

Freedom of association and trade union activity at the workplace in Sweden

Birgitta Nyström *

1. Background 2. Freedom of association. 3. Trade union activity at the workplace. 3.1. Introduction. 3.2. Board representation. 3.3. Trade union representatives. 3.4. Safety representatives. 3.5. Negotiations and information. 3.5.1. Right to negotiation, collective bargaining. 3.5.2. Co-operative negotiations. 3.5.3. Information. 3.6. Priority right of interpretation. 3.7. Co-determination agreements. 4. Conclusions and comments.

Abstract

The social partners play a key role on the Swedish labour market. There is a long tradition of collective bargaining and regulation of labour and employment conditions by means of collective agreements. The unionisation rate is high as well as the coverage of collective agreements. The employee's voice is channelled through the trade union. Trade unions with a collective agreement are entrusted with special rights; they are considered to represent the interests of the entire work force. Trade union activity at the workplace is facilitated by legislation from the 1970s providing for, among other things, trade union representatives carrying out trade union activities during paid working time. Co-determination negotiations and information provided by the employer are important for conditions at workplace level. EU law has influenced Swedish labour and employment law with a more individualistic approach and has increased legislation as means of regulating working conditions.

Keyword: Right to organise; Social partners; Right to negotiate; Trade union representatives; Co-operation at the workplace

1. Background.

Sweden is situated in the North of Europe. It has over 10.3 million inhabitants, mainly located in the southern and central parts. It is a large country; the distance from North to South is roughly equivalent to the distance between the Southern edge of Sweden and Naples.

The labour market is characterised by a high overall rate of labour force participation and a high rate of women's labour force participation. Almost 30 per cent of the total number of employees are engaged in the public sector. Trade union membership has, as in other North and West European countries, decreased during the last 30 years from an overall rate of almost 90 per cent to an overall rate of 70 per cent. Collective agreements cover almost 90 per cent of employees due to the old practice that the employer has a duty to apply the

* Professor Dr. of Private Law, Faculty of Law, Lund university, Sweden. This article has been submitted to a double-blind peer review process.

collective agreement he/she has signed on all employees of the applicable group, irrespective if they are members of the signatory union or not.

The pay level structure is comparatively narrow and income taxes are comparatively high. Total public sector expenditure amount to over 50 per cent of the gross national product and public services are highly developed.

In the 1880s, trade unions started to develop. Local organisations soon formed national unions. National unions founded the Swedish Confederation of Trade Unions (LO) in 1898. The employers too formed organisations and in 1902, these organisations formed the Confederation of Swedish Enterprise (then SAF, now SN). The first nationwide collective agreement was concluded in 1905 in the engineering industry.

For a long time the Swedish labour market was regulated almost entirely by collective agreements. The state's role was one of non-intervention. Many important collective agreements were concluded between the head/umbrella organisations.¹ In the Basic Agreement (the so-called *Saltsjöbaden* Agreement) from 1938, LO and SN agreed on a uniform grievance procedure, a special procedure to be applied with respect to dismissals and lay-offs and restrictions on industrial action. The idea was that legislation in the area of industrial relations should be superfluous. Following the Agreement, the parties established a joint council that was to apply the rules either as an arbiter or as a negotiating body. The Labour Court was excluded from the application of the Agreement.

The *Saltsjöbaden* Agreement set a pattern and was followed by other collaboration agreements on important topics, such as work councils (agreements from 1946 and 1966). The *Saltsjöbaden* Agreement is still in force.²

Until the 1970s, legislation concerning labour and employment law was rather limited. There were laws concerning conciliation in labour disputes from 1906, the Labour Court and collective agreements from 1928, freedom of association and negotiation from 1936, and some legislation concerning health and safety and holidays. Then, in the 1970s, a formal explosion of legislation occurred. There was a general call on “democracy in working life” in the Swedish society. The most important acts are the 1976 Co-determination Act and the 1982 Employment Protection Act.³ Today, almost the whole area of labour and employment law is covered by legislation, except for one subject; wages. There is no legislation concerning wages or minimum wages in Sweden. Although, this “legislative explosion” collective agreements are still probably the most important means of regulating labour and employment law in Sweden. Many of the new laws were developed from collective agreements and a considerable part of the legislation is semi-compulsory, i.e. can be deviated from in collective

¹ Both LO and SN are umbrella organisations that organise employees' or employers' nationwide trade unions. On local level, there are usually local unions or clubs that belongs to the nation-wide unions. If the umbrella organisations enter into national central agreements, such agreements must be adapted at national organisation level. The umbrella organisations nowadays do not enter into agreements concerning wages. They are parties to agreements that should last for a long time, such as agreements concerning insurances, pension schemes, transition schemes in redundancy situations etc.

