and obligations through the works committee. However, certain information that must be supplied to the latter is mainly intended to enable them to fulfil their advisory role and, in some cases, co-determination activities efficiently. This is notably the case in Austria, Belgium, Finland, France, Federal Republic of Germany, Netherlands, Norway and Zambia, where the works committees are supposed to receive detailed information on the economic and financial situation and future prospects of the
undertaking, on any rationalisation, merger or transfer projects or plans to close the undertaking down and on any other measures liable to have serious consequences for the undertaking and those who work in it.

Although the laws and agreements requiring certain information to be disclosed to the parties have certainly made collective bargaining much easier, and especially for the workers, their application has also raised problems in some countries, for example as regards the exact nature of the information to be disclosed and the extent to which its disclosure by the employer and its circulation can be restricted by reason of its confidential nature. Workers' and employers' organisations and the public authorities in a number of countries are currently studying how these difficulties can be overcome.

Institutions Responsible for Promoting Collective Bargaining

The legislative authority in several countries has recently set up specialised institutions whose responsibility is to help to promote collective bargaining, especially by studying general problems, preparing codes of practice and advising the parties on the solution of specific problems they may encounter.

Before looking at the institutions themselves, it must be emphasised that they do not of course represent the sum total of promotional activities in this field and that many bodies that were not set up specifically for this purpose do in fact also encourage collective bargaining. Among the latter, of course, are the ministries of labour, which have certainly done a great deal to promote this practice, particularly through their labour inspection services, conciliation services and, where they exist, their specialised industrial relations departments. Quite often, in practice, labour inspectors do not merely investigate infringements of labour legislation but try to forestall and solve various problems that may arise in labour-management relations. In numerous countries, particularly in Latin America, labour inspectors and official conciliators also often play a very important role in the bargaining process itself and are involved in it virtually from the outset. Finally, the specialised industrial relations departments that have recently been created in a number of ministries of labour have frequently helped to promote collective bargaining through their research and advisory activities.

The national advisory bodies that now exist in some countries in the form of economic and social councils, national labour councils or labour advisory committees have likewise done much to further the cause of collective bargaining. The same is true of the United States National Labor Relations Board and of similar bodies that have been introduced into some other countries to enforce key provisions of the industrial relations legislation.

In addition to these institutions, there are others that have been made specifically, and sometimes solely, responsible for promoting collective bargaining. These include the United Kingdom's Advisory, Conciliation and Arbitration Service that was set up under the 1975 Employment Protection Act "charged with the general duty of promoting the improvement of industrial relations, and in particular of encouraging the extension of collective bargaining and the development and, where necessary, reform of collective bargaining machinery."18 The Service is directed by a Council consisting of a chairman and nine members, three of whom are appointed after consultation of the employers' organisation and three after consultation of the workers' organisation. The Service's general mandate includes the exercise of certain functions in the field of conciliation, arbitration and the certification of bargaining
agents. In addition to these functions, which are dealt with in other chapters of this report, the Service is also responsible for carrying out inquiries, preparing codes of practice and advising workers and employers and their organisations in matters pertaining to industrial relations. As regards the inquiries, the Act stipulates that “the Service may, if it thinks fit, inquire into any question relating to industrial relations generally or to industrial relations in any particular industry or in any particular undertaking or part of an undertaking.” As to the codes of practice, the Service has already prepared a number of them on such subjects as the disclosure by the employers to the trade unions of certain information for the purposes of collective bargaining, the free time granted for the exercise of trade union activities and disciplinary procedures. These codes are prepared in consultation with the employers’ and workers’ organisations and must be approved by the competent Secretary of State and adopted by Parliament. With regard to the Service’s advisory activities, which normally take place at the level of the enterprise, these may according to the Act relate to “any matter concerned with industrial relations or employment policies”. The most common areas in which it has conducted advisory work are grievance, disciplinary, disputes and redundancy procedures, recognition and negotiating procedures and worker participation, including consultations and communications within the undertaking.

Certain other countries have institutions that, in some ways, are similar to the United Kingdom’s Advisory, Conciliation and Arbitration Service. In New Zealand an Industrial Relations Council was set up under the 1973 Industrial Relations Act. The Minister of Labour acts as chairman of this Council, which also has ten members appointed on the recommendation of the central organisation of employers, ten members appointed on the recommendation of the central organisation of workers and the Secretary of Labour. Among other activities, it is the function of the Council “to formulate codes of practice relating to industrial relations” and “to recommend to the Government ways and means of improving industrial relations, industrial organisation and industrial welfare.”

Canada has a tripartite institution known as the Canadian Industrial Relations Council that was created by Cabinet decision on 17 July 1975. The Council, which is chaired by the competent minister, is responsible for studying various collective bargaining methods and finding ways and means of enabling workers and employers to overcome their differences more easily. However, the Council has not met for some time now owing to the refusal of the representatives of the trade union organisations to participate in its meetings—as well as in those of certain other tripartite bodies—over a disagreement with the Government’s prices and wages policy.

In Northern Ireland the Labour Relations Agency, set up in 1976, has similar functions to those of the institutions referred to above. Finally, the Adam Report, recently published in France and already mentioned in the introduction to this report, proposes that similar functions should be entrusted to the “Commission supérieure des conventions collectives”, which has already been in existence for several years and, inter alia, is currently responsible for advising on the extension of collective agreements.

The Level of Collective Bargaining

The flexibility and adaptability of the institution of collective bargaining are nowhere more in evidence than in the levels at which bargaining takes place. A large
number of factors come into play in determining levels, including the objectives of the parties, the structure, strength and field of competence of their respective organisations, and external elements such as the size of the country and the structure of its economy, national traditions and statutory constraints. The main levels at which bargaining takes place are the level of the enterprise, plant or workshop, the level of the industry or branch, and the central, national level covering the economy as a whole. But it may also intervene at many intermediary levels, for example on a regional or provincial basis, or covering some but not all of the enterprises in an industry, or for certain categories of personnel, in particular manual workers or salaried employees. Recent years have witnessed a trend towards the greater diversification of bargaining levels in many instances, with increased centralisation being accompanied by a growing decentralisation in a number of cases. This evolution, along with the existence of parallel negotiations at different levels, inevitably gives rise to problems of co-ordination of the results of bargaining at higher and lower levels with regard to their practical effect on working conditions.

**Enterprise-level Bargaining**

The earliest and still the most widespread form of bargaining is that which takes place at the level of the enterprise or plant. In some large industrialised countries—Canada, Japan and the United States, for example—negotiations between employers and workers are largely confined to this level. In Canada, however, negotiations take place at the provincial level in a few cases, such as in the construction industry in Quebec and for hospitals in British Columbia, and at the national level in federal industries such as rail and air transport; and in Japan, aside from the instances of industry-wide bargaining that obtain in the maritime, railway, coal and textile industries, the action of the unions in the "spring offensive" at the national level helps to co-ordinate bargaining demands. But in all these countries enterprise-level bargaining is the predominant pattern. This is also the case in the socialist countries of Europe, with the exception of Poland, where collective agreements are negotiated at industry level. In Bulgaria negotiations take place frequently at the level of the department or other economic unit within the enterprise. In the USSR negotiations may also take place at higher levels, for a group of associated undertakings or at the industry level, on certain matters, such as, for example, the dissemination of pioneer experience, the introduction of inventions and rationalisation schemes, the provision of specially favourable and safe working conditions, construction of housing or development of cultural facilities, children's institutions, or other matters, financing of which lies beyond the scope of a single undertaking.

Enterprise- or plant-level bargaining is the only form of bargaining which exists in those developing countries where collective bargaining is in an incipient stage of development, as for example in Indonesia and Thailand, and it also remains the general practice in a very large number of countries in Asia, Africa, the Caribbean, and North and South America, which have a longer experience with collective bargaining, and where some industry-wide bargaining structures have developed.

In a number of countries in Europe where, in general, industry-level bargaining is the rule, enterprise- and shop-level negotiations have gained increasing importance in recent years, for example in France, Italy and the United Kingdom, as will be seen below.
The negotiation of collective agreements at the level of the undertaking makes it possible to relate bargaining to concrete situations, known to both sides. It also provides scope for bargaining over a wide range of issues of immediate concern to workers. The give-and-take between parties familiar to each other may have a favourable effect on plant-level labour-management relations. Enterprise-level bargaining may also be an indispensable complement to negotiations at industry-wide and higher levels. On the one hand, it may serve the purpose of bringing enterprises not covered by industry-wide agreements within the ambit of the levels of wages and working conditions set by those agreements. At the same time, it provides a means of adapting terms and conditions of employment agreed upon at industry level to the real situation of workers in the enterprise. Real wages, as distinct from industry-wide minima, may be effectively negotiated at this level. The strong pressures which have led to greater freedom of action for trade unions at the plant level in a number of countries in Europe in recent years have been largely due to the belief that it is possible to negotiate better conditions at this level and improve the terms of higher-level settlements. Finally, enterprise-level bargaining is itself a significant form of worker participation in the decision-making process, from the moment demands are formulated and approved in trade union meetings to the final stage of ratification of agreements.

The disadvantages of enterprise-level bargaining lie in the possible weakness of the unions, inter-union rivalries and ensuing problems of union recognition for bargaining purposes which, as has been shown above, are more frequent and acute at this level. There is also the risk that fragmented bargaining of this type, where it is predominant, may give rise to disparities in terms and conditions of employment of workers in large and small undertakings, or in different regions, depending on the financial possibilities of the undertaking and the bargaining strength of the union representing the workers. This risk is countered to some extent in countries where enterprise-level bargaining is the rule by the fact that settlements achieved in large companies exercise a pattern-setting influence on other agreements in the same industry, as in the automobile industry in Canada and the United States. It may also be noted that it is sometimes more difficult for the parties to take account of the national interests in enterprise-level bargaining than when negotiations take place at higher levels.

Industry-level Bargaining

Industry-wide bargaining, on the other hand, makes it possible to reduce disparities between large and small undertakings and between different regions of the country, as well as to develop social welfare programmes, standards of safety and health at the workplace, retirement benefit plans, job classification and evaluation systems, and methods of employment stabilisation and guaranteed income, applicable to the industry as a whole. Bargaining at this level thus frequently enjoys the preference of the public authorities who, in a large number of developing countries, in particular, have sought to encourage the negotiation of industry-wide agreements. For example, most of the French-speaking African countries still have an industry-based bargaining structure that was established by the French Overseas Labour Code of 1952. Sierra Leone, Tanzania and Zambia are examples of countries where collective bargaining at industry level was introduced by law in recent years, while in Nigeria and the Philippines its development is being fostered by the Govern-
ment. In some Latin American countries, for example Argentina, industry-wide bargaining is well entrenched and some collective agreements, for example in the commercial sector, cover more than 1 million workers. Industry-level negotiations also take place on a wide scale in Mexico, where for many years "contract laws" (contrato-ley) have been negotiated in the sugar, alcohol and rubber industries and branch-level bargaining is customary in the textiles industry; and in Venezuela, where agreements are negotiated at industry level in 39 major industries. In many other instances, the emergence of strong unions and employers' organisations at the industry or branch level has resulted in a spontaneous development of bargaining at these levels. This is, for example, the traditional pattern of bargaining in most of the European countries, and in Cyprus and Israel, where the collective agreements in the main sectors of the economy are concluded at industry level. In many other countries industry-wide bargaining occurs only exceptionally, as for example in the banking industry in Peru, in plantations in Malaysia and Sri Lanka, in mining in Malaysia and in the iron and steel and textiles industries in India. In Nigeria a few joint industrial councils have begun to operate in such sectors as banking and insurance, shipping and some branches of mining. There has also been some multi-employer bargaining in recent years in Singapore, in the banking industry and stevedoring sector, although in these cases separate, similar agreements are signed for each of the enterprises concerned.

