

General Distribution
OCDE/GD(93)8

LABOUR MARKET AND SOCIAL POLICY
OCCASIONAL PAPERS

N° 11

**PREVENTING AND RESOLVING
INDUSTRIAL CONFLICT**

Seminar on Industrial Conflict Settlement in OECD Countries and in
Central and Eastern European Economies in Transition

FINAL REPORT



Paris 1993

GENERAL DISTRIBUTION

OCDE/GD(93)8

LABOUR MARKET AND SOCIAL POLICY
OCCASIONAL PAPERS

No. 11

PREVENTING AND RESOLVING INDUSTRIAL CONFLICT

Seminar on Industrial Conflict Settlement in OECD Countries and in
Central and Eastern European Economies in Transition

FINAL REPORT

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

Paris 1993

004040

DIRECTORATE FOR EDUCATION,
EMPLOYMENT, LABOUR AND SOCIAL AFFAIRS

CENTRE FOR COOPERATION WITH
EUROPEAN ECONOMIES IN TRANSITION

OCCASIONAL PAPERS

This series is designed to make available to a wider readership selected labour market and social policy studies prepared for use within the OECD. Authorship is usually collective, but principal writers are named. The papers are generally available only in their original language -- English or French -- with a summary in the other.

This study on Preventing and Resolving Industrial Conflict in Central and Eastern European Economies in Transition was undertaken in the context of the programme of assistance of the CCEET.

Comment on the series is welcome, and should be sent to the Directorate for Education, Employment, Labour and Social Affairs 2, rue André-Pascal, 75775 PARIS CEDEX 16, France. Additional, limited copies are available on request.

The opinions expressed and arguments employed here are the responsibility of the author(s) and do not necessarily represent those of the OECD.

Copyright OECD 1993

Foreword

The Centre for Co-operation with European Economies in Transition ("the Centre"), which was created in March 1990, is the focal point for cooperation between the OECD and Central and Eastern European countries. Its major responsibility is to design and manage a programme of policy advice and technical assistance which puts the expertise of the Secretariat and Member countries at the disposal of countries engaged in economic reform. This advice or assistance can take numerous forms, including conferences, seminars, missions and workshops in order to explore policy questions or review draft legislation; it can also include training for government officials who are called to implement market-oriented policies.

As part of an activity on "Conflict Regulation and Settlement" under the Centre's Programme of Work, the OECD's Social Affairs and Industrial Relations Division organised, together with the Polish Ministry of Labour and Social Policy, a seminar on "Preventing and Resolving Industrial Conflict" which was held in Warsaw from 18th to 20th May, 1992.

The activity had been developed in response to requests from Central and Eastern European countries that the OECD assist them in collecting information on legislation concerning industrial disputes, and on successful conflict settlement practices in OECD countries. Plans for implementing the activity were discussed with the Working Party on Industrial Relations; information provided by the Members of this Working Party on strike legislation and conflict settlement practices in their respective countries served as background material for the preparation of the seminar.

The Polish authorities, as hosts of the event, sent a dozen participants to the seminar, from government, labour unions and employer organisations, with the Minister for Labour and Social Policy joining the concluding session. Hungary and the Czech and Slovak Federal Republic sent three and four participants, respectively. Three members of the OECD Secretariat took part and five consultants presented detailed information to the seminar. In addition, participants were nominated by the Business and Industry Advisory Committee and the Trade Union Advisory Committee to the OECD, by the International Labour Office and the Commission of the European Communities.

The following text contains the Summary Report of the seminar, drafted by the Rapporteur, Professor George Thomason. The Report is prefaced by an Opening Address to the seminar given by Peter Scherer from the OECD Secretariat. It is followed by an Annex containing a brief overview of the current state of affairs concerning labour relations and industrial conflict settlement in Hungary, Poland and the Czech and Slovak Federal Republic. This Annex was drafted jointly by Professor George Thomason and Peter Tergeist from the OECD Secretariat, incorporating comments and corrections from the countries concerned.

Salvatore Zecchini

Assistant Secretary General of OECD
Director of the Centre for Co-operation
with European Economies in Transition

TABLE OF CONTENTS

	PAGE
OPENING ADDRESS, by Peter Scherer	1
FINAL REPORT, by George Thomason	3
EXECUTIVE SUMMARY	3
A. INTRODUCTION	4
B. EXPERIENCE FROM OECD COUNTRIES	4
France	
Germany	
Spain	
United Kingdom	
C. THE TRANSITION PROCESS IN CENTRAL AND EASTERN EUROPE	8
Political Stop-work Actions	
The Role of Law	
D. COLLECTIVE BARGAINING	11
Developing the Bargaining Partners	
Facilitating the Bargaining Process	
E. THE RIGHT TO STRIKE	16
Alternative Mechanisms	
Lock-outs	
Avoiding Open Conflict	
F. CONCLUSIONS	21
LIST OF PARTICIPANTS	23
ANNEX: PRACTICES OF CONFLICT SETTLEMENT IN CENTRAL AND EASTERN EUROPEAN COUNTRIES, by George Thomason and Peter Tergeist	27
A. HUNGARY	27
B. CZECH AND SLOVAK FEDERAL REPUBLIC	31
C. POLAND	34

OPENING ADDRESS

by

Peter Scherer

Head, Social Affairs and Industrial Relations Division, OECD

I would like to commence by expressing my appreciation for the assistance of the Polish authorities in the organisation of this seminar. The OECD's method of work is basically through mutual exchange of experience and expertise, and we hope that this seminar will be a good example to all present of this method of working.

Preventing and resolving disputes is an ambiguous goal. Discussions and disagreements about the terms of market transactions are the life blood of market economies: the myriad of discussions on stalemates between buyers and sellers is the way in which signals are exchanged on demand and supply. These signals provide the co-ordination of economic actors which, experience has shown, cannot be satisfactorily provided by central planning institutions. Clearly, we do not refer to a failure to agree to terms amongst potential buyers and sellers as a "dispute", even if a large number of goods are unsold or there is a shortage. At worst, we talk of rigidities in market mechanisms and a failure of prices to adjust quickly enough to clear markets.

Disputes arise in labour markets, of course, because they are so different in nature from other markets. An employment contract involves so many issues that it is impossible to continuously negotiate them. This leaves two possibilities. One is unilateral determination of the terms and conditions by the employer, with the employee remaining free to refuse the offer and seek other employment if he or she does not find it acceptable. This sort of "unilateral" regulation remains common in many countries, and is, in fact, the main method of determination in some, notably the United States.

However, over the past hundred years, mechanisms have developed in all OECD countries by which employees form trade unions, and through them, refuse to leave to employers the formulation of the terms of the employment contract. They seek *joint* regulation. The mechanisms by which they do so -- by which they bargain collectively -- are myriad. These mechanisms vary in time within countries as well as across countries. Even in a dynamic and successful economy, a deadlock on employment conditions can occur.

The absence of such deadlocks is not necessarily a sign of health. Unsatisfactory employment conditions imposed by unbalanced power relations can result in seeming acquiescence at the workplace, but anger and protest can then erupt in destructive ways. A "mature" industrial relations system in a market economy is characterised by mechanisms for discussing grievances at the workplace and (if necessary) tribunals to hear them which reduce the need for collective action to counter individual injustice. At the same time, such a system accepts that potential disagreement about what the employment contract should contain is an inherent feature of market economies, and that, on occasion, it is through the process of deadlock that collective conflicts on such issues find resolution.

Few industrial relations systems are "mature" in this sense all the time. Most open disputes -- and particularly those which are the most difficult to settle -- stem from a failure to recognise the legitimacy of disagreement. Anger over individual injustices often manifests itself in "unreasonable" demands for wage increases or reductions in hours which employers then regard as demonstrating the unreasonable nature of union demands. Unresolved deadlocks on the basis of the labour contract can lead to confrontational industrial relations which undermines the viability of the enterprise or (if widespread) whole industries and even economies. The art of the conciliator and the mediator is to help the parties arrive at an understanding of the issues at stake so that the areas in which compromise is necessary can be clarified, while the defects in procedures which impede day to day relations can be rectified.

The process of learning to live with and regard as normal the clash of market signals and forces has only been fully in action for 18 months in the three Central and Eastern European countries represented here. Sorting out economic disputes from political demands on the state is only just beginning. The main task is to identify the boundaries between economic, political and legal disputation, so that procedures can be put in place to deal with each.

PREVENTING AND RESOLVING INDUSTRIAL CONFLICT

FINAL REPORT

by

Professor George Thomason

EXECUTIVE SUMMARY

The Warsaw seminar did not attempt to reach agreed conclusions or to pass resolutions, but to expose the issues which, in the light of OECD countries' experiences, were felt to warrant further consideration by the social partners in the Central and Eastern European countries as they attempt to develop appropriate structures and strategies for collective bargaining. The main issues to emerge were:

- a) The problems being encountered in the transition period should not be allowed to stampede the countries into adopting measures which might restrict the development of orderly collective bargaining in the longer term;
- b) Moral suasion exercised through the mechanism of tripartite discussion might be used in parallel with prescriptive and proscriptive legislation in the process of stimulating appropriate behaviours and attitudes;
- c) Policies might be developed and resources applied to fostering the development of the employer and trade union institutions and of appropriate collective bargaining procedures which the bargaining partners might adopt at their discretion;
- d) Policies and facilities intended to help the parties to resolve conflicts might be based on the principle of allowing the bargaining partners as much freedom as possible to pursue their legitimate interests, but ensuring that a range of settlement procedures and mechanisms are available to the parties;
- e) The role of government might be to maintain a balance of bargaining power through the operation of law and to ensure the availability of facilities of advice and help to the bargaining partners;
- f) This principle of balance might be extended to those situations in which the workers' right to strike is denied or curtailed in the social interest, and the desirability of providing alternative mechanisms of protection might be more fully explored;
- g) The collective bargaining and social security implications of the economic power of the employer in a market economy might repay further attention as the proportion of the economy exposed to competition is increased beyond its present low levels.

A. INTRODUCTION

The Warsaw seminar on industrial conflict settlement allowed a constructive dialogue to take place between industrial relations practitioners from a group of OECD countries (France, Germany, Spain and the United Kingdom) and from Poland, Hungary and the Czech and Slovak Federal Republic on their diverse experiences in preventing and resolving industrial relations conflicts.

Taking a broad view on the issues involved in conflict settlement, discussions at the seminar focused on three main themes:

- a) the rights and responsibilities of the social partners in both smoothing the transition to a market economy and establishing a viable foundation for the future industrial relations system;
- b) the role of legislation in steering the conduct of the collective bargaining partners into those channels best calculated to allow them to achieve their objectives at least cost to themselves and to the economy;
- c) the role of governments or other third parties in ensuring the availability of mechanisms for the resolution of differences and disputes.