² Parts of the Agreement have ceased to apply, because of new legislation (for example concerning employment protection). Other parts still apply, for example the important rules concerning restrictions on industrial action and protection of essential services.

³ A preliminary Act concerning job security was issued in 1971, which was replaced by the first Employment Protection Act in 1974. The latter was rather similar to the 1982 Act.

agreements. All legislation applies to all kinds of employees in all sectors of the economy. There is probably no other European country where public employees have such extensive rights concerning collective bargaining and industrial action. Still, there are a few special rules that apply to the public sector in order not to confuse political and industrial democracy, and to maintain impartiality in the exercise of public authority.

Sweden became a member of the European Union in 1995, and hereafter almost all changes in Swedish labour and employment law have concerned the transposition of EU law.⁴

2. Freedom of association.

During the last decades of the 19th century, there were some industrial unrest that concerned the right to organise and collective bargaining. In 1906, negotiations between LO and SN resulted in the important so-called December Compromise. LO accepted the employers demand to include in all collective agreements that the employer is entitled to direct and distribute the work, to hire and dismiss workers at will, and to employ workers whether they are organised or not.⁵ On the other hand, the right of association should be inviolate on both sides.

The first Act guaranteeing the right to organise was the 1936 Act on the Rights of Association and Negotiation. The workers had in fact already acquired these rights by collective bargaining, but the 1936 Act helped the organisations of salaried employees. The 1976 Co-determination Act with the same principles has replaced the 1936 Act.⁶

The right for employers and employees to form associations is not subject to any statutory restrictions. A trade union or an employer organisation can be established without any sanction from the State. According to the Co-determination Act Section 6 a trade union is an association that according to its bylaws is to take care of the interests by the employees in relation to the employer, and an organisation of employers is a corresponding association on the employer side.

⁴ Publications with general information concerning Swedish labour and employment law: see Adlercruetz A., Nyström B., *Labour law. Sweden*, 2ed., Kluwer Law International, Alphen aan den Rijn, 2016; Edlund S., Nyström B., *Developments in Swedish Labour Law, The Swedish Institute*, 1988; Eklund R., Sigeman T., Carlson L., *Swedish Labour and Employment Law: Cases and Materials*, Iustus Forlag, Uppsala, 2008; Fahlbeck R., Mulder B. J., *Labour and Employment Law in Sweden*, 3rd ed., Juristförlaget I, Lund, 2009; Fahlbeck R., Sigeman T., *European Employment and Industrial Relations Glossary. Sweden*, Sweet & Maxwell, London, Office for Official Publications of the European Communities, 2001; Wahlgren P. (ed.), *Stability and Change in Nordic Labour Law, Scandinavian Studies in Law*, Vol. 43, Stockholm Institute for Scandinavian Law, Stockholm, 2002. See also Carlson L., Edström Ö., Nyström B. (eds.), *Globalisation, Fragmentation, Labour and Employment Law. A Swedish Perspective*, Iustus Forlag, Uppsala, 2016.

⁵ To hire and fire at will has been abolished or circumscribed by employment protection and anti-discrimination legislation, but the employer's right to direct and distribute the work and manage the business; the employer's prerogative, still applies as a main rule.

⁶ The Swedish Constitution also provides protection for the freedom of association, as well as Article 11 of the European Convention on Human Rights. The Convention was enacted as law in Sweden in 1994 (SFS 1994:1219).

According to the Co-determination Act⁷, the right of association is defined as the right of employers and employees to belong to an employers' organisation or a trade union, to make use of the membership, to work for the organisation or for its formation, Section 8 of the Co-determination Act. The rules are primarily intended to strengthen the position of unions, but it requires that an individual's right have been violated for an organisation to claim that its rights has been violated or interfered with. A violation is a measure taken by employers or employees against someone on the other side, because of the utilisation of the right of association, or with the intention to make someone refrain from exercising the right of association. The measure must be determined by a motive of revenge or intention to influence. It is difficult to prove motives, and the Labour Court here divide the burden of proof. If the evidence is sufficient to establish that the motive for a measure is most likely of an impermissible nature, then the burden of proof is transferred to the other side that has to prove that the measure was undertaken for other reasons.

The rules concerning freedom of association protect all labour market organisations without distinction.

