

Netherlands

Introduction

The Netherlands has a long tradition of consensus, by a process of persuasion and consultation. Since 1945, central employees' and employers' organisations have participated in a national consultative body, known as the Joint Industrial Labour Council (*Stichting van de Arbeid*, or "STAR"), in which the social partners are equally represented for bargaining basic wages and labour conditions. The outcome of these bargaining sessions usually sets the trend for similar bargaining in each type of industry or trade (or large corporations). The STAR also advises, consults, and discusses with the government to jointly give direction to social and economic policies. The STAR can also make recommendations – by request or by other means – to the government on labour relations.

Furthermore, the Social and Economic Council (*Sociaal-Economische Raad*, or "SER") plays an advisory role to the government. It is an advisory board established by law. The SER consists of employer, employee, and government representatives (known as "crown-appointed members" or "*kroonleden*"), in equal proportion. The SER can make recommendations on its own initiative, or the government can ask it for advice on any important measure in social and economic fields. The advisory function of the SER is directed toward improving the quality of decision-making in social affairs and organising public support for policy. The SER also serves as a forum where the parties can meet, lobby, and seek consensus on social and economic policies.

In the Netherlands, most unions are organised for a particular branch of industry or trade. Only a small number of the trade unions are organised on an enterprise level. The largest federation of trade unions in the Netherlands is the Federation of Dutch Trade Unions (*Federatie Nederlandse Vakbeweging*, or "FNV"), followed by the National Federation of Christian Democratic Workers (*Christelijke Nationaal Vakverbond*, or "CNV") and the Trade Unions Federation of Middle and Senior Staff (*Middelbaar en Hoger Personeel*, or "MHP").

The Netherlands is currently one of the least unionised countries in the European Union. In 1995, only approximately 28% of the Dutch working population was unionised. This percentage decreased even further to 24% in 2004. The reasons for the low organisation percentage include the erosion of employment in the

traditionally highly organised manufacturing industry, the decline in solidarity and group awareness among employees, changing patterns of work (households with two incomes), and the changing composition of the working population (e.g., more women, more workers with a higher level of education, and more categories of employees who are less attracted to unions).

Trade Unions

The General Role Of Trade Unions

Trade unions, as well as employers' associations, are important lobbies in the Netherlands. Trade unions regularly enjoy the support of the Dutch Parliament, certain political parties (although without an official link), and social institutions.

There is no legal statute in the Dutch Constitution on trade unions. However, the freedom to unionise is based on Article 8 of the Constitution, which recognises and guarantees the freedom of association. The Netherlands has also signed a number of international treaties recognising trade union freedom (e.g., the European Social Charter).

In general, trade unions in the Netherlands are tasked with:

1. Representing the interests of their members in negotiations on labour conditions with employers or employers' organisations to be included in a collective bargaining agreement (*collectieve arbeidsovereenkomst*, or "CAO");
2. Representing the interests of their members in discussions with employers (especially on a social plan) in the event of a reorganisation or the closing down of an enterprise, especially pursuant to the Act on the Notification of Collective Dismissals;
3. Representing the interests of their members in merger control, pursuant to the SER Code on Takeovers and Mergers (*SER Fusiegedragsregels*);
4. Representing employees in boards and consultative bodies, such as the Social Security Boards, the Regional Employment Offices, and the STAR;
5. Providing individual assistance to members (e.g., legal aid, tax advice, etc.);

6. Stimulating worker participation within enterprises, especially by proposing candidates for the Works Council pursuant to Article 9 of the Works Council Act and assisting Works Council's members (in the Netherlands, there are no real formal representatives of trade unions on managerial bodies); and,
7. Educating members by organising courses, etc.

Additionally, trade unions with several members in one enterprise often start up what is known as a “*bedrijfsledengroep*” (members’ committee), which consists of organised members within a certain enterprise. In this manner, trade unions are kept informed of the situation in a certain enterprise, are able to learn more regarding the wishes of the employees, and are able to learn more on how to possibly implement employees’ wishes.

