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AMICABLE METHODS FOR COLLECTIVE DISPUTE RESOLUTION —SELECTED LEGAL ISSUES

INTRODUCTION

Disputes arising from an employment relationship are conflicts generally involving an employer and employees. The subject matter of these disputes involve issues of labour law. Labour law conflicts can take two forms: there are individual labour disputes, where the parties involved are the employer and the employee, and collective labour disputes involving the employer and trade union organisations whose task is to represent the rights and interests of workers in general. Problems in the area of collective labour relationships can be solved in several ways, in particular through bargaining, mediation, arbitration and strike. However, in order to take part in these stages, certain conditions must be met, to be presented in more detail in this article.

Under labour law, there are a number of conflicts that take the form of collective disputes. Accordingly, this study seeks to present the stages of resolving such disputes. These issues will be explored in a comprehensive manner along with a detailed discussion of amicable methods of eliminating collective labour disputes.

THE MAIN INSTITUTIONS RELATED TO COLLECTIVE DISPUTES

Initially, we should note that in individual disputes, the claim of an individual employee becomes the subject of conflict, while in collective

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disputes, collective interests and workers' rights are the subject of conflict. The idea of collectivity typically encompasses employees who work for the same company, but also the interests and rights of employees in a specific sector of the economy or a single profession. The most important feature that distinguishes collective disputes and individual disputes is the procedures used to resolve them. Disputes arising from an individual employment relationship are generally settled by the labour court, but the Act of 26 June 1974, known as the Labour Code,¹ permits the possibility of amicable settlement of a dispute at the employee's request, usually by the company grievance committee. On the other hand, collective labour disputes are settled using out-of-court procedures such as bargaining, mediation, arbitration and strike.²

The term "collective" should be understood as referring to a specific group or the general public. Therefore, the parties to a collective dispute based on labour law cannot be entities or persons who do not constitute a specific social group. One of the parties to a collective labour dispute may be an employer or an organisation of employers, the other party being a trade union.³

The issue of collective labour disputes falls within the scope of collective labour law. Collective labour law is concerned with legal relationships encompassing collective interests and the rights of employees who are not indicated individually. The employer occupies a central position among the entities that can be found on the employer's side of collective labour relationships. Unlike the employee, who is essentially represented by a trade union in collective relationships, the employer is an autonomous entity and can participate in the aforementioned relationship without representative bodies. Of note is the fact that the employer has the possibility of bargaining, conducting collective labour disputes, and concluding collective labour agreements and other agreements. The employer, first of all, can form employers' associations at its own discretion and without prior authorisation.⁴

The special feature of the employer is that it takes decisions affecting the profile of a given workplace, for example, in order to transform it, reduce or

¹ Journal of 2016, item 1666 as amended [henceforth abbreviated as LC].

² M. SEWERYŃSKI, "Wybrane zagadnienia rozwiązywania sporów zbiorowych w Polsce," in *Arbitraż i mediacja w prawie pracy*, ed. G. Goździewicz (Lublin: Wydawnictwo KUL, 2005), 45.

³ A.M. ŚWIĄTKOWSKI, "Komentarz do art. 1," in *Zbiorowe prawo pracy. Komentarz*, ed. J. Wratny and K. Walczak (Warszawa: Wydawnictwo C.H. Beck, 2009), 270.

⁴ Z. HAJN, "Pracodawca i organizacja pracodawców jako podmioty zbiorowego prawa pracy," *Zbiorowe prawo pracy w społecznej gospodarce rynkowej*, ed. G. Goździewicz (Toruń: Towarzystwo Naukowe Organizacji i Kierownictwa "Dom Organizatora", 2000), 138.

increase its workforce, or decisions concerning an increase or reduction in salaries. It can be argued that this person has a natural initiative in shaping employment relations, which is not usually observed in the activities of trade union activities.⁵

Within the meaning of Article 3 LC, an employer is a natural person or an organisational unit if it employs personnel. Such an entity may also be represented by a legal person or an entity without legal personality, for example a budgetary unit. Only an entity which is authorised to employ personnel on its own should be considered as an employer. An entity whose manager employs personnel by virtue of authorisation is not deemed to be an employer. Any natural person can also act as an employer. Therefore, he or she has the right to employ personnel without a registered business.⁶

