Poland

Introduction

Trade unions in Poland have a special place among social organizations and associations, mainly due to the role played by the Solidarity trade union during the social and political changes after 1980.

Works Councils are a relatively new institution in Polish Labour Law. It is hard to predict what their role and meaning will be.

Purpose And Practical Importance Of Union Representation

Trade unions are voluntary and self-governing organizations of workers, established to represent and protect their rights, as well as professional and social interests. Trade unions represent not only workers but also other persons who are entitled to join them. They also defend their members' dignity, rights, and material and moral interests, collectively as well as individually.

Trade unions also have the right to represent workers' interests on international forums through different forms of participation in the process of creating favourable work, welfare, and rest conditions.

Purpose And Practical Importance Of Works Councils

Works Councils also represent employees, but their role in the Polish legal system is not as significant as that of trade unions. According to the current regulations, Works Councils must be informed and consulted about any important facts and decisions that may affect employment in a particular work place. Their existence gives employees an opportunity to participate in the main processes concerning their work place.

Sources Of Collective Labour Law

In Poland, the sources of collective labour law are the following:

- The Polish Constitution – April 2, 1997, the Labour Code – June 26, 1974;
- The Trade Union Act - May 23, 1991;

- The Information and Consultation Act – April 7, 2006;
- The Dispute Resolution Act – May 23, 1991; and
- The European Works Councils Act transposing the EWC Directive into the Polish Labour Law on April 5, 2002.

Trade Unions

General Principles Of Polish Trade Union Law

Employees have a constitutional right in Poland to form and join a trade union. The Polish Constitution provides that the freedom to organize trade unions and other trade union rights may only be restricted by legal provisions of the international agreements that are binding for Poland.

The main law regulating trade unions in Poland provides that a trade union is a voluntary and autonomous organization of employees, which is set up to represent and defend their rights, as well as professional and social interests. In its statutory activity, a trade union is independent from the employer, governmental, and self-governmental institutions and other organizations. The employer, governmental, and self-governmental institutions are obliged to treat all trade unions equally.

The main objectives of trade unions are to:

1. Represent employees;
2. Defend the employees' dignity, as well as their collective and individual rights of employees; and
3. Defend the collective and individual material or moral interests of employees.

Additionally, trade union law provides that trade unions are to participate in the creation of profitable conditions of work, existence, and rest.

Under trade union law, an employee may not suffer adverse consequences as a result of membership in a trade union. Nor may an employee be subject to adverse consequences if he or she refuses to join a trade union. Furthermore, an employer may not condition employment or subsequent promotion to a higher post on whether an employee is a member of a trade union. Moreover, an employer may not prohibit the creation of a trade union within its company.

According to Polish law, trade unions enjoy tax exemptions provided for associations. The legal rule is also that all income earned by a trade union from its economic activity be used to carry out its statutory tasks and cannot be distributed among its members.

Constitution Of A Trade Union

The right to establish and join trade unions is available to workers regardless of the basis for work relations. The following are entitled to join trade unions:

- Workers;
- Members of agricultural production cooperatives;
- Persons performing work on the basis of agency contracts, where they are not employers;
- Persons performing outwork;
- Retirees;
- Pensioners;
- Unemployed people; and
- Persons directed to workplaces to carry out alternative military service.

A workplace trade union organization can be established pursuant to a resolution on its establishment, passed by at least 10 persons entitled to establish trade unions. Persons who passed the resolution on establishment of a trade union, pass statutes and elect a founding committee numbering three to seven persons.

A trade union' statutes set down in particular:

- The union name;
- The union seat;
- The territory of its operations and the scope of its activity;
- Union aims and tasks and the methods and forms of their realization;
- The rules for granting and terminating membership;
- Members' rights and obligations;

- The union organizational structure indicating which union organizational units have the legal person status;
- The method of union representation and persons authorized to undertake financial obligations on behalf of the union;
- Union bodies, procedure for the election and dismissal of their members and the scope of their authority and term of office;
- Sources of financing the trade union activities and the method of establishing membership fees;
- The rules for adopting and amending the statutes; and
- The method for dissolving the trade union and liquidating its assets.

Organizational units of a trade union are defined in its statutes and are established on the basis of resolutions of its statutory bodies. Trade unions operate at a place of employment in the form of a trade union organization. Trade union organizations may operate as company and multi-company trade union organizations.