The Scope Of Trade Union Rights In Businesses

In the Netherlands, trade unions – as well as central employers’ organisations – participate in the STAR. Discussions in the STAR mostly set the standard of bargaining in different types of industry or trade with the goal to achieve new CAOs.

Each trade union in the Netherlands is entitled to conclude CAOs under certain minor formal requirements. However, a trade union must have full legal capacity in order to enter into CAOs. Collective bargaining has been recognised since 1927, when the Act on Collective Bargaining Agreements (*Wet op de collectieve arbeidsovereenkomst*), Act of December 24, 1927, Stb. 415, was adopted. Based on the Act on the Declaration of General Bindingness and Non-Bindingness of CAOs, the Minister of Social Affairs may declare, at the request of one or more parties to a particular CAO, that such CAO be “generally binding” for the entire sector of industry if it already applies to a substantial majority of the employers and employees in that sector. In this way, employers and employees within that industry sector that were *not* involved in the negotiations for the CAO will also be bound by the same terms and conditions as those applicable to employers who were, thus preventing businesses operating in the same sector from deriving a competitive advantage by offering poorer terms of employment.

The parties to a CAO are employers’ associations (or individual employers) and trade unions. In principle, an employer may refuse to negotiate with (certain) trade

unions. However, sufficiently representative trade unions may claim admission to negotiations in court proceedings. Furthermore, a strike could play a role, although Dutch employees are not easily inclined to strike.

CAOs are mostly concluded for a period of one or two years, but there is generally a continuous process of negotiation between the social partners. The most important bargaining is done at an industry-wide level. Provisions in a CAO may not deviate from obligatory law (e.g., the acts on minimum wage, equal treatment, etc.), but provisions in a CAO may deviate from what is known as the “three-quarter obligatory law.” The parties may, for instance, agree:

- To the termination of an employment contract during illness, before the employee has been sick for more than two years;
- That the notice period will be shorter or longer than the normal notice period; and,
- That the working hours may be longer than the standard statutory working hours.

The CAO applies to all employees that fall within the scope of a CAO, including non-union members. However, trade union members are obliged to accept the terms of employment in the CAO, while non-members do not have this obligation unless the CAO has been declared generally binding by the Minister of Social Affairs. Very rarely are all employees within a company covered by the CAO. Most CAOs only apply to a certain job level and, therefore, up to a certain salary level.

CAOs contain mostly minimum rules and “normal provisions” regarding wages, additional pay, working time, vacation, health and safety, etc. More favourable terms can be agreed upon in individual labour agreements.

The Right To Strike

Dutch law does not contain any specific provisions on strikes. The court adjudicates how parties conduct themselves in conflict situations. The court will examine the conflict according to the European Social Charter ratified by the Netherlands in 1980. Section 6 (4) recognises the right of employees to strike, unless a CAO rules out strikes, typically with an absolute or conditional no-strike agreement. In principle, strikes are allowed only as a last resort after a breakdown in serious negotiations. A strike is unlawful if serious negotiations have not first been held with the employer

and if the employer has not been given due notice. Section 31 of the Charter imposes restrictions on the right of collective action, especially based on the protection of third parties' rights to freedom and the protection of the public order, national security, and public health and morale. However, the courts are not easily inclined to invoke Section 31 of the Charter. Courts will typically assume that damages, even those suffered by third parties, are inherent in a strike. The losses need to be disproportionately large in order for a strike to be deemed unlawful. The size of the damages can also be affected by the length of a strike. Furthermore, strikers may not obstruct those willing to work. Picketing is therefore deemed unlawful.

Employees participating in a strike have no right to remuneration and social security benefits, although employees participating in strikes who are members of a union will be paid from union strike funds.

Based on the figures below, labour relations in the Netherlands can be characterised as harmonious. Trade unions and employers' associations have adopted a strategy of conflict avoidance. In comparison with other countries, trade unions rarely use the strike as a method to achieve their goals.

An important point is that three-quarters of the trade union members must vote in favour of the strike. As strikes are often used only as a warning, the number of strikes and lost working days is very low in the Netherlands, especially in comparison with figures for other EC countries.

