**LABOUR RELATIONS AND HUMAN RESOURCES MANAGEMENT: AN OVERVIEW**

Anne Trebilcock

**Labour or Industrial Relations**

The term labour relations, also known as industrial relations, refers to the system in which employers, workers and their representatives and, directly or indirectly, the government interact to set the ground rules for the governance of work relationships. It also describes a field of study dedicated to examining such relationships. The field is an outgrowth of the industrial revolution, whose excesses led to the emergence of trade unions to represent workers and to the development of collective labour relations. A labour or industrial relations system reflects the interaction between the main actors in it: the state, the employer (or employers or an employers’ association), trade unions and employees (who may participate or not in unions and other bodies affording workers’ representation). The phrases “labour relations” and “industrial relations” are also used in connection with various forms of workers’ participation; they can also encompass individual employment relationships between an employer and a worker under a written or implied contract of employment, although these are usually referred to as “employment relations”. There is considerable variation in the use of the terms, partly reflecting the evolving nature of the field over time and place. There is general agreement, however, that the field embraces collective bargaining, various forms of workers’ participation (such as works councils and joint health and safety committees) and mechanisms for resolving collective and individual disputes. The wide variety of labour relations systems throughout the world has meant that comparative studies and identification of types are accompanied by caveats about the limitations of over-generalization and false analogies. Traditionally, four distinct types of workplace governance have been described: dictatorial, paternalistic, institutional and worker-participative; this chapter examines primarily the latter two types.

Both private and public interests are at stake in any labour relations system. The state is an actor in the system as well, although its role varies from active to passive in different countries. The nature of the relationships among organized labour, employers and the government with respect to health and safety are indicative of the overall status of industrial relations in a country or an industry and the obverse is equally the case. An underdeveloped labour relations system tends to be authoritarian, with rules dictated by an employer without direct or indirect employee involvement except at the point of accepting employment on the terms offered.

A labour relations system incorporates both societal values (e.g., freedom of association, a sense of group solidarity, search for maximized profits) and techniques (e.g., methods of negotiation, work organization, consultation and dispute resolution). Traditionally, labour relations systems have been categorized along national lines, but the validity of this is waning in the face of increasingly varied practices within countries and the rise of a more global economy driven by international competition. Some countries have been characterized as having cooperative labour relations models (e.g., Belgium, Germany), whereas others are known as being conflictual (e.g., Bangladesh, Canada, United States). Different systems have also been distinguished on the basis of having centralized collective bargaining (e.g., those in Nordic countries, although there is a move away from this, as illustrated by Sweden), bargaining at the sectoral or industrial level (e.g., Germany), or bargaining at the enterprise or plant level (e.g., Japan, the United States). In countries having moved from planned to free-market economies, labour relations systems are in transition. There is also increasing analytical work being done on the typologies of individual employment relationships as indicators of types of labour relations systems.

Even the more classic portrayals of labour relations systems are not by any means static characterizations, since any such system changes to meet new circumstances, whether economic or political. The globalization of the market economy, the weakening of the state as an effective force and the ebbing of trade union power in many industrialized countries pose serious challenges to traditional labour relations systems. Technological development has brought changes in the content and organization of work that also have a crucial impact on the extent to which collective labour relations can develop and the direction they take. Employees’ traditionally shared work schedule and common workplace have increasingly given way to more varied working hours and to the performance of work at varied locations, including home, with less direct employer supervision. What have been termed “atypical” employment relationships are becoming less so, as the contingent workforce continues to expand. This in turn places pressure on established labour relations systems.

Newer forms of employee representation and participation are adding an additional dimension to the labour relations picture in a number of countries. A labour relations system sets the formal or informal ground rules for determining the nature of collective industrial relations as well as the framework for individual employment relationships between a worker and his or her employer. Complicating the scene at the management end are additional players such as temporary employment agencies, labour contractors and job contractors who may have responsibilities towards workers without having control over the physical environment in which the work is carried out or the opportunity to provide safety training. In addition, public sector and private sector employers are governed by separate legislation in most countries, with the rights and protections of employees in these two sectors often differing significantly. Moreover, the private sector is influenced by forces of international competition that do not directly touch public-sector labour relations.

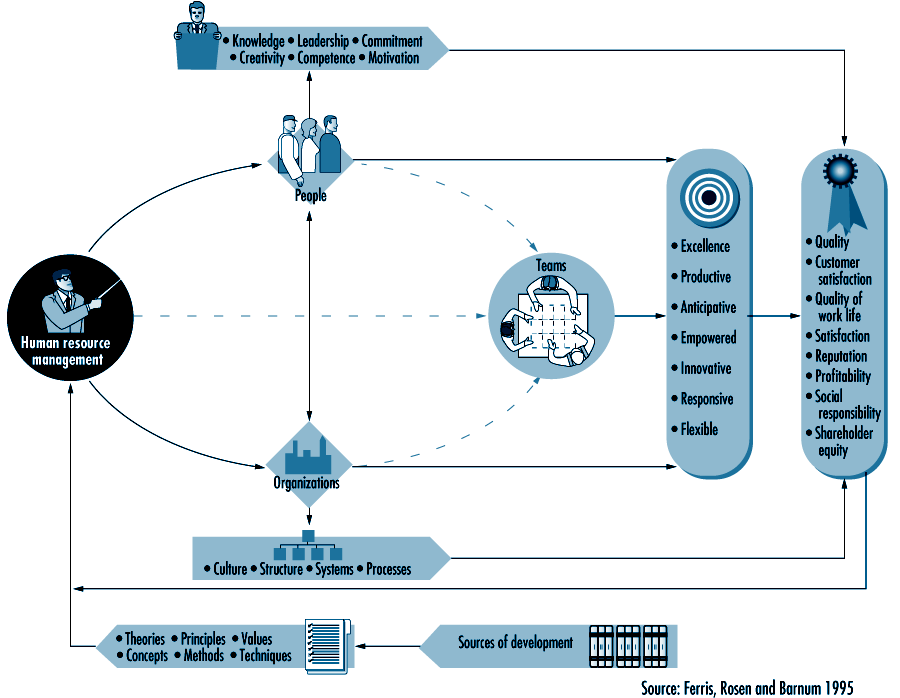
Finally, neoliberal ideology favouring the conclusion of individualized employment contracts to the detriment of collectively bargained arrangements poses another threat to traditional labour relations systems. Those systems have developed as a result of the emergence of collective representation for workers, based on past experience that an individual worker’s power is weak when compared to that of the employer. Abandoning all collective representation would risk returning to a nineteenth century concept in which acceptance of hazardous work was largely regarded as a matter of individual free choice. The increasingly globalized economy, the accelerated pace of technological change and the resultant call for greater flexibility on the part of industrial relations institutions, however, pose new challenges for their survival and prosperity. Depending upon their existing traditions and institutions, the parties involved in a labour relations system may react quite differently to the same pressures, just as management may choose a cost-based or a value-added strategy for confronting increased competition (Locke, Kochan and Piore, 1995). The extent to which workers’ participation and/or collective bargaining are regular features of a labour relations system will most certainly have an impact on how management confronts health and safety problems.

Moreover, there is another constant: the economic dependence of an individual worker on an employer remains the underlying fact of their relationship–one that has serious potential consequences when it comes to safety and health. The employer is seen as having a general duty to provide a safe and healthful workplace and to train and equip workers to do their jobs safely. The worker has a reciprocal duty to follow safety and health instructions and to refrain from harming himself/herself or others while at work. Failure to live up to these or other duties can lead to disputes, which depend on the labour relations system for their resolution. Dispute resolution mechanisms include rules governing not only work stoppages (strikes, slowdowns or go-slows, work to rule, etc.) and lockouts, but the discipline and dismissal of employees as well. Additionally, in many countries employers are required to participate in various institutions dealing with safety and health, perform safety and health monitoring, report on-the-job accidents and diseases and, indirectly, to compensate workers who are found to be suffering from an occupational injury or disease.

**Human Resources Management**

Human resources management has been defined as “the science and the practice that deals with the nature of the employment relationship and all of the decisions, actions and issues that relate to that relationship” (Ferris, Rosen and Barnum 1995; see [figure 21.1](http://www.ilocis.org/documents/chpt21e.htm" \l "JD_Figure21.1)). It encapsulates employer-formulated policies and practices that see the utilization and management of employees as a business resource in the context of a firm’s overall strategy to enhance productivity and competitiveness. It is a term most often used to describe an employer’s approach to personnel administration that emphasizes employee involvement, normally but not always in a union-free setting, with the goal of motivating workers to enhance their productivity. The field was formed from a merger of scientific management theories, welfare work and industrial psychology around the time of the First World War and has undergone considerable evolution since. Today, it stresses work organization techniques, recruitment and selection, performance appraisal, training, upgrading of skills and career development, along with direct employee participation and communication. Human resources management has been put forth as an alternative to “Fordism”, the traditional assembly-line type of production in which engineers are responsible for work organization and workers’ assigned tasks are divided up and narrowly circumscribed. Common forms of employee involvement include suggestion schemes, attitude surveys, job enrichment schemes, teamworking and similar forms of empowerment schemes, quality of working-life programmes, quality circles and task forces. Another feature of human resources management may be linking pay, individually or collectively, to performance. It is noteworthy that one of the three objectives of occupational health has been identified by the Joint ILO/WHO Committee on Occupational Health as “development of work organizations and working cultures in a direction which supports health and safety at work and in doing so also promotes a positive social climate and smooth operation and may enhance productivity of the undertakings...” (ILO 1995b). This is known as developing a “safety culture.”

