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COLLECTIVE AGREEMENTS IN POLAND

Henryk Lewandowski*

1. The Early Model for Collective Agreements in Poland

Collective agreements were first legally sanctioned in Poland by the Act of 14 April 1937 concerning collective agreements.[1] Until that time collective agreements, generally referred to as "group contracts" existed *de facto* but were only partly acknowledged in labour law. Due to the 1937 Act Poland became one of the few countries at that time which accorded legal recognition and protection to collective agreements in a single act.

According to the above-mentioned Act, collective agreements could specify all the conditions of contracts of employment and include other provisions mutually binding on both parties to the contract. Collective agreements could be concluded at different enterprise levels and vary in scope; decisions regarding the range and scope of an agreement were left to the parties. According to the so-called legal theory, which guided the legal interpretation of collective agreements in Poland, the normative provisions of a collective agreement applied to all workers in the enterprise or branch which the agreement encompassed, regardless of whether or not they belonged to the trade union organisation which was party to the agreement.

By its nature, the "legal theory", accepted together with all its implications, granted workers a privileged legal position (known as the principle of "workers' privilege"). This principle determined the relationship of collective agreements to legislative acts as well as to individual employment contracts. The provisions of collective agreements which deviated from legislative norms were legally recognised so long as such deviation was to the advantage of the workers. Similarly, from the moment of its taking effect its provisions superseded those of individual employment contracts so long as said provisions were more advantageous to the workers than the superseded provisions of the employment contracts. The collective agreement, however, could not negate

* Professor of Labour Law at Łódź University.

[1] *Dziennik Ustaw (Dz.U.)* [Journal of Laws] no. 31, item 242. Various problems concerning collective agreements against the background of this Act are discussed by W. Szubert in his monographic study: *Układy zbiorowe pracy* [Collective Agreements], Warszawa 1960. For a concise presentation of the development of collective agreements in Poland, encompassing the 1937 law, see my article: "Le role des accords collectifs dans le droit du travail polonais", *Acta Universitatis Lodziensis, Folia Iuridica* 1991, no. 46, p. 79 and following.

those provisions of employment contracts or legislative acts, which were more advantageous to the workers.

The principle of the workers' privilege was also applied in the event of a conflict between the provisions of various collective agreements. In those cases, employers were required to comply with the provision(s) of the applicable collective agreement, which was most advantageous to its workers. In addition, the principle was extended to provide that upon the expiration of a collective agreement those original conditions less advantageous to the workers were not automatically reinstated. The workers retained the advantages of the expired agreement. Even in those cases where the expired collective agreement was replaced by a new agreement, the provisions of the new agreement could not eliminate those privileges which were vested in the workers as a result of the earlier agreement, unless, of course, they contained more advantageous provisions.

2. Collective Agreements during the Period of "Real Socialism"

After regaining independence at the end of the second world war Poland inherited the 1937 Act on Collective Agreements together with the entire system of labour law prevailing from the inter-war period. In the new systemic conditions, based on centralised planning and administration, the entire process of collective bargaining was transformed fundamentally. Following a short period of intensive development, first the freedom of the parties to negotiate wages was restricted, and later their freedom to negotiate work conditions was further limited. This period is marked by the intervention of government organs responsible for the wage and income policy. The legislative act became the major mechanism for regulating labour relations, and collective agreements were assigned a subsidiary role. They became used primarily as an instrument to implement wage policy in a socialised economy and as a means to differentiate branch policies.

As a result, collective agreements lost their "bargaining" element. Instead of being the result of negotiations over normative provisions in labour relations between autonomous parties, they became a form of coerced cooperation between economic administrators and trade unions in creating the law governing labour relations. Their provisions were carefully selected on the basis of laws, regulations, and politico-economic directives setting forth the government's reigning socioeconomic policy. Only on those conditions and subject to those limitations were collective agreements recognised as a primary source of law.

The above-mentioned changes, presented in a synthetic manner, were carried out in practice; they were not reflected in the existing law and regulations until the codification of labour law in 1974. Up to that time, however, as much as one might have tried, it was almost impossible to justify the existing practices as a means of implementing the 1937 Act, which legally remained in force. Labour policy was being dictated by the government, and not formed on the basis of a freedom to bargain collectively. Therefore, the changes which took place were regarded as transformations in the legal form of collective agreements, naturally occurring without a corresponding modification of the basic law. The decisive factor was deemed to be the new reality, in which collective agreements were concluded.

The first step in significantly restricting the negotiating freedom of the 1937 model for collective agreements was instituted by making the legal effect of collective agreements dependent upon their consistency with the assumptions of the government economic plans. This, above all, concerned wages and other benefits which were an economic burden to the enterprise or branch concerned.

Control and supervision over the projected nature of collective agreements by such means was already occurring as early as 1946 with regard to collective agreements of a national scope. Before such agreements could be concluded, they had to be submitted to the central planning authorities for their opinion. In later years, the scope and principles underlying such supervision and control were changed, but they always constituted a form of *a priori* control, with compliance and approval being necessary for the conclusion of a collective agreement.

