DANISH COLLECTIVE LABOUR LAW AND ITS DEVELOPMENT IN RECENT YEARS

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1. THE BASIC PRINCIPLES OF DANISH COLLECTIVE LABOUR LAW

ollective labour law in Denmark rests on a few but essential basic princiles. The first and most important is the distinction which is drawn beveen "disputes of right" and "disputes of interest". A dispute of right xists where the parties to a collective agreement are in dispute as to the orrect interpretation of the agreement or when one of the parties is of the pinion that the other party is in breach of the agreement, whereas a lispute of interest exists where no collective agreement has been entered nto or where an existing agreement does not cover the work in question ınd one of the parties insists upon the conclusion of a collective agreenent. The fact that the work or the working conditions in question are not expressly mentioned in the existing collective agreement does not mean that the work and the working conditions are not considered to be covered by the agreement. On the contrary, it is assumed in Danish labour law that the fact that a collective agreement has been concluded creates a presumption that the parties to the agreement have intended to solve and settle all problems and disputes which existed at the time of the conclusion whether these were known to the parties or were only capable of being anticipated by them. Disputes on issues which are not expressly covered by the text of the collective agreement must therefore usually be regarded as disputes of right. Consequently they should be settled by interpreting the existing agreement by means of interpolating "invisible clauses" into the agreement.[1] A dispute on the question whether a specific kind of work is covered by the provisions of the agreement is always regarded as a question of the interpretation of the collective agreement, i.e. as a dispute of right.

The distinction between disputes of right and disputes of interest is important because in a dispute of right it is a main rule that resort to industrial action is not allowed, whereas a dispute of interest can legally be settled by the use of industrial action. If disputes of right are not solved by

[1] Antti Suviranta, "Invisible clauses in collective agreements", 19 *Sc.St.L.*, pp. 179ff. (1975).

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means of negotiations between the parties, they must be settled by a judicial decision. Where the dispute concerns the interpretation of an existing collective agreement, the procedure follows those provisions of the collective agreement which concern the settlement of trade disputes, i.e. it is referred to negotiations between the parties to the collective agreement and if necessary to arbitration. If the dispute concerns the question whether one of the parties is in breach of the collective agreement, it is decided by the Labour Court unless the parties to the collective agreement agree upon arbitration.[2]

It is also a basic principle of Danish labour law that a collective agreement is enforceable by law and binding upon the parties to the agreement. The agreement is, however, binding not only upon the organization as party to the agreement but also upon its members. This rule means that organizations which are members of a federation are bound by collective agreements concluded by the federation, and it also means that the individual members of trade unions and employers' associations are bound by collective agreements entered into by their organization or by a federation of which their organization is a member. By concluding a collective agreement the organization binds its members even where it has acted contrary to the constitution of the organization or where the representatives of the organization in the bargaining have acted against the instructions of the governing body of the organization or against instructions from the members themselves. The individual member of an organization which is a party to a collective agreement is also personally entitled to the benefits provided for in the agreement. He has, however, no possibility of enforcing these rights himself. The right to sue in the Labour Court or to have disputes of interpretation of the collective agreement decided by arbitration belongs exclusively to the organization as party to the collective agreement in question.[3] The individual member of the organization has no possibility of having his claim under the collective agreement taken to an ordinary court of law, since a claim based on the provisions of a collective agreement can only be decided by the Labour Court or the respective Trade Arbitration Court.[4]

A third basic principle of Danish collective labour law is the rule according to which the conclusion of a collective agreement creates a peace obligation incumbent on the parties to the agreement and their members

[2] Sec. 9(1) of the Labour Court Act, cf. also sec. 9(3).

[3] If an organization is a member of a confederation it is only the confederation which is entitled to sue at the Labour Court, cf. sec. 14 of the Labour Court Act. Cf. also Per Jacobsen, *Kollektiv Arbejdsret*, 2nd ed. 1975, p. 72.

[4] Per Jacobsen, *op. cit.*, pp. 411 f., and cf. sec. 11 of the Labour Court Act.

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for the period of validity of the agreement. Even if the agreement does not expressly provide for such a peace obligation, it is nevertheless assumed that a peace obligation is, as an invisible clause, embodied in the agreement. The peace obligation under a collective agreement is not absolute, but is very far-reaching. When it is to be decided whether, for instance, a strike is in breach of the peace obligation, it is of no significance whether the purpose of the strike has a relation to the collective agreement or its content. This means, among other things, that a political strike is in breach of the peace obligation, and the same applies to a stoppage of work which occurs because the workers want a day off for a picnic.[5]

The right to resort to industrial action in disputes of interest is not stated in the legislation but is recognized in case law. It is presumed that the trade unions have a right to strike and boycott and that the employers' organizations have a corresponding right to lock out and boycott. However, the right to industrial action is not without limitations. According to case law the organization which takes action has to prove that the purpose of the action is legal and reasonable and that the organization has a reasonable and sufficiently strong interest in undertaking the action. It has been held by the courts that there must be a reasonable proportion between the purpose of the action and the means used to enforce the purpose.[6] This principle to some degree corresponds to the German principle of "Sozialadequanz".

2. THE HISTORICAL BACKGROUND OF THE LEGAL RULES

The basic principles mentioned in (1) above are not laid down in statutory law. There is no act on collective agreements in Denmark. The principles have been created by the organizations themselves in their collective agreements. They have been confirmed by numerous decisions of the Labour Court and the Trade Arbitration Courts. Danish legislation in the field of collective labour law is very sporadic and in fact consists of only two acts, the Labour Court Act 1973 and the Conciliation Act, as amended in 1971. The purpose of the Labour Court Act is to regulate the function of the Labour Court and the enforcement of its decisions. The Act does not contain any provisions of substantive law. The principles mentioned in (1)

[5] Per Jacobsen, *op. cit.*, pp. 255 ff., and regarding political strikes, pp. 291 f.
[6] Per Jacobsen, *Konflikters lovlige Formål,* 1976.