A multi-company trade union organization is a trade union organization which is:

1. A nationwide trade union organization; or
2. An association of trade unions (a "federation"); or
3. A nationwide inter-trade union organization (a "confederation").

Union organizations, including federations and confederations, have the right to establish and join international worker organizations. Union organizations may also establish joint union representations in cases concerning collective union representations.

The scope of activity of workplace trade union organizations includes in particular:

1. Issuing opinion in individual employee cases within the scope regulated by labour law;
2. Issuing opinion on employers and personnel self-government bodies in cases concerning collective interests and rights of employees;
3. Maintaining control over labour law compliance in the workplace, in particular work safety regulations;
4. Managing activities of the social labour inspection and cooperation with the state labour inspection; and

5. Interest in the welfare of retirees and pensioners.

The employer must provide to the workplace union organization the technical equipment and premises necessary for the union activities, under terms and conditions regulated by the employer and the trade unions in a separate contract.

Trade Union Registration Procedure

After passing the resolution on establishment of a trade union, its founding committee should register the union in the National Court Register.

Trade unions and their statutory organizational units are given the legal person status on the registration date. Proceedings in registration cases are free from court fees.

If the founding committee does not file an application for registration within 30 days from the date of establishment of the union, the resolution on establishment of the union *will be null and void*.

The court removes the trade union from the Register where:

1. The body indicated by its statutes adopted a resolution on the dissolution of the union;
2. The workplace in which the trade union has operated has been removed from the relevant register due to its liquidation or bankruptcy, or its organizational/legal transformation, rendering impossible continuation of union operations; and
3. The number of union members has been less than 10 for a period of over three months.

The registry court examines whether the documents attached to the application for making an entry in the Register are in conformance with the provisions of law, in terms of form and contents.

In case the application for making an entry in the Register or the documents whose submitting is compulsory, have not been submitted despite the elapse of the time limit set, the registry court may fine particular members of the union body with the sums set down in art. 1052 of the Code of Civil Procedure

If, despite imposing fines the union body fails to fulfil its duties the registry court may refuse to make the entry or remove it ex officio.

Trade Union Rights – Protection Of Collective Interests

As regards collective interests, trade unions represent all workers, regardless of their union membership. Based on trade union law, trade unions exercise general control over the observance of the law provisions regarding the interests of employees and their families.

Trade union organizations are empowered to:

- Give opinions on assumptions of new laws, and draft laws and secondary regulations to laws regulating matters related to trade union tasks, to be implemented either in Poland or the European Union – that right is reserved for national inter-trade organizations (confederations) and national trade unions representing workers of most workplaces. If the union opinion is rejected in whole or in part, the competent state administration or territorial local government agency should inform the union in writing of this fact, presenting the justification for such rejection. In case of discrepancies between opinions, the union may present its opinion during a session of Parliament commission or territorial local government commission.
- File motions for the issue or amendment of laws passed by Parliament or other legal acts that address matters related to trade union tasks – that right is reserved for national inter-trade organizations (confederations) and national trade unions representing workers of most workplaces. Motions concerning laws passed by Parliament should be directed by the union to members of Parliament or agencies with legislative initiative. In case of laws of lower status, applications should be directed to agencies authorised to issue them. State agencies to which applications have been filed must present, within 30 days, their opinion to the trade union, and in case of a negative opinion, also its justification.
- Publicly express their opinion on assumptions or draft laws and secondary regulations to laws regulating matters related to trade union tasks, in mass media including radio and television.
- Where a trade union believes that actions of state administration and/or local government agencies or the employer are not compliant with law or are contrary to the principles of justice, the union may request the competent agency to eliminate the stated inconsistencies by launching proper procedure.