While industry-wide bargaining offers obvious advantages by establishing greater uniformity of working conditions, it may also entail certain disadvantages. The level of wages agreed to, for example, may be geared to the weaker rather than the stronger and more prosperous undertakings in the industry, thus giving rise to the phenomenon of "wage drift", which may nullify the stabilising or anti-inflationary effect of industry-level agreements. The remoteness of these negotiations from enterprise-level conditions and problems has led in some instances to the rejection of agreements by rank-and-file workers. Thus, in a number of countries in Europe, where industry-level bargaining is firmly established, the unions have pressed for stronger representation at the enterprise level in order to be able to deal directly with plant-level problems of concern to workers such as, for example, overtime pay, work schedules, absorption of redundancies, productivity programmes and introduction of technological changes. These pressures led to legislation being adopted in France in 1968 and in Italy in 1970 which opened the way for union representation in the enterprise and plant-level collective bargaining. In Belgium trade union delegations within enterprises bargain with employers to supplement industry-wide agreements. Bargaining is being carried on to an increasing extent by the shop stewards in the United Kingdom; the productivity agreements concluded in the 1960s were negotiated at the enterprise level. Mention may also be made here of the Swedish Act of 1976 which established the right of trade unions to bargain with management on all decisions taken at enterprise level.

National-level Bargaining

Direct collective bargaining over wages and working conditions between employers' and workers' organisations at the central national level is comparatively rare. It occurs mainly in the Scandinavian countries, i.e. Denmark, Norway, Sweden and Finland, in all of which countries the parties are strongly organised and entitled
to bargain at the central level. Thus, in Sweden, wage negotiations are carried on by the main central organisations of employers and workers, resulting in a settlement which has the character of a recommendation to the member federations on both sides. The latter subsequently negotiate on the implementation of the central agreement and conclude binding industry-wide agreements for the sectors concerned, covering wages and other conditions of work. This is followed in many cases by enterprise-level bargaining over the implementation of wage increases and other provisions contained in the industry-wide agreements. National wage agreements have been concluded in Ireland since 1970, and in Israel a framework agreement on wages and other conditions of work is negotiated periodically at the national level. Some scattered examples of centralised collective bargaining may also be noted in other regions, for example, in some of the French-speaking countries of Africa. In Mauritania a collective agreement fixing general terms and conditions of employment for workers in all industries, in both the private and public sectors (excluding civil servants), was signed in 1962 and renewed by the parties in 1974, and national collective agreements of a similar kind have been concluded between the central employers' and workers' organisations in Benin, Chad, the Ivory Coast and Togo. In 1977 the central organisations in Tunisia signed an agreement with the government fixing wage increases for different categories of workers for the period of the Fifth Five-Year National Development Plan. An inter-trade collective agreement on wages and certain social security benefits was concluded at the national level in Greece in January 1977.

Centralised negotiations have also been resorted to, exceptionally, by the unions and employers' federations concerned, with a view to generalising innovations or reforms introduced by collective bargaining on an industry-wide basis or even at the enterprise level. Inter-trade agreements have been negotiated in recent years in France, for example, covering such matters as the extension of maternity leave pay of 90 per cent, supplementary pension schemes for supervisory and managerial staff, and monthly wage payment for workers. In several cases, the central agreements have been subsequently embodied in the law. But in addition to this function of harmonising and generalising standards of working conditions, national-level agreements may also serve a promotional purpose, defining a programme of action in such fields as vocational training, for example in the French inter-occupational agreement of 1970, or the development of new forms of worker participation and co-operation, as in Denmark (1964 and 1970) and Sweden (1966). In many such cases, the public authorities are also involved, sometimes through official research committees which prepare the basis for negotiation, or in accepting certain responsibilities in the carrying out of such a programme.

The relationships between the parties and the rules governing their dealings with each other have also formed the object of national-level negotiations on a bipartite or tripartite basis in a number of industrialised and developing countries. In many instances these negotiations have led to the conclusion of so-called “basic agreements” or to the adoption of industrial relations codes, more details of which will be provided in the following chapter.

**Co-ordination of Bargaining at Different Levels**

For centralised bargaining to exercise a co-ordinating influence on industry-level or branch- and enterprise-level bargaining, some clarification of the relationship
between the results of bargaining at these different levels is required. Various solutions have been worked out in practice in the countries concerned. In general, the inter-trade agreements are framework agreements in the sense that they set guidelines and limits to negotiations at lower levels, but their impact varies. In Denmark central negotiations determine general employment conditions, while the branches negotiate only on questions specific to the industry. In Ireland the national wage agreements can only go into effect when negotiated at the industry level, but the parties are obliged to respect these agreements in their negotiations, a process which is not always achieved without difficulty. In the Federal Republic of Germany central negotiations have been in the nature of consultations, leaving intact the bargaining autonomy of the parties at industry level.

The co-ordination of industry-wide and enterprise-level bargaining has also been a matter of concern in recent years in some countries of Europe where, as already mentioned, an upsurge of plant-level bargaining has occurred in response to immediate issues related to economic recession and inflation. Efforts have been made to regulate certain aspects of plant-level bargaining by legislation in the United Kingdom, and by contractual arrangements in Italy, where a system known as "articulated bargaining", whereby the parties specified in national agreements what subjects could be referred to bargaining at lower levels, was introduced experimentally in the early 1960s. Neither of these efforts met with complete success. The dynamics of the collective bargaining process are such that it is basically the strength of the parties and the acuteness of the issues with which they are faced that determine the level at which they negotiate certain matters. As has been shown above, the co-ordination may work from the bottom upwards, by the generalisation at industry-wide or national level of innovative agreements concluded at the enterprise level, as well as from the top down. It is noteworthy that in a country such as Sweden, which has a highly centralised and well co-ordinated system of collective bargaining, it has been found necessary to specify in recent legislation that all decisions taken at the enterprise level are negotiable.

The problem of co-ordination does not occur to the same degree in the socialist countries, where the discussions leading to the conclusion of collective agreements generally take place at the enterprise level within the framework of the national economic and social plan and are primarily designed to ensure the attainment of the objectives set by the plan and to supervise the application of relevant legislative standards on working conditions. There has, however, been a considerable expansion of trade union activity at the plant level in recent years with a view to the improvement of working and living conditions of workers. Recommendations concerning the content of collective agreements are handed down jointly by the administrative and trade union bodies existing at the industry-wide level, which permits some co-ordination of the provisions included in enterprise-level agreements. These higher bodies are also responsible for ensuring the concordance of the binding provisions of a collective agreement with the legislation currently in force.

In the light of the varied experience briefly reviewed above, it is clearly not easy, even on a national plane, to draw up a final list of questions appropriate for negotiation at the different levels. A legislative or contractual framework of this nature may be useful at certain times to give an impetus to the development of collective bargaining or to help improve co-ordination. But within the established structure of negotiations changes and adaptations are bound to take place pragmatically, in response to
economic, social and political pressures of various kinds. The important thing is for the system of collective bargaining to be flexible enough to provide adequate scope for employers and workers to negotiate effectively at the level which meets their needs, taking account of the needs of the industry to which they belong as well as of the over-all national interest.

Notes

1 In certain countries works committees or councils consist exclusively of workers’ representatives: see Chapter I.

8 ILO: Freedom of association, op. cit., para. 280; see also paras. 274-279 and 282.


4 See Chapter I.

5 For the text of these Rules, see ILO: Basic agreements and the joint statements on labour-management relations, Labour-Management Relations Series, No. 38 (Geneva, 1971), p. 39.


7 For more about “concerted action”, see Chapter V.

8 Regulations of the Permanent Production Conference approved by the Council of Ministers of the USSR and the All-Union Central Council of Trade Unions on 18 June 1973—Decision No. 422.


11 Ibid., section 18.


14 Ibid., section 19.

15 Ibid., section 21.

16 Rules for negotiation, article 5. For text, see ILO: Basic agreements ..., op. cit., p. 39.

17 See the Communications within the Undertaking Recommendation, 1967 (No. 129).


19 Ibid., section 5(1).

20 See Chapter II.


22 For further details, see ACAS: Annual Report, 1977 (Brown, Knight and Truscott, 1978), pp. 23 et seq. and 77 et seq.


CHAPTER III

COLLECTIVE BARGAINING AS A MEANS OF REGULATING WAGES AND WORKING CONDITIONS AND LABOUR-MANAGEMENT RELATIONS

Collective bargaining, in practice, serves a dual purpose. On the one hand, it provides a means of determining by free and voluntary negotiations between the parties concerned the wages and conditions of work applying to the group of workers covered by the ensuing agreement. On the other hand, it enables employers and workers to define by agreement the rules governing their mutual relations. These two complementary aspects of the bargaining process are discussed in this chapter.

COLLECTIVE BARGAINING AS A MEANS OF REGULATING WAGES AND WORKING CONDITIONS

In principle, the parties are free to negotiate on all matters of mutual interest, subject only to the legal and contractual regulations indicated in the preceding chapter and to the willingness of employers to discuss the matters raised by the union. One of the main characteristics of collective bargaining in recent years has been a steady enlargement of the scope of negotiable issues and a gradual breaking down of barriers preventing the consideration of a number of subjects affecting workers’ interests. This evolution has been particularly noticeable in the industrialised market economy countries; however, there has also been a considerable extension of the scope of collective agreements concluded in the socialist countries, and in some developing countries. In Venezuela, for instance, a recent monograph 1 identified more than 250 items as possible subject-matters of collective bargaining.

The content of collective bargaining, as has already been indicated, may differ according to the level at which bargaining takes place; however, the trend towards an enlargement of the subject-matter discussed is perceptible at all levels. Indeed, the simultaneous pressure for increased bargaining both at the national level and at the level of the enterprise comes primarily from the need to solve new problems at those levels. The relative urgency of the matters raised by the workers and the priority they attach to different items change with changing economic situations and the rising aspirations of the workforce. Recent recessionary trends and the threat of mass dismissals are in the forefront of trade union preoccupations in many industrialised market economy countries. Thus, in addition to traditional issues of wages and hours of work, collective bargaining has become the forum for discussing many matters of wider concern, relating, for example, to job security, vocational training and retraining, retirement benefits and unemployment insurance, improvement of productivity as well as criteria and procedures for dismissals. At the same time, there is a growing emphasis on improving the working environment, including a better organisation of work and the lessening of psychological tensions and other pressures
as well as the elimination of health hazards and accident risks. Added to these trends, there have been a number of cases where bargaining agreements have dealt with managerial decisions regarding production or investments, as well as matters such as manning, recruitment, or reduction of the workforce. Even in countries where there is a strong tradition of legislative regulation of working conditions and labour relations, collective bargaining has enabled the parties to go beyond the statutory rules, to improve standards and to find innovative solutions to problems arising at the enterprise or industry level which have, in some cases, influenced subsequent legislation. Collective bargaining may thus be considered as an increasingly important decision-making process in the whole field of social policy.

_Wage Negotiations_

In the realm of wages and other items of remuneration, which remain the central issue of collective bargaining, negotiations are becoming increasingly complex. For example, the effect of inflation on the purchasing power of wages has prompted the development of various different formulas for adjusting workers' incomes to increases in the cost of living. Wage indexation systems were introduced after the end of the Second World War by negotiations at the central or at the industry level in Belgium, Denmark and Italy and more recently in the Netherlands. The techniques used vary from country to country and from one industry to another, but in all these countries the principle of wage indexation is now generally applied. In Luxembourg it has been made compulsory by a law of 1965 for all collective agreements to include clauses providing for the adjustment of wages to the cost of living. In a number of other countries, including Canada, Switzerland and the United States, there are many industry-wide or enterprise-level agreements which include such clauses, but this is not yet a generalised practice. In Switzerland, for example, 57 per cent of the agreements in force at the national or local levels in 1975 included wage adjustment clauses, generally providing for the re-negotiation of wage provisions in relation to the cost-of-living index during the period of validity of the agreement. ²

Wage-indexation agreements, apart from protecting purchasing power, have also been adopted in some cases with a view to modifying wage structures. In many enterprise-level agreements in Canada and the United States, for example, cost-of-living increases are paid at a flat rate for all workers concerned, which inevitably results in a reduction in wage differentials between high and low wage categories. The reduction of wage inequalities has, in itself, been an object of wage negotiations in many instances, the resulting agreements relying on various different means to achieve this aim. In Sweden, for example, where the main central organisation of manual workers has for many years been pursuing a "solidaristic" wage policy, the central-level wage agreement of 1978 provides for special "low-wage increments" designed to raise the wages of lower paid workers up to a level closer to that of average earnings in the industry, and to bring earnings levels in different sectors more in line with each other. In some agreements in the metal trades in France efforts have been made to bring the different categories closer together by a system of overlapping indices for manual and non-manual workers and a single grading chart for all personnel except the executive staff; and in several industries in Italy provision was made for a simplified wage structure with fewer occupational classifications and skill differentials as well as a single scale for all but senior executive personnel.
Parallel with these attempts to reform the wage structure, changes have been introduced in the method of wage payment. Incentive wage systems or payment by results appear to be declining in importance in some industrialised countries, and in some industries, but at the same time there is a continuing emphasis on methods of payment related to output. Productivity agreements concluded in the United Kingdom are one example of this. In the socialist countries payment by results, along with various forms of incentives and bonuses for exceeding production targets, continue to be important elements in collective agreements. Although in these countries the wage rates for different jobs are laid down at a higher level, the undertakings are responsible for fixing methods of wage payment in accordance with the conditions of the workplace. Thus, for example, in an agreement concluded in 1976 in a metal-working firm in the USSR, detailed provisions are found establishing the rules governing the application of payment-by-results schemes, the introduction of new technically-based production norms and the utilisation of material incentive funds.

