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The Role of Collective Bargaining

Questionnaire

General Reporter: General Reporter: Judge Harald Schliemann,
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NORWAY

National Reporter: Prof. S. Evju, Norwegian School of Management BI
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[Item numbering below refers to the main numbering of questions in the Questionnaire.]

A The legal framework of collective bargaining

1, 2 The Norwegian Constitution, of 1814, contains a rather brief "bill of rights" only. Collective bargaining rights are not included.

The basic legal framework of collective bargaining and collective disputes resolution is set out in the labour disputes legislation, which consists essentially of *two* Acts: the Labour Disputes Act, 1927 (LDA; superseding the largely similar first LDA of 1915); and the Public Service Labour Disputes Act, 1958 (PSLDA). This legislation is based on the principle of freedom of collective bargaining and contains no specific limitations on the scope of bargaining issues. The PSLDA applies to the *state* civil service sector, essentially; the LDA covers the rest of the labour market, including other (and in terms of employment, the larger) parts of the public sector.

In major parts of the labour market, framework collective agreements – commonly called "basic agreements" – supplement the statutory framework. There is a number of such agreements, in the private as well as the public sector, based largely on similar principles but with some variation as to bargaining structures and procedures.

The Labour Court came into being with the first LDA, 1915, recognising the right to collective bargaining and regulating the collective agreement as a legal instrument. The Court through its case law has however played an important role by developing in more detail the basic tenets of the system thus established.

3 There is no distinction in Norwegian law similar to that between *Tarifvertrag* and *Betriebsvereinbarung*. The latter type of agreement is not provided for in legislation and in effect does not exist in practice. *See*, also, 7 and 9 below.

A different distinction is however important. General (or 'superior') collective agreements – *overenskomster* – are concluded mainly between labour market organisations at the national level, for a sector, an industry, etc. Predominantly, general agreements provide for the conclusion of local follow-up agreements at the enterprise level – commonly called *særavtaler*, or local subordinate collective agreements. However, in the context of the LDA, no distinction is made; general

collective agreements as well as local subordinate agreements both are 'collective agreements' (*tariffavtaler*) in the statutory sense and in principle, the same rules apply to both. But in practice, this is modified in that rules on the relation between national, superior, and local, subordinate, agreements are commonly contained in "basic agreements", setting out the subordination of the latter to the former, specific rules on terms and termination, etc. It is only in the PSLDA, sec. 11, that the distinction between general agreements and "særavtaler" has a statutory basis. – *See*, further, 7 and 8, below.

"Basic agreements" are not a separate type of collective agreement, technically speaking, but merely one form of (national level) *tariffavtale* in the general legal sense. The importance of "basic agreements" lies primarily in that they are included into and thus form part of the various sector or branch specific collective agreements that are concluded between the basic agreement parties and their affiliated organisations.

Similarly, so-called *hengavtaler*, or "accession agreements", technically are not a separate type of agreement. The term denotes a collective agreement concluded between a trade union and an unaffiliated employer, identical to one already existing between organisations for the relevant kind of business. In actual practice, this is the predominant way of concluding collective agreements with employers not affiliated to an employers' association. The number of "accession agreements" is considerable; to legal analysis, and with regard to impact on dispute resolution bodies' workload, they are of little significance, however.

4 For a collective agreement to be valid it must be concluded *in writing*. No further requirements of form, registration, publication, etc., apply.

5 In Norwegian law, a collective agreement is legally binding only on the parties concluding the agreement *and* on those members affiliated to the parties (subordinate organisations, individual employers, and employees) to whom the agreement is applicable pursuant to its own provisions on scope and application. Consequently, an agreement is *not* binding on non-signatories and other "outsiders" – neither on other employers' associations or trade unions and their members, nor on non-unionised employees working with an employer who is bound by the agreement. This applies equally to general collective agreements and to local subordinate agreements.

For those *members* that are bound by a collective agreement, the agreement is mandatory by being binding and inderogable (*Unabdingbar*). In the relevant Acts (sec. 3 No. 3 LDA, sec. 13 PSLDA) it is expressly stated that an employment contract between an employer and an employee who are both bound by a collective agreement cannot contain any clause derogating from the collective agreement's stipulations. Pursuant to case law and, typically, provisions in "basic agreements" the same applies to local subordinate agreements. Clauses contravening these norms of inderogability are null and void and are substituted by the relevant provisions set out in the applicable collective agreement. It should be noted, also, that in Norwegian law the norms on inderogability apply to provisions less favourable to the employee (or local union of employees) *as well as* to provisions more favourable to the employee than those of the collective agreement. – The extent to which collective agreements allow freedom to parties at the enterprise

level to bargain on terms and conditions, individually or collectively, varies a great deal. Generally, however, local follow-up collective bargaining plays a quite important role in actual industrial relations practice.