The interests of employees should be represented through their representation. The Polish legislation provides for the principle of representation, which means that employees may not act directly, but only through representative bodies within the framework of collective labour relations.⁷

Employees can be represented by a separate entity, which represents the rights and interests of the company's employees. Most commonly they are units that have been made functionally and organizationally separate and they operate in the workplace. These may be workers' councils or trade unions.⁸

The unions mentioned above have the power of general representation, which means that they represent the interests and work of all employees, regardless of their membership in trade unions. It is also assumed that there is a collective workers' entity having its own rights and interests. In collective labour disputes, trade unions are competent to conduct collective bargaining with an entity represented by the employer in order to enter into collective labour agreements, company normative agreements with the employer, initiate and conduct collective labour disputes or industrial action, such as strike.⁹

In summary, collective labour disputes, in accordance with Articles 1 and 2 of the Act of 23 May 1991 on the resolution of collective disputes¹⁰ are

⁵ Ibid.

⁶ M. SKAŁKOWSKI, "Przepisy ogólne," in *Kodeks pracy 2017. Praktyczny komentarz z przykładami*, ed. M. Skalkowski, (Warsaw: Infor, 2017), 20.

⁷ E. WRONIKOWSKA, and P. NOWIK, *Zbiorowe prawo pracy* (Warszawa: Wydawnictwo C.H. Beck, 2008), 9.

⁸ Ibid.

⁹ Ibid.

¹⁰ Journal of Laws of 2015, item 295 as amended [henceforth abbreviated as RCLD].

disputes arising between trade unions representing the interests or rights of the workers and the employer or employers in respect of working conditions, social benefits, salaries or the rights and freedoms of members of unions or other groups which have the right of association.¹¹

BARGAINING

One of the mandatory procedures for resolving collective labour disputes is bargaining. It can be regarded as the most natural method whereby an amicable agreement can be achieved. In essence, collective bargaining does not require statutory authorisation. The right to bargain has acquired constitutional status. In accordance with Article 59 para. 2 of the Constitution of the Republic of Poland of 2 April 1997,¹² employers and trade unions can engage in bargaining in collective disputes. Bargaining can be regarded as one of the basic methods of preventing and, above all, eliminating all collective conflicts that arise under labour law.¹³

Negotiations are conducted in an autonomous manner. These provisions do not explicitly set forth rules of bargaining, nor do they specify a time limit for their completion. According to Article 8 of the RCLD, bargaining is to be used immediately after the occurrence of an collective labour dispute in order to settle it. As for the employer, it is obliged to notify the competent labour inspector of the ongoing collective dispute. The term “immediately undertake bargaining” should be understood as meaning that the employer should bargain without undue delay or after the reason preventing it has ceased. It is assumed that the trade union has to be ready to bargain at any time.¹⁴

In bargaining, the guiding principle is to conduct it in good faith. This principle should be accompanied with respect for the mutual interests of the parties. The rules referred to above should be primarily applied in a situation where the trade union should refrain from making any demands which significantly exceed the employer’s financial and economic capacity. The employer should take into account those demands of the other party which are justifiable given the employer’s financial and economic situation. The trade union may also request to be better informed about the situation. It

¹¹ BARAN, “Spór indywidualny a spór zbiorowy w prawie pracy,” 227.

¹² Journal of Laws of 1997, No. 78, item 483 as amended.

¹³ CUDOWSKI, “Model rozwiązywania sporów zbiorowych,” 245.