Strikes In The Netherlands (From The Central Bureau Of Statistics, May 2008 Statistics)				
<i>Year</i>	2004	2005	2006	2007
Number Of Strikes	12	28	31	20
Number Of Employees Involved (x 1,000)	104,2	29,0	11,3	20,7
Number Of Lost Working Days (x 1,000)	62,2	41,7	15,8	26,4

Number Of Lost Working Days Per 1,000 Employees In Specific EU Countries In 2004, 2005 and 2006 (From The Statistics International Labour Office And Central Bureau Of Statistics For The European Union)

Year	2004	2005	2006
Finland	18.0	280.3	29.9
Germany	1.3	0.5	11
Netherlands	9	6	2
Spain	248.9	50.1	47
United Kingdom	34	6	28

Collective Redundancies

Pursuant to the Act on the Reporting of Collective Dismissals (“WMCO”), if there is a planned dismissal of 20 or more employees within a period of three months and within one district that the Central Organization for Work and Income (“*Centrale organisatie voor werk en inkomen*”) or “CWI”) operates in (a “District”), the employer is obliged to inform the trade unions of the planned dismissal by sending the union a copy of the written request to the CWI (some CAOs may oblige employers to inform the trade union at an earlier stage).

The employer must discuss with the trade union the reasons for the reorganisation and the consequences for the employees. According to Article 4 of the WMCO, the report to the CWI and the trade unions must include the following information:

1. The reasons for the planned collective dismissal;
2. The number of employees to be made redundant, with a breakdown of their job description, date of birth, sex, and date of commencement of employment;
3. The number of employees normally employed;
4. The proposed time scale for the termination of the affected employees;
5. The criteria used in the selection of employees to be dismissed;
6. The way in which the severance payments are calculated; and,
7. Whether a Works Council in the company will be involved.

There is a one-month waiting period that allows the employer and the trade union to negotiate and gives the employer sufficient time to prepare a social plan. However, there is no legal obligation for the employer to negotiate the content of the social plan with the trade unions. Nevertheless, a social plan often forms an important part of the negotiations with the trade unions, as trade unions will base their support on the content of that plan. In case of bankruptcy, a waiting period does not have to be observed.

The SER Merger Code

The Social and Economic Council (“SER”) is an advisory public body, equally composed of members who represent the trade union federations, the employers’ federations, and independent experts. The SER drew up the Merger Code in 1975, which is promoted by a SER Commission. The rules of the Merger Code, which were last amended in 2000, are to safeguard the rights of affected employees and shareholders during mergers, although the Code does not contain any (mandatory) rules of law.

Article 3 of the Code obligates the management of a business to notify the relevant trade unions before the decision regarding a merger has been made. This obligation only applies if one of the merging enterprises is settled in the Netherlands and has 50 or more employees. The trade unions are obliged to treat the notification confidentially. The trade unions have a right to obtain information concerning the motives and the consequences of the merger and to give their judgment on the merger from the employees’ point of view. The trade unions are furthermore entitled to a face-to-face meeting with representatives of the company to discuss (among others) the consequences for the employees and possible ways to alleviate such consequences.

Works Councils

General Requirements And Principles

Under Article 2(1) of the Dutch Works Council Act, every business that employs at least 50 persons must have its own Works Council.

Part-time employees and employees who are hired out are also granted full participation in the enterprise that hires them, as long as they have an employment agreement with the enterprise. This right is also conferred upon employees who are hired in (including temporary employees): they are entitled to participate in the

hiring enterprise's Works Council, provided that they have worked there for at least 24 months (pursuant to Article 7:690 of the Dutch Civil Code) and have contributed in the activities of the enterprise. Thus, employees who are hired out (e.g., by means of secondment) are not only entitled to participate in the enterprise from which they are hired out, but also in the enterprise where they are actually performing their activities (subject to the 24-month rule).

