

**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**

SWEDEN

**National Reporter: Chairperson Carina Gunnarsson
and Chairperson Inga Åkerlund
The National Labour Court**

The legal framework of collective bargaining

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

Constitutional provisions. Does your country's Constitution or Basic Law include the right to collective bargaining? If it does, please quote the relevant provisions.

Some of the fundamental rights in the field of labour law are contained in the Swedish Constitution, for example the right to take industrial action. There are however no rules in our Constitution on the right to collective bargaining.

2. Legislation:

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)

ii) a law on collective bargaining

iii) a framework (central) agreement

There is no Swedish Labour Code. Different acts regulate different parts of labour law. Collective bargaining is thus regulated by Sections 10 to 16 of the Employment (Co-determination in the workplace) Act ("Medbestämmandelagen", "MBL"). This part of the labour law is also to a great extent regulated by different collective bargaining agreements between central employers' organisations and central employees'

organisations. You can also find rules concerning collective bargaining in local agreements between a local trade union and an employer.

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 abovementioned Employment (Co-determination in the workplace) Act entered into force on 1 January 1977. Especially in the years after that the Labour Court played a great role in interpreting and more closely establishing the meaning of the law rules.

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?

A “collective bargaining agreement” is in the Act (Section 23) mentioned above defined as “an agreement in writing between an employers’ organisation or an employer and an employees’ organization in respect of conditions of employment or otherwise about the relationship between employers and employees”. All collective agreements are regulated by the same law rules. The part on the employee side has to be a trade union - let it be it could be a local one which has concluded an agreement directly with the employer concerning matters on enterprise level. The differences between the collective agreements thus depend on the content of the agreement itself. You could however also notice that in some of the labour law acts it is stipulated that a collective agreement has to be entered into or approved by a central organisation of employees if the agreement deviates from certain rules in that particular act.

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

b. Registration?

c. Publication?

d. Other?.

There are no demands for governmental approval, registration or publication for a collective agreement to become valid and binding as a collective agreement. The only conditions follow by the definition cited above. That is the agreement has to be in writing, it has to be entered into between an employers' organisation or an employer and an employees' organisation and it has to relate to conditions of employment for employees or other aspects of the relationship between employers and employees.

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?*

A collective bargaining agreement which has been concluded by an employers' organisation or an employees' organisation is, within its area of applicability, binding to not only the organisations but also upon a member of such organisation. This apply irrespective of whether the member joined the organisation before or after the agreement was entered into, but not regarding terms and conditions with respect to which he is already bound by another collective bargaining agreement. If a member resigns from an organisation which has concluded a collective bargaining agreement he does not cease to be bound by the agreement only as a consequence of such a resignation.

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?*

The answer to this question is in principle no. An employer who is not a member of a federation can however by a separate agreement join the collective agreement between the trade union and the employers' association for his line of business and thus become bound by that agreement (a so called substitute agreement ("hängavtal").

A general validation of collective agreements in Sweden has not been considered necessary because of the high degree of organisation and the extensive coverage afforded by collective agreements. For every line of business there is usually a dominant collective agreement which apply directly to about three-quarters of all employees.

And in practical legal life an employer who is bound by a collective agreement usually also apply the collective agreement's terms of employment at "outside" employees, that is non trade union members. Regulation often still follows from the fact that the collective agreement includes an explicit or understood commitment for the employer - in relation to the trade union making the agreement - not to apply other terms of employment for outside employees. There are also provisions in several labour law acts which give an employer the right to apply collective terms for outside employees although the terms in the agreement in certain ways deviates from the law.

A worker not covered by the collective agreement cannot invoke any rights deriving from it. However, in a dispute between an employer who is not bound by a collective agreement and an employee about something that has *not* been settled by the individual contract a court can settle the dispute by "supplementing" the individual contract with the guidance of the collective agreements within the line of business concerned.

Especially nation-wide collective agreements stating minimum conditions thus have a strong normative importance in cases where none of the parties of the employment contract is bound by a collective agreement.

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?*

Parties to a collective agreements can be, as already mentioned, trade unions and associations of trade unions on one side and employers and associations of employers on the other side.

8. Workers' representation by a trade union:

Is trade union representativeness an important issue in your country?

No, not generally speaking. Questions concerning the representativeness are for the trade unions themselves to decide and internal disputes cannot be adjudicated in the Labour Court.

Where there is trade union multiplicity:

How organised is the workers' representation for collective bargaining purposes?