Collective bargaining has also been used as a means of ensuring greater stability and security of wage income. The trend towards the replacement of payment by the hour by monthly payment has been pursued in a number of countries in Europe, such as Belgium, France and the Netherlands; this change is designed to reduce the distinctions between manual and non-manual workers and to provide greater income security for the former.

In the vast majority of cases, however, the emphasis in collective negotiations is on increasing the wage packet, with payment of overtime, annual bonuses or premiums of various kinds (e.g. for night-shift work, hazardous or dirty jobs or hardship duty stations) figuring as negotiable items, along with such minor matters as meal and transport allowances, provision of tools, safety equipment, special clothing or uniforms. These latter items are, of course, more likely to appear in agreements negotiated at the enterprise or plant level.

One of the most serious problems which has arisen in recent years in connection with wage negotiations is that of government influence on wage fixing. The difficulties encountered in this respect stem from the fact that, departing from past practice, governments of an increasing number of market economy countries, both industrialised and developing, have recently taken various steps to influence wage fixing. These measures, which sometimes form part of an over-all incomes policy, are looked upon by the governments of industrialised countries as an important element of their anti-inflationary policy and, by the governments of developing countries, as a central component of their national development policy.

Government wage policy measures may take a variety of forms. In some cases the public authorities have adopted provisions which, although intended to influence wage fixing, are not binding in character. An example of such non-binding measures is the system which operates in the Federal Republic of Germany under the name of "concerted action" and which is based on a law of 1967. In order to preserve price stability, full employment, economic growth and the equilibrium of the foreign trade balance, the Federal Government mentions certain "indicative forecasts" in the Annual Report on the economic situation that it has to submit to Parliament. In addition, the Federal Government convenes meetings which are presided over by the Federal Minister of the Economy and which are attended, among others, by representatives of the central employers' and workers' organisations and of the
Federal Bank. The objective of these meetings is to discuss current economic problems and to facilitate "concerted action" of all interested parties aimed at settling the problems concerned, without limiting in any way whatsoever the autonomy of employers' and workers' organisations.

Elsewhere, wage policy is determined, or at least largely influenced, by central tripartite arrangements between the government and the employers' and workers' organisations. A very particular form of tripartite wage fixing has been applied in Austria since 1957 through the Joint Committee on Prices and Wages and its various subcommittees. This Joint Committee, which is in fact tripartite and was created by the Federal Government at the suggestion of the trade unions, takes its decisions by unanimous vote, although the Government representatives gave up their right to vote in 1966. The unions have undertaken to submit all wage claims to the Joint Committee, which must then consider not so much the extent of the claims but whether the moment is well chosen to conclude a new collective agreement in the bargaining unit concerned. Should the Joint Committee fail to reach agreement on the subject, negotiations may begin, on the basis of the claims submitted, after an interval of 11 weeks.

A very different tripartite wage-fixing system has recently taken root in several other industrialised countries, including Ireland, the Netherlands and Norway. Although it is true that the broad lines of these countries' wage policies are still, at least formally, set out in bipartite agreements signed between the employers' and workers' organisations, many of the latest agreements were made possible only because simultaneous arrangements were concluded with the government, whereby the latter undertook to adopt certain fiscal, employment-creating or other measures specially designed to facilitate acceptance by the employers' and workers' organisations of the agreements concerned. Yet another kind of wage policy that can be assimilated to those already mentioned is that which had been pursued for some years in the United Kingdom. Under the "social contract" concluded between the Government and the trade union organisations prior to the 1974 election, the unions, in exchange for certain concessions, undertook to keep their wage claims within certain limits.

On other occasions, public authorities have introduced actual wage-control measures, in the form of provisions entailing a restriction of the autonomy of the employers' and workers' organisations to fix wages. These provisions, which are usually applied for only fairly short periods, vary greatly in nature and scope, ranging from a mere ban on the indexation of the highest wages to a general wage-freeze or prior approval of collective agreements by an administrative or judicial authority. The most far-reaching wage control measures have been taken during the past ten years in certain Latin America countries such as Argentina, Brazil, Chile and Uruguay. More limited measures have also been taken in a number of countries in Africa and in Asia and, more recently, in certain industrialised countries such as Canada, Denmark, the Netherlands and Spain.

It is clear that a binding government wage policy automatically raises the problem of its compatibility with the autonomy of the bargaining parties. This problem has been examined on several occasions by the Committee on Freedom of Association. Dealing in general terms with the relationship between collective bargaining and the national economic policy, the Committee has considered that "where intervention by the public authorities is essentially for the purpose of ensuring that the negotiating
parties subordinate their interests to the national economic policy pursued by the
government, irrespective of whether they agree with that policy or not, this is not
compatible with the generally accepted principles in the field of freedom of associa-
tion. As regards more particularly the problem of government influence on wage
fixing, the Committee has repeatedly considered that it would be difficult to lay
down an absolute rule concerning this matter because, under certain circumstances,
governments might feel that the economic position of their countries called at certain
times for stabilisation measures during the application of which it would not be
possible for wage rates to be fixed freely through the medium of collective bargain-
ing. In this connection the Committee has however also recalled on several occa-
sions in recent years that if, as part of its stabilisation policy, a government con-
siders that wage rates cannot be settled freely through collective bargaining, such a
restriction should be imposed as an exceptional measure and only to the extent that is
necessary, without exceeding a reasonable period, and it should be accompanied by
adequate safeguards to protect workers' living standards. As far as prior approval
of collective agreements is concerned, the Committee has expressed its opposition
in principle to it. However, objections by the Committee to the requirement that
prior approval of collective agreements be obtained from the government do not
signify that ways could not be found of persuading the parties to collective bargaining
to have regard voluntarily in their negotiations to considerations relating to the
economic or social policy of the government and the safeguarding of the general
interest. After having given several examples of how this could be achieved, the
Committee has however again insisted on the fact that in this connection, persuas-
ion is always to be preferred to constraint and has recalled that it should be
clearly understood that the final decision in the matter rested with the parties to the
agreement.

**Hours of Work and Paid Leave**

The length and arrangement of working time is another vast and complex area for collective bargaining in which new trends are visible. A substantial reduction of working hours below the statutory maximum has been achieved in a large number of countries during recent years. In the Federal Republic of Germany the 40-hour week now applies to almost all workers; in Belgium it has been made general as of 1 January 1976 by a national industrial agreement and in Denmark by a conciliation agreement of 1973. Some categories of workers, such as civil servants in Italy and postal-telecommunications workers in Australia, now work less than 40 hours. Pressure is now being brought by the unions in a number of industries to have working time further reduced. This trend is accompanied as a rule by efforts to limit the number of hours of overtime permissible.

Shift work has long been opposed by unions in many countries, but at present it appears to be on the increase in many industrialised countries. Not only is it unavoid-
able for technical reasons in some industries but it is now appearing in new sectors due to the introduction of costly equipment which has to function around the clock in order to be economically profitable. Negotiations have therefore concentrated on developing better arrangements for the distribution of working time, shorter night
shifts, limitations on the number of years for which workers may be required to do
shift work, special compensation and practical facilities (transportation, hot meals,
etc.) for night-shift workers, and so forth. Two other recent trends in working time,
namely flexible hours (arrangements whereby workers are free to fix their own starting and stopping time, provided they work a certain core time daily and the regular number of hours per week) and part-time work, have rarely been the subject of collective bargaining, although employers generally consult with workers before introducing such schemes. For various reasons, the unions often have reservations about flextime arrangements and part-time work; however, these problems mainly concern unions in the industrialised countries.

On the other hand, a subject of universal interest in collective bargaining is the extension of paid leave. While in some developing countries collective agreements merely restate the statutory provisions in this respect, in many other cases longer leave has been negotiated. This is also the case in several countries in Europe, where the majority of workers now enjoy four weeks' annual leave under negotiated agreements, while an increasing number have five weeks. This applies to about 50 per cent of both manual and non-manual workers in the Federal Republic of Germany, for example. In France, where the fourth week was introduced by collective agreements before becoming generalised by legislation, negotiations are now under way, as in some other countries, to make the fifth week generally applicable. Additional paid leave is provided for in many agreements on the basis of age and seniority and for arduous work, as for example in the Federal Republic of Germany and Italy.

Safety and Health, Working Environment and Social Welfare

Among the subjects widely dealt with by collective bargaining, occupational safety and health measures figure prominently. In some cases they focus on the adequate enforcement of statutory standards and protective regulations, while elsewhere they may take the form of provision of medical services at workplaces and social welfare benefits to workers. While occupational safety and health is thus generally regulated by law, the collective bargaining process nevertheless intervenes in re-emphasising the respective responsibilities of the management and of supervisory bodies, such as joint safety committees, as well as of the workers themselves, in ensuring a safe and healthy working environment. For example, the obligation on management to provide and on workers to wear or use personal protective clothing and equipment is sometimes specified in agreements. A few recently concluded agreements provide that the safety committee or other responsible persons may stop the production process if a danger is perceived, until the necessary precautionary measures are taken.

But beyond the strictly protective aspects of such provisions, collective bargaining has in recent years given evidence of a widening interest in the improvement of the entire working environment and the relief of mental as well as physical stress in the workplace. Widespread public interest in methods of improving the "quality of working life" has been taken up in collective bargaining in concrete terms. Thus, in a few cases, the organisation of work, job design and job evaluation, among many other matters, are becoming amenable to collective bargaining. In France a "framework agreement" of 1975 on the improvement of conditions of work, negotiated at the central level, provided a basis for the conclusion of industry-wide or plant-level agreements concerning the organisation of work, with a view to the enrichment of jobs, increased responsibility and autonomy of work groups, and other measures related to the arrangement of working time, methods of wage pay-
ment, the physical working environment and more co-operative methods of supervision. An agreement signed in 1973 in the metal industry of the Nord-Württemberg-Nordbaden region of the Federal Republic of Germany included provisions concerning the lengthening of the work cycle in assembly-line jobs, with a view to relieving the monotony of the work. Some of the agreements mentioned below relating to vocational and further training include provisions designed to ensure that workers will be given the chance to use their acquired skills and enjoy regular promotions throughout their working career. In the socialist countries collective agreements include a variety of provisions designed to eliminate monotonous and arduous work, to reduce both physical and mental stress, to create a favourable climate for production by the upkeep and embellishment of workplaces, and the provision of sports, recreational and cultural facilities and special facilities for women and young workers. Provision is also made for the protection of nature and the prevention of atmospheric, soil and water pollution by industrial waste.