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must, however, be considered as part of the background of the Act. The Conciliation Act contains only the formal rules for the functioning of the Public Conciliation Service, which has been established for the purpose of assisting the parties of the labour market in the settling of disputes of interest. Denmark has a tradition, dating back to the late 19th century, of non-interference by the Government and Parliament in the affairs of the parties of the labour market. It is felt that the creation of rules regarding their relationships should if at all possible be left to the organizations, to the Labour Court and the Trade Arbitration Courts. Danish trade unions and employers' associations are allowed a very high degree of autonomy in the field of collective labour law. This tradition was founded in the period from 1899 to 1910. In 1899 the two top organizations of the labour market, Landsorganisationen (LO—the Confederation of Danish Workers' Unions) and Dansk Arbejdsgiverforening (DA—the Danish Employers' Federation) entered into a collective agreement, known as the "September Agreement". This agreement ended a long and serious lockout which had been embarked upon by the DA in order to protect the right of the employer to manage and direct the work in the enterprise. The agreement contained a few essential rules regulating the relations between the two organizations and their members. The rules for the undertaking of industrial actions and the rules stating the right of the employer to manage and direct the work without any interference from the workers can be mentioned as examples. More important than these were the unwritten "invisible" clauses interpolated into the agreement by decisions of the Labour Court and the Trade Arbitration Courts, which constituted a web of legal rules of collective labour law applicable to the parties and their members. These rules are in reality the foundation of Danish collective labour law of today. The September Agreement and the legal rules created on the basis of this agreement also influenced collective agreements between parties which were not members of the two top organizations. The reason was that many unorganized employers and many organizations outside the two top organizations adhered to the September Agreement or modelled their own corresponding agreements on that agreement. In this way the rules contained in the September Agreement or interpolated into it became so widespread that in time many of them acquired the character of basic legal rules of collective labour law. An important example is constituted by the rules on the rights of employees and employers to organize without interference from the opposite party.

The September Agreement remained without amendment until 1960. In that year the two top organizations, the DA and the LO, concluded a Basic Agreement intended to replace the September Agreement. The

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Basic Agreement of 1960, however, did not involve any significant modification of the legal rules founded upon the September Agreement. On the contrary, it was indicated by the parties in the text of the agreement that they had no intention whatsoever to alter the rules of the September Agreement with its written and unwritten clauses unless such intention was expressly indicated in the Basic Agreement. Most of the rules of the September Agreement therefore still remained valid after 1960. In 1969 the Basic Agreement of 1960 was terminated after notice by the LO. The parties did not conclude a new Basic Agreement until 1973. In the period from 1969 to 1973 when no "basic" agreement between the LO and the DA was in force, it was proved that a great many of the rules of the Basic Agreement and also the September Agreement had become basic legal rules which were valid even though they were not laid down in any current agreement.

The Basic Agreement now in force was concluded by the two top organizations in 1973. It contains rules which correspond to the rules of the September Agreement and the Basic Agreement of 1960. The amendments are few and most of them insignificant. In recent years a great number of basic agreements have been concluded between other top organizations, most of them having been modelled on the agreement between the LO and the DA. One could therefore say that the September Agreement and the Basic Agreements of 1960 and of 1973 have in fact had the same function as the statutes on collective agreements that exist in some other countries.

In the period from 1907 to 1910 a commission appointed by the Government, known as the August Commission, was working. The commission was composed of an equal number of members from the LO and from the DA presided over by an impartial chairman appointed by the Government. The commission prepared Bills for the first Labour Court Act and for the Conciliation Act. Both Bills were passed by Parliament without any significant alterations. The adoption of these Acts established a tradition in Denmark according to which legislation in the field of labour law should always be the product of cooperation between Parliament and the organizations of the labour market. Very often this means that Parliament merely confirms proposals made by the organizations in concert.

The Labour Court Act of 1910 remained in force, with a few minor amendments, until 1973, when it was replaced by a new Act. The Conciliation Act, also of 1910, is still on the statute book. Certain amendments, however, have been made in this Act in the course of the years; mainly they have been prompted by proposals made by the LO and the DA with a view to bringing the rules of the Act into harmony with the procedural rules of

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bargaining contained in special collective agreements between the two top organizations.[7]

It was the intention of the August Commission that the Labour Court should be the forum in such disputes of right as concerned breaches of the collective agreements, and that the Labour Court should have no competence to decide in disputes regarding the interpretation of an agreement unless the parties agreed to submit the dispute to the Court or the meaning of the agreement had to be decided in order to find out whether a party was in breach of the agreement. Disputes of right concerning the interpretation of the collective agreements were to be settled by the parties through negotiations and, if such negotiations between the parties to the agreement did not succeed, the disputes should be decided by Arbitration Courts which were to be established according to the provisions of the collective agreements agreed upon between the parties. The commission published a set of rules, known as the Standard Rules for the Settlement of Trade Disputes. The intention of the commission was to create a set of rules which the parties could embody in their agreements. The use of the "Standard Rules" was, however, in no way compulsory. The parties were at liberty to agree upon other rules or to disregard such rules in their collective agreements. In 1934 the state of the law was, however, altered. Parliament passed an Act to amend the Labour Court Act, and according to this amending Act the "Standard Rules" were in all cases to be considered as part of the collective agreement unless the parties had themselves agreed upon other rules for the settlement of trade disputes embodying at least the same principles and guarantees as those of the "Standard Rules". The new Labour Court Act of 1973 provides accordingly.[8]

The Labour Court Act of 1910 did not, however, apply to all collective agreements. Most of the collective agreements concluded by trade unions of white-collar workers were outside the coverage of the Act. If, however, the Act applied to a collective agreement, the Court had exclusive competence to decide in such disputes of right as according to the Act belonged to the competence of the Court. It was, furthermore, the principle of the Act that there was no possibility of appealing against the decisions of the Court to a higher instance. The Labour Court's decisions were final. The Court was composed of an equal number of ordinary lay judges elected by the LO and by the DA, as well as of substitutes. In the last years before the Act of 1973, a few of the substitutes on the employers' side were elected by the top organization of the employers of the agricultural industry. The

[7] Per Jacobsen, *Kollektiv Arbejdsret*, pp. 226 ff.
[8] See sec. 22 of the Labour Court Act.

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Court had a presidium composed of a president and three vice presidents appointed by the lay judges. The president and the vice presidents had to have the qualifications for appointment to a judgeship in an ordinary court. The members of the presidium were—and by tradition still are—elected from amongst the members of the Supreme Court. Membership of the presidium is a part-time job.

When the Labour Court found that a party to an agreement or members of a party were in breach of the agreement, the Act provided for a possibility of deciding that the offender should pay the top organization on the other side a fine (*bod*) by way of compensation. If loss was suffered by the offended party, it was the principle of the Act that the fine should as a main rule be meted out in such a way that it would compensate the loss, but the defendant in breach could also be ordered to pay a fine where the offended party had suffered no loss. Although it was the main principle of the Act that the fine should compensate loss, it was stated in the Act that the Court was at liberty to decide upon a fine the amount of which was less than the economic loss and that the Court could likewise decide upon a fine the amount of which exceeded the economic loss. Actually the size of the fine would depend upon the individual circumstances of the case brought before the Court.