B. EXPERIENCE FROM OECD COUNTRIES

Before the specific situation in the Central and Eastern European countries was discussed, the seminar devoted one session to the presentation of legislative background and cases of conflict settlement in OECD countries. The following are short summaries of the presentations, made by M. Gilles Bélrier for France, Mr. Peter Kraft for Germany, Mr. José Luis Junquera for Spain and Professor Sid Kessler for the United Kingdom.

France

Terms and conditions of employment are determined by the statutory imposition of minimum rates of pay, holidays, etc., which may then be improved in individual or collective bargaining. It is widely accepted that the law will be used to increase democratic control in the workplace, through the institutions of either the works council or collective bargaining. Because union density remains low (estimated at about 12 per cent), the works council assumes an important role in assuring democracy in many workplaces.

The institution of collective bargaining is supported by the establishment, under the Act of 13 November 1982, of a duty to bargain. This Act made no provision for enforcing the duty, so that it is for the bargaining partners to regulate the process as best they can, once their qualification to act as a bargaining partner has been verified by a government agency.

It is fostered by the constitutional right of French workers -- other than the police, the armed forces and the judiciary -- to go on strike (although those in public service are required to give prior notice of their intention to exercise this right). In the absence of an enforceable right to bargain collectively, however, the strike weapon may be more readily used to coerce employers.

Provision exists for third party intervention in disputes, via conciliation, mediation or arbitration, but these are very little used, although the Labour Ministry keeps a list containing the names of around 30 suitable mediators. In present circumstances, the courts are drawn into the process of regulating industrial relations. The employer can apply to a court to secure an injunction to prevent a strike taking place. The court also has power to appoint a mediator in order to resolve a conflict of interest. However, in practice major disputes are often resolved in trials of strength which may sometimes require intervention by the civil authorities to maintain public order. Some trade unionists, although by no means all, are in favour of introducing mandatory procedures as a way of introducing greater order into the industrial relations system.

Germany

The ordering of industrial relations in Germany depends on the two distinct institutions of collective bargaining and the works council. Wage issues are mostly handled through sectoral bargaining machinery. Other issues, referring to those which concern the organisation, direction and control of affairs in the workplace are handled through the works councils. It is considered that the separation of the two classes of interest allows issues to be resolved without the intrusion of complicating concerns.

The workers' rights to organise, to bargain collectively and to take industrial action are derived from the Constitution (Basic Law) of 1949. The wage agreements reached (normally at a sectoral level) are legally binding and take precedence over work agreements or personal contracts. These voluntary agreements usually contain a "peace clause" which restricts the opportunity of either party to take industrial action.

The courts regard strikes as lawful only when they are called by a trade union after a ballot and are concerned with issues capable of determination within a collective agreement. They have also developed a "principle of proportionality" which enjoins the unions to take strike action only after:

- all other methods of resolution have been tried and failed;
- the chances of achieving the union's objectives have been assessed;
- taking account of its likely effects on other interested parties.

Lock-outs, which are also lawful, are subject to similar principles developed by the courts.

Collective agreements usually make their own provision for conciliation, mediation or arbitration, although some States offer a conciliation service which the partners may call upon. The most commonly used method of dispute resolution is that of mediation, carried out by a board of equal numbers drawn from both sides and chaired by an independent person.

The independent mediator usually sits in on all negotiations so that he/she is familiar with the issues and is able to assist the parties in reaching agreement amongst themselves and thus avoiding breakdown. This allows the mediator to feed into the negotiations information which might not otherwise be available to them. The crucial factor in the success of this approach is the existence of trust between the mediator and the parties.

Spain

Industrial relations, and with them the rights governing collective action, were reformed during the transition to democracy in 1976/77. Trade unions, despite their low organisational density (estimated at below 15 per cent), were accorded the status of a social partner (along with business and Government) in evolving new democratic institutions. The Workers' Statute of 1980 assures employees the right to organise but lays down conditions to be satisfied by unions wishing to engage in collective bargaining. This is conducted at three levels, those of national or provincial sectors and of the individual undertaking. Agreements become effective if they secure approval by 60 per cent of each of the two sides and once they have been published in the Official Bulletin.

Workers (other than those in the armed forces) have the right to strike, but the Government has power to require the maintenance of minimum services when a strike occurs in public or other essential services. Political strikes, strikes likely to interrupt production in strategic sectors, and most forms of disruptive industrial action short of a strike are unlawful. A proposal to extend the restrictions on strike activity by, *inter alia*, naming the services deemed to be essential has been sent to Parliament and is likely to be implemented despite strong trade union opposition.

In case of collective labour disputes, the labour authorities have power to call disputing parties together in order to facilitate agreement through conciliation and mediation. Where agreement is not reached, the parties may decide to go to arbitration. In disputes of right, where conciliation or mediation have failed, the authorities may send the dispute to the labour courts for resolution. Arbitration is always voluntary, except in certain cases where government can order compulsory arbitration to end a prolonged strike that involves "serious prejudice to the national economy".

Since a central Institute of Conciliation, Mediation and Arbitration was little used, its functions were transferred to the Ministry of Labour during the mid-1980s. In the Basque autonomous region, similar machinery established by voluntary agreement between the employers' associations and the trade unions has been more frequently used to good effect.

The experience in Spain suggests that if strikes are to be prevented, the parties must be prepared to talk to one another and seek consensus, while the role of the State should be limited. It illustrates the difficulties of establishing an effective method of dispute resolution in conditions of significant political change.

United Kingdom

The United Kingdom has no written constitution and workers' rights are established in specific legislation which may be amended by a majority vote in Parliament. Historically, workers' rights in respect of industrial actions have been granted as immunities from prosecution or suit for actions which would otherwise be unlawful. Britain has no statutory minimum wage, and collective bargaining over terms and conditions of employment is entirely voluntary.

In recent years, the unions' immunities have been reduced by a series of Acts of Parliament, with the result that lawful strikes are now confined to actions which are taken against the workers' immediate employer, following a majority vote in a lawful ballot. A strike breaks the contract of employment, and the employer is at liberty to dismiss all or some of the workers taking strike action.

In the changed economic and political conditions of the last decade, trade union membership has been declining (although density remains at about 40 per cent), sectoral bargaining is giving way to company and establishment bargaining, and the unions' influence in the workplace is being curtailed. Continental-style works councils do not exist (although there are some voluntary joint consultative committees), and there is therefore no alternative workplace representation to that established by the trade unions (where they have achieved recognition from the employer).

Beyond collective bargaining, two mechanisms exist for determining pay for parts of the workforce. The device of the independent *Pay Review Body* is used to recommend pay levels to government in respect of the armed forces, the judiciary, senior civil servants, school teachers, doctors, dentists, nurses and paramedical personnel in the National Health Service.

The device of the tripartite *Wages Council*, whose members are appointed by the Department of Employment, is used to establish statutory minimum rates of pay for adult workers in some industries in which pay levels are relatively low and (usually) collective bargaining arrangements inadequate.

The publicly-funded but otherwise independent *Advisory Conciliation and Arbitration Service* (ACAS) provides a free service to the collective bargaining partners to help avoid or resolve disputes. There is no mandatory requirement that the parties should use these services, but ACAS' impartiality is widely accepted. In 1991, ACAS was involved in 1 226 collective conciliations and 157 mediations and arbitrations. In addition, ACAS provides individual conciliation in cases such as unfair dismissals which amounted to over 60 000 during 1991, and free advisory services which included over 6 000 advisory visits in the same period.

Professor Kessler's presentation on the United Kingdom was illustrated by reference to a case study which revealed the procedures followed in voluntary arbitration.

C. THE TRANSITION PROCESS IN CENTRAL AND EASTERN EUROPE

Poland, Hungary and the Czech and Slovak Federal Republic are all in the process of transforming their economies from centrally-planned socialist systems to market economies. The three countries have made significant and rapid progress in devolving economic decisions, including those concerned with income distribution, from the state administration to subsidiary organisations (at the levels of the branch, the establishment and the enterprise). Progress is necessarily and sensibly constrained by the need to maintain internal social order while achieving international competitiveness.

The liberalisation programme entails the creation and allocation of new decision-roles and the development of new rules of competitive engagement and negotiation. This applies as much to the area of industrial relations -- concerned with the establishment of the price of labour and the terms and conditions under which workers are engaged -- as to any other. Each country has attempted to progress by securing the prior consent of the social partners to the changes thought to be needed to support the new system of collective bargaining between employers and workers or their trade unions.

Consent is often sought through discussion of proposed reforms of the legal and institutional framework by tripartite councils representing government, employers (management) and workers (trade unions). Each country attaches great importance to the "creation of an organisation and legal framework for tripartite consultations at local and national levels, in order to reach a consensus on the shape of economic and social policy" (in the words of Mr. Andrzej Baczowski, Under-Secretary of State at the Polish Ministry of Labour and Social Policy).

Discussion of the kinds of action which might be taken to create this framework has focused on the twin tasks of meeting the requirements of the transitional phase as well as those of the more settled state expected to follow it within a few years. Seminar participants generally agreed that it was sensible to keep separate the specific remedies adopted to meet the needs of the transition from the longer-term solutions adopted to structure the collective bargaining process. In the initial phase, it was recognised, many of the issues and problem areas tend to assume a "political" character in that they encourage political action aimed at influencing government policies; however, once the policies have been firmly established, the nature of the problem is likely to change.

Political Stop-work Actions

An important issue taken up by a number of conference participants, was that of stop-work actions undertaken for political protest purposes. Participants recognised a distinction between the "political" process of establishing the new roles and rules and the non-political processes of collective bargaining. Mr. G. Chaloupek, spokesman for the Trade Union Advisory Committee (TUAC), reminded the conference that current disputes are unlikely to be classical wage disputes when the workers are faced with major restructuring of their enterprises and workplaces. The conference was concerned, nevertheless, that the "political" strikes (usually directed against government policies and programmes) mounted during the transition period might have a continuing significance for the longer term.

This concern is to some extent borne out by the facts. Mme M. Lado of the Institute of Labour Research in Budapest reported that her study of recent strikes in Hungary concluded that many of them had little to do with local or branch collective bargaining, but involved a more or less strong element of protest at government decisions. Mr. A. Baczkowski presented figures for Poland for the preceding 10 months which showed that unlawful demonstrations involving work stoppages amounted to between one-sixth and one-third of total recorded conflicts. Mr. W. Tkac from the Czech and Slovak Confederation of Trade Unions estimated that 15 per cent of strikes in the Czech and Slovak Federal Republic fell outside the limits set by law.

While the incidence of political stop-work actions is not necessarily high, it was regarded as frequent enough to cause concern that a "habit" of stopping work (and disrupting production) in order to influence government policies might continue beyond the transition and threaten the orderly functioning of collective bargaining in a market economy.