The right to organise has not been a topical issue on the Swedish labour market for the last hundred years. Nevertheless, there are some cases from recent years concerning this question in the Labour Court. In AD 2013 No. 5⁸, an employer had invited the unorganised employees, but not the trade union members, to a dinner. This was considered to be a violation of the right to organise, and the employees that were not invited as well as the union were awarded damages. In AD 2004 No. 49, a young woman was engaged under a probationary employment contract in a shop. She told the other employees that it would be a good idea to invite the union to the workplace to find out how a collective agreement would affect employment conditions. The local manager called the head office and this resulted in the termination of the employee's probationary contract. The Labour Court found that this was a violation of her right to organise. It was probable that there was a connection between her wish to invite a union representative and the termination of the contract. The employer was unable to show that the contract was terminated for other reasons.⁹

3. Trade unions activity at the workplace.

3.1. Introduction.

Trade union activity at the workplace is very important. The focus of co-determination negotiations and information to the trade unions is the workplace level. This local level is also important concerning other forms of negotiations. The general right to negotiation protects all labour market organisations, also trade unions not successful in reaching a

⁷ The 1976:580 Co-determination Act is translated into English, see www.riksdagen.se

⁸ (The Labour Court's decision number 5 from 2013.) The Labour Court's decisions are published in Swedish on the Court's webpage, www.arbetsdomstolen.se

⁹ About freedom of association and examples from case law, see Eklund R., Sigeman T., Carlson L., nt. (4), 60 ff. Examples of case law, see also AD 2009 No. 51, AD 2015 No. 29, AD 2018 No. 10.

collective agreement with an employer or employers' organisation, Section 10 of the Co-determination Act.

The rights according to the Act on the Position of Trade Union Representatives at the Workplace and the joint regulation legislation requires that the trade union has succeeded in reaching a collective agreement. Such organisations are the "established trade unions" in Sweden, and given a privileged status in several aspects according to labour law. There is no requirement of representativeness, independency, or the like.

3.2. Board representation.

Before the late 1960s no claim for board representation was called for by the Swedish trade unions. When other forms of worker participation started to develop board representation began to be looked upon as one of several ways to gain insight and influence. This method of participation is regarded as a supplementary method aiming at providing facilities for insight into the internal affairs of the enterprise.

A provisional Act was passed in 1972. The present 1987 Act on Board Representation (Private Sector Employees) provides for minority representation for employees.¹⁰ The employees of a company that employs not less than 25 employees is entitled to two representatives on the board of directors. In companies that employ at least 1.000 employees, the employees shall be entitled to three representatives. This may not result in the number of employee representatives exceeding the number of other board members. The decision to appoint employees' board representatives shall be taken by a local employee organisation that is bound by a collective agreement with the company, and the representatives shall be appointed by the local trade union. The union may decide not to appoint representatives, but they usually make use of this right.

In principle, the employee representatives have the same position, the same rights and duties as other board members. The period of assignment is determined by the union, but may not, according to the Act, exceed four years. The employee representatives may not participate in matters relating to collective agreements or industrial action.

3.3. Trade union representatives.

The increasingly comprehensive and complex labour and employment legislation have resulted in an increase in the work done by trade union officials. New tasks and duties have fallen particularly on local trade union representatives. Already before the 1974:358 Act on the Position of Trade Union Representatives at the Workplace there were trade union representatives that were given time off without loss of remuneration based on collective

¹⁰ The Act 1987:1245 is translated into English, see www.riksdagen.se

agreements or usage. The 1974 Act was thus based on usage already established, but contains important innovations and is generally applicable.

The Act on the Position of Trade Union Representatives is only applicable if there is an “established” trade union, i.e. a trade union that has a collective agreement with the employer. It is the union that decides who is to be the union representative at the workplace. The representative(s) must be chosen from among the employees of the enterprise. The union can appoint as many as they see fit. (There is also a possibility to appoint regional union representatives to carry out duties in several small workplaces, and these regional representatives do not have to be employed by the enterprise.) The Act becomes applicable as soon as the union has notified the employer of the appointment.¹¹

According to the Act, the employer must not prevent the union representative from carrying out union duties. He/she shall be offered the use of a room or other space at the workplace as required for trade union activities. Regional union representatives are guaranteed access to the workplaces for which they are commissioned.

According to the Act on the Position of Trade Union Representatives, the representative has a right to time off. The extent and allocation of time off is determined after discussions between the employer and the local trade union. The right to time off with retained employment benefits is only for trade union activities directly related to the workplace. Time off must not be longer than is reasonable considering the conditions of the workplace, particularly related to the number of employees. It must not be taken when it would cause significant inconvenience to the proper performance of the work. Within reasonable bounds, the union representative has the right to time off for participation in conferences, courses for training in trade union activities, negotiations on national level and so on, but not for other activities such as political work supported by the trade union. Union activities of this more general nature not directly connected to the workplace does not entitle the representative to employment benefits. Local collective agreements concerning how to calculate reasonable hours’ time off with retained employment benefits, or how many full-time trade union representatives there should be at a workplace are rather common.

