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TOPIC 1

TRADE LIBERALIZATION & LABOUR LAW : A CANADIAN PERSPECTIVE

THE ACTORS OF COLLECTIVE BARGAINING
POLAND – NATIONAL REPORT

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A. LEGAL FRAMEWORK FOR COLLECTIVE BARGAINING

1. Constitutional Provisions

The Constitutions of the Republic of Poland of April 2, 1997 (Journal of Laws No. 78, item 483), effective as of October 17, 1997, guarantees trade unions and employers the right to bargaining, especially in the resolving of collective disputes and concluding collective labour agreements and other arrangements (Article 59, Clause 2). It is on this basis that collective agreements are considered a specific source of labour law.

2. Legislation

a. Collective bargaining with the intent of concluding a collective agreement is regulated by Section 11 of the Labour Code of June 26, 1974 (unified wording in Journal of Laws No. 21 of 1998, with subsequent amendments).

b. There is no separate law on collective bargaining as such.

c. Poland is not a federal state.

d. There are no separate regulations governing collective bargaining in specified industries, etc.

e. Questions of collective bargaining are not regulated by the Civil Code.

f. The guidelines assumed in Section 11 of the Labour Code—the basis for collective labour agreements—were negotiated by the Government with the trade unions and employers' organisations giving is known as the "State Enterprise Package" signed in February of 1993. That document imposes obligations on the Government to put forward a legislative initiative. The act modifying the Labour Code with respect to collective labour agreements was passed on September 29, 1994 and came into effect on November 26, 1994. A successive amendment to Section 11 of the Labour Code came into effect at the close of the year 2000.

   The parties to collective agreements may regulate certain aspects of their mutual relations in connection with the applied agreements through obligation provisions—e.g. establishing ways for settling collective disputes in connection with the applied agreement that differ from that envisaged by the Act on the Settlement of Collective Labour Agreements.

g. The regulations governing collective agreements as well as the provisions of the agreements themselves, serving as sources of labour law, are subject to judicial review. In practice, application of such review is of a narrow scope in light of the detailed nature of legislative regulations.

   The courts have jurisdiction in the registration of collective labour agreements as a body hearing appeals against the decisions of registration bodies as well as in passing decisions relative to the representativeness of trade unions for negotiating collective agreements (see below).

3. How is collective bargaining (collective labour agreements) legally defined in your country?

Although Polish law lacks any direct legal definition for collective bargaining (collective labour agreements), it is not difficult to derive such a definition on the basis of regulations defining the parties to and the subject of negotiations.

4. The Duty to Bargain

a. The Labour Code includes the duty to undertake bargaining and to conduct such negotiations in good faith.

   Pursuant to Article 241^2 §3 of the Labour Code, no party guaranteed the right to conclude a collective labour agreement (employer, employer's organisation, the appropriate trade union structure) may refuse a demand by the other party to undertake such negotiations:

   1) In order to conclude such an agreement encompassing workers not encompassed by a collective labour agreement;

   2) In order to modify a collective labour agreement as justified by significant changes in the economic or financial situation of the employers or a worsening of the material situation of workers; and

3) If the demand is forwarded no earlier than sixty (60) days prior to the elapse of the period for which the collective labour agreement was concluded or following the date on which the agreement was terminated.

Pursuant to Article 241^3 §1 of the Labour Code, each of the parties is obligated to conduct negotiations in good faith and to respect the justified interests of the other party, which specifically signifies:

1) The taking into account of the postulates of the trade union organisation as justified by the economic situation of the employers;

2) Refraining from forwarding postulates whose implementation obviously goes beyond the financial abilities of the employers; and

3) Respecting the interests of workers not encompassed by the collective labour agreement.

b. The Labour Code does not include clear sanctions that may be applied in cases of refusal in violation of the duty to undertake bargaining with a party empowered to conclude a collective labour agreement or in cases in which such bargaining is not conducted in good faith.

In such a case, the parties representing the workers have the right to institute a collective dispute pursuant to separate legislation—the Act of May 23, 1991 on the Settlement of Collective Labour Disputes (Journal of Laws No. 55, item 236, with subsequent amendments).