Training and Retraining

Collective bargaining is beginning to intervene in the area of vocational training and retraining, although in the main this is still largely the responsibility of the State. Some agreements concluded at the industry level in Italy, starting with the metal trades agreement of 1973, contain extensive provisions relating to the training and retraining of workers with a view to their promotion and career development, and a central-level agreement on vocational and further training measures was concluded in France in 1970. These agreements define the rights of workers to paid leave for training purposes, provision for which has been introduced by law in several countries. The financing of such training, which in some cases is partly incumbent on employers and in other instances is wholly covered by the State, is a matter for legislation rather than collective bargaining. In a number of instances, agreements have made provision for the retraining of workers in order to facilitate their readaptation to new methods of work and technological changes. Agreements covering professional workers often provide for special arrangements, such as time off to attend training courses or research meetings, in order to enable these workers to update their knowledge and keep abreast of developments in their field.

In the agreement referred to above concluded in 1976 in a metalworking firm in the USSR, the management and the trade union committee assume joint responsibility for carrying out a training plan for all grades of workers, related to the modernisation of technical equipment and the improvement of productivity. The management commits itself not to transfer workers during their training and to facilitate their acquisition of a second skill, as well as to provide the necessary machines and equipment for this purpose, and the trade union committee takes an active part in finding qualified teachers among the skilled personnel, encouraging participation of workers and supervising the carrying out of the training plan by the management.

Social Security

In many countries collective bargaining is a means by which workers obtain social security benefits which may either be complementary to those provided by state-supported schemes or payable in respect of contingencies not otherwise covered
by statutory schemes. Although in financial terms the most important benefits granted in virtue of collective agreements are disability, old-age and survivors' benefits (pensions and/or lump-sums), an international survey of current agreements shows that employer-employee negotiations cover the whole field of contingencies generally included in a social security system, such as unemployment, employment injury, sickness and maternity, medical care and family benefits. Another important feature is that in some countries collective bargaining in respect of social security benefits takes place in a framework much wider than the company or the industrial sector. In the Netherlands, for instance, supplementary occupational pensions are negotiated for different industrial sectors. In France negotiations have taken place essentially at the national and inter-occupational level leading to the establishment of a broad-based supplementary pension system for supervisory and executive employees (1947) and later for all other employees (1957). A similar approach was followed in negotiating maternity benefits of up to 90 per cent of lost earnings (1970) and unemployment benefits (1958) which were recently supplemented (1974) by a new national agreement (very recently revised) granting higher benefits to workers dismissed for "economic" reasons. It is noteworthy that unemployment benefits are administered privately in France, on the basis of national agreements, through joint organs set up by the employers' and workers' organisations.

The negotiated schemes referred to have in many instances paved the way either to state provision through legislation or to the recognition of such schemes as the major system of protection in the particular field.

In times of recession and rising unemployment, collective bargaining has proved effective in easing the situation of redundant or unemployed workers, through a variety of arrangements such as additional unemployment payments as well as redundancy, early-retirement or guaranteed minimum benefits. Examples of this can be found in Belgium, Federal Republic of Germany, Italy, the United Kingdom, and many other industrialised countries. Finally, it should be recalled that collective bargaining plays an equally important—although different—role in strengthening the social security protection of workers in developing countries where state schemes still have a limited scope. Examples can be found in Asia (Hong Kong, Malaysia, Thailand) and in Latin America. Here the main benefit provided through employer-employee agreements are retirement pensions and gratuities, life insurance and, more generally, death benefits. In Africa, apart from pension and retirement benefits, collective agreements are increasingly providing for payment by the employer of medical expenses incurred by workers as well as for other social benefits not covered by social security legislation.

Job Security and Other Matters

In many industrialised market economy countries the pressure of growing unemployment in recent years has prompted the negotiation of various types of provisions designed to protect jobs and create new employment opportunities. In addition to legislative measures in this field, collective bargaining has thus played an important role in promoting job security during a period of economic recession.

In some cases, such provisions have been related to the modernisation of enterprises and the introduction of technological changes, as for example in the Federal
Republic of Germany where agreements have been concluded since 1961 protecting older workers with ten years’ service from dismissal in case of rationalisation or reorganisation of enterprises, and providing for longer notice and increased separation payments in such cases. Similar agreements were signed in Luxembourg in 1969. Advance information concerning projected dismissals and joint discussion of such measures have been made obligatory in France, under a central-level agreement of 1974, subsequently embodied in legislation; in Belgium by a national agreement of 1975; and in Cyprus by the Industrial Relations Code drawn up jointly in 1977 by the employers’ and workers’ organisations at the national level under the auspices of the Labour Ministry. Mention may also be made of the inter-confederal agreement on individual dismissals concluded in 1965 in Italy and the Danish central agreement of 1973, both of which prescribe procedures for guaranteeing protection of workers from unjustified or arbitrary dismissal. In the United States, where job security and guaranteed-income provisions are included in many collective agreements, negotiations have been undertaken in the automobile and iron and steel industries aimed at the conclusion of lifetime job-security programmes covering the entire working life of employees.

A number of agreements concluded recently at the industry or enterprise level have provided for the maintenance of the employment level in return for such measures as the suppression of overtime, work-sharing arrangements, early retirement, transfers of workers to another establishment and retraining. In Canada, for example, an experimental work-sharing agreement was concluded in 1977 between the government and employers and workers in 11 plants, under which dismissals were avoided by a reduction of working hours, the workers concerned being entitled to unemployment benefits to compensate for wage losses.

In other cases, the agreements aimed not only at job protection but at the creation of new jobs. In the Belgian retail trade sector an agreement of 1978 provided for a gradual reduction of the working week to 36 hours, with corresponding wage adjustments, while the employers agreed to create 700 additional jobs. Several agreements were negotiated in Italy, in particular those signed with the Fiat automobile company since 1974 and with Alfa Romeo in 1978, under the terms of which the company undertook to invest in the south of Italy, an area of high unemployment, in order to create new jobs.

The preoccupation with security of employment has thus furnished the occasion for the expansion of the scope of collective bargaining to include even the investment policy of the undertaking in some cases; there have in fact been other instances where the company concerned agreed to discuss jointly with the workers’ representatives decisions that would formerly have been taken unilaterally. For example, an agreement signed in 1975 in the automobile industry in Belgium reversed the company’s decision to close down one plant and provided for joint discussion of the restructuring of the plant on the basis of a reconversion plan established by the trade union. Other matters, such as subcontracting of work and recruitment methods, are also becoming subject to bargaining; for example, many agreements in Canada and the United States contain clauses limiting management’s right to contract out work; and an agreement concluded in 1977 in the plantations industry in Colombia includes provisions prohibiting the use of intermediaries in the recruitment of labour. This trend towards a wider scope of participation of workers in management decisions affecting them has been institutionalised in the Swedish law of 1976 on co-determina-
tion of working conditions at the level of the enterprise, which obliges the management to negotiate on any matter relating to the activities of the enterprise at the workers' request.

In the socialist countries collective agreements concluded within enterprises in recent years have included provisions aiming at ensuring the active participation of workers in the management of production as well as in the improvement of working conditions and welfare of workers and socio-cultural activities. Through the mechanism of social planning, which, since 1971, has been extended to a large number of enterprises, particularly in the USSR, the trade union committee and the management draw up jointly a long-term plan for the enterprise relating to many aspects of its activities, including the organisation of work, mechanisation and automation, and increased participation of workers in the management of production. These social plans, which are integrated into the five-year economic plans of the undertaking and which serve to orient the provisions of collective agreements concluded annually, carry obligatory force.

Effects of the New Trends in Bargaining

The above paragraphs by no means exhaust the list of subjects relating to wages and working conditions currently dealt with in collective agreements. They are meant to be illustrative of the widening scope of bargaining and the increasing complexity of the issues discussed. As a result of these trends, the parties often experience an increasing need for training in negotiating skills and for information, expert technical advice and assistance in dealing with new questions. This is a field where the public authorities may play an important part in promoting collective bargaining by, for example, making available training facilities as well as information and research services on relevant questions. In addition, the enlargement of the area of bargaining and the increasing capacity of unions to propose innovative solutions to current problems have entailed many changes in their relationships with employers. The rights of management are being re-defined and the areas for joint decision-making widened, both in practice and by law. The opening up of the field of collective bargaining may necessitate the development of a more "participative" style of management. As more and more subjects become negotiable, unions become obliged to establish priorities among the questions open to discussion, which may sometimes involve difficult choices. The evolution of collective bargaining as an instrument for regulating wages and working conditions is thus closely related to its other function, that of regulating labour-management relations.

Collective Bargaining as a Means of Regulating Labour-Management Relations

Collective bargaining, which for a time had virtually no other purpose than the fixing of wages and working conditions, has gradually come to be used to regulate industrial relations. More and more clauses in collective agreements are now being devoted to this question with a view to developing and regularising the relationship between employers and workers and their organisations and to laying down the often quite precise rules governing these relations. The basic assumption of the parties is of course that a constructive dialogue is possible between employers and workers
and that it is the best way of solving any problems that arise. In practice, provisions of this nature have in fact often proved very effective in that they have done much to promote collective bargaining and, more generally, to foster balanced and dynamic labour-management relations.

In some countries the parties concerned have demonstrated a particularly strong desire to regulate their relations, with the result that, not confining themselves only to the occasional settlement of certain aspects of the problem, they have used one or more agreements, generally negotiated at the national level, to build up a fairly comprehensive set of regulations on the subject. The "basic agreements" concluded by the central employers' and workers' organisations in Denmark, Finland, Norway and Sweden, either before the Second World War or immediately after, are a typical example. Sweden's 1938 basic agreement, which has been amended on several occasions, was recently denounced, along with various other national agreements, because its provisions were no longer in line with the 1976 Act respecting co-determination at work; the country's central employers' and workers' organisations are currently negotiating a new agreement. Similar agreements have been concluded in a number of other countries: the Industrial Relations Charters adopted in Kenya and Sierra Leone in 1962 and 1970, respectively, the Industrial Relations Code of Practice adopted in Fiji in 1973, the Code of Conduct for Industrial Harmony adopted in Malaysia in 1975, and the Industrial Relations Code adopted in Cyprus in 1977 to replace a 1962 agreement. In Kenya the Government is co-signatory of the Charter with the central employers' and workers' organisations. In Cyprus, Fiji and Malaysia the negotiations which preceded the adoption of the Codes took place under the auspices of the Minister of Labour, who in some cases has also countersigned the agreements. A brief outline of the basic agreements signed in Denmark and Norway and the Code of Conduct adopted in Malaysia is given below.

The Danish basic agreement, which dates from 1899, was last revised in 1973. It provides, inter alia, that the central organisations and their members will respect the principle of freedom of association, that the agreements concluded between the central organisations shall be respected and complied with by all organisations belonging to them, under the relevant central organisation's responsibility, and that the parties to any collective agreement will in principle refrain from resorting to strike action and lock-out during the period of its validity. Other clauses in the agreement deal with the termination of collective agreements, the representation of workers and collaboration between employers and workers in the undertaking, management prerogatives and dismissal procedures. One important provision is that, in the event of a breach of the agreement or any other agreement, the parties must hold a meeting before a complaint is lodged with the Industrial Court; where the breach of agreement concerns the stoppage of work, the meeting must be held at the latest the day after the initiation of the stoppage. Apart from the General Agreement, other central agreements exist in Denmark to regulate industrial relations, such as the 1964 Rules for Negotiation and the 1970 Agreement on Collaboration. The latter includes a provision regarding the creation of collaboration committees in the undertaking.

The Norwegian Basic Agreement was concluded in 1935 and last amended at the end of 1977. The introductory clauses of the agreement deal with the freedom of association of employers and employees and the duty of the latter to maintain industrial peace during the validity of the agreements they conclude. The agreement
consists in the main of highly detailed provisions concerning shop stewards and works councils. In addition, the basic agreement lays down the rules to be followed in respect of the ratification of draft collective agreements, termination of such agreements and labour disputes. On several occasions, and particularly in respect of shop stewards and works councils, it emphasises that good industrial relations must be based on the desire of employers and workers to co-operate.

