THE NEW SWEDISH ACT ON COLLECTIVE BARGAINING

Papers presented at a Conference October 8-9, 1975, sponsored by the Institute of Industrial Relations in cooperation with the Royal Swedish Embassy, Washington, D.C.

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FOREWORD

These *Proceedings of the Conference on the Swedish Act on Collective Bargaining*, which was held on 8-9 October, 1975, in Los Angeles, California, under the sponsorship of the UCLA Institute of Industrial Relations, mark an important and unique event. Prior to the Conference, a Swedish government commission of inquiry, the *Commission for Labor Legislation*, which included both members of Parliament and representatives of employers and employees, had presented proposals for new legislation relating to the right to codetermination at the workplace. The proposed bill had not yet been formally introduced in Parliament, and its provisions were the subject of considerable controversy. Indeed, it appeared, at least to observers in the United States, that the debate over workers' participation in management marked the most important division between principal employer and union federations on a basic policy issue since the Basic Agreement of 20 December 1938.

At the height of the controversy, the Swedish Institute, a government foundation, took an absolutely unprecedented action. It agreed to underwrite the cost of a conference in Los Angeles, at which leading spokesmen representing Swedish government, industry, labor, and academic institutions would present their differing views on the proposed legislation to a select audience drawn from similar groups in the United States and Canada. The UCLA Institute of Industrial Relations made arrangements for the conference and invited the American and Canadian participants. The results were gratifying, to say the least.

The Swedish delegation to the conference was led by the distinguished Minister of Labor, the Honorable Ingemund Bengtsson. The Ministry of Labor was further represented by Mr. Åke Bouvin. Messers. Stig Gustafsson and Bo Bergnéhr represented the Swedish Central Association of Salaried Employees and Swedish Confederation of Trade Unions, respectively; Mr. Gunnar Lindström spoke for the Swedish Employers' Confederation. Two highly respected scholars, Professors Folke Schmidt and Axel Adlercreutz completed the group of Swedish participants.

The principal speaker for the North Americans was Dean Harry W. Arthurs of the Osgoode Hall Law School, York University, Toronto, who offered a general critique of the proposed legislation. Three labor lawyers from the United States, David Ziskind, Richard M. Lyon, and Jay Darwin also commented on the bill from the standpoint of the public, management, and labor.

On or about 4 June, 1976, the Swedish Parliament unanimously adopted the proposed bill, with some modifications. Although, so far, only brief newspaper accounts of the new law have reached the United States, it appears that it grants to Swedish workers more far-reaching

rights of participation in decision-making at the plant and enterprise levels than have been attained by workers in any other country of Western Europe. Moreover, one may infer from the Parliamentary vote that the Swedes have once again demonstrated their remarkable capacity for reconciling conflicting points of view through creative compromises.

Although it is doubtful that the comments of the North American participants in the conference had a substantial influence on the compromises finally reached on the bill, one may hope that the Swedish participants derived some benefit from the exercise of articulating and debating their various differences before a sophisticated, neutral audience. In the last analysis, the conference--unique at least in the North American experience--showed that the Swedes have enough confidence in the underlying strength of their institution to air their internal disagreements fully and frankly to the outside world. And we, who had the honor and the good fortune to be their hosts on that historic occasion, were among the beneficiaries of their extraordinary forthrightness.

The recent conference was the second in as many years that has resulted from cooperation between the Swedish government and the UCLA Institute of Industrial Relations. We hope there will be many more.

Special thanks are due to Birger Viklund, Labor Attache at the Swedish Embassy in Washington, for his splendid cooperation and assistance in planning the conference, and to Ms. Susan Astarita and Ms. Felicitas Hinman, of the Institute, who edited the Proceedings.

Los Angeles, California
June, 1976

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SWEDEN AS A SOCIAL LABORATORY:

THE NEW SWEDISH ACT ON COLLECTIVE BARGAINING

Ingemund Bengtsson

It gives me great pleasure, before this distinguished audience,to have the opportunity to speak about Sweden's labor legislation, and in particular on the right to co-determination at the work place. This is now the subject of lively discussions in Sweden, since a government commission of enquiry, the Commission for Labor Legislation, which includes both Members of Parliament and representatives of employers and employees, has presented its proposals for new legislation in this field. The Swedish Government intends shortly to present a bill on the subject to Parliament.

Sweden, over the last few decades,has seen a steady improvement in the situation of employees at the work place. Wages have risen, and social security has expanded. The gaps between different classes of society have been reduced. Most people now have greater opportunities to influence their own conditions of life.

In recent years, this development has produced extensive demands for amendments to the present legal system or new legislation in essential sectors of labor law. The government has lent a sensitive and approving ear to these demands on the part of employees, and has proposed various reforms. When submitted to Parliament, these proposals have been approved unanimously to all intents and purposes. What legislation, then, has been introduced in the last few years?

Completed Reforms

Above all, we have acquired the Security of Employment Act. This Act provides greater protection for a person who is already employed. No one can be dismissed other than on material grounds; the minimum period of notice is now one month; for employees over the age of 45, the period of notice is six months,and full pay is drawn during this period.

Rules have been introduced regulating the order of priority with respect to dismissals when there are layoffs or cutbacks in production. Rules have been introduced providing for advance official notice of such measures, and giving the unions the right to consultations with the employer. Another Act has strengthened the position of trade union representatives at the place of work, and given them the right to perform their necessary union duties in working hours with full pay. In larger companies labor representation on the board is being tried out. A special Act ensures employees the right to leave of absence for study. This Act is designed to strengthen the role of adult education;

everyone, in principle, is to be granted such leave as may be required for education and training. As regards the work environment, special rules give safety delegates the authority to decide that a given job should be discontinued if it involves immediate and serious hazard to the life or health of the employee. Revised rules have been introduced regarding the legal procedure in labor disputes, in order to meet the increase (excepted, at least initially) in the number of cases brought before the Labor Court.

In spite of all these reforms, the employer still has the right to preside over operations at the company, and to direct and assign work. In principle, employees have had no co-determination in these matters. Only when employees have been accorded complete determination will it be possible to achieve any levelling-out between labor and capital. Such a levelling-out is,in our opinion, necessary. The employee is dependent upon the company for his livelihood; he spends a large part of his life within its portals; and he is exposed in greater or lesser degree to environmental risks involved in the enterprise. He therefore has an interest in the enterprise being run in a sensible manner, and he feels a responsibility for this. He needs the right of co-determination in the public and private sector.

Now there will be a change. In late 1975, the Swedish Government presented its proposals on increased co-determination. The proposals provide for new legislation governing, among other things, the right to negotiate, collective agreements, the duty to maintain industrial peace, and the penalties for breaches of the law and of agreements. The proposals in question are based on the report of the Commission for Labor Legislation, and on statements by authorities, organizations and some 200,000 employees who have been given an opportunity to discuss these issues. I will outline the essentials of the government proposals to be put forward.

The Right to Negotiate

First, we see the *right to negotiate* as the basis for increased influence on the part of employees. The Act will therefore lay down a general right to negotiate for both the labor organization and for the employer. This means that all unions will have the right to call for negotiations. The Act applies both to organizations bound by collective agreements, and to what we call "minority organizations." The right to negotiate covers, naturally, wage conditions, but it involves in addition the right to negotiate on co-determination with regard both to work supervision and management.

Let me emphasize that the right to negotiate means that management is required to sit down and consider the demands and wishes put forward by the employees, and constructively to try and solve the problems involved. It does not, by itself; entail any obligation to reach or formally conclude an agreement.

However, a right to negotiate of this kind must be supplemented by various measures to give the employees increased influence. The Commission for Labor Legislation proposed such supplementary measures in the form of what is termed a "primary obligation to negotiate" and an obligation for the employer to delay decisions on major questions until negotiations had been completed. By a "primary obligation to negotiate" is meant that the employer should enter into negotiations with the union on his own initiative, i.e., without a specific union request.

The government has decided, as the Commission proposed, to introduce a primary obligation for the employer to negotiate vis-a-vis the organization with which he has a collective agreement. The employer must thus, on his own initiative, start talks on major questions before he makes a decision or takes any measure. This primary obligation to negotiate will apply to any decision or measure involving

reorganization or discontinuation

reduction or expansion of operations;

transfer or leasing of the company;

or to other important changes, such as the recruitment of new personnel. The primary obligation to negotiate is thus intended to apply also to what are customarily termed "management questions" (management rights).

In addition, the government is going to propose that the same primary obligation should also apply to reassignment, and other lasting or otherwise important changes in the working conditions or terms of employment of the individual union member, i.e., major questions of an individual nature.

By requiring the employer to negotiate on these questions, we have created the necessary conditions for labor organizations to protect the interests of their members. It is thus the employer who has to say that he is planning a change, and start discussions with the union. This avoids a situation that often occurs at present, namely that a change has been made before the organization hears about it.

Regarding changes of minor importance it is, in my opinion, not necessary that the employer should take the initiative for negotiation--the initiative can be left to the unions. They, for example, can request negotiations on a matter that the employer considers to be of a more routine character. Here, again, employers will be required to postpone the measure in question until negotiations have taken place.

An important question in this context is the level at which negotiations should be conducted. The Commission has proposed that negotiations should be purely local. The labor organizations have maintained that the legislators should not intervene and alter the existing negotiating procedure by which they proceed to central negotiations if no satisfaction is obtained at the local level.

The government finds that, on the whole, it can follow the line taken by the unions. In view of the rules on responsibility incorporated, for example, in the company legislation, and the fact that certain questions may not brook postponement during a round of negotiations, we have put in a safety valve giving the employer the right to take a decision without waiting for central negotiations if he can quote special circumstances. At the local level, however, there is always an obligation to negotiate on all major issues. Abuse of this safety valve will entail heavy damages.

The Right to Information

Let me describe how the government sees the right to receive information. The line taken by the Commission was that an *obligation to divulge* should be introduced for the negotiating parties. It further proposed a *general obligation* for the employer to keep the labor organizations informed on developments as regards production, the company's economic development, and the guidelines governing the company's personnel policy. There is also envisaged a restriction to this latter obligation, in that the employer would have the right to refuse information if he considered it to involve a marked risk of injury to the firm.

This latter proposal has been strongly critized by the unions. They have seen it as reflecting a suspicious attitude towards employees, and have indicated that the rules envisaged lie well below the level already reached in agreements.

The Swedish government has for many years expressed itself in favor of improved information regarding circumstance at the place of work. It is therefore entirely natural that it should meet the wishes of the unions on this matter. I believe that open information from the management of a company to its employees is the best foundation for mutual confidence and cooperation. This is the line adopted by those companies which are most progressive with regard to co-determination, and their experience has been wholly positive.

The gist of the government's proposals is as follows: First, a limitation is made by comparison with the Commission's suggestions. The *obligation to divulge* applying in connection with the general right to negotiate -- a right thus extended also to minority organization -- should involve a right to request and gain access to documentation relating to the arguments used by a party in a negotiation. A minority organization or temporary fraction of employees will not be able, by requesting negotiation on a question, to acquire all information on the company's internal affairs.

In the case of organization bound by collective agreements, i.e., those involved in an agreement, the Commission considers that they should enjoy a right to be informed. This right will be constructed as follows:

1. The employer will be required to keep the union informed on developments as regards production, the company's economic development, and the guidelines applied in personnel policy.

2. The employer will be required, if so requested by the union's representatives, to make available to them the company's books, accounts, and other documents of importance in asses-ing the company's economic status and development. These rules should give the union a chance to come to grips with questions that the employer has failed to discuss, only summarily.

3. The employer will be required to assist in such work of enquiry as the union considers necessary to be able to eval-uate conditions at the company.

4. The rule proposed by the Commission, by which the employer could refuse to provide information if he considered it to involve a marked risk of injury, should be struck. The incorporation of such a rule in the legislation would create suspiciousness on the part of the union and injure the good relations between the two parties that we are attempting to build by this legislation.

Rules on Confidentiality

The government is thus not prepared to give the employer an opportunity to refuse the union information solely on the grounds that the employer himself considers a risk of injury to be involved. On the other hand, it is necessary to include rules stipulating an *obligation not to divulge information.* On this point, the unions are opposed to the inclusion of such statutory rules. The government proposes a rule by which the employer, if he wants to include an obligation not to devulge information, must obtain the consent of the union concerned. This means that he will have to negotiate with the union about what infor-mation should be confidential, and what persons should have access to it. If agreement is not reached on these questions, the employer has an opportunity to have the matter reviewed by an impartial body. Within ten days, the employer must go to the Labor Court, and obtain a ruling in the dispute about what information shall be confidential.

Breaches of Confidentiality

If anyone breaks the agreement not to divulge information, and injury should be incurred, then we must have rules governing responsibility for damages. The Commission proposed individual responsibility. The government finds that this responsibility should instead be collec-tively assigned to the union organization to which the information in question has been given.

We can say that the two parts of the legislation I have just discussed, the right to negotiate and the obligation to provide information, relate to questions at the place of work which have not been covered by any written or other agreement. The legislation is designed to give the union the right to obtain insight and an opportunity to start negotiations, even if the employer still has the right to decide.