Furthermore, the Act prescribes that a trade union representative shall not be given less favourable working conditions or terms of employment because of his/her position and activity as representative. Should the question arise of changing the trade union representative’s working conditions or terms of employment the employer shall notify the representative and his/her union in advance, and not put the change into effect until an opportunity to discuss the change has been given. When a former representative returns to his/her ordinary work, he/she is guaranteed the same or an equivalent position regarding working conditions and terms of employment as if he/she had not had a trade union position.

A trade union representative has extended employment protection according to the 1982:80 Employment Protection Act. The Act provides for a priority right to continued employment in the event of redundancy if it is of special importance to trade union activity at the workplace.

¹¹ About trade union representatives, *see* Eklund R., Sigeman T., Carlson L., nt. (4), 92 ff.

The Labour Court finally settles disputes according to the Act, but pending a dispute, the union has a priority right of interpretation. (About the union's priority of interpretation, see below section 3.6.)

3.4. Safety representatives.

Special protection is offered for safety representatives according to the 1977 Work Environment Act.

Safety representatives/delegates are to be elected at every workplace where five or more employees are regularly employed, Chapter 6 Section 2.¹² The rules concerning the rights and duties of the safety representatives become applicable on notification to the employer of the election.

The rights and duties of the safety representatives are in many respects similar to those of trade union representatives in general according to the Act on Trade Union Representatives (see above). A safety representative has at minimum all rights conferred to trade union representative, as well as some additional rights. There are some differences, partly because the Work Environment Act does not presuppose the existence of an established trade union, i.e. a union that has a collective agreement with the employer. The rights in the Act therefore are not exclusively conferred on trade unions. If there is a trade union that is bound by a collective agreement with the employer it is the local union that elect and appoint the safety representatives. Unions decide themselves how to elect safety representatives. In the absence of established union, the representatives are elected and appointed by the employees, Chapter 6 Section 2 second paragraph of the Work Environment Act.

Safety representatives must be elected among the employees at the workplace. (In small workplaces where there is no safety committee a so-called regional safety representative may be elected from outside the circle of employees.) The safety representative must not be hindered from fulfilling his/her duties. This prohibition is directed to the employer as well as to the employees. A safety committee shall be established in workplaces with at least 50 employees. Such a committee consists of representatives of the employer and the employees. A safety committee must also be appointed at smaller workplaces if the employees so require. The safety committee participates in planning and supervising the work environment. The employee members of the committee are elected in the same way as safety representatives and enjoy the same protection.

The employer has total responsibility for a satisfactory work environment. The safety representatives represent the employees in work environment matters and must strive to promote a satisfactory work environment. The safety representative(s) take(s) part in the planning of new or altered premises, equipment, work processes and methods and the organisation of work. The employer has a duty to keep the safety representatives informed of changes concerning safety conditions and the representative is entitled to examine

¹² The Work Environment Act 1977:1160 is translated into English, see www.riksdagen.se.

documents and obtain such information as needed for carrying out his/her duties. In return, he/she has a duty to observe confidentiality.

In addition to time off with full pay to the extent needed for carrying out his/her duties, including time for training in safety matters, protection against inferior working conditions or terms of employment because of the appointment, the safety representative has according to the Work Environment Act the power to order suspension of the work under certain circumstances. Such circumstances are: (1) the work entails immediate and serious danger for the life or health of an employee, and (2) if safety considerations so demand of work carried out by an employee alone. In both cases, the suspension depends on that no immediate remedy can be obtained by applying to the employer. The interruption is pending until the Swedish Work Environment Authority¹³ has made a decision. Finally (3), a safety representative can suspend work when a prohibition issued by the Swedish Work Environment Authority is disregarded. A safety representative is not liable for damages caused by a suspension of work.

Work environment matters are often dealt with in collective agreements in order to adapt the rules to branches and individual workplaces.

3.5. Negotiations and information.

3.5.1. Right to negotiation, collective bargaining.

Negotiations are the most essential form through which trade union activity is pursued. For the general right of negotiation (Section 10 Co-determination Act) there is no other requirement than that the trade union has a member employed with the employer concerned. The general right of negotiation is, as with the right of association, a mutual right and obligation to negotiate. There are no other limitations as to the subject for negotiations other than the general one; that the negotiations should concern the relation between employers and employees.

