

Azerbaijan

Introduction

Azerbaijan has a long history of trade union movements, which is characteristic of most countries of the former Soviet Union. The first collective bargaining agreements were signed before the Bolshevik Revolution, as far back as December 30, 1904, by representatives of Baku oil workers and their employers. This collective agreement represented a significant milestone in the protection of oil workers' rights in the early 20th century. In general, the influence of oil workers on union movement has been tremendous.

During the Soviet era (1920-1991) workers (the proletariat) were nominally declared as the ruling class and trade union power was substantially increased, at least in theory. In reality, however, trade union power was declaratory only – the trade unions were effectively controlled by the state, workers having almost no influence on employment rights and benefits. In a planned economy, industrial action could negatively impact the state's own economic interest, as nearly all enterprises were state-owned. In those circumstances, trade unions were expected to prevent workers' disturbances rather than take any proactive steps to further their interests.

After the collapse of the Soviet Union, one of the earliest decrees issued by the President of Azerbaijan was Decree No. 562, *On Ensuring the Rights of Trade Unions in the Transition to a Market Economy*, dated February 7, 1992. As the name suggests, this decree was aimed at protecting trade unions' rights in real terms; in the transition to a market economy and democracy, the state put more emphasis on the welfare of the general public and on the protection of “socio-economic interests of workers.”

In Azerbaijan's modern history, it became evident that the Soviet practice of nominal employee representation via state-controlled trade unions had had a negative impact on employees' general perception of the trade union movement – collective bargaining is generally seen by most employees as undesirable. As a result, the current influence of trade unions in Azerbaijan is not significant. Even in the oil and gas sector, where the union movement has traditionally been strong, trade unions are not actively involved in the resolution of employment issues.

Trade Unions

The main statute on trade unions in Azerbaijan is the law On Trade Unions, dated February 24, 1994 (the “Trade Union Law”). Azerbaijan is also a signatory to a number of international conventions adopted under the auspices of the International Labor Organization (ILO), which establish additional standards or expectations with regard to employees’ rights to organize and participate in trade unions. Some of the most prominent ILO Conventions ratified by Azerbaijan in this area are the Freedom of Association and Protection of the Right to Organise Convention (1948), The Right to Organise and Collective Bargaining Convention (1948), and the Collective Bargaining Convention (1981).

International conventions to which Azerbaijan is a party form part of Azerbaijan’s legal system and prevail over national (domestic) laws where such laws conflict with the international conventions.

The General Role Of Trade Unions

The prime function of trade unions is to protect the employment, social, economic, and other lawful interests of its members, whether at the level of a single enterprise, industry/profession, or national (state) level. This function is implemented in various ways. Prior to the enactment of laws which impact employees’ rights, the relevant state authorities must consult with trade unions operating at the national level.

Trade unions must also be consulted during the implementation of labor laws where such consultation is required by law. Finally, trade unions acting at the national level may also apply to state authorities and courts for matters not directly impacting their individual members but relating to the general interests of employees or trade unions.

While trade unions are primarily established to protect the rights of their members, their status as legal entities (all trade unions must register as legal entities) allows them to own assets, incur liabilities, and appear in court *on their own behalf*.

By law, trade unions are independent associations and any interference in their activity by state authorities is prohibited.

Constitution Of A Trade Union

Article 58 of the Constitution of Azerbaijan provides that any person may establish or join a trade union at will without restriction. Pursuant to the Trade Union Law, a trade union may be formed by at least seven people. By law, a trade union is an association which is designed to protect the employment rights of not only existing employees but also the social, economic, and other lawful interests of other people concerned. Therefore, unemployed and retired persons as well as students may also create or join trade unions to further the interests of their profession and to protect their lawful interests.

The Scope Of Trade Union Rights In Business

Trade unions have substantial power in the regulation of employment relations. Pursuant to the Labor Code of the Republic of Azerbaijan, effective July 1, 1999 (the “Labor Code”), the Trade Union Law and other laws and regulations, trade unions have the right to:

- Participate in the development of state policy on employment;
- Protect the employment rights of their members, file claims in court, and undertake the legal representation of their members in court hearings;
- Organize and facilitate industrial action (strikes, walkouts, rallies, etc.) in accordance with law and the trade union charter;
- Arrange training on employment rights for their members;
- Initiate collective bargaining negotiations and conclude collective contracts and agreements with representatives of employers and state authorities;
- Monitor compliance with labor laws, including laws relating to safety in the workplace and compensation for injuries;
- Participate in employment dispute resolution processes on behalf of their members;
- Apply to state authorities to request disciplinary sanctions against persons responsible for the violation of the terms of collective agreements and labor laws;

- Liaise with and participate in international trade union associations; and
- Establish information distribution systems (press centers, polling stations, etc.) to keep their members informed about trade union activities.

