

# **THE ACTORS OF COLLECTIVE BARGAINING (SWEDEN)**

**SWEDISH REPORT TO THE 17<sup>TH</sup> WORLD CONGRESS OF LABOUR  
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## Introduction and general background

The regulations concerning collective bargaining in Sweden have been developed in a tradition of self-regulation. The process – that in general is similar in the Nordic countries – has been described as a three-step-process.<sup>1</sup> In the *first phase* basic regulations concerning workers' protection were developed in the first half of the 18<sup>th</sup> century. Apart from this the official liberal state ideology was non-intervention. Hence there was a scope for self-regulation where the growing trade union movement and the employers struggled to establish equilibrium.

The situation settled and in 1906 there was an arrangement – called the “December compromise” – between the dominating central organisations on the labour market. A basic structure for collective bargaining was founded. The trade unions and the workers won the right to organise and in exchange the employer's right to lead and distribute work as well as to hire and fire workers was recognised by the trade unions.

The regulation of the labour market through collective agreements concluded between the employers and the trade unions was characteristic for the *second phase*. However, the door opened for state intervention through legislation in order to establish a legal normative structure for the procedures of collective bargaining. In 1928 the Riksdag had taken the Act on collective agreement and at the same time the Swedish Labour Court (AD) was set up.<sup>2</sup>

In 1936 the Act on the right of association and the right of collective bargaining completed the legal framework for self-regulation and collective bargaining covering the whole private sector.<sup>3</sup> In 1938 the “Saltsjöbaden spirit” was established on the labour market through the Saltsjöbaden Agreement, concluded between the dominating parties on the private sector, and further state intervention measures in order to promote industrial peace could be avoided. In

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<sup>1</sup> Aubert, W., *Continuity and Development. In Law and Society*, Norwegian University Press, Oslo 1989, p. 193–197. Concerning the history of labour law in the Nordic countries, see also Hasselbalch, O., *The Roots – the History of Nordic Labour Law*, in *Stability and Change in Nordic Labour Law*, Scandinavian Studies in Law (Volume 43), Stockholm 2002, p. 12–35.

<sup>2</sup> Government proposition 1928:253 om kollektivavtal and Government proposition 1928:254 om arbetsdomstol.

<sup>3</sup> Government proposition 1936:240 med förslag till lag om förenings- och förhandlingsrätt m.m. Such a system was already before 1936 established through the collective agreements for the major part of the labour market. However, the white-collar workers on the private sector were not included, which was an important reason for the legislation in 1936.

1965 important decisions concerning the right to collective bargaining on the public sector was taken by the Riksdag, and in 1976 further steps were taken in order to make the regulations on bargaining in the public sector more equal to the private sector.<sup>4</sup>

In the 1970's the *third phase* developed characterised by demands on joint decision followed by new regulations on consultation and information as well as certain restrictions on the employer's prerogatives.<sup>5</sup> The Swedish *Act on joint regulation of working life* (Swedish statute-book 1976 no. 580; the Joint regulation act; sometimes called the Co-determination act) was taken, integrating *inter alia* the previous Act on collective agreement as well as the 1936 Act mentioned above. From now on the law also provided a complementary legal structure for the prevention of the rising of conflicts between the employer and the employees.

In the following the report will concentrate on collective bargaining, mainly collective bargaining on wages and the general terms of employment. I will also to some extent comment on negotiations concerning the right to joint decision in the work place. Regarding negotiations in legal disputes I will point out some basic facts. Further, the Joint regulation act is optional in most parts and collective agreements are important for the regulating of collective bargaining as well as other negotiation activities.

## **A THE LEGAL FRAMEWORK OF COLLECTIVE BARGAINING**

### *1. Constitutional provisions.*

The Swedish Constitution does not put much emphasize on basic constitutional rights concerning trade union rights, although in practice these rights are well-founded and recognised on the labour market.<sup>6</sup> However, a constitutional provision on the freedom of association is found in the Constitution 2 ch. 1.5 §.

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<sup>4</sup> See Government proposition 1965:60 angående reform av de offentliga tjänstemännens förhandlingsrätt m.m. and Government proposition 1975/76:105 med förslag till arbetsrättsreform m.m. Bilaga (Appendix) 1 and 2.

<sup>5</sup> For an analysis concerning the Swedish labour market in a modern perspective, see Kjellberg, A., *Sweden: Restoring the Model?* In Ferner, A., & Hyman, R. (editors), *Changing Industrial Relations in Europe*, second edition, Blackwell, UK, 1998, p. 88–142.

<sup>6</sup> See Bruun, N., *Fackliga och grundläggande rättigheter i EU*, TCO, Stockholm 1999.

The freedom of association includes the right to organise trade unions and is further protected in the Joint regulation act §§ 7–9. Further, the right to association is mutual to both employers and employees.

Since January 1, 1995, also the European Convention on Human Rights should be applied as an integrated part of Swedish law.<sup>7</sup> The freedom of association is regulated in article 11 of the Convention and even the individual worker's right in the relationship vis-à-vis the employer is accentuated by article 11. Also the individual's right *not* to join an association is considered to be protected by the Convention.<sup>8</sup>

(Further, comments on Constitutional regulations concerning discrimination and equal treatment are touched upon below, see point 8.)

## *2. Legislation.*

2 a and b. Basically collective bargaining and negotiations on the Swedish labour market are regulated in the Joint regulation act. The right to negotiate in accordance with the Act is only for trade unions, employers or employers' associations. In § 6 of the Act there is a basic definition on the terms trade union and employers' association; a trade union etc. must aim to take care of the interest of the employees or employers respectively.

The basic principle presented by the law for the kind of matters which can be subject to collective bargaining, is that the bargaining must deal with the relationship between the employer and the employees.<sup>9</sup> Further, the employee concerned must be a member of the trade union and he or she must be employed by the employer (or at least he or she must have been employed by the employer).

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<sup>7</sup> Government proposition 1993/94:117 Inkorporering av Europakonventionen och andra fri- och rättighetsfrågor. Concerning Sweden's former ratifikation of the European Convention, see Government proposition 1951:165 angående godkännande av Sveriges anslutning till Europarådets konvention angående skydd för de mänskliga rättigheterna och de grundläggande friheterna.