A further aspect of inderogability norms should be noted. An employer who is bound by a collective agreement is, by virtue of explicit or implicit clauses therein, generally under the obligation to respect the collective agreement also in employment contracts with 'outsider' (non-unionised) employees performing work within the enterprise of the same kind that is governed by the collective agreement. From the legal point of view, this is an obligation on the employer *vis-à-vis* the trade union party to the collective agreement. It does *not* entail rights (or obligations) for the non-unionised employees; their individual employment contracts take precedence. However, the prevailing practice is to respect this aspect of the norms on inderogability, by "incorporating" the applicable collective agreement into the employment contracts of non-unionised employees, and hence, by and large unionised and non-unionised employees within the enterprise are treated equally in the context of the collective agreement.

6 Extension (or forms of *Allgemeinverbindlichkeitserklärung*) of collective agreements for all practical purposes is *not* a part of Norwegian labour law.

A special act on the topic does exist, however. The Act of 4 June 1993 No. 58 empowers a special board to issue (public administrative law) Regulations corresponding more or less stringently with collective agreement standards on minimum pay and minimum terms of individual employment relationships. Regulations can however not be issued on matters of a collective character, e.g., employee representation or local level collective bargaining arrangements. The Act was adopted in the context of Norwegian accession to the EEA Agreement, with a view to providing a means to safeguard against "social dumping". But in actual fact, the Act has not yet been put to use. Hence, I leave the rather intricate procedures provided for in the Act itself aside here.

To this may be added that the European Works Council Directive, 94/45/EC, is transposed into Norwegian law by way of the Act 23 August 1996 No. 63, pursuant to which, in the form for Regulations, the collective agreement provisions of the LO – NHO "basic agreement" on this particular subject are accorded general application. In the Norwegian context, this is however an exceptional measure and, as already indicated, a unique example in practice of a form of "extension".

B The parties to collective bargaining

7 As a matter of *law*, under the LDA the parties to a collective agreement are a "trade union" and, on the other side, an employer or an employers' association. For the purpose of the Act, a "trade union" is *any* combination of workers acting in concert to attend to their interest *vis-à-vis* their employer (sec. 1 No. 3 LDA); the concept of "employers' association" is defined in similar terms (sec. 1 No. 4 LDA). Hence, the concept of "trade union" covers anything and everything from a combination of two workers acting in concert to the largest trade union confederation. No notion of *"Tariffähigkeit"* or anything to a similar effect obtains for a trade union to be able to conclude a collective agreement (or to undertake industrial action). This legal facet, in combination with the norms on the binding effects of collective agreements (*see* 5, first paragraph, above), also features

importantly in practice. – Under the PSLDA, the legal regime is different. The parties to (general) collective agreements are the State and, on the other side, trade unions (or federations) that meet certain requirements as regards size and representativity (sec. 11, cf. sec. 3, PSLDA); *see* further in 8, below.

As regards industrial relations practice, those (general and superior) collective agreements that matter are concluded between trade union confederations, or – as the case may be – independent national trade unions, on the one side and on the other side the sectoral employers' confederation (the NHO) or associations. Mostly, the confederations (currently four on the trade union side) are empowered to conclude collective agreements in their own behalf and for their affiliated national unions and this also is mirrored in actual practice. Hence, typically, a general national level collective agreement is concluded between the relevant employers' association (or the confederation NHO and its pertinent sectoral employers' association as a subordinate party) on the one side, and on the other side a trade union confederation (with its relevant national union as a subordinate party). With regard to the trade union side, certain exceptions maintain, however, as some private sector collective agreement relationships are concerned, i.e., agreements are concluded between the (confederation affiliated) national union alone and the employers' association (or confederation). – In addition to this comes "accession agreements" (*see* in 3, above), which typically are concluded between a national trade union (whether confederation affiliated or not) and a single employer.

Local subordinate agreements (*see* in 3, above) are concluded between the local branch (or group of members) of the national union and the employer concerned. – As has been noted already (in 3, above), forms of agreements similar to *Betriebsvereinbarungen* do not exist in the Norwegian context and essentially, forms of collective agreements concluded by a "works council" or some other form of joint representation of all (unionised and non-unionised) employees within the enterprise are not provided for. *See,* further, in 9, below.