- Trade unions maintain control over compliance with labour law and participate, according to terms and conditions set down by separate regulations, in supervision over compliance with work safety regulations.
- When demanded by the workplace union organization, the employer is obligated to give information necessary for conducting union activities, in particular information on work conditions and remuneration rules.
- The employer must agree with the workplace union organization the regulations governing the use of the workplace social benefit fund, including application of funds to particular aims and types of activity, and award of benefits to employees from the fund. Also, the workplace system (regulations) for remuneration and the related award and bonus regulations must be set down and amended in agreement with the workplace union organization. This also applies to the rules for dividing funds for remuneration of employees in state-owned units.
- In case of justified suspicions that the life or health of employees is threatened, the workplace union organization may request the employer to conduct proper tests and notify at the same time the Regional Labour Inspector. Within 14 days from the date of receiving the request, the employer must inform the workplace union organization of its opinion. If tests are conducted, the employer must make their results available to the workplace union organization along with information as to how and when the identified threats will be eliminated. The notification of the workplace union organization of the rejection of the application referred to above, or failure by the employer to give opinion on the application within 14 days from the date of its filing, authorizes the workplace union organization to conduct the necessary tests at the expense of the employer. The intent to undertake tests, their scope, and expected costs should be notified in writing to the employer by the workplace union organization at least 14 days in advance. The employer may, within seven days from the date of receiving notification referred to above, request the proper regional labour inspector to evaluate how urgent tests are and their necessary scope. Conducting tests in defiance of the opinion of the labour inspector releases the employer from the obligation to cover the costs of tests.
- Conduct joint negotiations and conclude collective employment agreements, as well as other agreements provided for by labour law.

Collective Agreements

Under Polish law, a collective bargaining agreement may be concluded on an employer or multi-employer basis for either a definite or indefinite duration. An employer's collective bargaining agreement may not be less favourable to an employee than the applicable multi-employer collective bargaining agreement. During employer-level bargaining, the employer is obliged to provide relevant information on its economic situation. The representatives of trade union organizations are forbidden from disclosing any business-sensitive information received from the employer.

Once concluded, collective bargaining agreements are entered into the relevant official register. The employer is obliged to provide employees with details of the agreement and to explain it to them. The trade union organization must also be given copies of the agreement.

In case the provisions of the agreement are contrary to law, the registering body may:

1. Register the agreement without the contrary provisions with prior consent of the parties; and
2. Call upon the parties of the agreement to make proper changes in it within 14 days.

A collective agreement may not be negotiated for:

1. Civil servants;
2. Employees of state agencies employed by appointment or designation;
3. Self-employed persons; or
4. Court judges and prosecutors.

Polish trade unions have the right to strike and take other industrial action to protect their interests.

Dispute Resolution

A collective dispute exists from the day when dispute notification is submitted to an employer. The employer then has three days to respond and commence negotiations and to notify the regional labour inspector of the dispute. If no agreement is reached, the parties must draw up a document setting out their respective positions. A strike

may not be commenced earlier than 14 days from notification of the dispute. A strike is the ultimate means and may not be declared without prior exhaustion of possibilities of resolving the dispute according to the Collective Dispute Resolution Act.

It is necessary to obtain approval of the majority of voting employees if at least 50% of the employees participated in the ballot.

According to Polish law, only trade unions have the right to organize a strike.

Persons employed in positions or operating devices or installations where abandonment of work is hazardous for human health and life or the national security are prohibited from stopping their work due to a strike. In particular strikes may not be organised by personnel of the Internal Security Agency, the Intelligence Agency, the Police and Military units, the Penitentiary Guard, the Border Guard, the Customs Service, and the Fire Brigade. Employees of state and local administration authorities and agencies, courts of law, and prosecutor's offices have no right to strike either.

In branches of employment not covered by collective agreements, regulation of employment and remuneration conditions requires consultation with trade unions.

In cases when agreements or an opinion with trade organizations are required, the organizations must present a jointly agreed opinion. The method of agreeing and presenting the opinion by a joint union representation, to be established separately for each case, must be defined in an agreement concluded by the union organizations. If union organizations do not present a joint agreed opinion within 30 days in cases connected with the establishment of remuneration regulations, social benefit fund regulations, work regulations, or holiday leave regulations, as well as the settlement period and other regulations mentioned in separate regulations, decisions on such cases will be undertaken by the employer, after examination of individual union organization opinions.

Trade Union Rights – Protection Of Individual Interests

In individual work related cases, trade unions represent the rights and interests of their members. When requested by a non-member worker, the trade union may undertake to defend his or her rights and interests before the employer.

In workplaces where more than one union organization exists, each of them protects the rights and represents the interests of its members.

Employees not associated in trade unions are able to protect their rights under the terms and conditions provided for employees who are union members, provided the chosen company trade union organization agrees to protect their employee rights.