The Regulation of Co-determination in Collective Agreements

The aims of this reform, however, are wider. The object is to afford the employees co-determination or some other degree of influence over conditions at the company. The Commission's report thus included a proposal that would give the union the *right to obtain rules on influence in collective agreements*. The Commission proposed that agreements on influence should incorporate rules on questions relating to

the management and assignment of work;

employment and dismissal; and

disciplinary matters.

With the help of the law it would be possible, in the Commission's view, to override the legal effects of the employer's right to manage and assign work, and to bring about agreements on matters relating to work supervision. Questions relating to company management, on the other hand, were not covered.

It is not enough, however, that these rules should be incorporated in the collective agreement. There must also be some kind of mechanism to bring sanctions to bear if the employer refuses to reach agreement. In the case of negotiations over collective agreements covering wages and conditions of employment, such a mechanism exists in the form of resort to strike. The government has considered this question in great detail. It has arrived at the following conclusions:

1. The field in which there should be a right to obtain agreements on influence -- and thus a surviving right to take industrial action -- cannot be limited in the manner the Commission has proposed. It is impossible to draw a clear line between matters relating to work supervision and company management. Nor is it possible to guarantee an influence on work supervision if matters relating to company management are excluded, since it is precisely the decisions made by management that determine the organization of work to such a great extent. I therefore consider, like the labor organization themselves, that the right to influence and the right to negotiate must apply equally to work supervision and matters of company management.

2. There must, as the Commission proposed, be a surviving right to take industrial action. Let me briefly explain what this means. A necessary condition for an organization to have this residual right to resort to industrial action is that, in the course of wage negotiations, it may demand an agreement on a given question relating to influence. If the employers organization refuses to sign an agreement, or refuses to agree to a content that the union can accept, then a residual right to take industrial action exists, even if there is otherwise an obligation to maintain the industrial peace by reason of agreements on wages. Such a right can be applied at any time during the life of the agreement. It can be deployed over the entire sector covered by the collective agreement, or at a few specific places of work. It is important, however, to remember that this residual right to take industrial action will normally be handled by the central union organizations.

The Priority Right to Interpret Agreements

I will now discuss the question of the priority right to interpret collective agreements in legal disputes. Let me illustrate this question with an example. We will assume that a worker feels he has not received the wage he should have had under the agreement. When he draws attention to this and the matter is not corrected, he goes to his negotiator, for example the chairman of the union local at his place of work, and puts the problem to him. If the latter is of the same opinion as the worker in question, well, he will request negotiations to put the matter right. If the employer in this negotiation maintains his position, then at present the employer's opinion prevails. The union can go higher and ask for central negotiations. If these, too, fail to five results, the central organization, as a last resort, can submit the dispute to the Labor Court.

The example shows the basic principle now applied as regards priority of interpretation. It is the employer's view that prevails when there is a dispute between management and labor. It is the union that must take the initiative to start negotiations and have the case reviewed by a court. This principle applies in all contexts to do with agreements not just in legal disputes over wages and conditions of employment, but also in disputes on questions of influence.

The principle that the employer's interpretation should be given priority has been criticized by the unions. Moreover, Commission for Labor Legislation considered that the principle should be changed by giving the employees the priority of interpretation in disputes relating to work supervision, unless the employer went on within ten days to central negotiations or to the Labor Court. The Commission thus envisaged a very modest change. Its modesty is apparent also from the fact that we have already introduced two acts, the Shop Stewards Act and

the Act on an Employee's Right to Educational Leave,in which priority is given to the union's interpretation. The employees were critical of the Commission's proposal and of demands that the priority right to interpret should be transferred entirely to the union in the event of legal disputes.

On this question, the government has reached the following conclusions: In the case of disputes relating to the *obligation to perform work* and to the correct import of an *agreement on influence*, the union organization should have the priority right to interpret, as proposed by the employees. This means, that if a union member differs from the employer's opinion as to what the agreement entails, he must first go to his organization and find out whether it holds the same view. If the union's view is not different from the employer's, then,of course, there will be no negotiation and the question of priority of interpretation will not arise. The answer given by the employer stands. But if the union takes the same view as the menber, i.e., a different view from the employer, then it will ask for negotiations. If these fail to produce agreement as to how the provisions in question should be interpreted, then the union's interpretation is valid. If the employer wishes to assert his interpretation, he must go to his employers association and request central negotiations, and, in the final resort, to the Labor Court.

To this main rule I would add one exception. If a dispute arises concerning the obligation to perform work, or the right to make a decision in a matter relating to company management, and the employer considers that the work in question must be performed or the decision made for the company not to be in breach of some law or other obligation, or owing to other special circumstances, then the employer shall also be able to override the union's prior right to interpret and make such a decision. This exception to the rule is subject to sanctions in the form of heavy damages in the event of abuse by the employer.

In *disputes on wages and terms of employment*, we can't give the unions an absolute priority right to interpret in legal disputes regarding the agreement on wage benefits; a situation could arise in which the union, in the final resort, had to abandon its interpretation. The member who was the subject of the dispute could then perhaps be forced to pay back the money at issue, with all the problems this would inevitably involve.

Against this background, the government proposes the following: If the union and the employer disagree on the interpretation of an agreement governing wages and other terms of employment, the employer has the priority right to interpret for the first ten days. If he is concerned, after this period has elapsed, to assert his interpretation, he is required to take the initiative for central negotiations, and, in the last resort, proceedings before the Labor Court. If he does not take this step, the prior right to interpret passes to

the union, and the employer must pay the benefit in dispute. The burden of initiating proceedings should lead the employer to give in on all minor disputes.

I have now given an account of the government's position regarding these major questions:

the right to negotiate;
the right to receive information;
the right to agreements on co-determination;
the priority right to interpret in legal disputes.

By way of conclusion, I should like to say a few words about the public sector.

The Public Sector

It is an absolute demand by the unions that the reform in labor legislation should apply also in the public sector. The government understands this view very well. It would not be reasonable to lack co-determination in one sector, while employees in another were granted great deal of influence. The government has therefore decided that the public sector should, in principle, be covered by the reform.

The difficulty in implementing this reform fully in the public sector lies in the fact that we can never let the employees decide on the activities of public authorities, that being the business of our political institutions. In the sector relating to the activities of public authorities, then,it is impossible to have any agreements. But even here it should be possible to grant employees a corresponding right to information and negotiation. In other fields, however, it should be possible to achieve full parity with the private sector, in which the employees can enjoy the full right to negotiate, and the right to take industrial action.

Much can be said of the public sector, which presents numerous difficult problems, but it is time to end this account of co-determination at the workplace in Sweden. In various quarters this question has been raised: Will the new law regarding participation in the decision-making process lead to conflicts and antagonism? The law amounts to a shift of power from capital to labor, a decrease in the power of the employer and an increase in the collective power of the wage earners. It means that employers and employees will continue the practical day-to-day work, departing from different positions of power, that is,

through negotiations and agreements to solve the problems which exist in the workplace and in this manner reduce the risks of labor conflicts. What we are doing is to go on as before, applying already well-tried out labor union work methods. The law of participation in the decision-making process constitutes a firm base, but the result of this reform is entirely dependent on the everyday work carried out by the labor unions. The labor union movement is quite aware of this.

Let me conclude by noting that the Swedish Parliament will make a decision on the government's proposals in 1976, and that the new legislation will come into force on 1 January 1977, always provided that Parliament approves the bill -- and we assume that it will.

I AM CURIOUS (RED AND WHITE)

A CANADIAN REACTION TO SWEDEN'S NEW INDUSTRIAL IDEOLOGY

Harry W. Arthurs

The title of my talk amounts to a confession. That I should refer to the films I Am Curious (Yellow) and I Am Curious (Blue) tells you something about my research techniques. That I should substitute Red and White, Canada's national colours, tells you something about my perspective.

Turning first to my research techniques, I must acknowledge my debt to I Am Curious (Yellow). Its other qualities apart, the film struck me as a vivid portrait of Swedish society and industrial relations in the late 1960's. That film, and other snippets of information that have come my way, would seem to suggest that Sweden did not entirely escape the travails of so many of the industrialized nations of the west. North Americans, I suspect, were more surprised at this revelation than were the Swedes themselves. But it does seem clear that all of us have in some degree encountered the same familiar problems: anomie and anger on the shop floor, bureaucratization and bourgeoissification of the labor movement, the stubborn survival of social inequality, and an almost catatonic consensus amongst the major political forces that radical transformation is impossible.

As to my special Canadian perspective, perhaps this is less a matter for apology. Apart from the fact that Canada traditionally plays a peace-keeping role, there is a special sense in which our relation to both Sweden and the United States may help me to build bridges of understanding between your two countries. To state the more obvious point first, we are to some extent a northern outcropping of the American economy. Our major industries are to a considerable extent owned by Americans. Two-thirds of our organized workers belong to international unions whose headquarters are located in the United States. And our collective bargaining legislation draws its essential inspiration and much of its detail from the American model of the Wagner Act. What is, perhaps, less obvious is that we are acutely conscious of the lessons to be learned from the Swedish experience. In the past decade, a number of Canadian committees and commissions have visited Sweden or studied Swedish labor relations; some aspects of Swedish labour law have inspired recent Canadian legislation; and above all we are always conscious that the Swedes have proven that a country's size need not limit its ability to embark upon an intelligent and bold programme of social reform.

Thus, if on no other basis, at least on the basis of my nationality I may perhaps claim some special justification for my address to you this evening.

You have heard, and will hear, a good deal about the detail of the new Swedish legislation. I do not propose to do more than list some of its major features: security of employment for workers; thoroughgoing rights of participation by unions in every aspect of management decision-making; full disclosure, in advance, of all managerial decisions affecting workers; presumptive validity for the union's interpretation of a collective agreement, rather than for management's protection for shop stewards; expanded recourse by workers to both self-help and legal remedies; and streamlined-abjudicative procedures to effectively enforce the new regime. All of these are substantive legal changes of the first order. But there is also an important change in the process of lawmaking: the initiative in labor legislation is being undertaken over the protests of one of the major interest groups, the Swedish employers' Confederation (Svenska Arbetsgivareföreningen, SAF). This is a significant departure from the Swedish tradition of legislation by consent.

Shift of Power to Workers in Swedish Collective Bargaining

That all of this adds up to a major shift of power to the workers' side of the collective bargaining equation seems clear enough. But what is the significance of this shift? How is it likely to affect labor-management relations and the position of the individual worker in Sweden? And what lessons, if any, does it hold for us here in North America?

In his introduction to a pamphlet on the proposed new Industrial Democracy Act, Mr. Bengtsson, the Minister of Labor States:

> Properly used, these laws will mean a major shift of power in working life in favor of employees.

Elsewhere, Minister Bengtsson speaks movingly of "the need. . . for a renewal of working life" which must involve "the active participation of employees themselves". Why should one of the world's most advanced social democracies feel the need to radically transform the process of industrial decision-making, and to set itself a new and higher level of social aspiration?

The answer, I suspect, lies as much in conditions peculiar to Sweden as it does in the familiar and widespread malaise of all industrial societies.

Let me turn first to the Swedish situation in particular. Sweden has, for at least two generations, proudly and justifiably, cultivated a reputation as the social laboratory of the Western world. In social

welfare legislation, penology, town planning, administrative law, and sexual emancipation, -not to say industrial relations - the Swedes have often been both first and best. It is therefore hardly surprising that Sweden should be one of the first countries to seriously address the problem of the quality of working life in the new industrial state.

Second, it must be said candidly that despite Sweden's astonishing record of social progress, the body politic is not entirely hail and healthy. In particular, even before the current crisis of the international economic order, Sweden had been experiencing an increasing number of unofficial and official industrial conflicts, some degree of labor market disorganization, and some rank-and-file disenchantment with official organs of the labor movement, the Social Democratic party, and the state. Compare to the problems faced by most of us, those of Sweden seem relatively trivial. But it is characteristic of the Swedes that they should set about to intelligently analyze the causes of dislocation and discontent and to take rational measures of reform.

Third, Sweden has increasingly acknowledged the role of the central labor and management organizations in participating with government in the task of defining national economic and social goals, and in securing those goals. The labor movement has thus acquired almost a constitutional status in relation to macro-decisions affecting not only its members, but the whole country. In a sense, the current legislative changes can be seen as an attempt to extend this constitutional status to the process of making micro-decisions affecting individual firms and their employees. From this perspective, the new industrial democracy is but the natural extrapolation of a more general social democracy.

But there is more. The decision to legislatively compel a radical new regime within individual places of work does not appear to be the result of a consensus between unions and management. As I have mentioned, this partisan approach violates the nonpartisan tradition in Swedish industrial legislation. It seems to me that the explanation for this break with tradition must be that the labor movement and the Social Democratic party are seeking to revalidate their credentials as authentic representatives of working people, and to cease to be seen as mere managers of the economy and the state. This is a political development of deep significance for Sweden.

An Evaluation of New Swedish Labor Legislation.

