LAW AND INDUSTRIAL PEACE. THE SCANDINAVIAN APPROACH

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THE HISTORY OF THE LAWS ON COLLECTIVE AGREEMENTS

1. The labour law of the four countries Denmark, Finland, Norway and Sweden has essentially the same fundamental background, namely the existence of strong organizations of management and labour which bargain and conclude collective agreements upon wages and conditions of employment as well as upon other mutual relations.[1] If no agreement is reached, the organizations reserve the right to defend their interests by resorting to strike or lockout. The collective agreement, as an instrument regulating wages and conditions of employment, is normally a contract for a definite period of time—one, two or possibly three years. During this period the parties to the contract are bound by a peace obligation with regard to matters settled in the agreement. A distinction is made between disputes of rights and disputes of interests. Disputes of rights must be settled peacefully and, where the parties do not reach a settlement themselves, the dispute must be submitted to an arbitrator or a court of law. In disputes of interests, on the other hand, a party is entitled to resort to industrial action or threat of industrial action in order to bring pressure to bear on the other party. It may be mentioned that the laws of the Scandinavian countries are similar in content to the laws of West Germany and of the United States, although the techniques are not identical. French law is different. The collective agreement puts only a few restrictions on the parties; clauses prescribing that disputes should be settled peacefully occur, but

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[1] This article does not cover Iceland. That country's law on industrial relations is, however, basically the same as the law of the other Scandinavian countries.

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usually concern only a period of negotiations or limited issues. In Britain, until the adoption of the Industrial Relations Act, 1971, the collective agreement was not considered as a contract giving rise to legal obligations, and still it does not necessarily have that character. The distinction between disputes of rights and disputes of interests is inessential under the new Act, too, for the reason that in Britain the ordinary collective agreement is a settlement for the time being.

2. Denmark, being closest to Central Europe, was industrialized earlier than the other parts of Scandinavia, and in the beginning it set the pattern. There was not only conflict but also constructive cooperation between the organizations on both sides. In 1899 the Danish Employers' Association and the Confederation of Danish Trade Unions, both newly established, were involved in their first serious dispute. The employers presented a number of guiding principles to which the other party was required to subscribe. By means of sympathetic lockouts pressure was brought on the trade unions to yield. Eventually, on September 5, 1899, the dispute was settled by an agreement in which were embodied a number of principles regarding the initiation of industrial action, the binding effect of agreements, managerial prerogatives, and the position of supervisors. In case of breach of an agreement, action should be brought to a Permanent Arbitral Board which was to be created. This agreement, called the September Compromise, was in force until 1960, when it was replaced by another agreement between the same parties. It has been called the basic law of Danish industrial relations.

A proposal by the so-called August Committee, published in 1910, was the next step in this process of creating a body of industrial law. The Committee, which was composed of ten representatives of the Federation of Danish Trade Unions and ten representatives of the Danish Employers' Association under the chairmanship of a government representative, stated that industrial action should not follow upon disputes regarding the proper interpretation of a collective agreement, but that such disputes should be settled through negotiations and as a last resort be submitted to arbitration. Some principles were laid down in a document called "Norms regarding industrial action". It was envisaged that the Norms were to be made part of the national collective agreement of each industrial branch concerned. In 1934 the Norms were given general application by virtue of a statute, in which it is prescribed that the Norms shall apply when the

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collective agreement does not contain rules which deal satisfactorily with industrial disputes.

The August Committee proposed—in full accordance with the principles laid down in the September Compromise—the creation of a permanent court for labour disputes. The Danish legislators followed the advice of the Committee. Through an Act of 1910 a court of law, "Den faste Voldgiftsret", was established with jurisdiction over actions on breach of collective agreements. This court, renamed Arbejdsretten in 1964, has counterparts in the other Scandinavian countries: Arbeidsretten in Norway, the Arbetsdomstolen of Sweden and the Arbetsdomstolen of Finland. To these bodies we shall return later. In all four countries the court in question has exclusive jurisdiction in certain labour disputes, particularly those concerning a breach of the peace obligation or of other duties incumbent upon parties to collective agreements.

3. In Norway labour relations developed along the same lines as in Denmark. The Danish September Compromise had a counterpart in the Agreement of 1902 on negotiations and arbitration between the Norwegian Employers' Association and the Confederation of Trade Unions. It is true that this agreement had a short life. It was terminated in 1903 upon notice by the Confederation of Trade Unions. Its importance for the future was, however, considerable. Both sides had explicitly recognized the principle that resort to industrial action was not permissible in disputes of right and that such disputes should be submitted to an umpire for decision.