3. THE LABOUR LAW REFORM OF 1973

In the course of the years and particularly in the 1960s there was rather severe criticism of the Danish system of labour law on the part of politicians and sections of the trade union movement. In consequence the Government in 1970 appointed a commission with the task of examining the need for and feasibility of a revision of the Labour Court Act. There had been criticism of the fact that the Labour Court was competent only in disputes where the employee party to the collective agreement in question was a trade union of blue-collar workers. This rule was inconvenient because collective agreements with white-collar workers' unions as parties had become very common. The Act had therefore to be revised in order to make the Court competent to decide disputes over collective agreements of the white-collar workers' unions. In accordance with the established practice of paying regard to the views of the organizations concerned, the commission was composed not only of representatives of the two old top organizations, the LO and the DA, but also of representatives of other important top organizations of the labour market, including those of the white-collar workers. Among the employers' representatives were rep-

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resentatives of the organizations of the municipalities as well as of the Ministry of Finance, the latter representing the state as an employer. The commission was chaired by the president of the Labour Court.

The commission drafted a Bill for a new Act, which was passed by Parliament in the summer of 1973 with a few minor and insignificant amendments. So Parliament followed the tradition of in fact delegating the legislation in the field of labour law to the parties of the labour market. The work of the commission was coordinated with the negotiations between the LO and the DA on the conclusion of the Basic Agreement of 1973.

In its terms of reference the commission was asked to examine the need to create a Labour Court of Appeal and the possibilities of doing so and also to consider whether the sanction provided in the existing Labour Court Act for breaches of collective agreements, i.e. the fine (*bod*), could be deemed satisfactory. The commission was further asked to undertake a general survey of the provisions of the Act and to put forward such proposals as it thought fit.

The new Act of 1973 contained a few innovations, but it is important to recognize that the Act is founded on the same basic principles as its predecessor.

The need to extend the competence of the Labour Court to include *all* collective agreements whether the parties to the agreement are, on the employees' side, unions of blue-collar workers or white-collar workers or, on the employers' side, employers' associations of the private sector or of the public sector is met by sec. 9 of the Act. As a consequence of this extension of the competence of the Court a new provision has been added changing the composition of the Court so that the new organizations are represented by elected lay judges. However, the principle that the Court is composed of a presidium of professional judges and a group of lay judges still applies, as also does the principle that half of the lay judges and their substitutes are elected by the trade unions and half by the employers' organizations. The lay judges are not, however, elected exclusively by the LO and the DA. The organizations of trade unions and of employers' associations are divided into groups, each group being entitled to elect a certain number of lay judges and substitutes. Thus the LO forms one group and the DA another. The organizations of the municipalities and the Ministry of Finance form another group on the employers' side. The presidium of the Court is still elected by the lay judges (sec. 4(1)). The Court is composed of 12 ordinary lay judges and 28 substitutes, together with the presidium consisting of one president, three vice presidents and two substitutes for the members of the presidium (sec. 1). The term of

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election is three years for the members of the presidium as well as for the lay judges (sec. 3(3) and sec. 4(3)). Members of the presidium must be qualified for appointment as judges in the ordinary courts (sec. 7).

It was the unanimous view of the members of the commission that it would not be possible to create a court of appeal giving better guarantees of correct decisions than those given by the existing Labour Court. The idea of establishing a court of appeal was therefore rejected. The commission was of the opinion that the Labour Court, with a presidium which was in fact elected from amongst the members of the Supreme Court and lay judges who were usually elected from amongst the leading officials of the more important trade unions and employers' associations, had a great deal of expertise at its disposal. The commission, furthermore, held that the institution of a court of appeal would have the effect that cases brought before the Labour Court could not be finally decided within a short time, as had for years been the case with suits tried by the Labour Court. In order to secure correct decisions by the Labour Court the commission instead proposed a possibility of having the Court operated in the individual case by a presidium consisting of three members instead of, as usual, one member. It was the intention of the commission that use should be made of this possibility only in such cases as could be considered of great importance. In sec. 8(1) it is stated that for the individual case the Court is usually composed of six lay judges, three employer and three employee representatives and one member of the presidium. Upon request from the parties or by decision of the Court two members may be added to the presidium. It must be assumed that more weight would be attached to a decision, as a leading case, made by a presidium of three members than to an ordinary decision by the Court with only one member of the presidium on the bench.

As already mentioned, the Labour Court has competence to decide cases concerning breaches of collective labour agreements. Under the former Act, the Court was also competent to decide on the legality of notices of industrial actions or of industrial actions as such. This is still the case according to sec. 9(1)(3). This provision, however, applies only where a collective agreement already exists between the parties, since the question of the legality of a notice or of an industrial action is held to be a matter of what is legal under the agreement. It is sufficient that some sort of Basic Agreement is valid between the parties. Before the passing of the new Act the question of the lawfulness of industrial actions when no collective agreement existed between the parties was outside the competence of the Labour Court and belonged to the competence of the ordinary courts. The 1973 Act does, however, provide in sec. 9(1)(5) for competence to decide

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on the lawfulness of an industrial action when no collective agreement exists, if the purpose of the action in question is to force the other party to conclude a collective agreement. If the purpose of an action is other than this and there exists no collective agreement between the parties, the Labour Court has no competence whatsoever to decide on the lawfulness of the industrial action and such a question must be decided by the ordinary courts. As an example it can be mentioned that the question whether a political strike is lawful or not must be decided by the ordinary courts where no collective agreement exists between the parties.

In sec. 9(1)(4) it is stated that the competence to decide whether a collective agreement has been brought into existence belongs to the Labour Court.

According to sec. 9(3) the parties to a collective agreement are entitled to agree that a dispute which according to sec. 9(1) belongs to the competence of the Labour Court shall be decided by arbitration. Such agreement, which can be permanent or *ad hoc,* must, however, have express terms.

