

**Tenth Meeting of European Labour Court Judges
Stockholm, September 2, 2002**

The Role of Collective Bargaining

**Questionnaire
General Reporter: Judge Harald Schliemann,
Federal Labour Court of Germany**

IRELAND

**National Reporter: Mr. Kevin Duffy, Deputy Chairman of
The Labour Court**

A. The legal framework of collective bargaining

Please describe the legal framework for collective bargaining in your country:

1. **Constitutional provisions**. Does your country's Constitution or Basic Law include the right to collective bargaining? If it does, please quote the relevant provisions.....No

2. **Legislation**:

- a. Please, indicate if collective bargaining in your country is regulated by:

- i) the Labour Code or a general labour law (e.g. the Workers' Charter in Spain).....No
- ii) a law on collective bargainingYes
- iii) a framework (central) agreementYes

b. If your country does not have a law on collective bargaining, is this subject dealt with under civil law? (for example the Civil Code or the Code on Obligations).....N/A

c. To what extent have the labour courts played a decisive role in framing the right to collective bargaining and in determining the legal effects of collective agreements?

The Labour Court encourages parties to engage in collective bargaining and assists them to conclude agreements. Where parties cannot agree on a term to be included in a collective agreement the Court adjudicates. The Court makes recommendations which are not legally binding.

3. Types of collective agreements:

- a. Are there differences or distinctions between "collective agreements" at national, regional or sectorial level (the German "Tarifvertrag"), i.e. collective agreements whose parties are trade unions and (associations of) employers; and "enterprise collective

agreements” at the enterprise level (the German “Betriebsvereinbarung”), i.e. collective agreements between the works council and the enterprise?

In the main collective agreements are concluded at the level of the enterprise between trade unions and employers. In some instances agreement are concluded in respect of an industry or sector. Such agreements are less common than heretofore.

b. Are there any other types of collective agreements in your country? Please specify.

Since 1987 a serious of Social Partnership Agreement have been concluded between the social partners at national level. These agreements provide a framework within which pay increases and other improvements in working conditions are provided for over the currency of the agreement.

4. Conditions of validity of a collective agreement: Does the law provide for certain requisites to be filled for a collective agreement to become legally binding, such as the following:

- a. Governmental approval.....NO
- b. Registration?YES
- c. Publication?NO
- d. Other?.....

Note: The Industrial Relations Acts 1946-2001 allow parties to a collective agreement to register the agreement with the Court. Where the agreement is so registered it is in effect legally binding. Moreover, where an agreement relates to a whole industry or sector, every worker and every employer in the sector is bound by the agreement whether or not they are party to the agreement. Only a minority of agreements are registered with the Court and those which are registered are industry or sector agreements.

For a collective agreement to be valid, is its conclusion enough?.....YES

5. Effects of a collective agreement: To whom are collective agreements and/or enterprise collective agreements or work agreements binding or compulsory? Are they related to union membership and/or to the association of employers?

Collective agreements are generally binding on the parties to the agreement. Where agreements are registered with the Court they are binding on all workers and employers of a class to which they are expressed to apply. See note above.

6. Extension of collective agreements: In your legal system, is it possible to extend a collective agreement to non members of the employers’ association that has signed it so that it can have *erga omnes* effects in a branch of industry or a sector?

Yes- in the case of registered agreements only.

- a. Is extension frequently or rarely used in practice? *Rarely*
- b. When extension is possible:
- i) what procedure has to be followed for an agreement to be extended to third parties?

Where an agreement relates to an industry or sector and the parties are substantially representative of the trade unions and employers in the industry or sector, the parties to the agreement may apply to the Court to have it registered. If registered it applies to all employers and workers to whom it is expressed to relate.

- ii) what is the usual coverage of an extended collective agreement (i.e. a province, a region, the whole state)?

The industry or sector throughout the State.

B. The parties to collective bargaining

7. Who are the parties of collective agreements? Trade unions? Associations of Trade Unions and /or works Council (the German “Betriebsrat”) on the one side? Employers, enterprises, associations of employers on the other side? Who else?

Trade Unions and Employers

8. Workers’ representation by a trade union:

a. Is trade union representativeness an important issue in your country?

