

**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**

**UNITED KINGDOM**

**National Reporter: Judge Peter Clark  
Employment Appeal Tribunal , London, United Kingdom**

**A. The legal framework of collective bargaining**

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

Preliminary

The United Kingdom does not operate a system of legally enforceable collective agreements. Parties must expressly state that such an agreement is legally enforceable. TULRCA 1992 Section 179. In practise this hardly ever happens.

It follows that there is no system for the regulation of the content of Collective Agreements. However, employers may be compelled to recognise a Trade Union for certain limited collective bargaining purposes by a determination of the Central Arbitration Committee (CAC) under the provisions of Schedule 1A, TULRCA 1992.

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.

There is no legal right to collective bargaining other than under a CAC determination.

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) .....
- ii) a law on collective bargaining .....
- iii) a framework (central) agreement .....

None apply, other than CAC determined rights.

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) .....

Collectively agreed terms are enforceable through the individual contracts of employment made between worker and his employer, where these terms are incorporated, expressly or impliedly, into the individual contract.

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?

Not at all.

### 3. **Types of collective agreements:**

Such agreements may be reached at National or local level between Trade Union(s) and employers or employer representative bodies.

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.

Not applicable.

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?

As earlier stated, the collective agreements are generally not enforceable as between the parties to them (Trade Union and employer).

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?

### **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 Union(s)/Employers; Employer Federations

### 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)?

By agreement between employers and Trade Union(s), subject to CAC determination.

- 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?

ACAS conciliation service; arbitration by agreement between the parties; CAC. Labour 'courts' are not involved directly in these disputes, other than the CAC.

A recent example of court/legislative distance from the issue is to be found in the European Court of Human Rights judgment in **Wilson v NUJ; Palmer and RMT Unions v The U.K.** (Applns 30668/96, 30671/96 and 30678/96). Judgment 2 July 2002.

The court found that under UK law an employer could undermine Trade Union representation by offering higher pay to employees who agreed to forgo representation by their Trade Union in wage negotiations. That breached the UK Government's undertaking under Article 11 ECHR to take all necessary measures to ensure that workers and employers may exercise freely the right to organise.

The issue will become increasingly important as a matter of law with the development of European Law rights, to which the UK has signed up through the ECA 1992 and the HRA 1998.

b. Where there is trade union multiplicity:

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

Joint Trade Union committees are formed.

- ii) 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?

Yes. Not particularly. Limited CAC case law.

- iii) 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 the UK there is no litigation arising over breach of a collective agreement, other than through the individual contract of employment (by incorporation) route.

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

Yes, insofar as the collective agreement is incorporated into non-member employees' contracts of employment.

- d. Can a collective agreement be applied to non union members?

Yes, as described earlier.

- e. 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. ....

No. As explained, collective agreements are hardly ever legally enforceable by union/employer signatories.

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

None, other than through individual contracts of employment.

- g. 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?

Not applicable.

**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?

The old Wages Councils, which set minimum wage rates in various, generally low paid industries, were abolished in 1993. Legislation to implement the European Works Council Directive is now in place. TICER 1999. Thus far it has made little, if any, impact.

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

Not applicable.

- 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*)?

No real relevance.

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

This question is not properly understood.

- e. Do these agreements include rules or procedures to settle disputes concerning their interpretation or application?

Not applicable.

- f. Can these agreements be enforced before a Labour Court?

No.

**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;

In 1998 41% of employees were covered by collective agreements. This figure had fallen from 64% in 1984 and 47% in 1990. However, probably as a result of the setting up of the new CAC in 1999, 159 new recognition deals were reached between November 1999 and November 2000.

- 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.

(See Table at Annex A)

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

All of (a) – (k).

- 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. Health and safety? .....
- Training? .....
- e. Workers' welfare .....
- f. Workers' rights in the enterprise: right of expression, data protection, other? .....
- g. Trade union rights and facilities to be afforded to union stewards? .....
- h. Settlement of disputes? .....
- i. Peace obligation? .....
- j. Interpretation and administration of the agreement? .....
- k. Procedures for denunciation and renewal of the agreement? .....
- l. Other?
  - disclosure of information
  - redundancy programmes – selection; consultation; redeployment
  - procedures to avoid industrial action

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)?

Virtually all with independent recognised trade unions or staff associations.

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

The law plays no part, save in the limited respect mentioned earlier (incorporation into individual contracts)

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

Generally standard terms of employment.

**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?)

Voluntary or compulsory (CAC) recognition followed by negotiated agreements made between the parties.

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

a. While negotiating a collective agreement? .....

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

b. Where such action is in breach of the peace obligation? .....

Our 'labour courts' as such (Employment Tribunals and Employment Appeal Tribunals) deal with individual, not collective rights.

Injunctive relief is available in the ordinary civil courts where industrial action is not covered by statutory immunity from suit for trade disputes. Such relief is not available under (a) or (b) per se.

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

Not applicable.

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?)

No.

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?

No.

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?

Only in the context of construing a term of a collective agreement which is incorporated into the individual contract of employment.

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

Not applicable.

### General

It should be apparent from the above that the United Kingdom system of collective bargaining is not regulated by law as in other states. This principle may be eroded by implementation of European law, for example in relation to Trade Union consultation.

Labour injunctions depend on the statutory immunity from suit for legitimate trade disputes; they are not dependent on the terms of any relevant collective agreement, even if it provides for machinery to avoid industrial action.

**ANNEX A – Table 5**

**Table 5 – Coverage of different pay fixing arrangements in 1998  
overall and by sector and industry (*per cent of employees*)**

<i>Industry group</i>	<i>Collective bargaining more than one employer</i>	<i>Collective bargaining higher in organisation</i>	<i>Collective bargaining at workplace</i>	<i>Set by management higher in organisation</i>	<i>Set by management at workplace</i>	<i>Negotiated with individual employees</i>	<i>Other (eg. pay review bodies)</i>	<i>% of total employees by industry</i>
<b>All employees</b>	<b>15</b>	<b>13</b>	<b>7</b>	<b>24</b>	<b>26</b>	<b>3</b>	<b>10</b>	<b>100</b>
<b>Public sector</b>	<b>40</b>	<b>17</b>	<b>4</b>	<b>12</b>	<b>3</b>	<b>0</b>	<b>22</b>	<b>31</b>
<b>Private sector</b>	<b>4</b>	<b>12</b>	<b>8</b>	<b>30</b>	<b>36</b>	<b>4</b>	<b>5</b>	<b>69</b>
<i>Manufacturing</i>	5	13	18	16	43	2	2	23
<i>Electricity, gas &amp; water</i>	9	69	7	7	2	0	2	1
<i>Construction</i>	26	5	2	28	20	3	15	3
<i>Wholesale &amp; retail</i>	6	11	1	48	24	3	3	15
<i>Hotels &amp; restaurants</i>	6	2	1	46	31	8	5	4
<i>Transport &amp; communication</i>	15	32	8	20	19	2	3	6
<i>Financial services</i>	2	32	4	28	27	1	15	4
<i>Other business services</i>	2	5	1	30	45	7	8	10
<i>Public administration</i>	36	28	2	12	1	1	17	8
<i>Education</i>	36	7	3	14	11	1	28	10
<i>Health</i>	28	11	6	17	15	1	20	14
<i>Other services</i>	19	6	6	30	27	2	8	3

*Notes: Data weighted, based to population of Great Britain, workplaces with 10 or more employees.  
The first seven rows do not add up to 100 per cent due to rounding errors.  
Source: Brown et al., 2000, from WERS98*