**Figure 21.1 The role of human resources management in adding value to people and to organizations**



The example of a safety performance management programme illustrates some human resource management theories in the context of occupational safety and health. As described by Reber, Wallin and Duhon (1993), this approach has had considerable success in reducing lost time on account of accidents. It relies on specifying safe and unsafe behaviours, teaching employees how to recognize safe behaviour and motivating them to follow the safety rules with goal setting and feedback. The programme relies heavily on a training technique whereby employees are shown safe, correct methods via videotapes or live models. They then have a chance to practice new behaviours and are provided with frequent performance feedback. In addition, some companies offer tangible prizes and rewards for engaging in safe behaviour (rather than simply for having fewer accidents). Employee consultation is an important feature of the programme as well.

The implications of human resources management for industrial relations practices remain a source of some controversy. This is particularly the case for types of workers’ participation schemes that are perceived by trade unions as a threat. In some instances human resources management strategies are pursued alongside collective bargaining; in other cases the human resources management approach seeks to supplant or prevent the activities of independent organizations of workers in defence of their interests. Proponents of human resources management maintain that since the 1970s, the personnel management side of human resources management has evolved from being a maintenance function, secondary to the industrial relations function, to being one of critical importance to the effectiveness of an organization (Ferris, Rosen and Barnum 1995). Since human resources management is a tool for management to employ as part of its personnel policy rather than a relationship between an employer and workers’ chosen representatives, it is not the focus of this chapter.

The articles which follow describe the main parties in a labour relations system and the basic principles underpinning their interaction: rights to freedom of association and representation. A natural corollary to freedom of association is the right to engage in collective bargaining, a phenomenon which must be distinguished from consultative and non-union worker participation arrangements. Collective bargaining takes place as negotiations between representatives chosen by the workers and those acting on behalf of the employer; it leads to a mutually accepted, binding agreement that can cover a wide range of subjects.

Other forms of workers’ participation, national-level consultative bodies, works councils and enterprise-level health and safety representatives are also important features of some labour relations systems and are thus examined in this chapter. Consultation can take various forms and occur at different levels, with national-, regional- and/or industrial- and enterprise-level arrangements. Worker representatives in consultative bodies may or may not have been selected by the workers and there is no obligation for the state or the employer to follow the wishes of those representatives or to abide by the results of the consultative process. In some countries, collective bargaining and consultative arrangements exist side by side and, to work properly, must be carefully intermeshed. For both, rights to information about health and safety and training are crucial. Finally, this chapter takes into account that in any labour relations system, disputes may arise, whether they are individual or collective. Safety and health issues can lead to labour relations strife, producing work stoppages. The chapter thus concludes with descriptions of how labour relations disputes are resolved, including by arbitration, mediation or resort to the regular or labour courts, preceded by a discussion of the role of the labour inspectorate in the context of labour relations.

**The Actors in the Labour Relations System**

Classically, three actors have been identified as parties to the labour relations system: the state, employers and workers’ representatives. To this picture must now be added the forces that transcend these categories: regional and other multilateral economic integration arrangements among states and multinational corporations as employers which do not have a national identity but which also can be seen as labour market institutions. Since the impact of these phenomena on labour relations remains unclear in many respects, however, discussion will focus on the more classic actors despite this caveat of the limitation of such an analysis in an increasingly global community. In addition, greater emphasis is needed on analysing the role of the individual employment relationship in labour relations systems and on the impact of the emerging alternative forms of work.

**The State**

The state always has at least an indirect effect on all labour relations. As the source of legislation, the state exerts an inevitable influence on the emergence and development of a labour relations system. Laws can hinder or foster, directly or indirectly, the establishment of organizations representing workers and employers. Legislation also sets a minimum level of worker protection and lays down “the rules of the game”. To take an example, it can provide lesser or greater protection for a worker who refuses to perform work he or she reasonably considers to be too hazardous, or for one who acts as a health and safety representative.

Through the development of its labour administration, the state also has an impact on how a labour relations system may function. If effective enforcement of the law is afforded through a labour inspectorate, collective bargaining can pick up where the law leaves off. If, however, the state infrastructure for having rights vindicated or for assisting in the resolution of disputes that emerge between employers and workers is weak, they will be left more to their own devices to develop alternative institutions or arrangements.

The extent to which the state has built up a well-functioning court or other dispute resolution system may also have an influence on the course of labour relations. The ease with which workers, employers and their respective organizations may enforce their legal rights can be as important as the rights themselves. Thus the decision by a government to set up special tribunals or administrative bodies to deal with labour disputes and/or disagreements over individual employment problems can be an expression of the priority given to such issues in that society.

In many countries, the state has a direct role to play in labour relations. In countries that do not respect freedom of association principles, this may involve outright control of employers’ and workers’ organizations or interference with their activities. The state may attempt to invalidate collective bargaining agreements that it perceives as interfering with its economic policy goals. Generally speaking, however, the role of the state in industrialized countries has tended to promote orderly industrial relations by providing the necessary legislative framework, including minimum levels of worker protection and offering parties information, advice and dispute settlement services. This could take the form of mere toleration of labour relations institutions and the actors in them; it could move beyond to actively encourage such institutions. In a few countries, the state is a more active participant in the industrial relations system, which includes national level tripartite negotiations. For decades in Belgium and more recently in Ireland, for instance, government representatives have been sitting down alongside those from employer and trade union circles to hammer out a national level agreement or pact on a wide range of labour and social issues. Tripartite machinery to fix minimum wages has long been a feature of labour relations in Argentina and Mexico, for example. The interest of the state in doing so derives from its desires to move the national economy in a certain direction and to maintain social peace for the duration of the pact; such bipartite or tripartite arrangements create what has been called a “social dialogue”, as it has developed in Australia (until 1994), Austria, Belgium, Ireland and the Netherlands, for instance. The pros and cons of what have been termed “corporatist” or “neocorporatist” approaches to labour relations have been extensively debated over the years. With its tripartite structure, the International Labour Organization has long been a proponent of strong tripartite cooperation in which the “social partners” play a significant role in shaping government policy on a wide range of issues.

In some countries, the very idea of the state becoming involved as a negotiator in private sector bargaining is unthinkable, as in Germany or the United States. In such systems, the role of the state is, aside from its legislative function, generally restricted to providing assistance to the parties in reaching an agreement, such as in offering voluntary mediation services. Whether active or passive, however, the state is a constant partner in any labour relations system. In addition, where the state is itself the employer, or an enterprise is publicly owned, it is of course directly involved in labour relations with the employees and their representatives. In this context, the state is motivated by its role as provider of public services and/or as an economic actor.

Finally, the impact of regional economic integration arrangements on state policy is also felt in the labour relations field. Within the European Union, practice in member countries has changed to reflect directives dealing with consultation of workers and their representatives, including those on health and safety matters in particular. Multilateral trade agreements, such as the labour side agreement to the North American Free Trade Agreement (Canada, Mexico, United States) or the agreements implementing the Mercosur Common Market (Argentina, Brazil, Chile, Paraguay, thought soon to be joined by Bolivia and Chile) also sometimes contain workers’ rights provisions or mechanisms that over time may have an indirect impact on labour relations systems of the participating states.

**Employers**

Employers–that is, providers of work–are usually differentiated in industrial relations systems depending upon whether they are in the private or the public sector. Historically, trade unionism and collective bargaining developed first in the private sector, but in recent years these phenomena have spread to many public sector settings as well. The position of state-owned enterprises—which in any event are dwindling in number around the world—as employers, varies depending upon the country. (They still play a key role in China, India, Viet Nam and in many African countries.) In Eastern and Central Europe, one of the major challenges of the post-Communist era has been the establishment of independent organizations of employers.

**International Employers’ Organizations**

|  |
| --- |
| The IOE’s main activity, however, is to organize employers whenever they have to deal with social and labour matters at the global level. In practice, most of this takes place in the ILO, which has responsibility for these questions in the United Nations system. The IOE also has Category I consultative status with the Economic and Social Council of the United Nations, where it intervenes whenever matters of interest or consequence to employers arise.  The IOE is one of only two organizations that the employer community has set up to represent the interests of enterprise globally. The other is the International Chamber of Commerce, with its headquarters in Paris, which concerns itself principally with economic matters. While structurally quite different, the two organizations complement each other. They cooperate on the basis of an agreement which defines their areas of responsibility as well as through good personal relations between their representatives and, to a degree, on a common membership base. Many subjects cut across their mandates, of course, but are dealt with pragmatically without friction. On certain issues, such as multinational enterprises, the two organizations even act in unison.  by Chapter Editor (excerpted from: ILO 1994) |

In the private sector, the situation has been summed up as follows:

Employers have common interests to defend and precise causes to advance. In organizing themselves, they pursue several aims which in turn determine the character of their organizations. These can be chambers of commerce, economic federations and employers’ organizations (for social and labour matters) ... Where issues centre essentially on social matters and industrial relations, including collective bargaining, occupational health and safety, human resource development, labour law and wages, the desire for co-ordinated action has led to the creation of employers’ organizations, which are always voluntary in nature ... (ILO 1994a).