After a long period of preparation, the Norwegian Act on Labour Disputes was adopted in 1915. There were considerable differences of opinion, not so much about the need for legislation as about the question whether compulsory arbitration should be prescribed for in disputes of interests.[1a] The Norwegian Act of 1915, as revised in 1927, was to serve as a model for the Swedish Acts of 1928 on Collective Agreements and on the Labour Court.

4. In Finland an Act on Collective Agreements was adopted in 1924. There is a difference between the Finnish Act and the laws of the other Scandinavian countries which may be worth mentioning even though it has no direct bearing upon the subject of this paper. According to the Finnish Act of 1924 the peace obligation was, as in West Germany, an obligation incumbent

[1a] Compulsory arbitration will be dealt with *infra* no. 12.

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upon the party to a collective agreement exclusively, while according to the laws of the other Scandinavian countries the collective agreement is extended in all its parts—the peace obligation as well as rules regarding wages and other conditions of employment—to the relationship between the employer and a member of a contracting trade union. This difference is explained by the fact that the Finnish drafters had before them a draft bill, produced by the famous German scholar Sinzheimer, which had been published in *Reichs-Arbeitsblatt* in 1921.

The 1924 Act was replaced in 1946 by the present Act on Collective Agreements. The new Act comes closer to the laws of the other Scandinavian countries, as is demonstrated by the fact that the peace obligation is extended to cover the local union branch as well as the employer when the employer is a member of an association party to the agreement. However, with regard to the individual employee the law stands as it was before.

A separate Act of 1946 concerns the establishment of a Labour Court.

5. As already mentioned, the Swedish Acts on Collective Agreement and on the Labour Court were adopted in 1928. Thus Sweden was slower to take legislative action than the other Scandinavian countries. This may seem surprising since Sweden was industrialized earlier than Norway and Finland. This tardiness was due partly to the fact that those in power were not able to agree upon what measures should be taken—bills were introduced in Parliament as early as 1910 and 1911 but failed to be adopted—and partly to the opposition to state interference in general on the part of the unions and the Social Democratic Party. There was a general strike for part of a working day in May, 1928, in order to allow all workers to take part in manifestations against the bill on collective agreements then under debate in Parliament.

The basic principles of the Swedish Collective Agreements Act are expressed in the provisions contained in sec. 4, subsec. 1, of the Act. Anyone who is bound by a collective agreement is not allowed, during the period of validity of that agreement, to resort to industrial action (1) "on account of a dispute respecting the validity, existence or correct interpretation of the agreement, or on account of a dispute as to whether a particular action constitutes an infringement of the agreement or the provisions of this Act" or (2) "in order to bring about an alteration in the agreement".

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THE MEDIATOR AND HIS POWERS

6. In the first part of this paper I have given an outline of the legislative history of the laws on collective agreements in the four countries concerned. We shall now deal with the question whether rules of law should interfere in disputes of interests, and particularly in disputes occurring during the bargaining over the terms of a collective agreement which is intended to replace the old agreement when it comes to an end.

As a point of departure I may refer to a declaration made by the two wings of the Danish August Committee. The two wings both agreed to advise strongly against compulsory arbitration. The organizations on both sides should not be cut off from deciding upon questions which concerned their own vital interests. Regard to the interests of the community at large was another argument against compulsory arbitration, since a law establishing this would "make Government responsible in a rather unpredictable way for the earning power of private enterprise".[2] This declaration still represents the prevailing opinion, at least inasmuch as organized management, the trade unions and the leaders of the political parties all agree that wages and conditions of employment should preferably be regulated by collective agreements which are voluntarily entered into by the parties, and that government interference should be restricted to a minimum. When it comes to the actual application there are variations. Generally speaking, the freedom granted to the parties before state intervention takes place has been more restricted in Denmark and Norway than in Sweden. Finland occupies an intermediate position. There are differences with regard to the powers of the state mediation service as well as with regard to the willingness of the government to intervene in critical situations.

7. In Denmark the Act of 1934 on Mediation in Labour Disputes, with later amendments, gives the public mediator wide powers. In case of a stoppage of work or a threat of stoppage of work, the mediator in charge has the power to initiate mediation. He may summon the parties to meet. Upon a decision that mediation shall take place, the mediator has the power to order the parties to postpone action for a period of two weeks. A stoppage of work is not allowed earlier than on the third day after the end of

[2] *Beretning fra Faellesudvalget af 17. August 1908 angaaende Arbejdsstridigheter*, 1910, p. 4.