Furthermore, pursuant to Article 241^3 §2 of the Labour Code, the parties to a collective labour agreement may independently define the manner of settling disputes connected with the subject of bargaining or other contentious matters that may make an appearance during bargaining in a manner differing from regulations governing the settlement of collective disputes. This is the method that may be applied in settling disputes related to any refusal to bargain or undertaking bargaining that is not in good faith.

5. The Civil Service

a. Essentially, the same legal regulations apply to collective bargaining in both the public and the private sectors (Section 11 of the Labour Code). The labour Code, however, does incorporate certain differentiation in the principles applied in the two sectors, and there is also the indirect impact of legislation outside the Labour Code on collective bargaining in terms of centralised control over growth in wages, which is separate for the private and public sectors.

b. The Labour Code incorporates exclusions relating to the category of persons who do not conclude collective labour agreements. Those categories include the civil service in government administration and local government as well as the judiciary (the civil service corps, etc.). Moreover, up to the end of the year 2003, supra–establishment collective labour agreements in the name of employers employing workers in state entities of the budgetary sphere not associated in employers' organisations are concluded by the appropriate minister of central government administration body (e.g. the Minster of National Education in the name of the school); similar collective labour agreements in the name of employers who are local government entities of the budgetary sphere are concluded by the appropriate local government bodies. Starting with the year 2004, however, all collective labour agreements on a supra–

establishment level shall be concluded uniformly on the side of employers by employers' organisations in both the public and the private sectors.

Legislation whose objective is central control over wage increases in the private and public sectors influences collective bargaining. With respect to the private sector, the legislation in question is the Act of December 16, 1994 on the Negotiating System for Shaping Growth in Average Wages in Business (Journal of Laws of 1995, No. 1, item 2, with subsequent amendments). The wage growth indicator for this sector as established by the government and the social partners in the "Tripartite Commission on Socio–Economic Affairs" (a forum for understanding among the central government, trade unions, and employers' organisation) is only a guidelines; to a degree, it is obligatory in the case of state enterprises. The indicator serves as a starting point for annual collective bargaining relating to changes in wages in the enterprises. With respect to the public sector, the legislation in question is the Act of December 23, 1999 on Shaping Remuneration in the State Budgetary Sphere (Journal of Laws No. 110, item 1255, with subsequent amendments). The wage growth indicator for this sector (government administration, teachers, etc.) is negotiated in a manner similar to that for businesses and is then incorporated into the budgetary act. It is fixed and cannot be changed to the benefit of employees within the framework of collective bargaining underway in entities making up the budgetary sphere (compare with Item No. 14).

B. LEVEL AND STRUCTURE OF COLLECTIVE BARGAINING

6. Please indicate if in your country collective bargaining takes place mainly or exclusively at the level of:

a) The establishment;
b) The enterprise;
c) The branch of industry;
d) The national central level; and
e) Other levels, such as occupational groups?

In line with the present legal state, collective bargaining relating to collective labour agreements may take place on any level starting with the establishment and upwards in accordance with any criteria defining their range.

The Labour Code differentiates between establishment and supra–establishment collective labour agreements. The status of collective labour agreement applies equally to agreements concluded for a single establishment as well as entities concentrating more than one employer, such as a holding company made up of the parent company and subsidiaries.

Supra–establishment collective labour agreement regulations are applied in the case of higher levels. In practice, these are most often industry, occupational group, or occupational–territorial agreements. The potential for concluding nation–wide collective labour agreements between employees and employers in the Tripartite Commission is clearly assumed in the Act of July 6, 2001 on the Tripartite Commission on Socio–Economic Affairs and the Voivodeship [provincial] Social Dialogue Commissions (Journal of Laws No. 100, item 1080, referred to as the "Tripartite Commission Act"). In practice, the dominant form of collective bargaining is on the establishment level.

7. When collective bargaining takes place at different levels, does a hierarchical relationship exist, or is there co–ordination between those different bargaining levels?