It would be rash, not to say rude, for me to try to predict whether the new laws will be effective, whether democracy will come to the workplace, whether the life of the individual worker will be changed, or whether Swedish politics will be transformed. However, I hope I can at least identify some questions raised by the new Swedish scheme. Asking questions and not answering them is an academic's standard ploy for avoiding responsibility, I know. But tonight, at least, I have a warning from John Dunlop, *in absentia*, as my excuse. If he had been here this evening, I am sure he would have reminded us that national industrial relations systems each have peculiar characteristics which make institutional transplants very risky indeed. Thus, although the big questions are common questions, the answers must be very particular in nature. Americans, Swedes, and Canadians will each have to seek those answers within their own systems.

Still, the big questions do bother us all. Let me try to state these questions.

Most of us, whether Scandinavian or North American, whether supporters or opponents of the new legislation,obviously feel it is somewhat dramatic and radical. Those who favor the new legislation obviously do so because they expect that it will produce decisions which are substantively different from those which would result from unilateral management action. Otherwise, the elaborate procedures for negotiation would be nothing more than empty rituals. Likewise, those who oppose the new legislation must do so because they expect it will harm the enterprise, with diminished efficiency and profitability the results of impaired managerial authority. Both sides, in other words, are excited about this legislation because they believe it will accomplish something.

But will it? In his Inquiry Into the Human Prospect, Robert Heilbroner expresses skepticism:

> It may be that extensive decentralization, workers' control, and an atmosphere of political and social freedom could better reconcile the industrial system with individual contentment.
>
> I will not hide my doubts, however, that these reforms can wholly undo the de-humanizing requirements of an industrial system. Modes of production establish constraints with which humanity must come to terms, and the constraints of the industrial mode are peculiarly demanding. The rhythms of industrial production are not those of nature, nor are its necessary uniformities easily adapted to the varieties of human nature...

> [I]ndustrial production...confronts men with machines that embody "imperatives" if they are to be used at all, and these imperatives lead easily to the organization of work, of life, even of thought, in ways that accommodate men to machines rather than the much more difficult alternative.

I would frame my question slightly differently. Industrial democracy is essentially procedural: a new group is given an important role in decision-making. But will the substantive decisions really be any different or any better? So far as those decisions relate to the arrangement of the internal affairs of the enterprise, we can assume that the workers will be properly solicitous of their own interests, including their interests in the success of the enterprise itself. But so far as decisions relate to general public interests, can we really expect a higher level of social responsibility? Will workers use their new power to lower consumer prices, cut down environmental pollution, or invest profits in a foreign aid programme, if by so doing they lower profits, increase costs or transfer the benefits of their labor to others? Are workers, to put the matter squarely, more civic-minded than management?

Assuming, however, that the new legislation promotes participation as an end in itself, rather than as a means of bringing about social reform, what are the prospects? Those of us who have live in the university over the past ten years must be pardoned if we applaud with only one hand. We have certainly experienced considerable worker control over what were formerly management matters: curriculum, hiring, budget, even the selection of deans, not to say presidents. But faculty democracy seems to have contained, to some extent, the seeds of its own destruction: a pox of committees, a plague of trendy courses, and more, rather than less, public hostility, financial difficulty and internal dissension. We are not sure that the satisfaction gained through the transfer of power has compensated for these perhaps inevitable developments.

Yet I do not mean to be too negative. I doubt whether we would choose to return to the former regime, and voluntarily surrender our right of self-government. And I cannot find it in my heart to say that industrial democracy should not be tried because it is unlikely to justify all of the fond hopes of its proponents.

I rather suspect that Swedes are conscious of the biblical admonition "the task is not yours to finish, but neither are you free to desist from it". They have been more willing than most of us to undertake "the task", and to risk the frustrations and disappointments that are almost inevitable. More power to them.

I turn finally to the fact that the new legislation represents an overt decision by the government to attempt to shift power away from management, over its objections, to the workers. The abandonment of consensus as a precondition of legislation, and the failure to mask the transfer of power in reassuring language, may signal the emergence of a new political style. This style might be termed "ideological", a term that had seldom been used in connection with labor policy, or even politics, for ten or twenty years, or more.

Daniel Bell, you may recall, published a collection of essays memorializing "The End of Ideology". Bell pointed out that in the advanced western democracies, we have stopped arguing about, or even talking about, ideology. All serious political groupings seemed to agree that our present sociopolitical order, or some variant strain that might evolve from it, is both inevitable and ultimately acceptable to most people in our society. Fundamental change ceased to be a serious issue for debate, although of course polite disagreement was possible over the question as to whether one political party or another might manage the *status quo* more efficiently or benignly or with greater fidelity to the spirit of the nation. Social Democrat, Centre Party, Labor, Liberal, Democrat, Republican or Conservative, - the labels have lost their meaning. We no longer expect that a change in government will result in a radical change of social or economic policy.

Nor do we any longer perceive the labor movement as an agent of radical change. Bell's essay on the American Labor movement is ironically entitle "The Capitalism of the Proletaria". Bell's striking phrase underlines the fact that American unions have secured legitimacy by subscribing to the basic premises of American society. As John Kenneth Galbraith points out, however, if recognition of its legitimacy is a victory for American labor, then it is very much the sort of victory that Jonah enjoyed over the whale:

> [T]he industrial system (he says) has now largely encompassed the labor movement. It has dissolved some of its most important functions; it has greatly narrowed its area of action; and it has bent its residual functions very largely to its own needs.

What Galbraith says of American unions could, I suspect, have been said of most labor movements in the western world. No longer revolutionary, they have been integrated into and are essential parts of the process of administering a modern mixed economy.

If this analysis was essentially accurate, how are we to interpret these events in Sweden?

It is possible, of course, to regard the new legislation as a further exercise in cooptation. The workers are given mere symbolic reassurance of their power, in the form of favourable legislation and ultimately participation, while the system rolls on much as it did before. Under the new regime, however, the workers will be implicated in, and have a stake in, the system and thus will be less likely to obstruct it. This, I hasten to add, is surely not the intention of the authors of the legislation, although it might conceivably be the objective reality of the new industrial democracy.

On balance, however, I suspect that this is not the true significance of the new legislation. It seems rather to represent, as I have already suggested, a revival of ideology. Bell, after all, published his book before the great civil rights upheavals of the 1960's, before the emergence of anti-war and anti-establishment protests on the university campuses and city streets, before the emergence of radical and separatist undergroung terrorist movements, before worker occupations of factories in France and England. All of these phenomena, to be sure, seem to affect the periphery rather than the core of our industrial life. But I wonder whether they do not suggest that ideology may still - or again - be a force to be reckoned with.

I say this for two reasons. First, I share some of Heilbroner's skepticism about the extent to which shop-floor democracy is likely to mute the inherently inhuman qualities of modern industrial work. If it does not do so, then I expect more radical solutions will be sought, and that these will involve more far-reaching changes in social and industrial organization. Second, I believe that more and more people are likely to succumb to a temptation to make sense of the chaotic and complicated world in which we live by pledging loyalty to a simply unifying theory. It is, for example, all too easy to explain our economic problems by blaming unions for inflation. It is a short step to advocate that we dismantle the collective bargaining system in order to limit their power. And if this happens, is it not likely that the labor movement will respond by attempting to obstruct, to oppose and ultimately replace the new system?

Do we perhaps see, then, in this new legislation the beginnings of a new and broad-ranging debate about so many of the issues we have for so long successfully avoided, at least in North America? For does the issue of industrial democracy not, in truth, force us to address

such fundamental questions as whether men are to serve machines or vice versa; whether personal incomes and power are to be levelled by democratic decision-making or preserved as at present across a broad spectrum; or whether the democratic theory that each person should have a voice in the governance of his community is workable in the harsh and hectic reality of modern industry.

These are the questions. I have no answers, and I do not know whether our Swedish colleagues do. But they have surely opened a Pandora's box - and we are all of us curious, (red, white, blue and yellow,) to know what it contains.

THE NEW ACT ON COLLECTIVE BARGAINING AND THE PUBLIC SECTOR

Stig Gustafsson

My task here today is to comment on the implications of the new legislation in the public sector. Before I go into the special problems connected with the public sector I would like to stress that this reform has to be seen together with the other reforms in the labor legislation in Sweden during the last few years. The Swedish trade unions have been working very actively the last 10 years to improve industrial democracy and demand changes in the legislation.

An Overview of Labor Legislation.

Since 1970 a series of new laws strengthening the worker's position at the workplace have come into force.

As our Minister of Labor has mentioned, we have a law on security of employment, The Promotion of Employment Act, The Act Concerning the Status of Shop Stewards at Workplace, an act which ensures employees the right to leave of absence for the purpose of study, the Act Concerning Board Representation in Business Enterprise and Public Authorities (1972 and 1974), and amendments to the Workers Protection Act giving the safety stewards the right to stop work in special, hazardous situations. All these laws are applicable in the public sector as well. The Sec. 32-Reform-- as we call it-- is the logical continuation in this effect of legal reform.

When the Commission on Labor Legislation--or the Sec. 32 Commission, as it is usually called--presented its report in January, 1975, it was not a unanimous report. The members of the Commission from the Confederation of Swedish Trade Unions (LO) and from the Central Association of Salaried Employees (TCO) submitted a comprehensive minority report.

This minority report and the opinions given on the Commissions Report by the unions have--as our Minister of Labor pointed out--been the basis for his work.

The four important issues in the government proposals are:

1. *The right to negotiate.* There we have the primary obligation to negotiate and obligation for the employer to delay decisions as well as the right to proceed to central negotiations if no satisfaction is obtained at the local level--as was proposed in the minority report to the Commission.

2. *The right to information.* This right is, as we see it, from the employees side a very important one, as the employees today very often have major difficulties in getting real information concerning the company or agency where they are working.

3. *The right to agreements on co-determination.* Especially important in this context is the fact that employees may have collective agreements on co-determination not only in work supervision, but also in matters of company management.

4. *The priority right for the union to interpret collective agreements in legal disputes.* As was mentioned earlier in the discussion, the public employees in Sweden have the right to strike.

The right of Negotiation of State and Municipal Officials

State and municipal salaried employees in Sweden have enjoyed the same rights of collective bargaining as private sector salaried employees since 1966. The law on Collective Agreements, the Labor Court, and the law on Right of Association and Negotiation originally applied to the parties in the private sector of the labor market only. In other words, state and municipal salaried employees had no collective bargaining rights.

Until the mid-1930's, the salaries of state officials were fixed by unilateral decisions by the government and *Riksdag* (Swedish parliament). Separate commissions were appointed to draft proposals for pay schedules, and the political authorities then considered these proposals and made the necessary decisions. Sometimes one or two representatives of the employees' associations would be given a seat on the various pay commissions.

When the 1936 Act on Rights of Association and Negotiation was passed, it expressly provided that the Act applied to all employees except those in the public service. But the standing of public employees was enhanced by another provision, to the effect that the unions of public employees should be consulted before the state made its decisions.

During and after World War II, the public sector expanded considerably in the fields of administration, health and medical services, social welfare, education, and the armed forces. The number of public employees grew rapidly. Rising prices during and after the war made it necessary to increase the salaries of public employees, and public authorities came more and more frequently into contact with their employees' associations. In this way, contacts developed which resemblanced negotiation procedures in the private sector of the labor market. Officially, however, public servants were only entitled to lodge petitions. Decision-making powers were vested exclusively in the public employers.

Today the differences between the collective bargaining rights of public and private employees have practically disappeared. In 1966 the State Officials Act came into force, which meant that the Act on the Rights of Association and Negotiations, the Collective Agreements Act, and the Labor Court now apply to all parties in the Swedish labor market.

A basic agreement has been concluded between the state and the main associations of salaried employees, and another between the municipal employers and the main associations of municipal salaried employees. Like other basic agreements in the labor market, these basic agreements are modelled on the 1938 Basic Agreement between the LO and the Swedish Employers' Confederation (Svenska Arbetsgivareforeningen, SAF). Public servants are now entitled to strike on practically the same terms as private employees, and the state and municipal employers are similarly entitled to resort to lockouts. Both strikes and lockouts have in fact occurred in the public sector.

The state and municipal basic agreements include provisions prohibiting a limited number of senior officials from taking part in disputes. These are mostly personnel with tasks clearly resembling those of employers and roughly correspond to the groups of salaried staff which form part of the managements of private firms. There are also provisions which, in fact, exclude certain minor groups in the armed forces and the police from taking part in industrial disputes.

Both the state and municipal basic agreements include regulations concerning the establishment of special committees, on which employers and employees are equally represented, to determine whether a dispute is "threatening essential public services". The committees are only empowered to make recommendations, which the parties are then free to accept or reject as they see fit.

The state has set up a special agency, the National Collective Bargaining Office, which bargains on behalf of the state with the unions. A similar machinery has been set up at the municipal level. The introduction of collective bargaining rights for public employees in Sweden implies a distinction between the exercise by public bodies of public authority of one kind or another and their function as employers. As employers, public bodies are subject to much the same restrictions as private employers. The new system implies a final refutation of the time-honored supposition that public activities are of greater intrinsic public importance than private activities. In many sectors the production of goods and services that takes place in private enterprise can be no less important to the general public, if not more so, than the activities conducted by public authorities. Private power stations are just as essential as public ones when it comes to providing the general public with heat and light.