Yes

If so:

- i) how is the representativeness of a trade union for collective bargaining purposes determined at the different bargaining levels (i.e. the establishment, the enterprise, the industry or branch of economy, an occupational group or at national central level)?
- ii) what procedures are available to settle disputes, when trade union representativeness has been challenged? Are Labour Courts competent to settle disputes on union recognition or union representativeness for collective bargaining purposes? Is this an important issue in your country?

There are two aspects to this question. Firstly where disputes arise between trade unions as to which of them should have negotiating rights in a particular employment, such disputes are resolved by the Irish Congress of Trade Unions- the trade Union centre in Ireland. In such cases the Labour Court would not become involved.

Such disputes should be distinguished from disputes where an employer will not recognise a trade Union for negotiating purposes, either because the employer does not regard the union as sufficiently representative or because the employer does not recognise trade unions per-se. In those type of cases parties can proceed through a procedure set out in a code of practice made under the Industrial Relations Acts 1990. This involves engaging through the Labour Relations Commission so as to reach a voluntary agreement between the parties. If agreement cannot be reached the dispute may be referred to the Court.

b. Where there is trade union multiplicity:

- iii) how organized is the workers' representation for collective bargaining purposes?

Where there is multi-union organisation there is generally a high degree of cooperation. In many cases trade unions are organised into formal groups and negotiate collectively with employers.

- iv) can minority unions claim collective bargaining rights? Is this an important issue in your country? Does your country have a case law on this issue?

There is nothing to prevent minority unions claiming negotiating rights. As stated above where disputes arise between unions on this issue they are dealt with by the Irish Congress of Trade Unions.

- v) can a union join an existing collective agreement to which it has not originally been a signatory party? If it can, what rights does a union enjoy as a result of its adhesion to that agreement. For example, is the union recognized as *locus standi* before a tribunal to engage in litigation in case of breach of a collective agreement?

In principle there is nothing to prevent a union from becoming party to an existing agreement but this rarely happens. In the case of a registered agreement (the only type enforceable by the Labour Court) a party cannot be joined after the agreement is registered.

- b.** Can a union represent non unionized workers for collective bargaining purposes?

Generally they would not.

- c.** Can a collective agreement be applied to non union members? Yes.

- d.** What procedural rights and obligations are granted to Trade Unions that have signed a collective agreement? For example :

- i) can they initiate litigation on the workers' behalf?
- ii) can they initiate litigation on their own behalf?

iii) others.....

Since the vast majority of agreements are not legally binding or enforceable in law, this question does not arise.

- e. What procedures and recourses are available in your country for unions or employers to demand the enforcement of an agreement by the other party?

Disputes of this nature are generally referred to the Labour Court

- f. What remedies are available when it is held that one of the parties is in breach of a collective agreement by which it is legally bound? For example, can a labour court impose a fine or issue an injunction in these cases?

In the limited number of case where agreements are enforceable (registered agreements) the Labour Court may make an order requiring an employer to comply with its terms. It is then a criminal offence not to obey the order, for which a fine can be imposed by a Court of law.

9. Work agreements concluded by a non union body:

- a. For your country, please indicate whether there are legal or collectively agreed rules that provide for the representation of all workers, at enterprise or establishment level, by a body elected by all the workers of the enterprise or the establishment whether unionized or not (e.g. works councils, enterprise committees, shop stewards, staff delegates). If such bodies exist, how are they appointed or elected?

There are a small number of staff associations which represent non-Union workers in some employments. Whilst they may legally negotiate there are no other rules, legal or otherwise governing such bodies. In many unionised employments the union members elect committees or shop stewards committees who represent the Union in the workplace.

- b. What kind of relationship - legal or *de facto* - exists between these bodies and the unions?

Shop Stewards are regarded as the local representatives of the Union in the employment.

- c. What specific competences do these bodies have, and to what extent can they negotiate collective agreements, or other legally binding agreements such as work agreements (*Betriebsvereinbarung*)?

Normally, staff associations can negotiate collective agreements. Works committees and shop stewards in unionised employments generally deal with day-to-day issues and would not negotiate collective agreements. This would be the function of a union official.

- d. Are enterprise collective agreements or work agreements common in your country? Yes.

- e. Do these agreements include rules or procedures to settle

disputes concerning their interpretation or application?