8 a In the context of statute law, trade union representativity is not an important issue generally. As pointed to above (in 7), a notion of "representativity" applies only as regards the PSLDA, for the state civil service sector.

The criteria obtaining pursuant to the PSLDA are set out in the Act itself (sec. 3; most recently amended by Act 15 May 2002 No. 15) in the form of minimum requirements for having the right to bargain and conclude collective agreements with the State at the central (national) level. The requirements pertain to the size (number of affiliated civil servants) of the trade union (or federation) and its representing civil servants in some proportion or in a certain number of institutions or establishments. While aiming primarily to centralise bargaining at the national level to be conducted with federations of civil servants' trade unions, the requirements are sufficiently flexible to also enable national independent unions to obtain bargaining rights. In practice, however, trade unions in the state civil service sector predominantly are federation affiliated and collective agreements are concluded with the federations. – At subordinate levels, branch or local unions affiliated to parties at the national level have bargaining rights (so-called "derivative bargaining rights"; sec. 4 PSLDA).

Disputes on representativity under the PSLDA are under the jurisdiction of the Labour Court. Such disputes are rare, however; since the Act's entry into force in

1959, merely two cases have reached the Court (ARD[1] 1994, p. 106, and ARD 1998, p. 88).

In the larger picture, given the multiplicity of trade unions in the labour market (*see* b, *infra*), "representativity" may still be seen to figure as an issue in different contexts. A 1996 White Paper (NOU 1996: 14) proposed the introduction of forms of representativity criteria into the LDA. Those proposals met with considerable opposition, however, and have since been emphatically shelved (*see*, now the Bill – Ot.prp. nr. 46 (2001-2002) – on amendments to the LDA, enacted on 28 June 2002 (No. 58)).

But in different ways, the issue features in industrial relations practice. Employers' associations mostly are reluctant to conclude a collective agreement with a trade union unless it has a certain presence in the industry or enterprise(s) concerned, in particular if a collective agreement for that industry or enterprise already exists with a different trade union. Moreover, forms of representativity requirements may be found within the framework of existing collective agreement relationships. In particular in the private sector, the predominant practice is that a national (branch or industry) collective agreement does not automatically apply to all affiliated employers; it will apply only when having been "made binding" for the individual enterprise pursuant to a decision to that effect to be made, at the outset, by the (superior) parties to the collective agreement. Rules on this are contained in a number of "basic agreements". Varying as to the requirements and procedures that apply, it is however now a common feature that it is a prerequisite to having the collective agreement "made binding" that the trade union has a certain presence in the enterprise concerned (in the form of a minimum number of members or a certain percentage (10, or 30, as the case may be) of the employees performing work of the kind regulated by the collective agreement). Commonly, disputes on whether a right to have a collective agreement "made binding" obtains pursuant to such rules are subject to bargaining procedures and, possibly, arbitration; disputes on the "basic agreement" rules themselves however pertain to the Labour Court.

b The overall trade union density rate is 56 – 57 per cent and has been stable at that level for a great number of years. There is however considerable variation between sectors; whereas about 84 per cent of public sector employees are unionised, total trade union density in the private sector is around 45 per cent but differing substantively across industries (manufacturing, services, etc.).

It follows from what has been said already (7, 8 a, above) that minority unions have collective bargaining rights – or, more precisely, freedom to bargain and, as the case may be, to take recourse to collective action with a view to concluding collective agreements. As far as statute law is concerned, restrictions in this regard maintain only under the PLDA.

Trade union multiplicity is a feature of some importance in Norwegian industrial relations. One category of employees may well be organised by two or more trade unions (or federations); and it is commonplace to find employees of the same category in a given undertaking being affiliated to different trade unions. On that account, an employer may frequently be bound by two or more collective agreements for the same personnel category – and thus by several for different categories of employees.

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[1] ARD = Dommer og kjennelser av Arbeidsretten (the Labour Court Law Reports).

