

Collective agreements

Finnish reporter: Judge Jorma Saloheimo
Vice President, Labour Court,
Helsinki

1. Definitions

1.1 What is the definition of the collective agreement in your country?

The legal definition of a collective agreement is in Sec. 1 of the Collective Agreements Act (1946). Under the provision, a collective agreement is an agreement regulating conditions to be observed in employment contracts or otherwise in employment relations, concluded by one or more employers or employers' associations on one side, and one or more trade unions on the other side.

1.2 Is there a distinction made between different types of collective agreements according to their source, content or scope (occupational or territorial)?

There are different types of collective agreements, such as central, industry-wide, craft-wide and local agreements, but they all fall under the same definition and legal regulation. An exception is the public sector, where collective agreements applicable to civil servants and municipal officers are governed by separate statutes.

2. Please summarize the history of collective agreements in your country.

Collective agreements were introduced into Finnish statutory law in 1924, but in practice very little collective bargaining took place due to mutual distrust. In 1940, the organized employers and organized labour accepted each other as equal negotiating parties. After the II world war had ended, collective agreements were concluded for blue-collar workers in all major industries, and the new Collective Agreements Act, which is still in force, was adopted in 1946. Since then collective agreements have been extended to cover white-collar workers and workers in the public sector, as well as a wide range of issues relating to terms and conditions of employment.

To date, the role of collective agreements represent what can be called the Nordic model for industrial relations. The model is based on a unified trade union movement and a high rate of unionization with a long tradition of labour regulation through collective bargaining. The governmental regulation takes place in close cooperation with trade unions and employer organizations. While the participation of the Government aims at securing labour peace, the right to collective action is accepted. Tripartite cooperation is general not only in labour market regulation and decision-making but also in economic policy.

3. Collective agreement as a source of law

3.1 What are the constitutional or/and legal grounds of collective agreements?

Sec. 13 of the Constitution (2000) provides for the freedom of association and in this connection also the freedom to form trade unions to protect one's interests. Although the right to collective bargaining is not specifically mentioned here, it may be regarded as protected under the said provision. In addition, Sec. 22 of the Constitution contains a general duty for the public authorities to guarantee the observance of basic rights and liberties and human rights, also those relating to trade union activity as protected under the relevant international treaties.

3.2 Does a collective agreement have a contractual or statutory status (or both)?

The status is considered to be contractual, but the normative effect of collectively agreed terms in relation to third parties has required statutory basis, set out in the Collective Agreements Act.

3.3 The relationship between collective agreements and other sources of law

3.3.1. How do collective agreements receive legal status from the Constitution and the constitutional principles in force in your country?

The regulation of collective agreements is based on legislation passed by the Parliament in a regular procedure, with no specific hierarchal status.

3.3.2. Relationships between collective agreements and general principles

A) Hierarchy of standards

1) Principle of hierarchy

a) Are collective agreements and covenants subject to superior standards?

In the hierarchy of sources of labour law, collective agreements are subordinate to mandatory rules of law.

b) Does a hierarchy of levels exist between collective agreements?

There is a hierarchy e.g. in cases where a local agreement is concluded by an employer, who is already bound by a nation-wide collective agreement. In such a case the local agreement may not contain weaker terms than the nation-wide agreement, unless the latter expressly allows for local deviations from its standards.

2) Derogations

a) Are collective agreements subject to the “principle of favour” (exemption “in melius” from the laws or higher-ranked agreements)?

Yes.

b) Can they be less favourable than the latter or is it acceptable that lesser ranked agreements contradict unfavourably (“in pejus”) to higher ranked agreements?

Yes, but only on condition that the labour law statute or the other contract, binding upon the parties, allows for such derogations.

B) Principle of equality: non-discrimination and “equal pay for equal work”

1) May collective agreements set conditions of unequal treatment and are these upheld as legal?

No.

2) Are collective agreements subject to the principle of equality?

Yes.

C) Law and order

1) Is there a definition of “social” law and order (which is different from “economic” or “management” law and order)?

Such a distinction is not commonly made in Finland.

2) Is there a distinction between absolute and relative law and order?

No. The distinction between mandatory and optional law is another matter.

D) Is there a duty of good faith in collective bargaining?

Collective agreements are subject to the same conditions of validity as all other contracts. Since collective bargaining normally takes place within well-established relationships between the negotiating parties, violations of the duty of good faith are exceptional.

3.3.3. Collective agreements and other sources of law

A) Collective agreements and law

1) Are collective agreements allowed to abridge rights that employees have been given by law?

Only if such a deviation is expressly allowed in the statute in question.

2) May the law itself annex a collective agreement?

This is possible, but seldom happens. An example is in the Posted Workers Act (1999) which makes a reference to the national collective agreement applicable to the industry in question.

3) May a law delegate some of its powers to a collective agreement?