The principle in force is that the provisions of an establishment–level collective labour agreement cannot be less favourable for the employee than the provisions of a supra–establishment collective labour agreement simultaneously encompassing that employee (Article 214^{26} §1 of the Labour Code). Thus, and establishment collective labour agreement may only be more favourable to the worker than the supra–establishment agreement.

8. To what extent does international collective bargaining have and actual or potential bearing in your country's collective bargaining practice?

To date, international (European) collective bargaining has not had any influence on collective bargaining practice in Poland.

C. THE PARTIES TO COLLECTIVE BARGAINING: WORKERS' REPRESENTATION

9. Workers' Representation by Trade Union

a. The question of trade union representativeness is regulated by the Labour Code for collective bargaining on the establishment and supra–establishment level, respectively. Pursuant to Article 241^{17}, representativeness on the supra–establishment level lies with trade union organisations that satisfy at least one of the following three criteria:

   1) They associate no less than 500,000 workers;

   2) They associate at least 10% of all workers encompassed by their chartered scope, but no less than 10,000 workers;

   3) They associate the largest number of workers for whom the specific supra–estabpishment agreement is to be concluded.

   Representativeness of the supra–establishment trade union organisation is determined by the Regional Court for Warsaw (Article 241^{17} §2^{2} of the Labour Code). In the event that a confederation is deemed to have representativeness, then national trade unions and federations forming it also acquire representativeness by law (Article 241^{17} §3 of the Labour Code).

   Representativeness in the case of establishment level trade union organisations is derived from the size of the organisation and, to a degree, is a derivative of the representativeness of trade union organisations on a supra–establishment level. Pursuant to Article 241^{25a} §1 of the Labour Code, representativeness in the case of an establishment level trade union organisations requires the meeting by that organisations of one of the following two criteria:

   1) Affiliation in a supra–establishment trade union organisation that is deemed to hold representativeness (e.g. the Solidarity Commission, which is a link in the Solidarity Independent Trade Union, a nation–wide representative trade union) assuming that it associates no less than 7% of workers employed with the employer;

2) Association of at least 10% of workers employed by the given employer, if it is not an affiliated organisation.

If no establishment trade union organisation satisfies the above requirements, then the organisation that associates the largest number of workers is acknowledged as having representativeness (Article 241^{25a} §2 of the Labour Code). Thus, if an establishment has trade unions then at least one of the trade union organisations is considered to have representativeness.

In establishing the number of associated workers, only workers who have been members of the given trade union organisation for no less than six months prior to any collective bargaining are taken into account (Article 241^{25a} §3 of the Labour Code).

The representativeness of an establishment trade union organisation is based on the principle that the organisation satisfies criteria as laid down by the Labour Code. This assumption of representativeness, however, may be questioned by another establishment trade union organisation (see below).

Nation–wide collective labour agreements regulated by the Act on the Tripartite Commission are concluded by representative employer organisations whose representatives sit on the Commission. Representative organisations are specified in the Act by name, where this group may be enlarged to include other organisations that meet the limiting conditions. The representativeness of these is determined by the Regional Court for Warsaw.

b) The quality of supra–establishment representativeness of trade union organisations is determined by the courts. This occurs on the basis of regulations contained in the Code of Civil Proceedings regarding non–litigious procedures. During the course of such proceedings, the court examines all circumstances surrounding the case; it may also take into account reservations forwarded by persons and organisations calling into question data provided by the trade union organisations claiming representativeness.

The representativeness of an establishment level trade union organisations, for its part, is not determined by the courts and, in principle, is based on guaranties on the part of the interested organisations, that it satisfies conditions for representativeness.

However, prior to the conclusion of a collective labour agreement, other establishment level trade union organisations or the employer can submit reservations regarding the satisfaction of representativeness criteria by the given organisations to participants in collective bargaining (Article 241^{25a} §4 of the Labour Code). In such cases, the organisation cited in the reservations is obligated to apply to the labour court for confirmation of its representativeness (Article 241^{25a} §5 of the Labour Code).