Some efforts should be made to *reduce* the incidence of such unlawful stop-work actions, although it was thought unlikely that they would ever disappear entirely. The fact that the dividing line is not always respected as inviolate in the OECD countries (where the partners have lived with the distinction for longer) gave some support to this view. It was also doubted whether the social partners could be expected at this stage to observe clear-cut distinctions between their political and industrial relations purposes.

Any further constraining action should avoid adding to existing legal restrictions. Mme Lado suggested that more tripartite discussion of issues extending beyond the confines of employer-employee relationships might make further external controls unnecessary. Professor W. Masewicz from the Polish Academy of Sciences argued that it should, in any event and as a matter of principle, be for the partners, and not the government, to decide which conflicts were legitimate.

The Role of Law

The legitimate use of the law in curbing industrial actions which might threaten the process of transition to a market economy proved to be an issue which arose in many contexts during the conference. This is not surprising because the route to liberalisation being taken by the Central and Eastern European countries implies a reduction in the role of the State and of law in determining terms and conditions of employment, so that finding a new equilibrium position is important. In spite of this, the law seems well suited to providing some definition of the kinds of conduct that will be acceptable in and supportive of the new market system.

The general aim of establishing a foundation for industrial peace was accepted as a desirable objective for all three countries. Recognising that "the possibility of industrial conflicts emerging is an inseparable, even normal, element of regulation through collective bargaining", Mr. Baczkowski suggested that the Central and Eastern European economies "should aim at their prevention and develop procedures for their peaceful settlement".

Discussions focused on two main themes:

- a) the role and function of law in guiding and steering the collective bargaining conduct of the social partners, following the transitional phase;
- b) the responsibility of both social partners in developing mechanisms for facilitating the achievement of the general aim.

Two contrary views emerged on the first issue. One group saw a positive role for law in steering the partners into appropriate paths. Mme E. Sobolka of the Polish Ministry of Labour suggested that it is common for legal regulations to precede and stimulate changes of practice. For this reason, in a transition as significant as that being experienced in Central and Eastern Europe, this was an important function that the law could and should perform, even if it did not always succeed in eliciting precisely the response intended.

It was also noted that all countries represented at the seminar rely upon the law to impose some basic rules about what constitutes acceptable and unacceptable industrial relations conduct in a decentralised market economy (even though they do not all draw the same boundaries between acceptable and unacceptable behaviour). While their legal limits to socially-acceptable conduct have been modified over time, their constant features tend to be taken for granted even if they are not always followed.

All three Central and Eastern European countries have already enacted laws to constrain collective bargaining conduct and have done so in advance of the subject matter of collective bargaining itself being fully defined and established. Consequently, it is difficult empirically to assess their workability or acceptability. However, the penalties provided are intended to conform to settled industrial relations practice and not to cope with the more politicised labour relations currently in force.

Another group of participants took the view that the power of the law to channel conduct was limited and that reliance on it should be kept to a minimum. Mme L. Rostounova from the Czech and Slovak Federal Ministry of Social Development, indicated that a different approach was in fact being relied on to maintain social stability in the period of transition. Steps had been taken to ensure that, as far as possible, changes made in legal rules followed discussions which were aimed at recruiting the prior consent of the social partners. Mme Lado also attached significance to the role of effective tripartite discussion in preparing the way for acceptance of the new rules. The mechanism relied on is that of achieving behavioural conformity on the basis of conviction rather than on the basis of imposing penalties for non-conformity.

A related concern focused on doubts about the role of the judiciary in resolving industrial relations conflicts. Mme B. Skulimowska from the Institute of Labour and Social Affairs, Warsaw, initiated a discussion of the issue of whether it was desirable to regulate the collective conduct of the social partners through the judicial system or through voluntary mediation and similar non-judicial processes.

Some participants held that the law, being primarily (though not exclusively) concerned with issues of right and wrong, might not always be the most appropriate mechanism for resolving differences between partners who had to work together once the immediate difference was resolved. The propensity of the judicial system to establish who was right and wrong, tended to create winners and losers, and this might not form the best foundation for subsequent co-operation. The processes of conciliation and voluntary mediation and arbitration, concerned with settling differences and solving problems in a way which enables the parties to resume their co-operative relationship, were thought to be potentially more appropriate to the industrial dispute situation.

D. COLLECTIVE BARGAINING

The three central and eastern European economies in transition have determined that collective bargaining will be the main method used to establish the terms and conditions of employment. This involves a progressive reduction in the domain and influence of the pre-existing statutory Labour Code, through which these terms were previously determined, although it is intended to retain at least a statutory minimum wage.

The conference noted that a large number of societies have some form of minimum wage legislation, which establishes a universally applicable rate. However, the minima are usually relatively low and actual rates paid are more often dependent on competitive conditions in the industry or the ability of the trade unions to negotiate enhanced rates. It was also noted that the concept of a minimum standard may be extended beyond the actual wage rate to include hours, holidays and occupational safety.

The need to create by law a structure which gives workers some influence on the way in which their enterprises are to be developed was generally accepted. Strikes were considered to be less likely if workers had a democratic means of influencing their working environment. It was noted, for example, that a number of countries make it mandatory for the employer to establish and communicate with works councils. The founding statutes usually require the council to concern itself with a range of matters internal to the enterprise, but not with wages and conditions which are determined through collective bargaining.

Opinion was divided on the value of the works council mode of providing workers with some voice in the affairs of the enterprise. Some felt that this approach had much to commend it, in that it enabled domestic matters to be handled locally without the added complication of having to take account of remuneration questions in the process. Others felt that earlier experiments with similar workplace structures (as in the Czech and Slovak Federal Republic) had made it difficult for works councils to be accepted by workers as a second representational channel beside trade unions.

In this context, some participants commented on the role of employee representatives in dealing with the social security issues being encountered in the transition to a market economy. During this phase, massive lay-offs could occur as a result of reorganising enterprises for or on privatisation. The main questions centred on the authority to be allocated to workers to enable consultation and negotiation on the lay-offs and the social security payments for those who became unemployed as a consequence.

Given the specific relevance of experience in the process of German reunification, Mr. Kraft, mediator in the state of Northrhine-Westfalia, and Mr. Wienke from the German Employers Confederation noted that in Germany the works councils tend to co-operate in the design of mass lay-offs, and that financial responsibility is shouldered to a large extent by the enterprise. In the eastern *Länder*, however, enterprises can usually not assume the full costs of "social plans" for collective redundancies, and additional moneys are provided from state funds, although the distribution is negotiated by the social partners in the works council. A number of conference participants considered that more thought needed to be given to the way in which the issue would be handled by the Central and Eastern European countries, as current solutions seemed to be inadequate to cope with a problem of this magnitude.

Others saw this as raising a question about the balance of bargaining power in specific economic conditions and about the role of the state in fostering or maintaining the desired balance. Like the issue of securing union representation in small private establishments, the problem posed by collective lay-offs were seen to create a condition which might militate against the recruitment of worker commitment to the proposed collective bargaining system, and might make it difficult for the unions to control their members.

Constructive discussion of this issue was not facilitated by the fact that the "private employer" role and function is not yet well established in any of the three Central European countries. It proved difficult to make realistic estimates of how the new employers would respond to the underlying economic realities and therefore difficult to foresee what further actions might be needed to ensure that an even-handed approach was adopted by the collective bargaining partners. It was thought that the issue might have to be revisited when a sufficiently large section of enterprise had been exposed to market competition and the strategies of management had become clearer. The conference participants, thus, recognised that planning for stability in a condition of considerable volatility is far from an easy task.

Some of the trade union representatives present were concerned about the difficulties encountered by workers in establishing trade union recognition in the smaller private undertakings. Failure to achieve this had the effect of handing over the setting of terms and conditions unilaterally to the employer which, as they saw it, was a negation of the principle of relying on collective bargaining to perform this function.

They therefore questioned whether the State ought not to play a more pro-active part in either fostering or mandating collective bargaining. The difficulties of relying on legal safeguards of workers' standards, and of giving workers any influence on enterprise development, in the absence of a union, were advanced as reasons for concern. This would, however, imply a further section of legislation to impose controls over the collective bargaining process. The general thrust of the deliberations in the seminar was that the role of law -- whether in steering behaviour into acceptable channels or in controlling behaviour once the channels were identified -- should be kept to a minimum, and that the main initial requirement should be to establish by dialogue which channels ought to be adopted as appropriate to the prevailing conditions.

In this context, it was noted that OECD countries rarely mandate employers to engage in collective bargaining with representatives of their workers. In Germany and the United Kingdom, for example, employers are free to decide whether or not they will recognise one or more trade unions for purposes of collective bargaining, and it is therefore for the union(s) to "win" recognition by whatever means they can. In France, the Act of 13 November, 1982, introduced the concept of a "duty to bargain", but made no provision for its enforcement.

At the level of action short of legislation, the conference examined two issues, which relate to the responsibilities of the social partners in creating a viable system:

- a) what needed to be done to ensure that the bargaining partners themselves were prepared for their new roles; and
- b) what needed to be done to facilitate the development of the collective bargaining processes themselves, once the partners were in place and the processes under way.

Developing the Bargaining Partners

Conference participants recognised that the capacity of the new system to develop a satisfactory mechanism for determining terms and conditions was dependent on the development of appropriate bargaining partners. It was recognised that the trade unions already existed, but that the employer function was as yet ill-defined and ill-developed because privatisation had not yet proceeded far.

Union density in the Central and Eastern European countries remains high in comparison with OECD countries. Governments have already legislated to establish the legal status of the trade unions and to protect their role as collective bargaining partners under the new conditions. The possibility that governments might go further and make collective bargaining a mandatory charge upon employers was raised, but no consensus on the question seemed possible because of the current uncertainty about the concrete form that the organisation of business interests would take in the years to come.

The development of the new unions' workplace-level infrastructures was considered to be an important and urgent requirement. Mr. A. Toth of the Institute for Political Sciences, Budapest, suggested that the trade unions were relatively new and not yet well-established in their new roles. In all three countries, the Labour Courts continue to provide remedies to workers where their treatment is found to be in breach of the terms of the Labour Code.

The presentation of an individual complaint to the Labour Court often depends upon the individual receiving assistance from the trade union or works council representatives. This was enough to establish the need to facilitate the development of the unions' workplace structure.

More development of the employer's role in collective bargaining was also needed. Professor Masewicz expressed the view that a better-developed employer structure was a prerequisite for transferring control of industrial relations to the social partners. He considered that currently (as the recent educational dispute in Poland showed) no effective employer response to conflict and no internal control of its incidence was yet possible. It might also be desirable for the employers' associations to be more fully involved in other preparatory processes, such as composing a list of acceptable persons to perform the role of mediator where this is currently discussed only with the unions.

