

Northwestern Journal of International Law & Business

Volume 7
Issue 4 *Fall*

Fall 1986

The Prospects for Labor Law Reform in Poland

Maria Matey

Follow this and additional works at: <http://scholarlycommons.law.northwestern.edu/njilb>



Part of the [International Law Commons](#), and the [Labor and Employment Law Commons](#)

Recommended Citation

Maria Matey, *The Prospects for Labor Law Reform in Poland*, 7 *Nw. J. Int'l L. & Bus.* 621 (1985-1986)

This Perspective is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in *Northwestern Journal of International Law & Business* by an authorized administrator of Northwestern University School of Law Scholarly Commons.

PERSPECTIVE

The Prospects for Labor Law Reform in Poland

*Maria Matey**

I. INTRODUCTION

A complex combination of socioeconomic factors have produced a situation in Poland in the mid-1980s which is in urgent need of reform. This need for change extends to the complicated and controversial subject of labor law. It is the purpose of this Perspective to set forth the current status of labor law in Poland and to analyze the prospects for possible reform.

There are currently three approaches to labor law reform in Poland. The first is held by the government, the second by labor law scientists, and the third by the trade unions created after 1982. These approaches include wide-ranging opinions on the current trends of labor law reform, its substance, the timing of its introduction, and the stages by which it will be performed. The reason for such variety is that each approach to reform is grounded on different understandings of social needs and of their priority. Moreover, each approach is based upon a different assessment of the value and efficacy of existing Polish labor law and the pertinence of different methods of regulation.

* Professor of Labor Law and Industrial Relations, Director of Labor Law Division, Instytut Państwa i Prawa, Polskiej Akademii Nauk (Institute of State and Law of the Polish Academy of Sciences), Warsaw, Poland. M.A. 1956, Warsaw University, J.D. 1965, Polish Academy of Sciences.

It must be remembered that Polish labor law is, in principle, now exempt from the extraordinary and troublesome legal regulations of martial law. (The last of these provisions was repealed on December 31, 1985.)¹ The social tensions manifested in the labor unrest of the early 1980s have cooled. Looking at the situation objectively today, it is clear that the moment has come in Poland when wise and far-reaching socio-economic reforms must take place in the spirit of the 1980 Gdańsk and Szczecin Agreements. It is for this reason that the issue of labor law reform is becoming a topic of increasing importance.²

II. EXISTING LABOR LAWS

The existing body of labor law in Poland consists of a limited number of enactments. The most important body of law remains the 1974 Labor Code (as amended).³ There also exist a number of valid legal acts passed in the 1980s which were aimed at renovating labor relations in Poland. These laws include: two laws of September 25, 1981, concerning state enterprises and staff self-management in state enterprises;⁴ a law of March 6, 1981, on state labor inspection;⁵ a law of June 24, 1983, regarding social labor inspection;⁶ a law of October 8, 1982, (as amended considerably on July 24, 1985) concerning the activity of trade unions;⁷ a law of January 26, 1984, affecting remuneration systems at certain establishments;⁸ and a law of April 18, 1985, dealing with the solution of indi-

¹ The government declared a technical "state of war" on Dec. 13, 1981, thereby imposing martial law. On Dec. 21, 1982, the state of war was suspended; most restraints of martial law were lifted on July 22, 1983.

² The importance of this topic was stressed at a nationwide scientific conference on the subject of labor law reform organized in September 1986 by the Institute of State and Law of the Polish Academy of Sciences. Papers were presented by Z. Salwa, C. Jackowiak, and this author.

³ KODEKS PRACY (LABOR CODE), June 26, 1974 (effective Jan. 1, 1975) [hereinafter LABOR CODE].

⁴ Ustawa o Przedsiębiorstwach Państwowych (Law on State-Owned Enterprises), Sept. 25, 1981, *DZIENNIK USTAW POLSKIEJ RZECZYPOSPOLITEJ LUDOWEJ* (JOURNAL OF LAWS OF THE PEOPLE'S REPUBLIC OF POLAND) [DU] No. 24, item 122; Ustawa o Samorządzie Załogi Przedsiębiorstwa Państwowego (Law on Staff Self-Management of State-Owned Enterprises) [hereinafter Staff Self-Management Law], Sept. 25, 1981, DU No. 24, item 123.