In addition to the above procedure for control, which may be termed *ex ante* control (preceding the conclusion of the agreement), there are also *ex post* control procedures applicable following the registration of the collective labour agreement. Pursuant to Article 241^{11} §5^{1} – §5^{5} of the Labour Code, any person with legal interest may, within a specified period of time, approach the registration body with reservations suggesting that the agreement was concluded in violation of regulations governing the concluding of collective labour agreements. Legal defects may include failure to meet conditions of representativeness on the part of a trade union organisation claiming such representativeness if under such circumstances the concluding of the collective labour agreement would have been legally impossible. If the reservation is deemed to be justified, then the effect is the striking of the agreement from the registry that is subject to control by the courts.

c) In the case of collective bargaining on the establishment level, the structure empowered to conclude a collective labour agreement is always the establishment trade union organisation, regardless of whether or not it is a link in the supra–establishment structure or if it is an establishment trade union that is not a part of any supra–establishment structure.

In the case of complex trade union structures on a supra–establishment level—i.e. when a supra–establishment organisation represents workers for whom a collective labour agreement is to be concluded, such as the case when a trade union for a given industry is a part of a federation or confederation, then pursuant to Article 241^{14a} §1 of the Labour Code, the organisations empowered to conclude the agreement is that specific supra–establishment organisation, not the federation or confederation (the principle of decentralisation).

It is only in one case that the Labour Code grants the confederation bargaining powers in place of entities making up that confederation. Specifically, a confederation becomes a participant in bargaining and concludes collective labour agreements if a request, inclusive of justification, is submitted to it by at least one of the other supra–establishment trade union organisations involved in the bargaining relating to the agreement (Article 241^{14a} §2 of the Labour Code). In such cases the confederation cannot refuse participation in the bargaining. Trade union bylaws cannot change this principle.

Nation–wide collective labour agreements are regulated by the Act on the Tripartite Commission and are concluded by two specifically identified trade union structures for the workers; one is a national trade union (the Solidarity Independent Trade Union) while the other is a confederation (the All Poland Trade Union Alliance).

d) No institution of trade union delegates exists in Polish law. Collective labour agreements are concluded by the charter bodies of the appropriate trade union structures. However, trade union organisations send their representatives (delegates) to jointly represent the trade unions in negotiating the collective labour agreement if such a body is created (see below).

e) Polish law does not envisage the ratification of negotiated collective labour agreements by the rank and file, although workers do have informal influence other the course of bargaining.

f) In cases of multiplicity of trade union organisations representing workers for whom a collective labour agreement is to be concluded on the supra–establishment level, the following solutions are applied in accordance with the Labour Code (Article 241^{16}):

Firstly, a joint representative body may be established representing all interested trade union organisations. This joint representative body is intended to simplify the conducting of bargaining, but it is the specific trade union organisations that are the parties to the agreement in the name of workers, not their joint representative body. Secondly, all trade union organisations may act jointly without creating a joint representative body.

If not all trade union organisations take up the call for bargaining within the deadline as defined by the entity initiating the bargaining process (where the method for determining such a deadline is defined by regulations), then those organisations that took up the call for bargaining are empowered to bargain. However, in order for the bargaining to be effective, at least one organisations with representativeness must be a participant. A supra–establishment agreement is concluded by all organisations

participating in the bargaining process or at least all organisations considered representative that took part in the bargaining process.

Similar principles are applied in the case of collective bargaining regarding a collective bargaining agreement in the case of a multiplicity of establishment level trade union organisations (Article 241^{25} of the Labour Code).

g) A trade union organisation that was not an original signatory may enter into the rights and obligations of the parties to the agreement with the consent of the parties (Article 241^{9} §3 of the Labour Code). Moreover, a trade union organisation that acquired the status of representativeness following the conclusion of the collective labour agreement may enter into the rights and obligations of the parties by submitting an appropriate declaration to the parties to the agreement (Article 241^{9} §4 of the Labour Code). In such cases the consent of the parties to the agreement is not required for the joining of the new organisation. The joining organisation benefits from the same rights as those organisations that were the original signatories to the collective labour agreement, which means that its consent is required for all actions relating to the agreement (modifications and amendments, termination, etc.).