Employers are obligated to inform in advance and consult with trade unions on a wide range of issues, including dismissal of trade union members or persons whose rights the trade union has agreed to protect.

This procedure includes the following steps:

- Before giving notice, the employer must notify in writing the trade union to which the employee belongs or which was selected by the employee to protect his or her rights that it intends to give notice and indicate the reason for the intended dismissal; and
- The trade union should present its opinion as to the planned dismissal within five days of receiving the notice. If the trade union fails to reply within the prescribed timeline, the employer may give notice to the employee concerned. If the trade union considers the dismissal of a given employee unfair and presents such an opinion within the given time period, the employer may either accept the objection or give the employee notice regardless of this objection.

An employer must also inform trade unions on automatic transfer of employees and inform and consult with trade unions on collective redundancies prior to any decision in this respect being taken.

The Obligations Of An Employer Towards Members Of Trade Union Statutory Bodies

The obligations of an employer towards members of trade union statutory bodies are as follows:

1. To grant an unpaid leave of absence to or to release from work a trade union official; and
2. To obtain consent of the management board of a trade union in order to terminate an employment agreement with members of a trade union who are entitled to special protection.

Obligation To Grant Unpaid Leave Of Absence Or To Release From Work

An employee elected to perform a function in a trade union outside the company, if such election results in the employee being employed by a different company, is entitled to get an unpaid leave of absence from the original employer, upon the request of the trade union organization in which the employee is to perform his or her function.

If, following the unpaid leave of absence, the employee is willing to return to the previous employer, the period of his unpaid leave of absence is added to the work period based on which the employee's rights are established.

If an employee holding a position in a trade union is obliged to perform an emergency activity relevant to trade union activity outside the company, and this activity may not be performed outside working hours, the employee is entitled to be released from work while preserving his or her right to full remuneration for the time of the release.

Moreover, trade union law provides for a release from work of employees performing functions in the management board of the company trade union organization. Such release right is granted:

- In part to one employee in the monthly amount of hours equalling the number of members of the organization employed with the employer concerned, if the number of members of the organization employed with the employer concerned is fewer than 150; or
- In full to one employee, if the number of members of the organization employed with the employer concerned is between 150 and 500; and
- In full to two employees, if the number of members of the organization employed with the employer concerned is between 501 and 1000; and
- In full to three employees, if the number of members of the organization employed with the employer concerned is between 1001 and 2000; and
- To an additional employee, for each new thousand employees, if the number of members of the organization employed with the employer concerned is greater than 2000;

- Part-time release – in such circumstances such release right may be granted to a higher number of employees according to the rules determined above.

The release from work is granted to the employees upon a request of the company trade union and is granted with or without preservation of the right to remuneration, depending on the company trade union organization's request.

Obligations Of An Employer In Case Of A Termination Of An Employment Agreement - Special Protected Employees

Generally, an employer may not, without the prior consent of the management board of the company trade union organization:

- Give notice of termination nor terminate an employment agreement with:

  a. A member of the management board of the company trade union organization, designated by name by a resolution of the management board of the company trade union organization; or

  b. Another employee entitled to represent such company trade union organization towards the employer or towards a person performing acts within the scope of employment law on behalf of the employer; or

- Unilaterally change the terms of the employment agreement in a manner unfavourable for the employee referred to above.

Such protection is enjoyed by the above-mentioned employees during the period specified by the resolution of the management board, and after the expiration of such period, for a period equalling half of the period specified by the resolution of the management board, no longer, however, than one year after its expiration (the "Protection Period").

The management board of a representative company trade union organization having up to 20 members is entitled to indicate to the employer two employees entitled to the Protection Period, and for a representative company trade union associating more than 20 members, two members, and additionally:

- One employee for each commenced unit of 10 employees who are members of this organization within the scope of 21 to 50 employees;

- One employee for each commenced unit of 20 employees who are members of this organization within the scope of 51 to 150 employees;

- One employee for each commenced unit of 30 employees who are members of this organization within the scope of 151 to 300 employees;
- One employee for each commenced unit of 40 employees who are members of this organization within the scope of 301 to 500 employees; and
- One employee for each commenced unit of 50 employees who are members of this organization for over 500 employees.