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the period (sec. 3(1)). The mediator has additional powers where a stoppage of work threatens "vital public institutions or functions" or for other reasons will have "far-reaching consequences for the life of the community". After hearing the other members of the Mediation Service the mediator may order an additional delay of two weeks. In such a case the total period of postponement will be 31 days.

The mediator has the power to order that a vote shall be taken. The proposal as drafted by the mediator has to be submitted to the voters for approval or rejection by marking "Yes" or "No" in a secret ballot. Depending upon the constitution of the organization concerned, the voters are either individuals or members of a competent body, such as the board of a national union. In the former case one speaks of a basic ballot *(urafstemning)*. For rejection an ordinary majority suffices, provided that the noes represent 35 per cent of those entitled to vote.

The coupling of settlements for several industries is a peculiar Danish device. Although powers to sign a contract remain with the various national unions, centralized bargaining has been the ordinary pattern since the early 1930s. Assume that the mediator has reason to believe that his proposal will be rejected by one or two unions but be approved by the majority. Then it is within his discretion to decide that his proposals shall constitute a unit and that all the votes shall be counted together (sec. 12(2)). Since one union may submit the proposal to the individuals, another to a board of representatives, there are provisions on how to add votes of a basic ballot to votes by members of a competent body (sec. 12(5)).

The rule of coupling settlements was introduced in 1933.[3]

The power of coupling is frequently used and today it is a matter of routine that central negotiations are followed by proposals for settlement for a number of branches, these proposals to be considered as one unit.

[3] In 1933 the Stauning Social Democratic Government was in power. Introducing the Act in Parliament the Minister of Social Affairs, Mr Steincke, explained the necessity of "limiting the power of the small organization which possibly had a lack of feeling of solidarity with the great majority of employees". Full independence was not "natural because of the force of solidarity that in other respects was the basic idea of unionism and cooperation between unions". Depending upon the circumstances, this solidarity may produce the effect "that those who are small in number have to submit to those who are many, and that a minor interest may have to yield to a higher and greater one".

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A lawyer may ask how one is to explain the effect that a new agreement is binding upon an organization whose members were against approval. The matter has hardly been discussed by legal writers, nor has it been tested by the courts. The explanation offered by experts is as follows. In the Basic Agreement of 1960 there was a clause in sec. 7(2) to the effect that although an agreement was duly terminated the parties to the agreement had the duty to apply its provisions until it was replaced by another agreement or work had stopped upon a decision in accordance with the procedure laid down in the Basic Agreement. This rule of continuous effect is said to correspond to actual practice before 1960. It is still to apply in spite of the fact that the Basic Agreement was terminated in 1969.[4]

8. In Norway the rules on mediation procedure are part of the Act on Labour Disputes of 1927. They are very similar to the Danish ones. Before embarking on a stoppage of work a party has to give notice to the National Mediator. Upon such notice the Mediator may order the parties to suspend the stoppage until mediation has taken place if he is of the opinion that a stoppage "will be harmful to public interests because of the nature of the enterprise or because of its proportions" (sec. 29(2)). The powers of the mediator are so wide that they cover virtually any conflict which is not altogether insignificant and it is routine procedure for a continuation of work to be ordered until the mediator has had time to present his proposals for a settlement. However, after ten days a party is entitled to request that mediation shall come to an end. The mediator then has another four days at his disposal (sec. 36). It seldom occurs that a party makes use of this right to bring mediation to an end.

As in Denmark, the mediator has the power to order that his proposals shall be put to the vote. He has, too, the power to couple several settlements. The provisions of the Act on Labour Disputes are supplemented by a voting procedure in the Basic Agreement of 1966 between the Norwegian Employers' Association and the Confederation of Trade Unions. On the employees' side the votes are always individual. There is no voting by members of a competent body.

[4] The Danish Mediation Service is aware of the need for some foundation for the principle of the continuous effect of existing collective agreements. In his proposals of 1969 the mediator inserted a clause corresponding to sec. 7(2) of the Basic Agreement of 1960. The same procedure was applied in 1971.