¹⁴ WRONIKOWSKA and NOWIK, *Zbiorowe prawo pracy*, 137–38.

must not, however, make demands towards the employer which would bring considerable harm to other employees.¹⁵

The parties involved in a collective labour dispute are obliged to conclude their bargaining by signing a collective agreement or drawing up a record of divergences. If the parties sign an agreement, the dispute which has a collective nature will be terminated on terms and conditions previously agreed by all parties to the dispute. The content of the agreement depends on what has been worked out and accepted by both parties by way of bargaining.¹⁶

Such an agreement should be concluded in writing, in accordance with Article 9 RCLD. This provision directly indicates that the activities developed through bargaining should result in the signing of a bilateral agreement. Pursuant to the provision mentioned above, we must say that an agreement in a form other than written cannot be regarded as an effective measure to finish bargaining. An agreement which will be concluded verbally will not meet the formal and legal requirements resulting from the RCLD. Each party may question a particular argument which was formulated only orally. Such a behaviour may, for example, result in further demands made by the trade unions. From a legal point of view, the conclusion of an agreement in a form other than written does not end a collective dispute but only suspends it.¹⁷

The only conclusion of bargaining which is permissible under Polish law is an agreement signed by each party to the dispute. This leads to a transformation of the interests of a particular group of workers who are represented by a trade union. Such an agreement falls into the category of the so-called specific sources of labour law.¹⁸

Agreement can be reached in several different ways. The first is to accept all the demands made by the trade unions or the employer, or by reaching compromise based on which each party should make specific concessions. Agreement may be reached if the trade union withdraws from previous demands. However, in such a situation, the agreement cannot constitute a source of labour law, as it has not in any way affected the rights and obligations of the parties to the employment relationship.¹⁹

An agreement which ends a collective dispute may also contain provisions intended to specify mutual obligations and rights of the parties to the dispute. It is not necessary to include provisions which impose specific

¹⁵ CUDOWSKI, *Model rozwiązywania sporów zbiorowych*, 245–46.

¹⁶ A.M. ŚWIĄTKOWSKI, "Rokowania," 333.

¹⁷ *Ibid.*, 334.

¹⁸ *Ibid.*

¹⁹ WRONIKOWSKA and NOWIK, *Zbiorowe prawo pracy*, 138.

rights and obligations on one of the parties. For example, such provisions make it obligatory for the initiator of the dispute which has been settled—the trade unions—not to make any further demands and to maintain social peace. The inclusion of the so-called social peace clause in the agreement prevents trade unions from initiating a dispute intended to change the provisions already hammered out. By concluding a written agreement, both parties should clearly define the procedure for resolving the conflict in the case when any of the parties to the dispute were not to comply with the binding provisions.²⁰

In the event that no bilateral collective agreement is reached during the negotiations, a record of divergences should be drawn up in a written form. Its indispensable element is to identify the positions of both parties who have taken part in the collective dispute.²¹ The record of divergences must specify the demands made by the trade union and the position expressed by the employer. Participants are not obliged to sign the record, but they are under the obligation to make it. This document is common to both parties to the collective dispute. However, the record should be signed by each of the parties so that its credibility cannot be doubted.²² If the written form of the record of divergences is not observed, the negotiations cannot be considered concluded. The time limit for concluding negotiations is not indicated in the legislation, either, so any of the parties are not forbidden to suspend the proceedings. The possibility of moving a collective dispute to the next stage of resolving the dispute in an amicable way can contribute to social peace in collective labour relations.²³

Failure to comply with any of the requirements of the Act mentioned above may be considered as an attempt to block the possibility of moving on to mediation, a manoeuvre which may greatly hamper reaching the final agreement.

In conclusion, the bargaining can be concluded in two ways: by agreement or by signing a record of divergences. Agreement does not necessarily mean that the employer agrees to all demands made by the trade union, but it can also agree to meet only some of the demands. However, such a document should be made in writing and signed by all parties in order to avoid any misunderstanding at a later stage of the proceedings.²⁴

²⁰ ŚWIĄTKOWSKI, *Rokowania*, 335.

²¹ WRONIKOWSKA and NOWIK, *Zbiorowe prawo pracy*, 138.

²² ŚWIĄTKOWSKI, *Rokowania*, 335.

²³ *Ibid.*, 336.

²⁴ *Ibid.*, 336–37.