Under the Dutch Works Council Act:

- An “enterprise” is defined as “any organisational group that operates as an independent entity in society and in which work is performed pursuant to an employment contract or by public-law appointment”;
- An “entrepreneur” is “the natural person or legal entity that carries on an enterprise” (one entrepreneur may thus carry on various enterprises);
- The persons with voting rights for the Works Council are the persons who “worked for the enterprise” for six months in order to be able to vote or for one year in order to be elected; and,
- Persons “employed by the enterprise” are those persons who have actually worked for the enterprise on the basis of (i) a public-law appointment, (ii) an employment contract with the “entrepreneur that carries on the enterprise,” (iii) a temporary employment contract as defined in Article 7:690 *et seq.* of the Dutch Civil Code for at least 24 months, and (iv) persons who have an employment contract with the entrepreneur, but who work for an enterprise that is carried on by another entrepreneur.

An entrepreneur who maintains two or more businesses employing at least 50 people can set up a Joint Works Council if it promotes the positive application of the Works Council Act in the related businesses. The same applies to a group of entrepreneurs that maintains two or more businesses.

Setting up a Joint Works Council is usually done if an entrepreneur runs several businesses that are linked as far as nature, structure, and management are concerned, and to such a large extent that there does not seem any point in setting up separate Works Councils. A Joint Works Council may be set up provided that a primarily joint business policy is implemented, both in the economic and in the organisational sense. If no joint policy is implemented despite the fact that there are certain common interests, a Group or Central Works Council may be set up. If the Central Works

Council functions for only a part of the enterprise, it is named a Group Works Council. In that case, the entrepreneurs involved must have a joint economic objective and conduct a joint management. The Group Works Councils and the Central Works Councils are authorised only in joint matters regarding the enterprises in question, regardless of whether the separate Works Councils are granted authority in those matters (Articles 3 and 33 of the Dutch Works Councils Act).

In applicable businesses, the employer is obliged to set up the Works Council. If no Works Council is set up, each interested party and each trade union entitled to nominate members of the Works Council will have the right, after mediation and advice by the Industrial Committee for Works Council Matters, to request the Cantonal Court to order the employer to set up a Works Council. The Cantonal Court may decide that the employer indeed has an obligation to set up a Works Council. If the employer fails to comply with that obligation, the employer will be liable under the Economic Offences Act (*Wet economische delicten*) and could face a maximum sentence of six months' imprisonment or a fine of EUR 16,750 in addition to other penalties that can be imposed and actions that can be taken.

Election Of Works Councils

Employees who have an employment contract for at least six months with an employer are entitled to vote in the Works Council elections. Temporary and seconded employees are not entitled to vote until they have performed activities for the employer for at least 24 months.

Employees who have worked for the employer for at least one year will be eligible for membership in the Works Council. Temporary, and seconded employees will not be eligible until they have performed activities within the company for at least 24 months.

After consultation with the entrepreneur, the Works Council shall set the election date as well as the times at which voting shall commence and end. The Secretary of the Works Council shall give the entrepreneur, the employees, and any relevant employee organisations notice to that effect. There shall be at least 13 weeks between the date of notice and the date on which the election is to be held.

At least 10 weeks before the election date, the Works Council shall draw up a list of employees who will be entitled to vote and/or who are eligible for election as of the election date and shall ensure that this list is known within the company.

Employee organisations may submit candidate lists up to six weeks before the election date. The Works Council must verify that the lists submitted and the candidates named on them meet the requirement set by law and the Rules of Procedure. The Works Council must inform all employees of the candidate lists at least two weeks before the election date. A list can also be submitted directly by a group of employees if that group is composed of one-third or more of the voting employees of the business who are not members of an association, provided that at least 30 signatures have been placed on the list of candidates.

Works Council Members

A Works Council consists of members chosen directly by and from employees who work in the business. The Works Council will have five members if the business has 50 to 100 employees, seven if the business has 100 to 200 employees, etc., with a maximum of 25 members in case the business employs 12,000 or more (Article 6 of the Dutch Works Councils Act). The Works Council elects a chairperson and one or more substitute chairpersons from its midst. The chairperson (or substitute chairperson) has the power to represent the Works Council in court.

Management Of Works Councils

A Works Council must prepare internal rules and regulations on matters charged or left to the Works Council. Before adopting the rules and regulations, the Companies' Chamber of the Amsterdam Court of Appeals affords the employer an opportunity to express its views.