As its title suggests, the Code of Conduct adopted in 1975 in Malaysia is designed to contribute to the promotion of "harmonious" industrial relations. It consists of a foreword signed by the Minister of Labour and Manpower, a central section in which the signatory organisations, "with the collaboration and approval of the Ministry of Labour and Manpower", undertake certain commitments of a general nature, and a detailed appendix containing specific rules to be observed by employers and workers in their day-to-day relations. In the central part of the Code the parties undertake "to promote constructive and positive co-operation at all levels in industry and to abide faithfully by the spirit of agreements mutually entered into". With regard to labour disputes, the parties undertake to refrain from taking unilateral action and to use the proper procedures, and specifically the grievance procedure. Other clauses in the Code stipulate that the parties agree not to support or encourage any unfair labour practices and to refrain from resorting to various forms of pressure such as coercion, intimidation and sit-down strikes. The appendix to the Code contains a set of detailed provisions concerning the commitments of the employers and workers at the enterprise and higher levels, recognition of trade unions, negotiating procedures, collective agreements, the procedure for resolving collective disputes, communication and consultation in the undertaking, etc.

The fact that the central employers' and workers' organisations of many countries have not adopted basic agreements or codes of conduct of the kind described above does not mean that collective bargaining is never used there for regulating industrial relations. On the contrary, in most cases it is quite usual for certain such issues to be settled by the parties themselves through appropriate agreements; many examples of these have already been given in the foregoing chapters. The point has also been made that the main purpose of these agreements is to protect and strengthen the position of the unions within the undertaking, to institute a procedure for union recognition, to set up negotiating bodies, to define negotiable issues, to draw up rules governing the bargaining process and to oblige the employers to disclose certain information to the workers for the purposes of collective bargaining. The following chapter describes how, in some countries, the collective agreement stipulates the procedure to be followed for the settlement of labour disputes.

Another industrial relations issue that is sometimes dealt with in collective agreements is the maintenance of industrial peace. Broadly speaking, the commitment to observe industrial peace can be described as the obligation on the employers and workers and on their organisations to refrain entirely or partly from resorting to direct action during the period of validity of the collective agreements, and in some cases during their negotiation. In some countries this matter is covered by legislation. Elsewhere it tends to be a matter for collective agreements. Yet other countries have both laws and agreements, the latter normally serving to reinforce the provisions contained in the former.

As a rule, the purpose of the provisions contained in agreements, which are the only ones with which we are concerned here, is the maintenance of industrial peace
during the validity of the agreements. However, their scope varies considerably from one case to another. The major distinction in this respect is between the commitment to "relative" peace and the commitment to "absolute" peace, the former relating only to issues covered by the agreement and the latter to all issues without exception. The undertaking to observe relative industrial peace appears in a large number of collective agreements. Some countries, such as Austria and the Federal Republic of Germany, even consider that a fixed-term agreement automatically entails a commitment to maintain relative peace—although this view is not always unanimous. On the other hand, it is fairly widely recognised that a commitment to industrial peace can be absolute only if the agreement states so explicitly, as often happens in the United States. This is also the case in the Swiss agreement concerning industrial peace in the machine and metallurgical industries which has been regularly renewed since its conclusion in 1937.

Apart from clauses aimed at the maintenance of industrial peace during the validity of the agreement, there are others—fewer in number—that concern the maintenance of industrial peace during the negotiation of the collective agreements. Very often they are intended not to prevent any possibility of resorting to direct action but only to postpone such action until the end of a conciliation procedure. There are, however, a few rare cases where the possibility of resorting to direct action has been not only postponed but rejected altogether by the negotiating parties. The Experimental Negotiation Agreement which was concluded in 1973 in the United States iron and steel industry and last renewed in 1977 for a further three years excludes any possibility of resorting to direct action over issues normally negotiated at the national level.

The collective agreements concluded in the socialist countries also contain clauses defining certain commitments undertaken by the signatory parties, the most important of which are those that are concerned directly or indirectly with the achievement of the objectives of the plan. In the USSR the 1970 Act to approve fundamental principles governing labour legislation stipulates that "the collective agreement shall establish the mutual obligations of the management, on the one hand, and the manual and non-manual workers' collective, on the other, in the execution of the production plans...[and] the promotion of social emulation." Likewise, in Poland a 1974 order of the Council of Ministers respecting collective agreements provides that "a collective agreement shall set down rules and procedures for the co-operation of the parties in carrying out their tasks under the national social and economic development plans..." Similar provisions can be found in the legislation and regulations of the other socialist countries.

Notes

3 Idem: Freedom of association, ...op. cit. para 284.
4 Ibid, para. 287.
5 Ibid. para. 288.
6 Ibid. para. 290; see also paras. 283, 285, 286 and 289.
7 See Chapter II.
8 General agreement of October 31, 1973 (published jointly by the central organisations of employers and workers).
9 Agreement on co-operation and co-operation committees, 1970 (published jointly by the central organisations of employers and workers).
10 Basic agreement of 1978 (published jointly by the central organisations of employers and workers).
12 Act No. 2-VIII of 15 July 1970 of the Supreme Soviet of the USSR, to approve fundamental principles governing the labour legislation of the USSR and the Union Republics (ILO: Legislative Series (LS), 1970—USSR 1, section 7.
CHAPTER IV

SETTLEMENT OF DISPUTES ARISING IN CONNECTION WITH COLLECTIVE BARGAINING

In countries where collective bargaining is regarded as an adversary process, that is, a method of reconciling opposing interests through negotiation and compromise, it is normal that differences and deadlocks between the parties concerned should occur in relation to the bargaining process. As the scope of negotiable issues widens and negotiations become more complex, dealing with many aspects of working conditions and venturing into domains that were formerly reserved for management decision, the area of possible conflict may tend to expand. At the same time, a difficult economic environment marked by problems of recession and inflation, such as exists at present in many industrialised countries with a market economy, may aggravate tensions between the negotiating parties as certain issues become particularly intractable. The number of conflicts related to collective bargaining that led to work stoppages has, in fact, markedly increased in many of these countries over the past decade. This fact emphasises the evident general need for establishing procedures for the peaceful settlement of disagreements arising in the course of negotiations. As will be seen below, collective bargaining itself may provide a means of formalising such procedures on a mutually agreed basis, while the negotiating process is frequently resorted to as the preferred method of endeavouring to settle the issues in dispute.

After the conclusion of a collective agreement, difficulties and differences may arise with regard to the interpretation and implementation of its provisions. The sheer length and complexity of many present-day agreements may present a higher potentiality for misunderstandings, disputes or grievances arising out of conflicting interpretations of its terms or failure to respect them. Thus, the administration of agreements as well as their negotiation may be a source of conflict, and the need for adequate dispute settlement procedures is evident in this field as well if serious disruptions are to be avoided. Here again, collective bargaining has in many countries measured up to the challenge, providing a means through which the parties have developed autonomous procedures for settling grievances and other disputes arising out of the implementation of an agreement. Such procedures are now a well entrenched feature of labour relations systems in a number of countries.

The nature of collective bargaining itself is evolving from a type of "crisis bargaining", intervening only when relations between the parties have reached a high degree of tension and the outbreak of conflict is feared, to a regular activity, taking place at mutually agreed intervals, to which the parties come well prepared and with a planned negotiation strategy. In some instances, "continuous bargaining" is practised, enabling the parties to remain in contact between bargaining sessions leading to the conclusion of a collective agreement and to discuss contentious issues whenever they arise. These trends may have positive repercussions by cutting down the frequency of disputes.
Collective bargaining is thus both a possible source of conflicts and a mechanism for their settlement. But when direct negotiations fail to solve their differences, the parties may avail themselves of the traditional methods of dispute settlement involving the intervention of a third party. Of the various techniques available, conciliation and mediation are the preferred methods used in most national systems for the settlement of bargaining impasses, with arbitration as an ultimate resource, in order to avoid as far as possible the final resolution of such disputes by a trial of strength between the parties.

Whatever the specific third-party approach followed by a country, the trend nowadays seems to be towards using the traditional methods of dispute settlement in the context of an over-all policy aimed at fostering industrial peace and promoting collective bargaining. Both objectives are regarded as important elements of social and economic development. If industrial peace may serve to provide the conditions necessary for the realisation of production activities, collective bargaining is looked upon in many countries as a means of achieving social progress and consolidating social development.

The problems of dispute settlement do not present the same characteristics in socialist countries with a centrally planned economic system, where collective bargaining is viewed not as an adversary process but as a means of ensuring the full co-operation of employers and workers in carrying out the economic and social plans and improving the management of undertakings. Although it is recognised that grievances and individual conflicts over rights are bound to arise and provision is made for their settlement by a judicial process, the pursuit of common aims by both employers and workers is deemed to eliminate any source of serious conflict or any need for methods of direct action.

**General Policy on Dispute Settlement**

It may be noted at the outset that methods of dispute settlement are an integral part of labour relations policy in general. They are closely related, for example, to the establishment of trade union rights and the promotion of employers’ and workers’ organisations competent to bargain on behalf of their members, to the encouragement of collective bargaining as a means of determining the terms and conditions of employment and the mutual relations of the negotiating parties and, to the promotion of consultations between employers and workers at the level of the undertaking and of sound human relations and personnel policies at that level.

One of the aspects of this general policy which characterises the dispute settlement system is the extent to which governments choose to rely on voluntary methods, aiming at reaching agreed settlements between the parties. Moreover, in the formulation of public policy in this field, governments are increasingly making use of various forms of prior consultation with employers’ and workers’ organisations. This enables them to take advantage of the experience of these parties and to develop procedures that will be more likely to work, since no system of dispute settlement can be successful unless it is acceptable to those to whom it is to be applied. Employers’ and workers’ organisations may be associated with the policy formulation in this field and its implementation through bipartite or tripartite consultations, in permanent organs set up for the purpose or on an ad hoc basis. Bipartite consultations may take place,
for example, in the standing joint consultative organs which have been set up at the central level in Belgium, Denmark, Kenya, the Netherlands and Sweden and which are empowered to express their views on such matters. Basic agreements concluded at the central level in Denmark and Sweden have included rules of dispute settlement which have been accepted by the government. In an increasing number of countries, both developing and industrialised, special tripartite consultation machinery has been set up with wide terms of reference in the field of labour relations policy, including settlement of disputes, for example in Canada, India, Malaysia, New Zealand and Trinidad and Tobago. In other cases, special meetings or conferences have been convened by the government with the parties concerned to discuss methods of settling disputes and maintaining industrial peace, among other matters. This has been the case in recent years in Australia, Kenya, Uganda and Zambia, for example.

**Jointly Agreed Methods of Dispute Settlement**

A feature of the dispute settlement system in a number of countries is the existence of procedures set up by agreement between the parties and operated autonomously by them, side by side with official machinery established and operated by the government. Sometimes legislation plays a role in promoting or sustaining such agreements, and the procedures so developed are usually given priority in that they must be exhausted before recourse may be had to the statutory machinery.

Jointly agreed procedures for conciliation and arbitration of disputes have developed on a voluntary basis in a number of countries, with or without the encouragement of the public authorities. In many cases, these arrangements have subsequently been given a legislative framework or statutory basis and in a few instances it has been made obligatory for the parties to include settlement procedure clauses in collective agreements. In the United Kingdom joint negotiation of dispute settlement procedures was developed simultaneously with the growth of collective bargaining at the industry-wide level during the second half of the nineteenth century. Government policy later came to recognise and encourage this process. For example, the Industrial Court Act of 1919 laid down as a condition for the referral of a dispute to that court the requirement that, where there existed arrangements for conciliation or arbitration of disputes agreed to by the organisations of employers and workers in the trade or industry concerned, they must first be resorted to before a dispute could be referred to the court. In Belgium joint industrial committees were set up under government guidance, after the First World War, to negotiate collective agreements and conciliate disputes. They have since been given a statutory basis by legislation adopted in 1945 and 1968 and now function under the auspices of the Labour Ministry. Their conciliation function is exercised either through a smaller subcommittee or a permanent conciliation office, set up by collective agreement or under standing orders.

In Switzerland it is a principle of law that neither cantonal nor federal conciliation procedures may intervene where the parties have established their own joint machinery for conciliation, unless efforts to settle the matter by direct negotiations and the agreed procedures have failed. In practice, agreements have been concluded in a number of industries, starting with that signed in the machine and metallurgical industries in 1937, which provide for a procedure for settling collective disputes,
the parties agreeing to refrain from strike or lockout action while the agreement is in force. In the Federal Republic of Germany agreed conciliation machinery was also developed at an early stage and was given precedence over official procedures. A conciliation agreement signed by the central employers' and workers' organisations in 1954 established a model agreement on conciliation procedures, which furnished the basis for the conclusion of such agreements in the major industries in the country.