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In a decision 1963 A.R.D. 131 the Norwegian Labour Court tried a claim by the Norsk Bedrifts Elektriker Forbund (National Union of Electricians) that the union was not bound by a settlement for those of its members who were employed in the paper industry; by means of coupling the settlement had been extended so as to cover the electricians as well as other workers of that industry. The Court stated that the mediator had duly consulted the parties before putting his proposals to the vote. The settlement was therefore in force as a binding collective agreement between the Norsk Bedrifts Elektriker Forbund and the organizations of employers concerned. Thus the Labour Court did not hesitate to allow the voting machinery to create a contract at law notwithstanding the absence of the ordinary prerequisites of an offer and the corresponding acceptance.

There has been a debate on the question under what circumstances the mediator should rely upon his power to couple. This is a delicate matter when unions representing the foremen or similar categories are involved in negotiations which run parallel to negotiations for other employees in the same branch of industry. In merchant navy ships, the navigating officers and the engineering officers each have national unions of their own. Other crew members come under the jurisdiction of the Seamen's Union. In 1969, in a dispute regarding the coastal traffic, the National Mediator refused to couple his proposals for settlements. The great majority of both the navigating and the engineering officers voted for rejection. Since there were no agreements in force, the two unions were free to resort to industrial action. However, the Government introduced a bill providing that the dispute should be submitted to compulsory arbitration, and this was passed by Parliament.[5]

9. The Finnish law on mediation has been amended on several occasions. There were provisions on mediation in the Ordinance of 1879 on the Freedom of Trade and in the Instruction of 1889 on Factory Inspection. These rules, however, had little effect. By an Act of 1925 a Conciliation Service with a number of provincial mediators was established. It has been said that the Government offered the parties a service the use of which was not compulsory. In certain circumstances, however, the mediator had power to initiate mediation against the will of one of the parties.

[5] Ot. prp. no. 86 (1969–70). See, on the matter of compulsory arbitration, *infra* section 12.

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A duty to give notice was introduced with the Act on Mediation, 1946. In case of a stoppage of work covering ten or more employees, notice had to be given to the other party and to the mediator 14 days in advance. The Minister of Social Affairs had power to order suspension of action for an additional period of 14 days where the conflict concerned railways, maritime or air communications, telegraph, postal or telephone services, defence, the police force, the prisons, medical or fire services, electricity, gas or water supply, or necessary transports of food. Where any of these activities was affected there was a duty to give notice even in conflicts involving less than ten employees. The mediator was allowed to intervene without asking for the consent of the parties.

The present Act on Mediation was enacted in 1962. The office of National Mediator was established. The duty to give notice two weeks in advance applies to a stoppage of work due to "the coming into existence of a labour dispute", an expression which is held to imply that sympathetic actions are exempt. The Act does not make any distinctions based upon the number of employees involved, or upon the nature of the branch of industry concerned. The Minister for Social Affairs and Health has the power to order postponement of industrial action for an additional period of two weeks where the stoppage of work "because of its coverage or the character of the field concerned is held to imperil vital community functions or cause considerable harm to the interest of the public".

The mediator has the power to submit to the parties proposals for the settlement of the dispute and to require them to give an answer within a short period of time. There is on the statute books of Finland no provision to the effect that the proposals shall be put to a vote. Most Finnish unions, however, have in their constitutions rules under which industrial action cannot be initiated or continued without the support of a two-thirds majority. The lack of the required majority for action does not imply that the proposals are held to be carried. A state of non-contractual relationship will exist until a collective agreement is signed by both parties.

In 1970 two laws were enacted concerning collective agreements for state and municipal officials. In this context a second National Mediator was appointed. The two National Mediators have the same competence and they divide the work between them as they find convenient. A stoppage of work by state or munici-

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pal officials can be postponed by an order of the Minister for a period of seven days in addition to the ordinary period of postponement of two weeks.

10. The Swedish mediator has limited powers compared with the powers of a Danish or a Norwegian mediator. Nor has the Ministry or any other authority powers to order postponement of action as is the case in Finland. The first Swedish Act on Mediation was adopted in 1906. When a dispute which imperilled industrial peace occurred, the mediator had to invite the parties to meet for negotiations. He was not allowed to summon them to a conference. If the parties failed to appear, the mediator was instructed to bring to the knowledge of the parties that he was willing to offer his services when called upon to do so. This offer was to be repeated at certain intervals if the stoppage of work continued. The powers of the mediator under the present Act, which dates from 1920, are still very limited. The mediator is allowed to summon the parties. Originally there were no sanctions for non-compliance. In 1936 the Act was amended so as to empower, in the case of a refusal to appear, the mediator to report it to the Labour Court, which can order a party, under threat of penalty, to enter into negotiations before the mediator. There is seldom need for any sanctions, however. The Labour Court has tried a few cases where the employer has claimed that there was no employer–employee relationship, since those on the other side were independent contractors. Thus in the case 1969 no. 31 the Labour Court ordered the Swedish Esso Company to enter into negotiations with the National Union of Petrol Distributors on the conditions of an agreement concerning the operators of filling stations.

