

# the Swedish rules on Negotiation and Mediation - a brief summary

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## 1. The parties in the labour market

Both employees and employers in Sweden are organised in national associations, which in turn are affiliated to a confederation on each respective side.

### 1.1 Employers

In the *private sector*, the main organisation is the Confederation of Swedish Enterprise (incorporating the former Swedish Employers' Confederation, SAF). It comprises some 50 sectoral and employer associations with together more than 54,000 member companies. These companies employ some 1.5 million employees. The Confederation of Swedish Enterprise does not negotiate on pay. This is the remit of the employer associations in each sector.

In the *public sector*, the Swedish Agency for Government Employers represents central government bodies in the collective bargaining process. At local government level, county councils and primary municipalities are independent bargaining parties but are represented by the Swedish Association of Local Authorities and Regions.

### 1.2 Employees

The Swedish Trade Union Confederation, LO, comprises 14 national unions that organise *blue-collar workers*. Membership numbers almost 1.5 million, which corresponds to around 80 per cent of all industrial workers and 60 percent of blue-collar workers in the service sector. Previously, LO negotiated with SAF on pay. Nowadays, the national unions negotiate directly with the employer associations, but their negotiations are still coordinated to a certain degree within the LO framework. The largest unions are the Swedish Municipal Workers' Union and the IF Metall (for metalworkers and industrial workers).

*White-collar workers* are organised in the Swedish Confederation of Professional Employees, TCO. It has 16 affiliated national unions with a total of 1.2 million members.

The TCO is not a partner in the collective bargaining process. Agreements are negotiated by the various member associations. The two largest are Unionen (for white-collar workers in the private sector) and the Teachers' Union.

*Professional (university-trained) employees* are organised in 23 national unions affiliated to the Swedish Confederation of Professional Associations, SACO. Membership is some 600,000. Leading unions include the Association of Graduate Engineers and the Swedish Medical Association. Like the TCO, SACO is not a part of the collective bargaining process.

The level of organisation is 65 for the private sector and 85 per cent for the public sector.

### 1.3 Negotiating coalitions

The fact that national unions belong to different national federations does not prevent them from collaborating in negotiating cartels or coalitions when they share a common adversary.

One such grouping in the private sector is the Federation of Salaried Employees in Industry and Services, PTK. It comprises 27 national unions from the TCO and SACO representing 700,000 employees. PTK negotiates with the Confederation of Swedish Enterprise on pensions and insurance.

Fourteen national unions in the public sector have joined together in the Public Employees' Negotiation Council (OFR), which is a collaborative body. The unions represent some 560,000 central- and local government employees. The OFR is made up of unions from both SACO and the TCO. It is primarily a forum where the unions can plan, coordinate, complete and evaluate bargaining rounds and negotiations.

In March 1997, the negotiating parties in Swedish industry – 12 employer organisations and 7 trade unions – reached a collaboration agreement on industrial development and wage formation. The agreement covers some 600,000 employees from such unions as the Association of Graduate Engineers, the IF Metall (for metalworkers and industrial workers) and Unionen (for white-collar workers).

## 2. Right of association

The right of association, i.e. the right of individual employees and employers to belong to an employee or employer organisation, is enshrined in the Act on Co-Determination at Work, the Co-Determination Act (called MBL in Swedish). This law also upholds the right to put one's membership to use and to work actively on behalf of the organisation or to seek the establishment of such an organisation.

The organisations do not have to accept any violation of a member's right of association. This is considered an intrusion upon the activities of the organisation. A violation is deemed to have occurred when a party on one side takes a step that is prejudicial to someone on the other side simply because the latter has exercised his or her right of association.

The party responsible for a violation against the right of association is liable to pay damages to the violated party and his or her organisation.

## 3. Right of negotiation

### 3.1 General

A basic principle of the Co-Determination Act is that disputes between employers and employees should be resolved by negotiation. Thus the union organisation has a statutory right to negotiate with the employer, and vice versa. An organisation is also entitled to negotiate with an organisation on the opposing side. The right of one party to negotiate is matched by an obligation whereby the opposing party must turn up for the negotiation. A party failing to appear is liable to damages.