One of the main tasks of the commission was to examine the effects of the sanction, the above-mentioned fine or "bod", for breaches of collective agreements, and to propose amendments if necessary. The considerations of the commission resulted in a minor but important new provision of the Act. The LO had expressed the opinion in the commission that the sanction of a fine to be paid by individual employees in case of unlawful strikes had no function to perform. This opinion was based on the fact that an employee taking part in a strike gets no remuneration for the time when he is on strike. According to the LO this in itself had the effect that employees would abstain from taking part in unlawful strikes unless they felt compelled to do so in order to secure their rights under the collective agreement. The DA did not agree with this view and insisted that a sanction on breaches of collective agreements including unlawful strikes was a necessary part of collective labour law, according to which the agreement was binding upon the parties and their members. This disagreement between the two top organizations resulted in a compromise between their representatives on the commission. The DA members admitted that certain unlawful strikes were of such a nature and were started under such circumstances that the sanction by fine had no preventive effects whatsoever. This was the case with wildcat strikes which were started spontaneously by the employees as a protest against unreasonable working conditions and unreasonable behaviour of the employer towards the employees. They also declared that certain political strikes of short duration, e.g. demonstration strikes, might be exempted from the sanction of fine (*bod*). The representatives of the LO and the DA agreed that in

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such cases it was more important to have work resumed as soon as possible than to have the employees ordered to pay a fine. Both sides were of the opinion that such strikes should as a main rule be exempted from the use of the sanction by fine if the employees went back to work within a short period of time.

The rules on fines (*bod*) are contained in sec. 12. The principle of the former Act according to which a person in breach of a collective agreement should as a main rule have to pay a *bod* still prevails. The earlier rule that the amount of the *bod* should as a main rule be equal to the loss suffered by the offended party has been omitted in the new Act. The reason for this is that the rule was never applied in practice. The fines imposed on individual employees have for years been meted out according to a fixed rate which has been altered by the Court when a rise in the general level of wages has made an adjustment reasonable and necessary. Fines imposed upon organizations and employers have been meted out on the basis of a free evaluation of all the circumstances of the individual case in question. The rule of the new Act corresponds to the practice of the Court according to which the fixing of the fine is based on a free evaluation of all relevant circumstances of the case in question (cf. sec. 12(2)). If the victim has suffered a loss, such loss must be considered part of the individual circumstances of the case. The practice of meting out the fines to be paid by individual employees according to fixed rates is not embodied in the provisions of the Act, but the Court has continued this usage since the passing of the new Act. The principle of the former Act according to which, where extenuating circumstances were present, the amount of the fine could be reduced, or the offender even absolved, is still applicable (cf. sec. 12(2)), and the same applies to the principle that aggravating circumstances should result in a heavier fine (cf. sec. 12(3)). As mentioned above, the collective agreement creates rights and obligations of the organizations as parties to the agreement and means that it is also binding upon their members. Sec. 12(1) states, however, as did the earlier Act, that an organization has to pay a fine only when the organization itself is in breach of a collective agreement or has participated in a breach by its members. It should be added that according to the practice of the Labour Court an organization which is a party to the collective agreement or is as member of an organization bound by it has an obligation to do its utmost to prevent its members from committing breaches of the agreement. If the organization is informed that its members are in breach of the agreement, it will itself be in breach if it does not try to stop this behaviour of the members.[9]

[9] See sec. 2(5) of the Basic Agreement of 1973 between the LO and the DA.

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The Act considers unlawful industrial action to be a special form of breach of the collective agreement. In sec. 12(2) it is stated that the size of the fine is to be reduced if the behaviour of the opposite party has been such as to give reasonable cause for the taking of the action and that there shall be no fine when the offended party has himself committed a breach of the collective agreement and thereby given reasonable cause for the offender's action. This rule has sometimes been applied to wildcat strikes. In sec. 12(2) there is a provision that there shall be no fine when an unlawful industrial action has been caused by bad conditions of the "working environment" for which the opposite party is responsible. The term working environment is used in a broad sense and it is assumed by legal writers that the rule also covers old-fashioned authoritarian modes of management by employers. The provision is new and it is considered to be of some importance because of the new Act on Working Environment. The provision is supposed to have established a means by which the employees should be able to enforce the provisions of this new Act.

The most important innovation under the new Labour Court Act was a result of the compromise between the LO and the DA regarding strikes of short duration. According to sec. 12(2) employees participating in an unlawful strike of short duration will as a main rule not have to pay a fine. This provision applies only to the individual employee. A trade union which orders a strike of this sort or backs up such a strike will have to pay a fine according to the ordinary rules. When an unlawful strike starts the employer or his organization has to report the strike to the union at once. According to sec. 9 a "joint meeting" in cooperation with the organizations involved must be held on the day following the start of the strike. If work is resumed before this meeting or immediately after the meeting, according to sec. 12(2) the employees who have participated in the strike will not have to pay a fine unless the employer proves either that there has been no reasonable cause for the strike or that the strike was part of a systematic action. As mentioned before, the basic attitude of the commission and the politicians on this matter has been that it is more important to have a spontaneous wildcat strike stopped and work resumed than to have the strikers ordered to pay fines. The interpretation of this new provision of the Act has, however, given rise to problems, and a great number of cases have been taken to the Labour Court.

Even if the new Labour Court Act contains few changes—and these minor ones—of the provisions of the former Act, it is important because it provides the Labour Court with new opportunities to create and develop rules of collective labour law. When the Bill was discussed in Parliament it was expressly stated and agreed that it was the wish of the legislators that

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the law should be more liberal in favour of the employees and that one of the purposes of the new Act was to create guarantees that in the future the Labour Court should not stagnate in an established pattern. There can be no doubt that before the passing of the new Act the Court felt itself bound by its earlier decisions. By reason of the statements made in Parliament when the Bill was discussed, the Court has now the necessary support for introducing new rules when innovations are deemed necessary by reason of the development in the relations of the labour market. It may therefore be assumed that in the future the rules of collective labour law which are laid down in the decisions of the Labour Court will be looked upon only as guidelines. The extension of the competence of the Labour Court to the agreements of white-collar unions is also important for the future development. Before the passing of the new Act the Court sometimes acted as an arbitration court *ad hoc* in disputes arising out of such collective agreements. In some of these decisions it was stated by the Court that it could not be taken for granted that rules applicable to the agreements for blue-collar workers should also apply to agreements to which white-collar workers' unions were parties.

4. THE DEVELOPMENT AFTER THE 1973 REFORM

The number of cases brought before the Labour Court has increased since the passing of the new Act. This is not surprising. It can be ascribed to the extension of the competence of the Court and to the need of the parties for guidelines regarding the interpretation of the new provisions of the Act. It has, however, meant that the Labour Court has had a renaissance as an instrument for creating legal rules. The Court has for the moment to play a role comparable to that of the period from 1910 to 1930, when most of the present rules were created through decisions of the Court. Several decisions of the Court in the period following 1973 are fundamental. The increase in the number of cases brought to the Court is also due to the development of the labour market in recent years. The economic crisis of society has led to increased strain in the relations between employers and employees and their organizations. Furthermore there seems to exist a crisis in the relations between the trade unions and their members. The unions are unable to maintain the same discipline as before. In addition, there are signs that the new provisions regarding unlawful strikes of short duration have had an effect which was not foreseen, viz. a sharp rise in the number of unlawful strikes.