There are three different main types of negotiation procedures. First, negotiation for new collective agreements, the classical collective bargaining type of negotiation (disputes of interests). Secondly, dispute or grievance negotiation. These negotiations aim at the settlement of disputes concerning the interpretation or application of collective agreements and labour statutes (disputes of rights). Lastly, negotiations aiming at cooperation in management affairs; co-operative negotiations. The co-operative negotiations are regulated in Sections 11-14, the Co-determination Act. They aim at giving employees and unions influence in the conduct of business. The two first types of negotiations have been used since trade unions and collective agreements started to emerge. The third type is an innovation in the 1976 Co-determination Act.

Collective bargaining, bargaining over interest disputes, is closely connected to the right to industrial action. This right is always, according to the bylaws of the organisations,

¹³ www.av.se

conferred to the national level. The nationwide organisations are in charge of the conflict funds. A nationwide collective agreement allows the local parties to conduct local negotiations and to conclude local agreements within its limits. Such negotiations are conducted under a peace obligation because there is an existing agreement on national level.

Dispute negotiations over grievances concerning disputes of rights (for example how to interpret a provision in the collective agreement or if the employer had a legal right to dismiss an employee) are usually conducted at first on local level, and if the parties are unable to agree, negotiations continue on nationwide level. Negotiations concerning disputes of rights are under a peace obligation according to the Co-determination Act. The last resort is to take the dispute to the Labour Court. Usually, the parties solve rights disputes in negotiations. The Labour Court handles very few disputes.¹⁴

A party that has a duty to negotiate shall attend the negotiations and discuss the demands presented. The duty to negotiate exists even if the union only has one member at the workplace. However, there is no legal obligation to agree or to sign an agreement.

3.5.2. Co-operative negotiations.

The employer's primary duty to negotiate (by "primary" is meant that it is the employer who has a duty to take the initiative) is an obligation in relation to the trade union that has a collective agreement with the employer; "the established trade union", which is considered to represent the employees' interests concerning information and participation rights. Co-operative negotiations according to Section 11 of the Co-determination Act has become the most important method of gaining influence on managerial decisions.

When the employer plans to introduce significant changes in his/her activities the employer has a duty to take the initiative to negotiate. More specifically, this applies to changes that are expected to affect the enterprise in a general way, such as reorganisations, closure of operations, transfer or introduction of new working methods. Furthermore, this applies if the employer intends a significant alteration of working or employment conditions affecting (an) individual employee(s) who belong to the employee organisation concerned. This could for example be a transfer to another workplace or another kind of job.

The Labour Court has decided in many cases concerning the employer's primary duty to negotiate, especially during the first decades after the Co-determination Act entered into force. The Labour Court has found that a company had a primary duty to negotiate prior to decide on the appointment of a managing director in a joint stock company.¹⁵ There have also been cases concerning the question of what stage in planning of a measure the negotiations should be initiated. The Labour Court has declared that the employer should first investigate the practical possibilities for introducing the change he/she has in mind to be able to present a proposal before negotiations are called for.¹⁶ It is, on the other hand, too

¹⁴ The Swedish Labour Court is situated in Stockholm. It handles less than 100 cases a year.

¹⁵ AD 1980 No. 72, AD 1981 No. 8.

¹⁶ AD 1978 No. 56.

late if the employer has bound himself/herself for one alternative or made some kind of a decision “in principle”.

If an “established” trade union calls for negotiations in other cases (not significant changes) when the employer has in mind a decision that will affect member(s) of the union the employer has a duty to negotiate, Section 12 of the Co-determination Act.

A corresponding duty to negotiate as prescribed in Sections 11 and 12 of the Co-determination Act is imposed on the employer in relation to any “non-established” trade union, i.e. a trade union without a collective agreement with the employer. This only applies with reference to issues especially concerning the “non-established” unions members, Section 13. There is no obligation to negotiate with a “non-established union” concerning the enterprise in general.

According to the Co-determination Act Section 13 second paragraph an employer not bound by any collective agreement at all, is obligated to negotiate with all affected employee organisations pursuant Section 11 in all matters relating to termination of employment in a redundancy situation. This follows from the transposition of the EU Directive on collective redundancies.¹⁷ The same applies in a changeover of an undertaking or business from one employer to another following the implementation of the EU on the safeguarding of employees’ rights in the event of transfers of undertakings.¹⁸

The employer does not need to make any special inquiries regarding who are members of a union. A simple question is enough.

The aim of the negotiations under Sections 11-13 of the Co-determination Act is that the employer and the trade union shall agree on what the employer will decide. The negotiation deals with topics under the employer’s prerogative where the employer has the final say. If the parties are unable to agree, the employer decides after he/she has fulfilled the duty to negotiate.