For their part, employer representatives recognised the existence of a problem in current trade union attitudes. Mme R. Semerak-Nebes from the Confederation of Polish Employers, for example, suggested that union leaders had to accept that reaching agreement does not mean that the employer must capitulate to their demands: collective bargaining is essentially a process of give and take within the limits set by the economic conditions of the branch or enterprise in which it occurs.

Employer and trade union representatives from Poland agreed that there were really two problems in this area, both requiring urgent remedy: in the public sector there are strong trade unions but no real employers, whereas in the private sector there are real employers but trade unions find it difficult to secure a foothold. This highlighted the probability that a true employer role will not emerge until enterprises are subjected to the discipline of effective competition.

Developing strong trade union and employer central organisations was also thought to be necessary because they should be the prime source of help to the local (enterprise-level) negotiators. In well-functioning industrial relations systems it was usual to find strong trade union and employer associations operating in support of the activities of the local units. Action to bolster this aspect of the industrial relations system ought therefore be treated as urgent.

Given the current objective of liberalising trade in order to achieve greater international competitiveness, it was sensible to devote more resources to preparing the social partners to engage in bargaining processes. Educational activities, rather than creating additional legal controls, should be emphasised, as in any case the partners would need time to orient their behaviour to the new rules.

Facilitating the Bargaining Process

The concern with the question of how collective bargaining itself might be facilitated recognised that the first issue to be resolved was whether it should take the form of conventional distributive bargaining or some form of "mutual gains" or "productivity" bargaining (concerned with both generating and distributing benefits). These methods have appeared in different guises in different countries, such as productivity bargaining in the United Kingdom, mutual gains bargaining in the United States, and certain works council procedures in some other OECD countries.

This was considered to be an issue which required urgent consideration in the tripartite bodies. Mr. Chaloupek observed that the exposure of the former state enterprises to competitive pressures places a premium on achieving improvements in productivity, and that employees' future prosperity -- as well as that of their enterprises -- depends upon the partners being able to generate such gains prior to considering how to distribute them.

"Model" procedures for both distributive and integrative bargaining might be drawn up and disseminated for adoption (at their discretion) by the collective bargaining partners. The procedures established either by law or by joint consultation remained general. Much was left to be filled in as the partners accrue experience of resolving problems through collective bargaining.

Conventional bargaining processes depend on the partners developing procedures, in advance of their being needed, to enable interest claims and grievances over rights to be handled systematically and with expedition. The basic procedures identify the status of the parties, the matters on which they agree to bargain or negotiate, the stages through which the negotiations will proceed and the timetable to be followed in the absence of specific agreement to depart from it. Other procedures not reserved to the works council may be adopted for handling disciplinary matters and grievances, or to govern the introduction of new technologies, job evaluation, etc.

Mutual gains bargaining incorporates these procedures, but extends them to provide machinery and facilities for increasing productivity. For this reason, it incorporates arrangements for information dissemination, consultation and mutual problem-solving of the kind which are characteristic of works council processes. Where, therefore, the works council model is not adopted, it is likely that the collective bargaining process will need to make provision for these processes to be gone through in the collective bargaining framework, if the objective of generating productivity is to be realised.

Such procedures give a degree of organisation to the bargaining processes. Where they arise from the voluntary agreement of the social partners, they usually command sufficient respect to be useful in avoiding open conflicts. In the Central and Eastern European countries, the development of such procedures has been a main task of the social partners in tripartite discussions during the first years of the transition. They are only now being used as the Labour Code is relaxed and the collective bargaining machinery takes over.

Another issue, more directly related to the bargaining and negotiating processes themselves, concerned the supply of information to the bargaining partners. In most Western European countries, the responsibility for assembling information for bargaining purposes lies with the bargaining partners, although this may be supplemented where third parties are involved in the process of working towards an agreement. In the Central and Eastern European countries, the partners are less well-established in this role; and it is possible to envisage using government officials or mediators to disseminate the needed information.

Consideration of the question of whether the State or some other central agency ought to play a role in providing advice and other forms of assistance to help the bargaining partners to work themselves into their new negotiating and decision roles, brought an acknowledgement that if any of these facilities were to be provided as a central service by the State, it would require a change in structures, activities and orientations of personnel in the Ministries of Labour and also of the attitudes of the parties towards them.

E. THE RIGHT TO STRIKE

Conference participants accepted that, if collective bargaining was to be relied on as the mechanism by which the separate interests of workers and employers are reconciled, there could be no denial of the workers right to strike. The concerted withdrawal of labour forms the ultimate sanction which workers can impose to pressure an employer to settle a claim or a grievance on their terms or to avoid having to accept the employer's terms.

The trade union's ability to make use of the strike sanction is also affected by the economic conditions at the time: with high levels of unemployment and no restriction on the employer's freedom to replace strikers by recruiting other workers, mere possession of the right may be of little value to the unions as a sanction. But if the right to strike were to be denied them, they would have little power to enforce their demands under any conditions.

Because of its importance in this respect, the right to strike is sometimes (as, for example, in Italy) enshrined in the constitution, but where this is not the case, it is usually established and upheld by the law. Where the exercise of the right depends upon either specific legislation (as in the United Kingdom) or court decisions (as in Germany) rather than the national constitution, it is always possible to restrict the right by amending legislation or court decision.

It is normal (and in some countries legally enjoined) to regard the contract of employment as merely suspended for the duration of a lawful strike, so that the workers' jobs are "safe" and may be resumed once it is settled. However, in some countries and in some circumstances the employer might choose to regard the contract as terminated either by the industrial action itself or because of its effects upon the business. He may be at liberty to lay-off or dismiss workers who strike, on the ground that the enterprise has ceased to be viable because of the action taken, or on the ground that a court has granted an injunction declaring the strike to be unlawful for some reason. In the United Kingdom for example, as Professor Kessler pointed out, the employer now has the liberty to dismiss striking workers either *en masse* or selectively.

Another practical and politically controversial issue surrounding the right to strike -- found in some form in all economies -- is whether it should extend to everyone in all circumstances. It is not difficult to find a rationale for making exceptions to the general rule. But if exceptions are made, there is a consequential question to be answered: by what means can those denied the right seek accommodation of their interests or redress of their grievances? The conference spent some time examining these issues in the context of the Central and Eastern European developments, and identified three types of restriction which might be acceptable.

The right to strike might be restricted (as is commonly the case) to collective withdrawals from work in support of claims or grievances which are capable of being resolved in negotiations with one or more employers, and not extended to those which have some other purpose which it is outside the capacity of the employer to resolve. This would be sufficient to outlaw political strikes but, more problematical, could be used to outlaw sympathy (or solidarity) strikes. Given the historical experience that in some Warsaw Pact countries strikes had been instrumental in bringing down Communist governments, there was a feeling among Central and Eastern European participants that laws which try to make political strikes unlawful or even criminal come uncomfortably close to practices of the previous regime.

The right to strike might be denied to workers in the security and safety forces and the judicial system, and possibly also to other categories of employees in government service. In these cases, the rationale for the denial is that the exercise of the right could be expected, directly or indirectly, to threaten the breakdown of law and order.

In the case of government workers and in other cases where the supply of essential services to the community are involved, the solution might be to constrain the use of the strike rather than to deny the right. The rationale in this case is that the health, safety or well-being of either the population at large or specific (often disadvantaged) sections of it would be put at an unacceptable risk if the strike were to occur. It is usually considered sufficient to deny such actions legality only if certain steps to minimise disruption are not taken before the industrial action commences. The restrictions might take the form of:

- a) imposing a mandatory period of notice (as in Spain and France) or a "cooling-off" period (as in certain circumstances in the United States) before a strike may be commenced;
- b) imposing (as in Hungary, Poland and the CSFR) a mandatory stage in the negotiating process during which a further attempt has to be made (with or without external assistance) to settle the difference without resorting to any form of industrial action;
- c) requiring (as in Spain) the strikers to agree with the management in advance of the strike some arrangements for safety and security cover or for the minimal provision of services during its course;
- d) enjoining (as in Germany) those proposing to initiate a strike to take such action only after considering the benefits to be gained in the light of the likely costs to the community.

In a somewhat different category are the obligations placed upon the trade union to ensure that any strike is called by an authorised official of the union, after a defined proportion of the workers concerned have indicated their willingness to strike. The legal stipulations in these respects are diverse, but all have the general intention and effect of preventing, or reducing the incidence of, unofficial and "wild-cat" strikes (where these are not specifically declared by the law to be illegal). The seminar took no very

firm view on this issue, however, because the infrastructure of the bargaining partners in Central and Eastern Europe is not yet sufficiently well-developed to provide a framework for consideration of the issue.

Alternative Mechanisms

Desirable though it might be to restrict the workers' right to strike in some circumstances, there was a correlative obligation to provide some alternative mechanism through which their legitimate interests might nevertheless be pursued and protected. This problem was seen to have something in common with that of workers in small-scale private undertakings in which it was proving difficult for the unions to secure representation.

In this connection, Professor S. Kessler mentioned the various Pay Review mechanisms adopted from time to time in the United Kingdom to allow some at least of the terms of public sector workers who eschewed the use of strikes to be reviewed independently, or to subject pay rates considered to be relatively low to independent examination. He also referred to the device of the tripartite Wages Council whose traditional role was to subject the wages and conditions of workers in largely "unorganised" trades and industries to review with the aim of establishing and maintaining them at a socially-acceptable level.

In the Central and Eastern European countries, this function has in the past been performed by the operation of the Labour Code. Although these countries are in the process of divesting the Code of its previous authority and pervasiveness, the thought was expressed that they may find it desirable to retain some of its function for at least some categories of worker who for one reason or another cannot be granted the same rights and powers as the generality of employees.

The alternative of using third party arbitration is being explored in Poland. Mr. Baczowski indicated that the government had been discussing the possibility of establishing some rules which both parties would accept and respect, to allow effective negotiations to take place in the public sector. A draft agreement has now been reached which enjoins the signatories to commence negotiations without delay on any issue which does not require amending legislation, and to use their best endeavours to secure agreement at the appropriate level within their organisations. In the event of failure to agreement, the parties accept that the generally-available processes of mediation will be used as a first stage, and that if the dispute is not thereby resolved, the dispute will be referred to binding arbitration.