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The development in certain important fields of collective labour law will be discussed below.

(a) *The Peace Obligation of the Collective Agreement*

The collective agreement means a peace obligation for the parties and their members for the duration of the period of validity of the agreement. The Labour Court Act of 1973 and the Basic Agreement of the same year did not intend to bring about any change on this point. It is expressly stated in sec. 2 of the Basic Agreement that entry into a collective agreement constitutes a peace obligation unless otherwise provided in the Standard Rules for the Settlement of Trade Disputes or in the agreement itself. Since 1973 the Labour Court has decided in two cases concerning the extent of the peace obligation, and in these decisions the strength of the peace obligation is underlined.

Case no. 7862 concerned a collective agreement between an employers' organization and a trade union of white-collar workers. The amount of the individual salaries was not provided for in the agreement, this being a common feature of agreements with unions of white-collar workers. The agreement contained, however, a provision according to which the individual salaries should be agreed upon between the individual employer and employee. The trade union gave notice of a strike the purpose of which was to bring about an agreement on the improvement of the individual earnings of those members of the union who were employed by one of the members of the employers' organization. The standpoint of the union was that the amount of the individual earnings could not be covered by the agreement, since the agreement did not contain any provisions relating to this question. The Labour Court found, however, that the strike was unlawful and was a breach of the peace obligation. The Court held that although the collective agreement did not specify salary rates it contained provisions on the manner in which the individual earnings were to be fixed. In the opinion of the Court the individual earnings were covered by the agreement under the umbrella of the peace obligation even though the parties could not agree upon the earnings of the individual employees. There was no right to resort to strike.

The peace obligation is not absolute. In the Standard Rules it is stated that a collective refusal to work is lawful when considerations of the life, welfare or honour of the employee constitute a compelling reason for stopping work or refusing to work. The same rule applies when the economic difficulties of the employer result in the non-payment of wages.[1]

[1] See sec. 5(2) of the "Standard Rules".

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The right to stop working or to refuse to work is, however, very limited. Only those employees who are actually not paid or whose personal life, welfare or honour is at stake are allowed to stop working. The stoppage of work is a defence measure by the employees and their organizations. Sec. 2 of the Basic Agreement, according to which the right to resort to industrial action can be provided for in a collective agreement, does not necessarily mean that the right must be expressly provided for in the agreement. It can follow from the assumptions upon which the agreement in question is based. This is the case, for instance, in the metallurgical industry, where resort to industrial action is allowed in disputes over piece rates.[2]

An important exception from the peace obligation is the right to take sympathy actions in support of industrial actions started by other workers or employers. In the Basic Agreement between the LO and the DA it is stated in sec. 2 that the undertaking of sympathy strikes and lockouts is permitted according to the "existing agreements and case law". The agreements referred to are the September Agreement of 1898, and a settlement in the Labour Court between the LO and the DA in case no. 108, concerning the interpretation of the September Agreement. It was stated in sec. 2 of the September Agreement that the two top organizations had a right to declare strikes and lockouts or to approve strikes and lockouts which were instituted by their members. This provision did not, however, confer a right to undertake industrial actions in disregard of the peace obligation of a collective agreement. It is interpreted by the Labour Court to mean the right to institute and approve of sympathy actions. There are limits to this right, however, as is explained in decisions of the Labour Court. A right to institute sympathy actions is also provided for in sec. 11 of the Standard Rules. This fact is important because, according to sec. 22 of the Labour Court Act, the principles of the Standard Rules should be considered part of all collective agreements. In decisions of the Labour Court it is declared that sympathy actions are lawful only when they are undertaken in support of a primary industrial action which is itself lawful. It is furthermore a condition for the lawfulness of the sympathy action that the primary action shall *de facto* be instituted. The basic principle of Danish labour law that an industrial action is lawful only when the organization which has ordered the action has a reasonable interest in the action also applies to sympathy actions, and the same is true of the principle that there must be a reasonable proportion between the aim of the action and the means used to attain it.

A problem which has given rise to doubt in legal writing and on which

[2] Per Jacobsen, *Kollektiv Arbejdsret,* p. 265.

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there is no established case law is the question whether Danish trade unions have a right to undertake sympathy actions in support of primary industrial action in foreign countries or in support of primary international industrial actions. Most legal authors of recent years have expressed the view that such sympathy actions are permissible to some extent but only under very special circumstances and only on a very limited scale. The former president of the Labour Court has voiced the opinion that they are lawful if the action is directed against work which has been transferred to Denmark as a result of a foreign industrial action, but otherwise not. This rule regarding transfer of work is in accordance with a doctrine of the Labour Court that an employee has a right to refuse to do work which would otherwise have been performed by employees taking part in a lawful industrial action. Such work is also known as "strike work" or "transferred work". A collective refusal of all employees is also legal under such circumstances. The present author has voiced the opinion that sympathy actions in support of foreign primary actions are lawful where certain conditions exist. First, the primary action must be lawful not only according to foreign law but also according to basic rules of Danish collective labour law. Secondly, the foreign primary action must *de facto* have been instituted. These conditions are in accordance with the rules regarding domestic sympathy actions. But I am furthermore of the opinion that the rule should apply according to which a trade union wishing to institute an industrial action must prove a reasonable interest in the action of sufficient strength to outweigh the employers' loyal interest in the maintenance of industrial peace.