In Canada, the Philippines and the United States, where enterprise-level collective bargaining is the rule, conciliation and arbitration procedures set up by agreement are concerned solely with the settlement of individual grievances arising out of the application of a collective agreement. Government policy has encouraged this development. For example, the Labor-Management Relations Act of 1947 in the United States recommends that methods of final adjustment of grievances be set up by agreement between the parties and provides that agreements on grievance arbitration are enforceable in Federal courts. The Federal Mediation and Conciliation Service is empowered to assist employers and trade unions to formulate grievance settlement provisions for inclusion in collective agreements and is directed to make its services available for settling this type of dispute "only as a last resort and in exceptional cases". The Service also assists in the selection of arbitrators for the parties at their request.

Government policy in Canada is somewhat different. Part V of the Canada Labour Code requires every collective agreement to contain a provision for the settlement, without stoppage of work, by arbitration or otherwise, of all differences concerning its interpretation and implementation. Where a collective agreement does not include such a provision, the Canada Labour Relations Board is empowered, on application of either party to the agreement, to furnish a provision for final settlement which becomes a term of the agreement. In the Philippines it has been made obligatory, under the Labour Code of 1974, for the parties to make provision in collective agreements for final settlement of grievances by voluntary arbitration procedures, and grievance disputes may not be brought before government conciliation or arbitration machinery. In Fiji, Ghana, New Zealand and Singapore recent legislation has made it mandatory for collective agreements to include provisions for the settlement by arbitration or other methods of all disputes arising out of the application of the agreement.

In another group of countries legislative provisions require that collective agreements contain an agreed procedure for settling collective disputes in general. This applies to all collective agreements in France, Morocco, Panama and Zaire, and only to agreements subject to extension in Benin, Gabon and Mauritania.

**Government Systems of Conciliation and Mediation**

Statutory systems of conciliation show a wide diversity in the details of their operation and administration but their objective is everywhere the same, namely to bring the parties in dispute together again and reopen negotiations with a view to reaching an amicable settlement. The conciliator or conciliators aim, first, to clarify the issues in dispute so that no misunderstandings persist, and then to persuade both sides to agree to compromises that will bring them closer to each other's stand.
In some cases the conciliators are empowered to propose alternative solutions which may be accepted or rejected by the parties. Conciliation is thus conceived more as a process of "assisted bargaining" than as a dispute settlement procedure per se, its purpose being to reinforce the bargaining process rather than to settle differences by third party intervention.

When a conciliation service is provided by the government, the administrative responsibility for its operation is frequently entrusted to the Ministry of Labour. There are, however, a large and growing number of countries where the administrative responsibility for conciliation in labour disputes has been vested in a special organ, functioning under the Ministry of Labour or, in some cases, independently.

This evolution may be motivated by the increasing number and importance of the disputes occurring, but it is undoubtedly also inspired by the governments' policy to promote collective bargaining and to develop methods of avoiding disputes—for example, preventive mediation—as well as for their peaceful settlement. A specialised service with qualified staff can build up a large bank of experience and information that will help it to settle disputes expeditiously. Moreover, a service functioning autonomously cannot be suspected of yielding to government pressures in favour of one or other of the parties.

Resort to conciliation may be voluntary or compulsory. The compulsory nature of conciliation proceedings is generally related to the objective of enabling the conciliators to intervene in a dispute before the parties proceed to direct action. Thus, it is often required that advance notice of intention to declare a strike or lockout be given to the conciliation authority, or it may be made illegal to declare a strike or lockout before the statutory conciliation procedures have been resorted to, or unless they have been exhausted. The avoidance of work stoppages is a primary concern of governments in dealing with major disputes affecting essential services or sectors of activity of vital importance to the economy. Special emergency settlement procedures are provided for in such cases in Denmark, Finland, Japan, Norway, Turkey and the United States, among other countries. Under such provisions, a threatened strike or lockout may be prohibited for a period varying from 10 to 50 days in order to give time for conciliation procedures to operate. In Sweden a special ad hoc conciliation commission may be set up in the case of major disputes and, in a number of countries including Canada, France, the Ivory Coast, Japan, Sweden and the United States, the government may appoint an eminent person from outside the regular conciliation staff to act as mediator. In some cases, the Minister of Labour is himself authorised by law to intervene as a conciliator, as in Malaysia, Singapore and Trinidad and Tobago, while there always remains the possibility, where statutory methods fail, for conciliation to be attempted by the highest authorities in the country in order to get the parties to agree to a settlement.

Fact-finding or investigation of all the circumstances and data relevant to a dispute and the possibilities of settlement is a technique used in some countries, for example in Canada, to supplement conciliation procedures. The investigating body in such cases is invariably endowed with powers of compulsion in collecting information and is required to submit a report on its findings. The report may or may not contain recommendations for settlement, and may be addressed to the parties or to the public authorities to whom the investigating body is answerable. In some cases, fact-finding reports are also made public.
STATUTORY ARBITRATION SYSTEMS

Like the conciliation procedures discussed above, arbitration systems established by the State may be either voluntary or compulsory. The virtue of voluntary arbitration is that it offers a method of final settlement of disputes based on the advance agreement of the parties to abide by a third party's decision. Where such agreement can be reached—and it often requires a considerable effort of persuasion on the part of conciliators or the public authorities to get the parties to submit their dispute to arbitration—it is usually accompanied by a tacit or express agreement not to resort to direct action while arbitration is in progress. Many governments in all regions of the world have therefore chosen to make voluntary arbitration available—for example, Colombia, Costa Rica, Egypt, El Salvador, Guatemala, Honduras, India, Indonesia, Ireland, Ivory Coast, Israel, Jamaica, Japan, Korea, Luxembourg, Malaysia, Mauritius, Nicaragua, Norway, Pakistan, Philippines, Panama, Singapore, Sri Lanka, Sudan, Syrian Arab Republic, Switzerland, Tanzania, Thailand, Trinidad and Tobago, Tunisia, Uganda and Venezuela—not only because it preserves the freedom of the parties but because it offers a peaceful method of settlement of disputes. However, it would seem that in some countries the parties have made little use of the available facilities. A few rare instances exist where arbitration has been instituted on a contractual basis, as in the Experimental Negotiating Agreement concluded in the United States iron and steel industry in 1973.

Involving as it does the intervention of a third party in the determination of the terms of a contract between employers and workers, compulsory arbitration is widely regarded as an interference with the freedom of these parties to fix their own conditions of employment and to exert pressure on each other by the use of strikes or lockouts in case of an impasse in negotiations. However, in some of the developing countries the introduction of compulsory arbitration has been defended on the grounds that it affords protection to some unions which are too weak to bargain effectively on behalf of the workers. The protection of the national interest is the main argument used to justify compulsory arbitration in other cases—for example, in the legislation of Argentina, Senegal and Trinidad and Tobago, where governments fear that the development of the economy may be retarded or jeopardised if work stoppages are permitted after the failure of voluntary methods of dispute settlement. Where compulsory arbitration applies only to essential services, which may be specified in the legislation, as in Costa Rica, Honduras, Kenya, Nicaragua and Sierra Leone, it is the argument of public interest that prevails, the aim being to prevent a disruption of services which may endanger the health or security of the population or cause serious inconvenience or hardship to the public.

To many governments the promotion of collective bargaining is of the highest order of public interest and they have therefore eschewed completely, or almost completely, resort to compulsory arbitration in the settlement of disputes. One of the arguments frequently put forward to support this approach is that, where compulsory arbitration is applicable, employers and workers will be discouraged from endeavouring to settle their differences by collective bargaining which may thus become atrophied, while third-party arbitration will tend to become the predominant pattern of regulating their relations. However, in some countries which have introduced compulsory arbitration on a general scale in recent years, it is claimed that the mere existence of the compulsory procedures has not been a hindrance to collective
bargaining since in many cases these procedures have rarely been resorted to, the parties preferring to avoid third-party intervention and the majority of disputes being settled by agreement. In Australia, where compulsory arbitration has been the established national practice for many years, collective bargaining has always been customary in some industries and there appears to be a growing trend towards direct negotiations and the conclusion of collective agreements, without recourse to the arbitration process. A new form of arbitration known as “final offer selection”, which is gaining some currency in Canada and the United States, tends to stimulate the parties to propose reasonable compromise solutions that are likely to be selected by the arbitrator and thus promotes a constructive approach to the settlement of issues in dispute.

Although compulsory arbitration is quite widely applied in the settlement of labour disputes it is as a general rule utilised only after the failure of conciliation and mediation. Compulsory arbitration applies generally to the settlement of disputes after the failure of voluntary methods in Australia, Benin, Bolivia, Brazil, United Republic of Cameroon, Ecuador, Egypt, Gabon, Greece, Haiti, Jordan, Libyan Arab Jamahiriya, Madagascar, Mali, New Zealand, Paraguay, Philippines, Syrian Arab Republic and Zambia; any dispute may be submitted to compulsory arbitration by decision of the competent authority in Ghana, India, Malaysia, Mauritius, Singapore, Sri Lanka, Tanzania and Uganda. Preference is given in most cases to methods of dispute settlement that can be more directly instrumental in promoting or reinforcing the collective bargaining process. Indeed the very notion of what constitutes a labour dispute has gradually evolved in many countries. Before collective bargaining became widespread workers were often constrained to use the strike weapon, real or threatened, as a means of obtaining recognition and obliging employers to take cognisance of their demands; thus, in much early legislation, a labour dispute meant a strike or lockout and the settlement procedures established were intended to put an end to such action by the initiation of negotiations or a speedy resolution by an outside authority of the issues involved. This concept survives in some legislations today but, as time has passed and public policy has come to be more oriented to the promotion of collective bargaining on a broad scale, dispute settlement procedures have aimed more and more at furthering the pursuit of negotiations and avoiding open conflict.

**Work Stoppages**

In many countries where collective bargaining is basically regarded as a power relationship, the parties concerned, both employers and workers, consider that the right to strike and lock out is an essential element in the development of voluntary collective bargaining. Without such rights, it is claimed, bargaining would be deprived of its effectiveness since the parties would have no means of using economic pressure on each other to come to an agreement and conflicts would inevitably be resolved by third-party intervention. As a recent OECD publication has observed, in industrialised market economy countries strikes and lockouts are regarded as “part of the cost of a self-regulating collective bargaining system”. While the study of work stoppages that may arise as a result of deadlocks may, in certain countries, thus be an important element of the dynamics of collective bargaining, the present report aims at discussing ways and means of promoting
negotiations and does not deal with such other aspects of industrial relations systems. Brief reference will nevertheless be made below to the present position of ILO standards vis-à-vis strikes and lockouts.

Although none of the ILO Conventions or Recommendations expressly provides for the right to strike, and there is only a single reference to it—in Paragraph 7 of the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92)—the Committee on Freedom of Association of the Governing Body of the ILO has nevertheless on many occasions given opinions which imply that, in the Committee’s view, the right to strike is part and parcel of trade union rights. According to the comments of these experts, the right to strike is a legitimate means, and indeed one of the essential means, whereby workers and their organisations may promote and defend their occupational interests. "While the Committee has always regarded the right to strike as constituting a fundamental right of workers and of their organisations, it has regarded it as such only in so far as it is utilised as a means of defending their economic interests." The case law of the Committee has thus established the principle that strikes of a political nature designed to coerce a government do not fall within the scope of the principles of freedom of association and that prohibition of such strikes does not therefore constitute an infringement of freedom of association.

The Committee has also emphasised in a number of decisions the importance which it attaches to the principle that, where strikes are prohibited or subject to restrictions, adequate guarantees should be ensured “to safeguard to the full the interests of the workers thus deprived of an essential means of defending their occupational interests”, and has pointed out that such restrictions “should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage.” It has been made clear, however, that this recommendation refers not to the absolute prohibition of the right to strike as such but to the restriction of that right in essential services or in the public service. The Committee has also expressed the view that “the right to strike is affected where a minister is permitted by law, whenever he thinks fit, to submit a labour dispute to compulsory arbitration, thus preventing recourse to a strike.”

