
Historical Development of Collective Bargaining

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Summary

Collective bargaining, often referred to as a "legal bridge" or legal instrument in the hands of participating parties, traces its historical roots back to the 19th century. The significance of collective bargaining is no less than that of a collective agreement. The historical climate for dialogue and bargaining between parties in the employment relationship was changing. This is primarily influenced by the fact that our country went through the Balkan war and later two world wars, which left an impact on labor relations and everything related to that legal institution. As labor relations historically changed and modernized, along with the transformation of labor relations at the end of the 20th century, collective bargaining takes on a new form and significance. It represents, among other things, a "good culture" between workers on the one side and employers on the other. The authors of the paper aim to emphasize the significance of the historical development of collective bargaining, which is, among other things, unique to each country, and therefore, its cultural importance of labor relations has undoubtedly influenced approaching contemporary collective bargaining in a systematic and responsible manner. The following sections of the paper will pay special attention to the current normative state in the field of collective bargaining and some of its specific features.

Key words: employee, employer, collective bargaining, collective agreement, social dialogue

Historical Development of Collective Bargaining

Introduction

Collective bargaining as a process accompanying the conclusion of collective agreements is closely tied to them. Their significance has evolved throughout history. Today's approach to collective bargaining is quite different from what it was in the mid-19th century. The development of collective bargaining followed the paths of the industrial revolution. The origin of collective bargaining can be traced back to the industrial revolution in the 18th and early 19th centuries, a period of profound technological, economic, and social changes that began in the United Kingdom and then spread to Western Europe, North America, and other parts of the world (Koufman, 2004.). Collective bargaining is deeply linked with the historians of the trade union movement, Sidney and Beatrice Webb, while the avant-garde of creativity regarding collective bargaining are considered to be (Dunlop, 1944; and Leontief, 1946). If we were to trace the genesis of the need for collective bargaining and collective agreements, it can be said that it occurred when capital took precedence over human labor. In order to secure a more favorable position for workers, through the process of unionization, workers came into an equal situation with capital owners (employers), and thus, a situation arose where the voice of the working class could be heard through negotiation and agreements. Thus, collective bargaining emerged as a means to balance otherwise unequal (individual) bargaining power in labor relations to correct deep inequalities and injustices (Hayter, 2011., p. 2). Throughout their existence, trade unions have had the status of supporting pillars of the social model, primarily in Western European countries and to a lesser extent in Eastern European countries (Bataveljić, 2019., p. 138). The cradle of trade union organization is considered to be England, where in the second half of the 19th century, unions gained legitimacy through a special law (Trade Union Act – 1871.) (Buklijaš & Bilić, 2006., p. 66). The culmination of collective bargaining in the 19th century was

the first collective agreement concluded in the French city of Lyon in 1830, but it was later annulled (Ravnić, 2004., p. 400). The law of 1919 gave collective agreements their own legal significance in French law for the first time. The first European laws recognizing collective agreements were: the Dutch Civil Code of 1907, the Swiss Code of Obligations of 1911, and later, in Norway in 1915, in Germany in 1918, in France and Austria in 1919, and in Sweden in 1928. In the development of collective bargaining, two specific periods can be recognized. There are two periods in the development of collective bargaining: the period of acceptance and the creation of legal frameworks for collective bargaining (validity of agreements, recognition of the right to industrial action). The second period occurred from the early 1970s to the end of the 1980s, when the state began to play a more dynamic role in collective labor relations. In fact, from that time onwards, states encouraged collective bargaining and cooperation between social partners at various levels (Bodiroga-Vukobrat & Laleta, 2007., p.3).

In our country, collective agreements were regulated by the Law on Acts of the Kingdom of Yugoslavia dated November 9, 1931 (Buklijaš, 2012., p. 103). After World War II, collective agreements, and consequently collective bargaining, diminished because they did not align with a centrally planned or self-managed economy. However, they persisted in the private sector, which was marginalized. Parties to collective bargaining could be groups or legally recognized organizations (unions) or de facto groups (strike committees), which did not necessarily need legal recognition or establishment. In principle, individuals could not be parties, except on the employer's side. The main subject of the collective bargaining at that time was the regulation of working conditions, especially wages, working hours, rest periods, employment, and ultimately the termination of employment. Participants in collective bargaining freely chose the period for which the collective agreement would be applicable (specified or unspecified period). The main drawback of the agreements at that time was that the collective agreement only applied to members of the union or committee that had concluded the collective agreement, excluding

other employees who bargained but were not, for example, union members, which is unimaginable in today's system of labor relations.