In principle every organisation is bargaining for itself and they have their own internal rules for how they are supposed to be represented in the negotiations. Sometimes more than one trade union is involved in the same bargaining, that is when the purpose is to reach a joint agreement. Also then the question of representation is up to the participating trade unions. Often every union has rules concerning these questions in their own statutes.

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?

Minority unions can claim collective bargaining rights in the same way as the leading trade union in the area concerned.

The National Labour Court has decided in several cases concerning conflicts between trade unions where an employer has been forced to conclude different collective agreements with two different trade unions. Thus there is a case law on how to solve conflicts arising from this situation.

Can a union join an existing collective agreement to which it has not originally been a signatory party?

No, that is not possible for a union, only for an employer - as mentioned above.

Can a union represent non unionised workers for collective bargaining purposes?

No, a union can only represent its own members in such bargaining.

Can a collective agreement be applied to non union members?

Yes, as been mentioned above, a collective agreement can be applied to a non union member. That person can however not claim any rights due directly to the collective agreement.

What procedural rights and obligations are granted to Trade Unions that have signed a collective agreement? For example

can they initiate litigation on the workers' behalf?

can they initiate litigation on their own behalf?

others?

Trade unions can initiate litigation both on their on behalf and on the member worker's behalf. These rights are however granted not only to trade unions which have signed a collective agreement but to all trade unions, let it be that there are some differences between these two kinds of trade unions concerning the possibility to initiate litigation directly to the National Labour Court

When it comes to rights especially for those trade unions which are bound by collective agreements the Trade Union Representatives (Status at the workplace) Act from 1974 should be mentioned. This Act provides an important economic base for such a trade union. According to the Act a representative of such a union has a right to carry out union work concerning issues at the workplace during working hours paid for by the employer.

Furthermore, there are important provisions in the abovementioned Employment (Co-Determination in the Workplace) Act which give special rights and obligations to trade unions that have signed the collective agreement for the workplace concerned. For instance shall an employer before taking any decision regarding changes in its operations, on its own initiative, enter into negotiations with such a union.

There are also obligations attached to unions which are bound by collective agreements. A trade union which is bound by a collective agreement is in principle not allowed to take dispute actions as long as the agreement is in force. Such an organisation is also obliged, if unlawful industrial action is imminent or is being taken by a member, to attempt to prevent such action or to endeavour to achieve a cessation of such action.

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

An employees' association can order a collection blockade for the purpose of exacting payment of uncontested and accrued wages and other remuneration for work which has been performed. In the more usual case when the parties of the collective agreement have different opinions about the terms of the agreement they start with negotiations trying to solve the dispute. If this does not succeed one of the parties or both can initiate an action before the court. It can be formulated as a pure question of interpretation or as a motion for a prohibitory or mandatory injunction against the other party.

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?

The court could issue an injunction to pay according to the terms in the collective bargaining agreement (as the court has interpreted the meaning of the terms) and/ or award damages against the wrongdoing party for the infringement itself (so called general damages, which can be characterised as a hybrid between damages and a penalty) as well as for any loss incurred as a consequence of the breach.

9. Work agreements concluded by a non union body:

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?

What kind of relationship - legal or de facto - exist between these bodies and the unions?

Normally the trade unions which have reached collective agreements with the employer are the bearers of industrial democratic rights. There is no direct equivalent in Swedish legislation for the German system of "Betriebsrat" (works council) as a representative for employees of a company.

The legislation on safety committees could be mentioned as an exception. At every workplace where 50 or more persons are regularly employed there shall be a safety committee consisting of representatives of the employer and of the employees. Employees' representatives shall be appointed by the local trade union currently or customarily having a collective agreement with the employer, but, in the absence of such an organisation, the representatives shall be appointed by the employees.

(European Works Council might also be mentioned. The Swedish members of employees' special negotiating bodies shall be appointed by the local trade union or unions which is or are bound by collective agreements in relation to the undertaking or undertakings.)

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)?

The aim of employee representation in the bodies mentioned above is mainly information and consultation.

Are enterprise collective agreements or work agreements common in your country?

Nationwide (central) collective bargaining agreements are usually supplemented by local agreements. The central agreements often requires such local agreement, for example concerning working hours or wages. Local agreements have to comply with the central agreement (Section 27 of the Employment (Co-determination in the Workplace) Act).

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:*

sectorial, industrial, and enterprise level agreements;
national, regional, provincial or local agreements;
the percentage of the workforce that are covered by collective agreements;
the percentage of enterprises that are covered by collective agreements.