Lock-outs

In some OECD countries, the lock-out is regarded as the employer's sanction equivalent to the union's strike weapon. However, the trend is towards restricting the employer's right to use this weapon. In France, the courts have declared lock-outs to be unlawful except in special circumstances, and in Germany the courts have made them subject to similar proportionality criteria as are applied to union actions. In Spain, lock-outs are legally permitted where the employer needs to take action to protect persons or property from violence, to prevent an occupation of the workplace, or where

attendance or performance is so erratic as to prevent normal working, but only for the time necessary to achieve the purpose. The employer taking such action must immediately inform the authorities who are empowered to terminate it if they see fit; if he takes action in contravention of the law, he is liable to a fine and for any wages withheld during the lock-out.

The approach adopted in the Central and Eastern European countries is in line with this trend in that they restrict the employer's right to lock-out workers. In the Czech and Slovak Federal Republic, the law on Collective Bargaining details the limited conditions under which the employer might lawfully lock out his employees.

The employer's power to lock-out was not therefore considered to be a major issue, although there was a strong view that the state did have a major role in establishing and maintaining an approximate balance of power between the employer and organised labour. It was thought, however, that the issue was likely to become more prominent as the employer role develops.

Avoiding Open Conflict

While both bargaining partners tend to find it advantageous to avoid open disputes, governments also have a direct which interest in limiting conflict and can use their authority to determine the legitimacy of industrial action. So far, however, governments in Central and Eastern Europe have not pursued this to the point of using third party interventions to dictate a settlement of any dispute.

The conference participants accepted that some third party provision was in principle desirable. In the Czech and Slovak Federal Republic and in Poland, mediation is mandatory upon the parties prior to any industrial action being called, and in Hungary further negotiations (possibly assisted by a mediator) are mandatory before a strike is called. There was widespread acceptance of the view that this degree of central control was legitimate and not particularly onerous for either party.

The main task ahead for Central and Eastern European countries is the establishment of an acceptable institutional structure for the avoidance and the resolution of economically damaging conflict, wherever possible. This structure needs to serve the interests of the parties even-handedly; each social partner should have the same rights in relation to any third party intervention in the collective bargaining process. The assumed difficulty of satisfying this criterion helps to account for the fact that arbitration does not figure at all prominently in current proposals for third party intervention, although, as in Poland, it may prove useful in resolving public sector disputes. The preference found in Central and Eastern European countries for relying on court resolution of differences is also partly explained by the fact that arbitrators' decisions, not being bound by legal precedent, are less easy to predict and therefore find less favour as a mechanism for dispute resolution.

Participants recognised that it was desirable to give both parties equal rights and obligations in referring unresolved issues for third party resolution. This principle is written into the legislation of the different countries. It was also recognised that where striking is forbidden by law, the principle might need to be varied. In the Czech and Slovak Federal Republic, for example, a union which cannot lawfully strike has the right to make a unilateral reference to arbitration if mediation fails to resolve an issue. However, unilateral reference need not always facilitate resolution, even when an award is intended to be legally binding on the parties. In Poland, each party has the same unilateral right to refer to arbitration any issue not resolved in mediation; but such reference can be frustrating if the other party refuses (as he has the legal right to do) to appoint the two mediators needed to allow the arbitration to take place.

All three countries have already taken steps to identify and develop a cadre of personnel who can be called upon to assist the bargaining partners to reach agreements or to resolve differences over the application of their terms. The mode of third party intervention preferred, as in many OECD countries, is that of *mediation*, and lists of mediators are maintained by the Ministers of Labour. However, this term has a rather flexible definition, being used to subsume advice-giving or conciliation. It does not, however, usually extend to embracing arbitration in respect of which deliberately separate preconditions are usually imposed. There might be some benefit in avoiding ambiguity or confusion as to the nature of the third party intervention if the roles were separately identified as advisory, conciliatory or mediatory.

The approach to staffing of the mediation function also tends to vary. It is possible to identify separately the officials of the labour inspectorate (who are sometimes drawn into mediation in Poland), mediators acting as advisers or conciliators prior to being formally invited to mediate in an unresolved dispute, and mediators formally appointed to perform that role in the event of a failure to agree. However, most listed mediators remain untried in their role as little use has so far been made of their services. Under-secretary of State Mr. Baczowski reported, for example, that 14 mediations had been completed in Poland between mid-August, 1991, and April, 1992; in the Slovak Republic, seven cases of mediation were recorded in 1991.

In the face of this dearth of experience, participants were cautious in advancing proposals for further development in the area of dispute settlement using third parties. There was a willingness to reserve resolution of conflicts of right to judicial bodies, and to apply the present arrangements for mandatory mediation prior to calling industrial actions over matters of interest, but a reluctance to go much further in pursuing the State's interest in avoiding open disputes. The general mood was that third party processes should be made as efficient as possible, but otherwise their use should be left to the voluntary decisions of the parties. This perspective is also prevalent in most OECD countries.

The conference identified the organisational options open to ensure that the bargaining partners received assistance under any or all of these heads. On the basis of experience to date in the various countries represented, two main models were identified and discussed:

- a) the use of the officers of the labour inspectorate or the listed mediators to "run alongside" the bargainers with a view to offering them advice or information as required (as happens, for example, in Hungary and in the German state of Northrhine-Westfalia) or;
- b) the establishment of a more formal advisory service, either under the auspices of the Ministry of Labour or of a separate independent agency. The British ACAS model was quoted as one which could form a source of ideas on how such an agency might be structured.

If the major role were to be assigned to the Ministry of Labour, rather than a free-standing agency controlled by separate legislation, it would be at least desirable organisationally to separate its roles of law enforcement and service provision from one another.

F. CONCLUSIONS

The conference provided a useful opportunity for a meeting of minds on the subjects of collective bargaining, dispute avoidance and disputes resolution. By juxtaposing the experiences of the OECD and Central and Eastern European countries, a number of issues of interest and concern to both groups were examined in some depth. It was recognised that OECD countries' mechanisms could simply be imported without modification, but that some pointers to possible actions in Central and Eastern European countries could be obtained by bringing the different experiences together.

A central theme of many discussions concerned the extent to which government should adopt a proactive role in fostering the development of collective bargaining and of machinery for disputes avoidance and resolution. The OECD countries have reached a stage where the parties are usually able to handle these issues with only minimal assistance from government or public agencies, but, while this was a desirable aim for the social partners in the Central and Eastern European countries, a more interventionist role of government might be called for in the transitional period. This might focus particularly on providing impartial advice, training and assistance to the collective bargaining partners, with the aim of developing mutual trust.

The creation of new institutions of both collective bargaining and disputes resolution was widely recognised as a priority, without which it would be difficult for the liberalisation programme to maintain its momentum. An appropriate balance between direction and persuasion, related to the progress made by the social partners themselves, was thought to be an important principle that should guide social action; the continuation of tripartite discussions would be a necessary feature of this process.

A part of this process of striking a balance would concern the question of whether additional mechanisms would be required to protect the interests of employees in occupations and workplaces where -- for whatever reason -- collective bargaining proved slow to develop. Maintenance of statutory minimum wages or other conditions might suffice to underpin progress, but other independent mechanisms (such as those mentioned by Professor Kessler of the United Kingdom) might prove to be desirable in some circumstances.

There is clearly some ambivalence about the desirability of establishing works councils, whether separately from or complementary to the formal negotiating machinery. In some cases, historical experiences have left a reluctance to go down this path; in others, there is some interest in them as bodies with a statutory right to participate in some important decisions, particularly where these rights might prove difficult for the unions to acquire by other means.

Participants also felt ambivalent about whether any mechanisms of dispute avoidance and resolution would be established by the bargaining partners themselves or by government as a freely available service to them to use or ignore as they wish. There is a strong desire to have some such machinery, but it seems necessary to continue the dialogue on this issue before the countries of Central and Eastern Europe select the means and methods which are congenial to and likely to work for them.

SEMINAR ON PREVENTING AND RESOLVING INDUSTRIAL CONFLICT

Warsaw, Poland, 18th to 20th May 1992

LIST OF PARTICIPANTS

OECD AND OECD MEMBER COUNTRY REPRESENTATIVES

Mr. Gilles BELIER
22, rue de l'Elysée, 75008 Paris, France

Mr. Günther CHALOUPEK
Head, Department for Economic Analysis
Austrian Chamber of Labour
Viennese federal section
Hohenstaufengasse 10-12
1011 Wien I, Austria

Mr. Georg FISCHER
Principal Administrator
Centre for Co-operation with the European Economies in Transition
OECD

Mr. José Luis JUNQUERA
Sous-directeur du service de médiation, arbitrage et de conciliation
Ministerio de Trabajo y Seguridad Social
Pia Baroja, 6
28009 Madrid, Spain

Mr. Sid KESSLER
Professor, City University Business School
Frobisher Crescent
Barbican Centre
London EC2Y 8HB, United Kingdom

Mr. Peter KRAFT
Leitender Ministerialrat
Ministerium für Arbeit, Gesundheit und Soziales
Horionplatz 1
D-4000 Düsseldorf 1, Germany

Mr. Helmut SCHAUER
Collective Bargaining Division
IG Metall, Wilhelm-Leuschner Str. 79-85
D-6000 Frankfurt-Main 11, Germany

Mr. Peter SCHERER
Head, Social Affairs and Industrial Relations Division
OECD

Mr. Peter TERGEIST
Administrator, Working Party on Industrial Relations
OECD

Mr. George THOMASON
Editor, Employment Bulletin and Industrial Relations Digest
139, Lake Road West
Roath Park, Cardiff CF2 5RJ, United Kingdom

Ms. A.M. TREBILCOCK
Labour Law and Labour Relations Department
International Labour Office, Geneva, Switzerland

Mr. Fernando VASQUEZ
Administrator, DG V
European Commission, Brussels, Belgium

Mr. Frank WIENKE
Confederation of German Employers Associations
Gustav Heinemann Ufer 72
D-5000 Köln 51, Germany

CZECH AND SLOVAK FEDERAL REPUBLIC

Ms. Nina GRIGEROVA
Specialist, Ministry of Labour and Social Affairs

Ms. Lenka ROSTROUNOVA
Economist, Department of Social Development
Office of the Federal Government

Mr. Vratislaw SLADEK
Specialist, Ministry of Labour and Social Affairs

Mr. Wojtech TKAC
Head of Legislative Department
Czech and Slovak Confederation of Trade Unions

HUNGARY

Mr. Istvan HORVATH
Labour Law Department
Ministry of Labour, Budapest V, Roosevelt ter 7-8, H-1373

Ms. Maria LADO
Research fellow, Institute of Labour Research
Budapest VI, Moszar utca 14, H-1063

Mr. Andras TOTH
Research fellow, Institute for Political Sciences
Benczur u. 33, Budapest H-1063

POLAND

Government Representatives

Mr. Andrzej BACZKOWSKI
Under-secretary of State
Ministry of Labour and Social Policy

Mr. Bartłomiej PIOTROWSKI
Under-secretary of State
Ministry of Labour and Social Policy

