

Collective agreements

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1. Definitions

1.1.

The former general agreement between the two largest central organisations, the Confederation of Danish Employers and the Danish Confederation of Trade Unions, defined a collective agreement as an agreement on pay and working conditions between an employee organisation of the one part and an employers' organisation or a single employer (enterprise) of the other part.

This definition has been left out in the current general agreement, and instead the collective agreements that are characterised by being subject to the rules of the Danish Labour Court Act for dealing with and imposing sanctions for breach of law and the special procedures for interpretative inconsistencies are delimited according to a specific assessment that includes the following elements:

- a) The collective agreement should serve to regulate the relations between employers and employees, whether they concern the terms of how to perform paid employment or the general framework of collective agreements in the working life.
- b) It should be in the nature of an agreement, but could also be in the form of organisational agreements on resolution and conciliation of specific disputes.
- c) The employee party should be an organised association of such firmness that it is able to act as plaintiff or defendant in actions concerning the collective agreement and, in this relation, represent its members efficiently and ensure out-of-court enforcement of the terms of the collective agreement. The employer party could be such an association or a single enterprise.

1.2.

We distinguish between general agreements (which primarily lay down general principles, e.g. of mutual relations between the organisations), general collective agreements between organisations or between employee organisations and single enterprises (which (a) lay down the specific terms of the individual service contracts entered into within their framework and (b) include stipulations

on the duty to participate in bargaining, conciliation and industrial arbitration) as well as accession agreements (in which an unorganised employer enters into an agreement with an employee organisation on complying with a collective agreement that this has entered into with an employers' organisation).

All types of collective agreements may be delimited in terms of enterprise type, work function and sector, as well as territorially.

2. Short history of collective agreements in Denmark

Masters and journeymen of most trades were, far back in time, organised in the same guilds with privileges and their own rules for working conditions and conflict resolution. In consequence of the implementation of the first Danish Constitution in 1849, guild privileges and rules were, however, abolished under the Danish Freedom of Trade Act of 1857 ("Næringsfrihedsloven").

After that, relations between masters and journeymen were subject to the principle of freedom of contract, which - especially with the industrialisation in the 1870s - resulted in poor conditions for many employees.

However, an act dating from 1854 maintained the freedom of contract restrictions in the important agricultural sector, and 1873 saw the introduction of regulations on the protection of children and adolescents working in factories. The poor working conditions in factories, in particular, and the unrest in the labour market also led to appointment of a committee, which in 1878 submitted a report, according to which a majority were in favour of comprehensive recognition of freedom of contract and dispute resolution by voluntary arbitration, while a minority would rather return to the old guild system with dispute resolution by boards representing both parties. The committee's work did not result in any material legislative amendments.

The Danish Constitution also ensured freedom of association and assembly, which proved particularly important to the organisation of employees, and in 1869 the first union was established. The local unions gradually united into a number of national federations, which in 1898 established the central organisation "De Samvirkende Fagforbund" (today named the Danish Confederation of Trade Unions), whose primary aim was to coordinate the initiatives to enter into collective agreements, e.g. by making efficient use of the strike weapon.

The organisation of employers also gathered momentum, and in 1896 an employers' association was established for the skilled trades, which in 1898 merged with the association of metalworking manufacturers into the Danish Association of Employers and Masters ("Dansk Arbejdsgiver- og Mesterforening"), today named the Confederation of Danish Employers.

Soon after, one of many conflicts with a single enterprise developed, after a major lockout by the Association of Employers and Masters, into a nationwide labour dispute lasting three months and resulting in a loss of over 3 million working days, which, considering the size of Denmark, must have been the most comprehensive conflict in 19th century Europe.

In September 1899, the conflict was however resolved by a reconciliation whereby the employers acknowledged the employees' right to organise and conduct collective bargaining, while the employees acknowledged an employer's right to manage and distribute work as well as complied with a request for a more centralised collective bargaining between the national employers' and employee organisations (rather than the traditional bargaining between employee organisations and single enterprises). The reconciliation included an agreement on establishment of the Permanent Court of Arbitration, in which the production of witnesses was allowed under an act of 1900.