It should be noted that - as has already been indicated - until the adoption of the Labour Code in 1974 the requirement that the provisions of collective agreements comport with existing economic plans and policies was nowhere to be found in the laws and regulations. Therefore, failure to comply therewith should not obviate a concluded collective agreement, as the Supreme Court declared in a 1956 decision.[2] In the situation, however, where one of the parties to such agreements was almost always a governmental supreme administrative organ (either a Minister or the President of a central administrative office), those occasions where compliance with the principle of prior review and acceptance was omitted, were few and far between.

Another deviation from the 1937 model occurred by concentrating the negotiations and collective agreements almost exclusively at the branch level. The negotiating freedom of the parties as to the range and scope of agreements was thus significantly reduced. Collective agreements could encompass only a branch, either in whole or in part. This process was significantly facilitated after the nationalisation of the economy in 1946, when governmental economic units, based on the branch principle, began to predominate, and eventually became almost the exclusive form of economic activity.

The concentration of collective agreements at the branch level was brought about by increasing administrative centralisation and a connected desire on the part of the administrative authorities to exercise strict control over the social and economic policies and activities in their branches. A significant development in this regard was also the formation of branch structures in the trade union movement.

The centralising tendency in national economic administration also formed the background out of which the third significant deviation from the 1937 model arose. In the increasingly dominant and eventually almost exclusive governmental sector, the "employer" (state enterprise), conceived as party to a collective agreement, became more

[2] Decision no. 740/56, published [in:] *Przegląd Zagadnień Socjalnych* 1957, no. 3, p. 52-54.

and more often a governmental administrative organ. Initially, representatives of the central (branch) industrial boards constituted the authorised employers, and later authorisation was assigned to appropriate ministries. Those officials had the exclusive competence to conclude such agreements. The representatives of the branch trade unions could conclude agreements with them alone. This process of authorising government organs to take the place of authentic employers affected both the substance and, as was already indicated, the character of collective agreements.

The codification of labour law in 1974[3] introduced a new system of regulating collective labour agreements. The new provisions and regulations gave legal sanction to the changes which had evolved in practice, and additionally introduced further restrictions, which severely limited collective agreements as a primary source of labour law. The new model for collective agreement constituted a complete expression of its role in a centralised economy, where the only thing that mattered was the law established by the central authorities, and collective agreements were reduced to a wholly secondary role, fulfilling primarily the function of differentiation, and then only to a limited extent.

The decision as to whether a particular collective agreement was in accord with the assumptions of existing economic plans was entrusted to the Minister of Labour, Wages and Social Affairs. If he refused to register a particular agreement, his decision was not subject to review or appeal. Thus, the Minister became a behind-the-scene third party to all agreements, vitiating their legal character.

The criteria for determining branches and occupations became fixed exclusively by legislation. The practice of entrusting to ministries or central administrative managers the role of the "employer" party was also given legislative sanction in the 1974 Code.

Immense significance in reducing the role of collective agreements was ascribed to provisions restricting the normative scope of such agreements. According to the regulations issued in 1974, collective agreements could only concern those work conditions which were specific to a particular branch or profession. Collective agreements were assigned the function of adjusting the existing labour policy and provisions to conditions prevailing in a particular branch. Given such restrictions, collective agreements lost their force as an impetus in the development of labour law.

The restrictions placed on the role of collective agreements were undoubtedly influenced by the fact that they were included in, and intended to be part of the Code section designed to unify workers' rights and benefits, as well as by the false conviction on the part of the Code's drafters that, following codification, collective bargaining agreements would no longer have a necessary function to fulfil in the development of labour law.[4]

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[3] Labour Code of 26 June 1974, *Dz.U.* no. 24, item 141. Regulations concerning collective agreements constitute Section Eleven of the Code. After the amendment of 1996, the consolidated text of the Labour Code is published in *Dz.U.* 1997, no. 25, item 128.

[4] The falseness of this conviction, expressed during discussions prior to codification, was proved by W. Szubert: "Rola układów zbiorowych w dalszym rozwoju prawa pracy" [The Role of Collective Agreements in Further Development of Labour Law], *Zeszyty Naukowe Uniwersytetu Łódzkiego* 1974, no. 107, p. 18-19.

The substantive limitations placed in collective agreements by the Labour Code also included wages. From this time on, collective agreements could not establish any general conditions concerning remuneration. The parties to an agreement could only establish the details of applying the wage and benefit regulations fixed by the government in accordance with an agreement between it and the Central Council of Trade Unions.

The next model for collective agreements arose out of the 1986 amendments to the Labour Code. The 1986 model for collective agreements did differ somewhat from the earlier model as a result of the increased autonomy granted to state enterprises, conceived as economic units by changes in the law in 1981.[5]

The content of collective agreements concerning state enterprises differed in certain respects from other government sectors. In particular, their provisions regarding wages established a basic framework. The specific provisions implementing the established framework were fixed at the enterprise plant level, in accordance with each enterprise's financial capabilities, by plant wage agreements, which were intended to constitute the central means of negotiating wage payments.