Ms. Eugenia GIENIECZKO
Director, Department of Labour Law
Ministry of Labour and Social Policy

Mr. Zygmunt GADAJ
Director, Bureau for Co-operation with Trade Unions

Ms. Elzbieta SOBOTKA
Adviser to the Minister of Labour and Social Policy

Ms. Barbara SKULIMOWSKA
Institute of Labour and Social Affairs

Mr. Walery MASEWICZ
Professor, Institute of Legal Sciences
Polish Academy of Sciences

Confederation of Polish Employers

Mr. Andrzej MACHALSKI
President, Confederation of Polish Employers

Mr. Krzysztof RACZKA
Bureau of Industrial Relations

Ms. Roksolana SEMERAK-NEBES
Bureau of Industrial Relations

Mr. Marian DOBRZYNSKI
Professor, Director General
Confederation of Polish Employers

Mr. Jacek SZYRMER
Director, Bureau of International Co-operation

Polish Trade Union Alliance

Ms. Bozena GRABOWSKA
Legal Adviser

Mr. Bodgan GRZYBOWSKI
Chief Specialist

Mr. Slawomir REDMER
President, Federation of Communication Workers

Independent self-governing Trade Union "Solidarity"

Ms. Barbara NIEMIEC
Vice-President, Gdansk

Ms. Joanna SZANDOROWSKA
Analyses and Negotiations Section, Gdansk

Ms. Agata HANNES
Legal Adviser, Pila

Mr. Krzystof WOZNIEWSKI
Expert, Legal Bureau, "Solidarity" Country Commission, Gdansk

Mr. Andrzej STERCZYNSKI
Presidium Member, Gdansk

ANNEX

PRACTICES OF CONFLICT SETTLEMENT IN CENTRAL AND EASTERN EUROPEAN COUNTRIES

by

George Thomason and Peter Tergeist

A. HUNGARY

In common with other countries in central and eastern Europe, in 1989/90 Hungary decided to embark on a process of transformation to a full-fledged market economy. However, the country did not depart totally from its economic past since it had been moving away from a centrally planned economy since the mid-sixties and had already put in place a number of building blocks of a market economy prior to 1988.

At this stage, bureaucratic directives relating to production are gradually giving way to negotiations, both between commercial partners and between employers and employees. However, the creation of institutions to facilitate the performance of negotiator roles is still, despite the length of time since Hungary first began to move in this direction, regarded as a problem and a challenge.

A new law on the right of association allows any association or organisation, including trade unions and employers' associations, to form provided that their aims are not contrary to the constitution of the country.

Union density has remained high, despite the break-up of the previous system of quasi-automatic union membership (currently estimated at 60 per cent, with around 2 500 000 trade union members in total). As liberalisation proceeded, the former Communist National Council of Trade Unions (SZOT) transformed itself into the National Confederation of Hungarian Trade Unions (MSZOSZ) in 1989, and declared its independence of any political party. It currently represents about 40 per cent of all union members.

The main challenge to the MSZOSZ dominance (and earlier to the SZOT monopoly) is offered by the new (alternative) trade unions and their confederations which made their appearance in 1988-89. The actual total number of trade unions is quite uncertain. Estimates vary between 200 (the number of trade unions which actually function) and 800 (the number of worker associations registered). A number of national trade union confederations were also formed. Seven of these are of special importance, being members in the (National) Council for the Reconciliation of Interests. Among these new confederations, the Democratic League of Trade Unions was the first to emerge. In terms of membership, two other new confederations are more significant: the Co-operation Forum of Trade Unions (SZEFT), comprising mainly public employees; and the Confederation of Autonomous Trade Unions (ASZOK), whose members are mainly blue-collar workers. Total membership is around 700 000 and 350 000 respectively. The co-existence of numerous trade union confederations, and especially the lack of understanding and co-operation among them, threatens to divide the trade union movement at a time when workers' voices might have an important influence on the route taken to development.

Employers have also established a number of associations, nine of which are present at the (National) Council for the Reconciliation of Interests. These associations vary considerably in their composition, economic weight and membership. The Association of Hungarian Employers (MAOSZ), which has its origin in the Chamber of the Economy, is the largest with a membership of about 2 000 enterprises. It is dominated by larger State enterprises. Other employers' associations have been created primarily for private entrepreneurs. The Association of Hungarian Manufacturers (MGYOSZ), however, is also open to state enterprises if their privatisation is scheduled for the near future. The traditional associations of traders, and those of cooperatives, have changed fundamentally. Despite these developments, there is as yet no cohesive national structure which might facilitate the development of a coherent employer view or purpose. Consequently, employers appear to have less influence on government policy than the trade unions.

The Wage Reform debate, which began in 1988, spawned a number of new methods of dealing with industrial relations (and particularly wage) issues. The central wage-regulation and wage-tariff system, which was based on governmental decrees, had determined the details of pay and conditions, and left only very limited scope for local determination. The gradual liberalisation of wage setting finally led to the suspension of governmental wage-regulation on 1st January, 1992. Enterprises are no longer being centrally regulated as to the wages they have to pay, and are now, within limits, free to determine these for themselves. The limits (referring to mandatory minimum wages and recommended maximum wage-increases) are determined through consensus of the social partners. These developments obviously leave more matters to be resolved through localised collective bargaining.

At the national level, the (National) Council for the Reconciliation of Interests, which is a tripartite institution, serves as a means for central collective bargaining, on the one hand, and for consultation with the social partners, on the other. So far the scope of bargaining has been rather limited; nation-wide agreements refer mainly to minimum wages (these agreements have been subsequently published as decrees by the Minister of Labour). Consultation, on the contrary, covers the whole world of work and the relevant economic and social issues.

At enterprise and branch levels, negotiations towards agreements may occur between employers (or their associations) and trade unions, the State being involved only where it is an employer. However, until recently, little bargaining took place at these levels. This is ostensibly because of the difficulty of identifying who should constitute the bargaining partners, and particularly who should represent the employers' interest. Although these problems have not been solved yet, bargaining activity has recently increased, due to the suspension of the central wage-regulations. Presently, both parties tend to consider local negotiations as the best possible way to determine wages and conditions of employment. In addition, at enterprise level the new Labour Code, effective as from 1st July, 1992, details the information, consultation and co-determination rights of works councils (obligatory in workplaces of more than 50 employees) and workers' representatives (in workplaces of between 15 and 50 employees).

Strikes and Conflict Settlement

The workers' right to strike to secure their economic and social interests, or in sympathy with other workers, is assured them by the *Law on the Right to Strike* of 15 April, 1989. It enjoins both employers and employees to co-operate in exercising the right and protects employees who initiate or participate in a strike from the penalties (other than loss of pay) which might otherwise ensue. It also makes some strikes by some workers unlawful by imposing restrictions on, and conditions to be observed in, its exercise.

There are two classes of restriction, one relating to the aims of the strike and the other to the nature of the service provided by the workers concerned. A strike may, on the one hand, be illegal if its aims are:

- anti-constitutional;
- related to purposes other than securing the workers' social and economic interests;
- directed at getting the employer to change a practice which cannot be lawfully changed other than by a court of law;
- intended to change the terms of a current collective agreement during its life-time.

The right may, on the other hand, be either denied or restricted if:

- it is directed against the organs of the judiciary, the police, the military, or the industrial security services;
- it directly and seriously threatens human life, health, security and environment, or hinders the prevention of fundamental damage;
- in the case of government employees, it is exercised other than in accordance with the specific rules laid down in the agreement with the Council of Ministers and the trade unions concerned;
- in organisations supplying public transportation, telecommunications, gas, water, electricity and other energy, it would prevent the continued supply of a satisfactory service (where what is satisfactory is defined in conciliation meetings preceding the strike).

In the first two cases, the denial of the right is effectively total; in the other two cases, it is restricted to those workers who fail to co-operate with the employer to ensure that a minimal satisfactory level of service is maintained to the public. However, the law does not regulate in detail the right to strike amongst employees in the public sector, nor does it define the "sufficient" or "satisfactory" level of essential services.

The new *Labour Code* makes more specific reference to the resolution of industrial conflicts. In the event of any dispute between the parties -- whether employer and trade union or employer and works council -- the party initiating the dispute is required to provide the other party with a written

statement of the grievance or claim. It then requires the disputant parties to attempt to reconcile their differences by negotiation over a period of seven days. Any strike initiated without having first carried out the reconciliation procedure is considered illegal.

During the seven-day period, the parties must refrain from any action (including striking) which might prejudice the reaching of an agreement, except that workers who have a legal right to strike may call one warning strike of up to two hours duration.

In order to facilitate reconciliation, the Labour Code encourages the parties to agree to call upon the services of a mediator. The costs, including any fees, are to be met by the employer, in the absence of any agreement to the contrary.

In the event that the parties cannot reach agreement during this time period, with or without the help of a mediator, they may voluntarily seek arbitration of their differences, although both parties must be agreed to this course. The arbitrator is empowered to establish and chair a coordinating committee, composed of equal numbers of representatives of both employer and employees (whether trade union or works council members). This body makes any determination on the issue, and the arbitrator's vote is crucial only in the event of a tied vote by the representatives of the two parties. The determination is binding where the parties have committed themselves in advance to accept it as binding; otherwise it is for them to decide whether to accept or reject.

Resort to arbitration is, however, obligatory on the parties in four sets of circumstances regarding the participation rights of works councils:

- where the dispute is over the employer's obligation to make public information on the activities of the company which is considered necessary by the trade union for carrying out its functions;
- where the dispute is over the premises (facilities) which the employer is prepared to make available to the trade union to enable it to carry out its functions;
- where the dispute is over the costs for the election of representatives to the works council or the budgeting and allocations of the council's operating costs;
- where the dispute is between the employer and the works council over the manner in which "welfare money" earmarked in the collective agreement (for home-buying, holiday and sports facilities, etc.) is to be spent; and
- where the dispute is over the health and safety regulations at the workplace.

The determination of whether a strike is legal or illegal is a matter for the regional Labour Court. The Court is empowered to hear the parties where necessary, and required to reach a decision on the matter within five days of a petition being presented by a party having an established interest in the legality of the strike.

Hungary has experienced few strikes so far, and those that have occurred have focused on a variety of issues, from loss of government subsidies for an enterprise, through the appointment or dismissal of directors, to the decline in living standards, changed wage differentials and mass lay-offs. Many of these have taken the form of mass demonstrations, often in reaction to government decisions, where a direct relationship to the conventional subjects of collective bargaining is difficult to discern.

B. THE CZECH AND SLOVAK FEDERAL REPUBLIC

While the market liberalisation programme in Czechoslovakia is well under way, to date only about 10 per cent of the labour force are in private sector employment. It is planned progressively, either to privatise the remaining public sector (mainly via the sale of privatisation vouchers and through network arrangements with foreign firms), or to decentralise the control of those parts of it which prove not amenable to privatisation.