State Intervention

Although it is a fundamental principle of Swedish industrial relations that the state must not intervene in disputes beyond supplying mediators, it has not been possible to maintain this principle completely. On a number of occasions during the 1940's and 1950's when officers of the mercantile marine, nurses, and bank clerks were preparing to go on strike, the government declared its intention to introduce a bill in the *Riksdag* that would make it the duty of those concerned to remain at work. Of course, one cannot say for sure whether the *Riksdag* would have passed such a bill if the occasion had actually arisen, but there is a great deal to suggest that the government would have got what it wanted. Evidently the unions were of the same opinion on this matter, because the government threat was enough to make them call off their strike actions.

In 1971 the *Riksdag* passed a law that curtailed a conflict which had actually broken out in the public sector, between the state and the municipalities on the one hand and SACO-SR, the organization mainly of senior salaried staff, on the other. Among other things, this dispute had paralyzed the railways, and there was an imminent danger of unemployment in a number of sectors because firms could not obtain raw materials and finished products could not be dispatched. At this juncture the *Riksdag* passed an Act whereby all current disputes had to be suspended for 6-week cooling-off period.

I will now discuss the proposals for the new Swedish legislation.

The Report of the Labor Legislation Committee

The rules which have been proposed for the private labor market and which have been codified in the proposed Collective Bargaining and Collective Agreements Act will, if they become law, apply without restriction to all private employees and to all public employees not having salaried status. Concerning the latter limitation, the ultimate intention is for the new rules to apply to the public salaried sector as well. In order to achieve this goal, a throughgoing reform is proposed of the basic legislation involving public employees, with the aim of abolishing as much as possible of the restrictions on collective agreements for this group. At present, Section 3 of the State Officials Act and Section 2 of the Local Government Officials Act include a general prohibition of collective agreements which runs as follows:

Employment to which this Act is applicable shall be subject to the provisions of collective agreements. A collective agreement may not be concluded concerning

a) the establishment or abolition of any office or the organization of the Public Service in other respects;
b) the duties of an Authority;
c) conditions of employment or service governed by this Act or by legislation to which this Act refers, nor matters lawfully determined by the government, the Parliament or any Authority.

Any agreement concluded contrary to the provisions of the preceding provision shall in such respect be null and void.

The proposals put forward by the labor legislation Committee reduce these general rules prohibiting agreements to a prohibition of any agreement restricting the liberty of the "public interest" (in the ultimate analysis, democratically elected assemblies and the government) to determine the activities in which authorities and public institutions are to engage. This prohibition also invalidates such an agreement on any other point, e.g., executive management, which makes it impossible for public activities to serve the purpose for which they are intended. The Committee also proposes the repeal of several provisions of the State Officials Act specifying various working conditions and terms of employment for public employees. The removal of these provisions from the Act will make it possible for the conditions involved to be made the subject of collective agreements instead.

Similar amendments are proposed for the local government salaried sector. Proposals have also been made for a wider application of the Security of Employment Act in the public salaried sector.

Finally, the Committee feels that certain alterations should also be made in the special rules of the State and Local Government Officials Acts concerning labor disputes. Among other things, it is proposed that the present restriction on industrial action to strike and lockout should in principle be abolished, and that all of the matters concerning neutrality during disputes, the obligation to carry out safety work, etc., at present regulated by this legislation, should be transferred to the sphere of collective bargaining.

Viewpoint of the Trade Union Organizations

The fundamental idea incorporated by the Committee's proposals is that the terms of employment for public employees should, like those of the labor market generally, be based on private law. Thus the Committee proposes that the new Act should, with certain exceptions,

also apply to the working conditions and terms of employment of public employees. Most of the exceptions now advocated are prompted by the axiom that the right of collective bargaining enjoyed by public employees must not be allowed to conflict with the fundamental principle of democracy, whereby citizens control public activities through elected public decision-making bodies. Otherwise the proposed provisions concerning, for instance, the right of collective bargaining, the duty of providing information, and the residual right of industrial action are in the trade unions' view to be fully applicable to the public sector.

The views of the trade union organizations concerning the public sector have been well received in certain respects involving demands for an expansion of the sector covered by collective bargaining and collective agreements. At the same time, however, on several important points the Committee has advocated solutions that are not satisfactory from a trade union point of view.

Failing indication to the contrary, the following remarks concerning the state sector also apply to local government.

The Right of Negotiation

The principal reason for the current restrictions on Section 3 of the State Officials Act (StjL) concerning collective agreements is that public employees must not be able to use the machinery of collective bargaining and the concomitant right of industrial action in order to secure demands for the regulation of matters via collective agreements which it is the prerogative of political bodies, such as the government and Parliament, to decide. The Committee's proposals are founded on the same motive, and this vital fundamental principle is fully endorsed by the trade union organizations.

This prohibition regarding collective agreements has been taken to imply that there exist neither a right nor a duty of collective bargaining covering matters excluded from the area of collective agreement. Instead, the trade union organizations are able, by means of special discussions, to communicate to the state employer their viewpoints on subjects excluded from collective agreement--subjects about which, accordingly, the public employer is not obliged to negotiate. Section 52 of the current State Officials Act has confirmed this procedure for disputes on matters excluded from the field of collective agreement under Section 3 of the same Act and subject to the procedure laid down in the Industrial Litigation Act. In this way, a certain amount of uniformity has been established in the treatment of negotiable and non-negotiable issues. Even when disputes arise concerning negotiable matters, talks generally have to be held between the parties before an action can be brought in the Labor Court.

However, all that Section 52 of the State Officials Act really implies is that the employees' side must give the public employer an opportunity of separate talks before bringing the matter before the Labor Court. The employer is under no formal obligation to attend the talks but is in principle entitled to decline to do so. In practice, the opportunity of discussion can be said, in the light of statements included in the drafting for the Act, to imply a right of discussion. Thus the Minister responsible for presenting Section 52 of the Act said that he felt "entitled to assume that the party who is invited to separate talks will generally accept the invitation."

The trade union organizations now feel that the time has come for a further expansion of the right of negotiation, in view of the good results achieved by the extension of the right of collective bargaining and collective agreement to public employees.

As has already been observed in the minority report of the LO and TCO representatives, the right of negotiation and the duty of negotiation under Section 12 and 13 of the proposed Collective Bargaining and Collective Agreements Act do not allow for industrial action or Labor Court proceedings if the parties are unable to reach agreement in negotiations of the kind referred to in Sections 12 and 13 of the Act. The parties are under no obligation to reach a settlement, so that in theory, once discussions have been concluded, the employer can unilaterally determine matters on which he has exclusive powers of decision-making. As LO and TCO see it, this merely amounts to the statutory confirmation of a right of consultation and a duty of consultation, in other words, an expanded form of the right of discussion and the duty of discussion, respectively. LO and TCO therefore have not found any reason to exclude public employees from the application of Sections 12 and 13 of the Collective Bargaining and Collective Agreements Act to matters which according to Section 3 of the State Officials Act are non-negotiable and thus come within the exclusive decision-making competence of the state employer. On the other hand, exceptions to Section 11 of the Collective Bargaining and Collective Agreements Act may be required with regard to non-negotiable matters, for when negotiating under Section 11 of the new Act, the parties will be able to resort to industrial action in non-actionable disputes.

Thus LO and TCO hold the opinion that the wording of paragraph three of Section 3 of the State Officials Act must only make exceptions from Section 11 of the Collective Bargaining and Collective Agreements Act regarding non-negotiable matters. Otherwise the same procedure must be applied to public sector employees as it does to private sector employees. In this way public employees will have more or less the same opportunities of influence as private employees without violating the fundamental demand for the control of public activities by citizens acting through their political bodies.

The trade union organizations also feel that the employer must be under a primary duty of negotiation as soon as he wishes to make any alterations to conditions of work at the work place. It must also be his duty to postpone such alterations pending the completion of central negotiations in the manner agreed on by the parties. If the parties have been unable to reach agreement, the employees' side must have a right of veto or, in certain cases, the right of self-determination, failing provision to the contrary in a collective agreement.

LO and TCO feel it is self-evident that the employees' side in the public sector must not have a right of veto or the right of unilateral self-determination involving matters within the scope of the duties of the public agency concerned. On the other hand, they do feel that the primary duty of negotiation and the duty of postponement pending the completion of negotiations must also apply to the state employer with regard to non-negotiable matters, i.e., matters within the scope of the duties of the agency. LO and TCO do not see any danger of infringement of the right of citizens to control public activities through their political bodies because the trade union organizations are not entitled to resort to industrial action--for example, a strike action--in connection with negotiations of this kind.

The Labor Legislation Committee proposes that the duty of continuous information under Section 18 of the Collective Bargaining and Collective Agreements Act be fully applicable even to non-negotiable matters. It is only reasonable that the state employer should also be obliged to await the response of the trade union organizations and to discuss,with them for instance, a comprehensive change in the activities of the agency.

The Duty of Information

Needless to say, the fundamental demand of the trade union organizations that the employer's duty of information should include all matters also applies to the state employer. As LO and TCO see it, there is no reason why the state as an employer should be entitled to evade this duty of information on the grounds that a document is secret. An issue which is secret under the Secrecy Act should also be covered by the duty of information. LO and TCO could here conceive of a trade union representative or an employee board representative also incurring a duty of silence insofar as they are given secret information.

It is also important for the employees side to be given access to material which, technically speaking, is not yet to be regarded as a public document in accordance with the Swedish Freedom of the

Press Ordinance. Material of this kind includes, for instance, rapporteur memoranda, rough notes, etc. Thus the employees side should be entitled to inspect all material on which a public agency bases its planning of activities, its planning of personnel administartion, and its budgeting.

The Concept of the Activities or Duties of a Government Agency

One important issue raised by the expansion of the sphere within which state officials are entitled to negotiate and enter into collective agreements concerns the boundary between the negotiable sphere and the matters which it must be the prerogative of the political bodies to decide. This boundary is drawn in paragraph 2 of Section 3 of the State Officials Act. The Committee's proposal on this point is that a collective agreement must not be allowed to impinge on the right of the state to make decisions concerning the activities or duties of a public agency.

LO and TCO feel that only matters pertaining to the overriding aims of the public agency and to the frames within which activities are to be conducted should be excluded from the scope of collective bargaining. As LO and TCO see it, the matters which should be reserved for decision by the political bodies, and which should thus be excluded from the scope of collective bargaining, more or less correspond to what the Committee, referring to the private sector, terms fundamental questions of management concerning the type of production a firm is to engage in.

The Labor Legislation Committee has given the following examples of matters which will become negotiable within the public sector:

Questions concerning the length and disposition of working hours, as well as vacations and other forms of leave of absence, questions concerning the employment regulations, hire and fire of personnel and matters concerning personnel requirements generally, matters concerning personnel training, matters concerning the status of union representatives, matters concerning the work procedure for the individual or working groups, i.e. working method, the speed of work, and efficiency measures, matters concerning the apportionment of work within the working group, matters concerning the alternation of tasks and the arrangement of autonomous groups for the performance of certain tasks, matters concerning the planning of work premises (technical equipment, open-plan offices, the positioning of machinery, furniture), matters concerning the choice and acquisition of machinery, tools, working clothes and other equipment, matters of industrial safety, ergonomics, health and medical services, housing and communications, catering and canteen facilities, social matters and matters concerning the provision of personnel premises (for trade union or political activities, etc.).

Most of the matters enumerated here by the Committee were already made negotiable in 1973 by the amendments then made to the State Officials Act. The greatest difference in relation to the 1973 reform is the Committee's proposal that matters concerning the hire and fire of personnel as well as the organization of appointments generally should now be made negotiable within the framework of the exclusive decision-making powers vested in the state concerning the activities of a public agency. The examples of negotiable matters enumerated are considered by LO and TCO to be directly referable to the execution of decisions made by the government and by Parliament. It is important in this context for all detailed regulation to be left to the individual public agency, so that questions that are not essentially a subject of political decision-making can be governed by collective agreements.

LO and TCO also presume that matters will not be excluded from collective bargaining merely because they come within the sphere of activities of a particular agency. The main allusion here is to matters handled by agencies rendering services to other agencies, e.g., education and training questions, which are the responsibility of the National Government Employee Training Board, and general matters of personnel administration, which are the responsibility of the National Government Employee Administration Board. The trade union organizations view matters of this kind to be of such a nature that they are primarily concerned with the relationship between the state employer and the state salaried employee.

Summing up, LO and TCO believe that a clearer distinction between negotiable and non-negotiable items can be achieved if the wording of the legislation is made to underline that it is the *nature* of the *agency's* activities and the *frames* within which those activities are to be conducted that must be excluded from the scope of collective bargaining. Thus all matters coming within the internal administration of public agencies and primarily concerned with the relationship between the state employer and its employees are to be eligible for collective bargaining.

Other provisions of the State Officials Act

LO and TCO are particularly gratified to note that the provision of the State Officials Act concerning the duties of public employees are to be deleted and that the content and scope of those duties are to be made a matter for collective agreement.