<sup>8</sup> See The European Court decisions 25/4 1996 and 30/7 1998 (both *Torgny Gustafsson v Sweden*) and the Swedish Labour Court Case AD 1998 no. 17.

<sup>9</sup> Hence, the relationship between the organisation and the members of the organisation is considered to be an internal matter for each organisation to regulate in accordance to the statutes of the organisation respectively.

In principle the same regulations should apply to both the private and the public sector, even though there are some restrictions on the area for collective bargaining in the public sector (see point 5 b below).

Three types of bargaining or negotiation activities are regulated by the Joint regulation act:

- Bargaining in accordance with § 10, which is focused on disputes of interests.
- Negotiations in legal disputes (the Act §§ 64–68).
- Negotiations in joint decision matters (the Act §§ 11–14); in principle an information and consultation procedure.

The *general right to collective bargaining* is stipulated in § 10 of the Act and employers, employers' associations and trade unions have a mutual right to collective bargaining. In practice collective bargaining referring to § 10 mainly deals with working conditions such as wages and general terms of employment regulated in the collective agreements. Hence, in practice recurrent wage bargaining is called for when the collective agreements in force expire and that point of time is fixed in the collective agreement respectively. The procedures for these re-bargaining activities resulting in wage-increase agreements are regulated in the collective agreements.

In a collective bargaining perspective it is important to keep in mind that in connection to the right to collective bargaining in interest disputes there is a right to take *industrial action*. However, when the parties have concluded a collective agreement there must be industrial peace between the parties in accordance to the Joint regulation act § 41.<sup>10</sup>

If there is a risk for industrial unrest or if industrial actions have been taken, the Joint regulation act provides regulations for the solving of industrial conflicts through mediation (§§ 46–53).

A certain state authority – the Swedish National Mediation Office – is in charge for mediation and has the task to follow the wage bargaining activities on the labour market. The Mediation

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<sup>10</sup> However, before the parties have concluded a collective agreement on wages etc. the trade union can request a residual right to take industrial action – even if there is a peace obligation concerning other matters – in order to get a so called § 32 agreement on joint decision in a certain matter (the Joint regulation act § 44).

Office can appoint mediators at the request of the parties (§ 47 a). Further, since 2000 the Office also has the authority to take a decision on mediation under compulsion (further comments, see below point 4 b). The Mediation Office can also – at the mediator’s request – decide to order a cooling-off period 14 days before a notified industrial action may begin (§ 49).

Regarding *joint decision matters*, in accordance with § 11 of the Joint regulation act the employer shall on his own initiative – and before he takes any decisions regarding significant changes in his activity or concerning working or employment conditions for employees – enter into negotiations with the employees’ organisation. This primary duty to negotiate must be conducted vis-à-vis the trade union with which he is bound to negotiate pursuant to a collective agreement.

The trade union bound by a collective agreement with the employer can also make a request for negotiations before the employer takes a decision of minor importance not covered by § 11 (see § 12).<sup>11</sup> Under certain conditions there is a corresponding duty for the employer (or a right for a trade union to make a request for negotiation) comprising a trade union not bound by a collective agreement (§ 13).<sup>12</sup>

The entitlements attached to §§ 11–12 are almost exclusively reserved for trade unions having a collective agreement with the employer. Regarding EC law, this restriction on negotiation rights is considered to be doubtful whereas there is no reason for such a demand on a collective agreement as a prerequisite for the right to be consulted.<sup>13</sup> Finally, there is no right to industrial action in connection to the negotiations referring to §§ 11–13.

*Negotiations in legal disputes* should basically be conducted in accordance with the basic regulations in the Joint regulation act if the parties cannot agree on another procedure, but in practice the negotiations are conducted in accordance with the Main agreements on the labour

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<sup>11</sup> For an overview of the regulations on joint regulation in Sweden in comparison to the corresponding regulations in three other Nordic countries, see Edström, Ö., *The Involvement of Employees in Four Nordic Countries*, in *Stability and Change in Nordic Labour Law*, Scandinavian Studies in Law (Volume 43), Stockholm 2002, p. 159–188.

<sup>12</sup> A prerequisite is that a member of such a union is directly involved in a change, in practice an alteration specifically concerning his or her working conditions.

<sup>13</sup> See the Directive (98/59/EC) on collective redundancies, the Directive (2001/23/EC) on the transfer of undertakings and the Directive (2002/14/EC) of the European Parliament and of the Council establishing a general framework for informing and consulting employees in the European Community.

market. There is no right to industrial action in connection to a negotiation in a legal dispute and the Labour Court is the last resort for settling conflicts in these matters.

In many issues that may be subject to negotiations in legal disputes the employer has the preferential right of interpretation until the dispute eventually has been settled. However, concerning the duty to work according to the agreement the trade union has a priority right of interpretation (the Joint regulation act § 34). In order to assert another interpretation the employer must call for a negotiation and in the last resort the dispute can be brought before the Court. If there is a legal dispute on an employee's wage, the employer must immediately call for a negotiation and in the end the matter can be tried by the Court. Otherwise the interpretation will be made in accordance with the trade union's standpoint (§ 36).

2 c. Not relevant for Sweden.

2 d. There are no ad-hoc regulations addressing collective bargaining for specified industries or activities in Sweden.

2 e. In principle not relevant, but some basic principles elaborated in civil law on the conclusion of agreements etc. are comprised by labour law.

2 f. The Joint regulation act is optional in most parts and in almost all lines of business and as is the case in the public sector, there are collective agreements on the procedures for collective bargaining in interest disputes as well as concerning negotiations on joint decision and legal disputes. Hence, the basic structure for collective bargaining etc. is founded in law, but in practice the parties elaborate the regulations in the collective agreements.

2 g. Collective agreements are concluded within the framework of law. Substantial law many times stipulates a basic level for matters that could be subject to regulations in collective agreements. For instance, the length of the holiday period with pay is stipulated in the Compulsory holidays act 4 §, and the number of days stipulated in collective agreements can be more – but not less – than what is stipulated in law.