Collective bargaining represents the oldest form of social dialogue and the most important way of regulating relations between employers and unions based on mutual compromise and a common agreement (Urdarević, 2021., p. 100). Through collective bargaining, existing problems are attempted to be resolved to the satisfaction of all participants, as much as possible. The final outcome of collective bargaining is the collective agreement (Učur, 2010., p. 676). Today, the right to collective bargaining on working and employment conditions is enshrined in many constitutions, based on the principles of political and economic democracy, incorporated into fundamental social rights, and thus recognized as fundamental human rights (Veg, 1993., p. 272). In that sense, collective bargaining is an important dimension of the industrial relations system because it determines the capacity of collective agreements to provide effective protection for employees. Furthermore, it is identified as a key institution in reducing wage disparities and limiting labor and market dualization (Bosch, 2015., pp.57-66). The current situation regarding collective bargaining is not at a satisfactory level, but it is much better than it was in the past (Kulić et al., 2017., p. 151). For negotiations to be ethically acceptable and non-coercive, conditions must be created for each party, in defending and representing its interests, to act without pressure and domination from the other party. Moreover, the success of collective bargaining requires a reasonable balance of power and equality between the parties in negotiations. Hence, union organization is crucial and almost decisive for the position of employees in the work process, because an isolated individual - an employee, can often find themselves in a situation where they accept unfavorable employment conditions (Brković, 2015., p.88). According to Blanpain (2003., p. 549), "today's collective bargaining presents at the European level as "a delicta flower".

The historical development of collective bargaining in the Republic of Serbia

In the Republic of Serbia, collective bargaining began to develop in the period following the First World War with the Law on the Protection of Workers of the Kingdom of Yugoslavia from 1922. Collective bargaining was initially introduced as a possibility, but with the enactment of the Labor Act in 1931, it became mandatory. After the Second World War, collective bargaining practically did not exist and only covered employees in the private sector (Kosanović & Paunović, 2010., pp.27-29). During the period of employees' self-management, collective bargaining and collective agreements were practically non-existent. Due to fulfillment of employees' conditions and the inability to terminate employment, the will and desire of the working class of that time were not expressed. This was a period of "calm waters" through which the working class passed with the disintegration of the Socialist Federal Republic of Yugoslavia in the late 1980s, the collective agreement was reintroduced into legislative frameworks, reviving the negotiation process with the Law on Basic Rights from 1989. The constitutionalization of the right to collective bargaining in our country occurred with the adoption of the Constitution of the Republic of Serbia in 1990, a course retained with the Constitution of 2006. Our country is actively engaged in ratifying international acts related to this sphere of collective bargaining. The creation of the legal platform to strengthen the influence of collective agreements and collective bargaining in labor law has been influenced by the conventions and recommendations of the International Labor Organization. In the developed world, collective bargaining has long become an indispensable element of social dialogue, ensuring a balance of various interests in the labor process. Hence, it is not surprising that the International Labor Organization, through conventions and recommendations, creates legal labor platforms for the development of this institute worldwide. Thus, the adoption of Convention No. 87 on Freedom of Association and Protection of the Right to Organize, Convention No. 98 on the Right to Organize and

Collective Bargaining, and Recommendation No. 91 on Collective Agreements, by the International Labor Organization has significantly contributed to placing the “right to a collective agreement and collective bargaining” on the pedestal of fundamental labor rights.