Industrial Peace and the Right of Industrial Action

The existing rules of the Collective Agreement Act concerning industrial peace during the term of a collective agreement are applied to the public sector. The proposals of the Labor Legislation Committee regarding industrial peace are also intended to apply equally to the private and public labor markets. The same is true of the new regulations proposed by the Committee with regard to the residual right of industrial action during the term of a collective agreement.

However, the State Officials Act includes certain special regulations concerning industrial peace which also refer to a situation when there is no collective agreement. These regulations are described as follows: Lockout and strike are the only forms of industrial action permissible in the public sector. This means that a partial refusal to work, e.g., an overtime ban or a slowdown working to rule and the collective repudiation of work agreements, are prohibited. Moreover, a strike or a lockout may only be used in a conflict involving negotiable matters. Thus a strike may not be called with the intent to influence the exercise by the state of its prerogative in the non-negotiable sector.

Finally, there is a special rule of law for the public sector whereby a public employee may not take part in a strike at all without a prior decision by the union organization calling the strike. The private sector is governed by similar rules in the Basic Agreement concluded between the Swedish Employers Confederation and the trade union organizations.

Needless to say, extending to the public sector the means to engage in industrial action creates a parity with the rest of the labor market that will be of great importance to the public employees concerned and to their rights of trade union membership. However, the Committee has proposed a new, supplementary rule of law whereby industrial action must be deferred pending the determination of any dispute by the Labor Court as to the permissibility of the intended action under the statutory regutions concerning industrial peace. The sole justification given by the Committee for this deferment rule is that the provisions of Section 15 of the State Officials Act involving the duty of public employees to observe peaceful industrial relations "is not altogether without complications," so that steps must be taken to prevent "unlawful action being taken due to a misinterpretation of the legal situation." As it stands, this rule could be utilized by the state employer to make industrial action of which notice had been given subject to an almost obligatory legal assessment, and thus obtain the postponement of the action for

a convenient period of time and perhaps destroy its effect. The limitations and safeguards incorporated by law and by the Basic Agreement concerning industrial action by public employees must be considered sufficient for the avoidance, containment, or termination of conflicts which are either unlawful or a danger to the community. LO and TCO, therefore, advocate the deletion of the proposed supplementary rule.

The majority of the Committee has not proposed that public employees be entitled to join in sympathetic action on behalf of employees outside the sector covered by the State Officials Act. This means that, unlike all other state, local government and private employees, public employees will not be entitled to engage in sympathetic actions. The LO and TCO Committee representatives have made a separate statement opposing this attitude and have advocated legislative amendment entitling salaried employees in the public sector to resort to sympathetic action to the same extent as other employees in primary conflicts both in Sweden and abroad. The proposals thus made have been endorsed by LO and TCO.

* * *

The Swedish trade unions definitely do not want to compromise the *political* democracy through some kind of corporatism. The system I have tried to describe is, rather, based on politically responsible, strong trade unions.

THE EFFECT OF THE NEW LEGISLATION ON THE EFFICIENCY OF SWEDISH ENTERPRISE

Gunnar Lindström

Most of the speeches in this series have described specific aspects of the new labor legislation in Sweden. My task is somewhat different, and perhaps a more difficult one since it is expected that I forecast what will actually happen when the legislation is enacted. It is today (October 9, 1975) too early to take a definite stand on these matters.

In the first place we do not yet know in detail what that labor legislation is going to look like. It is especially difficult for us on the employer side to have an idea since we have only known the plans of the government for about a week. Secondly, once the law has been passed, extensive negotiations will take place concerning its implementation. Until we know the result of such negotiations--we now do not even know the demands the trade unions are going to put forward--it is only possible to indicate what we can expect, hope for or fear. The other representatives of the parties to the employment relationship here are very optimistic. In order to have some balance I shall concentrate on a few pessimistic notes. This is perhaps natural as the points of view and opinions of the employers have been almost completely neglected in the elaboration of the law.

Another characteristic of my subject, compared to the other speakers, is that it concerns a new question. The question of how the efficiency of our enterprises will be affected by the new rules is treated only in passing by the Commission and, even more remarkably, not at all by the minority report. As you know, the opinion of the minority will form the basis for the forthcoming legislation. Even now we don't know how the government looks on the consequences of the new legislation in respect of the efficiency of our enterprises. This apparent lack of interest in one of the fundamental problems of management and work organization is rather alarming.

We on the employers side are very worried by what we know so far about the new labor legislation. This attitude does not mean that we are against development toward industrial democracy and consider all change detrimental to efficiency. On the contrary, I think it is important to underline that interest in this question is an established tradition on the employer side as well. We quite agree with the trade union movement that increased participation in the planning and in the work of the company by those employed can contribute to increased efficiency. As has been demonstrated in various collective agreements, the employers and the trade unions jointly feel that increased productivity and increased job stasifaction are twin goals of equal importance in modern industrial life, and that these two goals do not contradict each other.

Negative Effect on Decision-Making

For many years a development toward involvement of workers in the decision-making process within the companies has taken place, fast in some companies, less fast in others, but the general direction has been quite clear. I am afraid, however, that the new legislation may have a negative effect. Efficiency may decrease sharply through paralysis in the decision-making process. Job satisfaction may in fact diminish through increased bureaucratization and centralization. Our climate of co-operation may well deteriorate and lead to a break with the old traditions--the *Saltsjöbaden spirit**which has so much contributed to good industrial relations and to our competitive strength in the world--as a result of the polarization in the present debate and the focusing on power as opposed to co-operation and consensus.

I will now discuss the reasons for employer opinion. The trade unions will have a right to bargain and conclude collective agreements about all questions. In a question of any importance, the employee will have to take the initiative to negotiate. What I am going to say about collective bargaining is also to a certain degree applicable to the problems related to the right to interpret the collective agreement. In the debate concerning the new legislation, there is a very strong tendency from the labor and from the government to consider questions requiring separate decisions together, and to make the whole problem less serious by focusing the discussion on questions like those we already negotiate about. However, the decisions made in an enterprise, say, a producing industrial company, are of a varied character. They include strategically important policy decisions, decisions of a more tactical importance, pure decisions of performance, and emergency decisions.

In all matters the employer will be obliged to postpone his decision until negotiations have taken place. It seems clear, however, that the time factor is very different in these various types of decisions.

Strategic decisions are usually made after rather long planning, and this planning period is in itself a series of decisions such as choosing the alternatives, discarding some, making a final evaluation, and so on. In these kinds of decisions many employees do take part. In many cases the local trade unions are also involved in planning related to strategic decisions. They have a final say through their representatives on the board.

Tactical decisions, for example, accepting or not accepting a business proposition demand a much shorter planning period.

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*Refers to a landmark agreement between the Swedish Employers' Confederation (SAF) and the Confederation of Swedish Trade Unions (LO) December, 1938 at Saltsjöbaden, near Stockholm. The agreement specified that major disputes between employees and employers would be settled by bilateral negotiations without governmental interference.

The risk, or necessity, to take a chance on incomplete data becomes much bigger and the scope for discussions and negotiations very much smaller. Slowness might easily make the whole question academic when the offer no longer stands, the temporary producing capacity is no longer available, or a foreign competitor with a quicker process of decision concludes a prior agreement.

The purely executive decisions are made after the strategic and the tactical decisions have been made, and usually concern choice of method to implement the decision. These decisions often are of considerable concern to individual workers.

Finally we have the emergency decisions calling for quick action when something has gone wrong or improvization is necessary for other reasons.

I am afraid that this view of industrial life has not influenced those writing the law; at the very most, they have been prepared to concede that emergency issues are a bit tricky. The Commission tried to separate the various kinds of decisions in suggesting that the employer wait for negotiations with the workers before acting in some of these cases, but not in others where it would not be reasonable to postpone the decision. However, this seems not to have been understood.

There is an obvious risk of a general slowdown in the decision-making process of the individual company, and I think that such slowdown in each individual company will create a chain reaction. The industrial company that I used as an example has a possibility of bidding for an order, but its decision to do so or not to do so may be delayed through the new rules. The buyer's decision to accept this offer or take someone else's will be delayed in a similar way because his internal decision-making process is being influenced by the new legislation. When the order has finally been accepted, the producing company in its turn must organize production--buy material, hire subcontractors-- and its decision to do so will be delayed. The subcontractors and the deliverers of raw material will in their turn be influenced by the new procedure, and so on.

I suppose there is a considerable risk of a general slowdown in our activity and, therefore, in the efficiency of our whole economy. This slowdown is an inevitable consequence of the legislation and cannot be eliminated through responsible implementation of it.

Necessity of Negotiation at Two Levels

Another matter which causes concern among employers is the idea that we would have to negotiate about all issues at two levels: the local level in the enterprise and the national level, between the federations. Here we face the time factor again. As I indicated

earlier, most of the important decisions are carefully researched by experts in the various departments of the company--technical experts, marketing experts, sales people, and so on. Someone has to make a final decision involving a certain amount of risk. This decision has to be made by someone with a capacity to evaluate research, to balance contradictory advice and tendencies--someone with a feeling for business and a sense of economic responsibility. In other words, a final decision must be made by someone who knows business management. The legislation, however, involves a completely different type of person in the process. By this I do not mean the employees of the company, but the worker and employer federations. Organizations on both sides do not have expertise in these matters or knowledge of the particular enterprise. Nor are they accustomed to making decisions of this kind. On the contrary, their task has so far been to mediate between different interests. They are used to applying a legalistic approach to this task. Their basic aim is to resolve disputes and reach compromises. However, in the matters that are now to be negotiated the important goal is not to reach a compromise, but to find the best solution. In many cases it is quite obvious that a compromise is impossible. One cannot compromise between taking or not taking an order by taking half the order.

I think there is a definite risk that if the organizations on both sides get involved in this sort of discussion, they will try to apply their old methods and seek their own solutions. In cases of difficulty, the immediate reaction of any bureaucrat is to try to shove away the problem, to let it solve itself. Such a tendency is regrettable even in ordinary disputes. In matters where speed is of primary importance, such a procedure would be disastrous.

We are being told by some of the responsible trade union leaders that it is not their intention to start negotiating these matters at two levels at once, even if the wage earners for reasons of principle cannot accept any limitation in the law. After all the declarations that the new legislation marks the beginning of real economic democracy and a shift of power, the trade unions can hardly be expected to contact their membership and tell them not to use the new opportunities. In addition many militant local groups will put pressure on the union to start negotiations about the management questions. The easiest way out will then often be not to take any real position on the actual questions, but to demand compensation for each change that management wants to undertake. Demand for compensation will probably in the normal case be economic: unless we get a raise of two crowns an hour we shall oppose the demand of management and the matter will have to go to central negotiation between the federations. If the time factor is important and the demands for money put forward relatively modest, many companies will accede rather than to go to central negotiation and lose time. Of course, the union side may inadvertently argue for bad decisions because they lack knowledge of management problems.

It is very possible that the new legislation will counteract the desirable development in recent years toward decentralizing decisions. Such a counter development would probably mean less personal satisfaction at work. In the proposed legislation there are many factors contributing to such centralizing effects. One such factor is the right of trade unions to go on strike under certain conditions even during the binding term of the collective contract in order to reach an agreement on codetermination. The employers will hardly be prepared to conclude any agreement unless they can be sure to get peace for the time of the contract. Securing peace is the only real reason for the employers to conclude an agreement. It is true that the commission intentionally proposed such rules in order to effectively to encourage strong collective agreements about codetermination. In practice it is probable that both parties at the central level will try to influence the matters in order to achieve binding industry-wide collective agreements.

When problems occur locally, the local trade union will probably ask for the opinion of the central trade union, especially immediately after the new legislation becomes law. Having received central proposals and guidelines, the local trade union will go to the company with its demands. Management will probably, as an act of defence, consult their organization in the same way. Such a behavior, which removes the question from the local parties, is of course strengthened by the idea that all negotiations can be brought to the central level. The ultimate decision is thereby handed over to decision-makers who lack knowledge about the specific problems of the company and at the same time lack sufficient general competence concerning this kind of question. The legitimate ambition to give more influence to those directly concerned in the company therefore quickly degenerates into negotiations between, in the best case, co-operative but commercially incompetent central bureaucrats.

To sum up, management will, under the new legislation, have to face a new and very much more difficult decision-making process, demanding increased time for negotiations and containing the risk that the matter will ultimately be decided elsewhere. These new factors will probably reinforce the natural resistance to change. The position of the trade unions vis-à-vis the legislation is in fact to allow management only one prerogative: to do nothing whatever. This is hardly a very good way to stimulate change and increase efficiency.

The guarantee that my fears here are merely ghosts produced by sulking employers who do not want to lose their power is, according to the trade unions, that their new power is in good hands. Union leaders are all responsible people and know that workers have more at stake than the shareholders if the efficiency of the company declines.

This argument, however, is based on the naive if sympathetic assumption that all workers are good workers. In fact, we have a normal distribution of people among trade union officials as well as among industrialists. Some are good and some are bad, some have very good judgement and others are irresponsible. Some are even brilliant, but some are dull-witted. It is impossible to build new legislation on the theory that all unionists are supermen and all employers, scoundrels.