MEDIATION

Mediation is the next stage of solving a collective labour conflict. It is a form of a non-sovereign interference in a dispute of a third party, represented by a mediator. Its purpose is to enable the parties to a collective labour dispute to hammer out an agreement.²⁵

Mediation is an obligatory element in the procedure aimed at collective dispute resolution. Essentially, mediation involves is an attempt to reach agreement with the participation of third party who is impartial. The mediator can be chosen freely. If the parties at conflict do not agree on a common candidate to assume the role of a mediator, this person will be selected by the Minister of Labour and Social Policy from the official list.²⁶

The mediator should ensure impartiality of the mediation participants. His or her role consists in helping the parties to reach a mutually acceptable agreement. At the outset, however, the mediator must make necessary arrangements in relation to the subject-matter of the dispute and the positions of the parties. When mediation is under way, the mediator can also suggest making other arrangements of a necessary nature, for example in order to carry out an expert study. He or she can also persuade participants to enter into an agreement. However, this person does not have any administrative or decision-making powers, and their motions—addressed to the parties – are only postulates.²⁷

If, in the course of the mediation procedure, the mediator believes that the settlement of the dispute requires additional or detailed arrangements related to the subject-matter of the dispute to be made, he or she must notify the parties thereof. If it becomes necessary to determine the economic and financial status of the employer, the mediator may propose that an expert opinion be obtained. Unless the parties agree otherwise, the costs of the expert study will normally be borne by the employer. The above mentioned actions entitle the mediator to request that the scheduled date of strike be postponed to make time for specific arrangements.²⁸

²⁵ A. KALISZ and A. ZIENKIEWICZ, *Polubowne rozwiązywanie konfliktów w pomocy społecznej* (Sosnowiec: Wyższa Szkoła Humanitas, 2015), 105.

²⁶ A. SZLĘZAK and R. PAŁUBICKI, "Pozasądowe sposoby rozwiązywania sporów pracowniczych. Uwagi ogólne," in *Pozasądowe sposoby rozwiązywania sporów pracowniczych*, ed. A. Góra-Błaszczukowska and K. Antolak-Szymanski (Warszawa: Dom Wydawniczy Elipsa, 2015), 29–30.

²⁷ WRONIKOWSKA and NOWIK, *Zbiorowe prawo pracy*, 139.

²⁸ Ibid.

Mediators are entitled to have their mediation costs reimbursed, and they have the right to be exempted from work and be remunerated pursuant to the Regulation of the Minister of Justice of 20 June 2016 on the amount of remuneration and reimbursable expenses of the mediator in civil proceedings.²⁹ The above-mentioned exemption is granted to mediators for the duration of mediation proceedings not exceeding thirty days in a calendar year. Provisions related to the reimbursement of travel costs as well as remuneration or accommodation costs should be set forth in a contract concluded between the mediator and the parties to the collective dispute. These costs are borne by the parties to the collective labour dispute in equal parts, unless a different division was agreed earlier. In the case of a documented lack of funds to pay for the previously indicated costs, at the request of the parties to the dispute, the mediation costs will be covered by the minister in charge of labour issues. In such a case, the mediator's remuneration may be covered up to the amount stipulated by that regulation.³⁰

The rules for mediation proceedings are determined by the mediator and the parties to the collective labour dispute. It is argued in the literature that the first two stages in resolving disputes of a peaceful nature, that is bargaining and mediation, should last at least nineteen days in total. The announcement of strike by the trade union organisation must not have any legal effect on the mediator's activities. The mediator's duty is to conduct the mediation procedure until the parties decide to terminate this stage of the procedure.³¹

The parties to a collective labour dispute are to be represented during the negotiation and mediation phases by competent persons who are authorised to conclude an agreement and draw up a record of divergences. No party may be substituted by lawyers during the mediation proceedings. The direct involvement of the parties is essential so as to encourage the conclusion of an agreement that will put an end to the collective dispute.³²

The mediator is a person whose task is to reconcile the positions of both parties to a collective labour dispute. The mediator should start off by thoroughly exploring the record of divergences, which was created at the first stage of the peaceful resolution. The existence of this document proves that the bargaining has failed. The next step the mediator should take is to hold separate meetings with each of the parties to the dispute. This will allow him

²⁹ Journal of Laws, item 921.