The problem was brought before the Labour Court in case no. 7745 in 1976. The sympathy action in question was not in support of a foreign primary action but in support of a primary action in the shape of a boycott instituted by the Danish stokers' union against shipowners and shipping companies whose ships were flying flags of convenience. The Scandinavian Federation of Transport Workers' Unions, which is affiliated to the International Transport Workers' Federation (ITF), decided to start a boycott of such ships in Scandinavian ports. As far as the lawfulness of such a boycott according to Danish labour law is concerned, it was stated in 1959, in a settlement between the LO and the DA in case no. 5155, that the member organizations of the LO and the LO itself were entitled to institute sympathy actions initiated by the ITF, but only on the express condition that a primary conflict existed between a Danish trade union and a shipowner under a flag of convenience, a primary action which had to be legal according to Danish law. It was also stated in that settlement that sympathy actions in support of such a primary action could lawfully be instituted

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only to the extent decided by the ITF and only when such sympathy actions were *de facto* undertaken in other countries or at least in a considerable proportion of those West European countries which are affiliated to the ITF. To fulfil the conditions of the settlement a primary action was instituted in the form of a boycott by the Stokers' Union. It was decided by the Labour Court that this boycott was legal according to Danish rules of labour law. Because of the international nature of shipping the Court was of the opinion that the union had a real interest in the working conditions on board ships flying flags of convenience, even though the primary boycott had no real effects on the shipping companies or on the members of the union and was only undertaken in order to fulfil the conditions of the settlement in case no. 5155. Further the Court had to consider a sympathy action taken by the LO and the Stevedores' Union in the form of a refusal to load and unload ships flying flags of convenience. The Labour Court found this sympathy action unlawful. The Court held that the settlement in case no. 5155 was still in force as a collective agreement binding upon the LO and the DA and their members. The conditions there laid down were not fulfilled, since sympathy actions were not instituted to any considerable extent in the other countries affiliated to the ITF. There are, however, many signs which indicate that the decision would have been the same even if there had not existed a settlement on the issue in question. The interest of the union undertaking a sympathy action in support of a foreign primary action or an international primary action must be founded on the international solidarity of the trade union movement. In the case in question, the absence of similar sympathy actions in other European countries proved that this solidarity was in fact rather weak, and therefore the Danish unions did not have an interest in the action of sufficient strength to outweigh the employers' expectations founded upon the peace obligation. The reasons for the conditions of the settlement must have been precisely the necessity to prove the existence of an interest of sufficient strength. Thus, according to the decision in case no. 7745, sympathy actions by Danish trade unions are lawful only where the union can prove a very strong interest in supporting the trade union which is a party to a foreign conflict. Such an interest exists when the sympathy action has the character of a refusal to perform "strike work" transferred to Denmark by reason of a lawful foreign action. In such cases the union has an interest of its own in order to defend the members against a violation of their personal feelings. Otherwise the possibilities of instituting such sympathy strikes must be looked upon as very limited. As a possible example of the existence of an interest of sufficient strength in the undertaking of sympathy actions could be mentioned the starting of

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sympathy strikes by a Danish trade union against a Danish company belonging to a multinational group in support of a primary action by employees belonging to another company of the same group. The present author submits that such an international sympathy action must be regarded as lawful.[3]

(b) *The Development of the Sanction by Fine ("bod")*

The provisions of the Labour Court Act, sec. 12(2), which state that an employee taking part in unlawful strikes of short duration should not have to pay a fine, have given rise to many cases before the Labour Court. Such strikes are not sanctioned by fines when the employees who have participated resume work before the "joint meeting" which has to be held by the organizations involved, or when the work is resumed immediately after this meeting. The strikers have none the less been in breach of the collective agreement.

The rule that the employee is relieved from the duty to pay a fine does not apply if the employer is able to prove that the employees have had "no reasonable cause" for the strike, or that the strike must be regarded as part of a systematic industrial action. There are only a few guidelines for the interpretation of these provisions in the statements accompanying the Bill, or in the debates in Parliament. The expression "reasonable cause", in particular, has given rise to many problems. In the statement accompanying the Bill the commission mentioned, as examples of strikes which should be regarded as having no reasonable cause, strikes instituted in protest against decisions made after negotiations between the parties to the collective agreement or by a Trade Arbitration Court. After the passing of the Act, the LO voiced the opinion that these examples were the only ones, whereas the DA maintained that the enumeration was in no way exhaustive and that other circumstances could have the same effect. The leading case is no. 7227.

The workers at a bacon factory considered the collective agreement which covered their fellow workers employed at the slaughter-houses more advantageous than their own agreement. They wished to have an explanation from the union and to discuss the matter with representatives of the union. They therefore asked the union to call a meeting, but the union declined to participate. The workers then declared their intention to go on strike unless the union agreed to take part in a meeting with them, but the union still declined. The management of the factory was then

[3] Per Jacobsen, *Kollektiv Arbejdsret*, p. 289, and *idem*, *Konflikters lovlige Formål*, pp. 77 f.

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informed by the shop stewards that the workers were going to strike as a protest against the union's behaviour towards the members. A "joint meeting" was held. Work was resumed immediately after that meeting. The employers were of the opinion that a strike having no connection whatsoever with the relations between employer and employees could not be regarded as founded on a reasonable cause. The LO, however, insisted that such a situation was not mentioned in the statement accompanying the Bill, and so had to be regarded as a reasonable cause in the meaning of the Act. The LO furthermore voiced the opinion that the expression "no reasonable cause" in the Act could not be understood in its usual meaning: in interpreting the Act it had to be taken into consideration that the purpose of the provision had been to avoid the imposing of fines on individual employees in most strikes of short duration. If the expression "no reasonable cause" was not interpreted narrowly, this purpose could not be achieved.

The Labour Court decided that the workers participating in the strike in question should not have to pay fines. The Court agreed in principle with the DA in the opinion that the examples mentioned in the statement by the commission were only examples, and therefore not exhaustive. However, these examples had to be considered as guidelines for the interpretation of the Act. Strikes of short duration could only be the subject of fines if the circumstances of the strike could be considered fully comparable to the examples in the statement. On the other hand, the Court also agreed with the view of the LO that the expression "no reasonable cause" had to be interpreted in a very restrictive way. Otherwise it would not be possible to achieve the purpose of the Act. The Court decided that in case of strikes of short duration the duty to pay a fine could only be applied to strikes "instituted under circumstances which should be considered as particularly onerous for the participants" and that the examples of the statement were to be considered as guidelines for deciding whether such circumstances existed. Thus the interpretation of this new provision of the Act is liberal and the later decisions of the Court have until recently been in accordance with the leading case. The liberal interpretation of the Court has, however, clearly led to a sharp rise in the number of unlawful unofficial strikes of short duration, a fact which means that the traditional Danish idea that the collective agreement constitutes a peace obligation is threatened. The decision of the Court in case no. 7729 is important because it may imply a limited reversal of the practice of the Court. An unofficial strike committee of the postal workers at the post offices in Copenhagen had declared an unofficial strike which lasted one day. The strike was called as a protest against the dismissal of a shop steward, the legality of which step was to be

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decided a few days later by a Trade Arbitration Court. The committee had given a five-day notice. The Court held that the strike had no reasonable cause since it was not instituted spontaneously and therefore under circumstances which should be considered to be particularly onerous for the participants. Whether this decision means that strikes which are not instituted spontaneously will in the future be fined is not certain, but the possibility exists.