The historical development of collective bargaining worldwide

Globalization has altered American labor law and the nature of labor relations. Individual bargaining, which historically held precedence in the United States, began leaning toward collective bargaining. As individual bargaining evidently did not meet the needs of employees, the United States Congress and the President decided that it was in the interest of workers and the country to adopt federal laws that protect and encourage collective bargaining as an important means to address employees’ needs. Accordingly, in 1935, Congress passed the Wagner Act (known as the National Labor Relations Act) to promote “equality in bargaining power between employees and management” and to promote “industrial peace.” The idea was that, even though employees might not be able to individually negotiate with employers to achieve higher wages, benefits, and to have a greater say in managing their companies and society, they could unite to achieve these tasks through a collective agreement (Dau Schmidt & Brun, 2004., pp. 21–22). Collective bargaining allows for an individualized solution based on the enterprise and can address many of the market imperfections of individual bargaining. Unfortunately, due to the minimal organization of employees in the United States, relying on collective bargaining leaves the majority of employees without an effective way to address their needs in the employment relationship. Protective state and federal legislation provide the least individualized way of addressing employees’ needs. This is also administratively expensive. However, protective legislation can be used to provide at least some relief from the issues of individual bargaining for all employees. Moreover, the system of individual rights and enforcement used in most protective laws aligns well with the American

legal system and ideals of individualism (Dau Schmidt, 1993., pp. 692-698). A secondary method for meeting employees' needs is through common law. The law of individual contracts is primarily shaped through state judicial decision, although federal common law regulates the enforcement of collective agreements.

In Nordic countries, except from Finland, collective bargaining, alongside collective agreements, has become a form of uniform regulation of wages and employment conditions in the late 19th and early 20th centuries (Malmberg, 2001., p.190). Sweden's labor relations have historically been characterized by a high rate of unionization. Unions began rapid development in the 1930s. Today, the density of unions is higher in the public sector than in the private sector. Another characteristic is that Swedish employers have accepted collective bargaining and collective agreements as instruments for regulating employment relations since the early decades of the 20th century. In fact, until the 1970s, employment conditions for private sector employees were almost exclusively regulated through collective agreements. From 1974 onwards, the legislator introduced a series of laws to balance between agreements and laws. Nevertheless, collective agreements still exist and remain the predominant source of norms influencing the content of individual employment (Ahlberg & Bruun, 2005., p.1). The historical development of collective bargaining in Sweden has followed abundant specificities, characterizing Sweden with a high degree of collective autonomy and non-intervention by the state. When unions and employers agree to regulate matters themselves, the government does not intervene.

Collective bargaining in South Africa traces its origins back to the Conciliation Act of 1924. With the enactment of this law, the establishment of industrial councils was envisaged to advocate for employees' rights, a structure that still exists today (except for the name change to the Bargaining Council in 1995). For the first 55 years, the law was discriminatory towards black employees, denying them participation in centralized collective bargaining. However, the emergence of democratic black unions with strong organizational foundations in the early 1970s, along with increasing international

pressure against apartheid state regimes, compelled the South African government in 1979 to allow black unions to register and join industrial councils (Maree, 1991., p.85). This marked a fundamental turning point for labor relations in South Africa. During the 1980s and early 1990s, the landscape of industrial relations underwent a dramatic change, with black unions rapidly growing, gaining recognition from employers, and participating in industrial councils (Maree, 2009., p.1). What further strengthened this situation in South Africa was the transformation of the country in 1994, when the majority of black citizens governed South Africa, led by Nelson Mandela. The Labor Relations Act of 1995 expanded full rights to collective bargaining, almost covering the entire public service, including domestic and agricultural workers, and the Industrial Council changed its name to the Negotiating Council (Maree, 2009., p.1).

After the social and economic upheavals resulting from state-controlled settlement during the Weimar Republic (1919–1933), the Federal Republic of Germany (1949–1990) refrained from direct intervention in collective bargaining. One of the fundamental rights contained in the German Constitution of 1949 is the freedom of coalition. The freedom enjoyed by social partners to engage in collective bargaining on behalf of their members without state intervention is one of the most important, tangible manifestations of this fundamental right. The legal regulation governing collective bargaining is intentionally limited, with their primary aim to strengthen the bargaining privileges of trade unions and employers' associations and establish collective agreements as binding. The primary legal instrument is the Collective Bargaining Act (Tarifvertragsgesetz) of 1949 (International Labor Organization 2021., p.9). According to the legal provisions at that time, collective agreements could be concluded between employers' associations (or individual employers) on one side and trade unions on the other. In contrast, workers' councils – legally employed representative bodies elected in the workplace – do not have the possibility of collective bargaining and therefore can only conclude employment contracts (Schulten & Bispinck 2018., p.106). Germany is undoubtedly a good example to use as a basis for exploring the role