Yes.

- f. Can these agreements be enforced before a Labour Court? *Except in the case of a registered agreement they cannot be legally enforced. Disputes concerning the interpretation or application of an agreement can be referred to the Court for investigation and recommendation in the normal way.*

If they can:

- i) who can bring litigation before the Court? (e.g. a union, a works council, the individual worker)
- ii) what measures can a labour court take to enforce these agreements?

For the reasons referred to above this question does not arise in the context of the Irish industrial relations system.

C. The role and (political) importance of collective agreements

10. If data are available, please provide information on the following:

- a. The number of collective agreements that are in force in your country;
- b. Their distribution, according with their coverage:
 - i) sectorial, industrial, and enterprise level agreements;
 - ii) national, regional, provincial or local agreements;
 - iii) the percentage of the workforce that are covered by collective agreements;
 - iv) the percentage of enterprises that are covered by collective agreements.

This type of data is not available.

11. What subjects are generally addressed in collective agreements, or in work agreements concluded with works councils or other staff representation bodies?

- a. Terms and conditions of employment? (e.g. wages, overtime, hours of work, job classification) Yes
- b. Provisions concerning the contract of employment: hiring, probation, discipline, fixed-term contracts, termination of employment, other? Yes
- c. Health and safety? Yes
- d. Training? Yes
- e. Workers' welfare Yes
- f. Workers' rights in the enterprise: right of expression, data protection, other? Yes

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| g. | Trade union rights and facilities to be afforded to union stewards? | Yes |
| h. | Settlement of disputes? | Yes |
| i. | Peace obligation? | Yes |
| j. | Interpretation and administration of the agreement? | Yes |
| k. | Procedures for denunciation and renewal of the agreement? | Yes |
| l. | Other? | |

12. Which of the above subjects are normally addressed by collective agreements concluded with a union, and which by work agreements between an employer and staff representatives (i.e. works councils or the like)?

All would normally be included in agreements with unions.

13. Which issues are governed only by law and / or are not allowed to be dealt with in collective agreements or work agreements?

Some of the issues are dealt with by law (i.e. health and safety). However they would also be dealt with in collective agreements.

14. In collective agreements, are the wages and other conditions of employment minimum or standard terms of employment?

Generally agreements provide the standard conditions.

D. The role of Labour Courts in the collective bargaining process

15. By what means are collective agreements achieved? (Bargaining, or if not successful, striking, or by taking another industrial action? Mediation? Arbitration?)

In the vast majority of cases, where collective bargaining fails the dispute is referred in the first instance to conciliation and then to the Court. The Court then makes a non binding recommendation which is the majority of cases is accepted by both parties. if the Courts recommendation is rejected industrial action may be taken.

16. Can a labour court stop a strike or other form of industrial action:

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| a. | While negotiating a collective agreement? | No |
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If it can, how does it proceed (for example, by issuing an injunction)?

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| b. | Where such action is in breach of the peace obligation? | |
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17.	Can a labour court mediate in a collective dispute?	Yes
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18. Can a labour court impose binding arbitration? No

E. Interpretation of collective agreements by the labour courts

19. Are there rules of interpretation of collective agreements (Interpretation as a <written> law? Interpretation as a treaty? Interpretation with respect to the usual practice?)

Collective agreements are not drafted with the precision normally found in a legal instrument. Therefore, the rules of construction applicable to the interpretation of legal instruments does not apply in the case of collective agreements. The overriding objective in interpreting an agreement is to try to ascertain the intention of the parties. In so doing the wording of the agreement will be examined together with any other background material such as correspondence, records of negotiations leading to the agreement etc.

20. Is there any ranking between the wording, motives, sense of a clause or term in a collective agreement? No.

21. Is it common, allowed or prohibited, that a labour court asks the parties of the collective agreement for their interpretation?

Both parties would give there views as to the correct interpretation. It they agree that is the interpretation which the Court will adopt.

22. Is a labour court allowed to extend or restrict the rules or terms of a collective agreement?..... No.

23. How much or how often (in relation to other cases) do labour courts deal with the interpretation of collective agreements?.....Rearly

24. Are labour courts allowed to void a “not interpretable” (i.e. extremely unclear) term of a collective agreement? No