In accordance with the discussions in the commission between the representatives of the LO and the DA political demonstration strikes of short duration have usually been considered to be covered by the main rule of the Act (cf. case no. 7313) that the strikers should be relieved from paying a fine. However, the Court has in a recent decision (case no. 7600) stated that a political demonstration strike of short duration might be undertaken under such circumstances that the strikers are not relieved from the duty to pay a fine. The strike in question was started as a protest against the behaviour of the police, who had stopped a boycott where a picket line blocked admittance to the boycotted firm for all persons and vehicles. The workers were not ordered to pay a fine, as the Court found that the strike *also* had the purpose of a protest against political decisions of Parliament. There is, however, a possibility that the decision in case no. 7600, like the decision in case no. 7729, can be interpreted as a sign of a reversal of the liberal usage of the Court in the years immediately following the passing of the new Act in 1973. In case no. 7600 it was furthermore stated that a political demonstration strike of short duration will usually be covered by the rule that no fines shall be imposed even if only a few of the employees of an enterprise participate.

If the employer can prove that strikes of short duration are parts of a "systematic action", they are not covered by the rule of relief. This exception has been necessary in order to avoid the application of the rule to "rolling strikes" consisting of several successive strikes of short duration. However, the fact that the employees participate at short intervals in strikes of short duration is not sufficient to make the strike a part of a "systematic action". It is stated in several decisions that the concept of "systematic action" only comprises situations where the series of strikes undertaken in succession all have the same aim. The Labour Court has also stated that the separate actions of a systematic action can be established under different forms. A strike of short duration preceded by a "go-slow" action and followed up by a collective refusal to work overtime is a part of a systematic action if the purpose of these different actions is identical. (See cases nos. 7511 and 7525.) It has been discussed by legal writers whether strikes of short duration undertaken at the same time at different en-

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terprises by order of a trade union or, more commonly, by instructions from an outside agency, as for instance a political party or an unofficial strike committee, can be considered to be part of an systematic industrial action in the meaning of the Act. The decision of the Court in case no. 8011 states that such an interpretation would not be in accordance with the Act.

A new form of collective industrial action has become very common since the passing of the new Labour Court Act. It sometimes happens that the employees of an enterprise hold meetings in working hours without the employer's approval to discuss problems connected with the working conditions or purely political questions. Such meetings are in breach of the peace obligation of the collective agreement unless they are permitted by the employer. The participants in such meetings are, however, considered by the Labour Court to be covered by the rule of relief from fines unless the meetings are regularly repeated. If they are, the meetings constitute a systematic industrial action.

A study of the new provisions that participants in strikes of short duration shall be relieved from the duty to pay fines seems to show that these rules have had an effect of undermining the peace obligation which was not foreseen by the organizations of the labour market or by the Government and Parliament. The rule that strikes of short duration are in breach of the peace obligation has no effect when fines are imposed only under very special circumstances. It is already being discussed whether this rule ought not perhaps to be moderated in some way or other so that only strikes which are started spontaneously should be exempted. If, however, the Court continues to revise its practice from the years immediately after 1973 (cf. the trend in cases nos. 7600 and 7729), it is possible that a revision of the Act can be avoided.

(c) *New Types of Industrial Actions*

In Denmark the traditional types of collective industrial actions have for years been the strike, the lockout and the boycott. In addition, "go-slow" actions and collective refusals to work overtime have frequently been used as illegal industrial actions. In recent years it has, however, been not uncommon to supplement the ordinary strike or boycott with physical hindrance of admittance to the enterprise which is the object of the strike or boycott. Such action has been directed not only against employees willing to work but also against the customers of the enterprise and persons delivering goods to it. Until case no. 7601 there were no decisions on the lawfulness of this kind of action. In this decision it was stated by the

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Court that the lawful boycott includes the right of the trade union to give instructions to its members not to be engaged by the boycotted enterprise, and does not comprise a right to undertake physical hindrance of admittance. It was furthermore stated that the use of physical hindrance can make unlawful a boycott that otherwise is lawful. The use of pickets and picket lines is, however, legal according to Danish law if the pickets only use verbal persuasion, but otherwise not.

(d) *The Principle that an Industrial Action Shall Have a Lawful and Reasonable Purpose*[4]

It has been mentioned before that it is a basic principle of Danish labour law that collective industrial action can only be instituted when the action is in pursuit of a lawful and reasonable purpose. If the purpose of an industrial action is to force the other party to conclude a traditional collective agreement, it will normally be considered lawful and reasonable. The demands of the trade union as to the contents of the future agreement may, however, be contrary to a statutory provision or to principles of law which cannot be deviated from. If so, the effect is that the purpose and thus the action itself are unlawful. This rule has been expressed in legal writing for years and was confirmed by the Labour Court in its decision in case no. 7976.

It has also been discussed by legal writers whether a trade union has the right to establish industrial action in order to force a contract upon an enterprise which has already entered into a collective agreement with another union covering the work in question. There have been decisions according to which such industrial actions were held unlawful. There are also decisions indicating that such actions would be lawful.

In case no. 7184 the Court stated that industrial action undertaken in order to enforce the conclusion of a collective agreement upon an enterprise which was already covered by a collective agreement for the work in question would be unlawful under certain circumstances. This rule would chiefly apply if the two competing unions were members of the same top organization and so covered by the same Basic Agreement in their relations with the employer. In such a case it is the expectation of the employer that the conclusion of a collective agreement with one union will mean that he will have no further troubles with other unions which are members of the same top organization. If, however, the employer has no expectations of this kind, the fact that an existing collective agreement

[4] Per Jacobsen, *Konflikters lovlige Formål,* 1976.

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already covers the work in question does not mean that other unions are without a reasonable interest of sufficient strength to use industrial action in order to have the employer sign a collective agreement. The decision in case no. 7184 has been followed up by two decisions in the years since 1973. In case no. 7824 the Court stated that a notice of strike from the union of the security controllers at an airport was lawful as being in pursuit of a lawful purpose, although the work in question was covered by a collective agreement with the union of those controllers who were civil servants, since the controllers' union was not covered by the Basic Agreement for civil servants. In case no. 7651 the Court stated that an industrial action by the union of the workers of the wood-working industry was unlawful, as the work in question was already covered by collective agreements with the Union of Unskilled Workers and the Carpenters' Union. All three unions were members of the LO and covered by the Basic Agreement between the LO and the DA.