The aforementioned distinguishing features of collective agreements concerning state enterprises were, in principle, headed in the right direction, i.e. decentralisation and démocratisation. Their scope was too limited, however, to allow collective bargaining agreements to play a significant role, as was afterwards conclusively proven by practice.

The above concise description of the legal status of collective agreements demonstrates that they were known in Polish labour law during the years of "real socialism". The scope of the regulation, which the agreements provided, varied with time, primarily depending on the legislature's views on the value of collective agreements as a means of formulating wage and working conditions during different stages of the socialist system.

The legislative framework, however, does not fully reflect the role which collective bargaining agreements really played in practice. First and foremost, it should be stated that their actual importance was more widespread than could be deduced from the legislative norms themselves. As was indicated at the outset, collective agreements are of a specific nature, and are sometimes more influenced by such non-legal factors as economic and political conditions than by legislative norms themselves.

In concluding this section it may be stated that, aside from the beginning of the second half of the 1940s and several short periods of increased trade union power, collective agreements in Poland were characterised by the lack of any features of authenticity and, owing to their nature, became entirely discordant from corresponding agreements reached in democratic countries. The nature and (non)importance of collective agreements was determined by the predominant position of the state, which not only assumed the role of the employer party to such agreements, but also effectively controlled their content. The 1974 codification of labour law significantly reduced the legal contents of collective agreements, which thereafter bore more similarity to execu-

[5] By virtue of the state enterprise law of 25 September 1981, *Journal of Laws* no. 24, item 122.

tive regulations than an autonomous source of labour law, formulated by parties enjoying equal rights.

3. Towards a New Legislative Regulation of Collective Agreements

The year 1989 marked a great turning point in Poland. The socialist regime collapsed and Poland began its path towards the establishment of democracy and a free-market economy.

Fundamental political transformation has been accompanied by widespread systemic and social change. Economic reform, which determines the transformation of labour relations, and especially collective labour relations, has been implemented at a much slower pace. Due to the protracting privatisation process, state enterprises, many of which were hit by the economic crisis, continue to dispose of more than half of national assets. The private sector developed initially more in terms of the number of economic entities it comprised than actual economic potential. Among private enterprises small commercial or service establishments, less important for the development of collective labour law than big enterprises, continue to predominate.

In spite of the relatively slow pace of economic transformation, the early years of systemic change and reconstruction have already brought about significant progress in the reform of the labour relations law. Three new legislative acts were passed in May 1991: the trade union law, which endowed trade unions with even more authority to represent and defend workers' rights and interests; the employers' organisation law; and the law concerning the settlement of labour disputes.[6] These enactments do not include the fourth pillar of labour relations, i.e. concerning collective negotiation and collective agreements. It was not included within the scope of the initial reform due to its complex nature and the lack of well-established institutions, especially as regards stable, independent employers' organizations, to carry the same into effect. The 1991 law on employers' organizations is deemed to have paved the way for the establishment of appropriate bodies for collective bargaining.[7]

The aforementioned should not be taken to mean, however, that regulations concerning collective agreements were not the subject of legislative activity during the discussed period. Rather, the drafters of new legislation did not envisage the possibility of concluding collective agreements beyond the enterprise level, and thus concentrated on preparing an enterprise-oriented law. Besides, enterprise-wide agreements constituted a question of utmost urgency, since the numerous agreements concluded at the plant level lacked legislative sanction and consequently, not being of a defined legal nature, left many issues unresolved.

Thus, two legislative acts concerning collective agreements concluded at the plant (enterprise) level were drafted in 1991. One of them was a trade union draft (formu-

[6] See laws of 23 May 1991, published [in:] *Journal of Laws* no. 55, items 234, 235 and 236.

[7] See also M. Seweryński: "Les accords de la table ronde et les rapports de travail en Pologne", *Revue Internationale de Droit Comparé* 1989, no. 4, p. 1005 and following.

lated by the Solidarity National Committee); the other was prepared by the governmental Commission for Labour Law Reform. Neither, however, was passed as a legislative enactment. The union draft was submitted to the Sejm (the Polish parliament) by a group of deputies, but parliamentary work thereon was abrogated.

The new legislative solutions proposed in 1992 and concerning collective agreements, together with other draft legislative acts, were included in the governmental project known as the "Enterprise Pact", which aimed at increasing workers' involvement in the transformation process and attaining public acceptance thereof. In February 1993, following several months of negotiations, the pact was signed by the government and representative social partners. As a consequence, the government was required to submit the draft law concerning collective agreements to the Sejm. Contrary to expectations, the legislative process was protracted, and the law was not passed until 29 September 1994. The new regulations constitute Section XI of the Labour Code "Collective Agreements", and replace the previous 1986 regulations. Today it is questioned whether the inclusion of provisions governing collective agreements in the Labour Code is justified, inasmuch as the Code, contrary to what its title might suggest, is an act concerning individual labour law. The provisions of Section XI regarding collective bargaining are thus separated from other sections of collective labour law, which are regulated outside the Labour Code.