The court's jurisdiction was limited to disputes about the actual reconciliation, for which reason the collective agreements often continued to be enforced by means of (threats) of strike or lockout. On completion of a major conflict in 1908, a committee was therefore appointed to consider an already existing proposal for actual arbitration courts and rules for the prevention of conflicts and conciliation during conflicts.

The following year, the committee submitted a report that distinguished between disputes of interest (concerning formation and renewal of collective agreements) and legal disputes (concerning interpretation and breach of collective agreements already made). In order to minimise the use of strike and lockout in disputes of interest, the committee proposed the establishment of a conciliation board. As to the legal disputes, the committee agreed that there had to be an industrial peace duty during the term of a collective agreement, and that these disputes therefore had to be resolved in court. Accordingly, in 1910 two acts provided the establishment of a conciliation board for industrial disputes and a governmental permanent arbitration court.

The Permanent Court of Arbitration was composed of a legal chairman and six industrial arbitrators, three of whom were appointed by the Confederation of Danish Employers and three by "De Samvirkende Fagforbund" (today named the Danish Confederation of Trade Unions). The arbitration court had exclusive jurisdiction to hear disputes concerning the parties' general agreement named "Septemberforliget" and cases concerning breach of ordinary collective agreements, while cases concerning interpretation of the latter were heard by the collective parties' own conciliation and arbitration system.

The latter still applies. However, the original restrictions of the governmental arbitration court's jurisdiction to hear cases concerning employees in trade and industry as well as navvies and transport workers no longer apply, and the jurisdiction of the court, which has since 1964 been named the Labour Court ("Arbejdsretten") has been extended continuously so that, since 1973, it has in principle included the entire, very substantial section of the private and public labour markets that is now covered by collective agreements.

There is still only one labour court, but it functions at several levels. Basically, a case is heard by the chairman or one of the vice-chairmen acting as the presiding judge and six of the industrial judges, who no longer have to be representatives of the Confederation of Danish Employers and the Danish Confederation of Trade Unions, but may include representatives of various employers' and employee organisations etc. Test cases may be heard by three legal judges, and employers' or employee organisations that are not members of an organisation entitled to appoint industrial judges have since 1997 been entitled to demand that their cases be heard by the legal judge alone. However, a considerable part of the approx. 1,400 cases annually brought before the court are,

with the parties' consent, decided by the chairman, one of the vice-chairmen or the head of the secretariat, who is also a judge, during preliminary hearings.

3. Collective agreements as a source of law

Collective agreements are based on the general law of property and obligations including especially rules of contract and tort law as well as rules governing freedom of association and competition law. The Danish Official Conciliator Act and the Danish Labour Court Act also include some important provisions. The Danish Constitution does not, however.

Collective agreements are thus a special form of contract and do not resemble statutes or the like. In various instances, when it has not been possible to renew collective agreements in the usual way, e.g. by using the voting rules provided in the Danish Official Conciliator's Act, renewal has been effected by enactment, usually in the form of implementation of the conciliator's proposed compromise. The acts have, however, maintained the special dispute resolution of collective labour law through the conciliator and arbitration system, and the Danish Labour Court.

Collective agreements are, as mentioned above, civil agreements without special authority in constitutional rules of law. They apply alone to the parties and do not require the approval of a public authority.

Collective agreements yield to relevant rules of law and general principles of law like other agreements, always provided that the special character and terms of collective agreements are, in certain cases, directly accepted by the general review or may be considered to be accepted.

In principle, the legislature may, in certain circumstances, intervene and amend a collective agreement, but then the government may incur liability in damages. A collective agreement cannot renounce rights provided by mandatory statutes, but it is not unusual that statutes allow their being derogated from by collective agreement.

A collective agreement may disregard a custom, and an employer's prolonged voluntary compliance with a collective agreement may, in certain circumstances, give rise to his being deemed to have accepted it.

