Medlingsinstitutet
Swedish National Mediation Office

The Swedish model and the Swedish National Mediation Office

The Swedish labour market model means that the labour market parties have primary responsibility for regulating wages and other terms of employment. This is also the prerequisite for the task of the Swedish National Mediation Office.

The labour market parties are responsible for wage formation and they also have a central responsibility for the other conditions on the labour market. The legislation supports this, for example through rules on rights of association and negotiation and the right to take industrial action. The labour market parties bear the main responsibility for maintaining industrial peace.

The Swedish model on the labour market can be summarised as follows:

- The legislation in large part constitutes a framework within which the labour market parties have a great deal of freedom to regulate the precise conditions in collective agreements.
- Many of the legal regulations can be replaced with collective agreements.
- There is no legislation on minimum wages or the universal application of agreements.
- Collective agreements are applied to most of the employees on the labour market.
- Disputes are resolved in the first instance through negotiation.

The parties in the labour market

There are more than 100 party organisations on the Swedish labour market, approximately 55 employer organisations and 60 trade unions. Together they sign around 670 agreements on wages and general conditions. The employer organisations and trade unions use various forms of cooperation in their negotiations.

Employer organisations

The Confederation of Swedish Enterprise represents 50 or so industry and employer associations within the private sector, which together have almost 60,000 companies as members. These companies have approximately 1.8 million employees. Over 98 per cent of the companies have fewer than 250 employees.

A number of employer organisations in the private sector are not members of the Confederation of Swedish Enterprise, such as the Banking Institute Employer Organisation (BAO), Fastigo; the Real Estate Employer's Organisation, the KFO Employer Organisation and the Employers' Alliance.

In the public sector, employers are represented by the *Swedish Agency for Government Employers* and the *Swedish Association of Local Authorities and Regions, SALAR.*

Employee organisations

The trade unions are in most cases members of one of the three central organisations, LO, TCO or Saco.

LO – The Swedish Trade Union Confederation is a central organisation for 14 trade unions for blue-collar employees and has around 1.3 million working members.

TCO – The Swedish Confederation of Professional Employees is a central organisation for 14 trade unions for white-collar employees. The association has about 1.1 million working members.

Saco – The Swedish Confederation of Professional Associations comprises 23 trade and professional unions. Together they organise just over half a million working members.

Negotiating associations and collaborative bodies

There are several associations and collaborative bodies within different sectors and for various issues. The majority of the employer organisations in the private sector work together within the Confederation of Swedish Enterprise. This cooperation includes collective agreement negotiations, for example.

On the trade union side, there are several associations for cooperating on negotiations etc. LO negotiates on behalf of its member associations on pensions and insurance, with the Confederation of Swedish Enterprise as the counterparty.

The Council for Negotiation and Cooperation, PTK, is a collaborative organisation that represents around 830,000 private sector white collar employees and academics in 27 trade unions. PTK negotiates with the Confederation of Swedish Enterprise on issues such as pensions and insurance.

For public sector employees, there is OFR, the Public Employees' Negotiation Council, which represents around 550,000 white-collar employees and academics in 14 trade unions. OFR negotiates with SALAR and the Swedish Agency for Government Employers on issues such as pensions and insurance. OFR is also a forum for the member associations to plan, coordinate, implement and evaluate collective bargaining.

For state-employed academics there is Saco-S, which is a negotiating organisation for 21 Saco associations with the Swedish Agency for Government Employers as the counterparty. Saco-S represents around 85,000 members and negotiates on wages and general conditions, as well as pensions and insurance.

Right of association and right of negotiation

The right of association, in other words the right to belong to an employee or employer organisation, is protected by the Swedish Employment (Co-Determination in the Workplace) Act (1976:850). This protection also includes the right to use the membership to work in the interests of the organisation or to form such an organisation.