If there is a dispute on the interpretation of a collective agreement, the matter could be brought before the Labour Court in accordance to the Act (1974 no. 371) on litigation in

labour disputes. However, before the Labour Court deals with a legal dispute it shall be dealt with in negotiations between the involved parties (ch. 4 § 7). This “barrier rule” is of vital importance and the parties themselves resolve in negotiations the overwhelming number of disputes in accordance to the procedures stipulated by the collective agreements. The parties can also agree on that the dispute will be dealt with in an arbitration board or a corresponding committee.

### *3. The legal definition of collective bargaining.*

Regarding the term “collective bargaining” there is no legal definition or equivalent term in Swedish law.<sup>14</sup> In the Joint regulation act different types of collective bargaining or negotiations are regulated (as mentioned above, see point 2 a and b). In legal practice the term collective bargaining basically seems to be equivalent to bargaining in accordance with § 10 of the Joint regulation act.

### *4. The duty to bargain.*

Bargaining orders making the duty to bargain more elaborated are stipulated in the collective agreements. However, basically the procedure for collective bargaining is regulated in §§ 15–17 of the Joint regulation act. In accordance to § 15 a party that has the duty to bargain must appear to a negotiation meeting. Further, the party has the duty to present and state his motive for a suggestion concerning the matter that is subject to the bargaining.

The right to bargain for one party means an obligation to bargain for the other party. The duty to bargain is called forth when a party presents a proposal for a bargaining or negotiation (§ 16). The subject for the bargaining must be presented in the proposal, and on request from the other party the proposal must be written. Finally, the bargaining procedure must be conducted in a “speedy manner”.

4 a. In Sweden there is no “duty to bargain in good faith” equivalent to the requirements in many other countries. Swedish law does not formally require willingness to compromise or

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<sup>14</sup> See Svensson, G., *Industrial Relations, including Collective Disputes, in the Public Sector (Sweden)*, Report to the XVI<sup>th</sup> World Congress of the International Society for Labour Law and Social Security, held in Jerusalem in September 2000.



that the bargaining is conducted in view of reaching an agreement. However, EC law requires that negotiations on certain matters concerning information and consultation shall be conducted in a view of reaching an agreement, and Swedish law does not fulfil this requirement.<sup>15</sup> Anyway, in practice collective bargaining generally is conducted in a spirit of co-operation.

4 b. If a party that has the duty to bargain refuses to attend a bargaining meeting or in any other respect does not fulfil his obligation to bargain, the Labour Court can find the party guilty of breach of the duty to bargain. Such a violation of the duty to bargain is sanctioned by general damages.

If the parties approve the appointment of a mediator by the Mediation Office, the mediator shall call the parties to a bargaining meeting or take the initiative to some other activity in order to resolve the conflict (the Joint regulation act § 48) . A refusal to respond to the mediator's notice to attend the bargaining can be made punishable by a fine.

Since 2000 the Mediation Office also can appoint mediators without the consent of the parties (the Joint regulation act § 47 b). This can be done if one of the parties has given notice of industrial action and the Office judges that the mediators satisfactorily can contribute to resolve the dispute.

However, if the parties have signed a collective agreement on bargaining procedure and more and registered the agreement with the Mediation Office, they are exempted from the procedure on mediation without consent. Hence, such collective agreements containing a bargaining order, regulations on the appointment of mediators and the mediator's authority etc. are very frequent on the labour market. Further, in these agreements there are regulations on mediation procedures in combination with the postponing of industrial actions.<sup>16</sup>

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<sup>15</sup> Compare Council Directive (75/129/EC; now 98/59/EC) on collective redundancies, the Council Directive (2001/23/EC) on the employees' rights at transfers of undertakings (former Directives 77/187/EC and 98/50/EC) and Council Directive (94/45/EC) on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees. See also Fahlbeck, R., *Industrial Relations and Collective Labour Law: Characteristics, Principles and Basic Features*, in *Stability and Change in Nordic Labour Law*, Scandinavian Studies in Law (Volume 43), p. 87–133, p. 120.

<sup>16</sup> Concerning these agreement in connection to the regulations concerning mediation, see Nyström, B., *Nya samarbetsavtal på den svenska arbetsmarknaden*, in *Septemberförslaget 100 år*, Jurist- og Økonomforbundet Forlag, København 1999, p. 279–297.

An example on such an agreement is the Agreement on industrial development and wage formation (the Industry Agreement) that was concluded in 1997 between large organisations representing important parts of private industry at branch level and the trade unions. The Bargaining Agreement – attached to the Industry Agreement – aims at the promotion of constructive bargaining without industrial actions between the parties resulting in balanced agreements.

Another example is the Main agreement between the Association of Swedish Engineering Industries and Sif (the largest non manual workers union in the private sector). Any of the parties can bring a collective interest dispute before a certain committee within three weeks after the bargaining is finished. If the parties agree, the decision by the committee shall be binding and if so industrial peace must be observed and no strike or lockout actions are permitted. Otherwise, industrial peace is imposed for the three weeks period.

On the public sector the Main agreements from 1993 and 1994 contained regulations of a similar kind, but in 2000 the collective agreements were completed in the light of the new regulations in the Joint regulations act concerning mediation.

#### *5. The Civil Service (or the Public Sector).*

5 a. For many years a trend in Sweden has been that labour law in the public sector has developed to be more like in the private sector. Today the labour regulations on collective bargaining procedures are very much the same on the whole labour market, even if there are certain particulars and restrictions on collective bargaining in the public sector. Further, the relationship between the employer and the employee in the public sector is looked upon as a civil law relationship, even if the employer's decision to employ an employee also has a public law aspect.

5 b. When the Riksdag approved the former Act on public employment (1976 no. 600), declarations establishing restrictions on collective bargaining in the public sector were made.

Two main reasons for the restrictions were presented. First, the principal of political democracy rules the public sector. In order to avoid a conflict with political democracy

collective bargaining must not lead to collective agreements in matters concerning the public sector's objectives, orientation, extent or the quality of the public services. This restriction cannot be found explicitly in the Joint regulation act, but it was expressed in the preparatory works to the Act on public employment.<sup>17</sup>

At the local government sector there is a corresponding prohibition putting restrictions on the competence of certain bipartite bodies to take decisions concerning the activity's objectives, orientation, extent and quality.<sup>18</sup>

Further, the parties on the public sector labour market have concluded the Special Main Agreement (SHA), where they have committed themselves to peaceful bargaining and to avoid industrial conflicts, when the bargaining matter must be considered to touch upon the principal of political democracy.