The rules and regulations of the Works Council can also provide for an electoral group system, in which case the persons working in the business are divided into electoral groups: groups of employees or business divisions that elect a certain number of Works Council members from their midst.

Members of the Works Council resign collectively every three years, but are immediately eligible for re-election. The Act specifies the provisions to be incorporated in the rules and regulations, but the Works Council determines its own procedural methods. It can set up committees, which can reasonably assist in the performance of the council's duties. The Works Council can also invite one or more experts to attend a meeting of the council dealing with a specific subject matter.

Functions And Rights Of Works Councils

The Works Council Act and several other statutes grant the Works Council a number of specific powers.

On the basis of Articles 158 and 268, Book 2 of the Dutch Civil Code, Works Councils in large public and private companies (*naamloze vennootschappen* and *besloten vennootschappen*) have certain powers with respect to the appointment of supervisory directors (e.g., the right to make recommendations or raise objections).

The most important powers of a Works Council include the right to information, the right to be consulted and the right of initiative, advisory powers, and the right of approval in certain circumstances. The Works Council also has specific promotional duties with regard to the working conditions of the establishment.

The Right To Information

Articles 31 to 31e govern the Works Council's right to information. A newly elected Works Council is entitled to the current, basic information on the structure and organisation of the company and the legal entity that governs the company, as well as information on the group to which the company belongs (Article 31(2) of the Dutch Works Councils Act).

On the basis of Article 31, the company must provide the Works Council with written information about important legal and organisational aspects of the company, including:

- The company's legal form and Articles of Incorporation or Association;
- The name and address of the company or the (general) partners;
- A list of the legal entities that make up the group, the division of powers between these individual entities, and the legal entity that is actually in control of the company (e.g., in the form of a group structure diagram);
- A list of the other companies with which the company maintains permanent relations that may be essential to the company's continuity; and,
- Insight into the organisational structure of the company.

The Works Council's right to information is limited to the information that can reasonably be linked to the performance of the Works Council's tasks. In its request for such information, the Works Council must clearly specify the matter for which

it requires the information. Should the company feel that the Works Council does not reasonably need certain data or information, it can refuse to give the information. If, subsequently, the Works Council insists that it must have the information, it may, after consultations with the works committee, request the Cantonal Court to break the deadlock.

Furthermore, the entrepreneur must provide the Works Council with detailed information on the company's financial and economic policy at least twice a year (Article 31a) and with information on the company's social policy at least once a year (Article 31b, 31c, paragraph 1(g)). This information must be discussed in one or more consultative meetings (Article 24).

The Works Council is also entitled to receive information on the amount and content of the terms and conditions of employment that are provided to the several groups of employees within the business. The entrepreneur is also to provide information on the amount and content of the terms and conditions of employment of the management board. Last but not least, the Works Council is to be informed of the total amount of compensation provided to the supervisory board (Article 35d of the Dutch Works Councils Act).

Apart from the right to the above information, the Works Council is also entitled to ask the company for information and data that the Works Council in all reasonableness requires to perform its duties (Article 31(1)), which is known as the "active information right."

Finally, the Works Council has other specific rights to information within the framework of its advisory powers and its power of approval (Articles 25(3), 27(2) and 30(3)).

The Right To Be Consulted/The Right Of Initiative

Consultations between the company and the Works Council take place in "consultative meetings." The company and the Works Council are obliged to convene within two weeks after either the company or the Works Council has requested a meeting, specifying the reasons for its request. If necessary, following the mediation efforts and the advice of the works committee, the Cantonal Court can be petitioned to order both parties to meet, so that the two-week time period may be complied with (Article 23). The Works Council has the power to make proposals concerning any such matters and express its point of view (rights of initiative conferred under Article 23(2)).

On behalf of the entrepreneur, the managing director of the company must conduct the consultation. If there is more than one managing director, the directors must decide among themselves who will consult with the Works Council. The managing director may ask other managing directors or other individuals working for the company to assist him or her (Article 23(6)).

The conduct of affairs in the company must be discussed at least twice a year in a consultative meeting, although the Works Council may decide that this obligation need not be complied with (Article 24(2)).