It is considered a violation of the right of association if anyone on the employer or employee side takes action detrimental to someone because they have exercised their right of association or in order to induce them not to exercise their right of association. A violation of the right of association can also be considered to constitute encroachment on the activities of the organisation whose member suffered the violation. The party that is guilty of a violation of the right of association can therefore be liable to compensate both the individual and their organisation.

The Employment (Co-Determination in the Workplace) Act is based on the idea that differences of opinion between employers and employees should be resolved through negotiations. The trade union therefore has a legal right to negotiate with the employer or their organisation and vice versa. The right of negotiation of a party means there is a corresponding obligation for the counterparty to attend the negotiations. If it fails to do so, it risks having to pay damages.

The rules distinguish between three different kinds of negotiations:

- Co-determination negotiations
- Dispute negotiations
- Agreement negotiations.

The type of negotiation in each case determines what happens if the parties are unable to agree.

Co-determination negotiations

Co-determination negotiations generally relate to issues of a work or company management nature, where the employer's decisions involve a change of activities or a change of employment conditions for individuals.

Before making a decision involving an important change, the employer has an obligation, on its own initiative, to request negotiations with the trade unions at the workplace. If the local parties are unable to agree on what decision the employer should make, the matter may be referred for central negotiations between the respective organisations of each side. If these parties are also unable to reach agreement, the final decision rests with the employer.

Dispute negotiations

Dispute negotiations usually relate to the interpretation or application of collective agreements or relevant legislation. Such disputes are usually designated as legal disputes and must ultimately be settled in the courts. Before the courts will examine the dispute, the parties must first have attempted to resolve the issue through negotiations.

Agreement negotiations

In agreement negotiations, the parties try to draw up a collective agreement to govern an unresolved matter of interest. Agreement negotiations can take place at

various levels. The most important agreement negotiations concern wages and general employment conditions.

The aim of these negotiations is to establish national collective agreements for entire industries. There are around 670 such agreements that apply to the Swedish labour market. If the parties are unable to reach agreement in their negotiations, there is generally the option to take industrial action.

Agreement negotiations between an individual employer and the trade union at the workplace often relate to issues which the parties have delegated to the local parties in the national agreement. These negotiations usually take place under a no-strike rule. In other words, industrial action is prohibited.

Industrial action and the no-strike rule

The right to take industrial action (strike, lockout, blockade, etc.) is protected by the constitution and can only be restricted by law or agreement. This protection also covers employees in the public sector.

No-strike rule for parties bound by collective agreement

The law contains restrictions on the right to take industrial action, primarily in the Employment (Co-Determination in the Workplace) Act. A no-strike rule applies to parties bound by collective agreement. In other words, industrial action is prohibited in the following situations:

- Industrial action cannot be taken if the action has not been duly ordered by the organisation that entered into the collective agreement.
- Industrial action cannot be taken if the action breaches a collective agreement containing a no-strike rule that is more extensive than the law.
- Industrial action also cannot be taken if the action is taken for any of the following purposes: to exert pressure in a legal dispute, to effect a change in the agreement, to realise a provision that is to be applied since the agreement has ceased to apply, or to provide support for someone else (known as sympathy action) who is not able to take industrial action themselves.

A sympathy action is consequently also permitted if the party taking the action is bound by collective agreement, provided that the action is taken to support permitted industrial action. Being bound by collective agreement also does not prevent employees taking part in a blockade that has been duly ordered by the trade union in order to secure the payment of overdue wages or other remuneration for work done (known as a collection blockade).

Other restrictions on the right to take industrial action

Under the Employment (Co-Determination in the Workplace) Act, the union is prohibited from taking industrial action (with the exception of an employment blockade) in order to establish collective agreements with companies that do not have any employees or where the business operator or his or her relatives are the

employees and sole owners. An employer may not take industrial action in the form of withholding wages or other remuneration that are due for payment. The scope of opportunity for the trade union to take industrial action is also limited with regard to foreign employers with employees posted in Sweden. The restrictions are specified in the Swedish Posting of Workers Act (1999:678). The Public Employment Act (1994:260) also contains certain restrictions on which industrial action can be taken with regard to work in the public sector that comprises the exercise of official power.