⁵ Ustawa o Państwowej Inspekcji Pracy (Law on State Labor Inspection), Mar. 6, 1981, DU No. 6, item 23 [hereinafter State Labor Inspection Law].

⁶ Ustawa o Społecznej Inspekcji Pracy (Law on Social Labor Inspection), June 24, 1983, DU No. 35, item 163.

⁷ Ustawa o Związkach Zawodowych (Law on Trade Union Activity), Oct. 8, 1982, DU No. 32, item 216, *amended by* Ustawa o Zmianie Ustawy o Związkach Zawodowych i Niektórych Innych Ustaw Określających Uprawnienia Związków Zawodowych (Law Amending the Activity of Trade Unions), July 24, 1985, DU No. 35, item 162 [hereinafter Trade Union Activity Law].

⁸ Ustawa o Zasadach Tworzenia Zakładowych Systemów Wynagradzania (Law on Principles for Setting up Remuneration Systems at Establishments), Jan. 26, 1984, DU No. 5, item 25.

vidual labor disputes.⁹

These enactments, particularly those passed in the 1980s, generally provide for the introduction of sociolegal solutions specific to the needs of Poland. Such flexibility stands in contrast to the limited range of solutions available in other socialist countries and has resulted in statements concerning the "Polish model" or the "Polish anomaly" to the socialist labor law system. One example of these peculiarities is the system of workers' self-management which exists only in Poland.¹⁰ The 1981 law also allows for the supervision of working conditions by the state;¹¹ in most socialist countries such supervisory power rests in the hands of trade unions. Another example is the 1982 law which legalized collective labor disputes and recognized the right to strike.¹²

The reform enactments of the 1980s provided valuable legal solutions to Polish labor problems and, to a large extent, contributed significantly to the existing body of labor law and imparted to it features unique to Poland. It is paradoxical to many observers outside Poland that the country adopted these important laws almost simultaneously with the imposition of the far-reaching measures of martial law. This paradox testifies to the complexity of the Polish crisis and to the unique character of the labor laws enacted during the first half of the 1980s.

III. CURRENT DEVELOPMENTS

While the enactments of the early 1980s remain in force, the attention of labor law scientists has focused on how to protect these regulations from formal and informal deviations. The difficulties stemming from the current crisis in Poland present many temptations to make such modifications. Indeed, a reading of the 1974 Labor Code may give the impression that it originates from an entirely different age and that changes to it are now necessary. While speculation for possible change is great, it is reasonable at the present time to anticipate two alterations in Polish labor law. First, a "small amendment" is likely to be adopted to the Labor Code in 1987 for the purpose of handling the most urgent matters of reform. Second, it may be expected that the labor law will be recodified in the long run, perhaps by 1990. In the meantime, such a major change will be preceded by thorough reexaminations, legal as well as comparative, which will encompass both the labor law of socialist

⁹ Ustawa o Rozpoznawaniu Przez Sady Spraw z Zakresu Prawa Pracy i Ubezpieczeń Społecznych (Law Concerning Settlement of Labor Disputes), Apr. 18, 1985, DU No. 20, item 85.

¹⁰ Staff Self-Management Law, *supra* note 4.

¹¹ State Labor Inspection Law, *supra* note 5.

¹² Trade Union Activity Law, *supra* note 7, arts. 36-45.

countries as well as that of industrialized capitalist nations.¹³

A. Recodification

It is too early to anticipate the trends which will occur in the general recodification of Polish labor law as the studies being made in conjunction with it are still in the preliminary stages. The author believes that the recodification should, in general terms, establish several goals: 1) to make as much progress, as is permitted through the economic power available to the Polish state, in the field of workers' rights and social standards in order to raise those rights and standards to a level which will be required in the twenty-first century; 2) to support a dramatic increase in labor efficiency and social discipline of workers, areas which have been, so far, the source of Poland's difficulties and failures; and 3) to expand and to authenticate industrial democracy by solidifying the workers' self-management system and by solving the problems which have accumulated in the sphere of trade union activities.