The above obligations to attend the meeting do not apply to companies that are maintained by an entrepreneur that, alone or as part of a group of associated entrepreneurs together, maintains at least five companies for which a Works Council has been set up (Article 24(3)).

Advisory Powers

Certain decisions to be taken by the entrepreneur require prior advice from the Works Council. Pursuant to Article 25(1) of the Dutch Works Councils Act, such decisions include:

1. Transfer of control of the company or a part thereof;
2. Establishment, take-over, or relinquishment of control of another company, or entering into or making a major modification to or severing a permanent co-operative venture with another company, including entering into or effecting major changes of or severing of an important financial participation on the account of or for the benefit of another company;
3. Termination of the operations of a company or a major part thereof;
4. Major reductions or expansions or other changes to the company;
5. Major changes in the organisational structure of the company or in the division of powers within the company;
6. Changes in the location where the company conducts its business;
7. Recruitment or borrowing of personnel on a group basis;
8. Making major investments on behalf of the company;
9. Taking out a significant loan for the company;

10. Granting important loans and providing security for major debts of the entrepreneur;
11. Implementing or changing important technological facilities;
12. Taking important measures with respect to environmental matters;
13. Making provisions under the Dutch Disablement Insurance Act; and,
14. Commissioning an outside expert to provide recommendations on one of the matters referred to above and formulating his or her terms of reference.

A Works Council's advisory rights do not, however, apply to take-overs, cooperative ventures, and other situations referred to under (10) or to the commissioning referred to under (2), if the other company is or will be established abroad (Article 25(1)).

The request for advice must be in writing and include a summary of the reasons for the decision, its expected consequences for the employees, and the measures proposed in response (Article 25(3)).

The advice must be requested within a time frame that will allow it to have a significant impact on the decision to be made (Article 25(2)). The Works Council is not obliged to give its advice. If the Works Council refuses to give advice or does not give advice within a reasonable time frame (or informs the entrepreneur that it will give advice in due time), the entrepreneur can also make a decision without the advice of the Works Council. However, if the entrepreneur has made a decision, the Works Council should be informed in writing as soon as possible. The Works Council can seek a court injunction.

The Works Council may not give its advice until after the matter has been discussed during at least one consultative meeting.

If, after the advice has been given, the entrepreneur decides to go through with the planned decision, it must so inform the Works Council in writing.

Should the decision deviate from the advice given by the Works Council, the entrepreneur will have to give a full account of the reasons. The entrepreneur is also obliged to postpone executing the decision for one month, unless the Works Council expresses its willingness to waive that obligation (Article 25(5) and (6)).

Although there is no financial penalty if this one-month stay is not observed, the entrepreneur should not ignore this obligation, as the Works Council can start summary proceedings to force the entrepreneur to observe the one-month stay.

If the entrepreneur executes an “apparently unreasonable” decision and the Works Council is thus faced with a *fait accompli*, the Works Council can bring summary proceedings before the President of the Cantonal Court. The Works Council can thus prevent a lodged appeal (or an appeal to be lodged) with the Companies Chamber from having no effect if the disputed decision has been already executed by the entrepreneur. The possibility of initiating summary proceedings also exists if the Works Council has already filed a request at the Companies Chamber for (preliminary) orders.

During the one-month stay, the Works Council may lodge an appeal with the Companies Chamber of the Court of Appeal in Amsterdam pursuant to Article 26(1). An appeal may also be filed if the entrepreneur failed to request the advice of the Works Council.

The Works Council may lodge an appeal only on the ground that “the entrepreneur, after having weighed all interests involved, could not have reasonably made his decision” (Article 26(4)). Thus, the Companies Chamber may only judge the reasonableness of the manner in which the decision was reached. It can reject the decision on substantial grounds only if the decision is “apparently unreasonable.”

The decision may also be “apparently unreasonable” if the formal procedure has been disregarded. In order to successfully appeal to the Companies Chamber in such cases, the interests of the Works Council, as protected by law, must have been considerably affected (e.g., if the company took the decision without requesting the advice of the Works Council).

In general, the entrepreneur may execute its decision after the one-month stay has expired. However, a possible preliminary order by the President of the Cantonal Court and preliminary orders by the Companies Chamber may have consequences for the decision and its execution (see Article 26(5) to (8)).