³⁰ WRONIKOWSKA and NOWIK, *Zbiorowe prawo pracy*, 139.

³¹ ŚWIĄTKOWSKI, "Mediacja i arbitraż," 339.

³² Ibid.

or her to get the grasp of the reasons why the bargaining was concluded by signing that document rather than by reaching agreement. The mediator can thus make a preliminary assessment of the lengths each party can go to during the mediation proceedings. Gathering more information will allow him or her to get an in-depth picture of the collective dispute. Initially, the mediator acts as an intermediary between the participants of the proceedings and the so-called investigator of the main subject matter of the dispute. It belongs to the mediator to make every effort to ensure that—prior to a meeting of the parties—he or she is able to bring their positions together as close as possible and make them ready for agreement. It is very important that the mediator's activity is marked by impartiality. The mediator may independently take only such measures which do not impair his or her impartiality towards each of the parties.³³

A mediator who performs his or her duties properly should have the characteristics of a disciplined, organised, kind and calm person, who has an understanding of business needs as well as the ability to understand the needs of the employees and employers. The mediator's tasks include, first and foremost, a precise definition of the subject matter of the dispute. In practice, however, this is not always easy, as the real point of contention is entirely different from what was previously declared.³⁴

The mode of mediation and its duration, as well as decisions concerning the signing of an agreement or the drawing up of a record of divergences are subject to mutually acceptable decisions of both parties to the dispute. The conditions for signing an agreement by way of mediation should be agreed by both parties and constitute their autonomous decision.³⁵

The mediator's involvement ends by guiding the parties to the dispute reach agreement. If this is not achieved, a record of divergences is drawn up. In this case, the legal nature of the agreement is crucial. As a rule, agreements concluded by way of bargaining or mediation are not treated as non-statutory sources of labour law. Failure to reach agreement leading to the resolution of the collective dispute during the mediation proceedings enables the trade union to take industrial action.³⁶

³³ Ibid., 339–40.

³⁴ SZLĘZAK and PAŁUBICKI, "Pozasądowe sposoby rozwiązywania sporów pracowniczych," 30.

³⁵ WRONIKOWSKA and NOWIK, *Zbiorowe prawo pracy*, 140.

³⁶ ŚWIĄTKOWSKI, "Mediacja i arbitraż," 359.

ARBITRATION

Another peaceful method for resolving a collective labour dispute is social arbitration. Pursuant to Article 16 para. 1 of the Act on resolution of collective labour disputes, arbitral proceedings are initiated after a request has been filed by a trade union for the settlement of a dispute by a social arbitration committee. In practice, collective labour disputes arising from the employment relationship are ended through bargaining or mediation. On the other hand, social arbitration is only used in a small number of cases.³⁷

Arbitration starts after the mediation process is over, when a divergence report has been drawn up, and immediately before the commencement of a possible strike. The facultative nature of arbitration can be considered from two perspectives. First of all, this process is started only if the initiative is taken by the trade union. Secondly, each of the arbitration participants may stipulate that they will not be bound by the outcome of the proceedings.³⁸

A collective dispute is settled before a social arbitration committee established at the Supreme Court (a multi-establishment dispute) or the regional court (a dispute involving one workplace). The committee is composed of a chairperson appointed from among the judges of the court by the president of the court and six members appointed, three on either side. The parties should strive to identify those who are not directly interested in resolving the case (Article 16 para. 3 RCLD).

The idea underlying social arbitration employed as an optional method of resolving a labour dispute, is to delay or avoid strike action if the trade union provides for such a possibility. The arbitration procedure can be regarded as the last resort in the resolution of the dispute in a peaceful manner. The employer does not have the right to refer the dispute to an institution such as arbitration, as this entitlement could be abused by superiors to delay the planned strike. Only the trade union has this right, and can be used in cases where all obligatory stages have been conducted and the employees' consent has been obtained.³⁹

The characteristic feature of social arbitration is that it is the closest to the traditional model of the judiciary. Much like a judicial authority, an arbitrator issues a ruling which may somehow impose the resolution to the dispute on its the parties. This process is one of the alternative dispute

³⁷ CUDOWSKI, *Model rozwiązywania sporów zbiorowych*, 246–47.