The Swedish system of rules distinguishes between three different types of negotiation:

- a) co-determination negotiations
- b) dispute negotiations
- c) agreement-linked negotiations

The reason for these distinctions is that different solutions are applied in the event of disagreement, depending on the type of negotiation involved.

### **3.2 Co-determination negotiations**

This type of negotiation generally refers to issues in the work supervision and management field where a decision by the employer causes a change in the company's activities or a change in the employment conditions of the individual employee. Before the employer makes a decision involving any *substantial* change, he is required of his own accord to seek negotiations with the union organisation at the workplace. The aim of this rule is to guarantee the employees a voice and give them the opportunity to influence the decision. Should the parties fail to agree on what decision the employer is to make, the union has the legal option of raising the matter at a higher negotiating level, between the organisations on each side. Should these organisations fail to reach agreement, the employer then has the final say. The employer's final decision cannot be appealed to a court of law. Nor is the union organisation entitled to take industrial action in support of its opinion in the matter.

### **3.3 Dispute negotiations**

Dispute negotiations are primarily used in the event of disagreement on the interpretation or application of signed collective agreements or existing legislation. Such disagreements are normally termed legal disputes, and in the final instance are settled by a court. Before a court can agree to try the case, however, the parties must first have sought to settle their dispute by negotiation. A party to a collective agreement may not take industrial action to force through its own position in a legal dispute.

### **3.4 Agreement-linked negotiations**

This refers to negotiations where the parties seek to conclude a collective agreement in order to regulate an unresolved issue of common interest. Agreement-linked negotiations can take place at different levels. The most important are those between organisations concerning pay and general employment conditions. These negotiations are a preliminary to nationwide collective agreements for whole sectors. There are about 650 such agreements in the Swedish labour market. Should the parties fail to agree in these negotiations, industrial action is usually permitted. (Read more about industrial action in section 6.)

Bargaining between an individual employer and the union organisation at the workplace often concerns matters that the parties in the nationwide agreement have delegated to local parties for resolution. As a rule, both sides are required to maintain industrial peace during these negotiations. This means that no industrial action is allowed.

## **4. Collective agreements**

The parties to the agreement are on the one hand an employer organisation or an employer and on the other an employee organisation (union). Collective agreements are intended to regulate the employment conditions for employees or other kinds of conditions between employer and employee. A collective agreement must be in writing.

Collective agreements have two major consequences:

- members are bound by whatever agreement their organisations negotiate, and
- industrial peace ensues during a contract period.

The fact that members are *bound* by the collective agreement means, inter alia, that employers and employees may not reach separate agreements in violation of the collective agreement. Such agreements are invalid.

The *peace clause* requirement implies an absolute ban during the contract period both on any industrial action that seeks to bring about a change in the agreement and on the introduction of any rule that is to apply once the agreement has expired. Industrial action aimed at bringing pressure on the opposing side in a legal dispute is also prohibited. The rules concerning peace clauses and industrial action are described in greater detail in section 6.

## **5. Collaboration agreements**

### **5.1 Collective agreement areas with collaboration agreements**

A relatively new phenomenon in the Swedish labour market is the fact that the partners at sectoral or industrial level have increasingly reached agreement on the forms for bargaining. The collaboration agreement on industrial development and wage formation mentioned above is one such example. The agreement contains a timetable for bargaining. The purpose of this timetable is to ensure that bargaining gets under way in time for a new collective agreement to be negotiated before the old one expires. The timetable stipulates for instance that bargaining is to begin three months prior to the expiry of the current agreement and that the talks are to be led by an impartial chair. The task of the impartial chair is to assist the parties in the negotiations should they themselves fail to reach an agreement. The chair is empowered to order the parties to examine and identify individual bargaining issues. Further, chairs may present proposals of their own for a solution to the issues in hand. They are also entitled to order a cooling-off period for previously notified industrial action until such time as all possible avenues in the search for a solution have been explored, but for no longer than 14 calendar days. It should also be noted that an economic advisory council of four independent economists has been attached to the parties in the above-mentioned collaboration agreement. The council's task is to make statements and recommendations on economic issues.

The collaboration agreement in the industrial sector has been followed by similar accords elsewhere, also in local and regional government sector. The Swedish state, too, via the Agency for Government Employees, has concluded collaboration agreements with its counterparts in the OFR, etc.