Whether in statute law or in collective ("basic") agreements, a right for a trade union to unilaterally join, or adhere to, a collective agreement is not provided for.[2] Where a collective agreement already exists, if a union presses for an agreement on its own, the prevailing practice is for the employer side – if acceding to the union's claim – to conclude a collective agreement identical in substance to that already existing. In legal terms, such a "parallel collective agreement" is a separate and independent collective agreement in its own right.

c,d It also follows from what has been said above that a trade union does not and cannot represent non-unionised workers for collective bargaining purposes. Nor is a collective agreement binding on or as such applicable to non-unionised workers, or "outsiders". (*See*, in particular, 5, above.)

e A trade union, signatory party to a collective agreement, may initiate litigation on its own behalf – subject, however, to the proviso that pursuant to sec. 8 LDA[3], in disputes pertaining to a collective agreement the right of action is reserved for the superior party to the agreement. I.e., where a union is a (subordinate) party to an agreement to which its superior organisation is also a party, it is only the latter that may initiate litigation and act as plaintiff or, as the case may be, as defendant before the Labour Court. – In disputes pertaining to the collective agreement as such, the union plaintiff appears and acts in its own name but can also act on behalf of its members (subordinate organisations or individuals). However, a suit may be filed *also against* members, e.g., against a subordinate member organisation or employees for the payment of damages. In such instances, the relevant member must be sued and then obtains status as a defendant alongside the defendant organisation party.

The union, whether a signatory party to a collective agreement or not, may represent and assist members in individual grievances. It does however *not* have a right to initiate litigation on the worker's behalf in disputes concerning its individual employment relationship or contract. In such disputes, the right of action rests solely with the individual worker. Nor is there, generally speaking, a right for trade unions to file "class action" suits on matters concerning employment, etc.

f Matters concerning the interpretation, application, and enforcement of a collective agreement are, primarily, subject to "dispute bargaining" pursuant to rules laid down in the collective agreements themselves – mainly, in "basic agreements". Generally, a procedure is provided for whereby dispute bargaining starts at the local level and is carried upwards in the hierarchy of organisations, parties to the collective agreement. If no settlement is reached through such bargaining, suit may be filed with the Labour Court. Prior dispute bargaining between the (superior) parties to the collective agreement, it should be added, is a prerequisite to bringing suit with the Labour Court (pursuant to sec. 18, No. 2, LDA).

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[2] One exception applies. Pursuant to sec. 41 of the "basic agreement" for the State civil service sector, which is concluded between the State and the confederations of civil servants' trade unions, may be "joined" by independent unions having bargaining rights under the PSLDA, whereby the adhering union acquires bargaining rights and standing in dispute resolution in matters covered by the "basic agreement".

[3] Sec. 8 LDA and other procedural law provisions of the LDA apply similarly to litigation pursuant to the PSLDA.

g In the case of breach of a collective agreement, by a party or by a member being bound by the agreement, the Labour Court may hold action taken to be null and void, and grant an order for restoration, back payment, etc., as appropriate in the individual case. Otherwise, the applicable sanction for breach of collective agreement is that of damages, which is for incurred economic loss only. There are no provisions, in the LDA or the PSLDA, empowering the imposition of a fine of any sort (as, e.g., in Denmark) or an award for non-economic compensation (as, e.g., in Sweden). – Whether interlocutory injunctions may be issued, in disputes on breach of collective agreement or the "peace obligation" or otherwise is a moot point. It has still not been pushed to the point; in practice, the Labour Court deals with "urgent cases" involving pending or on-going industrial action expeditiously, in a matter of relatively few days, as the case may be.

9 Work agreements concluded by a non-union body

Bodies including representatives of, in principle, all employees in the enterprise or undertaking exist, albeit to a limited extent only. The Worker Protection and Working Environment Act, 1977, provides for bipartite Working Environment (Health and Safety) Committees in enterprises with more than 50 employees (or 20, if requested by either side locally). Under company law legislation (joint stock companies, and other), in companies with more than 30 employees there is a right to minority (one-third) representation on the company Board of Directors; if the company has more than 200 employees, as a main rule it shall have a "corporate assembly" on which employees similarly have a right to minority (one-third) representation. In addition, certain private sector "basic agreements" provide for bipartite "works committees" at the enterprise level – and also at departmental level, or for a company group, as the case may be – in enterprises with more than 100 employees.

The workforce at large in principle elects worker representatives to these bodies. The actual rules on elections are however thus framed as to facilitate the election of representatives nominated by local trade unions if they represent more than half of the workforce and act in concert. Otherwise, there is no formal relationship between these bodies and the trade union(s) concerned.

The role of the bodies, or the worker representatives on them, is mainly one of information and consultation, as well as being a form of participation in decision-making processes. They are *not* empowered to conclude collective agreements or other form of agreements legally binding on the employer and its workforce. – The power to conclude local subordinate collective agreements (*særavtaler*; *see* 3, above) at the enterprise level rests with the local trade union representation, pursuant to superior collective agreement rules, separate and independent from the bodies referred to above.