No. If it is provided in the law that certain issues may be regulated through collective agreement, such an agreement will then have the legal effects of a collective agreement only, and the statutory legal effects (sanctions etc.) no longer apply.

B) Collective agreements and regulations

1) Should collective agreements be extended by a regulation to govern the whole profession, even businesses that are not members of the signatory unions?

Such a system of generally applicable collective agreements is in place in Finland. The procedure for declaring a collective agreement to be generally applicable is regulated in a specific Act passed in connection with the new Employment Contracts Act (2001). A special tripartite board makes the decision, which can then be challenged in the Labour Court. Under the Employment Contracts Act, the general applicability of collective agreements presupposes that the agreement is nation-wide and can be deemed as representative in the field in question. In the consideration of the said criteria several factors are taken into account, the point of departure being that about one-half of the employees in the field concerned are covered by the agreement already by virtue of the Collective Agreements Act. If the criteria are fulfilled and the agreement is declared as generally applicable, its terms shall be followed as minimum conditions by all employers in the field, regardless of their membership in an employers' association. Only employers bound by another collective agreement, concluded with a nation-wide trade union, are exempted from this duty.

2) Are some collective agreements subject to approval by ministerial order?

No.

C) Collective agreements and customs

1) Does a collective agreement challenge custom when its object is the same?

Yes. The role of custom is practically insignificant in the Finnish labour market.

2) Does the voluntary enforcement by the employer of a collective agreement that normally does not apply to him/her constitute a custom?

This may happen if the application of the agreement has lasted for some time, so that its terms have been established as part of the individual employment contracts.

As regards pay, if the employer is not bound by a collective agreement (normally binding or generally applicable), and nothing has been stipulated on the amount of pay in the employment contract either, the employee shall be paid "a reasonable normal remuneration for the work performed" (Sec. 10, Chapter 2 of the Employment Contracts Act). The standard for such remuneration may then be derived from a collective agreement, applicable to activities comparable to those of the undertaking in question.

3) Have you something else to say about this point?

D) Collective agreements and the labour contract

1) Is the contract of employment allowed to contain clauses less favourable to the employee than the relevant collective agreement?

No, unless otherwise stated in the collective agreement.

2) Is the collective agreement incorporated into the contract of employment or does it remain independent from it?

According to the general view, most collectively agreed terms and conditions of employment gain the effects of a contract of employment also (the double effect theory). This is to say in practice that after the end of the collective agreement period and before a new agreement has been reached, the terms and conditions of the previous agreement continue to be followed as part of the individual contracts.

3) May a new collective agreement modify the contract of employment?

Yes.

4. Elaboration of collective agreements

4.1. Collective bargaining

4.1.1 How many levels of bargaining exist in your country?

There are three levels: the level of central agreements, the level of agreements concluded by nationwide industrial federations, and the level of company agreements. These are complemented by individual contracts.

4.1.2 How are they related?

The levels are distinguished by the parties to the agreements (the central labour market organizations, the federations, the local trade unions etc.). One further aspect is that an important category of central agreements, often concluded in connection with comprehensive incomes policy solutions, establish only a framework or guidelines for the collective agreements proper that are subsequently concluded by the federations.

4.1.3 Is collective bargaining freely decided or mandatory?

Freedom of contract applies here.

4.1.4 What subjects may collective bargaining include?

A wide range of subjects, which fall under the definition laid down in Sec 1 of the Collective Agreements Act (see above in reply 1.1). This refers to remuneration, working hours, annual holidays, worker participation, occupational health and safety etc. These are typical so-called normative clauses of a collective agreement. Clauses purporting to regulate the relations of employers and their business partners are not regarded as valid.

The so-called obligatory clauses regulate the relationship between the contracting parties themselves (contract period, negotiating procedures etc.).

4.2. Conclusion of collective agreements

4.2.1. Signatories

a) Who can be parties to the collective agreement?

(1) Only unions (or their representatives)?

Yes, on the employee side.

(2) Also the employees, or work-council, or workforce delegates?

No.

(3) Other responses?

On the employer side, also an individual employer may conclude a collective agreement.

b) Must the parties meet a condition of representativity?

No.

c) May the agreement be signed by only one union, though in the minority, or is it necessary that a majority of unions do not oppose the text of the agreement?

One union is enough. It must be remembered here that a situation with rivalling unions in the same sector is not common in Finland.

d) Does a right of opposition exist?

No. Entering into an agreement is an internal matter of the union, and the decisions are made as in any association, sometimes after a ballot.

4.2.2 Formal requirements

a) Must collective agreements be made in writing?

Yes. An alternative is that the agreement terms are entered in a record over the agreement negotiations and the record is certified in a manner accepted by the parties.

b) Must a notice be given?

No.

c) Must collective agreements be registered?