Sec. 3 a of the Mediation Act (an amendment enacted in 1935) prescribes a duty, under threat of penalty, to give notice of a stoppage of work one week beforehand. Sec. 3 a is not comparable to the corresponding provisions on notice in the other three countries, which constitute a peace obligation for the period of notice. In Sweden a strike or a lockout in breach of the regulation to give notice is not unlawful.

INTERVENTION IN EMERGENCY SITUATIONS

11. As mentioned above, the Danish August Committee, in its report of 1910, took the view that the state should not intervene

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with compulsory arbitration. The parties should not be cut off from the possibility of defending their own vital interests. In Denmark this philosophy has applied only in periods of industrial peace. Whenever a dispute has constituted a threat to the national economy, the Government has not hesitated to intervene. In addition to three laws from the second world war, emergency laws have been passed on 18 occasions.[6] This happened for the first time in 1933. The country was suffering from heavy unemployment and the Danish Employers' Association had demanded a 20 per cent wage cut. An act was passed providing for the prolongation of existing collective agreements for one year. At the same time the Danish crown was devalued. In 1963 the same method was applied as part of a package with forced saving and profit regulations. Two other methods are mostly applied. When the proposals of the mediator have been rejected by one of the two sides a statute has been enacted declaring that these proposals constitute a binding agreement between the parties concerned. There have been ten such statutes. On six occasions compulsory arbitration has been prescribed.

12. In Norway permanent restrictions have been in force for long periods. Thus a temporary law on compulsory arbitration was in force in the years 1916–19, and this was prolonged twice, each time for a year. After a short period without regulations, compulsory arbitration was reinstituted through enactments in 1922, 1923 and 1927; the last of these temporary laws ceased to be in force in 1929.

After the second world war there was again a period of state intervention. In a provisional order of September 15, 1944, the Norwegian Government, at that time having its seat in London, provided for the establishment of a wages council *(lønnsnemnd)* with powers to regulate wages and conditions of employment when the parties were unable to come to terms. This arrangement, which was designed to meet the expected needs of the period following liberation, was continued with several variations until 1952, when the present Act on Wages Councils for Labour Disputes was adopted.

The Wages Councils Act of 1952 provides for the establishment of a National Wages Council and of a number of regional councils. The National Council is composed of a chairman and six

[6] See Allan Rise and Jens Degerbøl, *Grundregler i dansk arbejdsret*, 5th ed. 1971, p. 145.

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other members. Five of the members are permanent members. Among these the chairman and two other members are independent; of the two last-mentioned one is a management representative and one a union representative. In addition there are two *ad hoc* members, each nominated by a party to the dispute.

It is assumed that upon the advice of the mediator the parties may voluntarily refer a dispute to the Wages Council for arbitration. The award of the Council has the legal effect of a collective agreement. However, Parliament may enact a law that a dispute shall be decided by the National Wages Council, and this frequently happens. Thus in the period 1953–71, Parliament intervened in 38 disputes. On one occasion the award of the Council concerned a settlement for the whole industry. The other cases have mostly concerned the national agreement of a branch of industry. On some occasions submission to the Wages Council is in fact an alternative to a prescription for coupling by the National Mediator. Assume that the National Mediator does not use his power to prescribe that votes shall be counted unitarilly. Parliament then decides that the dispute shall be submitted to the Wages Council. As mentioned before, the Government acted in this way in 1970 when the navigating officers and the engineering officers of the merchant navy turned down the mediator's recommendations with regard to an agreement for the coastal traffic.

13. In Finland, during the second world war, wages were regulated by the state and stoppages of work prohibited. For a period after the war the Government retained its wartime powers to regulate wages, but enforcement was lax and on one occasion wage increases were pushed through under threat of a general strike. The regulation system was abolished early in 1956.