of collective bargaining. Coverage by collective agreements remains high in specific sectors of the German economy, particularly in those with a higher density of unions and strong employees' councils. Social partners in these industries have been able to negotiate the setting of trends through collective agreements, which can also serve as models for other countries (International Labor Organization, 2021., p.9). Germany serves as a regional example of how the decentralization of collective bargaining is carried out. While many European countries faced a trend of decentralizing collective bargaining from the 1990s, this development generally did not lead to a decline in bargaining coverage. The central pillar of the German model was the dual system of interest representation, based on employees' councils at the enterprise level and negotiation with multiple employers at the industry level, encompassing unions and employers' associations, ensuring high bargaining coverage and efficient implementation of collective agreements (Muller & Schulten, 2019., p.239). For instance, in the UK, since the 1980s, the company has become the dominant bargaining level. In contrast, most central and Eastern European countries have predominantly company-level bargaining, with the exception of Slovenia, which has established a sector-level bargaining system (Kohl, 2009.). What distinguishes and makes the legal solution in collective bargaining in Germany positive is certainly that the final phase of collective bargaining, the "signing of the collective agreement", is approved by executive bargaining committees (Bacaro & Simoni, 2010., p.605).

The current legal status of collective bargaining in the Republic of Serbia

In today's employment system of the 21st century, collective bargaining is a process that receives significant attention. Appropriate measures, according to national conditions, should be taken if needed to stimulate and enhance the development and wider use of voluntary negotiation procedures through collective agreements between employers and employer organizations on one side, and workers'

organizations on the other, in order to determine working conditions through the process (National Assembly of the FPRY, Article 4). Collective bargaining in today's employment system has three approaches: national, regional, and at the employer level. In the Federal Republic of Germany, France, Sweden, the Netherlands, etc., negotiations take place at the national and regional levels between national central trade union organizations and employers. However, even in these countries, there is an option for "additional" bargaining at the employer level, where workers are not always represented by union representatives. Negotiations at the level of individual enterprises or companies prevail in Japan, Congo, and the USA. In the USA, regional and state (national) negotiations take place in industries such as railways and coal mining, for example (Učur, 2006., p. 547). In the Republic of Serbia, the primary approach is currently relevant, allowing the conclusion of general, specific, and employer-level collective contracts under the Primary Labor Law (National Assembly of the Republic of Serbia, 2018, Article 241). The largest scope and quality of rights are expected in employer-level collective agreements, which is why employers tend to avoid them. Namely, the best prevention of current issues in the field of union organization and collective bargaining is the affirmation of social dialogue (Jovanović, 2010., p. 431). Collective bargaining in the Republic of Serbia today is characterized by minimal desire and interest among negotiating participants. This is especially due to legal limitations on who can initiate the bargaining process, specifically only the representative union. Another issue that arises here as a potential problem is whether collective bargaining has indeed been conducted in the best possible way, considering the fact that a representative union requires 10% of employees, and whether this small percentage can truly reflect the will and true state of the employees in collective bargaining. In environments with low trust between employers and workers, where workers are largely excluded, decisions affecting them will be less motivating to work hard. In contrast, in environments with high trust, where employees and their unions are integrated into the decision-making process, and where both parties accept each other's legitimacy,