Legislation Promotes Unrealistic Expectations

In fact the legislator goes out of his way to make work more difficult for the responsible trade unionist. He promotes great expectations by creating negotiating powers that the trade union leadership has no opportunity to use seriously for the time being. This will cause disappointment among militants and increase the incidence of wildcat strikes. The new right to go on strike to achieve rules about co-determination during the validity of the contract will contribute further to making strikes and other militant actions respectable and normal. The further erosion of the sanctions against wildcat strikes works in the same direction. Today we already have a clear tendency toward more local conflicts. The number of wildcat strikes this year will probably reach an all time record in Sweden. The attitude of the trade unions is usually to declare the strike regrettable, but to express sympathy for the claims put forward by the strikers. In public statement the employer is held responsible, and the main cause of the strikes is attributed to bad working conditions.

This is, however, a false assumption. Out of the 145 strikes that took place during the first eight months in 1975, 110 were only an effort to put pressure on local negotiations in order to gain wage increases over and above the collective agreement. It should be noted that these extra demands are proposed after the most expensive agreement ever signed and just before the expected recession hits Swedish industry.

This tendency to disregard the binding agreements negotiated by the trade unions and the lack of responsibility among the union members is indeed a serious problem that seemingly does not interest the legislator and the unions. The unions should first attempt to solve their internal problems so that they can be considered a responsible party whose word in negotiations can be trusted. Only then can the demand for more power to responsible unions be discussed seriously.

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I must conclude by saying that I had wished for a more balanced solution that would take note of the employer's opinions. I think all

social progress presupposes a certain consensus. This has been underlined in another recent report on changing industrial life, the French Sudreau Commission. Without taking any stand on the actual proposals of that commission, I think they are right at least in one thing, and that is when they are saying the following: "One must have the realism to consider that nothing can be accomplished without a minimum of acceptance and confidence of all interested parties, and it would be vain to replace the present laws, imperfect as they may be, by new laws that go too far ahead of mentalities and behaviour." More of this attitude in our legislation would have been a better guarantee of continued prosperity and efficiency.

SECRECY REGULATIONS UNDER THE NEW COLLECTIVE BARGAINING ACT

Bo Bergnèhr

Background

At the Congress of the Confederation of Swedish Trade Unions (LO) in 1966, the demand was made for changes in the working environment. A detailed report of the trade union movement and technological change was presented to the Congress. The descriptions of technological change clearly indicated that technology had advanced to such an extent that human aspects had not been considered in that development. A comprehensive survey of the working environment and of changes in labor organization was carried out after the Congress adjourned. The survey established that about 80 percent of LO's Executive Board appointed a committee of inquiry with the task of presenting to the Congress proposals on ways of changing the employees' situation at the workplace.

The report, "Democracy in the Enterprise", was presented at the 1971 LO Congress. It covered five main areas: (1) security of employment; (2) working environment and rationalization; (3) management questions; (4) new labor legislation; and (5) personnel policy and work organization.

I shall not give a detailed review of the comprehensive legislation which was the result of the unions' demands at the Congress. It was reviewed in Mr. Ingemund Bengtsson's paper on new Swedish legislation. However, I should like to take up a question which is of interest from the employees' point of view. It concerns some requirements we should stipulate in respect of technological development. We know that technological development today is governed only by the need to satisfy the demands of production and productivity. Human and social needs have not been taken into account in the development of different technological systems at our places of work. Regarding changes in work organization, insufficient consideration has been shown for purely human and social needs. I shall concentrate therefore on the demands the Swedish labor movement has reason to make in respect of technological development systems which restrict the possibilities of declaring solidarity and support for one another, and of asserting claims of common interest.

We also have the right to demand that a job give opportunities for *learning and developing*. The continuous acquiring of knowledge through a job trains one to acquire and use knowledge in other areas--outside the place of work.

We must also be able to demand of a job that it gives personal freedom and that we can participate in decisions that could in any way restrict that freedom. We claim that forms of organization which force a person to submit to the will of others is shameful and an outrage against human dignity. This deep respect for the equality of men must be characterized in a new and more worthy organization of work.

Adaptation to the Human Being

Here I want to mention the enormous difficulties that have been brought about by the increase in specialization--particularly for people. with impaired working capability. Specialization threatens to label more and more people as abnormal and incompetent. Therefore greater versatility must be an important demand on work organization. Different job elements should not be kept apart, as they are now, but be brought together so that one can combine work roles which correspond to the individual's requirements.

A job should require more than just stamina. It should have a *content* and should offer a measure of *variety*. In other words, each employee should be able to employ a variety of skills and diverse knowledge, not only manual skills, but also the ability to organize, to assess, to make decisions and take responsibility, ability to solve problems, develop working methods, tools, and so on.

A new work organization must also imply a new view of the role of the manual worker in production. The worker, too, must have the opportunity to *influence the future development of his employment*. Everyone should have the right to new work assignments in step with increased knowledge and experience. From time to time, everyone needs to try something new, acquire fresh knowledge and experience. Consequently, we must ensure that the opportunity for everyone to *learn something from the job* is built into the job.

We also need self-sufficiency. This applies both in the sense of defending oneself against attack from others and in the sense of making decisions on one's own responsibility, decisions about changes in methods of work, for example, in utilizing tools and the working environment. Every person has an innate need for an area he can call his own.

There are some jobs which have ended up at the bottom of the social scale, jobs which many people look down on. Peoples' social standing is influenced by their jobs to such an extent that such jobs should disappear or be changed completely. Every person has the right to *respect and esteem* even on the basis of his job.

A demand that is of importance for the evaluation of one's own work is the right to be able to see the connection between work assignments and the immediate environment. The possibility of seeing the use and value of one's own work contribution must be an unconditional demand. Today, technology often raises barriers which make it impossible to see this connection.

A Democratic Organization of Work

In a democratic organization of work, the members must have the right to discuss freely matters of mutual concern. This requires free access to information about all matters related to the job. Further, organized opportunities for debate and the creation of public opinion are needed.

All employees have equal rights in a democratic work organization. First and foremost this applies to equality of power and influence, but it also applies in other respects. Thus, the attempt of any outsider to intervene in the organization of work in order to create differences in status between the employees is a violation of democracy. Such demarcations are contrary to the principles of democracy, which is based on autonomy.

This notion leads to the demand that the employees must have the final decisions on all internal matters in the work organization, which applies also to the relationship between the work organization and management. The employees can elect one or more representatives to be responsible for this relationship. There then will be clear, dependent relationships between employees, the employees'representatives, and the employers.

The Organization of Work Must Always be Able to Develop

The union policy for a new work organization and work management is a part of the social regeneration of working life. This regeneration principally concerns the employees' welfare. Therefore the labor movement demands that this regeneration be governed by the employees themselves.

Secrecy Regulations Under the New Act

In the preceding discussion I have set forth a few principles regarding the damands for changes in the work organization. Since the political ramifications of new legislation have been explained in detail in preceding papers, I shall now make a few short remarks on the questions of information and secrecy.

The question of information is, since 1946, regulated through an agreement between the two trade union federations, LO and TCO, and the Swedish Employers' Federation, SAF. According to this

agreement, the employer must inform the local union about important imminent changes. Unfortunately the agreement also enables the employer to withhold information if it, according to the employer, would entail so-called "risk of damage." Through this secrecy rule, when the employer's judgement prevails, the possibility of receiving information has been substantially reduced. The agreement has not brought out all the information that the unions have sought.

In recent years the discussion of the information problem has been intensified. This is very natural, since the availability of information is of paramount importance for all activities involving industrial relations at the workplace. The party to the employment relationship, the employer or the employee, who has access to all information has a basis for making decisions in the desired direction. Access to all information is completely decisive in effective negotiations between the parties.

The even greater importance of the problems of information and secrecy led to discussion of this complex issue in great detail at the 1971 convention of the trade union federation. The questions were: (1) How shall the trade union organization receive all and full information? (2) Who shall decide when a piece of information should be kept secret?

Our convention recommended some measures by which the trade union organizations could be satisfied: (1) worker representatives on the corporate board; (2) employee auditors; (3) a reform of the collective bargaining act.

The new collective bargaining act we are talking about here provides a whole new framework for full disclosure of relevant information to the local union. The employer is obliged to keep the union informed on a continuous basis.

In 1973 we introduced the law dealing with worker representatives on the corporate board, two of them in companies with more than 100 employees. The law which will be revised in 1976, aims at strengthening the employees' access to information and participation. Before and after the bill became law, a thorough discussion was carried on about the need for secrecy. Many employers maintained that serious secrecy problems would arise as a result of worker access to information and decision-making. In some cases companies tried to provide separate secrecy rules for the worker board members. However, we never accepted any such restrictions. We were very firm in maintaining that the trade union representatives must always have the right to bring information to the executive board of the local union.

Conclusion

After two and one half years' experience under the act we can draw some conclusions. Since the act will now be revised, made permanent, and form an integral part of the new industrial relations system, we have made a thorough evaluation of its results. It is very obvious that there have been no problems whatsoever concerning secrecy. The trade union representatives have done a very good job of handling their information duties and have not endangered business.

On the question of employee auditors, or consultants, an agreement has been concluded between LO, the white-collar workers' union in industry, and the SAF. According to this agreement the employees may locally, through their organization, appoint an outside consultant who has the right of access to all records and documents. The consultant shall in turn inform the representatives of the local union. If a secrecy problem should arise, the agreement provides for the following procedure: the employer may suggest to the consultant that a matter should be kept secret. The consultant then has to contact three representatives of the local union. The trade union representatives then decide themselves if a piece of information should be kept secret.

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These few examples of how we have sought to solve the questions of information and secrecy in the recent past will guide us when we shall seek passage of the new collective bargaining act.

UNION SYMPATHETIC ACTION IN SUPPORT OF FOREIGN CONFLICTS UNDER THE NEW LEGISLATION

Åke Bouvin

I would like to say a few words about union action taken in sympathy with foreign conflicts, notably union actions in support of labor organization in a foreign labor struggle. But I also comment on sympathetic actions in support of political opinions. In my remarks, I will emphasize only what is applicable to unions with collective agreements.

I have chosen this topic because it is of international interest. In practice the problem may be of limited importance. In Sweden, for instance, during the last ten years we haven't had many international sympathetic strikes. As in other countries, the transport workers are the most active in this field. They have a key position because they have effective means of stopping transports to or from an employer involved in a conflict.

During the last years new factors have given these problems increased importance. We have got new markets. The internationalization of the enterprises has continued. International cooperation between the employees' federations has been intensified. Note, for example, the new European union organization, established in 1973, and a similar organization in the Nordic countries in 1972.

At present only the employees' organization use union sympathetic actions internationally--in a real sense. Such measures can be undertaken for unselfish reasons, for instance, to support a worker in a country with weak trade unions. But the unions can also have the aim of supporting their own interest. In an international alliance an organization can support a brother organization and count upon getting the same kind of help in the future. The aim of the strike may also be raising the level of wages in a low-salary country in order to prevent enterprises from removing their activities from the country in question. In this way jobs can be saved for those who are going to strike.

In the following discussion I will summarize present Swedish legislation, analyze the proposal of the Swedish Labor Legislation Committee, and, finally, explain the Swedish government's attitude toward the Committee's proposals.

Summary of Present Swedish Legislation

According to Swedish legislation governing collective agreements, sympathy strikes at the national level are not allowed if the primary conflict is illegal. The law does not contain provisions for cases in which the primary conflict originates in another country. However,

in a decision of the Swedish Labor Court it was established that the law does not prohibit sympathy strikes in support of one side in foreign industrial conflicts. So, in principle, such a step is allowed. However, one condition is that a primary conflict must in fact exist abroad before it can be supported by a sympathy strike. In other words, it is not enough if one side in another country is about to enter a labor conflict but for some reason or other has not actually done so.

In other respects Swedish law is not clear. Nothing is said specifically about the nature and aims of the primary conflict. Moreover, it is not quite clear whether the primary action must be legal in the country in which it occurs. Nor is the legal relationship between the primary and the secondary action made explicit. Concerning sympathetic actions with political background the Swedish law is also somewhat unclear, but the legislation does not contain any prohibition against such strikes. The Labor Legislation Committee, however, suggested a definite prohibition of sympathetic action in such situations. It should be observed, however, that the rules of damage, which the committee proposed, are formulated so that damage doesn't always follow, for instance in a short term political strike.

Proposal of the Swedish Labor Legislation Committee

Concerning sympathetic strikes in support of a union in a foreign labor struggle the Labor Legislation Committee has tried to formulate a rule which in principle will be as simple as possible. In this respect the Committee has been successful. But it was not quite as successful in formulating a rule which will be easy to apply. The Committee proposes that a Swedish sympathy strike shall be allowed if the primary action is legal according to the law of the country involved, or--when that is not the case--if it would have been legal under Swedish law.

Moreover, according to the Committee, a strike by a Swedish union shall be allowed on condition that the primary action has actually been taken in another country, or at least that it is begun at the same time as the sympathy strike. Another condition is that the primary action must have a trade union basis. A final condition is that the sympathy action should be decided in due course by a union which is a signatory to the Swedish collective bargaining agreement.