4. A New Model for Collective Agreements

Discussions prior to and accompanying the enactment of the new law on collective agreements revealed dissension *vis a vis* the time frame to be adopted for the implementation of the future model for collective agreements, i.e. whether the new model should be oriented towards the transition period or projected in advance to accommodate the conditions of a free-market economy. The author took this occasion to express his opinion that the new model should be adapted to a free-market economy, i.e. that it should constitute, so to speak, a purposeful model, but, at the same time, should be applicable in the period of socioeconomic transformation. Such an all-purpose applicability, during both the transition period and the full functioning of a free-market economy, could be reached, primarily, by formulating the new regulations with an appropriate degree of generality. In the event of the necessity to temporarily slow down wage increases in the state sector, financial or organizational instruments of a temporary nature could be applied so as not to undermine the model itself.[8]

In solving this problem the legislature adopted a position of partial compromise. The adopted model takes into account systemic and socioeconomic transformation, yet it is not free of constraints that can only be considered as remnants of the old system. In particular, this concerns the exclusion of a number of issues from the

[8] H. Lewandowski: "Przyszły model układu zbiorowego pracy w Polsce" [Future Model for Collective Bargaining Agreement in Poland], *Problemy Prawa i Pracy i Polityki Społecznej, Acta Universitatis Lodzienisis, Folia Iuridica* 1993, no. 58.

substantive contents of collective agreements and making the conclusion of a collective agreement dependent upon a consensus of all trade unions involved on the workers' part. As to the general principles governing collective agreements, it should be stressed that the new model provides certain effective tools for inducing the social partners to correlate the wage and salary provisions of collective agreements with economic reality. We will return to these aspects when we discuss the respective elements of the collective agreement model.

The current law regarding collective agreements is extremely complex. It regulates the substance (content) of agreements, and determines the proper parties and respective procedures for concluding, amending and dissolving collective agreements, subject to mandatory registration. The legislative act regulates the scope of coverage and levels at which collective agreements may be concluded, differentiating agreements concluded at the enterprise level and those concluded at a higher level. It also determines the relationship of the normative provisions of an agreement to, respectively, the act itself and individual employment contracts. It should also be stressed that the law extensively regulates the process of collective bargaining aimed at concluding an agreement, issues regarding adherence thereto, and the so-called generalisation of agreements. The regulation is extremely detailed and, thus, to a certain extent, inconsistent with the underlying principle of collective agreements which declares that they should be formulated by social partners rather than by legislative bodies. In this regard it is also important to note that the detailed regulations are not necessarily clear; the first commentaries on the act indicate that its provisions are the source of many questions.

The definition of a collective agreement constitutes an appropriate starting point for our description of the new model. A collective agreement is an agreement relating to work which satisfies two conditions: it is concluded by parties representing both employees and employers, vested with relevant competence, and it contains definitive provisions. On the part of the workers the competence to conclude collective agreements is the sole prerogative of trade unions, and on the part of employers - that of the employers themselves, employers' organizations and, to the extent stipulated by the law, appropriate state and local administrative organs. The conditions concerning the content of collective agreements are deemed to be satisfied if a given agreement sets forth the conditions governing employment contracts and defines the mutual obligations of parties to the agreement. Fundamental importance is attached to those provisions concerning conditions of employment which constitute the agreement's normative part and are determinative of the categorisation of the entire agreement. Provisions of the latter type, i.e. defining the mutual obligations of the parties, constitute its procedural aspect. Normative provisions are recognised as a primary source of law and, similarly to legislative acts, directly influence the conditions of employment contracts, unless they are less advantageous to the workers than the original provisions of their individual employment contracts.

The content of a collective agreement may be more extensive than that indicated above, as the general remarks on the legal notion of a collective agreement were limited only to the minimum content required for such an agreement to be legally recognised as a collective agreement. Aside from setting forth the conditions to be satisfied by an employment contract and the mutual obligations of the parties, an agreement may also regulate other issues relating to work. Such a synthetic legal approach (Art. 240, para. 1 and para. 2 of the Labour Code) opens up wide opportunities for social partners to influence the situation of workers in a given enterprise.

Substantive conditions contained in employment contracts should be understood in the widest meaning of the term. They encompass almost all regulations concerning practically every conceivable element of an employment contract, such as: type of work, working hours, vacation leave, salary and/or wages (both with regard to amount and determining elements), as well as questions related to the termination of an employment contract.