Some employers’ organizations were initially established in response to pressure from the trade unions to negotiate, but others may be traced to medieval guilds or other groups founded to defend particular market interests. Employers’ organizations have been described as formal groups of employers set up to defend, represent and advise affiliated employers and to strengthen their position in society at large with respect to labour matters as distinct from economic matters ... Unlike trade unions, which are composed of individual persons, employers’ organizations are composed of enterprises (Oechslin 1995).

As identified by Oechslin, there tend to be three main functions (to some extent overlapping) common to all employers’ organizations: defence and promotion of their members’ interests, representation in the political structure and provision of services to their members. The first function is reflected largely in lobbying government to adopt policies that are friendly to employers’ interests and in influencing public opinion, chiefly through media campaigns. The representative function may occur in the political structure or in industrial relations institutions. Political representation is found in systems where consultation of interested economic groups is foreseen by law (e.g., Switzerland), where economic and social councils provide for employer representation (e.g., France, French-speaking African countries and the Netherlands) and where there is participation in tripartite forums such as the International Labour Conference and other aspects of ILO activity. In addition, employers’ organizations can exercise considerable influence at the regional level (especially within the European Union).

The way in which the representative function in the industrial relations system occurs depends very much on the level at which collective bargaining takes place in a particular country. This factor also largely determines the structure of an employers’ organization. If bargaining is centralized at the national level, the employers’ organization will reflect that in its internal structure and operations (central economic and statistical data bank, creation of a mutual strike insurance system, strong sense of member discipline, etc.). Even in countries where bargaining takes place at the enterprise level (such as Japan or the United States), the employers’ organization can offer its members information, guidelines and advice. Bargaining that takes place at the industrial level (as in Germany, where, however, some employers have recently broken ranks with their associations) or at multiple levels (as in France or Italy) of course also influences the structure of employers’ organizations.

As for the third function, Oechslin notes, “it is not always easy to draw a line between activities supporting the functions described above and those undertaken for the members in their interest” (p. 42). Research is the prime example, since it can be used for multiple purposes. Safety and health is an area in which data and information can be usefully shared by employers across sectors. Often, new concepts or reactions to novel developments in the world of work have been the product of broad reflection within employers’ organizations. These groups also provide training to members on a wide range of management issues and have undertaken social affairs action, such as in the development of workers’ housing or support for community activities. In some countries, employers’ organizations provide assistance to their members in labour court cases.

The structure of employers’ organizations will depend not only on the level at which bargaining is done, but also on the country’s size, political system and sometimes religious traditions. In developing countries, the main challenge has been the integration of a very heterogeneous membership that may include small and medium-sized businesses, state enterprises and subsidiaries of multinational corporations. The strength of an employers’ organi-zation is reflected in the resources its members are willing to devote to it, whether in the form of dues and contributions or in terms of their expertise and time.

The size of an enterprise is a major determinant in its approach to labour relations, with the employer of a small workforce being more likely to rely on informal means for dealing with its workers. Small and medium-sized enterprises, which are variously defined, sometimes fall under the threshold for legally mandated workers’ participation schemes. Where collective bargaining occurs at the enterprise level, it is much more likely to exist in large firms; where it takes place at the industry or national level, it is more likely to have an effect in areas where large firms have historically dominated the private sector market.

As interest organizations, employers’ organizations—like trade unions—have their own problems in the areas of leadership, internal decision-making and member participation. Since employers tend to be individualists, however, the challenge of marshalling discipline among the membership is even greater for employers’ organizations. As van Waarden notes (1995), “employers’ associations generally have high density ratios ... However, employers find it a much greater sacrifice to comply with the decisions and regulations of their associations, as these reduce their much cherished freedom of enterprise.” Trends in the structure of employers’ organizations very much reflect those of the labour market– towards or against centralization, in favour of or opposed to regulation of competition. Van Waarden continues: “even if the pressure to become more flexible in the ‘post-Fordist’ era continues, it does not necessarily make employers’ associations redundant or less influential ... (They) would still play an important role, namely as a forum for the coordination of labour market policies behind the scenes and as an advisor for firms or branch associations engaged in collective bargaining” (ibid., p. 104). They can also perform a solidarity function; through employers’ associations, small employers may have access to legal or advisory services they otherwise could not afford.

Public employers have come to see themselves as such only relatively recently. Initially, the government took the position that a worker’s involvement in trade union activity was incompatible with service to the sovereign state. They later resisted calls to engage in collective bargaining with the argument that the legislature, not the public administration, was the paymaster and that it was thus impossible for the administration to enter into an agreement. These arguments, however, did not prevent (often unlawful) public sector strikes in many countries and they have fallen by the wayside. In 1978, the International Labour Conference adopted the Labour Relations (Public Service) Convention (No. 151) and Recommendation (No. 159) on public employees’ right to organize and on procedures for determining their terms and conditions of employment. Collective bargaining in the public sector is now a way of life in many developed countries (e.g., Australia, France, United Kingdom) as well as in some developing countries (e.g., many francophone African countries and many countries in Latin America).

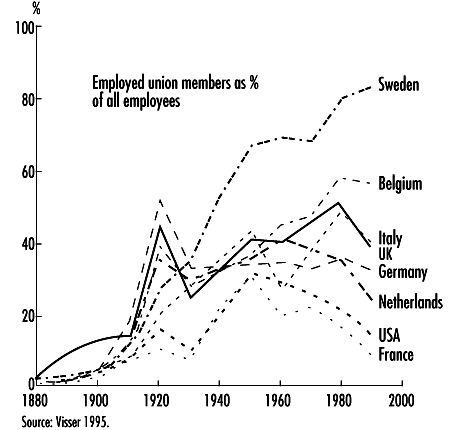
The level of employer representation in the public sector depends largely upon the political system of the country. In some this is a centralized function (as in France) whereas in others it reflects the various divisions of government (as in the United States, where bargaining can take place at the federal, state and municipal levels). Germany presents an interesting case in which the thousands of local communities have banded together to have a single bargaining agent deal with the unions in the public sector throughout the country.

Because public sector employers are already part of the state, they do not fall under laws requiring registration of employers’ organizations. The designation of the bargaining agent in the public sector varies considerably by country; it may be the Public Service Commission, the Ministry of Labour, the Ministry of Finance or another entity altogether. The positions taken by a public employer in dealing with employees in this sector tend to follow the political orientation of the ruling political party. This may range from taking a particular stance in bargaining to a flat-out denial of the right of public employees to organize into trade unions. However, while as an employer the public service is shrinking in many countries, there is an increasing readiness on its part to engage in bargaining and consultations with employee representatives.

**Trade Unions**

The classic definition of a trade union is “a continuous association of wage earners for the purpose of maintaining or improving the conditions of their employment” (Webb and Webb 1920). The origins of trade unions go back as far as the first attempts to organize collective action at the beginning of the industrial revolution. In the modern sense, however, trade unions arose in the later part of the nineteenth century, when governments first began to concede the unions’ legal right to exist (previously, they had been seen as illegal combinations interfering with freedom of commerce, or as outlawed political groups). Trade unions reflect the conviction that only by banding together can workers improve their situation. Trade union rights were born out of economic and political struggle which saw short-term individual sacrifice in the cause of longer-term collective gain. They have often played an important role in national politics and have influenced developments in the world of work at the regional and international levels. Having suffered membership losses, however, in recent years in a number of countries (in North America and some parts of Europe), their role is under challenge in many quarters (see [figure 21.2](http://www.ilocis.org/documents/chpt21e.htm" \l "JD_Figure21.2)). The pattern is mixed with areas of membership growth in the public service in many countries around the world and with a new lease on life in places where trade unions were previously non-existent or active only under severe restrictions (e.g., Korea, the Philippines, some countries of Central and Eastern Europe). The flourishing of democratic institutions goes hand in hand with the exercise of trade union freedoms, as the cases of Chile and Poland in the 1980s and 1990s best illustrate. A process of internal reform and reorientation to attract greater and more diverse membership, particularly more women, can also be seen within trade union circles in a number of countries. Only time will tell if these and other factors will be sufficient to deflect the counterweighing tendencies towards the “de-collectivization”, also referred to as “atomization”, of labour relations that has accompanied increased economic globalization and ideological individualism.