I have said above that the primary conflict should be legal, either according to Swedish law or the laws of the country involved. The Committee feels this stipulation would guarantee an acceptable approach since the right to take sympathetic action in Sweden will not be dependent on the extensive limits placed on the right to take union action which apply in some other countries. At the same time it will still be easy to decide the legality of the sympathy strike when it is determined that the primary action is legal in the country in which it takes place.

The Committee's intention in formulating this basic rule is to go as far as possible in permitting union sympathy strikes in legitimate cases. Without departing from the demand for legal controls over industrial peace in the Swedish labor market. The Committee does not want to recognize labor actions which are sympathy strikes in name but not in fact. This is also the case in current Swedish labor law. If the company involved cannot prove that a proposed strike would be a fake sympathy strike, then the union may determine what steps are necessary in order to bring about the required results.

In deciding whether the Swedish action can be approved, the Committee feels that certain factors must be considered. These include the actual effect of the primary conflict, both economic and otherwise, the time relationship between the actions in Sweden and abroad, and the extent of the conflict. The Committee proposes that regulations be made optional so that agreement can be reached on a longer period of labor peace, and--in contrast to other rules concerning industrial peace--that the right to strike can be extended through negotiation.

There has been opposition to the Committee's proposals, both from employers and employees. The employers do not want to allow sympathy strikes if the primary action is illegal in the country involved, or if it would be illegal according to Swedish law. This is mandated by the concept of industrial peace. On the other hand, the employees' organizations think they should have the legal right to decide for themselves whether to act in sympathy with employees in another country. They feel that it is often difficult to determine satisfactorily in Sweden just how legal the primary conflict is. In addition, they also feel that they should be allowed to take sympathetic action even if a primary strike has not actually occurred.

Government Attitude Toward Labor Legislation Committee Proposals

Now, how does the Swedish government intend to solve the problem? First we should ask if the problem needs to be solved by legislation. Some people feel that the question of international sympathy strikes does not need to be covered by any special regulations in Swedish labor law, since it is so difficult to predict the effects. Instead, we could use the general rules intended mainly for Swedish conditions in dealing with the right to and limitations on sympathy action. These rules apply to all signatories to the Swedish agreements on collective bargaining. The concept of "public order" could also be used--a basic rule in international civil law. This would mean that the regulations affecting industrial peace in the legal code of the country involved would not apply if they were obviously inconsistent with the basis of the legal code in Sweden. However, such a system would be pretty vague, and could be very difficult to apply. So we need some definitive statements.

What kind of statements does the Swedish government have in mind? First of all, I must mention that the Swedish government doesn't intend to prohibit political strikes. On this point the government rejects the proposal of the Committee and agrees with the opinion of the employees. We haven't had any big political strikes in Sweden for a long time, and there doesn't seem to be much danger that political strikes will now become more common. But under such an arrangement it will not be quite clear what is valid. In principle, however, political strikes are allowed. Probably lengthy strikes are illegal, strikes which totally prevent the employer from running the enterprise. As to the sympathy strikes in support of foreign union interests, the government is critical of the proposal of the Committee.

I would venture to say that it will be very difficult to find out whether the foreign primary conflict is legal or illegal. Therefore it is better not to have rules of permission. The demand of the Committee that the primary conflict should actually have taken place will ensure that a sympathy action cannot be called favoring workers in countries in which there is no union freedom and where the workers who really need help can't struggle for their labor rights. It is also difficult to draw the line between primary political action and one which is a labor conflict.

Accordingly the government will replace the proposal and is instead prepared to meet the wishes of the employee organizations; that is, propose a regulation which will give the unions the right to take sympathy action. Considering the sense of responsibility which unions show in Sweden today, there is no reason to think that such a right would be abused, especially since it is intended to give this right only to the top level of the union hierarchy: their central headquarters.

It is necessary, however, to have some sort of limitation. One must be able to prevent an organization from striking for reasons which are entirely contrary to what the law intends. Without such leverage a phony strike could take place. Naturally there is no reason to suspect that our well-established unions would be guilty of such action, but laws are written for the future. We can't deny that some smaller organizations might come under the power of irresponsible people who would be willing to use any loopholes in the law. For example, they might strike for higher wages, but claim that the strike was a sympathetic action in respect of political conditions in another country. In other words, the purpose of the strike must actually be related to a primary action. There must be an actual connection between the Swedish action and the foreign conflict.

One more demand should be discussed. The Swedish action should not be allowed to reach unreasonable proportions. Normally, sympathy strikes

are by nature of short duration. If the strike tends to be prolonged, we should ask if it can still be considered a sympathy strike. The legal situation in Sweden is not clear on this point in cases not involving political strikes. The Swedish government's proposal assumes, I think, that at least sympathy strikes with a political background will take the form of short demonstrations, while strikes of long duration may be regarded as a direct attack against the employer. In such a case one can't talk about a sympathy action. In the case of labor conflicts--and this applies especially to boycotts of foreign ships--longer strikes could be allowed.

In my opinion, we don't need statements other than those I mentioned in the Swedish legislation. We must trust the judgment of the unions. If the strike is called by the international trade union organization, it must be regarded as proof that the action has an acceptable goal.

* * *

If we look back, some time from now, at the Swedish legislation, we will find perhaps that Sweden's example has not been followed by other countries. But then we must remember that almost all Swedish workers--90 percent--belong to unions and that the Swedish unions are responsible and have abstained from extreme strike action.

THE PREROGATIVE OF INTERPRETATION OF COLLECTIVE AGREEMENTS UNDER THE NEW LEGISLATION

Folke Schmidt

There is in employment relationships a well-established principle that the employer gives orders which the employee has a duty to obey. In English textbooks they generally refer to the opinion of Lord Justice Karminski in *Pepper v. Webb:* "It has long been a part of our law that a servant repudiates the contract of service if he wilfully disobeys the lawful and reasonable orders of his master." (1969 2 All E.R. 216) The Swedish Labor Court has expressed this rule forcefully as a duty to obey orders even when the order can be disputed. Legal writers speak of a prerogative of the employer to decide disputes over the interpretation of the contract of employment (see my own study Tjänsteavtalet, 1st ed. 1959, p. 170.) As Mr. Bengtsson has told us, the bill under preparation will transfer the interpretative prerogative from the employer to the local branch of the union which is party to a collective agreement. Ordinarily the prerogative will be handled by the board of the union club at the shop.

The decision of the Labor Court 1934 no. 179 is the leading case of the law as it now stands. Zackrisson was the president of the union club at flour mill, the Stokkeby Company. One Friday the company posted a notice that the mill was going to run in three shifts the coming Sunday. In the last few months the workers had been laid off for some periods due to alleged shortage of work. Naturally, the workers were not pleased at the idea of doing overtime work on Sunday with the prospects of further layoffs in view. The following day, i.e., on Saturday, which at that time still was an ordinary workday, Zachrisson told his manager that the work on Sunday which had been ordered was not going to be performed. Later Zackrisson was discharged by the company.

The union took action in the Labor Court disputing the justification of the discharge. The Court discussed the question whether Zackrisson had been in breach or not, and found that this was the case. It expressed its opinion on the general issue of the employee's duty to obey orders irrespective of the matter whether the collective agreement should be interpreted as embodying a duty to perform the work concerned. "The union side has claimed that a duty to obey an order cannot be assumed to exist when the duty to perform the work is disputed, since in that case the employer, by claiming an interpretation which is as such impossible, would enforce a work which otherwise would not have been allowed. For equally good reasons it could be alleged, however, that in case a refusal to work was allowed when the duty was disputed, the worker would be able, by means of an interpretation as such untenable, to prevent the work which the employer was entitled to impose. In this connection it should be noted that,

generally speaking,it might be more difficult to compensate later on damage caused thereby that a work rightly imposed has not been performed than to redress a damage due to the fact that the workers were forced to take upon themselves a work which they were not obliged to perform... Considering the employer's right to direct and distribute the work, the Court must assume that when a dispute arises concerning the duty to work and the dispute cannot be solved by the Labor Court before the work is intended to be performed, the employer as a rule has a right to require the work to be performed irrespective of the dispute while awaiting a legal decision on the disputed matter."

There is a limit to the interpretative prerogative which closely corresponds to the requirements indicated in the *Pepper v. Webb*, namely, that the order must be "Lawful and reasonable," although this limit is expressed somewhat differently. According to the Labor Court the work which is required must be reasonable, and the duty to obey yields when conflicting with an interest of higher quality."

The Court declares, in addition, that "the interpretation claimed by the employer must be a meaning of the contract presented in good faith."

When demonstrating to my students the interpretative prerogative, I draw on the blackboard two concentric circles. The inner circle represents the undisputed coverage of the agreement, the outer circle represents the widest possible field or what can possibly be covered by a very extensive interpretation of the contract. If the order concerns a job outside the wider circle, the interpretation of the employer cannot be claimed to be presented in good faith. The space between the outer and the inner circles is the grey area where a duty may exist. The right solution will be laid down by consecutive decisions in disputes over the meaning of the contract, possibly it will be a line in between the two circles.

What is the basis of the rule on the interpretative prerogative of the employer? As already indicated, the interpretative prerogative has its roots in the law of master and servant and can hardly be considered as the outflow of the sophisticated reasoning of the Labor Court on the matter whose interest is foremost at stake, that of the employee who should not be forced to do work which he is not obliged to do, or that of the employer who wants the work performed.

What necessitates a change of the old established rule? The Committee, which was appointed in 1971 and entrusted with the drafting of a new statute did not recommend any substantial change of the law as it is today. The idea of transferring the interpretative prerogative from the employer to the union local originates from the dissenting opinions of the three union members of the Law Revision

Committee. They explain that "the interpretative prerogative that has been given the employers and their organizations in the jurisprudence of the Labor Court has meant an advantage the importance of which can hardly be exaggerated". Evidently the union members picture an employee to be like a puppy who can be pushed around by his foreman, and that every whim of the foreman must be complied with.

Are disputes over the meaning of the contract rare or do they occur frequently? The question has bearing on the matter whether the prospective change of law will merely have the psychological impact of creating a feeling of freedom from suppression by supervision, or will it change the daily routine at the workshop?

Disputes regarding the payment for the work constitute a large category which can be disregarded since it is not intended that the union shall take over the interpretative prerogative in such matters. The disadvantage of the present state of affairs is very slight. The employer has the purse strings and decides *ad interim* which piece rate shall apply. If he does so wrongly, the employee will be compensated later on, with interest.

The interpretative prerogative concerns subjects like the following: (1) What jobs are covered by the agreement? Does a worker at an iron mill or an engineering shop have a duty to assist on the construction of a new factory building when building workers are called in temporarily? (2) Is the employer allowed to put the work on shifts? And the dispute may concern only an individual worker. (3) Is the worker obliged to take overtime work when he considers himself excused for personal reasons? (4) Several disputes have their origin in a directive that a worker shall move from one job to another either permanently or temporarily because a worker with the same skill is absent. For natural reasons, he will often object when the workplace is less pleasant than the present one or when he will have to take over a night shift. (5) Another possible ground for disputes is the question whether a worker is allowed to have a leave of absence without pay. In the last year, rules regarding a short leave of absence have been introduced in the Swedish collective agreements. You are allowed to leave with pay, e.g., for the purpose of the employee's own wedding, his 50th anniversary, his first visit to the doctor or the dentist in case of an acute disease or an accidental injury. In most cases the meaning of the contract is known to the experts, but it may not be clear to the ordinary worker or his foreman.

The effect of the reform is hard to predict. It is not intended to influence efficiency, and the work may flow as smoothly as before. But there is the danger that the employer will be put under pressure

to make temporary deals. For example a worker refuses to take the job of a sick fellow worker unless he is paid some additional money per hour. The foreman does not want to take the trouble of referring the matter to the union official. He may yield, with a detrimental effect upon the general wage structure. That is, the claim of the worker will likely be followed by other similar claims. What is going to happen is largely dependent upon the policy applied by employers and by union officials.

THE UNION'S RIGHT OF NEGOTIATION UNDER THE NEW LEGISLATION

Axel Adlercreutz

There is nothing so vague, so devoid of concrete and comprehensible contents and substance as the right of negotiation. Yet it is the fundamental basis for the collective bargaining system. So much depends on how the right of negotiation is used and practiced. It has some resemblance to a pot,--the important thing is what is poured into it--a beautiful and well-made pot may contain bad wine and vice versa.

The right of negotiation is defined in the Act of 1936 concerning the right of association and negotiation, as "...the right to institute negotiations respecting the adjustment of conditions of employment and respecting the relations between employers and employees in general." According to the Act this right is conferred, on the one hand, on the employer or the employers association of which he is a member and, on the other hand, on the employees association of which the employees are members.

On the employee side, it is a right for the trade union to be recognized as bargaining representative for its members. The Act does not prescribe any special qualifications for the union, no proof that it is representative. There are no elections to determine exclusive representation, no majority rule. A trade union has the right of negotiation if it has members employed in the place of work, but in principle it bargains only for its members. Although the law is based on contractual principles, the outcome, the collective agreement concluded, may serve as law in all enterprises bound by it as well as in nonaffiliated firms as the custom of the trade.

The question of representativeness has so far been a problem of minor importance as interunion disputes have been rather rare in Sweden. Lately, however, the topic has attracted some attention, as I will discuss later on.