In the middle of the 1960s the adoption of policies for a coordination of wages and prices became an issue. After the devaluation of the Finnish mark in 1967, organizations representing industry and management together with the unions entered into an agreement with the Government on an economic policy for stabilization. In this agreement limits were laid down for general wage increases. An Act was passed which gave the Government power to regulate wages. In case of a breakdown in bargaining each party was entitled to submit the dispute to the Council for Wages and Prices. A decision of the Council, however, had no teeth since, unlike the decisions of the Norwegian National Wages Council, it was not given the effect of a legally binding peace instru-

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ment. The Government never made use of its powers to regulate wages under the 1967 Act, which remained in force until the end of 1970.

In some quarters there are advocates of a system for compulsory settlement of labour disputes. The Finnish Confederation of Trade Unions has firmly rejected such suggestions. There has been little substance in the arguments for wage regulations in so far as private industry is concerned.

In connection with the adoption in 1970 of the Acts on collective agreements for state officials and for municipal officials it was held that Parliament must have the power to enact a law against a strike of public officials which threatens vital interests of the community. In order to do away with the possible blocking of an emergency law in the future, the Constitution was amended. According to the Finnish Constitution, 67 members of Parliament—one third of the total membership—are entitled to vote the "tabling" of a bill, with the effect that consideration of the bill will be deferred to a session following upon a new election. However, an emergency law against a strike should come into force without delay. In art. 66 of the Constitution it was laid down that a bill may not rest for later consideration "when the purpose of the bill is to prohibit industrial actions among public officials which, if permitted to come into effect, will imperil such public services as are necessary for the safety of the community and for the protection of the citizens' life and health". Through this amendment it was made clear that a prohibition against a strike within the limits of art. 66 does not constitute a violation of basic rights under the Constitution. Whether this applies to private employment relationships is a question which is not yet settled.[7]

14. Until recently, Sweden had the image of a country where the organizations on both sides were able to resolve their mutual conflicts on their own. It is true that on several occasions governmental intervention had been prepared. Thus in 1947 Parliament passed a provisional Act on special measures for the maintenance of police services, but a settlement was reached with the Union of Police Officers before the Government had made use of its extraordinary powers. Similar situations arose in 1951, when the

[7] For further information, see Keijo Liinamaa, "Wages policy: the role of the State and of the organizations of employers and employees", in *Finnish national reports to the Seventh international congress for labour law and social legislation, Warsaw 1970, Studia Iuridica Helsingiensia* 7, Vammala 1970, pp. 15–22.

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nurses in some municipal hospitals had given collective notice of termination, and in 1955, when the officers of the merchant navy were on strike. These disputes were settled peacefully and bills which had been introduced into Parliament were withdrawn. In 1947 and 1951 compulsory service was suggested, in 1955 compulsory arbitration was the chosen remedy.

In 1971, for the first time in the history of Swedish labour relations, the Government intervened. In the public sector, negotiations are centralized. The state is represented by a special body, the National Collective Bargaining Office, the municipalities by the Swedish Association of Municipalities. On the employees' side there are four confederations, namely SF (manual workers and officials in the lower grades), TCO-S (officials in the middle grades), SR (higher middle-grade officials, *inter alia* railway organizers and officers) and SACO (higher paid professional workers). The Government in close cooperation with the Confederation of Swedish Trade Unions, to which SF is affiliated, aimed at equalizing wages. The period of validity of existing collective agreements came to an end on January 31. In February SACO and SR called strikes of some of their members. The Bargaining Office and the Municipalities responded with lockouts. Gradually the effects of the conflict became more and more embarrassing.

It should be mentioned that in 1965 the status of public officials was reformed. Within the public sector collective bargaining was introduced basically on the same conditions as within private industry. The unions were entitled to resort to strikes in disputes of interest, and the public employer to resort to lockouts. In 1965 the Government was aware of the risks involved in open conflicts. It was made a precondition of the reform that the parties on both sides were able to agree upon some voluntary procedure for dealing with such conflicts as were dangerous to the community. Two basic agreements were concluded, one for the state sector, the other for the municipal sector, both designed upon the same pattern. A committee with equal representation of the parties should, when called upon by the state or by a union, pronounce its opinion on the question whether a strike or a lockout was "dangerous to the community as unduly disturbing important public functions". When a question has been referred to the committee, actions should be postponed pending the deliberations of the committee but not longer than three weeks from the time when the question was referred to the committee.

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During the course of the 1971 conflict the Committee for the State Sector had to give its opinion in six cases and the Committee for the Municipal Sector in two cases. In three cases, two of them concerning veterinaries, and one concerning social workers in municipal service, the committees found that the stoppage of work would, if it was allowed to come into effect, constitute a disturbance of important public functions. There was no question of the willingness of the unions to follow the recommendation of the committee. However, the committees had to deal with specified parts of the conflict. They were never called upon to pass a judgment on its total effect.