Trade union law provides that the management board of a representative company trade union organization indicates the number of employees entitled to the Protection Period:

- Up to the number calculated in accordance with the above-mentioned provisions; or
- Up to the number of persons occupying management posts with the employer, where the persons occupying such posts are:
    a. A person individually directing the company and any substitutes thereof;
    b. A person being a member of a collective management body of the company; or
    c. Other persons designated to perform acts within the scope of employment law on behalf of the employer.

The management board of a non-representative company trade union organization should indicate by name one person to be entitled to the Protection Period.

During a period of six months following the establishment of the funding committee of a company trade union organization, the Protection Period may be granted to no more than three employees specified by name by a resolution of the funding committee.

If the management board or the funding committee of a trade union organization does not indicate the persons entitled to the Protection Period, the Protection Period is attributed to the president of the trade union or to the president of the funding committee, until such persons are indicated.

The opinion of the trade union regarding the termination is binding for the employer. Hence, if the management board of the company trade union organization gives no consent, the employer may not legally terminate the employment relationship.

Trade Union Organizations In Poland

Currently, the two largest trade union organizations are OPZZ (the Polish Alliance of Trade Unions) with headquarters in Warsaw, and NSZZ "Solidarność" (the Solidarity Independent and Self-Governing Trade Union), with a national committee in Gdańsk.

According to union data, OPZZ has nearly three million members (including 500,000 pensioners), while Solidarity unites 900,000 workers. Both OPZZ and Solidarity are members of the International Labour Organization. In addition, Solidarity is a member of the European Trade Union Confederation, uniting the largest European trade union organization, the International Confederation of Free Trade Unions, and is represented in the Union Advisory Committee at the OECD.

OPZZ and Solidarity represent employees at the Trilateral Committee for Social and Economic Affairs, the main Polish institution for social dialogue between employers, employees, and the government. Its main aim is to conduct negotiations on wages and social benefits, tax liabilities, draft budgets, and other issues important for social stability and harmony.

The smaller union organizations include the Solidarity '80 Independent and Self-Governing Trade Union, a splinter group which looks back to the union traditions of the early 1980s, as well as some unions representing specific trades, such as a miners' union, a teachers' union, a railway workers' union, and a nurses' and midwives' union. A special role in the Polish trade union movement is played by the unions of private farmers and agricultural employees, which protect the interests of rural residents.

Works Councils

On the basis of Polish law, all employers employing 50 or more employees are under a statutory obligation to inform their employees about the right to establish a Works Council (till March 23, 2008, this obligation was applicable to employers with 100 employees or more). If the total headcount in the company varies during a calendar year, the company is considered to employ the relevant number of employees when the minimum threshold of 50 employees is maintained for at least six consecutive months.

Employers of 50 or more employees are also required to facilitate the establishment of a Works Council in the undertaking, unless there are eligible trade unions in place (if so, those unions are solely responsible for forming the Works Council).

To form a Works Council, a valid request must be made by 10% or more of the total number of employees in the employer's organisation.

The statutory number of members of the Works Council depends on the total number of employees in the company, and is as follows:

- Three members - if there are 50 to 250 employees in the company;
- Five members - if there are 251 to 500 employees in the company;
- Seven members - if there are more than 500 employees in the company.

Works Councils must be informed and consulted about any important facts and decisions that may affect employment – such as changes in business activities, the employer's financial standing, staffing levels, business transfers, and any other anticipated decisions that might lead to material changes in work organization or pay and conditions.

Under a separate agreement made by the company with the first established Works Council, the number of members of that body may be increased at the parties' discretion.

Work councils' members enjoy special protection against dismissal or alteration of their employment conditions for the duration of their term of office. Works Council's members are appointed for a term of four years, subject to specific cases where the term is shorter.

European Works Councils

European Works Councils Act has transposed the EWC Directive into the Polish Labour Law on April 5, 2002.

A company or a group of companies with "European dimension" must create an EWC where the company/group employs at least 1,000 employees and where at least two companies in the group employ a minimum of 150 employees in two different EU member states.

The jurisdiction of the EWC is limited to information and consultation on matters concerning the community scale undertaking or the group. The definition of consultation is "the organization of an exchange of views and the establishment of dialogue."

Employer Associations

There are four national, and many other industry, sector, or regional employers' associations. The principal associations are: the Confederation of Polish Employers, the Polish Confederation of Private Employers, the Business Centre Club, and the Polish Craft Association.

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