**Figure 21.2 Membership rates in trade unions, 1980-1990**



In contemporary industrial relations systems, the functions fulfilled by trade unions are, like employers’ organizations, basically the following: defence and promotion of the members’ interests; political representation; and provision of services to members. The flip side of trade unions’ representative function is their control function: their legitimacy depends in part upon the ability to exert discipline over the membership, as for example in calling or ending a strike. The trade unions’ constant challenge is to increase their density, that is, the number of members as a percentage of the formal sector workforce. The members of trade unions are individuals; their dues, called contributions in some systems, support the union’s activities. (Trade unions financed by employers, called “company unions”, or by governments as in formerly Communist countries, are not considered here, since only independent organizations of workers are true trade unions.) Affiliation is generally a matter of an individual’s voluntary decision, although some unions that have been able to win closed shop or union security arrangements are considered to be the representatives of all workers covered by a particular collective bargaining agreement (i.e., in countries where trade unions are recognized as representatives of workers in a circumscribed bargaining unit). Trade unions may be affiliated to umbrella organizations at the industrial, national, regional and international levels.

**International Labour Federations**

|  |
| --- |
| The international labour movement on a global, as opposed to a regional or national level, consists of international associations of national federations of labour unions. There are currently three such internationals, reflecting different ideological tendencies: the International Confederation of Free Trade Unions (ICFTU), the World Federation of Trade Unions (WFTU) and the relatively small, originally Christian, World Congress of Labour (WCL). The ICFTU is the largest, with 174 affiliated unions from 124 countries in 1995, representing 116 million trade union members. These groups lobby intergovernmental organizations on overall economic and social policy and press for worldwide protection of basic trade union rights. They can be thought of as the political force behind the international labour movement.  The industrial force of the international labour movement lies in the international associations of specific labour unions, usually drawn from one trade, industry or economic sector. Known as International Trade Secretariats (ITSs) or Trade Union Internationals (TUIs), they may be independent, affiliated to, or controlled by the internationals. Coverage has traditionally been by sector, but also in some cases is by employee category (such as white-collar workers), or by employer (public or private). For example, in 1995 there were 13 operative ITSs aligned with the ICFTU, distributed as follows: building and woodworking; chemical and mining, energy; commercial, clerical, professional and technical; education; entertainment; food, agriculture, restaurant and catering; graphic arts; journalism; metalworking; postal and telecommunications; public service; textile, garment and leather work; transport. The ITSs concentrate mainly on industry-specific issues, such as industrial disputes and pay rates, but also the application of health and safety provisions in a specific sector. They provide information, education, training and other services to affiliated unions. They also help coordinate international solidarity between unions in different countries, and represent the interests of workers in various international and regional forums.  Such action is illustrated by the international trade union response to the incident at Bhopal, India, involving the leak of methyl isocyanate, which claimed thousands of victims on 3 December 1984. At the request of their Indian national trade union affiliates, the ICFTU and the International Federation of Chemical, Energy, Mine and General Workers’ Unions (ICEM) sent a mission to Bhopal to study the causes and effects of the gas leak. The report contained recommendations for preventing similar disasters and endorsed a list of safety principles; this report has been used by trade unionists in both industrialized and developing countries as a basis of programmes for improving health and safety at work.  Source: Rice 1995. |

Trade unions are structured along various lines: by craft or occupation, by branch of industry, by whether they group white- or blue-collar workers and sometimes even by enterprise. There are also general unions, which include workers from various occupations and industries. Even in countries where mergers of industrial unions and general unions are the trend, the situation of agricultural or rural workers has often favoured the development of special structures for that sector. On top of this breakdown there is often a territorial division, with regional and sometimes local subunits, within a union. In some countries there have been splits in the labour movement around ideological (party politics) and even religious lines which then come to be reflected in trade union structure and membership. Public sector employees tend to be represented by unions separate from those representing employees in the private sector, although there are exceptions to this as well.

The legal status of a trade union may be that of any other association, or it may be subject to special rules. A great number of countries require trade unions to register and to divulge certain basic information to the authorities (name, address, identity of officials, etc.). In some countries this goes beyond mere record-keeping to interference; in extreme cases of disregard for freedom of association principles, trade unions will need government authorization to operate. As representatives of workers, trade unions are empowered to enter into engagements on their behalf. Some countries (such as the United States) require employer recognition of trade unions as an initial prerequisite to engaging in collective bargaining.

Trade union density varies widely between and within countries. In some countries in Western Europe, for instance, it is very high in the public sector but tends to be low in the private sector and especially in its white-collar employment. The figures for blue-collar employment in that region are mixed, from a high in Austria and Sweden to a low in France, where, however, trade union political power far exceeds what membership figures would suggest. There is some positive correlation between centralization of bargaining and trade union density, but exceptions to this also exist.

As voluntary associations, trade unions draw up their own rules, usually in the form of a constitution and by-laws. In democratic trade union structures, members select trade union officers either by direct vote or through delegates to a general conference. Internal union government in a small, highly decentralized union of workers in a particular occupational group is likely to differ significantly from that found in a large, centralized general or industrial union. There are tasks to allocate among union officers, between paid and unpaid union representatives and coordination work to be done. The financial resources available to a union will also vary depending upon its size and the ease with which it can collect dues. Institution of a dues check-off system (whereby dues are deducted from a worker’s wages and paid directly to the union) alleviates this task greatly. In most of Central and Eastern Europe, trade unions that were dominated and funded by the state are being transformed and/or joined by new independent organizations; all are struggling to find a place and operate successfully in the new economic structure. Extremely low wages (and thus dues) there and in developing countries with government-supported unions make it difficult to build a strong independent union movement.

In addition to the important function of collective bargaining, one of the main activities of trade unions in many countries is their political work. This may take the form of direct representation, with trade unions being given reserved seats in some parliaments (e.g., Senegal) and on tripartite bodies that have a role in determining national economic and social policy (e.g., Austria, France, the Netherlands), or on tripartite advisory bodies in the fields of labour and social affairs (e.g., in many Latin American and some African and Asian countries). In the European Union, trade union federations have had an important impact on the development of social policy. More typically, trade unions have an influence through the exercise of power (backed up by a threat of industrial action) and lobbying political decision makers at the national level. It is certainly true that trade unions have successfully fought for greater legislative protection for all workers around the world; some believe that this has been a bittersweet victory, in the long run undermining their own justification to exist. The objectives and issues of union political action have often extended well beyond narrower interests; a prime example of this was the struggle against apartheid within South Africa and the international solidarity expressed by unions around the world in words and in deeds (e.g., organizing dockworker boycotts of imported South African coal). Whether trade union political activity is on the offence or the defence will of course depend largely on whether the government in power tends to be pro- or anti-labour. It will also depend upon the union’s relationship to political parties; some unions, particularly in Africa, were part of their countries’ struggles for independence and maintain very close ties with ruling political parties. In other countries there is a traditional interdependence between the labour movement and a political party (e.g., Australia, United Kingdom), whereas in others alliances may shift over time. In any event, the power of trade unions often exceeds what would be expected from their numerical strength, particularly where they represent workers in a key economic or public service sector, such as transport or mining.

Aside from trade unions, many other types of workers’ participation have sprung up to provide indirect or direct representation of employees. In some instances they exist alongside trade unions; in others they are the only type of participation available to workers. The functions and powers of workers’ representatives that exist under such arrangements are described in the article “Forms of workers’ participation’’.

The third type of function of trade unions, providing services to members, focuses first and foremost on the workplace. A shop steward at the enterprise level is there to ensure that workers’ rights under the collective bargaining agreement and the law are being respected–and, if not, to take action. The union officer’s job is to defend the interests of workers vis-à-vis management, thereby legitimizing his or her own representative role. This may involve taking up an individual grievance over discipline or dismissal, or cooperating with management on a joint health and safety committee. Outside the workplace, many unions provide other types of benefit, such as preferential access to credit and participation in welfare schemes. The union hall can also serve as a centre for cultural events or even large family ceremonies. The range of services a union can offer to its members is vast and reflects the creativity and resources of the union itself as well as the cultural milieu in which it operates.

As Visser observes:

The power of trade unions depends on various internal and external factors. We can distinguish between organizational power (how many internal sources of power can unions mobilize?), institutional power (which external sources of support can unions depend on?) and economic power (which market forces play into the hands of unions?) (Visser in van Ruysseveldt et al. 1995).

Among the factors he identifies for a strong trade union structure are the mobilization of a large, stable, dues-paying and well-trained membership (to this could be added a membership that reflects the composition of the labour market), avoidance of organizational fragmentation and political or ideological rifts and development of an organizational structure that provides a presence at the company level while having central control of funds and decision making. Whether such a model for success, which to date has been national in character, can evolve in the face of an increasingly internationalized economy, is the great challenge facing trade unions at this juncture.

**RIGHTS OF ASSOCIATION AND REPRESENTATION**

Breen Creighton

**Relationship between Rights of Association and Representation and Occupational Safety and Health**

Joint consultation and participation can be effective only in an environment where there is adequate recognition of and respect for the right of employers and workers to associate freely and for their organizations to be able to represent their interests effectively. In a very real sense, therefore, respect for the right to organize can be seen to be an essential precondition of an effective occupational safety and health strategy at both the national and international level and at the workplace. That being the case, it is necessary and appropriate to look more closely at ILO standards relating to freedom of association, bearing in mind their application in the context of the prevention of work-related injury and disease and the compensation and rehabilitation of those who have incurred such injury or disease. Freedom of association standards require that there be proper recognition in law and practice of the right of workers and employers to form and to join the organizations of their choice and of the right of those organizations, once established, to formulate and to implement freely their programmes.