### **5.2 Collective agreement areas without collaboration agreements**

Although collaboration agreements are in place in several major areas, they are not present in all areas. Among the major bargaining areas that lack such accords are the retail trade, the construction industry and the transport industry.

## **6. Peace clauses and industrial action**

The right to take industrial action in Sweden is protected under the Constitution. This right is enjoyed by associations of employees, individual employers and associations of employers unless otherwise prescribed by law or by an agreement. (More on section 3.4)

The Government cannot on its own restrict a party's right to take industrial action. Such a decree can only be issued following a decision by the Riksdag (Swedish parliament), which has the sole right to enact legislation.

The rules concerning industrial action and peace clauses are mainly to be found in the Co-Determination Act.

Peace clauses, as set out in the Co-Determination Act, restrict the right to take industrial action. Under these rules, it is prohibited in certain cases to initiate or take part in work stoppages (strikes or lockouts), blockades, boycotts or other action of a comparable nature. The ban applies to both employers and employees bound by collective wage agreements. Peace clauses cover three situations.

**Industrial action may not be taken:**

1. without an officially sanctioned decision by the organisation (on the side taking action) that is a party to the collective agreement.
2. if it is in violation of an existing collective agreement containing a stiffer peace clause than is provided for by the law.
3. if the purpose of the action is
  - a) to bring pressure to bear in a legal dispute concerning a collective agreement or the Co-Determination Act,
  - b) to bring about a change in the collective agreement,
  - c) to introduce a rule that is to apply once the collective agreement has expired, or
  - d) to take sympathy action when the party being supported is not permitted to take industrial action itself.

Further, the Co-Determination Act prohibits industrial action aimed at concluding a collective agreement with companies that have no employees or where the entrepreneur or members of his family are employees and the sole proprietors.

The law bans a certain type of industrial action. An employer may not as part of an industrial action withhold any pay or other remuneration.

**Industrial action may be taken**

Organisations and members bound by peace clauses are nevertheless allowed to take part in *sympathy actions*. Such actions are permitted when they are in support of a party taking lawful industrial action.

*Collection blockades*, i.e. e blockades aimed at forcing the payment of due or overdue pay or other remuneration for work completed, are allowed even if the parties are bound by a collective agreement. This however is contingent upon the decision to institute a blockade having been taken in due order by the union organisation.

The Co-Determination Act does not include any clause requiring the industrial action to be aimed at the opposing party. Industrial action against *third parties* is permitted even when the third party has nothing whatsoever to do with the dispute or has in no way expressed loyalty for the opposing party.

The Co-Determination Act has no rules pertaining to industrial action affecting key functions in society. The issue of *conflicts that put the community at risk* has been solved through collective agreements, which prescribe certain procedures for dealing with such conflicts.

For the parties in the public sector, the Public Employment Act contains certain rules restricting industrial action in connection with the exercise of authority by public officials. In the case of work relating to the exercise of such authority, industrial action is only allowed in the form of lockouts, strikes, blockades on overtime and blockades on recruitment. Nor may sympathy actions be taken in support of parties in the private labour market. Thus the law distinguishes between the exercise of public authority and other labour market activities. In the case of public activities other than the exercise of authority, the Co-Determination Act rules on industrial action apply.

*Advance notice* must be given of any industrial action. The party intending to take such action or to further extend action already undertaken is required to notify the opposing party in writing at least seven working days in advance. At the same time, the party must notify the National Mediation Office (more about the National Mediation Office in section 7). The notification requirement does not apply in the case of collection blockades, nor in cases where the party has legitimate cause not to give notice. A legitimate impediment is when the industrial action would be ineffective were the period of notice to be observed, for instance in the case of blockades against the unloading of ships on short-term port calls.

Failure to provide notice does not mean that the industrial action as such becomes unlawful. It does mean, however, that the party which has failed to observe this step is liable to a claim of damages from the opposing party and may also be required to pay a notification charge to the state.

