

REPRESENTATIVITY AND RECOGNITION FOR COLLECTIVE BARGAINING



International
Labour
Office

In collective bargaining, one or more trade unions and one or more employers or employers' organizations negotiate with the intention of reaching agreement on two broad subjects: terms and conditions of employment; and the rules that govern how the two sides will jointly address workplace issues and resolve any disputes that arise between them.

Representativity and recognition for the purposes of collective bargaining

If a collective bargaining agreement is to reflect a fair balance between the interests of the workers and employers that it covers, the organizations that negotiate on behalf of each side must be properly *representative*. This means that their policies and bargaining goals reflect the interests of those who will be bound by the eventual agreement.

In most industrial relations systems, representativity is defined in law. Only organizations that meet certain

conditions are allowed to bargain on behalf of a group of workers or employers. Meeting these conditions shows that there is a democratic link between an organization's constituency and the officers who participate in bargaining. Where governments or the social partners accept that the conditions for representativity have been met, we say that an organization has been *recognized* as the representative of its constituency.

Representativity for purposes other than collective bargaining

In some cases, criteria for representativity also exist for purposes other than collective bargaining. These may include acting on behalf of individual workers, for example in disciplinary or grievance procedures, or participation in processes of bi- or tripartite consultation at industry, regional or national level. Generally speaking, the representativity

criteria for organizations seeking to act on behalf of individuals or to participate in consultative processes are less strict than those that grant the right to be recognized for the purposes of collective bargaining. The rest of this factsheet will consider only representativity and recognition for bargaining purposes.

Registration ≠ representativity

The simple fact that a workers' or employers' organization exists and has members does not necessarily mean that it is representative. In most industrial relations systems, rules for forming an organization are separate from those having to do with representativity. For example, workers in a particular industry in a particular country may have the right to choose between a number of different trade unions or to reject all of the existing options and instead

form a new organization. In this case, although each individual union may be the authentic voice of its own members, there may not be a single union that is representative of workers in the industry as a whole. Equally, even if there is only one employers' organization with members in a particular industry, it might be difficult for it to claim that it is representative of all employers in that industry if only one in ten employers is a member.

Representativity and the law

Regulation concerned with representativity varies considerably from country to country, but there are two broad approaches that correspond to the world's two principal types of legal system.

In the industrial relations systems of 'common law' countries (English-speaking countries and countries whose legal systems have been significantly influenced

by English or American law), regulation is built on the assumption that representativity is a question best resolved by the social partners themselves. If each party voluntarily recognizes the other as representative, the state need not be involved. While legal criteria for representativity do exist in most systems, they apply only in the absence of such voluntary arrangements.

Nevertheless, circumstances may make it difficult for voluntary recognition to occur. For example employers and workers may not agree about whether to bargain collectively or there may be more than one union that has substantial membership in the workplace. This is the point at which legal definitions of the representativity of workers' organizations become important in common law systems.

By contrast, in the industrial relations systems of 'civil law' countries (for example, most countries in Europe except the UK and Ireland, the countries of Latin America, and planned economies) the determination of who has the right to participate in collective bargaining is usually a

routine issue for the law rather than a question that comes up only if the social partners cannot agree. It is assumed that collective bargaining is the normal means of setting pay and working conditions for all workers. However, only representative organizations are recognized for the purposes of collective bargaining. Representativity is typically a formal status granted to employers' and workers' organizations via an administrative decision that all involved are bound to accept. In this sense it is the state that formally recognizes workers' and employers' organizations rather than the social partners themselves. Voluntary recognition of trade unions is not usually possible.

Criteria for representativity

As noted above, most common law countries encourage voluntary recognition but nevertheless specify legal criteria for trade union representativity that apply in cases where the social partners are unable to reach agreement. Where a trade union meets these criteria, this may give rise to a duty on the employer(s) involved to bargain in good faith with one or more trade unions. These criteria most typically involve either a demonstration that a certain proportion of workers are already members of a union (a 'card count') or a ballot result showing that a majority of workers would like a particular union to represent them.

Among the civil law countries, the criteria according to which decisions about representativity are made vary

significantly. With one or two major exceptions, the results of elections among workers and employers are the most important of these, although there are frequently also other criteria that must be fulfilled, for example relating to independence, experience or financial rectitude. Typically, once these qualitative criteria are met, organizations that win more than a threshold proportion of votes can subsequently participate in collective bargaining, with influence proportional to their support in their constituency. In most systems of this kind, the question of representativity is regularly reviewed, for example in the light of periodic workplace elections.

Representativity and bargaining structure

In some countries, only one union can be recognized as the representative of workers in a particular category, enterprise or industry branch. This is usually called the 'exclusive bargaining agent' model. A union that is an exclusive bargaining agent bargains on behalf of all workers, regardless of whether they are members. In industrial relations systems where this model is used, safeguards are typically put in place to ensure that the bargaining agent properly represents and is accountable to all the workers on whose behalf it bargains. These may include: (a) the representative union is chosen by a majority vote of the workers in the unit concerned, members and non-members alike; (b) the certification of a union as the exclusive bargaining agent is made by an independent body; (c) a union which in previous elections has failed to secure enough votes to become the bargaining agent has the right to request a new election after a certain period; (d) any union other than the certified bargaining agent has the right to demand a new election after a reasonable period has elapsed. In situations where no union is able to

establish the majority needed, ILO policy is that all unions in the unit concerned should retain the right to collective bargaining, at least on behalf of their own members.

In other countries, the law allows for the possibility that an employer recognize two or more unions at once.

Where an employer recognizes two or more unions, either voluntarily or as a result of a threshold being reached, there are two possibilities for bargaining structure. Employers may bargain separately with each union, with the resulting agreements applying only to members of the union that negotiates them. Alternatively, collective bargaining may take place at a 'single table'. Workers' representatives coordinate their bargaining and a single collective agreement is agreed and signed by all the unions involved. In most cases of this kind, the single agreement will apply to all workers in the relevant category, whether or not they are union members.

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