The above-used word “almost” was intentionally chosen, as this area is subject to certain limitations. In fact, as has been indicated in the initial remarks, the law excludes a number of questions from the content of collective agreements. They concern special protection of the workers against employment termination; workers’ rights arising from unlawful termination of an employment contract with or without notice (except for claims for wages or indemnity, or in the event they are the result of disciplinary action, or maternity or child-rearing leave). One would search in vain for any substantial reasons to justify the aforementioned exclusions. We can but guess that such questions as the special protection of workers and rights arising from unlawful termination of employment have been excluded from the range of collective agreements in order to prevent enhancing those rights which are already excessively broad and/or are not fully consistent with the free-market economic principles which are to govern enterprise labour relations. In such cases, however, the law itself needs to be changed instead of imposing restrictions on the freedom to conclude agreements. It should also be stressed that currently the main focus of workers’ claims consists of (and undoubtedly will continue to for a long time) questions concerning wages and salary, and that there is little pressure to enhance the above-listed other rights.

It would also be pointless to argue that the aforementioned rights subjected to exclusion need to be uniformly regulated for all workers, a feat which can be accomplished only by a legislative act. Uniform regulations should be limited to questions of fundamental importance, and any differentiation contained therein would signify discrimination among certain groups of workers, whereas the rights in question are by no means of a discriminatory nature. Therefore, excluding them from the range of collective agreements weakens the differentiating function, which is presumed to be one of their fundamental purposes.

In addition, it must be noted that the above-mentioned limitations are in conflict with the norms of international labour law. The International Labour Organisation invariably deems all legal forms of state interference in the contents of collective agreements as inconsistent with convention No. 98 of 1949 (ratified by Poland). Deviations from this rule are allowed in extreme circumstances and only for a short period of time. There is reason to believe that the Polish legislature will take this argument into consideration, and will cancel the much criticised limitations placed on the subject matter of collective agreements.

The scope of the procedural obligations contained in collective agreements is limited to defining the rights and obligations of parties (signatories). Provisions contained therein are not of an obligatory nature and do not constitute a source of justifiability under the law. According to Art. 241(1) of the Labour Code such provisions in an agreement may concern the following: the form of publishing the agreement and distributing its content; the means of periodically assessing its application; the mode of explaining the agreement's provisions and settling disputes arising between parties with regard thereto; mutual obligations of the parties concerning observance of the agreement's provisions. This group of provisions may also include a perseverance of public order clauses stipulating that the parties will not provoke collective disputes and will have recourse to strike only within officially defined limitations.

By virtue of the provisions stating that collective agreements may settle "other issues than those stated herein", other conditions may be subject to negotiation, such as: employment policy (trade unions may be vested with certain rights with regard to employing and dismissing workers); designating workers' representatives chosen by the personnel and endowed with specific participatory functions and establishing procedures for settling collective labour disputes. According to Art. 241(3), para. 2 of the new regulation, such agreed-upon procedures would take precedence over methods provided for by a separate legislative act.[9] The law also sanctions the inclusion of various programmes and social benefits in a collective agreement. The above-enumerated issues do not constitute a comprehensive list of those that may be settled by collective agreements in addition to the conditions of employment contracts and the mutual obligations of the parties.

Taking into account the above, we must complete our previous description of the structure of a collective agreement. In "reconstructed" agreements we can thus identify not two, but three parts: the normative provisions, the procedural provisions, and those concerning social programmes. The normative part may contain not only normative provisions concerning individual employment contracts (concluding and terminating employment contracts, remuneration, working hours, vacation leaves and other elements of the employment contract), but also normative provisions concerning collective labour relations (trade union representation, collective labour disputes, workers' participation, etc.). This distinction between the individual and collective normative provisions is of substantial importance, especially with regard to the generalisation of a collective agreement or the determination of its effects after expiry.

In discussing the substantive scope of a collective agreement it is important not to overlook its relationship to legislative acts. It is evident that none of the agreement's provisions may contradict legislative norms, which are explicitly binding and do not allow for any exceptions, in contrast to the legal nature of the above criticised provision which excludes certain issues from the scope of collective agreements. The relation-

[9] Law of 23 May 1991 on settling collective labour disputes *(Journal of Laws* no. 55, item 236).

ship is different as regards legislative norms of a semi-imperative nature, designed to protect workers' rights. Of course, we are talking only about the normative provisions of collective agreements, i.e. those which constitute a primary source of law. In this case, the relationship is determined on the traditional principle of workers' privilege, introduced to the Polish system by the 1937 Act on collective agreements. This means that provisions of a collective agreement may be more advantageous to the workers than legislative norms, but may not contravene the latter to the disadvantage of the workers.

It was indicated in the initial remarks to the present section of this work that the drafters provided the discussed legislative act with mechanisms designed to prevent excessive wage increases which, it was held, would contribute to and perpetuate inflation. In the present Polish reality, where systemic transformation is accompanied by a high inflation rate, those instruments are of crucial importance, and the provisions of collective agreements should be in accord with social interest.

A great advantage of those mechanisms is that they are themselves devised by means of collective negotiation, contrary to the previously applied means of protecting the state's interests, which consisted of administrative control over the provisions of an agreement relating to wages or of high taxation of wages which surpassed the established growth index. The limits on wage increases are set by a national agreement concluded between representatives of trade unions, employer organizations and the government, and are to be observed by all parties to collective agreements. The national agreement is not normative, and it is the duty of the signatories themselves to ensure its observance. Legal sanctions are provided for only with regard to the managers of state enterprises, i.e. in the event a state enterprise surpasses the defined wage growth index and, as a consequence, ceases to fulfil its financial obligations, the director of such an enterprise will be denied his bonus or recalled from his post.