Where there is a local trade union organisation, the obligation to negotiate under the Co-determination Act Sections 11-13 is to first be fulfilled through negotiations with that organisation. If agreement is not reached during such local negotiations, the employer shall upon request, also negotiate with the national employee organisation. Negotiations according to Sections 11-13 are usually conducted only on the local level. The employer has the right to the final decision in these kinds of questions, although, the employer normally has to postpone his/her decision until the negotiations are finished.

It is possible for the parties to go a step further in a co-determination agreement (see Section 3.7. below) and agree that the right of final decision in certain questions could be confined to, for example, some kind of a bipartite body. There are examples of such agreements, but with very limited competence for the decision-making body.

If the employer intends to use a contractor for the performance of a certain task or otherwise to allow non-employed persons to perform work in the enterprise (assign work to an independent entrepreneur or a staff agency with respect to temporary workers), the employer has a primary duty to negotiate, Section 38 of the Co-determination Act. Unlike

¹⁷ Council Directive 75/129/EEC on collective redundancies, later Council Directive 98/59 EC.

¹⁸ Council Directive 77/187/EEC, later Council Directive 2001/23/EC.

the right of negotiation according to Sections 11-13, the right of negotiation according to Section 38 is combined with the power of the trade union decision on a veto. The nationwide union has the power of veto, after negotiations have been pursued on local and national level. There is a right of veto if the measures planned by the employer can be presumed to involve a setting aside of law or a collective agreement for the work, or of what is otherwise generally approved of within the industry concerned, Section 39. The intention is to counteract the evasion of employer duties, for example to pay social insurance dues for his/her employees or follow labour legislation. The trade union right of veto is not to be used for reserving jobs for the members of the union. There is no right for the union to put another decision in effect. The veto is only to stop a measure that the employer has planned. If the trade union does not have a reasonable basis for the veto declaration, the trade union could be liable to damages.¹⁹

3.5.3. Information.

If the right to negotiate on managerial matters is to be of any value to the employees' side, information concerning the conditions of the enterprise is necessary. The provisions on the contents of the right to negotiation imply a duty to inform the other party. If a party refers to a document during the negotiations, the party must according to the Co-determination Act Section 18, make the document available to the other party on request. This is a mutual duty.

According to Article 19 of the Co-determination Act, the employer has a duty – on his/her own initiative – to keep the “established” trade union continuously informed of the developments of the production, economy of the enterprise and the guidelines for personnel policy. Furthermore, the employer must give the “established” trade union the opportunity to examine books, accounts and other documents relating to the employers' business activities to the extent that is needed by the unions for safeguarding the interests of their members in relation to the employer. If it is possible to do so without unreasonable cost or inconvenience, the employer should on request make available copies of such documents and assist the trade unions with such analyses, as the union may need for the purposes mentioned.

The duty to inform has been extended in 2005 in order to implement Council Directive 2002/14/EC on consultation and information. Employers that are not bound by any collective agreement at all have to keep all employee organisations that have a member at the workplace informed.

The duty to inform shall be fulfilled in relation to a local employee organisation. An employee who has been appointed to represent the organisation at negotiations may not be refused reasonable leave of absence in order to take part in negotiations, and the same applies to an employee appointed to represent the organisation in order to receive information.

¹⁹ About co-operation negotiations, *see* Eklund R., Sigeman T., Carlson L., nt. (4), 205 ff.

The extent of the duty to inform is in the first place determined by the needs of the trade union concerned with respect to its task of caring for the interests of their members. The employer has no duty to satisfy irrelevant wishes. The risk of damage to the enterprise should be taken into consideration as a limitation on the duty to inform. Research secrets and secrets relating to tenders may be exempted from the duty to inform, but it is difficult to estimate how far limitations on the duty to inform extends.

The employer's interest in secrecy is satisfied mainly by the obligation to observe confidentiality, imposed on those who receive the information. If the employer considers that information he/she has to give might cause damage to the enterprise, he/she must initiate negotiations with the trade union on confidentiality. If an agreement cannot be reached, a party may bring an action before the Labour Court for a ruling of confidentiality, within ten days after the close of negotiations. Until the Labour Court has settled the issue the other party must comply with a request for confidentiality. In practice, there does not seem to be many issues with confidential information. A duty to observe confidentiality does not prevent those who have received the information on behalf of an organisation from passing the information to members of the organisations executive board (who also will be bound by the same duty of confidentiality).