Prices have been liberalised, and in some cases dramatic increases have resulted, but the prospects for increasing wages and salaries in the short-run are few. The trade unions estimate that there has been a 40 per cent drop in living standards during 1991, and consider it astonishing that this has not resulted in an explosion of discontent. They also estimate that production is down by about a third from the level a year ago, while the official statistics show a fall of gross domestic product by 12 per cent over 1991.

So far, little conflict, whether "political" or industrial, has occurred in the course of the liberalisation programme. The industrial relations partners were not permitted before November 1991, to conclude individual agreements and consequently, negotiations during 1990 and 1991 were mainly concerned with procedures, in respect of which the partners could afford to be generally co-operative. This is now changing gradually as collective bargaining is extended over a larger number of substantive issues in the coming year.

The reconstruction of trade unions began at the end of 1989, and the Revolutionary Trade Union Movement (ROH) liquidated itself in March 1990. The majority of the new trade unions, organised from the bottom up, affiliated either to the Czech and Slovak Confederation of Trade Unions (CSKOS) or to the smaller Confederation of Cultural Workers. CSKOS now comprises 60 unions (of which 21 organised nationally) and has a membership of about 7 million workers. Associated confederations of unions exist in the two republics.

There are seven employers' associations, one of them drawing together the new entrepreneurs, and the others organised on a sectoral basis amongst the state enterprises. The employers have little experience of the employer role because none existed in the previous system, and are generally regarded as the weaker partner in the new system. Those employers that were encountered during the mission did not seem to have firm ideas about possible future strategies.

Tripartite Councils of Social and Economic Agreement have been established at federal and at the republics' level, to discuss legislation and industrial relations policies. In composition, each consists of 7 government, 7 employer and 7 trade union representatives. They examine and comment on all Bills relating to social and economic policy prior to their enactment, and although they are sometimes able to arrive at a unanimous view, more often majority and minority comments are presented to government.

The place of the trade unions in the industrial system and their role in collective bargaining are established in an amendment to the existing Labour Code and in the Law on Collective Bargaining, which came into effect in 1991. Where under the earlier Labour Code the trade union was nominally recognised as a partner in industrial decision-making, the new Labour Code provides for enterprises to take decisions on labour and employment issues after negotiation with the unions. The extent of trade union involvement in the development of enterprise plans and policies was much debated when the new laws were being considered.

Under the new Labour Code, trade unions must, *inter alia*, be involved in decisions to transfer workers to other jobs; terminate a work contract; and determine wage rates to be applied.

Under the *Law on Collective Bargaining*, only the trade unions can participate in collective negotiations, but the terms of the resultant agreements apply to union members and non-members alike.

Otherwise trade unions must be informed about and -- to a limited extent -- consulted on:

- measures to create new jobs or to make existing jobs redundant;
- measures for improving working conditions or the working environment;
- problems affecting the welfare of workers, both generally and those in minority or disadvantaged positions;
- any other measures which might affect large numbers of workers.

The law on Collective Bargaining is generally welcomed by the trade unions, although they criticise it for not making agreements mandatory. This problem is exacerbated by the absence of effective employers' associations and the lack of employer experience in collective bargaining. Examples of employers making common cause with the unions in order to pressure the government to take certain courses of action do occur, but this is a poor substitute for effective bargaining. There are few examples of the employers agreeing to rates of pay higher than those permitted by the legislation: the provision that heads of organisations could be prosecuted for agreeing such a rate is an effective deterrent.

There is provision for collective bargaining at three levels: national, sectoral and local. The present system provides that the superior agreements will establish the minimum rates of pay and the inferior agreements will be allowed to modify these. Any agreements reached have to be lodged with the Ministries of Labour of the Czech and Slovak republics. Ministry staff are

required to check them for compliance with both the Labour Code and the law on collective bargaining. It was reported that in the Slovak republic, not one of the 30 agreements examined last year complied with the Code or the law in all respects.

In 1991, the unions participated in negotiations at all three levels to establish the procedures and some limited number of substantive terms affecting the individual contract. This was done within a relatively tight framework of legal regulation. Thus, in 1991, it was not necessary to determine the levels of pay by collective bargaining, as they were provided for by the Labour Code. Similarly, the law previously permitted the employer to grant one extra holiday but no more.

Legislation proposed for 1992 is expected to permit more subjects to be brought within the ambit of collective bargaining. This year, pay levels are to be established mainly through collective bargaining, albeit within upper and lower limits established by law, and provision is made for the employer to grant more holidays where this is justified. This raises the possibility that collective bargaining will in the future deal with more substantive issues than previously. The unions appear keen to bring further education, training and retraining, and aspects of job security within the collective bargaining framework.

Strikes and Conflict Settlement

The present Law on Collective Bargaining establishes the workers' right to strike in defence of their interests, but not in sympathy with other workers. In addition, it provides for mediation to be used in the event of a failure to agree and lays down a timetable and procedures to be followed in this event. Strikes are made illegal if they precede mediation and if they follow the initiation of arbitration procedures (which the parties may choose in the event of unsuccessful mediation). Strikes are also illegal in certain essential services (health care, nuclear power stations, fire brigades, etc.); unlike in Hungary, the law makes no mention of the supply of a minimum level of services in cases of conflict. The law on Collective Bargaining also details the conditions under which the employer might lawfully lock out his employees.

It is incumbent on the parties in dispute, either to appoint a qualified mediator of their own choosing or to secure one from the list maintained by the government. So far, because the Labour Code effectively determined terms and conditions of employment, there was little need for mediation. (In Bratislava, it was reported that in 1991 there were 7 cases of mediation on record).

The Federal Ministry of Labour has created a list of qualified mediators, and it is likely that the separate republics will create their own panels. Those placed on the Federal list are usually lawyers or economists (who tend to be public employees), but trade union officers appear to be active in assisting the parties to reach settlements in dispute conditions.

The law provides for the voluntary use of arbitration where both parties agree, but these provisions are not integrated with the other processes (of collective bargaining, mediation or striking) with which the law deals. It is consequently little used and those interviewed attached little importance to it as a method of resolving conflict.

C. POLAND

Poland has for some time been opening up the industrial relations system to allow a measure of free collective bargaining. Some of the changes that in other countries occurred only at the end of the 1980s, were introduced in Poland much earlier in the decade. For example, despite the state of "martial law", strikes were permitted by law in 1982. Another law, passed in 1985, introduced a limited amount of wage bargaining at the enterprise level. It is also thought that the country is further along the road in developing employers associations and free trade unions.

Calculations of the central Polish statistical office reveal significant growth in the private sector, but a sharp decline in total economic activity, with GDP falling by eight per cent in 1991 (after a decline of 12 per cent in the previous year), and unemployment rising to over 13 per cent in mid-1992. Including cooperatives and the agricultural workforce, the private sector now accounts for more than half of total employment.

Three laws passed by the Parliament in May, 1991, the Trade Union Act, the Law on Employers' Organisations, and the Act on the Settlement of Collective Disputes, provide the framework for Industrial Relations. Proposals for supplementing these in respect of collective agreements are under active consideration by the Committee for Labour Law Reform

The *Trade Union Act* of 23 May, 1991, gives all employees, pensioners (on retirement and disability) and the unemployed the right to belong to a trade union and to take part in its activities. It acknowledges the right of trade unions to represent and defend employees in various ways and provides for financial penalties for those who seek to restrict union freedom.

Two large trade union confederations are registered in Poland: the *OPZZ*, which claims over 5 million members (of which many seem to be retired workers), and *Solidarity*, with a membership of around 2.3 million. In addition, there is *Solidarity 80*, which has only regional significance. Both major union organisations tend to avoid strikes if at all possible, saying that any strike would harm the economy and the workers themselves. However, living conditions are continuing to deteriorate and workers are becoming more insistent on taking action to defend their living standards.

The *Law on Employers' Organisations* of 23 May, 1991, gives employers the right to organise, the right of their organisations to establish federations and confederations, and the right to join international associations. It recognises as their basic goal the representation of employers' interests in dealings with the trade unions; they are, however, not permitted to restrict the workers' right of association. The Act also recognises that they may have legitimate objectives additional to those concerned with collective bargaining.

The main employers' body, the Confederation of Polish Employers, was set up in 1989, and, significantly, brings both private and State employers within the ambit of one decentralised organisation. Private employers currently comprise over a third of total membership.

The Confederation concerns itself with all matters of interest to the employers, including those concerning labour and employment. It aims to assist State-owned enterprises to privatise and, with the help of other countries' employers' organisations, provides training courses in collective bargaining. The Confederation takes the view that its 25 regional and branch organisations are now ready to embark on collective bargaining.

Strikes and Conflict Settlement

The *Act on the Settlement of Collective Disputes*, also of 23 May 1991, established a right to strike for the generality of workers, but withdraws or restricts it in certain cases and conditions. The Act prohibits strikes:

- a) where to do so would endanger human life and health or state security;
- b) in the military and police forces, the fire and prison services and in the Frontier Guard; and
- c) for persons employed in central and local governments and self-government administration, the courts and the public prosecutor's office.

The Act makes it lawful for any worker to engage in protest actions other than a strike, which do not interrupt work and which do not endanger human life or health. Such protest actions, however, may not threaten the public order. Workers who have no right to strike, may also benefit from these types of action.

The main purpose of the Act is to establish the methods and procedures to be followed in order to avoid open breach or the "proclamation of a dispute". A collective dispute occurs if workers' claims are not satisfied after having used "conflict-free" methods of settlement. A dispute can also develop when, on termination of an existing agreement, the timetable which the Act stipulates for its renewal is not adhered to by the employer

Where the trade union presents a demand, the employer is allowed at least three days to respond, presumably extendible by agreement, before the union may declare a dispute to exist. The union may also threaten that a strike will be called if the claim is not resolved, although this may not be done within 14 days of announcing the dispute to exist.

The employer is enjoined to attempt to resolve the claim by negotiation without delay and to inform the district labour inspector of the existence of a dispute. Negotiations will end either with a collective agreement or with completion of a formal record of divergence where the exact position of each party should be specified. In the latter event, the parties are required to continue in negotiation with the assistance of an independent mediator appointed by the parties themselves or drawn from the list of the Ministry of Labour. If they cannot, within five days, agree upon a mediator, one is appointed by the Minister of Labour and Social Policy on the application of one party.

The mediator is empowered to seek more detailed information on the matters in or relevant to the settlement of the dispute. Where this threatens to delay the settlement, the mediator may ask the union to postpone any strike action contemplated, but, as in Hungary, the union is given the right to organise a single warning strike of not more than two hours' duration within the period.