The employer party shall deliver the agreement as a paper copy and electronically to the Ministry of Social and Health Affairs. This notification is, however, not a condition for the agreement to be valid.

5. The enforcement of collective agreements

5.1. Scope of collective agreements

5.1.1. Geographic area

a) National, regional, local?

Both national and local agreements are concluded, but rarely regional.

b) International?

A collective agreement is applied also to work performed abroad, if so agreed.

5.1.2 Professional sphere

What jobs, professions or branches are concerned?

Collective agreements are typically concluded on the level of federations to concern all workers in a particular branch, such as in the cases of wood industry and metal industry. The other model is to conclude an agreement, which covers certain jobs or professions, as electric workers or technicians.

Altogether, about 90 per cent of the Finnish work force is covered by collective agreements.

5.2 Determining which collective agreement is enforceable

5.2.1 Is the main activity of the business a criterion?

The sphere of application is stated expressly in every collective agreement. Usually the employer's business activities are the main criterion.

5.2.2 What about the mandatory application of “extended” collective agreements?

If an agreement is declared as generally binding, such a decision has no effect on its material sphere of application. The only change is that also non-organized employers, carrying out business in the field in question, are obliged to observe the agreement.

5.2.3 Is it possible for an employer to voluntarily apply a collective agreement that does not apply to his/her business? Then, how to prove this voluntary enforcement?

This is possible as long as it does not contradict with individual contracts of employment. See also reply 3.3.3.A.2.

It is more common that the trade union demands an unorganized employer to follow the collective agreement concluded for the sector or activities in question, and then an agreement to this effect is made at company level.

5.2.4 Which collective agreement is to be enforced in case of coincidence of several agreements? According to what criteria?

It is not uncommon that an undertaking is bound by two or more collective agreements. The firm may for instance carry out activities in several fields and accordingly be a member of several employer associations. In such a situation, if a dispute arises as to which collective agreement should be followed, the first thing is to try to resolve the dispute by interpreting the

scopes of the rivalling agreements. If it finally turns out that both agreements apply (the case of “overlapping” agreements), the situation is resolved in favour of the first agreement that became binding upon the employer (time priority).

5.3 Binding force of collective agreements

5.3.1 Are collective agreements enforceable upon signing?

Yes. The signing of a contract may be the last stage of the procedure, which may have involved long negotiations, industrial action, ballot, etc.

5.3.2 Do collective agreements apply automatically?

Yes.

5.3.3 Are collective agreements binding (imperative)?

Yes.

6. Content of collective agreements

6.1 Is the content mandatory, or can the parties choose it freely (or both)?

Freedom of contract applies here, too. But to be a collective agreement, the agreement must contain at least one condition to be observed in employment contracts or relations.

6.2 Different subjects dealt with

6.2.1 Freedom of collective industrial organization?

A solemn declaration to this effect is often included in collective agreements.

6.2.2 Form and content of the contract of employment

- **Requirements concerning the use of fixed-term contracts?**

These are laid down in mandatory law, but sometimes reproduced and in some cases complemented in collective agreement.

- **Form of the contract: in writing; compulsory mentions?**

Rarely.

- **Various clauses**

- **Covenant not to compete?**

The general conditions for such clauses are provided for in the Employment Contracts Act. The application is then subject to individual contracts.

- **Compensation (financial) for covenant not to compete?**

See above.

- **Probationary period?**

See above.

6.2.3 Minimum wages?

Yes, frequently.

6.2.4 Classification and career of staff members?

Seldom.

6.2.5 Hours of work

- On-call time and hours of “equivalence”? Yes.
- Vacation? Yes, although the basic rules are in the Annual Leave Act, to which reference is often made in agreements.
- Overtime and fixed wages? Yes.
- Compensatory rest? Yes.
- Part-time work? Sometimes.
- Minimum rest time and maximum work time? Yes, complementing the rules of the Hours of Work Act.

6.2.6 Rights of an employee who is on sick leave?

- **Suspension of performance of the contract of employment?** No, this is self-evident. Instead, stipulations on the right to pay during sick leave are common.
- **Guaranteed resources?** See above.
- **Job security?** Job security, including protection against dismissal on the ground of disability to work, is regulated as a separate issue.

6.2.7 Discipline

There are clauses relating to a duty to give a warning prior to dismissal. Otherwise, disciplinary measures are usually left for the employer to decide.

6.2.8 Vocational training?

Training is regulated in collective agreements mainly concerning employee representatives.

6.2.9 Follow-up of the agreement? Yes.

7. Interpretation of and litigations relating to collective agreements

7.1 Which bodies are responsible for interpreting the collective agreements?

7.1.1 Joint boards?

There are rare examples of joint boards, composed of representatives of the federations in question and sometimes an outside chairman, which have been entrusted with the authority to decide upon disputes that have arisen from the application of the collective agreement. Such issues may be disputes over rights or disputes over interests.