Secondly, many activities in the public sector include the exercising of authority and such matters are excluded from the right to conclude collective agreements. Expressly following from the Act on public employment (1994 no. 260) § 23 there are also restrictions on the rights to take industrial action concerning work which has to do with the exercising of public authority. The only industrial actions allowed in connection to work concerning the exercising of public authority are lockout actions, strike, overtime ban or blockade on new appointments.

I will also put attention to another legal matter that is of particular interest for the right to collective bargaining and negotiation in the public sector. The wording "the relationship between the employer and employee" will be interpreted in a more restricted way in the public sector. The reason is that the term "employer" could be more indistinct in the public sector since there is a third party involved. In Case AD 1980 no. 150 concerning a dispute on the state sector, the Swedish Labour Court stated that a public decision could have an effect on the employees, but at the same time it could have motives that primarily did not concern the employees.

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<sup>17</sup> Government proposition 1975/76: 105 med förslag till arbetsrättsreform m.m. Bilaga (Appendix) 2, p. 142. For further analysis on these matters, see for instance Svensson, G., *Industrial Relations, including Collective Disputes, in the Public Sector (Sweden)*, Report to the XVI<sup>th</sup> World Congress organised by the International Society for Labour Law and Social Security.

<sup>18</sup> See the Act (1991 no. 900) on local government ch. 7.

In the case referred to the Court stated that a public authority could act in different roles. If a decision primarily is directed towards the employees in that capacity, the state is acting as an employer and the issue is under the Joint regulation act. Otherwise the decision is outside the relationship between the employer and employee and thus it must not be subject to negotiations.<sup>19</sup> However, that does not exclude that the effects of a decision that primarily has the public as addressee, could be subject to information and consultation in accordance to the Joint regulation act § 11 or 12.

## **B THE LEVEL AND STRUCTURE OF COLLECTIVE BARGAINING**

### *6. Does collective bargaining take place on different levels?*

Traditionally collective bargaining in Sweden is much centralised. The collective bargaining is co-ordinated by central organisations organising confederations of employers and trade unions respectively. However, in the last decade there have been strong tendencies to decentralisation.<sup>20</sup> In the 1990's the former Swedish Employers' Confederation (SAF), which very much was advocating decentralised collective bargaining, ceased its collective bargaining activities and transferred these tasks to the organisation's member associations.<sup>21</sup>

But as Fahlbeck has pointed out in an article the tendency toward decentralisation is not unambiguous. The Industry Agreement concluded in 1997 was implying a co-ordination of the collective bargaining on a "scale never seen before in Sweden".<sup>22</sup> In the Industry Agreement mentioned above the parties make common assessments concerning the conditions for industrial enterprise, the competitive environment etc. A bipartite Industry Committee is established and an Economic council for industry shall be appointed in order to make recommendations on economic issues, for instance to set the scope for the increase of wages.

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<sup>19</sup> See also the Labour Court Cases AD 1988 no. 23 and AD 1996 no. 66.

<sup>20</sup> Bruun, N., *The Autonomy of Collective Agreement*, in Labour Law Congress 2002 – Reports. Presented before the VII European Regional Congress of the International Society for Labour Law and Social Security, Stockholm 2002, p. 3–45, p 12. Further, see Eklund, R., *Deregulation of Labour Law – the Swedish Case*, in *Juridisk Tidskrift vid Stockholms universitet* 1998–99, p.531–551, p. 542.

<sup>21</sup> Instead of collective bargaining the organisation was putting emphasise on the "primary tasks", which according to the Confederation of Swedish Enterprise today is to "ensure that the value of enterprise enjoys widespread support in society and to improve the business climate in Sweden". (The Confederation of Swedish Enterprise was founded in 2001 after a fusion between SAF and the Swedish Federation of Industries.)

<sup>22</sup> Fahlbeck, R., *Industrial Relations and Collective Labour Law: Characteristics, Principles and Basic Features*, in *Stability and Change in Nordic Labour Law, Scandinavian Studies in Law (Volume 43)*, p. 87–133, p. 121.

The agreement expresses common values and an ideological foundation for collective bargaining in private industry is formulated.

However, collective bargaining on the Swedish labour market takes place on three levels:

- The national level.
- The industry-wide or branch level.
- The local level.

On the national level there are negotiations between employers' associations and nation wide trade unions co-operating in different ways. For the conducting of wage bargaining the trade unions on the national level organising white-collar workers are often organised in wage bargaining cartels. These bargaining activities are followed by bargaining conducted by the separate trade unions on the industry-wide or branch level. Also trade unions organising blue-collar workers co-ordinate their bargaining strategies, but in the main the bargaining is conducted by the trade unions separately.

Also the employers' associations many times are co-operating on wage bargaining organised in different employers' national federations bargaining both with the trade union cartels and the separate trade unions. On the state sector there is a special authority that is conducting the wage bargaining by order of the other state authorities. Further, on the local government sector there are two associations representing the employers. (For further comments on the parties in collective bargaining, see Section C and D below.)

On the local level the bargaining activities in interest disputes concerning wages and general terms of employment are conducted between the local trade unions and the individual employers in private enterprises or in the public sector (state authorities or local government employers). Even concerning bargaining on the local level there are wordings in the Industry Agreement, as well as in other agreements, regarding bipartite co-operation at the local level.

Concerning *legal disputes* between the trade union and the employer the negotiation procedure normally starts at the local level where the dispute often has arisen. When there are negotiations on *joint decision matters* the employer has the duty to take the initiative to negotiations on the local level (see the Joint regulation act § 14).

If the parties disagree in a negotiation matter at the local level, the trade union or the employer can make a request for negotiations on the central level.

*7. Is there a hierarchical relationship or is there a co-ordination between different bargaining levels?*

The hierarchical relationship is dependent on the intentions of organisations involved. The internal relationship in an organisation is regulated by the organisation and is expressed in the statutes of the organisation. The relationship between different federations or associations of organisations is regulated in the statutes that the members have agreed upon. However, on the state sector the activities of the Swedish Agency for Government Employers, representing the employers on the state sector, is regulated in a special ordinance.<sup>23</sup>

A collective agreement concluded on the national level is binding for the members of the organisation (the Joint regulation act §§ 26 and 27). When there are wage bargaining cartels or other central associations conducting collective bargaining, the cartel etc. concludes an agreement that stipulates the framework for continued bargaining between the trade unions and the employers or the employers associations.