It should be stressed that the discussed mechanisms, introduced for the sake of attaining a common social purpose and setting, to some extent, upper limits on a negotiating freedom to conclude agreements, do not constitute an integral part of the legislative model of collective agreement. Rather, the limitation arises from a separate legislative act[10] which can be modified or annulled, as appropriate, without changing the legislative model for collective agreements. Furthermore, its scope of application is not limited to the regulation of wages in collective agreements, but encompasses all economic entities with more than 50 workers employed.

The new legislative model for collective agreements is also significant as regards its scope of coverage, especially inasmuch as it extends the rule invariably applied in Polish law concerning collective agreements, which holds that an agreement encompassing an enterprise or another organizational unit applies to all workers employed there, irrespective of their union membership, *vel non.* Consequently, the workers who may take advantage of a given agreement include members of the trade union which was signa-

[10] Law of 16 December 1994 on negotiatory system of determining the average wage growth in economic units *(Journal of Laws* no. 1, item 2).

tory to the agreement, members of trade unions which were not parties thereto, as well as workers not associated in any union organisation whatsoever. It is possible, however, to exclude certain groups of workers from the coverage scope of an agreement, e.g. if they are encompassed by another agreement, but such exclusions cannot be based on the criterion of union membership. The author believes that this rule, both for social and economic reasons, is more justified than the contrary rule, applied in a number of countries and based on the representation concept, maintaining that the rights arising out of a collective agreement are vested only in workers who are members of the trade union which is a party to the given agreement.

The scope of coverage contained in the new model for collective agreements is far more extensive than was the case previously, due to the fact that under current regulations collective agreements may encompass certain areas of employment or, strictly speaking, certain types of employment contracts, which previously had been subjected to legislative regulation. Before the Act of 29 September 1994 took effect, collective agreements concerned labour relations according to the so-called universal principle of labour law, i.e. relations founded on contractual basis, with economically independent entities appearing as the employer party. Current collective agreements may also concern the so-called budget sector, where funds for wages and salaries come from the national budget or budgets of territorial or local self-governments. The new law on collective agreements applies even to those workers of the budget sector who are employed on an appointment basis, e.g. school teachers and professors employed at universities or at scientific research and development institutes. The only workers' groups outside the scope of the new law are appointed workers of the state and local administration (officials), as well as judges and prosecutors.

The above-described extension of the law regarding collective agreements into new areas exerts considerable influence on the model itself and satisfies the commonly formulated requirement that collective agreements should be available to all workers endowed with the right to associate. It should be stressed, however, that the model for collective agreements is not completely uniform. The law stipulates that in the state budget sector collective agreements shall not be concluded at the lowest level, i.e. at the level of establishment units which theoretically could be recognised as employing units; at higher levels, the agreements shall be concluded by an appropriate minister or another duly authorised body acting on the employer's behalf. The above-listed are not the only differences and/or limitations placed on collective agreements in the public budget sector. There are others as well, related to the content and legal nature of the agreements.

The decision concerning the scope of the coverage of a particular agreement, i.e. specifying employers and their workers encompassed by the same, is entrusted to subjects endowed with legal competence to conclude agreements, and arises from their actions within this sphere of competence. Thus, a given agreement may concern only a given enterprise or have a much wider coverage scope. In the latter case, it may encompass either a branch, in whole or in part, the workers of a given profession, or enterprises from a defined territory.

Those agreements, varying in scope of coverage, may function independently from one another, each of them containing provisions consistent with existing legislation. From this viewpoint they are mutually independent, and may regulate various or even the same questions. This concerns also collective agreements concluded at the enterprise level.

The possibility of concluding collective agreements at various levels and of various scopes of coverage involves the risk that one particular employer may find himself within the scope of more than one collective agreement, in relation either to its entire personnel or a part. For example, a given employer might be encompassed by a collective agreement concerning his enterprise, by a branch agreement, as well as, in relation to a specific group of workers, by an agreement concerning a given profession. The question arises whether, in such circumstances, the employer is bound by all these agreements, and how to settle possible conflicts between them.

The law clearly resolves this question with regard to the relation between a collective agreement concluded at an enterprise level and an agreement of a wider scope. This solution, based on the principle of workers' privilege, states that provisions of an agreement concluded at the enterprise level cannot be less advantageous to workers than provisions of another agreement, superior to its scope. Hence the conclusion that in those cases when the provisions of two agreements concern the same subject, provisions of the earlier concluded agreement may determine the way of implementing provisions of the latter, or complete the same, thus removing hindrances to their simultaneous application. In the event when the agreement concluded at the enterprise level comprehensively regulates a question in a way more advantageous to the workers, it supersedes the wider-scope agreement.