3.6. Priority right of interpretation.

The provisions concerning priority right of interpretation in the Co-determination Act Articles 33-37, concern disputes over the interpretation and application of agreements. A part of the employer's managerial prerogative is the right of interpretation until a dispute has been finally settled by agreement or by a court decision. The Co-determination Act gives the established trade union the priority of interpretation in a few cases. The employee side has not been given a priority of interpretation in general. The rules are rather exceptions from the general principle that the priority right of interpretation belongs to the employer. The priority right is primarily to be exercised by the local trade union. If there is no local union, or in negotiations at national level, the national union has the right. There is no priority right of interpretation for an individual employee.

The trade union has a priority of interpretation in disputes between an employer and a trade union; both bound by the same collective agreement, concerning an individual member's duty to perform work under the agreement, Section 34 of the Co-determination Act. If, in the employer's opinion, there are extraordinary reasons against postponing the work the employer may order the employee to perform the disputed work. The employee is then obligated to perform the work, but can refuse if the employer's view is erroneous and the employer was or should have been aware of this. The employee may also refuse if the work involves danger to life or health or if there are other comparable obstacles. If the employer makes use of the right to set aside the trade union's priority of interpretation, the employer must immediately call for negotiations. If the matter cannot be solved in negotiations, the employer must bring an action before the Labour Court. If the employer

has invoked extraordinary reasons without ground for it, he/she may be liable to pay damages. In addition, the trade union can be liable to pay damages for wrongful use of its priority of interpretation. The individual employee can never be liable for having refused to work in accordance with the approval of his/her union.

When a dispute concerns the employers' obligation to pay remuneration, the employer's priority of interpretation is preserved, but this has been subject to limitations. If there is a dispute over pay or other remuneration to a union member according to a collective agreement binding on both parties, the employer must ask for negotiations with the trade union immediately. If no settlement is reached in negotiations at the local level or at national level, the employer must bring an action before the Labour Court within ten days after the close of the negotiations, Section 35 of the Co-determination Act. If the employer fails to observe this, he/she must pay the remuneration assessed by the union, unless the union's claim is unreasonable. If the employer fails to observe the time limits ("immediately", "ten days"), the priority right of interpretation is shifted to the union.

In disputes over collective agreements, concerning sanctions against an employee for having committed a breach of contract the union has a priority of interpretation, Section 33 of the Co-determination Act.

Furthermore, the employee side has priority of interpretation in disputes concerning the application of co-determination agreements (Section 33 of the Co-determination Act, about co-determination agreements, see below).²⁰

According to the Act on the Position of Trade Union Representatives at the Workplace, Section 9, there is a priority right of interpretation for the local trade union in disputes concerning the rules in the Act aiming at protecting the trade union representative. This includes disputes concerning the representatives' right to time off and time off with retained employment benefits. If a collective agreement has replaced the rules in the Act, the local trade union has a priority right of interpretation concerning the rules in the collective agreement.

3.7. Co-determination agreements.

The Co-determination Act is intended to be completed by co-determination agreements. Section 32 of the Act provides that parties, who conclude a collective agreement on wages and general terms of employment, should, if the union so requires, also conclude a collective agreement on co-determination for employees in matters relating to the conclusion and termination of employment contracts, to management and distribution of the work, and the conducting of operations in general.

If a union has made claims for co-determination in the course of the wage negotiations and a collective agreement has been concluded without any provisions concerning co-determination, the employee side is entitled to use industrial action during the agreement

²⁰ About priority of interpretation, *see* Eklund R., Sigeman T., Carlson L., nt. (4), 226 ff.

period with a view to enforce co-determination provisions.²¹ The so called "surviving" right to take industrial action according to Section 44 of the Co-determination Act has never been used.

A co-determination agreement could include a wide range of forms of employee participation. The parties have a free choice. They may choose to extend or specify the rights according to the Co-determination Act, they can leave to a joint body to negotiate and decide on certain matters, they can give the trade union the power to decide or veto on certain questions etc.

In 1982, the Development Agreement for the private sector was concluded. Nationwide co-determination agreements were concluded in the state sector 1978 and in the municipal/regional sector in 1980. Both these latter agreements have been replaced by new agreements. These sectorial agreements all presuppose local agreements that develop co-determination that suits the own establishment.