goals such as increasing productivity and cost reduction can be achieved through collective bargaining. Overall, the "work atmosphere" in industrial relations will be a critical determinant of a company's performance (Laroche, 2020., p.6). Social integration of labor reduces the possibilities and intensity of potential social conflicts within the company and society, providing social peace. Participation as a form of social integration of labor contributes to the development of industrial democracy (Simonović & Bogićević, 1996., p.17). What makes the current normative state additionally specific is the existence of the Work Rulebook as a possible substitute for the Collective Agreement, further complicating and hindering the employees from negotiating and thereby participating in protecting their rights. Thus, with the Work Rulebook, or the employment contract in accordance with the law, the rights, obligations, and responsibilities arising from employment are regulated if: 1) no union is established at the employer or if no union meets the representativeness criteria, or if there is no agreement on union association according to the law; 2) none of the participants in the collective agreement initiates negotiations for the conclusion of a collective agreement; 3) participants in the collective agreement fail to reach an agreement within 60 days from the commencement of negotiations; 4) the union does not accept the employer's initiative to negotiate a collective agreement within 15 days of receiving the negotiation invitation. In the case of paragraph 2, item 3 of this Article, collective agreement participants are obliged to continue negotiations in good faith. In the case of paragraph 2, item 3 of this Article, the employer is obliged to submit the Work Rulebook to the representative union within seven days from the date of its entry into force. An employer who refuses the representative union's initiative to negotiate a collective agreement cannot regulate the rights and obligations through the Work Rulebook. The Work Rulebook is adopted by the employer's competent body, established by law, or the employer's founding or another general act. For public enterprises and capital companies whose founder is the Republic, an autonomous province or a local self-government unit (hereinafter: public enterprise), the Work Rulebook is adopted with the

prior consent of the founder. The Work Rulebook ceases to be valid on the day the collective agreement enters into force (National Assembly, 2018, Article 3). Another possible substitute for the collective agreement, bypassing collective bargaining, is the option to sign an agreement according to Article 250 of the Labor Law, which has its advantages and disadvantages (Kulić & Vuković, 2017., pp. 211-219). Interpreting these law provisions, we understand that the work rulebook and the agreement appear as an exceptional form of regulating labor rights in the absence of a collective agreement. What specifically affects the conclusion of a work rulebook and makes it a specific legal act is the absence of participants, lack of negotiation initiative, lack of consensus, non-acceptance of the employer's initiative to conclude a collective agreement. It is worth noting the potential danger and abuse that the legislator has not prescribed an ultimate limit, i.e., the duration of collective bargaining when harmonizing a collective agreement or signing it. This is important because based on these articles and provisions, the collective agreement participants are "advised" to continue negotiations "in good faith", without providing a final time limit within which the collective agreement "must be concluded". According to this legal regulation, collective bargaining can be abused in a way that the Work Rulebook cover legal gaps, thereby protecting the employer from criminal liability and thus, avoiding the conclusion of the collective agreement, which is the ultimate goal in regulating labor relations. In other words, every employer can, knowingly or unknowingly, especially if the standard of "good faith" is lacking (which is also related to the democratization of labor relations), create an environment in their enterprise where collective bargaining is impossible (bad atmosphere). Then, the employer unilaterally regulates labor relations with its act, or even reduces the regulation of labor relations to the field of individual negotiation (employment contract) with each worker individually. In cases where the employees regulate their labor law position only through an employment contract, they are minimally protected. In fact, they are protected to the extent provided by the law and their

own "negotiating power", i.e. the status, place, and role they have within the employer's domain¹ (Jovanović, 2004., p. 344).

Conclusion

Through the development and modernization of the science of labor law, placing collective agreements and collective bargaining on the pedestal of fundamental labor rights best illustrates their significance and importance. It is a well-known fact that collective agreements are inevitability in labor relations in the 21st century, and therefore, collective bargaining becomes a mechanism through which the legislator allows the subjects of labor relations to facilitate and improve their relationship. Collective bargaining has undergone significant changes throughout its historical development. Initially, it operated at the level of individual negotiations, but with the strengthening and development of industry through unions, it evolved to satisfy one of the basic labor rights today, which is the right to collective bargaining. The pillar through which collective bargaining should fulfill its function is the union, which, over historical periods, has further strengthened and affirmed the idea of "collective faction" for the additional implementation and development of labor relations. Although the union was initially an independent "group of people", according to many, they are not truly independent, unbiased, or politically neutral body, as it should be in essence. This, in turn, hinders the current process of collective bargaining. Moreover, considering the fact that throughout history, and even today, collective bargaining predominantly occurs under a certain veil of secrecy, it raises doubts as to whether the ultimate limits of each side have been fully utilized.