Prohibition of industrial action against employers already bound by a collective agreement and in legal disputes

With effect from 1 August 2019, in addition to the above restrictions, the following also applies. According to a new provision of the Employment (Co-Determination in the Workplace) Act, an employee who is not personally bound by a no-strike rule (through membership of a collective agreement-bound union organisation) may take industrial action against an employer already bound by a collective agreement in support of a claim in a matter governed by the employer's collective agreement only under the following conditions:

- the industrial action must have been decided by the employee's trade union organisation in a duly qualified order,
- The aim of the industrial action must be to bring about a (further) collective agreement,
- the trade union organisation must first have negotiated with the employer or its organisation about the claims being presented and
- there must not be a requirement from the trade union organisation that the agreement that it wishes to achieve shall displace the employer's existing collective agreement.

The new restriction shall not apply to sympathy actions or collection blockades.

Furthermore, with effect from 1 August 2019, in addition to the above prohibition on parties bound by collective agreements to take industrial action to exert pressure in a legal dispute, there is a general prohibition on industrial action in legal disputes.

Notice

Notice must be given before industrial action is taken. The party intending to take or extend industrial action must notify the counterparty and the Swedish National Mediation Office in writing at least seven working days in advance.

The obligation to give notice does not apply if there is a valid impediment to giving notice. A valid impediment may exist in a situation where there is particular difficulty in fulfilling the requirement to give notice, for example in the case of the blockade of a vessel that is only in port for a short period of time. Notice must contain details of both the reason for the notice and its scope. The party receiving the notice must accordingly be given time to prepare for the industrial action and to be able to consider countermeasures or actions to avoid the industrial action. If

notice is not given in time or is not formulated correctly, this shall not make the industrial action that may be taken unlawful. Instead, the party that neglected its obligation to give notice may be liable to pay damages to the counterparty and may also be liable to pay a notice fee to the state.

More extensive no-strike rule under collective agreement

A no-strike rule that is more extensive than the law requires may be agreed in a collective agreement. The general collective agreement (known as the main agreement) entered into between the central organisations of the parties contains further rules on when and how industrial action may be taken and on notice.

Examples of such main agreements include the so-called Saltsjöbaden Agreement between the Association of Swedish Employers, SAF, (now the Confederation of Swedish Enterprise) and the Swedish Trade Union Confederation, LO. Another main agreement is the Municipal Main Agreement between the Swedish Association of Local Authorities and Regions and the Swedish Municipal Workers' Union along with several employee organisations.

These agreements contain, among other things, rules on industrial action affecting socially important functions. The agreements stipulate that issues relating to the danger to society of a particular industrial action must ultimately be examined by special joint party committees.

Collective agreement

A collective agreement must be in writing and govern the employment conditions of employees or the conditions in general between employers and employees. The parties to the agreement are an employer or employer organisation on one side and a trade union on the other.

The most important consequences of a collective agreement are that the members are bound by the agreement made and that there is a no-strike rule during the term of the agreement. Agreements cannot be made that are in breach of the collective agreement. Any that are will be invalid.

With regard to wages, the vast majority of the 670 or so central collective agreements require wage negotiations to take place locally. Such negotiations may relate to the size of the scope for wage increases or how this will be allocated between the employees covered by the agreement, or both. As the central collective agreements entail a no-strike rule, the local negotiations are conducted without the possibility of industrial action.