As mentioned under 4(a) above, the Labour Court stated in case no. 7745 that the primary action of the Stokers' Union against shipping companies flying flags of convenience was in pursuit of a lawful purpose in which the union had a reasonable interest of sufficient strength. The boycott was therefore lawful. It was, however, also indicated in the decision that the existence of collective agreements between foreign unions and the shipping companies could possibly have had the effect that the union had been without such an interest. In the case there was also a question whether the primary action of the Stokers' Union could be considered as lawful when the purpose was not only the conclusion of a collective agreement between the union and the shipping companies in question but also the coming into being of collective agreements between the companies and other trade unions, e.g. the Danish Seamen's Union. The Court did not pronounce an opinion on this question, but the decision seems by its wording to indicate the possibility that the Court would have held such a purpose unlawful.[5]

(e) *The Effects of Transfers of Ownership on Existing Collective Agreements*

Regarding transfer of ownership of an enterprise which is covered by collective agreements, it has been held in court practice and in legal writing that as a main rule the new owner has a right to declare that he will not be

[5] Strikes and lockouts with the aim of enforcing alterations in the internal structure of the organization of the opposite party must be looked upon as unlawful, cf. Per Jacobsen, *Konfliktens lovlige Formål*, p. 23.

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bound by the agreements concluded with the former owner. If the transferred enterprise is not sold as a "going concern", there are no problems whatsoever. Those agreements which were valid when the enterprise closed down operations are considered terminated and have no validity in the relations with the new owner. If, however, the enterprise has been transferred as a "going concern", it is assumed that the new owner can only free himself from the obligations according to the agreements of the former owner if he expressly declares this intention. This rule was confirmed in the leading cases nos. 1600 and 2481. If the new owner does not declare such an intention, he is considered bound by the existing collective agreements, even if he did not know of their existence. It is assumed that the new owner has an obligation to ascertain, before the transfer, whether collective agreements exist, and if he fails to do so he acts at his own risk. These rules do not apply when the purpose of the transfer was to circumvent the existing collective agreements. If a trade union can prove the existence of such a purpose, the effect will be that the agreements also become valid in relation to the new owner. Nor do these rules apply when the new and the former owner are in fact identical, as for example when the owner of an enterprise transfers the ownership to a limited liability company whose shares are owned by himself. The trade unions also have the right to declare that they will not be bound by the collective agreements which were valid before the transfer.[6] Such declarations have to be made at the time of transfer or as soon as possible after the time when the union had information of the transfer or ought to have had such information.

In decisions nos. 7416 and 7421 the Court stated that the new owner can only free himself of the obligations under an existing collective agreement where this intention was declared directly to the union in question or to one of its officials. A declaration of the intention to the workers at the enterprise or to their shop steward will not have the effect of making the existing agreement not applicable to the new owner. In these decisions it was also stated that the existence of a collective agreement in the case of transfer creates a presumption that the agreements from the time before the transfer are to apply after the transfer also. The burden of proof of a different intention lies with the new owner.

As already mentioned, it has been assumed that the agreement still applies after the transfer if the new and the former owner are in fact identical. Among legal scholars the view prevails that a subsidiary company of a group is not in any way obliged by the collective agreements of its parent company. However, in an old case, no. 4176, the Court stated that

[6] See, regarding the transfer of ownership, Per Jacobsen, *Kollektiv Arbejdsret,* pp. 146ff.

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the subsidiary company in question was bound by the agreement of another company which as a shareholder had a determinative influence on the management of the subsidiary company. This decision has been strongly criticized by legal writers. In case no. 7963 the question arose whether a newly incorporated company in the printing industry was bound by the collective agreement of another company, whose shareholders controlled the voting rights of the company's shares and owned a decisive part of the shares of the new company. The new company had leased a printing machine from the old company and was housed on a rental basis in the buildings of the old company. The production of the new company was mostly taken over from the old company. Some of the former employees of the old company had been transferred to the new company. They were shareholders of the new company and had a rather strong influence on its management. In the opinion of the Court, the union had not proved an intention to get round the existing collective agreement. However, the Court found the agreement binding upon the new company "because of the strong common interest between the two companies". Some awards by the Trade Arbitration Courts have the same outcome. So there seems to be a trend to protect the existing collective agreements in case of a transfer of ownership.

Case no. 6915 concerned an amalgamation into one company of two enterprises, each of which was covered by a collective agreement with different trade unions. The Court found that both agreements were binding upon the new company for the remainder of their term. In case no. 7726 it was held that the merger of two trade unions did not mean that the coverage of the existing collective agreements was extended.

5. CONCLUSION

Danish collective labour law has for years been rather static, owing not least to the fact that most of its rules are judge-made. Admittedly, the Labour Court and the Trade Arbitration Courts are not legally bound by their earlier decisions, but they have been most reluctant to alter a rule once laid down, since that would create uncertainty amongst the parties of the labour market. It will also be seen from the examples mentioned above that in the years after 1973, when the new Labour Court Act was adopted and the present Basic Agreement between the LO and the DA came into being, there have only been minor alterations by means of judge-made law.

There are indications that in the future the Labour Court will continue

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to interpret the provisions of the new Act liberally and that the Court may create new rules or amend rules earlier made by the Court when opportunities to do so arise. It must, however, be emphasized that the opportunities will be few and that important alterations can only be made by the parties of the labour market by means of their collective agreements or by legislative enactments. However, the use of the latter procedure would be contrary to the traditions of the Danish labour market. So far the development of Danish labour law by means of agreements between the parties of the labour market has been slow.[7] Nor have there been many amendments by means of legislation.

However, it can be taken for granted that important innovations will be forced upon the parties of the labour market in the future because of the Danish membership of the European Economic Community (EEC). The regulations of the Commission of the EEC will—to an extent not yet known—make legislation on questions regarding collective labour law necessary in Denmark, if the Commission is to live up to the aim of harmonizing the rules of labour law of the member states. Legislation has already been adopted concerning equal pay for men and women and concerning collective dismissals. Legislation regarding the effects of transfers of ownership and mergers on existing collective agreements and the individual contract of employment will follow within two years and further regulations from the Commission are expected. It may therefore be assumed that the coming years will bring new developments for Danish collective labour law. It may reasonably be assumed that the present Danish tradition of non-interference from the legislature in the affairs of the labour market is out of date.

[7] See, on the development from the "September Agreement" to the "Basic Agreement" of 1973, Per Jacobsen, *Kollektiv Arbejdsret*, pp. 40 f.

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