The existing legislation does not provide any definitive solutions as regards the question of conflicts between two collective wider-scope agreements (beyond the enterprise level). Some implications can be deduced from the legislative provision concerning mergers of enterprises (into one entity), which were previously encompassed by different agreements of a wider scope (Art. 241 [20] of the Labour Code). Under this provision, the decision which provisions of such agreements shall apply is made jointly by the new employer and the union organizations. Most probably, the chosen agreement will be the one which is generally the most advantageous to the workers. Once the choice is made, however, the chosen agreement is binding in its entirety, irrespective of the fact that some of its provisions may be less advantageous to the workers than those of the rival agreement(s). On the other hand, the discussed provision does not prohibit choosing more than one agreement to be applied simultaneously, as follows clearly from the formulation that the said subjects decide by themselves **which ones of the agreements will be applied.** In the event when more than one agreement is adopted, any conflicts between individual provisions of the different collective agreements will be settled according to the principle of workers' privilege.

It appears that the above-discussed provision, regarding conflicts between collective agreements in the event of a merger, should be appropriately applied in a situation when an enterprise finds itself within the coverage of more than one collective agreement. With regard to what has been said previously, there arises the question: who should decide which agreements are to be applied if there is no union organisation at a given enterprise. Can the employer himself make the decision? No doubt the answer to this question is negative. Hence, it should be assumed that if an employer does not have a trade union partner with which to make a joint decision as to the choice of the collective agreement or agreements, all the agreements involved will have binding force. It is important to notice that in choosing the most advantageous agreement a comparison should be made between the individual provisions of the evaluated agreements.

As a rule, the above remarks concerning the scope of coverage and possible conflicts between collective agreements do not apply to the budget sector.

The question of the scope of the coverage of collective agreements is logically connected to that of the subjects authorised to conclude them, which, to a significant extent, determines who shall be covered thereby. The question of competence to conclude agreements, i.e. who is an appropriate party to a particular collective agreement, is one of the essential elements of the legislative model.

With regard to employers, legal competence depends on the level at which a given agreement is concluded, with all collective agreements being divided into those concluded at the enterprise level, i.e. concerning particular enterprises, and those concluded at a higher level, i.e. of a wider scope.

The competence to conclude agreements at the enterprise level is vested in individual employers. Such collective agreements should encompass one particular enterprise. According to legislative provisions, two or more employers cannot conclude one common agreement for their enterprises. If, for reasons of their own, for example, for the sake of their business cooperation, several employers wish to adopt uniform employment conditions, they must conclude separate collective agreements containing the same uniform provisions. They may also accomplish the same goal in yet another way, i.e. by adhering to a collective bargaining agreement concerning one of the enterprises involved. This requirès an agreement to be concluded at the enterprise level between the “adhering” employer and the competent trade union, providing for the application of the “foreign” agreement at the given enterprise.

The law allows one exception from the rule stating that an agreement concluded at the enterprise level cannot encompass more than one employer. Such an agreement may encompass more employers, provided that they form a legally recognised economic organisation, in which case an appropriate organ of this organisation is competent to conclude the agreement.

The competence to conclude collective agreements at higher levels, i.e. those of a branch, professional, or territorial nature, is vested in employers’ organizations functioning under provisions of the employers’ organisations law of 23 May 1991 *Journal of Laws* no. 55, item 235). Other organisations grouping employers, e.g. industrial chambers or chambers of commerce, are denied this right even if they are endowed with appropriate authorisation by their members: entrepreneurs-employers. One may reasonably question whether the above-described limitation is justified, especially in the light of the slow process of creating employers’ organizations.

With regard to the employee representatives in collective agreements, it should be stressed that the exclusive competence to conclude such agreements is vested in trade unions. In those enterprises where no union organisation exists the adopted law does not allow for the practice, which was proposed and is in use in some countries, of concluding collective agreements by workers' representatives duly selected for this purpose. Vesting trade unions with the exclusive competence to conclude collective agreements is, in part, a form of promoting trade unions, yet it is important not to forget that this choice is also based on the principle of continuing responsibility. The mere conclusion of a collective agreement does not necessarily represent a final resolution of a labour dispute. During the term of the agreement, and in the course of its application, questions may arise with regard thereto; their resolution will be impossible without the cooperation of both parties. Therefore, the agreements' function of protecting workers' interests must be assigned to one particular body. Furthermore, it is important not to overlook that during the term of a collective agreement order and discipline are supposed to be maintained within the given enterprise. Vesting the competence to conclude agreements in a group of workers chosen by the staff only for the purpose of carrying out this task would seriously weaken the continuing future functioning of collective agreements.

At the enterprise level, collective agreements may be concluded by plant union organizations; at a higher level, irrespective of the scope of the particular agreement, by appropriate supra-plant union organizations, e.g. a nationwide trade union, trade unions' association (federation) or national joint-union organisation (confederation). Under the existing legislative provisions, the trade unions' competence to conclude collective agreements is not conditioned on their actual presence, i.e. membership rolls, proportion of employees registered therewith, or proportion of members to be encompassed by a given collective agreement and associated in supra-plant union organizations.