The Companies Chamber may, for example, impose an obligation on the entrepreneur to withdraw the decision in whole or in part and return to the status quo (Article 26(5a)). It can also prohibit the entrepreneur from performing acts or having acts performed with respect to the execution of the decision or portions thereof (Article 26(5)(b)).

In general, the rights of third parties cannot be affected by court orders or prohibitions (Article 26(5)).

Appeals may only be lodged against judgments given by the Companies Chamber with the Supreme Court (“appeals in cassation”) (Article 26(9)).

Apart from the advisory rights set forth in Article 25, the Works Council also has the opportunity to make recommendations on each of the entrepreneur’s proposed decisions to appoint or dismiss a managing director of the enterprise appointed under the Articles of Incorporation (Article 30). The recommendations shall be requested in time for the Works Council to have a significant impact on the decision to be made. The entrepreneur must inform the Works Council of the reason for the decision and, in the event of an appointment, must also provide information regarding the newly appointed person to the Works Council.

With regard to the intended decision to appoint or dismiss a managing director, no one-month stay need be observed. Furthermore, if the advisory rights stated in Article 30 have not been observed, the Works Council has no right to appeal pursuant to Article 26.

The Right Of Approval

In a number of cases, the Works Council has been given the right to cooperate in decisions (Article 27(1) of the Dutch Works Councils Act). The Works Council should be requested to render its prior approval to specific intended decisions, particularly decisions to adopt, amend, or withdraw:

1. Pension insurance schemes, profit-sharing schemes, or saving schemes;
2. Arrangements on working hours or holidays;
3. Remuneration of job assessment schemes;
4. Regulations in the field of health, safety, and welfare;
5. Regulations in the field of appointment, dismissal, or promotion policy;
6. Regulations in the field of staff training;
7. Regulations in the field of staff assessment;
8. Regulations in the field of industrial social work;
9. Regulations in the field of job consultations;

10. Regulations in the field of handling complaints;
11. Regulations in the field of registration and protection of personal data of employees; and,
12. Regulations with regard to the supervision and monitoring of employees.

The right of approval is not required if the substance of the matters has already been regulated in a collective bargaining agreement that applies to the company or when a public body sets out regulations (Article 27(1)).

A decision proposed by the entrepreneur on one of the matters set out in Article 27(1) must be submitted in writing to the Works Council, including the reasons for it and its consequences. The matter must be discussed during at least one consultative meeting. As soon as possible after the decision has been made by the Works Council, the entrepreneur must notify the Works Council of the decision it has made, the date on which it was made, and the date on which the entrepreneur intends to execute the decision (Article 27(2)). If the entrepreneur has not obtained the required approval for the decision from the Works Council, it may ask the Cantonal Court to grant permission to execute the decision.

The Cantonal Court will grant permission only if the decision by the Works Council to withhold its approval is unreasonable or if weighty industrial, organisational, economic, or social interests necessitate the decision proposed by the entrepreneur.

A decision as referred to in Article 27(1) made without the required approval of the Works Council or the permission of the Cantonal Court is void, provided that the Works Council has invoked such consequence within the time period as provided by Article 27(5).

Promotional Duties

Finally, the Works Council has a duty to safeguard the supervision of working conditions (Article 28(1)), to promote the equal treatment of men and women and the inclusion of disables and other minorities in the business (Article 28(3)), and to promote environmental care (Article 28(4)).

Meetings of the Works Council and its committees are held whenever possible during regular working hours. The employer has an obligation to allow the Works Council, its committees, and a designated “*ambtelijk secretaris*,” if any, to use all of the facilities that are at the employer’s disposal and that are reasonably useful for the

performance of the duties of the Works Council and its committees. The facilities referred to above include the use of conference rooms, telephones, stationary, copy machines, postage meters, secretaries, etc. Furthermore, the entrepreneur should enable the employees to be consulted by the Works Council and its committees by providing time and facilities in so far as is reasonably necessary. If the entrepreneur does not want to cooperate, the Cantonal Court can be asked for a judgment.