Rights of association and representation also underpin tripartite (governments, employers and workers) cooperation in the field of occupational health and safety. Such cooperation is promoted in the context of ILO standard-setting, for example, by:

·     enjoining governments to consult with representative organizations of employers and workers in relation to the formulation and implementation of policy on occupational health and safety at the national or regional level (e.g., Asbestos Convention, 1986 (No. 162), Article 4 and Occupational Safety and Health Convention, 1981 (No. 155), Articles 1 and 8)

·     encouraging joint consultation and cooperation on occupational safety and health matters at the level of the workplace (e.g., Prevention of Major Industrial Accidents Convention, 1993 (No. 174), Article 9(f) and (g))

·     requiring the joint participation of employers and workers in the formulation and implementation of occupational safety and health policy in the workplace (see especially Occupational Safety and Health Convention, 1981 (No. 155), Articles 19 and 20 and Occupational Safety and Health Recommendation, 1981 (No. 164), para 12).

**ILO and Rights of Association and Representation**

The “right of association for all lawful purposes by the employed as well as by the employers” was one of the methods and principles set out in Article 41 of the original Constitution of the ILO. This principle now finds express recognition in the Preamble to the Constitution as one of the essential preconditions of the establishment of social justice, which is itself seen as the essential precondition of universal and lasting peace. Together with the principle of tripartism, it is also accorded express recognition in Article I of the Declaration of Philadelphia, which was appended to the Constitution in 1946. This Constitutional endorsement of the importance of respect for the principles of freedom of association helps provide one of the juridical bases for the capacity of the Fact-Finding and Conciliation Commission on Freedom of Association and the Governing Body’s Committee on Freedom of Association to inquire into alleged breaches of the principles of freedom of association.

As early as 1921 the International Labour Conference adopted the Right of Association (Agriculture) Convention (No. 11), which requires ratifying States to “secure to all those engaged in agriculture the same rights of association and combination as to industrial workers”. It does not, however, say anything about the rights which are to be accorded to the industrial workers with whom those engaged in agriculture are to enjoy parity! Attempts to adopt a more general instrument dealing with freedom of association in the 1920s foundered upon the rocks of employer and government insistence that the right to form and join trade unions must be accompanied by a correlative right not to join. The matter was re-opened in the period immediately after the Second World War. This duly resulted in the adoption of the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Conventions Nos. 87 and 98 are among the most important and the most widely ratified of all ILO Conventions: as of 31 December 1996, Convention No. 87 had attracted 119 ratifications, while No. 98 had attracted 133. Between them they embody what can properly be regarded as the four key elements in the notion of freedom of association. They are regarded as the benchmark for the international protection of freedom of association for trade union purposes, as reflected, for example, in Article 8 of the International Covenant on Economic, Social and Cultural Rights and Article 22 of the International Covenant on Civil and Political Rights. Within the ILO structure, they form the basis for the principles of freedom of association as developed and applied by the Governing Body’s Committee on Freedom of Association and the Fact-Finding and Conciliation Commission on Freedom of Association, even though in technical terms those bodies derive their jurisdiction from the Constitution of the Organization rather than the Conventions. They also constitute a major focus for the deliberations of the Committee of Experts on the Application of Conventions and Recommendations and of the Conference Committee on the Application of Conventions and Recommendations.

Despite the pivotal role of Conventions Nos. 87 and 98, it should be appreciated that they are by no means the only formal standard-setting instruments which have been adopted under the auspices of the ILO in the field of freedom of association. On the contrary, since 1970 the Conference has adopted further four Conventions and four Recommendations dealing in greater detail with various aspects of the principles of freedom of association, or with their application in certain specific contexts:

·     the Workers’ Representatives Convention (No. 135) and Recommendation (No. 143), 1971

·     the Rural Workers’ Organizations Convention (No. 141) and Recommendation (No. 149), 1975

·     the Labour Relations (Public Service) Convention (No. 151) and Recommendation (No. 158), 1978

·     the Collective Bargaining Convention (No. 154) and Recommendation (No. 163), 1981

**Principles of Freedom of Association**

**The core elements**

The core elements of the principles of freedom of association as embodied in Conventions Nos. 87 and 98 are:

·     that “workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization” (Article 2 of Convention No. 87)

·     that organizations of employers and workers, once established, should have the right “to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes” (Article 3(1) of Convention No. 87). Furthermore, the public authorities must “refrain from any interference which would restrict this right or impede the lawful exercise thereof” (Article 3(2))

·     that workers are to enjoy “adequate protection against acts of anti-union discrimination in respect of their employment” (Article 1(1) of Convention No. 98)

·     that “measures appropriate to national conditions shall be taken, where necessary, to encourage and to promote the full development and utilization of machinery for voluntary negotiation between employers and employers’ organizations and workers’ organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements” (Article 4 of Convention No. 98)

All of the guarantees provided by Convention No. 87 are subject to the proviso set out in Article 8(1): “in exercising the rights provided for in this Convention workers and employers and their respective organizations... shall respect the law of the land”. This in turn is subject to the further proviso that the “law of the land shall not be such as to impair, nor shall it be applied so as to impair, the guarantees provided for in this Convention.”

It should also be noted that by virtue of Article 9(1) of Convention No. 87 it is permissible, but not necessary, to qualify the application of the guarantees set out in that Convention to members of the police and of the armed forces. Article 5(1) of Convention No. 98 is to the same effect, while Article 6 of that instrument stipulates that the Convention “does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.”

**The right to join**

The right of workers and employers to form and to join the organizations of their choice is the pivot of all of the other guarantees provided by Conventions Nos. 87 and 98 and by the principles of freedom of association. It is subject only to the qualification set out in Article 9(1) of the Convention. This means that it is not permissible to deny any group of workers other than members of the police or the armed forces the right to form or join the trade unions of their choice. It follows that denial or restriction of the right of public servants, agricultural workers, school teachers and so on to form or join the organizations of their choice would not be consistent with the requirements of Article 2.

It is, however, permissible for the rules of a trade union or an employer organization to restrict the categories of workers or employers who may join the organization. The point is that any such restriction must be the result of the free choice of the members of the organization – it must not be imposed from outside.

The right to associate set out in Article 2 is not accompanied by any correlative right not to associate. It will be recalled that earlier attempts to adopt a general freedom of association convention failed because of the insistence by employer and some government delegates that the positive right to associate must carry with it a negative right not to associate. This issue was again raised in the context of the debates on Conventions Nos. 87 and 98. However on this occasion a compromise was effected whereby the Conference adopted a resolution to the effect that the extent to which trade union security devices (such as the “closed” or “agency” shop and check-off arrangements for trade union dues) were permissible or otherwise was a matter to be determined by national law and practice. In other words, the Conventions are considered neither to condone nor to condemn the closed shop and other forms of union security device, although such measures are not regarded as acceptable if they are imposed by law rather than adopted by agreement of the parties (ILO 1994b; ILO 1995a).

Perhaps the most difficult issue which has arisen in the context of Article 2 relates to the extent to which it can be said to endorse the notion of trade union pluralism. In other words, is it consistent with Article 2 for the law to limit, directly or indirectly, the right of workers (or employers) to form or join the organization of their choice through the application of administrative or legislative criteria?

There are two sets of competing interests in this context. On the one hand, Article 2 is clearly meant to protect the right of workers and employers to choose the organization to which they wish to belong and to choose not to belong to organizations with which they are out of sympathy on political, denominational or other grounds. On the other hand, governments (and indeed trade unions) may argue that the excessive proliferation of trade unions and employer organizations which may be an incident of unrestricted freedom of choice is not conducive to the development of free and effective organizations or the establishment and maintenance of orderly industrial relations processes. This was an issue of particular difficulty in the Cold War era, when governments often sought to restrict the range of unions to which workers could belong on ideological grounds. It remains a highly sensitive issue in many developing countries where governments, for good reason or ill, wish to prevent what they see as the excessive proliferation of trade unions by placing restrictions on the number and/or size of unions which can operate in a given workplace or sector of the economy. The ILO’s supervisory bodies have tended to adopt a fairly restrictive approach to this issue, permitting trade union monopolies where they are the result of the free choice of the workers in the country concerned and permitting the adoption of “reasonable” registration criteria, but taking exception to legally imposed monopolies and “unreasonable” registration criteria. In doing so, they have attracted considerable criticism, especially from governments in developing countries which accuse them of adopting a Eurocentric approach to the application of the Convention – the point being that the characteristically European concern with the rights of the individual is said to be inconsistent with the collectivist traditions of many non-European cultures.

**Organizational autonomy and the right to strike**

If Article 2 of Convention No. 87 protects the fundamental right of employers and workers to form and to join the organization of their choice, then Article 3 can be seen to provide its logical corollary by protecting the organizational autonomy of organizations once established.