Regarding wages the central collective agreements generally stipulate guarantee levels for the increase of wages for the employees. Usually there is a pot set aside for wage increases individually, bargained between the employer and the local trade union. Further, in practice there is normally a wage drift – if there is a shortage of competent employees – that goes beyond the level stipulated in the collective agreements concluded on the national level.

Hence, usually local agreements or even individual employment contracts can stipulate better – but not worse – conditions locally or individually, as long as such stipulations do not violate the collective agreement on the central level.

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<sup>23</sup> Ordinance (1994 no. 272) with instructions to the Swedish Agency for Government Employers.

8. *The bearing of international collective bargaining on Swedish bargaining practices.*<sup>24</sup>

If an employment has connections to more than one country problems concerning which national legal order to apply may arise and this matter must be considered in collective bargaining. Sweden has ratified both the so-called Lugano Convention and the Brussel Convention.<sup>25</sup> According to the main rule a court in the country where the defending party has his domicile shall try a dispute. However, if the dispute concerns an employment agreement the matter can be tried before a court in the country where the work usually is performed.

Further, there is reason to consider civil law aspects on which national legal order to apply. According to the Rome Convention – ratified by Sweden in 1998 – the parties in an agreement have the right to agree on which legal order to apply.<sup>26</sup> However, regarding employment relationships, an employee has the right to refer to binding regulations on protection in national law that should have been applied if the parties had not concluded the agreement concerning which national legal order to apply.

Normally a Swedish collective agreement shall not apply on work that is performed in another country.<sup>27</sup> Concerning legislation and the application of the Joint regulation act there is reason to mention the basic principle that the Act shall apply on a relationship between an employer and an employee if both parties are Swedish nationals. The same statement also includes when the domestic worker is working in another country than Sweden.<sup>28</sup> However, in accordance to the Act (1999:678) on the posting of workers § 8, a Swedish employer posting workers to a EU/EES country must follow the regulations implemented in that country referring to EC Directive (96/71/EC) of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services.

Further, disregarding the international conventions mentioned above on which national legal order to apply, there is a regulation in the Act on the posting of workers § 5, stipulating that

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<sup>24</sup> For a more developed analysis, see Eklund, R., *International dimensions of collective bargaining: legal aspects*, Swedish report for the XV World Congress of Labour Law and Social Security, held in Buenos Aires, 22–26 September 1997.

<sup>25</sup> See Law (1992 no. 794) the Lugano Convention and Law (1998 no. 358) on the Brussel Convention.

<sup>26</sup> Concerning the ratification, see Law (1998 no. 167) on applicable law concerning agreed obligations.

<sup>27</sup> Labour Court Case AD 1999 no. 99.

<sup>28</sup> See Government proposition 1975/76:105 med förslag till arbetsrättsreform m.m. Bilaga (Appendix) 1, p. 327.

Swedish law shall apply regarding working-hours, holiday, parental leave and discrimination irrespective of which national law otherwise shall be applied on a relationship.

The predominant international impact on Swedish collective bargaining and negotiation practices emanates from EC labour law.<sup>29</sup> The main EC labour law in these respects is concerning matters referring to the Joint regulation act §§ 11–13 and § 19.

Although implementation measures have been taken there are still possible conflicts between Swedish national law and EC law, and further amendments in Swedish law will probably be necessary. As mentioned above, a crucial issue in an EU perspective is the priority for trade unions bound by collective agreements for having the right to be consulted by the employer, to have information etc. (see point 2 a and b).

However, in 1994 § 13 of the Joint regulation act was amended meaning that an employer not bound by *any* collective agreement, is obliged to negotiate with all trade unions organising employees in his activity before decisions concerning the termination of employment contracts because of shortage of work or the transfer of an undertaking.<sup>30</sup>

Regarding the information the employer must provide the trade union with at the negotiation, which shall be held before measures on collective redundancies are taken, an amendment in § 15 of the Joint regulation act was made in 1994. Following from this amendment, which was partly implementing the former Directive (75/129/EC; now 98/50/EC) on collective redundancies, a detailed list was introduced in the paragraph on the information to be presented.

On account of the Directive (1994/45/EC) on European Works Councils, a special Act (1996 no. 359) on European Works Councils has been taken concerning the involvement of employees in multinational companies under the scope of the Directive mentioned.

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<sup>29</sup> In 1994 Sweden together with the other members of the European Free Trade Association (EFTA) and the EU concluded the Agreement on the European Economic Area (the EEA Agreement). Later on in 1995 Sweden became a member of the EU. Already the EEA Agreement meant that most EC regulations concerning the labour market should apply to Sweden. Further, some EC Directives required implementation measures in national law.

<sup>30</sup> The amendment was referring to Directive (75/129/EC; now 98/59/EC) on collective redundancies and to former Directive (77/187/EC) on the employees' rights at transfers of undertakings (later completed by Directive 98/50/EC; now Directive 2001/23/EC). However, compared to the Directive on collective redundancies the regulation in § 13 covers all collective redundancies disregarding the number of employees that might be subject to the measure.



Another matter to be mentioned of relevance for collective bargaining in an international context is the focus on *discrimination and equal treatment*.<sup>31</sup> Even here there is a great impact from EC law and the national legislation regarding these matters has been amended in different respects.

In the Swedish Constitution ch. 2 § 15 there is a general prohibition against regulations or statutes meaning discrimination on grounds of race, colour or ethnic origin and in ch. 2 § 16 there is a corresponding regulation against sex discrimination. In the Act (1999 no. 130) on measures to counteract discrimination in working life, there are regulations against direct and indirect discrimination on ethnical grounds. Further, there is certain legislation against sex discrimination, discrimination because of disability and sexual orientation amended in accordance to EC law.<sup>32</sup>

In the EC Treaty there are also basic regulations concerning discrimination and equal treatment that will put restrictions even on collective bargaining. Hence, in accordance with Article 12 of the EC Treaty there is a general prohibition against discrimination on grounds of nationality, and in accordance with Article 13 EC there is a regulation concerning measures against discrimination because of "sex, race, ethnic origin, religion or faith, disability, age or sexual orientation".<sup>33</sup> Further, in Article 39.2 EC on the free movement of workers within the European Union there are regulations on equal treatment and non-discrimination for workers from other Member States (some exceptions concerning employment on the public sector follows from Article 39.4).