Local subordinate agreements (*særavtaler*) are common within the framework of all major general (national level) collective agreements. Albeit bargaining structures and the role and scope accorded to local subordinate agreements differ considerably, generally local subordinate agreements constitute an integral part of the overall collective agreement regulation within the ambit of any national level agreement.

From the legal point of view, a local subordinate agreement constitutes a part of the superior collective agreement in pursuance of which it is concluded and thus is

subject to the rules and procedures with regard to dispute resolution, enforcement, the right of action, etc., set out in 8, above.

C The role and (political) importance of collective agreements

10 Reliable data on the total number of collective agreements in force are not available. If all the various forms of collective agreements are taken into consideration, including local subordinate agreements and "accession agreements", the number evidently is huge. It is fairly considerable also if the perspective is narrowed down to collective agreements (general, and "basic") concluded at the national level. The multiplicity of national trade unions (and trade union confederations) and of employers' associations as well, provides for even more of a multiplicity of collective bargaining relationships, which is added to by the prevailing practice of concluding separate collective agreements for different branches, etc., within the larger sectors or industries.

A recent study[4] on the larger part of the private sector identified 56 national level general collective agreements each covering more than 1 000 unionised employees. That number would increase if total "coverage" (*cf*. below) were taken into account. If excluded branches and agreements, and the public sector, are included, the number of agreements of similar size may be estimated at around 70 (not counting the significant number of "parallel agreements" in different parts of the public sector as more than one each). But, this is merely a part of the picture. Including smaller agreements and also "basic agreements", the number of national level collective agreements amounts, at a rough estimate, to about 500 in the private sector. And, if parallel agreements in the public sector are counted as individual ones, that being their formal status, their number may be roughly estimated at some 100 or more.

With regard to collective agreement coverage it is requisite, first, to make clear what is understood by that notion. Here, a distinction should be made. An *employer* cannot be deemed to be covered unless it is legally bound by a collective agreement. For *employees*, this may be considered differently. By virtue of the employer's agreement-based obligation to respect the collective agreement also in employment contracts with 'outsiders' (*see* 5, above), the number of employees "covered" within enterprises bound by collective agreement, in practice exceeds the number of (unionised) employees who are legally bound by the agreement. In the present context, this wider concept of "coverage" is used.

In the *public* sector, put simply, collective agreement coverage is at 100 per cent. All employers (state, and local and regional municipality) are covered; and so are practically all employees.[5] The picture is rather different for the *private* sector. Here, research data indicate that between 50 and 55 per cent of all employees are "covered" by collective agreement, with variations to that rate across industries and branches. The proportion of employers that are bound by collective agreement is more difficult to assess, for several reasons. At a rough estimate, the rate is not more than 40 per cent.

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[4] T. Grytli & T. Aa. Stokke, *Norges største tariffavtaler: Omfang, lønnsdannelse og arbeidstidsordninger*. Fafo-notat 1998:3, Oslo.

[5] Only a very small number of top-level state civil servants, and judges, are exempted from collective agreements; less than 0.5 per cent of the gross number of state sector employees.

11(12) Looking at subjects addressed in collective agreements, a generalised grouping may be made along the classification of types of collective agreements.

Typically, "basic agreements" contain provisions on the "peace obligation", on the administration of collective agreements within its ambit and dispute resolution procedures, including rules on local subordinate collective agreements; on trade unions rights and facilities, etc., for elected union workplace representatives; on information, consultation and, as the case may be, "co-determination" bodies (such as "works committees"); and further on certain general aspects of terms and conditions of employment, training, workers' rights in the enterprise including gender equality, and health and safety.

General collective agreements regulate specific terms and conditions of employment (wages, hours of work, overtime, holidays and leave, pensions, etc.), and aspects of contracts of employment, health and safety, training, and workers' welfare; and habitually contain provisions on denunciation and renewal.

Local subordinate agreements, spanning a wide variety of issues in practice, typically regulate subjects covered by the relevant general collective agreement, mainly terms and conditions of employment, adapting and adding to the rules of the superior agreement at the enterprise level. Issues of denunciation and renewal are typically governed by rules laid down in the applicable "basic agreement".