B. The "Small Amendment"

While it is difficult to speculate which changes will be made in the labor law recodification, the objectives of the so-called "small amendment" to be enacted in the near future appear to be more concrete. The need for such an amendment is quite apparent.¹⁴ One purpose is to bring the Labor Code up-to-date while avoiding any obstruction to the introduction and implementation of economic reform. In fact, the amendment is aimed at assisting with such reform. A second purpose of the "small amendment" is to adapt Labor Code provisions to the new structure and position of the trade unions. The present code refers to the trade union structure which existed in Poland prior to 1980. In this respect, the amendment would also have as an objective the creation of a new collective labor agreement model compatible with the structure of the new trade unions.

Despite general agreement as to the objectives and range of reforms to be covered by the "small amendment," many differences, some very acute, exist between the concrete suggestions put forth by the govern-

¹³ These trends are indicated in a detailed analysis presented in RAPORT O STANIE PRAWA, Rada Legislacyjna przy Prezesie Rady Ministrów PRL (REPORT ON THE STATE OF THE LAWS, Legislative Council, Chairman of the Council of Ministers of the Polish People's Republic), 1986.

¹⁴ The government appointed a Committee for Labor Law Amendment Affairs in September 1985 to prepare these changes. The chairman of the committee is the Minister of Labor, Wages, and Social Affairs; the Deputy President is Professor Z. Salwa, University of Warsaw. The committee has sought advice from Professors L. Florek, H. Lewandowski, W. Masewicz, W. Piotrowski, A. Swiatkowski, and this author.

ment, labor science observers, and the trade unions. It is important to note at this point that labor law science is the branch of the triad with the least influence. Opinions of labor law scientists are often kindly noted by the government and trade unions only to be brushed aside by the political and economic arguments which eventually arise between the government and the trade unions in political fora and the *Sejm* (Parliament). It is also important to note that the opinions of labor law scientists are not unanimous. Many differences exist regarding specific problems due to the various theoretical and political assumptions held by the observers.

I. Assisting Economic Reform

One of the aims of the "small amendment" is to assist in greater economic reform. Such reform involves revising the present labor durability protection system¹⁵ — which insulates workers from unjustified termination of employment — without violating its general principles. The amendment should permit some personnel moves essential for improving the economy of an enterprise and discharging employees no longer needed by the work establishment.

It is generally recognized that social employment has existed in Poland on a rather wide scale for many years. This has meant tolerating the employment of workers not recommended by their skills, work efficiency, and suitability. It has also resulted in their retention for social reasons, particular family situations, or health risks. Another important factor has been the fear of work establishment managers that, after releasing incompetent employees, it will not be possible to replace them with capable workers or, for that matter, any workers because the demand for labor in Poland is so high.

The fear of not being able to hire new employees when the economic situation of an enterprise improves has prevented, thus far, work establishment managers from reducing their staffs during an economic slump or production changes. The result is a vicious circle. The current system of employment is, in fact, the cause of the constant shortage of workers in the labor market. It is this occurrence which is the subject of an ideological controversy. The question is whether it is permitted, in a socialist country, to consider the subject of a "reserve labor force," — in other

¹⁵ LABOR CODE art. 32. See W. JAŚKIEWICZ & W. PIOTROWSKI, *PRAWO PRACY W ZARYSIE* (OUTLINE OF THE LABOR LAW) (1985); J. JOŃCZYK, *PRAWO PRACY* (LABOR LAW) (1984); Z. SALWA, *PRAWO PRACY W ZARYSIE* (THE LABOR LAW IN AN OUTLINE) (1977); W. SZUBERT, *ZARYS PRAWA PRACY* (AN OUTLINE OF THE LABOR LAW) (1976). See also Matey, *Poland*, in 8 *INTERNATIONAL ENCYCLOPAEDIA FOR LABOR LAW AND INDUSTRIAL RELATIONS* (R. Blanpain ed. 1977) (forthcoming).

words, limited unemployment — or whether such consideration is prohibited for political reasons.