h) Trade unions undertake collective bargaining in the name of all workers represented by those unions, both those that are union members and unassociated individuals. Similarly, a collective agreement is concluded for **all** workers employed by employers encompassed by its provisions (Article 239 §1 of the Labour Code)—both workers associated in trade unions and unassociated workers. Although the parties may decide that the agreement shall not apply to all workers, but the accepted view is that any exclusions cannot encompass workers who are not members of any union or who are members of unions that are not parties to the agreement. Exclusions from an agreement of a part of the workers of a given establishment may be the result of the provisions of the bylaws of the given trade union that is limited to a specific vocational group—e.g. professional staff or a trade union representing employees working at a plant in continuous operation in company X.

j) Trade union organisations that are signatories to a collective labour agreement act jointly in the name of the workers in performance of actions relating to the agreement (Article 241^{9} §2 of the Labour Code). These include the introduction of modifications and amendments by way of supplements, reaching an understanding regarding the suspension of the agreement, applying for an expansion of a supra–establishment agreement to include workers not encompassed by it, undertaking action aimed at terminating the agreement, etc. Similar rights are vested in trade union organisations that became a party to the agreement when it was already in force (see above).

The rights and obligations of the trade union organisations that are parties to collective labour agreements are laid down in detail in Section Eleven of the Labour Code as well as in the collective labour agreements themselves, where the obligatory manner for interpreting the collective labour agreement by the trade unions and employers is defined, for example.

k) Upon registration, the provisions of a collective labour agreement are considered regulations of labour lode (Article 9 §1 of the Labour Code) and become a part of individual employment contracts. Thus, workers may demand their rights as guarantied by the agreement through labour courts. As to forcing an employer to perform in line with the non–normative provisions of the agreement, trade unions may take recourse in union pressure right up to and including a collective dispute.

10. Workers' Representation by Non–Union Bodies

a) Establishment level non–union representation may be found in the state enterprise sector as well as in former state enterprises encompassed by ownership transformation.

The system applied in state enterprises is regulated by the Act of September 25, 1981 on State Enterprises (unified wording in Journal of Laws of 1991, No. 18, item 80, with subsequent amendments). A component of that system is the employees' self–government, whose structure and rights are regulated by the Act on State Enterprise Self–Government of the same date (Journal of Laws No. 24, item 23, with subsequent amendments). Bodies of this self–government include the enterprise workers' council and the workers' assembly. The formula laid down in the legislation states that the employees take part in the management of the state enterprise through their self–government (Article 1, Clause 1 of the Act). The workers' council has significant jurisdiction, especially in economic matters relating to the enterprise. Basically, it is the council that appoints the director, it also has the right of review, and may submit initiatives, recommendations, and comments in all enterprise matters.

This enterprise system, based on co–management by workers, is similar in nature to the model of worker control over the enterprise; it is presently considered to be an anachronism. The process of ownership changes resulting in the transformation of state enterprises initially into State Treasury companies (commercialisation) and subsequently their privatisation, is leading to a shrinking and ultimate disappearance of this sector of enterprises with its high level of worker participation.

The companies created as a result of the ownership transformation of state enterprises are subject to the Act of August 30, 1996 on the Commercialisation and Privatisation of State Enterprises (Journal of Laws No. 118, item 561, with subsequent amendments), which superseded the Privatisation Act of 1990, which assumes different forms of representative participation. These new forms entail the participation of workers' representatives in the company supervisory boards where such representatives account for approximately one–thrd of the board, and in companies employing more than 500 workers, a representative of the workers occupies on seat on the executive board.