The Development Agreement (the 1982 Agreement on Efficiency and Participation) between the main parties in the private sector was meant to be a first step towards a more complete co-determination agreement, but so far, no second step has been taken. The Agreement is to be adopted and incorporated in national branch level agreements and then followed up by local co-determination agreements. Only in local agreements, adjusted to local conditions, will it be decided how far employee co-determination will reach, within the framework laid down in the national agreements. It is particularly at plant level that co-determination should be exercised in matters relating to the supervision and distribution of work and other aspects of management. The Development Agreement rests upon an idea of common interests; the employers' interest in increased efficiency and profitability and the employees' interest in employment security, job satisfaction and a good working environment. Three forms of local joint regulation are indicated. They are negotiations between the company and the union(s) according to the Co-determination Act, line negotiations that means that union representatives participate at various levels in the undertaking's normal line organisation, and participation and information in bipartite bodies. These forms are meant to be utilised side by side. When joint regulation is exercised in a locally agreed form, the employer is considered to have fulfilled the primary duty of negotiation and information according to the Co-determination Act Sections 11 and 19.

According to the Development Agreement a trade union member is entitled to, for a maximum of five hours per year, participate during paid working time, in trade union meetings at the workplace. The meeting should be arranged by the local trade union and deal with matters concerning trade union activity at the company. Efforts should be made to arrange meetings to give rise to the minimum possible disruption of production, preferably outside normal working hours, in which case overtime compensation should be paid. The Agreement entitles local unions in companies with a minimum of 50 employees to engage at

²¹ In Swedish labour law, the collective agreement is a "peace instrument", i.e. during the period when a collective agreement is in force industrial action is in principle illegal. Items that have been discussed during the negotiations that lead to the collective agreement, but not have been regulated in the agreement, are considered to be "negatively regulated" and be encompassed by the peace obligation.

the employer's expense an "employee consultant" (independent expert) for economic matters.

A rather common provision in local agreements, both on private and public sectors, is that information according to Section 19 of the Co-determination Act should be given to all employees at regular personnel meetings.

Generally, developments of local co-determination agreements have been slow and the other forms of participation for employees provided for in the Co-determination Act have become more important than was first intended. Nevertheless, local co-determination seems to have developed rather informally in many areas of the economy, in for example joint working groups and other kind of bodies.

4. Conclusions and comments.

In Sweden, the employees' voice is channelled through the trade unions. It is very important for a trade union to succeed in reaching a collective agreement, to be an "established" union. They are considered representatives of the interests of the entire work force. They have a privileged status in several aspects. Especially important are the application of the employer's primary duty to negotiate and the rights following from the Trade Union Representatives Act. This Act provides an important economic basis for trade union activity at the workplace. It is based on the presumption that it is fair for production to bear the costs of union activities related to the workplace. There is a general opinion that the established trade unions fulfil important and necessary functions at the workplaces.

It is only the safety representatives that are appointed according to the 1977 Work Environment Act, that exercise influence in situations where the employer is not bound by a collective agreement. In the absence of a trade union with a collective agreement, the safety representative is to be appointed by the employees.

The "legislative explosion" from the 1970s and the legislative measures aiming at creating democracy in working life are of particular importance for conditions in the individual workplaces. Today, co-determination negotiations and information has become an integral part of the ordinary workplace organisation. The slow developments of the co-determination agreements can be explained by developments in economy and society that meant a shifted focus to other issues than to develop co-determination.

EU law has had an important influence on Swedish labour legislation since Sweden became a member of the Union in 1995. In some ways this more individual approach has caused difficulties for the "collective" Swedish labour law system. Nowadays, some of the rights originally conferred only to trade unions with collective agreements, also have to be applied towards unions without a collective agreement. This refers to information and, in some situations, also a primary duty for the employer to negotiate according to the Co-determination Act. Wages are decided in negotiations on different levels. There is no Swedish legislation concerning wages. Therefore, both employers' and employees' organisations are

very negative to suggestions on a European Union directive concerning adequate minimum wages.

The Swedish model for regulating the labour market is of collective nature where the labour market parties, employers' organisations and trade unions at different levels, play an important role. The decrease in trade union membership is therefore alarming. The decrease is most obvious in unions that belong to the LO while there seems to be a small increase in unionisation among salaried employees. Many young people working in the LO sector (blue-collar employees) do not have permanent employment contracts, and are sometimes considering other kinds of work in the future, and therefore do not join the trade union. Another explanation is that the white-collar sector is growing, while the traditional blue-collar sector is declining. Coverage of collective agreements is still high depending on the employers' interests in concluding collective agreements. Many employers believe that collective agreements are an efficient and flexible way to regulate working conditions, and they appreciate a competent counterpart, which the local trade union often presents. Employers and trade unions have a common interest in keeping good and stable relations. They are going to meet repeatedly in new negotiations and have to build up trust and common goals. The unions have so many important tasks and they must have legitimacy to represent the interests of workers. If the rate of unionisation continues to decrease, their legitimacy can be questioned. However, in recent years it seems as the degree of unionisation has stabilised at around 70 per cent, which is still very high in an international perspective.

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