13 For the most part – with the notable exception of wages – the issues referred to above are governed by legislation. This does not imply, however, that they are barred from being dealt with by collective agreements. Typically, worker protection legislation cannot be derogated from by agreement to the detriment of workers, but permits of agreement regulation more favourable to the worker and in many instances it is of a framework nature and fairly flexible, thereby rendering a wide scope for collective agreement regulation. Otherwise, as mentioned previously (in 1, above) there are no specific limitations on the scope of bargaining issues.

14 A distinction may be drawn, in principle, between "minimum terms" and "standard terms" collective agreements (insofar as general collective agreements are concerned, and with particular regard to the regulation of wages). This distinction is difficult to maintain in practice, however. Predominantly, general agreements allow of local, follow-up, bargaining on wages, etc., in some form or another, within more or less strictly defined bounds. Thus, even if some general collective agreements may be categorised as "standard terms" agreements at the outset, in real life it is only a small minority of agreements that are "standard terms" agreements in a strict sense.

D The role of labour courts in the collective bargaining process

15 The conclusion (or renewal) of a (general, or "basic") collective agreement is a matter for collective bargaining. If bargaining fails, the parties may take recourse to industrial action (strike or lockout; both are recognised on equal terms). Certain procedural rules, set out in the LDA and the PSLDA, must however be abided by, involving a "cooling off" period and, as the case may be, mediation. The office of the National Mediator is empowered (or, under the PSLDA, obliged) to summon the parties to mediation, which is subject to fairly restricted time limits. The Mediator is however not empowered to compel parties to a settlement, or to put a mediation proposal to a referendum. If mediation fails, industrial action may be implemented.

There are no rules, in statute law or agreements, providing for compulsory arbitration in this context – with one exception: Under the PSLDA, for employees that do not have a right to strike (appointed state senior civil servants, judges, military personnel) arbitration is mandatory if mediation fails. However, in practice it occurs that an *ad hoc* Act is adopted, prohibiting pending or on-going industrial action and referring the interests dispute to compulsory arbitration; this being a measure resorted to where, in the Government's assessment, the implementation or continuation of industrial action is harmful to the "public interest" (rather loosely understood).

The National Mediator's office is an independent public authority and has no links to the Labour Court. These are two separate pillars of the collective labour disputes resolution machinery, corresponding with the fundamental distinction on which this machinery and the different procedures are based: that of a distinction between disputes of interests and disputes of rights.

16-18 The Labour Court, or any other court, has no power to intervene in a dispute of interests. Courts are not empowered to engage in or to impose mediation or arbitration in disputes of this kind. Recourse to the Labour Court is only available if breach of the (statutory or collective agreement-based) "peace obligation" and relevant procedural rules (including those pertaining to mediation) is alleged; in which case the Labour Court may render a decision that the industrial action is unlawful and cannot be implemented, or must be stopped. The Court cannot, however, find industrial action unlawful on the grounds that in substance it is not a measure of "last resort" or not proportionate to the aims pursued, or similar. – As regards injunctions, *see* 8, g, above.

E Interpretation of collective agreements by the labour courts

19-24 Rules on the interpretation of collective agreements are not laid down in statute law, nor, as a rule, are they set out in the agreements. The rules on the interpretation of collective agreements have been developed through Labour Court case law, from 1916 onwards, and are fairly well settled. The fundamental point of departure to any interpretation is the wording of the agreement itself, but the interpretation process as a whole is a more complex and comprehensive one. At the outset, if the parties to the collective agreement share a common understanding of the clause or words at issue, this takes precedence. This implies, that the parties are not only asked but may freely argue their view on the interpretation. In the absence of a common understanding, the Court will consider the wording at issue, not in

isolation but in context with the collective agreement as a whole, its background and history, evidence on what transpired in the bargaining process leading to the text in dispute, etc. Generally, it may be said that a somewhat formal approach is employed, having regard to the distinction between rights disputes and interests disputes and that litigation should not serve as an arena for the continuation of interests dispute bargaining. – Apart from interpretation, courts are not vested with any form of power to extend or restrict collective agreement rules or provisions. Nor may courts void, or declare as inoperative, a collective agreement clause or provision on grounds of vagueness; however vague or unclear it may be, it is nonetheless subject to interpretation and application on that basis.

Disputes involving the interpretation of collective agreements constitute the predominant part of the Labour Court's caseload, which on average totals around 40 new cases annually. Only a minor part of the Court's cases – on average 10 – 15 per cent – are on other issues such as the lawfulness of industrial action, damages for breach of collective agreement, etc.