As the wording of Article 3(1) clearly indicates, this would include the drafting, adoption and implementation of the constitutions and rules of organizations and the conduct of elections. However, the supervisory bodies have accepted that it is permissible for the public authorities to impose minimum conditions upon the content or administration of rules for the purpose of “ensuring a sound administration and preventing legal complications arising as a result of constitutions and rules being drawn up in insufficient detail” (ILO 1994b). However, if such conditions are excessively detailed or onerous in application then they are likely to be adjudged to be inconsistent with the requirements of Article 3.

Over the years the supervisory bodies have consistently taken the view that “the right to strike is an intrinsic corollary of the right to organize protected by Convention No. 87” (ILO 1994b):

The Committee (of Experts) considers that the right to strike is one of the essential means available to workers and their organizations for the protection of their economic and social interests. These interests not only have to do with obtaining better working conditions and pursuing collective demands of an occupational nature, but also with seeking solutions to economic and social policy questions and to labour problems of any kind which are of direct concern to the workers.

This is one of the most controversial aspects of the entire jurisprudence relating to freedom of association and in recent years in particular it has come in for vigorous criticism from employer and government members of the Conference Committee on the Application of Conventions and Recommendations. (See, for example, International Labour Conference, 80th Session (1993), Record of Proceedings, 25/10-12 and 25/58-64 and International Labour Conference, 81st Session (1994), Record of Proceedings, 25/92-94 and 25/179-180.) It is, however, a firmly entrenched feature of the jurisprudence on freedom of association. It finds clear recognition in Article 8(1) (d) of the International Covenant on Economic, Social and Cultural Rights and was endorsed by the Committee of Experts in its 1994 General Survey on Freedom of Association and Collective Bargaining (ILO 1994b).

It is important to appreciate, however, that the right to strike as recognized by the supervisory bodies is not an unqualified one. In the first place, it does not extend to those groups of workers in relation to whom it is permissible to attenuate the guarantees set out in Convention No. 87, namely members of the police and armed forces. Furthermore, it has also been determined that the right to strike may legitimately be denied to “public servants acting as agents of the public authority” and to workers engaged in essential services in the sense of “services whose interruption would endanger the life, personal safety or health of the whole or part of the population.” However, any restrictions upon the right to strike of workers in these latter categories must be offset by compensatory guarantees, such as “conciliation and mediation procedures leading, in the event of a deadlock, to arbitration machinery seen to be reliable by the parties concerned. It is essential that the latter be able to participate in determining and implementing the procedure, which should furthermore provide sufficient guarantees of impartiality and rapidity: arbitration awards should be binding on both parties and once issued should be implemented rapidly and completely” (ILO 1994b).

It is also permissible to impose temporary restrictions upon the right to strike in times of “acute national emergency”. More generally, it is permissible to impose preconditions such as balloting requirements, exhaustion of conciliation procedures and so on, upon the exercise of the right to strike. However, all such restrictions must “be reasonable and... not such as to place a substantial limitation on the means of action open to trade union organizations”.

The right to strike is often described as the weapon of last resort in collective bargaining. If Article 3 is interpreted so as to protect the weapon of last resort, it seems reasonable to suppose that it must also protect the process of collective bargaining itself. The supervisory bodies have indeed taken this view on a number of occasions, but in general they have preferred to base their jurisprudence on collective bargaining upon Article 4 of Convention No. 98. (For more detailed discussion of the ILO jurisprudence on the right to strike, see Hodges-Aeberhard and Odero de Dios 1987; Ben-Israel 1988).

The autonomy of organizations of employers and workers is also addressed in Articles 4 to 7 of Convention No. 87 and in Article 2 of Convention No. 98. Article 4 provides that such organizations must not be “liable to be dissolved or suspended by administrative authority”. This does not mean that trade unions or employers’ organizations cannot be deregistered or dissolved where they have, for example, engaged in gross industrial misconduct or have not been run in accordance with their rules. But it does mean that any such sanction must be imposed through a duly constituted court or other appropriate body, rather than by administrative diktat.

Article 5 protects the rights of organizations to form and join federations and confederations and also the right of organizations, federations and confederations to affiliate with international organizations of employers and workers. Furthermore, according to Article 6, the guarantees set out in Articles 2, 3 and 4 apply to federations and confederations in the same way as to first level organizations, while Article 7 stipulates that the acquisition of legal personality by organizations of employers or workers must not be made subject to “conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4.”

Finally, Article 2(1) of Convention No. 98 requires that organizations of employers and workers are to enjoy “adequate protection against acts of interference by each other or each other’s agents or members in their establishment, functioning or administration”. In practical terms, it seems somewhat unlikely that trade unions would or could effectively interfere with the internal functioning of employer organizations. It is quite conceivable, however, that in certain circumstances employers or their organizations would seek to interfere with the internal affairs of workers’ organizations – for example, by providing some or all of their funds. This possibility finds express recognition in Article 2(2):

In particular, acts which are designed to promote the establishment of workers’ organizations under the domination of employers or employers’ organizations by financial or other means, with the object of placing such organizations under the control of employers or employers’ organizations, shall be deemed to constitute acts of interference within the meaning of this Article.

**Protection against victimization**

For the guarantees set out in Conventions Nos. 87 and 98 to be meaningful in practice, it is clearly necessary that individuals who exercise their right to form or join organizations of workers be protected against victimization on account of having done so. This logic finds recognition in Article 1(1) of Convention No. 98, which, as indicated, requires that “workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.” Article 1(2) takes the matter further:

Such protection shall apply more particularly in respect of acts calculated to:

(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Anti-union discrimination for these purposes would include refusal to employ, dismissal and other measures such as “transfer, relocation, demotion, deprivation or restrictions of all kinds (remuneration, social benefits, vocational training)” which may cause serious prejudice to the worker concerned (see also Termination of Employment Convention, 1982 (No. 158), Article 5(a), (b) and (c), as well as ILO 1994b, para.212).

Not only must there be comprehensive protection against anti-union discrimination as defined, but by virtue of Article 3 of Convention No. 98, there must also be effective means of enforcing those protections:

Legal standards are inadequate if they are not coupled with effective and expeditious procedures and with sufficiently dissuasive penal sanctions to ensure their application ... The onus placed on the employer to prove the alleged anti-union discriminatory measures are connected with questions other than trade union matters, or presumptions established in the worker’s favour are additional means of ensuring effective protection of the right to organize guaranteed by the Convention. Legislation which allows the employer in practice to terminate the employment of a worker on condition that he pay the compensation provided for by law in any case of unjustified dismissal... is inadequate under the terms of Article 1 of the Convention. Legislation should also provide effective means for implementing means of compensation, with the reinstatement of the dismissed worker, including retroactive compensation, being the most appropriate remedy in such cases of anti-union discrimination (ILO 1994b).

**Collective bargaining**

The guarantee set out in Article 4 of Convention No. 98 has been interpreted so as to protect both the right to engage in collective bargaining and the autonomy of the bargaining process. In other words it is not consistent with Article 4 for employers and workers to be denied the right to engage in collective bargaining if they wish to do so—bearing in mind that it is not inconsistent with the Convention to deny these rights to members of the police or the armed forces and that “the Convention does not deal with the position of public servants engaged in the administration of the State”. Not only must the parties be free to engage in collective bargaining if they so choose, but they must be permitted to reach their own agreement on their own terms without interference by the public authorities – subject to certain qualifications for “compelling reasons of national economic interest” (ILO 1994) and to reasonable requirements as to form, registration and so on.

Article 4 has not, however, been interpreted as protecting the right to recognition for purposes of collective bargaining. The supervisory bodies have repeatedly emphasized the desirability of such recognition, but have not been prepared to take the further step of determining that refusal to recognize and/or the absence of a mechanism whereby employers can be obliged to recognize the unions to which their employees belong constitutes a breach of Article 4 (ILO 1994b; ILO 1995a). They have justified this interpretation on the basis that compulsory recognition would deprive collective bargaining of its voluntary character as envisaged by Article 4 (ILO 1995a). As against that, it might be argued that the ostensible right to engage in collective bargaining must inevitably be compromised if employers are to be free to refuse to engage in such bargaining notwithstanding that they have the right so to bargain if they wish. Furthermore, permitting employers to refuse to recognize the unions to which their employees belong seems to sit somewhat uneasily with the duty to “promote” collective bargaining, which appears to be the principal purpose of Article 4 (Creighton 1994).

**Application of Freedom of Association Principles in the Context of Occupational Safety and Health**

It was suggested earlier that ILO standards relating to occupational safety and health endorse the concept of bipartite or tripartite involvement in three principal contexts: (1) the formulation and implementation of policy at national and regional level; (2) consultation between employers and workers at the level of the workplace; and (3) joint participation between employers and workers in the formulation and implementation of policy at the level of the workplace. It should be clear from the foregoing that the effective involvement of employers and (especially) workers in all three contexts is crucially dependent upon adequate recognition of their rights of association and representation.