³⁸ SZLEZAK and PAŁUBICKI, "Pozasądowe sposoby rozwiązywania sporów pracowniczych," 31.

³⁹ *Ibid.*

resolution methods, since the participation of each party is voluntary. In addition, the entities participating in it have the possibility of electing an arbitrator.⁴⁰

As it has already been pointed out, disputes related to employees of an industrial establishment are heard before a social arbitration committee established at a regional court. On the other hand, disputes involving multiple workplaces are heard by a social arbitration committee, which is attached to the supreme court. No process or organisational dependency exists between the above-mentioned committees. These are bodies functioning independently of each other as they deal with disputes of a different nature. In turn, the division of competences was made according to the formal criterion of employee involvement in a collective dispute. Workplace disputes are to be interpreted as disputes arising from the performance of work in the area of a single company. Where the claims go significantly beyond a workplace community which includes the employees of only one facility, we speak of a multi-establishment dispute.⁴¹

Although they have a similar form to that of judicial authorities, committees of social arbitration do not have the character of a judicial authority. The link between social arbitration and the Supreme Court or regional courts is only of a personal nature. The chairpersons of the social arbitration committees are judges of labour and social security divisions who are affiliated with regional courts. They are appointed by court presidents. The social arbitration committee attached to the Supreme Court is chaired by a judge who is appointed by the person holding the office of the president of the Chamber of Labour, Social Security and Public Affairs. The secretariats of the Supreme Court and regional courts, on the other hand, are intended to provide administrative support for the committees. It can therefore be concluded that committees of social arbitration are set up on an *ad hoc* basis, which means that their appointment serves a particular objective.⁴²

Social arbitration is one of the methods of dispute resolution functioning under Polish law, which is permissible solely in disputes of a collective character. On the other hand, individual disputes resulting from an employment relationship are settled before labour courts, which operate within the State structure of common courts. The detailed procedure for conducting social arbitration was regulated in the Regulation of the Council of Ministers

⁴⁰ KALISZ and ZIENKIEWICZ, *Polubowne rozwiązywanie konfliktów w pomocy społecznej*, 49.

⁴¹ ŚWIĄTKOWSKI, *Mediacja i arbitraż*, 364–65.

⁴² *Ibid.*, 365.

of 16 August 1991 on proceedings before social arbitration committees.⁴³ Therefore, none of the parties to a collective dispute have the authorisation to establish their own procedures to govern the arbitration procedure. Nor can they appoint independently, by common agreement, those who will make up the committee of social arbitration.⁴⁴

However, it is interesting to look at the nature of the reasons which may encourage the trade union party to resort to the path of social arbitration. The parties to a collective dispute do not usually expect the committee of social arbitration to accept their arguments and settle the dispute in favour of the employees. Practice shows that the essential role in this process is played by the expectation that this stage of proceedings will put an end to the collective dispute. Trade unions very often believe that social arbitration is the next stage that follows immediately after mediation. Such an attitude gives rise to the practice that each party typically stipulates that it will not be bound by the outcome of the process.⁴⁵

An important aspect of social arbitration is also the fact that arbitration proceedings are led by a qualified person, that is a professional judge, and the proceedings are typically held in the courtroom. This largely calms the emotions that may accompany all collective disputes. In this way it is possible to create a conducive atmosphere, which sometimes makes it possible to reach an agreement that could not have been reached in previous stages—both while bargaining and mediating.

To sum up, it can be concluded that the institution of social arbitration has a rather important function because it allows to avoid or delay strike, which is the objective of the act on resolving collective disputes.⁴⁶

CONCLUSION

Under Polish legislation, a number of methods for resolving collective disputes concerning claims arising from the employment relationship. They allow employees to ask trade unions to represent the rights and interests of all employees before the employer. Of course, in order to be able to participate in particular stages, it is necessary to meet the specific conditions

⁴³ Journal of Laws of 1991, No. 73, item 323 and 324.