4. Elaboration of collective agreements

Collective agreements are basically negotiated at three levels: between the central organisations, between the national employers' and employee organisations and at each relevant enterprise. Bargaining usually starts between the national organisations, and if they do not reach an agreement, the central organisations become involved. Finally, the collective agreement is actually fleshed out by bargaining at each relevant enterprise.

The parties of ordinary collective agreements are usually the national employers' and employee organisations, but single enterprises may, unlike single employees, also be parties.

It is not a requirement that an organisation is representative of a specific sector and, if relevant, an employer may enter into collective agreements with several employee organisations.

Collective agreements are neither subject to formal requirements nor to registration.

5. The enforcement of collective agreements

Collective agreements often apply to all of Denmark, but may also be local or applicable to a single enterprise. They may also apply to work performed abroad.

Collective agreements may be trade- or industry-dependent, but may also apply to several types of employees.

6. Content of collective agreements

There are no special requirements for the terms of collective agreements or how they are to be formulated. They are predominantly made in writing, but this is not a requirement.

Freedom of organisation is usually mentioned in general agreements. However, it is not unusual to specify minimum wages; likewise, collective agreements often include stipulations on qualification and seniority allowances. Moreover, they often include rules on working hours, including part-time employment and holidays, and stipulations concerning sick pay during a certain period.

7. Interpretation and litigation relating to collective agreements

The dispute resolution system is usually laid down in each general agreement and collective agreement and in the Danish Labour Court Act, but so that it can be based on a norm from 1908 for rules on hearing an industrial dispute if the collective agreements do not include the necessary stipulations.

It usually follows from these rules that a dispute should be resolved at the lowest possible level by bargaining, first between the management of an enterprise and the shop steward of the employees. If they do not succeed, a conciliation meeting including the local employers' and employee organisations is convened, and if this is not successful either, the central organisations will be included. In matters of urgency, e.g. ongoing strikes, joint meetings where the management of the enterprise, the shop steward and the representatives of the local and central organisations all come together.

During conciliation, organisation and joint meetings, the representatives of the organisations may resolve the dispute finally and conclusively if they agree, even if the direct parties do not want it. Such decisions are final and conclusive and may not be referred to the courts.

If it proves impossible to resolve the dispute during the industrial hearing, questions of interpretation may be referred to industrial arbitration courts, which are usually appointed to hear a single case, so that either party chooses an arbitrator and the two party-appointed arbitrators jointly choose a neutral umpire, who will make the arbitral award if the party-appointed arbitrators are unable to reach an agreement. Questions of breach of a collective agreement are usually referred to the Danish Labour Court. If the parties agree, the Danish Labour Court may also hear questions of

interpretation; likewise, the industrial arbitration courts may, if the parties agree, decide whether the collective agreement has been breached and the consequences. The decisions of both the industrial arbitration courts and the Danish Labour Court are final and conclusive.

Breach of collective agreements is subject to a penalty, which may be ordered by the above-stated conciliation, organisation and joint meetings as well as the industrial arbitration courts and the Danish Labour Court.

Actions are brought by and against the most comprehensive organisation of employers of the one part and employees of the other part, always provided that enterprises that are not members of any employers' organisation may themselves bring actions and be proceeded against.

8. Altering and challenging of collective agreements

Both general agreements and collective agreements usually include detailed terms of renewal and termination.

In case of transfer of undertakings, a collective agreement is, as a cardinal rule, also transferred, but usually the new owner may, immediately upon the transfer, indicate that he is not interested in taking over the collective agreements. The employees' individual rights under the collective agreement must, however, be complied with until the date of expiry.

Expiry of a collective agreement usually signifies the commencement of bargaining for extension of the agreement including certain amendments. If it proves impossible to extend the agreement, collective weapons such as strike or lockout may be taken up.

9. Conclusions

Both labour and management and the Danish government have clearly expressed their interest in having, wherever possible, questions of pay and employment terms resolved by the two sides of industry by collective agreements.