In Council Regulation (1612/68) on freedom of movement for workers within the Community there are further regulations elaborating the right to free movement of workers.<sup>34</sup> Concerning collective bargaining it is stipulated in Article 8.4 that "Any clause of a collective or individual agreement or of any other collective regulation concerning eligibility for

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<sup>31</sup> For further analysis, see Roseberry, L., *Equal Rights and Discrimination Law in Scandinavia*, in *Stability and Change in Nordic Labour Law*, Scandinavian Studies in Law (Volume 43), p. 215–256.

<sup>32</sup> The Equal opportunities act (1991 no. 433), the Act (1999 no. 132) against Discrimination of Handicap and the Act (1999 no. 133) against discrimination in working life because of sexual orientation.

<sup>33</sup> See also Council Directive (2000/78/EC) establishing a general framework for equal treatment in employment and occupation.

<sup>34</sup> Concerning different aspects on Sweden and the freedom of movement for workers, see Edström, Ö. (editor), *Sweden and the Free Movement of Workers in the European Union*. Department of Law, Umeå University, Umeå 1998.

employment, employment, remuneration and other conditions of work or dismissal shall be null and void in so far as it lays down or authorises discriminatory conditions in respect of workers who are nationals of the other Member States". Further, a worker from another Member State is entitled to the same rights as a national worker concerning for instance trade union membership, housing etc.

## **C THE PARTIES TO COLLECTIVE BARGAINING; WORKERS' REPRESENTATION**

### *9. Workers' representation by a trade union.*

9 a. There is no public recognition of a trade union for having the right to collective bargaining. It is sufficient that the organisation fulfils the requirements stipulated in the Joint regulation act § 6; the union's statutes must aim to take care of the employees' interests towards the employer. In addition to that, the trade union in principle must have or have had at least one member employed by the employer.<sup>35</sup> The same principle applies for determining the right to bargaining on higher levels of the trade union.

9 b. The trade union representatives are appointed by the trade union independently.<sup>36</sup> If there is a request for negotiation put forward by a qualified representative of the union, and if the employer ignores the request, the employer risks to be found guilty of breach of the duty to negotiate (see also above point 4 a).

9 c. If a trade union is a member of a federation of trade unions there normally is a division of bargaining rights. Such a division is regulated by the member trade unions expressed in the

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<sup>35</sup> However, in Case AD 1974 no. 16 a collective agreement was recognised by the Labour Court, even though the employer did not have any employees. The case indicates that an employer without employees might be regarded as a supposed or prospective employer qualified to be part in a collective agreement. See Schmidt, F., *Facklig arbetsrätt*, fourth edition, Stockholm 1997, p. 32.

<sup>36</sup> Compare the situation in Norway and Denmark where some basic requirements on the employees representing the employees as trade union representatives are stipulated in the Main agreement respectively. A trade union representative on the Norwegian and Danish labour market must for example, according to the agreements, be "qualified" and acknowledged as a "capable worker". See Edström, Ö., *The Involvement of Employees in Four Nordic Countries*, in *Stability and Change in Nordic Labour Law*, Scandinavian Studies in Law (Volume 43), p. 159–188, p. 164 f. and 175.

statutes of the federation in question. For instance, wage bargaining might be conducted by a wage cartel (see below, point 9 f).

9 d. When the union at the enterprise or the establishment appoints a trade union representative, the representative's task is to represent the members of the union. However, it is up to the trade union independently to make a more precise definition of the representative's duties and his competence to negotiate and make agreements with the employer on the behalf of the organisation.

9 e. The rank and file must not ratify a collective agreement. The general principle for the concluding of a collective agreement is based on the idea of representative democracy. The members of the union elect their representatives, decisions on the organisation's goals etc. are taken at recurrent meetings such as trade union congresses, representative assemblies etc. in accordance with the organisation's statutes.

9 f. When there is a trade union multiplicity in collective bargaining the unions often cooperate. On the national level the trade unions organising white-collar workers are often members in wage bargaining cartels. Two examples of such cartels are the Public Employees' Negotiation Council (OFR), representing trade unions organised in the Swedish Confederation of Professional Employees (TCO) and the Swedish Confederation of Professional Associations (SACO), organising employees on the public sector, and SACO-S, representing trade unions in SACO organising state employees. In the private sector there is also the Federation of Salaried Employees in Industry and Services (PTK), representing 28 trade unions both from TCO and SACO. However, nowadays PTK is only bargaining collective agreements on pensions, insurances and certain security matters.

The national trade unions are also associated in central federations on the national level focusing on more general employee interests in society not involved in collective bargaining concerning wages. The largest organisation for blue-collar workers in both the private and public sector is the Swedish Trade Union Confederation (LO), which has 16 national trade unions as member organisations.<sup>37</sup> The largest central organisation for white-collar workers – salaried employees and civil servants – is TCO with 19 affiliated trade unions together

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<sup>37</sup> More than 2 million workers are members of the trade unions in LO; about 1.2 million are employed in the private sector and about 800 000 are employed by the public sector.

organising 1.3 million employees all over the labour market. Another central organisation for white-collar workers is SACO with 26 affiliated member organisations organising around 500 000 employees in both private and public service.

Minority trade unions on the labour market corresponding the requirements presented in the Joint regulation act § 6 have the right to collective bargaining in accordance with the Act § 10. However, their position on the labour market is weak and the employers are very reluctant to conclude any collective agreement with a minority union.

9 g. A trade union, which has not been the signatory part of a collective agreement, can conclude a local collective agreement with an employer referring to the already existing collective agreement. In principle such an agreement is a separate collective agreement although it is considered enough that the employer in written form declares that he will follow the collective agreement to which the employer has not been a signing party.<sup>38</sup>

9 h. In accordance with the Joint regulation act § 26 the collective agreement is binding for the members of the organisation. (That is the case even if the member leaves the organisation.) Hence, in principle a trade union is only empowered to represent the members of that trade union.