This leads to the conclusion that even a trade union which comprises only a minor percentage of workers to be encompassed by the given agreement may be a party to a collective agreement. Such a solution may be subject to criticism since, under the provisions of Polish labour law, a collective agreement encompassing one or more enterprises is binding for all employees of the said enterprise(s) regardless of their union membership. Therefore, the competence to conclude collective agreements should be vested in "representative" trade unions, i.e. those which comprise an appropriate percentage of the staff employees.

The above remarks refer to those situations where, in the envisioned scope of the coverage of a given agreement, there is only one trade union. If there exists more than one such trade union, the question of workers' competence to conclude collective bargaining agreements is resolved in a different way. It should be indicated at the outset that the adopted solution is not only complex and extremely complicated, but, to make matters worse, authorises even the most insignificant of all negotiating trade unions to veto the conclusion of a collective agreement.

With regard to agreements concluded at the enterprise level, the right to negotiate and conclude collective agreements is vested in all the plant union organizations, which are able to establish their common representation or to act jointly. If not all the unions concerned are engaged in negotiations, the agreement reached thereby will be valid, provided that the participating union organizations together comprise at least 50% of the staff.

A similar solution has been adopted for collective agreements of a wider scope. If the workers to be encompassed by a given agreement are represented by more than one supra-plant union organisation, all those organisations, acting jointly or by their common representation established for this specific purpose, may be party to a negotiated collective agreement. If not all of the said organisations are interested in concluding the agreement, then relevant competence rests with the representative union organisation(s), which shall be determined by the Warsaw Regional Court. Representative status can be attributed to any appropriate supra-plant union organisation which includes either at least 500 000 workers or at least 10% of the total number of workers encompassed by the statute, but not less than 5 000 people, or the largest number of workers to be encompassed by the given agreement.

It is important to indicate that in the above-described case the concluding of a collective agreement is also conditioned on its acceptance by all union organizations taking part in the negotiations. In the author's opinion, this constitutes an evident fault in the new regulation on collective agreements. The lack of a consensus among union representatives, which is a widely encountered phenomenon in the present state of the union movement (characterized by a large number of organizations and their considerable fractionalisation), may paralyse the functioning of collective bargaining, a fundamental institution of labour law.

The description of the model of collective bargaining agreements should conclude with several remarks concerning the negotiating of an agreement and its registration, issues which are found among the new activities regulated by the law on collective agreements.

Under the Code's provisions, a party legally authorised to conclude a collective agreement may not refuse the other party's request to enter into negotiations aimed at the conclusion of such an agreement. Each of the parties is obliged to enter into negotiations upon the receipt of an appropriately submitted request by the other party. In fact, however, the obliged party is usually the employer. A plant union organisation might find itself under such an obligation if, e.g. a proposed collective agreement at the enterprise level was to be used as a means of provisionally limiting (suspending) workers' rights registered in a collective agreement concerning a branch or profession, in which case the proposal for such an agreement would come from the employer.

It is important to note that the law does not proscribe definitive sanctions for the refusal to enter into negotiations. Of course, in the event of an employer's refusal, the trade union would be authorised to take appropriate collective measures, including a strike.

In order to take legal effect, a collective agreement must be duly registered, as was the case in earlier regulations. The statute vests the competence to register collective agreements concluded at the enterprise level in regional labour inspection offices. Agreements concluded at a higher level are registered by the Ministry of Labour, Wages and Social Policy. Compared with the earlier regulations, the new law contains fundamentally different provisions *vis a vis* the discretion granted to the registering organ. It is no longer assigned the function, so typical in the era of real socialism, of checking the agreement's conformity with governmental socioeconomic policy, especially with respect to wage conditions. Under the current law, the registering organ is only obliged to check whether a given agreement conforms with the existing law on collective agreements; specifically, whether the agreement was concluded by competent parties, whether it is actually a collective agreement and not another type of group contract (the relevant criterion is the obligatory content), whether it was concluded in written form, and whether it does not violate explicitly binding regulations and/or deviate from legally mandated or guaranteed standards to the disadvantage of the workers.

Thus, it is evident that the control exerted by the local labour inspection and by the Ministry of Labour, Wages and Social Policy is primarily focused on verifying whether required legal formalities have been observed. The criteria and range of the control are defined precisely. It should be emphasised that the controlling organ is not authorised to interfere into the content of a collective agreement formulated by parties acting within the confines of their legal competence and autonomy.

The above-discussed issues seem to be the most important ones regulated by legislation on collective agreements, which undoubtedly constitutes a turning point in the development of this most important part of Polish labour law. There is ample reason to believe that the two major sources of labour law[11] - legislation and collective agreements, may exchange their roles in the future, and that collective agreements may move from a supplementary to a primary role in the creation of working conditions for workers. [11]

[11] In 1997 there arose a new theoretical problem, since the new 1997 Constitution of the Republic of Poland does not mention collective agreements among the general sources of law.