In all other work places, essentially it is the trade unions that have a monopoly. However, recent years have seen a careful tendency on the part of lawmakers to get away from a radical adherence to trade union exclusivity in undertaking collective decisions with respect to the staff. (Compare with expanded comments in Item 11.)

b) Legally, the above–mentioned worker–participation institutions are independent of trade unions. In the case of workers' councils in state enterprises, their independence from trade unions (as well as administrative and political factors) is a basic principle of their functioning that is stressed in the Act on Worker Self–Government (…) (Article 1, Clause 3). Workers' representation on supervisory boards and executive boards of companies created on the basis of state enterprises is also legally independent of trade unions. However, in companies with a high level of unionisation, trade unions have a decisive impact on the election of people appointed to those councils and they strive to influence their activities. Thus, one may speak of a *de facto* influence exerted by trade unions. This situation varies depending on specific company.

c) The workers' councils of state enterprises are co–responsible or completely responsible for decisions in key economic and organisational matters—e.g. they pass

resolutions in questions of investments, mergers, and subdivisions, they express consent for transforming the enterprise into a commercial company.

Workers' representatives on supervisory or executive boards in companies created as a result of the transformation of state enterprises have no special rights or competencies. As members of these collective company bodies they have some influence over the functioning of those bodies whose jurisdiction is defined by the Commercial Company Code. This is not a decisive influence, however, as a result of the minority character of workers' representatives.

The above non–union bodies representing the staff do not have the right to conclude collective labour agreements nor any other legally binding agreements in the realm of Labour Law.

d) The above–discussed bodies do not conclude normative agreements, but only obligatory agreements such as agreements regulating collaboration between the workers' council and state enterprise director.

11. Workers Representation by *Ad Hoc* Committees

The shaping of the seeds for an institution of elected personnel delegates established in an *ad hoc* manner in connection with a need to collaborate with the employer in specific employee–related matters may be noted pursuant to Code and non–Code regulations. In the present legal state it is possible to identify fourteen cases in which such *ad hoc* representatives on the establishment level are called. Workers selected by the personnel work with the employer, mainly in social matters and vocational health and safety.

Sometimes, their role is based on the conducting of *sui generis* collective bargaining with the employer—e.g. in non–unionized establishments the employer is obligated to come to an agreement with workers elected by the personnel as to social benefit bylaws. However, there is no permanent, personnel–elected worker representative body outside the state and post–state sector (compare above). Legal theory suggests the creation of a legal framework for such institutions that could function under the name of *establishment council*.

Ad hoc worker's representatives basically function only in non–unionized work places. For this reason there is no problem relating to their relationship with trade unions.

12. Protection of Workers' Representatives

Union officers are protected by the provisions of the Act of May 23, 1991 on Trade Unions (unified wording in Journal of Laws No. 79 of 2001, item 854, with subsequent amendments). This protection revolves around the right to be temporarily released from the obligation to work in line with principles as defined in the Act as well as on the protection of the employment contract.

This temporary release from work is the right of members of the executive board of the establishment trade union organisation, where the number of such persons is dependent on the number of union members in the work place. Standards are defined by the provisions of the Act (Article 31 of the Act on Trade Unions). Temporary release from work is paid (preserving the right to remuneration) or unpaid, depending on the application filed by the trade union organisation. Moreover, the employee has the right to be exempt from work while maintaining the right to remuneration for the period vital for the execution of summary actions as stemming from his or her trade union function if such activities cannot be carried out during time free from work.

Members of the executive board and of the committee for the auditing of accounts of the establishment trade union organisation are protected against firing or the termination of their employment contract for the duration of their terms in office and for a period of one year following its expiration. To a degree, this protection of the employment relationship also extends to encompass members of the trade union founding committee. The circle of trade union activists protected against loosing their jobs has been limited somewhat as a result of modifications recently made to the Act of Trade Unions (in connection with the amending of the Labour Code) of July 26, 2002.

D. THE PARTIES TO COLLECTIVE BARGAINING: REPRESENTATION OF THE EMPLOYERS

13. Employers' Representation in the Private Sector

a) A supra–establishment collective agreement is signed by the appropriate charter body of employers' organisation acting in the name of employers associated in that organisation (Article 241^{14} §1, Clause 2 of the Labour Code).

b) The existence of collective agreements of a higher level in force does not make impossible the negotiating by the employer of an establishment level collective labour agreement, whether or not the employer is a member of the employers' organisation.

c) Collective agreements concluded by employers' organisations bind only employers who are members of that organisation.

d) If the parties so apply jointly, a supra–estabslihment collective labour agreement may be expanded to encompass the whole or a part of workers employed by and employer not encompassed by the agreement (Article 241^{18} §1 of the Labour Code) regardless of whether or not that employer is or is not a member of the employers' organisation that concluded the agreement.