⁴⁴ RYCAK, "Praktyka arbitrażu społecznego w zbiorowych sporach pracy w Polsce," 129.

⁴⁵ SZLEZAK and PAŁUBICKI, "Pozasądowe sposoby rozwiązywania sporów pracowniczych," 31.

⁴⁶ *Ibid.*, 31–2.

spelled out in the Act on resolution of collective labour disputes. It is vital that employees be aware of the existence of specific rights in collective disputes with employers.

The settlement of collective labour disputes is the essence of collective labour law. This branch of law regulates, among other things, the conflicting interests of the parties to the employment relationship (employers and employees), as well as organisations that represent the interests and rights of these parties (trade unions, organisations of employers and other representative organisations). The legal norms contained in the act invoked above make it possible for social partners, such as employers, employers' organisations or employee representative organisations, to control the employment relationship. The social peace clause contained in the RCLD is extremely important, because it is a commitment expressed by the employees' representative bodies to refrain from collective actions during the proceedings for a collective labour agreement. This principle is particularly important to avoid industrial action.

Negotiations cannot be extended indefinitely, as this discourages further participation in amicable dispute resolution. In addition, the parties may come to the conclusion that judicial proceedings would be a quicker way to bring an end to the ongoing dispute. Bargaining, which is the first stage of amicable collective dispute resolution, should be in fact the second stage, as the parties allow various entities to engage in direct negotiation of the demands made but without a third party. In addition, it is worth noting that bargaining is also intended to extend social peace, which plays a crucial role in companies.

Mediation, on the other hand, should be obligatory and constitute the first stage in the resolution of such disputes, since a third party is involved in the proceedings to effect a rapprochement of both parties' positions. The participation of this entity may significantly influence the behaviour of the parties entangled in the dispute. It is also worth noting that the mediator can take up, comment on and modify the participants' proposals, which sometimes leads to the illustration of previously made demands.

A dispute in the workplace is referred to a third stage before a social arbitration committee, which is appointed at the voivodeship court where there is a labour and social security court. Social arbitration shall be composed of a chairman appointed by the president of the competent court and six members appointed by the disputing parties. However, such a committee for social arbitration should be composed of qualified persons who have had contact with collective labour disputes in their work. The appointment of

arbitration members by each party entails the risk of them not having the appropriate qualifications in this area.

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AMICABLE METHODS FOR COLLECTIVE DISPUTE RESOLUTION
– SELECTED LEGAL ISSUES

Summary

The article deals with the issue of asserting the rights and interests of all employees who enjoy the representation of trade union organisations in their disputes with the employer. The aim of the article is to give a detailed presentation of issues related to collective labour disputes.

To achieve this aim, the stages at which the rights and interests underlying collective labour disputes are presented in detail. This study employs the dogmatic-legal method. The author carries out an analysis and interpretation of the provisions relating to collective labour disputes in the field of labour law. It was vital to examine the legal norms established by the legislator. A description and systematisation of the applicable legislation was also conducted. Issues relating to the resolution of collective disputes in the workplace are presented theoretically with a detailed discussion of the specific stages.

This presented work is divided into four parts. The first presents the basic notions related to collective labour disputes. The sections that follow present the problems involved in the particular stages of claims enforcement based on employment relationship, i.e. bargaining, mediation, and arbitration. The rules for joining specific stages of resolving the above mentioned disputes were also discussed.

To a large extent, the issues elucidated here bring the reader, and above all entities involved in collective labour conflicts, closer to the methods of asserting their own rights and interests.

Key words: collective labour dispute; employer; employee; employment relationship; negotiation; mediation; arbitration; strike.

Translated by Tomasz Pałkowski



The preparation of the English version of *Roczniki Nauk Prawnych (Annals of Juridical Sciences)* and its publication in electronic databases was financed under contract no. 836/P-DUN/2018 from the resources of the Minister of Science and Higher Education for the popularization of science.