Notes

1 ILO: Legislative Series, 1947—USA 2, section 203 (d).
4 Freedom of association, op. cit., paras. 291 to 356.
5 Ibid. para. 301.
6 Ibid. para. 298.
7 Ibid. para. 299.
8 Ibid. para. 331.
CHAPTER V

ILO STANDARDS AND GUIDING PRINCIPLES

In the early decades of its existence, the importance of collective bargaining was recognised in certain studies published by the ILO and collective agreements were mentioned in some of the Conventions and Recommendations adopted by the International Labour Conference as one of the means of giving effect to their provisions; but it is since the end of the Second World War that the promotion of collective bargaining has become one of the central concerns of the Organisation. As recalled in the introduction to this report, the Declaration of Philadelphia on the aims and purposes of the ILO, adopted in 1944 and which is now an annex to the Constitution, entrusted the International Labour Organisation with specific responsibility for promoting the effective recognition of the right of collective bargaining among the nations of the world.

Thus mandated, the Organisation proceeded during subsequent years to adopt a series of important instruments in the field of industrial relations, all of which have a bearing on collective bargaining. The earliest of these international standards adopted by the International Labour Conference were the Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Article 4 of Convention No. 98 (see Introduction) envisaged specifically measures to be taken within countries to promote collective bargaining with a view to the regulation of terms and conditions of employment by means of collective agreements. As of 1 January 1979 Convention No. 98 had been ratified by 107 member States, more than have ratified any other Convention except the Forced Labour Convention, 1930 (No. 29).

The adoption of these important Conventions was followed up in 1951 by the adoption of the Collective Agreements Recommendation (No. 91). This instrument calls for the establishment of machinery appropriate to national conditions "to negotiate, conclude, revise and renew collective agreements" (Paragraph 1 (1)) or to be available to assist the parties in so doing. Collective agreements are defined as "all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers, or one or more employers' organisations, on the one hand, and one or more representative workers' organisations or, in the absence of such organisations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other" (Paragraph 2 (1)). The Recommendation further specifies the effects of collective agreements, the conditions for extending their application beyond the original signatory parties, and the need for appropriate machinery for settling disputes arising out of the interpretation of a collective agreement. It also stipulates that the supervision of the application of collective agreements should be ensured by the organisations of employers and workers parties thereto or by special existing or ad hoc bodies established for this purpose, and provides for the information of
workers by employers concerning the text of agreements applying to them, the registration of agreements and the fixing of a minimum duration of agreements in the absence of any provision on this matter in the agreement itself.

In the same year (1951) the Conference adopted the Voluntary Conciliation and Arbitration Recommendation (No. 92) Paragraph 7 of which stipulates that "no provision of this Recommendation may be interpreted as limiting, in any way whatsoever, the right to strike". In the following year it adopted the Co-operation at the Level of the Undertaking Recommendation, 1952 (No. 94). This latter instrument specifies that the consultation and co-operation referred to should take place on matters of mutual concern "not within the scope of collective bargaining machinery" (Paragraph 1), or not normally dealt with by other machinery.

In subsequent years a number of other instruments were adopted which concern certain aspects of labour relations that may have an impact on collective bargaining. These include the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), which specifies that the consultation and co-operation envisaged "should not derogate from freedom of association or from the rights of employers' and workers' organisations, including their right of collective bargaining" (Paragraph 2), the Communications within the Undertaking Recommendation, 1967 (No. 129), which states that the information given by management should, "in case of a question which has been the subject of negotiations between the employer and the workers or their representatives in the undertaking or of a collective agreement... make express reference thereto" (Paragraph 15 (3)), and the Examination of Grievances Recommendation, 1967 (No. 130), which contains the following provision (Paragraph 5): "When procedures for the examination of grievances are established through collective agreements, the parties to such an agreement should be encouraged to include therein a provision to the effect that, during the period of its validity, they undertake to promote settlement of grievances under the procedures provided and to abstain from any action which might impede the effective functioning of these procedures."

In 1971 the Conference adopted the Workers' Representatives Convention (No. 135) and Recommendation (No. 143). Seven years later, in 1978, the Conference devoted special attention to the problems of labour relations in the public service, and adopted the Labour Relations (Public Service) Convention (No. 151) and Recommendation (No. 159). Article 7 of this Convention mentions negotiations as one of the methods which allow representatives of public employees to participate in the determination of their conditions of employment.

Also directly relevant to the promotion of collective bargaining are the Labour Administration Convention (No. 150) and Recommendation (No. 158) adopted by the International Labour Conference in 1978. The latter instrument provides that the competent bodies of labour administration should "make their services available to employers' and workers' organisations...with a view to promoting the regulation of terms and conditions of employment by means of collective bargaining" (Paragraph 5 (a)), that these competent bodies should "participate in the determination and application of such measures as may be necessary to ensure the free exercise of employers' and workers' right of association" (Paragraph 7), that "there should be labour administration programmes aimed at the promotion, establishment and pursuit of labour relations which encourage progressively better conditions of work and working life and which respect the right to organise and bargain
COLLECTIVE BARGAINING

collectively” (Paragraph 8 (1)), and that the competent bodies should “assist in the improvement of labour relations by providing or strengthening advisory services to undertakings, employers’ organisations and workers’ organisations requesting such services” (Paragraph 8 (2)) and should “promote the full development and utilisation of machinery for voluntary negotiation” (Paragraph 9). It is also incumbent upon the labour administration, under this instrument, to “provide, in agreement with the employers’ and workers’ organisations concerned, conciliation and mediation facilities, appropriate to national conditions, in case of collective disputes” (Paragraph 10).

These various instruments constitute a group of standards establishing basic principles and guidance for governments and the parties concerned with regard to trade union rights and other aspects of labour relations which constitute the requisite conditions for collective bargaining. They have been supported by a number of resolutions adopted by the International Labour Conference, for example the resolutions concerning labour-management relations of 1955 and 1958, which called for increased action by the ILO in the field of industrial relations and the promotion of collective bargaining, in particular by the gathering and dissemination of information and educational activities for both management and labour, and the resolution concerning the promotion of good industrial relations, particularly in countries in course of development, and consultation of employers’ and workers’ organisations, of 1962, which invited the Governing Body to place questions relating to different aspects of labour-management relations on the agenda of tripartite meetings and to convene study conferences grouping employers and workers at a regional level.

Regional conferences of the ILO have also displayed a continuing interest in the subject of collective bargaining. As early as 1946 the Third Conference of American States Members of the ILO, held in Mexico, adopted a resolution concerning protection of the right to organise and to bargain collectively, which defined the obligation of the State to establish collective bargaining machinery and, in particular, an authority competent to determine bargaining agents, along with resolutions concerning the validity of collective agreements, the extension of collective agreements and voluntary conciliation and arbitration. At the Fourth Conference of American States Members of the ILO, held in Montevideo in 1949, a resolution was adopted concerning the settlement of disputes arising out of the interpretation or application of collective agreements, which recommended that provisions concerning methods of settling such disputes should be included in collective agreements, while another resolution adopted by the same Conference recommended the establishment of special labour courts for the settlement of such disputes in countries where the procedure laid down in the former resolution might not meet requirements. At the Fifth Asian Regional Conference in 1962, a text was adopted emphasising the importance of developing government services to help improve labour-management relations and to promote collective bargaining. The First African Regional Conference, held in Lagos in 1960, adopted conclusions on collective bargaining and joint consultation, wherein it was emphasised that “collective bargaining constitutes the method of determining wages and conditions of employment which is in the best interest of all parties and is the most conducive to equitable and harmonious relations between employer and worker” and that “appropriate measures should therefore be taken to guarantee the effective recognition of the right to organise and of collective bargaining in all territories and to facilitate collective bargaining in practice.”
Finally, at the Tenth Conference of American States Members of the ILO (Mexico, 1974), a resolution was adopted on the strengthening and furthering of tripartite co-operation. In determining the objectives and nature of tripartite bodies, the resolution made a special effort to ensure that they do not “take the place of collective bargaining processes”.

The promotion of collective bargaining has also been examined at the industry level by a number of the Industrial Committees of the ILO, several of which have adopted conclusions on this subject—for example, the Conclusions concerning methods of collective bargaining and settlement of labour disputes in rail transport, adopted by the Inland Transport Committee at its Eighth Session in 1966 and the Conclusions concerning the scope and methods of collective bargaining in the iron and steel industry, adopted by the Iron and Steel Committee at its Seventh Session in 1963. The latter conclusions dealt with the advantages of collective bargaining, the prerequisites for collective bargaining, the role of the State, the level, processes and contents of collective bargaining and ILO action in this field.

Another more recent text which contains references to collective bargaining is the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body of the ILO at its 204th Session in November 1977. This Declaration calls for the application in multinational enterprises of the principles and guidelines laid down in the above-mentioned standards adopted by the Conference (paragraphs 48-53). It also calls for the co-operation of those enterprises in providing governments and workers’ organisations with information concerning the operation of the enterprise that is necessary for meaningful negotiations (paragraphs 54-55).

The standards embodied in ILO Conventions are legally binding only on those ILO member States that have ratified them; however, the principles contained in Conventions Nos. 87 and 98 have had a very broad impact, not only through widespread ratification but also through the decisions of the bodies concerned with the implementation of ILO standards and the furtherance of freedom of association, namely the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association of the Governing Body. The reports of the latter Committee, in particular, have established a jurisprudence that sustains ILO policy in the field of collective bargaining. In taking decisions on cases brought before it concerning alleged interference with trade union rights, the Committee has attempted to make more explicit the practical implications of the principles laid down in the said instruments. Some of the most important decisions have already been cited throughout this report and only a brief reference to other relevant decisions is needed here. The Committee has, for example, repeatedly stressed the voluntary character of collective bargaining, upheld the right to bargain collectively in full freedom of all wage earners, and affirmed that the right to bargain freely with employers and with respect to conditions of work constitutes an essential element in freedom of association, that trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom they represent and that the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof. Intervention by the public authorities in the drafting of collective agreements, unless it consists exclusively of technical aid, is, in the Committee’s view, inconsistent with the spirit of Article 4 of Convention No. 98.
In addition to the texts adopted by the ILO, the right to bargain collectively has been recognised in some important international texts such as the Inter-American Charter on Social Guarantees (1948) and the European Social Charter (1961). Neither the Universal Declaration on Human Rights nor the International Covenants on Human Rights mention collective bargaining specifically, although the former refers to trade union rights and the International Covenant on Economic, Social and Cultural Rights contains provisions on the right of trade unions to function freely and on the right to strike.

The Arab Labour Conference at its Seventh Session adopted an Arab Labour Convention (No. 11) concerning Collective Bargaining (1979). Similarly, at its Sixth Session, the Conference had adopted an Arab Labour Convention (No. 8) concerning Freedom of Association and the Right to Organise (1977) which provides inter alia for the right to bargain collectively and for the conclusion of collective agreements.

Notes


2 The text of this Declaration and of most of the instruments and other documents adopted by ILO meetings mentioned below may be found in Labour-Management Relations Series, No. 44 (ILO, Geneva, 1975).

3 Observations regarding government services for the improvement of labour-management relations and settlement of disputes (1962).


5 Freedom of association, op. cit., paras 239-290.
QUESTIONNAIRE

In accordance with article 39 of the Standing Orders of the International Labour Conference, governments are requested to send their replies to the following questionnaire, indicating their reasons for each reply, so as to reach the International Labour Office in Geneva by 30 September 1979 at the latest. The attention of governments is drawn to the recommendation on p. 1 of this report concerning the consultation of the most representative organisations of employers and workers.

I. Form of International Instrument

1. Should the International Labour Conference adopt an international instrument or instruments concerning the promotion of collective bargaining?

2. If so, should the instrument(s) take the form of—
   (a) a Convention;
   (b) a Recommendation; or
   (c) a Convention supplemented by a Recommendation?

3. If you consider that the International Labour Conference should adopt a Convention supplemented by a Recommendation, which of the provisions to be included in these instruments should appear in the Convention and which in the Recommendation?