If the mediation process does not produce agreement, the parties are asked to, in the presence of the mediator, complete an official record of divergence where, again, the exact position of each party must be specified. After having done so, the union may legally authorise strike action. The Act indicates that the calling of a strike is to be regarded as an extreme measure and for this reason must not be resorted to before all other procedures, up to and including mediation, have been exhausted. This is varied only where the employer has taken illegal action (for example, in dismissing a union officer) to prevent negotiation or mediation occurring. It also enjoins the party organising the strike to compare the costs likely to be incurred in so doing with the benefits likely to be obtained.

The union may proclaim a strike at an establishment if a majority of the workers voting in the ballot approve, provided that at least 50 per cent of the staff take part in the voting. *Mutatis mutandis*, the same stipulation is applied to strikes affecting multiple establishments. Participation in the strike is voluntary and may not commence until five days have elapsed after it has been proclaimed or notified.

The present law permits the parties to transfer a dispute to the jurisdiction of a "social arbitration committee" attached to the respective court for labour and social insurance. Strikes can be proclaimed without recourse to arbitration; it is therefore not, like mediation, a compulsory element of the procedure for dispute avoidance. The Act defines in detail the composition and powers of the arbitration committee. Its decision is binding upon the parties unless they have previously indicated that they do not intend to be bound.

Since the passage of the Act on the Settlement of Collective Disputes, mediation has been resorted to quite frequently. In the period from mid-August 1991 to mid-May 1992, mediators have participated in 17 industrial disputes. While three mediation procedures were still in progress in May 1992, the activities had resulted in: nine protocols of agreement, one protocol of divergence and one protocol of agreement and divergence.

Recent experience has shown, however, that legal provisions are not consistently being followed. In fact, according to data supplied by the Labour Ministry, the majority of strikes and other forms of industrial action are falling outside the scope of the law and are therefore considered technically "illegal". For example, of six cases of industrial conflict at national level between September 1991 and May 1992, only one was a "collective dispute" consistent with legal definitions.

Conflict Settlement in State Administration

During the transition phase and for some time to come, many workers will continue to be employed by state-owned enterprises. The law relating to the settlement of industrial disputes does not apply to disputes between the State administration and the trade unions, and some method of closing the gap in provision has been sought.

In the spring of 1991, the government proposed to the trade unions that they might draw up some rules to govern relationships in this sector, and in the autumn, the National Committee of Solidarnosc began discussions with government which led to agreement on the procedures to be followed in disputes within the sector.

The agreement provides that in the event of a dispute arising over any matter which does not require amending legislation to change, the parties will begin negotiations without delay. The parties commit themselves to using their best endeavours to reach an agreement, to restrict the negotiations to the appropriate level of the organisation, to observe generally accepted principles and norms, to confine arguments to the subject matter of the dispute, and to avoid threatening the wider social interests.

The basic procedure has some similarity with that applied generally. Negotiations are expected to conclude with either an agreement or a statement of outstanding differences. The latter may, if the parties agree, be subjected to further negotiation with assistance from a jointly-agreed mediator. Any agreement reached may be rejected by either party, although it will then be incumbent upon the rejecting party to provide a statement of the reasons for doing so.

If no agreement is reached at this stage, either party may apply to a specially constructed Arbitration Committee for a judgement to be made on any outstanding matters. The Committee is composed of two members appointed by each of the parties from the list of mediators and a chairman appointed by the members of the Committee from outside the list. The award of the Arbitration Committee is not binding upon the parties, but the act of making an award terminates the dispute.

The parties agree that a review of the functioning of the procedures will be carried out after its first six months of operation.

LABOUR MARKET AND SOCIAL POLICY OCCASIONAL PAPERS

(Already available, free of charge)

No. 1 *AN ECONOMIC FRAMEWORK FOR THE EVALUATION OF CHILD CARE POLICY* (1990)
(Donald Verry)

No. 1 *UN CADRE ÉCONOMIQUE POUR L'ÉVALUATION DES POLITIQUES DE GARDE D'ENFANT* (1990) (Donald Verry)

No. 2 *HEALTH AND PENSION REFORM IN JAPAN* (1990)

No. 3 *WRONGFUL TERMINATION LITIGATION IN THE UNITED STATES AND ITS EFFECT ON THE EMPLOYMENT RELATIONSHIP* (1990) (Susan R. Mendelsohn)

No. 4 *STATISTICS OF ANNUAL EARNINGS IN OECD COUNTRIES* (1990) (David Grubb)

No. 5 *WAGE DIFFERENTIALS, ENTRY AND THE JOB GENERATION PROCESS IN GERMANY* (1990) (Tito Boeri)

No. 6 *EQUAL PAY FOR WORK OF COMPARABLE WORTH: The Experience of Industrialised Countries* (1991)

No. 6 *SALAIRE ÉGALE POUR UN TRAVAIL DE VALEUR COMPARABLE : L'expérience des pays industrialisés* (1991)

No. 7 *THE LONG-TERM UNEMPLOYED AND MEASURES TO ASSIST THEM* (1992)

No. 8 *EMPLOYMENT POLICIES FOR PEOPLE WITH DISABILITIES: Report by an Evaluation Panel* (1992)

No. 9 *FROM LABOUR SHORTAGE TO LABOUR SHEDDING: Labour Markets in Central and Eastern Europe* (1992)

No. 10 *PROJECTING THE OCCUPATIONAL STRUCTURE OF EMPLOYMENT IN OECD COUNTRIES* (1992) (Gerald Hughes)

Mailing List for Labour Market and Social Policy Occasional Papers

Please include the following name on the mailing list:
(write in capitals)

Name

Organisation

.....

Address

.....

.....

Country

This form should be returned to:

Labour Market and Social Policy Occasional Papers
Directorate for Education, Employment, Labour and Social Affairs
Office 110
OECD, 2, rue André-Pascal, 75775 PARIS CEDEX 16, FRANCE

A SELECTION OF OECD PUBLICATIONS ALSO AVAILABLE

"OECD SOCIAL POLICY STUDIES" SERIES

No. 3 LIVING CONDITIONS IN OECD COUNTRIES: A Compendium of Social Indicators
(1986) (81 85 04 1) ISBN 92-64-12734-8, 166 pp. £6.50 US\$13.00 FF65 DM29

No. 5 REFORMING PUBLIC PENSIONS (1988)
(81 88 04 1) ISBN 92-64-13123-X, 250 pp. £15.50 US\$29.00 FF130 DM56

No. 6 THE FUTURE OF SOCIAL PROTECTION (1988)
(81 88 03 1) ISBN 92-64-13152-3, 64 pp. £8.50 US\$15.50 FF70 DM31

No. 7 HEALTH CARE SYSTEMS IN TRANSITION: The Search for Efficiency (1990)
(81 89 05 1) ISBN 92-64-13310-0, 206 pp. £17.00 US\$30.00 FF140 DM55

No. 8 LONE PARENT FAMILIES: The Economic Challenge (1990)
(81 89 04 1) ISBN 92-64-13303-8, 284 pp. £20.00 US\$34.00 FF160 DM66

No. 9 PRIVATE PENSIONS AND PUBLIC POLICY (1992)
(81 92 06 1) ISBN 92-64-13790-4, 160 pp. £25.00 US\$35.00 FF150 DM60

OECD HEALTH CARE DATA Version 1.01 (1991)
available in English or French £300 US\$550 FF3 000 DM900
on 5¼-inch HD or 3½-inch DD diskettes

EMPLOYMENT

OECD EMPLOYMENT OUTLOOK July 1992 (published annually)
(81 92 04 1) ISBN 92-64-13720-3, 284 pp. £24.00 US\$42.00 FF220 DM80

THE INTEGRATION OF WOMEN INTO THE ECONOMY (1985)
(81 85 05 1) ISBN 92-64-12735-6, 184 pp. £10.00 US\$20.00 FF100 DM44

MEASURES TO ASSIST THE LONG-TERM UNEMPLOYED: Recent Experience in Some OECD Countries (1988)
(81 88 06 1) ISBN 92-64-13134-5, 100 pp. £7.50 US\$13.50 FF60 DM26

LABOUR MARKET FLEXIBILITY: Trends in Enterprises (1989)
(81 89 03 1) ISBN 92-64-13286-4, 74 pp. £10.00 US\$17.00 FF80 DM33

NEW TECHNOLOGY IN THE 1990s: A Socio-Economic Strategy (1988)
(81 88 07 1) ISBN 92-64-13180-9, 130 pp. £11.00 US\$19.00 FF90 DM37

LABOUR MARKET POLICIES FOR THE 1990s (1990)
(81 90 01 1) ISBN 92-64-13363-1, 130 pp. £13.00 US\$23.00 FF110 DM43

ENTERPRISING WOMEN (1990)
(84 90 02 1) ISBN 92-64-13436-5, 112 pp. £11.00 US\$20.00 FF95 DM37

EVALUATING LABOUR MARKET AND SOCIAL PROGRAMMES.

***The State of a Complex Art* (1991)**

(81 91 01 1) ISBN 92-64-13537-5, 200 pp. £20.00 US\$37.00 FF155 DM60

MANAGING MANPOWER FOR ADVANCED MANUFACTURING TECHNOLOGY (1991)

(70 90 03 1) ISBN 92-64-13467-0, 150 pp. £20.00 US\$36.00 FF170 DM66

NEW DIRECTIONS IN WORK ORGANISATION. *The Industrial Relations Response* (1992)

(81 92 01 1) ISBN 92-64-13667-3, 266 pp. £20.00 US\$40.00 FF210 DM60

DEMOGRAPHY

AGEING POPULATIONS: *The Social Policy Implications* (1988)

(81 88 02 1) ISBN 92-64-13113-2, 90 pp. £12.00 US\$22.00 FF100 DM43

MIGRATION: *The Demographic Aspects* (1991)

(81 90 03 1) ISBN 92-64-13439-5, 92 pp. £15.00 US\$26.00 FF125 DM48

HEALTH CARE POLICY STUDIES

No. 1 *U.S. HEALTH CARE AT THE CROSS-ROADS* (1992)

(11 92 03 1) ISBN 92-64-13780-7, 99 pp. £9.00 US\$15.00 FF60 DM25

No. 2 *THE REFORM OF HEALTH CARE SYSTEMS: A Comparative Analysis of Seven OECD Countries* (1992)

(81 92 01 1) ISBN 92-64-13791-2, 152 pp. £30.00 US\$46.00 FF180 DM74

Prices charged at the OECD Bookshop

THE OECD CATALOGUE OF PUBLICATIONS and supplements will be sent
free of charge on request addressed either to OECD Publications Service,
2, rue André-Pascal, 75775 PARIS CEDEX 16
or to the OECD Distributor in your country