We have no available data on a). The percentage of the workforce covered by collective agreements is very high. About 80 % of all employees are directly covered through membership of a trade union. All employees in the public sector are covered since their employers are bound by collective agreements. Probably less than 10 % - perhaps 5 % - of all employees are estimated to work outside the coverage of a collective agreement.

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)*
- b. *Provisions concerning the contract of employment: hiring, probation, discipline, fixed-term contracts, termination of employment, other?*
- c. - I. ...

Most of the subjects mentioned might be addressed in collective agreements, but typically the collective agreement covers terms and conditions of employment and provisions concerning the contract of employment. Usually the collective agreement also contains rules for settlement of disputes and procedures for denunciation and renewal of the agreement. The other subjects mentioned in the question might, in various degrees, be dealt with in collective agreements. Often collective agreements which contain deviations from mandatory provisions in labour law acts have to be entered into or approved by a central employees organisation. The idea is that such an organisation can be assumed to be so strong that it will not agree to an agreement which unduly undermines the rights of employees according to the law.

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)?

A collective agreement has to, by definition, be concluded by a trade union.

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

Most issues mentioned are allowed to be dealt with in collective agreements, in some cases at least if it does not result in the application of provisions which are less advantageous to employees than provisions contained in mandatory law. Some issues are of such importance that deviations are not possible through collective agreements, for example the concept of employee and employer, the concept of

objective reasons in cases of termination of employment, health and safety provisions etc. As already been said, other issues, governed by law, might also be addressed in collective agreements that has been concluded or approved by a so called central employee's organisation.

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

Wages are usually minimum terms of employment.

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?)

By collective bargaining, and if not successful, by striking or by other industrial action.

There is a State Conciliators' Office established for the purpose of mediating in industrial disputes. A Conciliation Officer might, when requested, provide parties on the labour market with advice and information concerning negotiations and collective bargaining agreements and might conduct negotiations between the parties. The Conciliation Officer shall propose modifications etc. in order to promote a satisfactory settlement of the dispute, but he can not force the parties to accept his proposals.

It is relatively unusual in Sweden for arbitration procedures to be used in the labour market.

16. Can a labour court stop a strike or other form of industrial action: While negotiating a collective agreement?

Sweden does not have any legislation concerning disputes posing a danger to society, not even as regards disputes in the public sector. The Labour Court can only stop an industrial action, otherwise lawful by the Employment (Co-determination in the Workplace) Act and collective agreements, if the government or parliament intervene and a particular piece of legislation is introduced. This has happened only once (1971).

If it can, how does it proceed (for example, by issuing an injunction)?

If the strike is unlawful, the Labour Court may order the employees to return to work. Damages can be awarded.

Where such action is in breach of the peace obligation?

An action in breach of the peace obligation is unlawful, thus the Labour Court may order the employees to return to work. Damages can be awarded.

17. Can a labour court mediate in a collective dispute?

No.

18. Can a labour court impose binding arbitration?

No.

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?)

Yes, there are in the court's practise rules of interpretation - mainly following interpretation of private law contracts in general.

20. Is there any ranking between the wording, motives, sense of a clause or term in a collective agreement?

Yes. First of all the court tries to establish a joint *intention* of the parties to the collective agreement. If that is not possible, the court looks at the *wording* of the agreement. When the wording is unclear or does not give the guidance needed the court looks at other factors, such as the structure of the agreement, the meaning of the same clause in other agreements, established practise, and, sometimes, what seems to be the natural purpose of the disputed clause.

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

It is allowed, and not uncommon. It is of special importance in cases where a collective bargaining agreement, concluded by parties other than the parties to the case, is of

importance for the determination of the dispute. In such case the parties who have concluded such an agreement shall - according to Chapter 5, Section 1 of the Labour Disputes (Judicial Procedure) Act - be afforded an opportunity to present their views in the case.

22. Is a labour court allowed to extend or restrict the rules or terms of a collective agreement?

The court is allowed to restrict a rule or term of a collective agreement or declare it invalid - for example in cases where a provision is incompatible with compulsory legislation or, in exceptional cases, deemed to be unreasonable.

The court may also, by Section 31 of the Employment (Co-Determination in the Workplace) Act, in certain exceptional cases mentioned there, declare that a collective bargaining agreement by which the parties are bound shall no longer be applicable to such parties.

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

About 10 % of the cases of the National labour Court deal with interpretation of collective agreements.

24. Are labour courts allowed to void a “not interpretable” (i.e. extremely unclear) term of a collective agreement?

Even extremely unclear terms are interpreted. The court presumes that the intention of the parties has been to regulate a certain question even if there has been mutual misunderstandings between the parties or the term is unclear for other reasons.