Negotiating procedure agreements

A negotiating procedure agreement (sometimes called a negotiating agreement) is a collective agreement in which the parties in certain industries have agreed on the forms that negotiations on new collective agreements for wages and general conditions should take. If such an agreement contains timetables for the collective agreement negotiations, time frames and rules for the appointment of mediators, rules on the powers of the mediators and rules on the termination of the agreement, the

parties can register this with the Swedish National Mediation Office. Once the agreement has been registered, mediators cannot be appointed in a dispute between these parties without their consent. Around 1.2 million employees are covered by such negotiating procedure agreements. Of the 670 or so collective agreements on wages and general terms on the Swedish labour market, almost 100 are made by parties that are bound by a negotiating procedure agreement. One example is the Industry Agreement between eight employer organisations and five trade unions in industry. The agreement contains not only the negotiating procedure, but also an agreement on cooperation for industrial development.

Swedish National Mediation Office

The Swedish National Mediation Office was established in 2000 and is a government agency under the Ministry of Employment. Its ten or so staff include social scientists, lawyers and statisticians with extensive experience of labour market issues.

The Swedish National Mediation Office has three principal tasks:

- to promote an efficient wage formation process
- to mediate in labour disputes
- to oversee the provision of public statistics on wages and salaries.

The Swedish National Mediation Office is required to strive for an efficient process of wage formation, in part by supporting and maintaining the consensus on the labour market of the normative role of the international competitive sector in wage formation.

An efficient wage formation process

- is based on the normative role of the international competitive sector in wage formation
- combines increased real wages with a high level of employment
- results in fewer labour market conflicts
- enables relative wage changes
- contributes to the international competitiveness of Swedish trade and industry.

The Swedish National Mediation Office strives for an efficient process of wage formation not only through its mediation work, but also by consulting the parties on the labour market about the economic conditions for wage formation and through conferences, seminars and reports.

Mediation

The Swedish National Mediation Office may appoint mediators if there is a risk of industrial action on the labour market of if the parties negotiating a collective agreement request this.

The Swedish National Mediation Office appoints special mediators in disputes between employers and trade unions in their negotiations on wages and general employment conditions. The mediators therefore work on behalf of the Swedish National Mediation Office, but are not its employees. Many of them have previously been negotiators or held senior positions at some of the labour market parties.

The Swedish National Mediation Office also has four permanent mediators affiliated to it. They are responsible for different geographical areas and are called in to assist in local disputes at company level. These are almost always conflicts where a company does not want to sign a collective agreement with a trade union. The permanent mediators are affiliated to the Swedish National Mediation Office for one year at a time and undertake this assignment as secondary employment. Often they are, or have been, court lawyers.

Duties of the mediators and powers of the National Mediation Office

The Swedish National Mediation Office appoints special mediators with the consent of the parties. The law also provides for mediators to be appointed without consent. This can take place if one of the parties has given notice of industrial action and the Swedish National Mediation Office considers that mediators may be able to effect a good resolution to the dispute. This kind of compulsory mediation is highly unusual. In practice, the parties always agree to the mediation of their conflicts. If a negotiating procedure agreement between the parties has been registered with the Swedish National Mediation Office, mediators cannot be appointed against the will the parties.

The task of the mediators is to ensure that the parties come to an agreement and that industrial action is avoided. This cannot be at any price, however, and ideally the mediators must strive for the parties to reach an agreement that is compatible with an efficient process of wage formation. In order to reach an agreement between the parties, the mediators must call them to negotiations. If a party fails to attend a meeting convened by the mediators or otherwise fails to fulfil its obligation to negotiate, the Swedish National Mediation Office, at the request of the mediators, may order the party to fulfil its negotiation obligation on pain of fine. The mediators can submit proposed solutions and must strive for the parties to postpone or call off industrial action. The mediators cannot, however, force any solution on the parties.

At the request of the mediators, the Swedish National Mediation Office can also decide that a party must postpone notified industrial action by up to 14 days. This may only be done once per mediation assignment. The intention is to give the mediators more time to bring about a resolution. The Swedish National Mediation Office must therefore have made the assessment in this case that additional time for the mediation work would provide the conditions for the resolution of the conflict.