(Read more about industrial action and agreement-linked negotiations in paragraph 3.4)

## **7. Mediation**

The National Mediation Office was established in 2000 and is the agency responsible for central government activities in the mediation field. Its tasks are regulated in the Co-Determination Act, which has been supplemented by an ordinance containing instructions for the work of the National Mediation Office. The task of mediating in labour disputes was previously discharged by the National Conciliator's Office. State Mediation in industrial conflicts has been provided by law since 1906.

### **7.1 Tasks of the National Mediation Office**

Under the Co-Determination Act, the National Mediation Office has two overall tasks. One is to mediate in labour disputes. Another is to promote an efficient wage formation process. Both tasks require the National Mediation Office to keep abreast of coming or current negotiations on pay and employment conditions, either through talks with the parties concerned or by other means. The Office is also required to provide guidance and information to the social partners on negotiations and collective agreements.

Another task for the National Mediation Office is to be responsible for the official Swedish statistics on salaries and wages. The statistics are produced by Statistics Sweden (SCB). The task is to provide statistics that as far as possible will meet the needs of the users.

## 7.2 Mediation in the bargaining process

### VOLUNTARY MEDIATION

If the parties negotiating collective agreements *accept* such a course, the National Mediation Office may appoint negotiation managers or mediators to take part in the bargaining process. In practice, this involves one or both of the parties requesting assistance and formally asking the National Mediation Office to proceed with such an appointment. Should one of the parties oppose such a course, the National Mediation Office is prevented from appointing a negotiation manager or a mediator.

### COMPULSORY MEDIATION

Should the National Mediation Office decide that a risk of industrial action exists, or if such action has already been initiated, the National Mediation Office may appoint a mediator *without the agreement* of the parties concerned.

Parties that have concluded collaboration agreements (see section 5.1 above), i.e. agreements on bargaining procedure that contain timetables for negotiations, time frames and rules for the appointment of mediators, rules on mediators' powers of authority and rules on the termination of agreements, are *exempt* from the rules concerning compulsory mediation. This is conditional upon the parties having reported the agreement to the National Mediation Office and the National Mediation Office having registered it. In such cases, the National Mediation Office may not decree compulsory mediation. The reason for this is that collaboration agreements should not have to be bound by dual systems.

### **Mediators appointed By the National Mediation Office**

The task of a mediator is to seek agreement between the parties. To this end, the mediator is required to summon the parties to the negotiating table or to take appropriate action of another kind. Parties summoned to negotiations by a mediator are duty bound to attend. Should any party fail to appear or fail to take part in some other way, the mediator may ask the National Mediation Office to require the party concerned to fulfil its obligations on penalty of a fine.

Mediators must also seek to persuade the party concerned to postpone or cancel a planned industrial action. Should the party refuse to comply with the mediator's request to postpone an action for which notice has been given, the mediator may ask the National Mediation Office to order the party concerned to postpone it. Should the National Mediation Office decide that such a course would be in the interests of a satisfactory settlement of the dispute, it may order a postponement. An action may only be postponed for 14 days at the most, and such a course may only be taken once per term of mediation. The National Mediation Office does not have the power to call off industrial action already under way. Such powers would contravene Sweden's obligations as stipulated in international conventions.

## 7.3 Promoting an efficient wage formation process

The chief responsibility for wage formation lies with the social partners.

The National Mediation Office's task of promoting an efficient wage formation process involves it working in various ways to help the negotiating parties take national economic considerations into account. When establishing the National Mediation Office, the Government declared that a low rate of inflation and a high

rate of employment growth were required if its employment goals were to be achieved. It also specified that wage formation should provide for real wage growth for employees without this causing cost levels in Sweden to rise above those of its major competitors.

In its instructions to the National Mediation Office, the Government specifies the main objectives in pursuit of an efficient wage formation process. The Office is to actively seek the development of timetables for the bargaining process with the aim of reaching new agreements before the previous contract period expires. The aim of such a course is to avert industrial action.

In addition, the National Mediation Office is to consult with the parties on bargaining prospects in terms of the national economic situation. The instructions also state that the National Mediation Office is to turn to account and uphold the consensus that exists in the Swedish labour market concerning the pattern-setting role of the competitive sector in pay talks. This is to be achieved through direct negotiations with the parties concerned. In addition, the National Mediation Office is required to collect, compile and interpret statistics of importance for wage formation and also to analyse those collective agreements considered to be of interest in this respect.

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