On March 11, after a one-day debate, Parliament enacted a law, which came into force the following day. The Government was given power to declare that in case of a conflict threating vital interests of the citizens collective agreements which had lapsed at the end of 1970 should come into force again for a period of six weeks but in no case beyond April 27. SACO and SR yielded and ordered their members back to work.

At the end of the bargaining rounds SACO (SR has no members among municipal employees) came to terms with the municipalities. The National Office entered into an agreement with SF and TCO-S, which organizations had not been involved in open conflict. The agreement, which was for the years 1970–72, covered the whole public sector, even those parts in which SACO and SR claimed jurisdiction. SACO and SR turned down an invitation to sign the agreement.

AUTHOR'S COMMENTS

15. In the first part of this paper the author reviewed briefly the history of the laws on collective agreements of the four countries covered by the study. The idea that a line of demarcation should be drawn between disputes of rights and disputes of interests was established in the period 1899–1928. Although there was some opposition at first, notably in Sweden, today very few contest the usefulness of the rule that industrial actions are banned in disputes of rights. There is little more to add on that point. The question how to deal with disputes of interests is a more controversial one.

In the early part of this century it was generally thought that

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labour and management could be left to themselves and that the working of inexorable economic laws and the counterbalancing of the powers of the organizations would enable a system of industrial relations to function where labour could achieve its fair share of an increased national income with few if any open conflicts. Indeed, until very recently this was the credo of both labour and management in Sweden. Today, however, there are many who, like the present author, do not look upon the act of intervention in the SACO-SR conflict in 1971 as an isolated phenomenon which will not happen again. Certainly, new clashes are to be expected if the Government continues in its attempts to influence wages, and backs some categories in order to impose a solution upon others. In what follows I shall discuss from a Swedish point of departure two topics: (1) Should the mediator be assigned wider powers than those he already has under Swedish law to order a party to enter into negotiations? (2) Is it a good idea to have, as in Norway, a permanent institution ready to act in the event of a conflict imperilling vital interests of the citizens?

As mentioned before, in Denmark and in Norway the mediator has much wider powers than in Sweden. In Finland the Minister of Social Affairs and Health has power to order postponement of industrial actions. Personally, I am much in favour of the idea of enacting a law which would give to the mediator power to order that industrial action be delayed for a short period of time. Such a rule would not be very different from the procedural rules laid down in the two basic agreements for public officials in Sweden. A peace obligation would become substantive at the moment when a party filed his submission to the Committee. However, the pause should not exceed three weeks.

The power of the mediator who has received notice of a stoppage of work, to order a delay is not comparable to the intervention through an enactment like the Swedish Act of March 12, 1971. This Act forced organizations which were lawfully engaged in strikes to order their members back to work. SACO, the greater part of whose membership had been subjected to lockouts for several weeks, had exhausted its funds. It was simply not in a position to call a strike again when the truce came to an end on April 27. Since SACO was thus deprived of its power to bring pressure, the Bargaining Office, as representing the state, was free to ignore the SACO claims. Naturally this was considered unfair, as being against the rules of the game.

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It is difficult to have an expert opinion on the question whether the mediator should have power to order a secret ballot for approval or rejection of his proposals and power to constitute a unit for the purpose of counting votes by coupling the proposal of one branch to the proposals of other branches. I do not support the idea that the wisdom of the members is greater than the wisdom of their leaders. The question whether there shall be a ballot or not should be left to the unions to decide for themselves in their constitutions. Incidentally, on the strength of earlier experiences of strikes which became protracted because of rejections, there has been introduced into the constitution of the Confederation of Swedish Trade Unions a clause making it a condition for affiliation that membership votes shall always be advisory and that the board of the national union shall have the ultimate decision.

The coupling of proposals is an instrument that favours the majority against the minority. One might hold that there are reasons for using this instrument when the members of the minority are affiliated to the same confederation as the members of the majority, since they have then some platform in common. On the other hand, awareness of the fact that the mediator's proposals will be carried by a majority of big unions may have as an effect that the members of the minority will vote for rejection as an act of protest. They want to disclaim responsibility but are not prepared to meet the hardships of a strike. The present author has been told by Danish experts that irresponsible leadership explains why such unions as the Printers' Union and the Seamen's Union constantly vote for rejection.