Concerning information and consultation referring to the Joint regulation act §§ 11 and 12, it is the trade union having a collective agreement with the employer that have the right to negotiations and information (with some exceptions that I have touched upon above). If the parties after such a consultation reach an agreement also the members of a trade union not bound by a collective agreement of course as well as unorganised workers can be influenced.

9 i. In practice an employer apply the same terms in the collective agreement to unorganised workers, although there is no ban preventing the employer reaching an agreement with unorganised employees with other condition. However, applying other terms to unorganised workers could risk a conflict with the trade union that is bound by a collective agreement with the employer stipulating certain terms for the work in question.<sup>39</sup> Further, to apply different

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<sup>38</sup> Compare for instance Labour Court Case AD 1989 no. 22.

<sup>39</sup> See Labour Court Cases AD 1977 no. 49 and AD 1991 no. 49.

terms depending on if a worker is organised or not, could be considered as a breach of the principle of freedom of association.

The collective agreement on the national level is considered to have a normative function for the regulation of working conditions, wages etc. even for unorganised workers. If the employment contract with an unorganised worker is considered to be incomplete, the courts will attach great importance to the collective agreement in force at the work place.<sup>40</sup> Hence, in practice the freedom of contract in the employer–employee relationship is rather restricted when there are regulations in a collective agreement, even if it in principle is possible to conclude an individual employment contract stipulating other terms.

On the state sector there is a certain regulation – Ordinance (1976 no. 1021) on state collective agreements – where it is stipulated that the collective agreement shall apply to the employees, even if they are not comprised by the collective agreement in question or any other collective agreement (§ 7).

Finally, in accordance with the Employment protection act (1982 no. 80) § 2, an employer has an explicit right to apply a collective agreement on some job security matters (for instance concerning the period of notice) on workers who are not members of the contracting union.

9 j. A trade union signing a collective agreement have the full rights as a contracting party.

9 k. In order to demand the employer to fulfil his obligations in accordance with the collective agreement the trade union can make a request for negotiation (concerning regulations on this matter, see above). If the employer refuses to come to the negotiation meeting called for, this omission might be the beginning of the enforcement procedure ending up before the Labour Court. In accordance with the Act (1974 no. 371) on litigation in labour disputes ch. 4 § 7, the court may not try a legal dispute if the parties have not negotiated on the issue in question (see also above point 2 g).

#### *10. Workers representation by a non union body.*

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<sup>40</sup> See for instance the Labour Court Cases AD 1983 no. 184 and AD 1990 no. 33. Compare Malmberg, J., *The Collective Agreement as an Instrument for Regulation of Wages and Employment Conditions*, in *Stability and Change in Nordic Labour Law*, Scandinavian Studies in Law (Volume 43), p 189–213, p. 205 f.

In Sweden there are no legal or collectively agreed regulations on the national level providing representation for *all* workers of the enterprise or the establishment. The legislator gives priority to trade unions bound by a collective agreement vis-à-vis the employer for the exercising of the workers' collective rights.

Further, the workers' representatives for different bodies or committees at the enterprise etc. are elected solely by the members of the trade union or are appointed by the trade union.<sup>41</sup> For instance, the trade unions bound by collective agreement have the right to appoint workers' representatives for example at the board level.<sup>42</sup> On the public sector the same principle apply in accordance with certain legislation covering the state sector and the local government sector respectively.

Regarding representation concerning work environment, it is the trade union bound by a collective agreement that has the right to appoint the Safety representative (which must be done if there are at least five employees at the work place) as well as the Safety committee (which must be done at every work place having at least 50 employees) in accordance with the Work environment act (1977 no. 1160), ch. 6 § 2 and ch. 6 § 8 respectively. However, if there are no trade union bound by a collective agreement at the work place, the Safety representative and the Safety committee should be appointed by the employees.

In accordance with the Council Directive (94/45/EC) on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, employee representatives from different Member States should be elected to a supranational trade union body for information and consultation. However, in the Swedish Act (1996 no. 359) on European works councils § 16, there is a regulation regarding the election of the delegates from Sweden into the special negotiation body stipulated by the law. Hence, the delegates coming from Sweden shall be appointed by the trade union bound by a collective agreement.

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<sup>41</sup> Sweden is a far going country in this respect even in a Nordic perspective. For instance in Norway all employees are entitled to take part in the elections for a Works Councils at the enterprise, and in Denmark all employees elect the trade union representative at the work place. Further, in Denmark, Finland and Norway the laws implementing the EC Directives mentioned stipulate that the employer shall inform and consult the trade union representatives *or* the employees. See Edström, Ö., *The Involvement of Employees in Four Nordic Countries*, in *Stability and Change in Nordic Labour Law, Scandinavian Studies in Law (Volume 43)*, p. 159–188, p. 184 ff.

<sup>42</sup> See the Act (1987 no. 1245) on Board representation for employees in the private sector.

*12. Protection of the workers' representatives.*

Trade union representatives in Sweden are protected by the Trade union representatives act (1974 no. 358), which apply to trade union representatives who are members of trade unions having a collective agreement with the employer. In accordance with the law an employer cannot prevent a trade union representative from conducting his or hers function as a trade union representative (§ 3). The representative has the right to reasonable time off for performing the representative's function and, if the matter is concerning the work place, without any deduction from wage (§§ 6 and 7).<sup>43</sup>

In the Trade union representatives act there are also certain regulations protecting the trade union representative from being passed over in different respects. He or she shall not, referring to the trade union mission, have worse working conditions or terms of employment (§ 4).<sup>44</sup> If there are dismissals because of shortage of work, the representative enjoy a certain employment protection and has the right to priority for continued work (§ 8).<sup>45</sup> The latter is motivated in order to secure that the local trade union will be able to fulfil its function in a situation where it is considered as important to have a working trade union.