Apart from these traditional roles and responsibilities, trade unions have certain special powers and prerogatives in the resolution of key employment issues:

1. The exclusive right to endorse an employer's decision to terminate an employment agreement due to staff redundancy and failure to perform work duties – the trade union's decision must be made within three days of receipt of notification from the employer and must be based on an objective and impartial review of all circumstances;
2. The right to receive, at least three months prior to the expected liquidation of an enterprise or staff redundancy, notification from an employer and to consult with it to reduce the impact of the process and take measures to protect socially vulnerable categories of staff (single parents, pregnant women, refugees, etc.);
3. The right to participate in skill assessment reviews of workers following initiation of such assessments, either by the employer or operation of law;
4. The right to establish, together with an employer, shortened working hours, not to exceed 36 hours per week, for people working under hazardous conditions such as in chemical laboratories;
5. The right to be consulted in establishing days off at enterprises operating work shifts;
6. The right to determine, together with an employer and employees, the order (sequence) of holiday entitlements among employees;
7. The right to be consulted on the implementation of and amendment to "labor norms" (pre-determined standards for effective use of time, level of service, deployment, and number of staff);
8. The right to be consulted on pay and benefit packages;
9. The right to be consulted on the preparation of disciplinary codes;

10. The right for its nominated representative to have free access to any workplace to assess compliance with safety rules as well as the right to demand disciplining of all persons responsible for violation of safety rules; and
11. In cases provided for in collective agreements, the right to participate in pre-trial settlement of individual employment disputes.

As the above list indicates, trade unions have an important role in regulating employment relations. In practice, however, trade unions either do not enforce these powers themselves or lack detailed, specific procedures to ensure compliance.

The Function Of Trade Union Representatives

The Trade Union Law makes a distinction between *primary trade unions* established by the workers of an enterprise at the enterprise level and *associations of trade unions* established by primary trade unions for professions and industries at the national or regional level. Further, trade unions are typically grouped at different levels by location: (i) at the local level, i.e., a single trade union within a certain administrative unit of the country such as a city or settlement; (ii) at the regional level, consisting of all local trade unions within a large city or settlement; (iii) at the national level, consisting of all regional trade unions representing a certain profession or industry; and (iv) an all-state trade union consisting of more than half of all state trade unions without regard to profession or industry. The influence, powers and duties of trade unions at different levels varies substantially.

In large trade unions, which receive substantial financial support from their members, the trade union's senior administrative staff (typically the head of a trade union and chief accountant) would occupy their positions on a full-time basis and would be released from performance of work duties. In other cases, an elected representative performs the trade union's administrative functions in addition to his or her full time job at an enterprise (usually the same enterprise in which the trade union has been established).

Non-managerial staff and ordinary members of an association of trade unions who have not been duly released from performance of their work duties may only participate in the activities of a trade union's elective administrative body and its seminars and training during work hours if agreed with the employer and at the trade union's cost (including average salary for non-work related time). Members

of primary trade unions, however, are entitled to free time during work hours to participate in trade union activities. The duration, term and conditions of such free time are set out in collective bargaining agreements.

Work Councils

Apart from trade unions, the Labor Code allows establishment of other public associations of workers including Work Councils. Unlike trade unions, the status of Work Councils is not regulated in detail and, in any case, their roles and responsibilities appear similar to those of trade unions (with the exception of associations created for a specific purpose, such as women workers' associations or association of inventors). In practice, Work Councils are not common in Azerbaijan.

Other Types Of Employee Representation

One of the characteristic concepts inherited from Soviet labor law is the institution of the labor (workers') collective as a non-institutionalized authority representing employees of a particular enterprise. A labor collective is defined in the Labor Code as an association of employees of a particular enterprise, who have the right to join in order to defend their employment, social, and economic rights and to protect their lawful interests collectively.

As a general matter, a labor collective may be characterized as an ad hoc substitute for trade unions in work places where no union has been formed. The labor collective enjoys some (but not all) of the rights and powers of trade unions. This makes it an attractive form of employee representation as there is no formal requirement for official registration, no membership burdens, and more importantly, no negative connotations for being a trade union member, which may be important for more skeptical employees concerned about their reputation with an employer.

The representatives of labor collectives may conduct negotiations and enter into a collective agreement with an employer, participate as an observer in skill assessments, undertake public monitoring of compliance with safety rules at an enterprise, take decisions on commencement of industrial action, and engage in similar activities.

Trade Union Employee Protection Rights

To ensure the objective and impartial representation of workers, the law provides for additional protection to trade union members. Key personnel of large trade unions who have been duly released from performance of their work duties in order to fulfill their administrative functions at a trade union must be provided with the same job (position and title) and at the same enterprise after expiry of their term of service at the trade union. If it is impossible to provide the same job (position), the employee must be provided with a similar job (position) at the same enterprise or, if agreed with the individual concerned, at a different enterprise. Unfortunately, the Trade Union Law does not specify how a person may be employed at a different enterprise and how those enterprises are selected.

Further, the members of trade unions who participate at the collective bargaining negotiations may not be disciplined, dismissed or transferred to another job at the initiative of an employer during negotiations.