The fear of work establishment managers of not being able to release certain employees runs counter to the principles of economic reform currently being sought in Poland. Improving the economy of work establishments through so-called “sound-making programs” may involve the need to release unnecessary workers who will not likely remain unemployed for a long time. Such releases, however, are not easy to make under provisions of the current Labor Code which protects workers from unjustified terminations. If trade unions do not agree with the justification given for a worker’s release, they will raise reservations as to the notice-giving procedures.¹⁶ In such instances it is difficult for the work establishment to prove the legitimacy of the release before a court (which has the final judgment in these matters). Consequently, it is the government’s intention to use the “small amendment” to introduce into the Labor Code a provision which would permit the abandonment of job security protections for workers when the economic necessity of reducing staff numbers is within the framework of the “sound-making program” of a particular enterprise.

Abandoning this aspect of workers’ protection by a provision in the “small amendment” would remove the trade unions’ control over the release of workers within the framework of the “sound-making programs” and the requirement that the justification given by work establishments be verified by the courts. Moreover, the duration of the notice-giving requirement — which is three months in most instances — would be cut in half in order to simplify the entire operation. The government’s proposal has been criticized by trade unions and the labor science community. While not denying the need to undertake programs of economic improvement, these two branches of the triad generally wish to establish protective mechanisms for workers with regard to their selection and subsequent fate.

2. *Labor Discipline*

Another problem associated with economic reform is finding effective measures to increase labor discipline. The solutions to two particular problems — quitting work without notice and alcoholism — are urgently needed. The current labor law may, once again, be inadequate to deal with these matters.

The legal notion of “quitting work” in Poland creates interpretation

¹⁶ LABOR CODE art. 38.

troubles which are not experienced in other countries. Essentially the problem is that workers who have more lucrative jobs do not properly terminate their existing employment by providing sufficient notice. Rather, the employees simply do not report for work. (It should be emphasized that workers in Poland are entirely free to terminate their work relationship with notice at any time.)

The amount of job quitting without notice appears to be somewhat exaggerated in official assessments. Nonetheless, the practice of quitting work without notice harms work establishments which must immediately find replacements for these employees. Considering the labor shortage in Poland, finding such workers is not easy and, as a rule, takes some time. In fact, it is the labor shortage itself which prompts workers who have already found a better job to quit their existing employment.

Polish labor law has attempted, for some time, to counteract job quitting without notice by introducing a variety of sanctions against employees who act in such a manner. These include temporarily reducing the length of the worker's vacation, withholding family allowances and other benefits, and recommending to work establishments employing such persons to pay lower salaries. These sanctions, however, have proven to be useless or improperly addressed. They are useless because it is difficult under the current Labor Code to establish that the worker quit a previous job. Moreover, new employers are unwilling to make such determinations as they are happy to have found a replacement worker. (Poland does not use a system of "labor booklets" or any other documents to track a worker's employment history.) The sanctions are also improperly addressed for, as an example, canceling family allowances affects older workers with families to support; quitting work without notice principally occurs among young people who have a lesser need for such allowances.

The government has recognized current sanctions are ineffective against the problem of quitting work without notice. Consequently, it has suggested including in the "small amendment" to the Labor Code a provision requiring the worker who quits employment without notice to compensate the previous employer in the amount equivalent to three months salary. This government proposal has not found active support among labor law science specialists. While some may agree that the sanction is an unpleasant but unavoidable measure, they generally oppose the suggested amount of compensation as being too harsh economically on workers and their families. The suggestion is also opposed as being unjust to those workers who are legally required to give only two

weeks notice. Trade unions also strongly oppose the government recommendation.

Proposals for strict legal measures regarding the treatment of alcoholism are, in most instances, given broad social support. The current Labor Code contains some provisions in this regard; nonetheless, they are seldom enforced. (Other disciplinary measures are similarly overlooked.) It is not yet known what detailed legal solutions regarding alcoholism will be included in the "small amendment."

The shortage of labor in Poland has created the desire to find methods of supervising and controlling the labor force at the market level in order to prevent excessive and undesirable staff fluctuations. One suggestion in the extreme is to establish a compulsory placement service. (The government introduced such a system, in part, during martial law, but discontinued the plan in late 1985.) Attempts to justify such methods of labor regulation often point to the fact that Poland has ratified as many as seventy conventions of the International Organization of Labor. Nonetheless, Poland has, so far, failed to ratify the Convention of 1948 which establishes the rule of voluntariness in the use of placement service facilities.¹⁷ Moreover, these methods have little popular support. The prevailing opinion is that, as with any other administrative measure, these methods of labor regulation are incompatible with the essence of economic reform which is to replace forms of state pressure with economic mechanisms.