Further, in the Joint regulation act § 17 there is a regulation stipulating that an employee that has been appointed to represent the trade union in a negotiation, shall have the right to time off for participating in the negotiation. In the Work environment act (1977 no. 1160), ch. 6 § 5 it is stipulated that a Safety representative has the right to paid time off for the performing his or her work as a Safety representative. Considering the number of Safety representatives in an activity the parties may consult the Labour inspectorate on the matter.<sup>46</sup>

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<sup>43</sup> See Labour Court Cases AD 1976 no. 35 (training-course in bargaining and argumentation), AD 1975 no. 62 and 1977 no. 115 (course on the Joint regulation act), AD 1979 no. 44, AD 1980 no. 154, AD 1988 no. 53, AD 2000 no. 19 (all concerning reasonable time-off).

<sup>44</sup> Labour Court Cases AD 1981 no. 147 (wage increment), AD 1982 no. 140 (holiday week), AD 1995 no. 40 (change in terms of employment and cancellation of the employment contract) and AD 2000 no. 74 (deteriorated working conditions).

<sup>45</sup> In accordance with the Employment protection act (1982 no. 80) § 22 the employer must make an order of priority in connection with termination of employment when there is shortage of work. Concerning the application of the right to continued employment referring to the Trade unions representatives act § 8, see Labour Court Cases AD 1977 no. 94, AD 1981 no. 146, AD 1992 no. 14, AD 1993 no. 80, 88 and 212.

<sup>46</sup> See the Work environment ordinance (1977 no. 1166) § 6.

On the labour market there are many collective agreements giving further specifications on the trade union representatives' entitlements, for instance on the extent of the time off for trade union missions, which in accordance with the Act shall be subject to considerations between the trade union and the employer. There are also examples of regulations in collective agreements specifying how many trade union representatives that shall have the right to paid time off etc. and the number of representatives is usually equivalent to the number of employees.

## **D THE PARTIES TO COLLECTIVE BARGAINING; REPRESENTATION OF THE EMPLOYERS**

### *13. The employers' representation on the private sector.*

13 a. On the *national level* there are associations conducting collective bargaining representing employers on different sectors of the labour market, although – as stated above – the largest umbrella organisation, the Confederation of Swedish Enterprise, does not take part in collective bargaining for its 47 member associations (see point 6 above).<sup>47</sup>

Among the largest employers' confederations to be mentioned on the private sector conducting collective bargaining on the industry-wide level, there is the Association of Swedish Engineering Industries (VI).<sup>48</sup> Another large confederation is the Employers' organisation for industrial and service companies (ALMEGA) consisting of seven employers' associations.<sup>49</sup> (Both confederations are members of the Confederation of Swedish Enterprise.)

The employer conducts the bargaining on the local level in the enterprise. However, on the employer's request the employer's central organisation can support the local bargaining and many employers' confederations also have offices at the regional level, supporting the

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<sup>47</sup> The member associations of the Confederation of Swedish Enterprise have approximately 48,000 member companies with 1.5 million employees. Also the individual private enterprises are members of the Confederation of Swedish Enterprise.

<sup>48</sup> Around 3,000 companies with 300,000 employees are members of the association.

<sup>49</sup> ALMEGA's members are the approximately 9,800 industrial and service companies with a total of 420,000 employees.



employers' bargaining activities.

13 b. As stated above there is a hierarchical relationship between collective agreements concluded on different levels of the collective bargaining system (see point 7). When a collective agreement is concluded on the national level it is binding for the members of the organisation. An employer who is member of an employers' federation that is part in a collective agreement is bound by the central collective agreement. Hence, he may not reach a local agreement that is in conflict with the collective agreement already in force (see the Joint regulation act §§ 26 and 27).<sup>50</sup>

13 c. If an employer is *not* a member of an employers' federation bound by a collective agreement or otherwise he is not bound by a collective agreement at the enterprise, the employer is free to bargain referring to the Joint regulation act § 10 and the general right to bargaining, which is mutual to both employers and trade unions (see above, point 2).

13 d. In Sweden there is no regulation to extend a collective agreement to employers who are not parties to the collective agreement.<sup>51</sup> In many Member States of the European Union there are regulations regarding an *erga omnes* effect in order to make a collective agreement generally binding on enterprises that otherwise are not bound by the collective agreement.<sup>52</sup>

13 e. A signing party to a collective agreement or an employer bound by the agreement is obliged to fulfil the commitments in accordance to the agreement. If there is any dispute on the application of the agreement the employer (as well as the trade union) can make a request for a bargaining, and if the other party refuses to negotiate, he can be found guilty of breach of the duty to bargain. If a party refuses to bargain or if the dispute cannot be settled in bargaining, the matter can be brought before the Labour Court. (As stated above there are also regulations on a priority right of interpretation to consider; see point 2.)

#### *14. The employers' representation on the public sector.*

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<sup>50</sup> Hence, the central collective agreement is said to have a mandatory effect. See Malmberg, J., *The Collective Agreement as an Instrument for Regulation of Wages and Employment Conditions*, in *Stability and Change in Nordic Labour Law*, Scandinavian Studies in Law (Volume 43), p. 189–213, p. 199.

<sup>51</sup> Concerning this matter in a Nordic perspective and in the light of EC law, see Nielsen, R., *Europeanization of Nordic Labour Law*, in *Stability and Change in Nordic Labour Law*, Scandinavian Studies in Law (Volume 43), p. 39–75, p. 52.

<sup>52</sup> Ahlberg, K. & Bruun, N., *Kollektivavtal i EU. Om allmängiltiga avtal och social dumping*, Stockholm 1996.

14 a. In the public sector there is a difference between the state sector and the local government sector. On the state sector the employers, which are all public administrations in the central government sector, are represented by the Swedish Agency for Government Employers, acting on behalf of the instructions from its members.

On the local government sector the employers are represented by the Swedish Association of Local Authorities (representing the so called primary local authorities) and the Federation of County Councils. Formally, the employers are the primary local authorities and the county councils, which are larger administrative units responsible for health care services and more.

14 b. In the state sector collective agreements concluded between the Swedish Agency for Government Employers and a trade union or a trade union cartel, are directly binding for the state employers and the agreement must not be ratified by a higher authority.

In the local government sector the employers' associations on the central level only recommend their members to sign the agreements negotiated on the central level. Hence, in principle the local government employer is free to bargain although in practice the local employer will follow the central agreement recommended.