¹ The interesting practice of the European Court is reflected in one of its opinions, stating, "Given that the legal order of the Union expressly recognizes the right of social partners to freely resolve their disputes through negotiation and on an equal footing, it would not be consistent to require them to use specific dispute resolution mechanisms. Instead, their autonomy lies in choosing an appropriate way to reach an agreement and to accept (or reject) a settlement offer independently of their interests. Therefore, they cannot be reproached for pursuing those interests in the manner that suits them best" (C-28/20, March 16, 2021).

Collective bargaining in today's labor relations system in the Republic of Serbia is characterized by specific features that demand careful attention. Hence, the Work Rules and the Agreement should not be substituted for the collective labor agreement, as they differ fundamentally, especially in the lack of the collective bargaining process. The Work Rules and the Agreement are more unilateral acts, whereas the collective labor agreement is a mutually binding act based on the agreement of wills. This, in turn, initiates a hearing of the other party through collective bargaining, contributing to a "higher quality" when regulating labor relations. The collective labor agreement should become a legally binding act as a product of mandatory collective bargaining, and any potential substitutes would lead to the abuse in concluding the collective labor agreement. This should be regulated by changing and applying the "old" collective labor agreement until the conclusion of the "new" one. The "old" collective labor agreement would serve as a "safety key" in the hands of employees, ensuring the signing of a new one, preventing employers from bypassing the collective labor agreement and imposing Work Rules or an Agreement. This approach would impose an obligation and obstacle for employers to avoid the collective labor agreement, making them understand the importance of collective bargaining. This aligns with Professor Jovanović's criticism in one of his works, highlighting the drawbacks of such normative regulation, as it allows employers to do so. It is advisable to set a definite time limit for collective bargaining, as the current regulatory framework could lead to potential abuse and a delay in concluding the collective labor agreement.. This is because after the expiration of the 60-day limit, participants in the negotiation process are only obliged to conduct negotiations in accordance with the principle of "bona fides". Regarding collective bargaining and the actual conclusion of the collective labor agreement, priority should be given to employees (the current regulatory framework favors employers). Therefore, our proposal is to leave the legal possibility for collective agreements to be concluded both for a definite (with a deadline) and indefinite period, promoting the principles of "security", "certainty", and "efficiency" of labor rights and obligations, including the negotiation

process, which is very frequent according to the current regulatory framework. Due to frequent collective bargaining, the possibility of strikes and other forms of collective struggle and the protection of collective rights is highly probable. Therefore, proposed legal changes would be aimed at preserving social peace and economic stability for both employees and employers.

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Istorijski razvoj kolektivnog pregovaranja

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Sažetak

Kolektivno pregovaranje kao "pravni most" iliti pravni instrument u rukama stranaka učesnica, svoju istorijsku determinantu vuče iz XIX vijeka. Značaj kolektivnog pregovaranja nije nista manji od značaja kolektivnog ugovora. Istorijska klima za razgovor i pregovaranje stranaka učesnica u radnom odnosu, mijenjala se. To se prevashodno odnosilo na to da naša zemlja je prošla kroz balkanske a kasnije i dva svejska rata, koja su ostavili zaostavštinu i na same radne odnose a kasnije i na sve vezano za taj pravni isntitut. Kako se istorijski mijenjao i savremenizovao radni odnos, i samom transformacijom radnih odnosa krajem XX vijeka, kolektivno pregovaranje dobija jedno novo ruho i značaj i predstavlja izmedju ostalog "dobru kulturu" izmedju radnika sa jedne i poslodavaca sa druge strane. Autori u radu žele na naglase značaj istorijskog razvoja kolektivnog pregovaranja, koji izmedju ostalog osoben za svaku zemlju ponaosob, pa samim tim i njihov kulturološki značaj na radne odnose nesmunjivo je uticao da se današnjem kolektivnom pregovaranju "prilazi" veoma sistematično i odgovorno. U nastavku rada posebno će se obratiti pažnja na trenutno normativno stanje na polju kolektivnog pregovaranja i neke njegove osobenosti.

Ključne reči: zaposleni, poslodavac, kolektivno pregovaranje, kolektivni ugovor, socijalni dijalog