In Sweden there is no need for the device of coupling where unions affiliated to the Confederation of Trade Unions are concerned. Coordination will be the effect of the procedure ordinarily applied to central negotiations. When in a case of centralized bargaining the Swedish Employers' Association and the Confederation of Trade Unions have agreed upon the framework for wage increases, possible improvements of conditions of employment and additional fringe benefits, the agreement remains provisional until there are final settlements for all branches of industry. Except for this, the Swedish Employers' Association has power to enforce coordination. In 1966 the Transport Workers' Union refused to join in central negotiations. Under threat of a general lockout the Confederation of Trade Unions signed an agreement on April 2. The Employers explained that the notice

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of general lockout would remain in force until the transport-industry employers had reached a settlement. Thus the Transport Workers' Union was not better off than it would have been if it had joined the others in central negotiations.

One could imagine that the big unions would be attracted by the idea of introducing a law on coupling. In the SACO-SR conflict this would have offered an alternative to the Act of March 12, 1971, prescribing the re-entry into force of certain collective agreements. Supposing that the mediator had prescribed that his proposals for an agreement covering all state officials should be put to the vote, all votes being counted unitarilly, there is no doubt that they would have been accepted by an overwhelming majority. The members of SACO and SR would have had no voice in the decision. In the opinion of the present author such a solution would have been even worse than the one actually applied. If a strike has to be forbidden as a threat to vital interests of the citizens, Parliament must take the decision. It should not, as in the case of coupling, be in the hands of other unions with conflicting interests.

15. We all agree that Government must have the power to intervene in emergency situations. However, it is another matter to define where the line should be drawn. What constitutes an emergency situation or, using the formula of the Swedish Act of 1971, a conflict which threatens vital interests of the citizens? There is no general answer to the question. So much depends upon the average citizen's willingness to endure the inconvenience to which the public is subjected as well as upon the economy of the country concerned. Possibly a small country with a centralized economy is more susceptible to strike actions than big countries are. For this reason the United States, Britain, France, Italy and West Germany might be able to tolerate open conflicts which a small country, like Denmark, simply cannot afford to have.

In Denmark legislative actions have been *ad hoc* measures designed to meet the immediate need. In Norway there exists an established method laid down in the Act on Wages Councils. The National Wages Council is a permanent board with a chairman and four permanent members plus two *ad hoc* members. However, compulsory arbitration is considered an extraordinary measure. A law has to be enacted by Parliament in each case. In my opinion the Norwegian approach is one that can be recommended. A board is appointed when there is no conflict in

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existence. Further, arbitration has advantages as compared with other methods of legislative intervention. A minority group is more willing to accept as reasonable an award by a neutral body than to submit to a decision passed by a majority of other unions in a coupling procedure. In my opinion it is also preferable to the method of enacting the proposals of the mediator as an agreement between the parties, since it has the psychological advantage of offering a party the opportunity of appeal to a new instance.

Certainly the climate in negotiations is influenced by awareness of the fact that Parliament may intervene at an early stage. The Danish scholar Knud Illum[8] describes perfectly the situation in Denmark when legislative action became more frequent. Earlier the task of the mediator was to produce proposals, of such a tenor that the parties would prefer acceptance to open conflict. "Aware of the possibility of legislative intervention, the mediator will make proposals in the belief that the parties will prefer their acceptance to an enactment by the legislature and also that there is a high probability that his proposals will be confirmed by Parliament."

Illum's observations have general application. The atmosphere in Sweden today is different from that of earlier times. In the last few years the Confederation of Swedish Trade Unions, which with its membership of 1.7 million represents virtually all manual workers, has been soliciting political support of the public and of the Government for its policy of equalizing wages rather than relying upon its strength in industrial action. In 1909 there was a general strike called by the Confederation of Swedish Trade Unions in reply to a number of lockouts by the Swedish Employers' Association. No one would expect a similar occurrence today to pass without Government interference. Possibly the conflict would be permitted to commence, but after a few weeks the parties would be given the choice of making a settlement of their own or submitting to some compulsory solution.

There are reasons why the scope allowed for industrial actions has become narrower than in earlier days. The author would like to emphasize one reason in particular. A regulatory system governed by parties which counterbalance one another may sometimes produce effects which are not desired by those who plan

[8] Knud Illum, *Den kollektive Arbejdsret*, 3rd ed. 1964, p. 21.

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the economy of the country. A Government which has a wages policy of its own is likely to be prepared to take the responsibility for the substantive outcome and may not tolerate any action having contrary aims.

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