The employer must also afford members of the Works Council and the committees a certain number of paid working hours per year (determined in mutual consultation between the employer and the Works Council) to consult and meet, to deal with affairs that are inherent in the performance of their duties, and to assess the working conditions within the business.

The employer is also obliged to afford members of the Works Council a certain number of paid working days per year (determined in mutual consultation between the employer and the Works Council) to follow such training courses as the members may deem appropriate for the performance of their duties.

The amount of available time referred to above must total at least 60 hours per year and at least five days per year, respectively, for members of the Works Council, at least three days for members of the committees, and at least eight days for members of both the Works Council and the committee. The costs reasonably required for a proper performance of the duties of the Works Council and its committees will be at the employer's expense. The same applies to the costs of seeking advice from an expert and the costs of conducting litigation, provided that the employer is notified of such costs in advance.

In consultation with the Works Council, the employer can also fix the amount from year to year that can be spent by the Works Council and the committees at the Council's discretion on matters not related to the provisions set forth in Articles 17 and 18. Any costs exceeding this fixed amount will only be payable by the employer to the extent that it consents to such payment obligation. Such costs include the costs of meetings, conference rooms, telephone calls, copying, administrative charges, secretarial support, travel expenses, refreshments, training fees, expert consultancy fees, and costs for consultative meetings. In the event of any litigation between the business and the Works Council, the Council cannot be ordered to pay the costs of the proceedings.

The Interaction Between A Works Council And A Trade Union

In the majority of cases, a trade union is the advisor to the Works Council when negotiating with the employer over labour conditions and employment agreements. Collective labour agreements are also negotiated by the employer and the trade union.

Additionally, in relation to collective dismissals, the trade union advises the Works Council on the process and will help in negotiating the social plan.

Works Council Employee Protection Rights

The employer may not terminate the employment agreement of a member of the Works Council, the Works Council committee, or *ambtelijk secretaris* unless the person concerned consents in writing or if the employment agreement is terminated for an urgent, promptly stated reason or on the ground of a discontinuation of the business or the business unit in which the person concerned works. Furthermore, without the prior consent of the Cantonal Court, the employer may not terminate the employment agreement of a person included in the list of candidates or who was a member of the Works Council in the previous two years, who is a member of a committee set up by the Works Council, or who was a member of such a committee in the previous two years (Article 7:670 (a), 7:670 a, 7:670 b of the Dutch Civil Code).

Employees who take or have taken the initiative to set up a Works Council also receive legal protection against being placed in a worse position within the company.

The Cantonal Court will only grant permission to terminate such an employee if it reasonably appears that the termination has no relation whatsoever to the employee's inclusion in the list of candidates or his or her membership in the Works Council or one of its committees. Permission from the Cantonal Court to terminate such an employee will not be required if the employee consents to the termination in writing or if the employment agreement is terminated for an urgent, promptly stated reason or on the grounds of a discontinuation of the business or the business unit in which the person concerned performs his or her work.

The foregoing does not affect the employer's right to petition the Cantonal Court, but the court will only grant such a petition if it reasonably appears that the dissolution has no relation whatsoever to the employee's inclusion in the list of candidates or his or her membership of the Works Council or one of its committees.

Other Types Of Employee Representation

An enterprise with at least 10 but fewer than 50 employees that does not have a Works Council may set up a Personnel Representative Committee. Its advisory powers apply to proposed decisions that may result in a loss of jobs or in major changes in the work or working conditions of at least a quarter of the employees. The Personnel Representative Committee does not have the right to appeal to the Commercial Chamber; thus, if the Personnel Representative Committee has given negative advice, the enterprise may still implement the proposed decision without the Personnel Representative Committee being able to appeal against it.

If neither a Personnel Representative Committee nor a Works Council has been set up, the enterprise is obliged to give the persons working in the enterprise the opportunity to meet with the entrepreneur twice every calendar year (Article 35b).

A small enterprise (fewer than 10 employees) may also voluntarily set up a Personnel Representative Committee, which would have the same facilities at its disposal as Personnel Representative Committees in enterprises with 10 to 50 employees; however, its powers are limited to the power to consent with regard to the regulation of working hours.