Respect for the right to form and to join organizations is clearly an essential precondition of all three forms of joint involvement. Consultation and participation at the governmental level is feasible only where there are strong and effective organizations which can be seen to be representative of the interests of their constituencies. This is necessary both for ease of communication and so that government will feel constrained to take seriously the views expressed by the representatives of employers and workers. A fortiori, consultation and participation at the level of the workplace is a realistic proposition only if workers have the capacity to form and to join organizations which can represent their interests in discussions with employers and their organizations, provide back-up resources for worker representatives, assist in dealings with public inspectorates and so on. Theoretically, worker representatives could operate at the level of the workplace without having any necessary connection with a more broadly based organization, but the reality of power relations in most workplaces is such that they are unlikely to be able to do so in an effective manner without the support of an industrial organization. At the very least, workers must have the right to have their interests represented in this manner if they so choose.

The organizational autonomy of employer and worker organizations is also an essential precondition of meaningful participation at all levels. It is necessary, for example, that worker organizations should have the right to formulate and to implement their policies on occupational safety and health issues without outside interference, for purposes of consultation with government in relation to: (1) issues such as the legal regulation of hazardous processes or substances; or (2) the formulation of legislative policy relating to compensation for work-related injury or the rehabilitation of injured workers. Such autonomy is even more important at the level of the workplace, where worker organizations need to develop and maintain a capacity to represent the interests of their members in discussion with employers on occupational safety and health issues. This might include having rights of access to workplaces for union officials and/or health and safety specialists; invoking the assistance of the public authorities in relation to hazardous situations; and in certain circumstances organizing industrial action in order to protect the health and safety of their members.

To be effective, organizational autonomy also requires that trade union members and officials be accorded adequate protection against victimization on grounds of their trade union membership or activities, or on account of their having initiated or participated in legal proceedings relating to occupational safety and health matters. In other words, the guarantees against discrimination set out in Article 1 of Convention No. 98 are as relevant to trade union activity relating to occupational safety and health as to other forms of union activity such as collective bargaining, membership recruitment and so on.

The right to engage in autonomous collective bargaining is also a crucial element in effective worker participation in relation to occupational safety and health. The guarantees set out in Article 4 of Convention No. 98 are important in this context. However, as indicated, those guarantees do not extend to the right to be recognized for purposes of such bargaining. On the other hand provisions such as Article 19 of the Occupational Safety and Health Convention, 1981 (No. 155) may be seen as coming very close to requiring trade union recognition in the context of occupational safety and health:

There shall be arrangements at the level of the undertaking under which:

·     representatives of workers in an undertaking are given adequate information on measures taken by the employer to secure occupational safety and health and may consult their representative organizations about such information provided they do not disclose commercial secrets;

·     workers and their representatives in the undertaking are given appropriate training in occupational safety and health;

·     workers or their representatives and, as the case may be, their representative organizations in an undertaking, in accordance with national law and practice, are enabled to inquire into, and are consulted by the employer on, all aspects of occupational safety and health associated with their work...

In practical terms it would be very difficult to give effect to these provisions without according some kind of formal recognition to the role of workers’ organizations. This in turn serves to emphasize yet again the importance of adequate recognition of rights of association and representation as a precondition of the development and implementation of effective occupational safety and health strategies at both the national and enterprise level.

**COLLECTIVE BARGAINING AND SAFETY AND HEALTH**

Michael J. Wright

Collective bargaining is the process through which workers negotiate, as a group, with their employer; this can occur at various levels (enterprise, industry/sector, national). Traditionally, the subjects of the negotiation are wages, benefits, working conditions and fair treatment. However, collective bargaining can also address issues that do not directly affect the workers employed in the enterprise, such as increased old-age pensions for workers already retired. Less often, collective bargaining addresses issues that reach well beyond the workplace, such as protection of the external environment.

In a very small enterprise, it is possible for all the workers to negotiate as a body with their employer. This kind of informal collective bargaining has existed for centuries. Today, however, most collective bargaining is carried out by workers’ organizations, or unions.

The definition used in the ILO Convention concerning the promotion of collective bargaining, 1981 (No.154), Article 2, is broad:

the term... extends to all negotiations which take place between an employer, a group of employers or one or more employers’ organizations, on the one hand, and one or more workers’ organizations, on the other, for –

(a) determining working conditions and terms of employment; and/or

(b) regulating relations between employers and workers; and/or

(c) regulating relations between employers or their organizations and a workers’ organization or workers’ organizations.

Collective bargaining is an important tool for raising living standards and improving working conditions. Even though safety and health is addressed in the national law of almost all countries, collective bargaining often provides the mechanism through which the law is implemented in the workplace. For example, the law may mandate joint safety and health committees or works councils, but leave the details to be negotiated between the employer and the workers’ organization.

Unfortunately, collective bargaining is under attack by authoritarian employers and repressive governments, both in developed and developing countries. It rarely exists in the informal sector or in small, traditional enterprises. As a result, the majority of the world’s workers do not yet enjoy the benefits of effective collective bargaining under a framework of worker rights guaranteed by law.

**History of Union Action for Safety and Health**

There is a long history of workers’ organizations taking collective action for safety and health. In 1775, Percival Pott, an English surgeon, made the first known report of occupational cancer – skin cancer in London chimney sweeps (Lehman 1977). Two years later the Danish Chimney Sweepers Guild, in what was the first known response by a workers’ organization to the threat of occupational cancer, ordered that apprentices be given the means for a daily bath.

However, safety and health seldom was an explicit issue in early labour struggles. Workers in dangerous jobs were overwhelmed by more pressing problems, such as low wages, crushing hours of work and the arbitrary power of factory and mine owners. Safety hazards were obvious in the daily toll of injury and death, but occupational health was not well understood. Workers’ organizations were weak and under constant attack by owners and governments. Simple survival was the primary goal of workers’ organizations. As a result, the grievances of nineteenth-century workers rarely manifested themselves in campaigns for safer conditions (Corn 1978).

**The Labour Agreement between the Bethlehem Steel Corporation and the United Steelworkers of America**

|  |
| --- |
| The agreement between Bethlehem Steel and the United Steelworkers of America is typical of company-wide agreements in large unionized manufacturing enterprises in the United States. Steel industry labour agreements have contained safety and health articles for more than 50 years. Many provisions negotiated in the past gave workers and the union rights that were later guaranteed by law. Despite this redundancy, the provisions still appear in the contract as a hedge against changes in the law, and to allow the union the option of taking violations to impartial arbitration rather than the courts.  The Bethlehem agreement runs from 1 August 1993 to 1 August 1999. It covers 17,000 workers in six plants. The full agreement is 275 pages long; 17 pages are devoted to safety and health.  Section 1 of the safety and health article pledges the company and the union to cooperate in the objective of eliminating accidents and health hazards. It obligates the company to provide safe and healthful workplaces, obey federal and state law, provide employees with the necessary protective equipment free of charge, provide chemical safety information to the union and inform workers of the hazards and controls for toxic substances. It grants the union’s central safety and health department the right to any information in the company’s possession that is “relevant and material” to an understanding of potential hazards. It requires the company to make air sampling tests and environmental investigations at the request of the union co-chairperson of the plant’s safety and health committee.  Section 2 sets up joint union-management safety and health committees at the plant and national levels, prescribes the rules under which they operate, mandates training for committee members, gives members of the committee access to all parts of the plant to facilitate the committee’s work and specifies the applicable rates of pay for committee members on committee business. The section also specifies how disputes over protective equipment are to be resolved, requires the company to notify the union of all potentially disabling accidents, sets up a system of joint accident investigation, requires the company to gather and supply to the union certain safety and health statistics, and establishes an extensive safety and health training programme for all employees.  Section 3 gives workers the right to remove themselves from work involving hazards beyond those “inherent in the operation” and provides an arbitration mechanism through which disputes over such work refusals can be resolved. Under this provision, a worker cannot be disciplined for acting in good faith and on the basis of objective evidence, even if a subsequent investigation shows that the hazard did not in fact exist.  Section 4 specifies that the committee’s role is advisory, and that committee members and officers of the union acting in their official capacity are not to be held liable for injuries or illnesses.  Section 5 states that alcoholism and drug abuse are treatable conditions, and sets up a programme of rehabilitation.  Section 6 establishes an extensive programme for controlling carbon monoxide, a serious hazard in primary steel production.  Section 7 provides workers with vouchers for the purchase of safety shoes.  Section 8 requires the company to keep individual medical records confidential except in certain limited circumstances. However, workers have access to their own medical records, and may release them to the union or to a personal physician. In addition, physicians for the company are required to notify workers of adverse medical findings.  Section 9 establishes a medical surveillance programme.  Section 10 establishes a programme for investigating and controlling the hazards of video display terminals.  Section 11 establishes full-time safety representatives in each plant, chosen by the union but paid by the company.  In addition, an appendix to the agreement commits the company and the union to review each plant’s safety programme for mobile equipment operating on rails. (Fixed rail equipment is the leading cause of death by traumatic injury in the American steel industry.) |

However, safety and health sometimes joined other issues in early labour struggles. In the late 1820s, workers in the textile industry in the United States began to agitate for shorter working hours. Many of the workers were women, as were the leaders of such rudimentary unions as the female labour reform associations of New England. The proposed 10-hour day was seen mostly as an issue of general welfare. But in testimony before the Massachusetts legislature, workers also decried the effects of 12- and 14-hour days in badly ventilated mills, describing a “wasting sickness” they attributed to cotton dust and bad ventilation, in what are now recognized as some of the first reports of byssinosis. They had little success in winning recognition from the mill owners, or action from the legislature (Foner 1977).