7.1.2 Other bodies or organizations?

The regular method of resolving disputes over the interpretation of a collective agreement is the grievance procedure, stipulated in most

agreements. This means that the dispute shall first be negotiated at the level of the undertaking and then between the federations, and only if a settlement is not reached in these negotiations can the case be brought before the Labour Court.

7.1.3 What is the scope of their interpretation?

a) Is it binding for the judge?

If the interpretation of a collective agreement is decided by parties to the agreement, the decision is in principle binding. It can, however, be challenged on certain grounds, mainly on the ground that it is not in conformity with mandatory law.

b) Can it be retroactive?

Yes.

7.1.4 Is the judge entitled to interpret him/herself collective agreements?

This is the basic duty of the judge, if a dispute is brought before his Court.

7.2 Remedies against breach of collective agreements

7.2.1 Are penalties provided?

An employer, whether party to the agreement or otherwise bound by it, may be ordered pay a compensatory fine to the wronged party if found guilty of violating the provisions of the agreement. The violator must have acted intentionally or he must have had reason to know that his action constitutes a violation. The maximum amount of the fine is EUR 25 900. Furthermore, associations which are parties to the agreement are under a statutory surveillance duty involving an obligation to see to it that their members follow the clauses of the agreement. If the surveillance duty is violated intentionally or negligently, a compensatory fine may be imposed.

The compensatory fine may also be ordered for violations of the labour peace obligation.

7.2.2 Which body or authority ascertains violations?

The Labour Court. If, however, the claim is based on the general applicability of the collective agreement (meaning that the employer is not a member of the employer association in question), regular courts have jurisdiction.

7.2.3 What are the civil remedies?

a) Individual claims?

As regards unions and employers bound by a collective agreement, all claims based on the agreement are handled by the Labour Court. The party to the agreement acts as the plaintiff. For instance, if the claim is based on an agreement made between federations, it is the regularly the federation that appears as a party to the lawsuit on behalf of its member. An individual member employee or employer may present a claim only upon the consent of the party to the agreement, or if the party has refused to institute proceedings.

All claims brought before regular courts are individual claims.

b) **Collective lawsuits?** See above.

7.3 Proceedings related to collective agreements

7.3.1 Is there a distinction made between individual and collective litigations in this matter?

See above.

7.3.2 Which court(s) or body(ies) have jurisdiction over legal matters relating to collective agreements?

The Labour Court, with the exception of claims based on generally binding collective agreements.

Disputes, which would otherwise belong to the jurisdiction of the Labour Court, may be referred to arbitration, but this is not very common.

7.3.3 How is the judge informed of the existence and content of a collective agreement? What is the role of the judge and the parties in litigation relating to collective agreements?

The agreement is normally filed in together with the claim. “Regular customers” of the Labour Court may also assume that the Court already has the agreement.

As to the roles of the judge and the parties, the normal principles of civil procedure apply. This is to say that it rests with the parties to decide how to formulate their claims, which facts to invoke in support of their claims, which evidence to present etc. This does not, however, prevent the judge from providing guidance on these issues.

8. Altering and challenging of collective agreements

8.1 Cases and procedures

8.1.1 Do procedures exist for the review and termination of collective agreements?

A collective agreement may be concluded for a definite or indefinite period. In the latter case, the agreement may be terminated with notice. The notice period is three months, unless otherwise stipulated. A common stipulation is that a party giving notice shall enclose proposals for a new agreement.

8.1.2 What happens to collective agreements in the case of a transfer of undertaking or change of employer?

The new employer is bound by the agreement as long as it is still in force.

8.1.3 What happens before and during the time of expiration of the agreement?

It is normal that negotiations for a new agreement are commenced in good time before the expiry of the old agreement.

8.1.4 What is the procedure for substituting a collective agreement with another one?

The parties to a collective agreement may always replace the agreement with new one, even before the regular expiry of the agreement, if so mutually agreed. There is no special procedure for doing so.

8.2 Can employees retain vested or established rights (“droits acquis”) in case of termination of collective agreements?

Yes, as explained in replies 3.3.3.E.2. and .3.

9. Conclusions

9.1 Is there a policy promoting collective bargaining and contractual collective law?

Yes, there is such a long-established policy and tradition.

9.2 Are there problems concerning the relationship between contract of employment and collective agreements?

Rarely. The superior status of collective agreements is generally acknowledged. Problems of interpretation, relating to legal details, may of course always emerge.

9.3 Does the connection between law and collective agreements operate in favour of employees (principle of favour, ratchet effect), or does it allow less favourable conditions?

The principle of favour is the point of departure. Several rules of law, however, allow deviations from their contents by means of contract. It may be provided that the contract shall be a collective agreement, or, as a further requisite, that the agreement must be concluded between nationwide federations.

9.4 Are there any additional conclusions or problems you want to mention?