The attempts to define the right of negotiation continue: "The right conferred upon one party shall entail upon the other party the obligation to enter into negotiations. This duty involves, in more detail, attendance at the meeting for negotiations and, where necessary, the making of motivated proposals for the settlement of the question of which negotiations were requested." This expresses roughly what the (American) National Labor Relations Act says in Sec. 8(d) about meeting at reasonable times and conferring in good

faith. The rule "does not compel either party to agree to a proposal or require the making of a concession..." to continue quoting from the NLRA. Neither does the Swedish Act--as distinguished from the NLRA--require the entering into formal agreements, written contracts, when agreement has in fact been reached. This difference has lately gained some importance, another point which I will discuss later on.

The Swedish Act contains no restrictions as to the scope of negotiations; no distinction is made between mandatory and nonmandatory subjects of bargaining. It says, vaguely, that negotiations may concern conditions of employment or employer-employee relations in general.

The negotiations can aim at a collective agreement. This was apparently the most important object in the mind of the legislators. But grievances as to interpretation and application also lie within the scope of negotiation duties. The Act does not use the term grievance or dispute to define the issue, only that it must concern an employer-employee relation. In the preparatory work it comes out clearly that the subject matter for such negotiations is supposed to be something that happened in the past or something that has already been established. It is interesting to note that the Committee on whose report the 1936 Act was founded discussed--and rejected--the possibility of requiring negotiations before a step was taken or a decision was made, for instance, a dismissal. Such a duty for the employer to negotiate in advance would presuppose the existence of works councils or other institutions for negotiations; and to propose the establishment of such institutions was outside the mandate of the Committee. The aim of the legislation was only to secure labor equality of bargaining power as to wages and other conditions of employment, in particular for white collar employees, not to secure labor influence or participation in the management of the enterprise.

The rules in the 1936 Act on the right--and the duty--to negotiate have not been sanctioned in the usual way. Omission or refusal to enter into negotiations does not give rise to an action for damages. The injured party can only refer the case to the official conciliator, who can in his turn report to the Labor Court. The Court may then--in case of continued refusal to negotiate--order the negligent party to appear before the conciliator and perform its duty of negotiation under the threat of a penalty.

I have so far dealt only with the right of negotiation as based on law. It should be mentioned, too, that most collective agreements contain provisions for grievance procedures; according to which all disputes arising from the agreement should be handled. There is, then, also a contractual duty to negotiate. Most of the rules involving grievance procedures are based on the same pattern, included the Basic Agreement between the top organizations in the

labor market, according to which negotiations should first be conducted locally between the parties in the work shop concerned. If the dispute cannot be settled locally, it may be referred to the national organizations for central negotiations. If the dispute is such that it can be brought before a court (a dispute over rights) and settlement has not been reached at the national level, the parties--or rather the dissatisfied party--may refer the dispute to the Labor Court or to arbitration; but the parties are not allowed to resort to direct action. Although the fulfillment of the duty to negotiate is a precondition for litigation in the Labor Court, the plaintiff is considered to have fulfilled his duty if the other party refuses to negotiate. The Labor Court is thus in reality (in normal cases) the third--and final--instance in the machinery for the handling of disputes, and the cases brought before the Court are therefore usually carefully selected and well-prepared.

If the dispute is one over interests, which is seldom the case during the life of an agreement, direct action is in principle allowed after negotiations have been terminated.

Refusals to negotiate according to these rules and negligence in the fulfillment of the duty amount to breach of contract. The sanction is damages, and many cases in the Labor Court concern such matters.

These kinds of negotiations, firstly, those with the aim to reach a collective agreement or alter a collective agreement, and secondly, those conducted according to the rules of a grievance procedure, are negotiations in the strict sense: they are formalized and have a special status.

However, there are also other kinds of contacts which are not regarded as real negotiations but as discussions, talks, or, in more formalized ways, joint consultations.

Joint consultations is the term for the activity of the joint works councils, according to an agreement of 1966. They have no decision-making functions, except in minor issues. The law provides that consultations in the works councils should precede management's decision, the idea being that the outcome of the consultations should be taken into consideration before the decision is made. Informal talks can also occur when formal negotiations are out of place. Such talks may concern matters of management, for instance, the execution of the managerial prerogatives in individual cases. It is usually held, although the issue has never been brought before the Labor Court for decision, that the employer has no duty to negotiate over matters which involve his managerial prerogatives (Section 32-matters) in so far as such prerogatives still exist, for instance, the right to direct and distribute work in the enterprise. All the same, informal talks on such matters can take place.

As far as state or municipal employees are concerned, their legal right of negotiation is restricted and in some respects reserved for decision to the public employer. Managerial issues have been expressly exempted from the right of negotiation, but here, too, informal talks with the trade union officials do occur.

Such talks cannot be conducted under the threat of strike, nor can they be resolved conclusively by way of legal proceedings. The employer has the right to decide, and talks or discussions on such matters are not regarded as negotiations in the strict sense of the word.

The employer is not considered to have a duty to negotiate in an illegal strike situation--on the issue the strikers wish to promote. On the contrary, he is strictly prohibited by the employer's associations from doing so. But if contact is established, the proceedings are not referred to as negotiations; they are only talks. This is not mere word-play; the distinction between formal negotiations under legal or contractual obligations and informal talks is not unimportant.

Now a new trend, a new development is on its way. The trade unions, which until the end of the 1960's refrained from demanding participation in management, are changing their policy. The employer prerogatives, long tolerated as an unavoidable necessity, are now being considered intolerable or at least too far-reaching. The demands now being made for employee participation in matters of management prerogatives involve the need for new forms of negotiations that are not merely retrospective in character as the grievance procedures and not confined to employment conditions as the classical form of collective bargaining. These new forms of negotiations are aimed at and suited for conferring participation in important decisions on the employees, represented by their union, not only in matters concerning labor relations in a strict sense but also in the conduct of business.

To meet these needs as far as negotiations are concerned the right and/or duty to negotiate are being widened in two ways:

(1) the subjects of bargaining will be expressly widened to include managerial prerogatives;
(2) in certain important matters a duty to negotiate in advance, a so-called *primary* duty to negotiate, is imposed **or** will be imposed upon the employer.

This direction of thought was present when the Committee prepared the 1936 Act on the right of association and negotiation, but the idea was then rejected as the circumstances were not ready

for such a step 40 years ago. The Committee pointed to the need of a negotiating partner on the employee side, which would not always be found. For such purposes nowadays the legislator has chosen the local union which has entered into and is bound by a collective agreement with the employer concerned or his association. Unions with an established relationship--as distinguished from those without a collective agreement relationship with the employer--are entitled to this extended right of negotiations.

This distinction and this duty to negotiate in advance in some cases have already been introduced in some recent legislation. Particularly in the Act of 1974 concerning employment security. I wish to stress the distinction there between the *discussions in advance*, which the employer is obliged to enter into with the established trade union before the notice of dismissal has been delivered, and the *subsequent negotiations* when a dispute as to the objective cause of the dismissal has become an actual fact--a dispute which may finally be settled by way of legal proceedings. I must add that normally the employment does not cease until negotiations and legal proceedings have been finally concluded.

I will now discuss the bill on the right of negotiation and on collective agreements, which in the final draft seems to be called the Act on participation (or co-determination).

The new legislation is aimed at conferring on the employee side influence in all matters involving employer-employee relations and to secure for the trade unions participation in the employer's decision on important questions. It aims at "democracy at the work place."

According to the bill, the right of negotiation covers expressly all questions which concern employer-employee relations. The fundamental right of negotiation, designed roughly according to the present law, is conferred on every organization which has members employed in the enterprise. This right--and the corresponding duty--to negotiate covers collective issues as well as individual grievances and also matters on which the employer has the right to decide.

The bill further contains two kinds of extended or reinforced rights of negotiation, which are conferred only on trade unions with established collective-agreement relations with the enterprise:

(1) First, Sec. 12 entitles such a union to call for negotiations on all questions, even if the employer has the right to decide on the matter according to the collective agreement. The difference when compared with the general right of negotiation conferred on all unions with members in the

workplace lies in the consequences of such a request for negotiations. The employer has to postpone his decision and put off all other measures until the negotiations have been concluded. In the proposal, only negotiations at the local level are required in order not to prolong the delay, but, as Ingemund Bengtsson said, the final legislation will provide for the possibility to request central negotiations as well. According to Sec. 12, the initiative to institute negotiations lies with the trade union concerned, but the employer is under obligation to keep the union continously informed as to the development in the production and the economy of the enterprise as well as his personnel policy, and thus provide opportunity for negotiations at an early stage.

(2) Second, according to Sec. 13 a primary duty to negotiate--a duty to negotiate in advance, before a decision is made--is imposed on the employer. The initiative thus lies with the employer, but this section covers a narrower range of subjects.

How far-reaching is this primary duty to negotiate? The action or decision which the employer has in mind must imply an important change of operational or working conditions or employment conditions. The provision mentions as examples reorganization, close-down or curtailment of the operation, and transfer or leasing out the enterprise. Such matters would be subjects for the primary duty of negotiation. In the final legislation, the scope of this section seems to have been broadened to comprise all important topics, also those covering individual cases.

The difference between Sec. 12 and Sec. 13 is that the employer in matters covered by Sec. 13 has to institute negotiations on his own initiative. Sec. 13 covers matters which are now subject to joint consultations in advance according to the joint works councils agreement, that is, general matters with at least potentially far-reaching effects for the workforce. Failure to comply with the rules will give rise to an action for damages. This is already possible according to the agreement on joint works councils or other collective agreements, but not according to the 1936 Act on the right of association and negotiation.

The reason why only established unions are entitled to this extended and reinforced right of negotiations is the contention that otherwise the duty to negotiate might be too heavy for the employer and that the important authority to postpone the employer's decision and the execution of his plans should not be conferred on every trade

union which might have members employed in the firm, but only on unions which could be expected to have good judgment and responsibility. Nevertheless, this restriction implies a problem from a democratic point of view: in Swedish law the right of negotiation does not include the right to have an agreement documented in the form of a collective contract, even if the parties have in fact reached agreement on terms and conditions of employment. Thus the employer can, by refusing to sign a collective contract, exclude a union from the privileged position of an established union--a union with collective agreement status. This is done sometimes in compliance with the demands of one established union which does not wish to have rivals, also sometimes for practical reasons, because it may be a disadvantage for an employer to have more than one union to deal with. But this approach again implies that the employees in the unit concerned, but is generally affiliated to the strongest central organization in the trade, whereas the rival union generally is a break-away union.

The philosophy behind the extended and reinforced right of negotiation may be stated in this way: the legislation should give a legal basis for a system in which the employer cannot carry out any important changes affecting the employees without having--in one way or another--made sure that there are no reasonable objections to the changes which he has in mind. For these purposes the parties concerned should themselves in some sort of basic agreement, work out and develop a method for employee participation in the decision-making process.

The legal rules should be only a basis. To promote the formation of such agreements, Sec. 26 of the bill sets forth that whenever a collective agreement on terms and conditions of work is entered into, the union is entitled to request that rules concerning employee influence on certain questions should be included in the agreement. The questions are those referred to as Sec. 32-Matters, that is, the direction and distribution of work, employment and discharge, or the infliction of sanctions on the employees for breach of contract. The union may also demand rules concerning the formation of joint bipartite committees to oversee the fulfillment of negotiations according to Sec. 12 and 13, and of the duty to submit information to the union according to Sec. 18.

In order to reinforce this right to demand influence rules the bill contains a provision that the trade unions are exempted from the peace obligation if they have demanded such influence rules but agreement has not been reached on the matter, whereas a collective agreement has been concluded on wages and other conditions of employment. This provision implies that there will be some sort of obligation to enter into an agreement, a trend as yet unknown to Swedish law.

The Committee which prepared the draft disagreed on many points. The representatives of the employee organizations demanded a more radical reinforcement of the right of negotiation, and the final proposal goes a long way to meet these demands. But how it will be worked out in detail, I do not know. This much seems to be clear: the level of co-determination will be a matter for collective bargaining. Thus,many questions are left unanswered-the Act will mainly give the employee unions a strong bargaining position. If they wish to have joint committees in the enterprises as an instrument for participation in the decision-making process, it is up to them to demand the establishment of such committees. In such actions they are exempted from the peace obligation, as has been noted, in order to gain influence not only over the direction and distribution of work but also--according to the final proposal over the management of the enterprise. If they prefer, they may rely mainly on the rules involving the right of negotiation in the Act. The elimination in the final proposal of this distinction between these two more or less interdependent employer prerogatives that are included in Sec. 32 will at least also dispose of the difficulties to draw the line between them. And while all these questions seem to have been given equal weight in the final proposal, nothing prevents the parties from making such distinctions in a collective agreement on influence rules or on co-determination.

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What the outcome of this reform will be in the long run is a matter of deep concern for both parties as well as for our economy. From the employers side, fear has been expresses as to the possibility to operate efficiently in matters of management, at least in the case of far-reaching employee participation. It all depends, of course, on how the machinery in the Act or the machinery set up according to collective agreements concluded will be used.