Other union actions dealt more with the effects of occupational hazards than with their prevention. Many nineteenth-century unions adopted welfare programmes for their members, including disability payments to the injured and benefits for survivors. US and Canadian mining unions went one step further, establishing hospitals, clinics and even cemeteries for their members (Derickson 1988). While unions attempted to negotiate better conditions with employers, most agitation for safety and health in North America was in mines aimed at state and provincial legislatures (Fox 1990).

In Europe, the situation began to change around the turn of the century with the rise of stronger workers’ organizations. In 1903, the German and French painters’ unions began a campaign against the hazards of lead paint. The Factory Workers Union of Germany had an active industrial hygiene programme by 1911, published education materials on chemical hazards and began a campaign for safeguards against chromate-induced lung cancer, ultimately leading to a change in the production method. Trade unions in the United Kingdom represented their members in workers’ compensation cases and fought for better laws and regulations. Their work showed the interplay between collective bargaining for safety and health and the factory inspection system. In 1905, for example, trade unions filed 268 complaints with the British factory inspectorate (Teleky 1948). As early as 1942, the Swedish Employers’ Confederation and the Swedish Confederation of Trade Unions reached a nationwide Working Environment Agreement regarding local safety and health services. The agreement has been revised and extended several times; in 1976 the original parties were joined by the Federation of Salaried Employees (Joint Industrial Safety Council of Sweden 1988).

North America lagged behind. Formal corporate safety programmes were instituted by some large employers around the turn of the century (for a description of such programmes in the steel industry see Brody (1960), or the self-congratulatory Year Book of the American Iron and Steel Institute for 1914 (AISI 1915)). The programmes were highly paternalistic, relied more on discipline than education and often were based on the premise that workers themselves were largely to blame for industrial accidents. Major disasters such as New York’s 1911 Triangle Shirtwaist Fire, which killed 146 workers, led to union campaigns for improvement and ultimately to improved fire safety laws. However, safety and health as a widespread labour issue came only with the rise of strong unions in the 1930s and 1940s. In 1942, for example, the founding Constitution of the United Steelworkers of America required every local union to establish a safety and health committee. By the mid-1950s, joint labour-management safety and health committees had been established in most unionized mines and manufacturing plants and in many other workplaces in the construction and service sector; most union contracts included a section on safety and health.

**Process of Collective Bargaining**

It is common to think of collective bargaining as a formal process that occurs at regular intervals and which results in a written agreement between the workers’ organization and the employer or employers. This kind of bargaining presupposes a succession of demands or proposals, counterproposals and extended deliberations. The process can produce a variety of results: a collective bargaining contract, letters of understanding, joint declarations or mutually agreed codes of practice.

However, collective bargaining can also be understood as a continuous process for solving problems as they arise. This kind of collective bargaining occurs every time a shop steward meets with an area supervisor to settle a dispute or grievance, every time a joint safety and health committee meets to discuss problems in the plant, every time a joint union-management team considers a new company programme.

It is this flexibility of collective bargaining which helps ensure its continued viability. There is, however, one precondition for formal or informal bargaining: for negotiations to be a success, the representatives of both sides must have the authority to bargain and to strike a deal that is meant to be honoured.

Collective bargaining is sometimes seen as a test of strength, in which a gain for one side is a loss for the other. A wage increase, for example, is seen as a threat to profits. A no-layoff agreement is seen as limiting management’s flexibility. If bargaining is seen as a contest, it follows that the most important determinant of the final outcome is the relative power of the parties. For the workers’ organization, this means the ability to halt production through a strike, organize a boycott of the employer’s product or service or bring some other form of pressure to bear, while maintaining the loyalty of the organization’s members. For an employer, power means the ability to resist such pressures, replace the striking workers in countries where this is permitted or hold out until hardship forces workers back to the job under management’s conditions.

Of course, the vast majority of labour negotiations end successfully, without a work stoppage. Nevertheless, it is the threat of one that leads both sides to seek a settlement. This kind of negotiation is sometimes called positional bargaining, because it begins with each side taking a position, after which both sides move by increments until a compromise is reached, based on their relative strengths.

A second model of collective bargaining describes it as a mutual search for an optimum solution (Fisher and Ury 1981). This kind of bargaining assumes that a proper agreement can lead to gains for both parties. A wage increase, for example, can be offset by greater productivity. A no-layoff agreement can encourage workers to improve efficiency, since their jobs will not be threatened as a result. Such bargaining is sometimes called “mutual gains” or “win-win” bargaining. What is most important is the ability of each side to understand the interests of the other and to find solutions that maximize both. Occupational safety and health is frequently seen as an ideal subject for mutual gains bargaining, since both sides are interested in avoiding occupational accidents and disease.

In practice, these models of bargaining are not mutually exclusive and both are important. Skilled bargainers will always seek to understand their counterparts and search for areas where both sides can benefit from a wise agreement. However, it is unlikely that a party without power will accomplish its objectives. There will always remain areas where the parties perceive their interests to be different. Good faith negotiation works best when both sides fear the alternative.

Power is important even in negotiations over safety and health. An enterprise may be less interested in reducing the accident rate if it can externalize the cost of the accidents. If injured workers can be replaced easily and cheaply, without substantial compensation, management may be tempted to avoid expensive safety improvements. This is especially true in the case of occupational diseases with long latency periods, where cost of controls is paid when the controls are installed, while the benefits may not accrue for many years. As a result, a workers’ organization is more likely to succeed if workers have the power to stop production or to call a government inspector if the parties fail to negotiate a solution.

**Legal Framework**

ILO Conventions on freedom of association, on protection of the rights to organize and to engage in collective bargaining and the ILO Conventions and Recommendations on occupational safety and health recognize the role of workers’ organizations. While these instruments provide an international framework, workers’ rights can be assured only through national law and regulation.

Of course, the legal basis for collective bargaining, the level at which bargaining occurs and even the process of bargaining all vary by country. The legislation of most industrialized countries includes a system for regulating collective bargaining. Even within Europe, the degree of regulation can differ widely, from a minimal approach in Germany to a much more developed one in France. The legal effect of a collective agreement also varies. In most countries an agreement is legally enforceable; in the United Kingdom, however, agreements are seen as informal, to be applied by virtue of the parties’ good faith backed up by the threat of a work stoppage. It is expected that this variability within Europe will diminish as a result of greater European unification.

The level of bargaining also varies. The United States, Japan and most Latin American countries feature bargaining at the level of the individual enterprise, although unions often attempt to negotiate “pattern” agreements with all the major employers in a given sector. At the other extreme, Austria, Belgium and the Nordic countries tend to have highly centralized bargaining in which most workplaces are subject to a framework agreement negotiated between national federations representing unions and employers. Sectoral agreements covering particular industries or occupations are common in some countries such as Germany and France.

French-speaking African countries tend to follow the example of France and bargain by industry. Some English-speaking developing countries also bargain by industry. In others, multiple trade unions bargain on behalf of different groups of workers in a single enterprise.

The level of bargaining partially determines the coverage of collective agreements. In France and Germany, for example, collective agreements are usually extended to cover everyone coming within the scope of the occupation or industry to which the agreement applies. On the other hand, in the United States and other countries with enterprise-level bargaining, collective agreements cover only those workplaces where the union has been recognized as the bargaining agent.

An even more important factor in determining the coverage of collective bargaining is whether national law facilitates or impedes unionization and collective bargaining. For example, public sector employees are not permitted to bargain collectively in some countries. In others, public sector unions are growing rapidly. As a result of such factors, the percentage of workers covered by collective agreements varies from a high of almost 90 per cent in Germany and the Nordic countries to under 10 per cent in many developing countries.

The legal framework also affects how collective bargaining applies to occupational safety and health. For example, the United States Occupational Safety and Health Act gives workers’ organizations the right to information on dangerous chemicals and other hazards in the plant, the right to accompany a workplace inspector and a limited right to participate in legal cases brought by the Government against an employer for a violation of standards.

Many countries go further. Most industrialized countries require most enterprises to establish joint safety and health committees. The Canadian Province of Ontario requires that certified safety and health representatives be chosen by the workers in most workplaces and given a standard course of training at employer expense. The Swedish Work Environment Act requires the appointment of safety delegates by the local trade union organization. Swedish safety delegates have broad rights to information and consultation. Most important, they have the power to suspend dangerous work pending a review by the Swedish Labour Inspectorate.

These laws strengthen the collective bargaining process on issues of safety and health. Mandatory joint safety committees provide a routine mechanism for negotiation. Training gives union representatives the knowledge they need to participate effectively. The right to suspend dangerous work helps keep both parties focused on eliminating the source of danger.