   This encompasses employers who are not encompassed by any supra–establishment agreement involved in economic activity that is the same or similar to the activities of employers encompassed by the agreement. This generalisation of an agreement, if not applied of by the parties, requires the satisfaction of several additional conditions. It is undertaken by the Minister of Labour and Social Policy by way of an enactment if major social interests so require. The opinion of employers that are to be encompassed by such an expansion or of an employers' organisation and establishment level trade union organisation identified by that employer must be considered if such an agreement is to be expanded; it must also be reviewed by the Collective Labour Agreement Commissions of the Ministry of Labour and Social Policy.

e) The rights and obligations of employers' organisations, as parties to a collective labour agreement, are regulated by Section Eleven of the Labour Code as well as other acts in the realm of collective labour law and the collective labour agreements themselves in the obligatory sections.

   Possible sanctions against trade unions are dependent on the type of infringement against a collective labour agreement in force. For example, failure to respect the period of social calm as called for by the agreement—a ban on instigating collective disputes aimed at modifying the provisions of the agreement prior to its termination (Article 4, Clause 2 of the Act of May 23, 1991 on Settling Collective Disputes, Journal of Laws No. 55, item 236)—results in the absence of any obligation on the part of the employer or employers' organisation to undertake bargaining with the trade union side.

Should a strike be called then its organisers bear all criminal–administrative, criminal, civil–legal, and worker responsibility.

In general, the liability of the trade union is not symmetrical to that of the employer, because it is the employer who is charged with care for the proper application of the concluded agreement.

14. Employers' Representation in the Public Sector

a) Employers' organisations shall be the exclusive representatives of employers in the public sector for purposes of concluding collective agreements starting with the year 2004. The provisions of the Act of May 23, 1991 on Employers' Organisations (Journal of Laws No. 55, item 235) do not envisage any specific legal status for organisations active in the public sector. Organisations associating employers in this sector will, therefore, have a legal status identical to that of organisations of other ranges of activity. Employers in the public sector may associate in nation–wide organisations, which is currently the Confederation of Polish Employers.

During the transitional period up to the end of the year 2003, supra–establishment collective agreements will continue to be signed by the appropriate government or local government administrative bodies in the name of employers employing workers of state entities of the budgetary sphere as well as local government units that are not associated in employers' organisations (compare with the comments in Item 5b). Such agreement cannot be in force for a period extending beyond December 31, 2005.

b) The Labour Code does not differentiate between the role played by the employer in collective bargaining in the public sector regardless of if negotiations involve an employers' organisation or administrative bodies, such as the minister. Agreements concluded in this sector do not differ in formal aspects from agreements in force outside it. They are subject to registration in line with general principles (in the case of supra–establishment agreements, the registering body is the Minister of Labour and Social Policy) and do not require any ratification under the current legal state.

However, growth in worker remuneration in the case of the employees of state entities in the budgetary sphere is regulated by indicators established on the forum of the Tripartite Commission (compare with comments in Item 5b).

c) Any negotiated (and in the case of a lack of agreement, unilaterally established by the Government) allowable remuneration growth indicator in the state budgetary sphere is submitted by the Government to the Sejm [parliament] together with the draft state budget. In order for this indicator to be applied by the Sejm and Senate as specified in the budgetary act, the Government must have sufficient political support in parliament. To date there has been no case noted in which decisions made by the Tripartite Commissions have not been respected.

The direct obligatory nature of wage indicators for the state budgetary sphere stems from the budgetary act. In its wording as amended in July of this year, the Labour Code now has a provision whereby the conclusion of any agreement encompassing workers employed with entities financed out of the budget may only occur within the framework of financial resources at the disposal of that entity, including resources for remuneration established in the manner presented above. The satisfaction of this condition by budgetary entities is confirmed by hierarchically superior entities as a part of the registration process.