II. Preamble

4. Should the Preamble of the instrument(s) refer to the Declaration of Philadelphia recognising "the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve . . . the effective recognition of the right of collective bargaining"?

5. Should the Preamble of the instrument(s) refer to existing international standards contained in the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Collective Agreements Recommendation, 1951 (No. 91)?

6. Should the Preamble of the instrument(s) note that—
   (a) Convention No. 98 and Recommendation No. 91 are concerned only with one form of collective bargaining, namely that which is designed to lead to the conclusion of collective agreements;
   (b) the definition of collective agreements contained in Recommendation No. 91 does not cover all the aspects which it has become customary to deal with by collective agreement since the adoption of the Recommendation;
   (c) Convention No. 98 and Recommendation No. 91 do not contain provisions regarding collective bargaining procedures?
7. Should the Preamble of the instrument(s) mention the need to promote collective bargaining by expanding on the general principles on the subject set out in Article 4 of Convention No. 98 and in Paragraph 1 of Recommendation No. 91.

III. Scope of the Instrument(s) and Definitions

8. Should the instrument(s) apply, in principle, to all sectors of activity?

9. Should the public service as defined in Article 1 of the Labour Relations (Public Service) Convention, 1978 (No. 151), be excluded from the scope of the instrument(s)?

10. Should the scope of the instrument(s) be limited in any other respect?

11. Should the instrument(s) provide that for the purposes of the instrument(s) the term “collective bargaining” extends to all negotiations for the purpose of—

(a) determining working conditions and terms of employment, and/or
(b) regulating relations between employers and workers or their organisations

which take place between an employer, group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other?

12. In countries where national law and practice recognise the existence of workers’ representatives as defined in Article 3 of the Workers' Representatives Convention, 1971 (No. 135), should the term “collective bargaining”, for the purposes of the instrument(s), extend also to negotiations with these representatives (measures appropriate to national conditions being taken to ensure that the existence of these representatives cannot be used to undermine the position of the workers' organisations concerned)?

IV. Methods of Application

13. Should the instrument(s) provide that the provisions therein may be applied by means of national legislation, agreements between the parties to collective bargaining, arbitration awards or in any other manner appropriate to national practice?

V. Promotion of Collective Bargaining

14. Should the instrument(s) provide that every Member should take measures, within the framework of its economic and social policy and with the collaboration of the parties to collective bargaining, with a view to ensuring that—

(a) all employers and workers in the sectors of activity referred to in the instrument(s) are covered by collective bargaining;

(b) all aspects indicated in question 11 may be the subject of collective bargaining;

(c) collective bargaining is not hampered by the absence of regulations governing procedure to be used or by the inadequacy or inappropriateness of such regulations?
VI. Means of Promoting Collective Bargaining

15. Should the instrument(s) provide that measures appropriate to national conditions should be taken so that employers' and workers' organisations are sufficiently strong and representative to be able to negotiate effectively?

16. Should the instrument(s) provide that measures appropriate to national circumstances should be taken so that—

(a) representative employers' and workers' organisations are recognised for the purposes of collective bargaining;

(b) in countries in which procedures for recognition apply with a view to determining the organisations to be granted, on a preferential or exclusive basis, the right to bargain collectively, such determination should be based on objective and pre-established criteria with regard to the organisations' representative character?

17. Should the instrument(s) provide that measures appropriate to national conditions should be taken so that—

(a) negotiators receive training so as to be able to negotiate effectively;

(b) negotiators are given a sufficiently broad mandate to be able to negotiate effectively?

18. Should the instrument(s) provide that measures appropriate to national conditions should be taken so that—

(a) the parties have access to such information as is necessary to enable them to negotiate in full possession of the facts;

(b) for this purpose—

(i) employers make available such information as is necessary on the economic and social situation of the negotiating unit and on all measures they are considering taking that are liable to affect this situation;

(ii) the public authorities make available such information as is necessary on the over-all economic and social situation of the country and on all measures they are considering taking that are liable to affect this situation?

19. Should the instrument(s) provide that measures appropriate to national conditions should be taken so that the parties negotiate in good faith and refrain from any practices that are liable to hamper the collective bargaining process?

20. Should the instrument(s) provide that measures appropriate to national conditions should be taken so that—

(a) collective bargaining can take place at any level whatsoever, whether at the level of the works, undertaking, region, branch of activity or national economy as a whole;

(b) in countries where collective bargaining takes place at several levels, there is coordination among them?

21. Should the instrument(s) provide that measures appropriate to national conditions should be taken so that the primary objective of the procedure for the settlement of disputes between employers and workers and their organisations should be to help the
parties to find a solution to their dispute themselves, irrespective of whether such disputes arise during the negotiation of the agreements or in connection with the interpretation and application of the agreements and whether or not they are covered by the Examination of Grievances Recommendation, 1967 (No. 130)?

VII. Collective Bargaining, the General Interest and the Role of the Public Authorities

22. Should the instrument(s) provide that—

(a) efforts should be made to reconcile the specific interests of the parties to collective bargaining with the general interest;

(b) the requirements of the general interest should be defined by the public authorities in consultation with the employers' and workers' organisations?

23. Should the instrument(s) provide that—

(a) the public authorities have an important role to play in the promotion of collective bargaining, particularly by creating conditions that are conducive to such bargaining and, where appropriate, by setting up the machinery for settlement of industrial disputes referred to in the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92);

(b) the measures taken by the public authorities to promote collective bargaining should be the subject of prior consultation with the employers' and workers' organisations;

(c) the measures taken by the public authorities to promote collective bargaining should not entail any interference on their part in collective bargaining itself?

24. Should the instrument(s) stipulate that no modification of existing standards is entailed by the new text(s)?

VIII. Special Problems

25. (1) Are there any peculiarities of national law or practice which in your view are liable to create difficulties in the practical application of the international instrument(s) as conceived in this report?

(2) If so, how would you suggest that these difficulties be met?

26. (Federal States only) Do you consider that, in the event of the Conference adopting a Convention, its subject-matter would be appropriate for federal action, or wholly or in part for action by the state authorities or other constituent units of the federation?

27. Are there, in your opinion, any other pertinent problems not covered by the present questionnaire which ought to be taken into consideration when drafting the proposed instrument(s)? If so, please specify.
APPENDIX

SUBSTANTIVE PROVISIONS OF RELEVANT INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Article 1

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to—

(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 2

1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

Article 3

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.

Article 4

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Article 5

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 6

This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.
Workers' Representatives Convention, 1971 (No. 135)

Article 1
Workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements.

Article 2
1. Such facilities in the undertaking shall be afforded to workers' representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently.
2. In this connection account shall be taken of the characteristics of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.
3. The granting of such facilities shall not impair the efficient operation of the undertaking concerned.

Article 3
For the purpose of this Convention the term "workers' representatives" means persons who are recognised as such under national law or practice, whether they are—
(a) trade union representatives, namely, representatives designated or elected by trade unions or by the members of such unions; or
(b) elected representatives, namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned.

Article 4
National laws or regulations, collective agreements, arbitration awards or court decisions may determine the type or types of workers' representatives which shall be entitled to the protection and facilities provided for in this Convention.

Article 5
Where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures shall be taken, wherever necessary, to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives and to encourage co-operation on all relevant matters between the elected representatives and the trade unions concerned and their representatives.

Article 6
Effect may be given to this Convention through national laws or regulations or collective agreements, or in any other manner consistent with national practice.

Collective Agreements Recommendation, 1951 (No. 91)

I. COLLECTIVE BARGAINING MACHINERY

1. (1) Machinery appropriate to the conditions existing in each country should be established, by means of agreement or laws or regulations as may be appropriate under national conditions, to negotiate, conclude, revise and renew collective agreements, or to be available to assist the parties in the negotiation, conclusion, revision and renewal of collective agreements.
(2) The organisation, methods of operation and functions of such machinery should be determined by agreements between the parties or by national laws or regulations, as may be appropriate under national conditions.
II. DEFINITION OF COLLECTIVE AGREEMENTS

2. (1) For the purpose of this Recommendation, the term "collective agreements" means all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more representative workers' organisations, or, in the absence of such organisations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other.

(2) Nothing in the present definition should be interpreted as implying the recognition of any association of workers established, dominated or financed by employers or their representatives.

III. EFFECTS OF COLLECTIVE AGREEMENTS

3. (1) Collective agreements should bind the signatories thereto and those on whose behalf the agreement is concluded. Employers and workers bound by a collective agreement should not be able to include in contracts of employment stipulations contrary to those contained in the collective agreement.

(2) Stipulations in such contracts of employment which are contrary to a collective agreement should be regarded as null and void and automatically replaced by the corresponding stipulations of the collective agreement.

(3) Stipulations in contracts of employment which are more favourable to the workers than those prescribed by a collective agreement should not be regarded as contrary to the collective agreement.

(4) If effective observance of the provisions of collective agreements is secured by the parties thereto, the provisions of the preceding subparagraphs should not be regarded as calling for legislative measures.

4. The stipulations of a collective agreement should apply to all workers of the classes concerned employed in the undertakings covered by the agreement unless the agreement specifically provides to the contrary.

IV. EXTENSION OF COLLECTIVE AGREEMENTS

5. (1) Where appropriate, having regard to established collective bargaining practice, measures, to be determined by national laws or regulations and suited to the conditions of each country, should be taken to extend the application of all or certain stipulations of a collective agreement to all the employers and workers included within the industrial and territorial scope of the agreement.

(2) National laws or regulations may make the extension of a collective agreement subject to the following, among other, conditions:

(a) that the collective agreement already covers a number of the employers and workers concerned which is, in the opinion of the competent authority, sufficiently representative;

(b) that, as a general rule, the request for extension of the agreement shall be made by one or more organisations of workers or employers who are parties to the agreement;

(c) that, prior to the extension of the agreement, the employers and workers to whom the agreement would be made applicable by its extension should be given an opportunity to submit their observations.

V. INTERPRETATION OF COLLECTIVE AGREEMENTS

6. Disputes arising out of the interpretation of a collective agreement should be submitted to an appropriate procedure for settlement established either by agreement between the parties or by laws or regulations as may be appropriate under national conditions.

VI. SUPERVISION OF APPLICATION OF COLLECTIVE AGREEMENTS

7. The supervision of the application of collective agreements should be ensured by the employers' and workers' organisations parties to such agreements or by the bodies existing in each country for this purpose or by bodies established ad hoc.
VII. MISCELLANEOUS

8. National laws and regulations may, among other things, make provision for—
   (a) requiring employers bound by collective agreements to take appropriate steps to bring to the notice of the workers concerned the texts of the collective agreements applicable to their undertakings;
   (b) the registration or deposit of collective agreements and any subsequent changes made therein;
   (c) a minimum period during which, in the absence of any provision to the contrary in the agreement, collective agreements shall be deemed to be binding unless revised or rescinded at an earlier date by the parties.

Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92)

I. VOLUNTARY CONCILIATION

1. Voluntary conciliation machinery, appropriate to national conditions, should be made available to assist in the prevention and settlement of industrial disputes between employers and workers.

2. Where voluntary conciliation machinery is constituted on a joint basis, it should include equal representation of employers and workers.

3. (1) The procedure should be free of charge and expeditious; such time limits for the proceedings as may be prescribed by national laws or regulations should be fixed in advance and kept to a minimum.
   
   (2) Provision should be made to enable the procedure to be set in motion, either on the initiative of any of the parties to the dispute or ex officio by the voluntary conciliation authority.

4. If a dispute has been submitted to conciliation procedure with the consent of all the parties concerned, the latter should be encouraged to abstain from strikes and lockouts while conciliation is in progress.

5. All agreements which the parties may reach during conciliation procedure or as a result thereof should be drawn up in writing and be regarded as equivalent to agreements concluded in the usual manner.

II. VOLUNTARY ARBITRATION

6. If a dispute has been submitted to arbitration for final settlement with the consent of all parties concerned, the latter should be encouraged to abstain from strikes and lockouts while the arbitration is in progress and to accept the arbitration award.

III. GENERAL

7. No provision of this Recommendation may be interpreted as limiting, in any way whatsoever, the right to strike.