3. *Status of Labor Unions*

The next objective of the "small amendment" is to adapt the Labor Code to the existence of the new trade unions established pursuant to the law of October 8, 1982.¹⁸ Any changes in this regard will not be fundamental in character as the legal status, recognition, and principles of trade union operation are governed in a complex interrelationship by that law and its far-reaching 1985 amendment. The trade unions now operating in Poland observe the rules laid down by the 1982 law in that they are self-managed and independent of other administration.

Trade unions in 1986 had a membership numbering 6,500,000 — some 60% of all workers having the right to associate. Trade union organizations currently exist at 26,000 work establishments and are part of 132 nationwide federations. One hundred, twenty-six of these federations comprise the *Ogólnopolskie Porozumienie Związków Zawodowych*

¹⁷ Convention Concerning the Organization of the Employment Service, July 9, 1948, 70 U.N.T.S. 85.

¹⁸ Trade Union Activity Law, *supra* note 7.

(All Poland Trade Union Agreement), a national interunion representative organization.

The 1982 law contains many original legal solutions adapted to Poland's particular social relations. The law included an extensive section entitled *Spory Zbiorowe* (Collective Labor Disputes).¹⁹ This provision recognizes the "right to strike," legalizes collective labor disputes, and lays down mechanisms for regulation of such disputes, including direct negotiation, arbitration, and the operation of special organs called Social Arbitration Panels. The right to strike may be employed as a last resort when all the other procedures have failed. These procedures have already been put into practice. The Social Arbitration Panels — the highest level of review — have examined some twenty collective labor disputes between 1984 and 1986. Labor inspection data reveal that approximately 800 situations which could be called "collective labor disputes" occur annually in Poland.

In view of the comprehensive regulation of trade union disputes by a separate trade union law, the "small amendment" needs to address three remaining issues with regard to the Labor Code. The first matter which requires consideration is the coordination and consultation procedures with the new trade unions. Second, the "small amendment" must deal with the controversy surrounding the trade unions' control over the termination of workers' employment relationships. Finally, the draft law should implement a new collective labor agreement model.

The duty of coordinating and consulting with trade unions requires various decisions to be made at work establishments, several operational levels of the economic administration (e.g., decisions by ministers), and the government level in the form of resolutions and ordinances promulgated by the Council of Ministers. The coordination and consultation at the parliamentary level occurs through the participation of groups of deputies representing trade unions; this process is not subordinated to current Labor Code regulations. The "small amendment" should delineate the levels and representatives of trade unions authorized to take part in the consultation and coordination process based upon the present structure and competency of the various trade union bodies. Similar recommendations should be made by the trade unions.

The current Labor Code provides for trade union control over the termination of employment relationships between workers and work establishments on two levels. Work establishment managers planning to terminate a labor contract with a worker must present the case to the

¹⁹ *Id.* art. 5.

local trade union organization. Trade unions examine the justification for the dismissal and, whenever necessary, express reservations or refuse to consent to the dismissal. If a reservation is made, the work establishment manager has two courses of action. First, the manager may choose to abandon the planned dismissal. Second, the manager may submit the case to a higher trade union body. If the latter course of action is taken, the manager may make a final termination decision only after the trade union body has expressed its opinion either favoring or opposing the worker.

The current two-tier structure of trade union decision making as to employment termination is now under review. The complete independence of trade union organizations at work establishments and the effective absence of their subordination to superior trade union authorities brings into question whether the second tier has any actual function. Suggestions have been made by the trade unions that a new procedure be instituted which would give the second tier more authority in termination of employment decisions. Others prefer that the control of dismissals and the right to submit reservations be limited to the work establishment level.

With regard to the implementation of a new collective labor agreement model, it should be recognized that collective negotiations have a longstanding tradition in Poland. The principles for concluding and validating collective labor agreements have been regulated by law since 1937.²⁰ In socialist Poland, a section of the Labor Code recognized these principles.²¹ As the result of this established practice, collective labor agreements are concluded at the branch level of an industry and embrace the entire industry branch. This principle must remain in force. Workers' salaries and other remuneration issues are considered separately and are now regulated under the law of January 26, 1984.²² This law permits work establishments to conclude wage agreements between the director of the establishment and the trade union organization, following consultation with the workers' self-management authorities.

The draft law on collective labor agreements, which forms part of the "small amendment" to the Labor Code, has been under negotiation between the government and the trade unions since early 1985.²³ Many

²⁰ Ustawa o Układach Zbiorowych Pracy (Law on Collective Labor Agreements), Apr. 14, 1937, DU No. 31, item 242.

²¹ LABOR CODE, parts 11-12.

²² Law Affecting Pay Systems, arts. 2, 7, *supra* note 8.

²³ Immediately prior to the publication of this issue, the *Sejm* approved the draft law. Ustawa o Zmianie Kodesku Pracy (Law on Amending the Labor Code), Nov. 24, 1986, DU No. 42, item 201. The passage of the draft represents a compromise attained after long arguments between the trade

bitter and dramatic events have occurred during the course of these negotiations. The principal subjects of disagreement were in three areas. First, the two parties could not reach any accommodation as to the scope of collective agreements. They disagreed, for example, over the issue of whether and to what extent, the agreements may vary from legal regulations. Second, the parties could not resolve the problem of how to conclude an agreement when several trade union federations exist in the same branch. This issue also involves the competency of branch ministers or the panels comprised of directors of enterprises of the given branch. Finally, the government and the trade unions could not agree on what body should have the power to make the final decision regarding the conformity of the agreement with the law and the socioeconomic plans of the country. This issue is particularly important in the event that the Ministry of Labor refuses to register a concluded agreement because it fails to conform with these standards.

III. FURTHER QUESTIONS

Apart from the positions held by each side, there have emerged at the margins of these negotiations several legislative and constitutional questions. In Poland, as in other socialist countries, the practice of negotiating draft laws between the state administration and trade unions on labor issues was not observed prior to 1980. Now that this process is followed, the question arises as to what would happen if, assuming each side could agree to a compromise negotiated draft, the *Sejm* subsequently deemed it necessary to change substantially the agreement. Should a law modified by the *Sejm* before enactment be considered by the government and the trade unions as the same agreement they legally negotiated?

A number of entirely new questions regarding parliamentary practice have emerged following the 1985 election. One of these issues concerns the creation of groups of deputies representing the trade unions. Should the existence of such officials prompt the establishment of formal trade union representation in the *Sejm*? If the answer to this question is "Yes," then what will be done to solve the problem of party discipline when the trade union deputies vote on legislation? While the deputies would represent the trade unions, they would also be members of one of the three political parties represented in the *Sejm*. These questions have become increasingly important with the radicalization of trade union policy and the increasing independence of the trade unions with regard to

unions and the government. The trade unions appear to be partially, but not fully satisfied with the compromise.

socioeconomic matters. Trade union positions are often considered to be quite controversial by other participants in contemporary Polish politics.

The year 1987 should prove to be extremely interesting, as answers to all of these questions may be given. Of paramount importance will be the draft legislation on the "small amendment" to the Labor Code.

IV. CONCLUSION

A fundamental change has been made in Poland regarding the rule prevalent in socialist countries of centralized, nationwide decision making on issues affecting workers' salaries. (Such a reform previously took place in Hungary.) With the enactment of the 1984 law concerning wage agreements, decisions as to workers' remuneration have been brought down to the level of work establishments. Such decisions are now closely dependent upon work efficiency, good management, and the general economic well-being of the enterprise. This significant change is in accordance with the basic principles of Polish economic reform, the so-called "three Ss:" *samodzielność*, *samorządność*, and *samofinansowanie* (independence, self-management, and self-financing of enterprises).

Poland in the 1980s is a great laboratory. Large-scale economic and legal experiments are currently being made in socioeconomic practices and in the preparatory work and accompanying controversy surrounding overall reforms. The developments are particularly important in the field of labor law. Whatever changes are made in Poland will have a fundamental impact on all of Central and Eastern Europe both in the 1980s and as we move toward the year 2000.