III. ARBITRATION AND SETTLEMENT OF LABOR DISPUTES IN SOME EUROPEAN COUNTRIES

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In February 1976, a Belgian shop steward, a member of the Socialist trade union, was discharged by SIBP, a petroleum company in the Antwerp area, for organizing a wildcat strike which, according to the company, endangered the lives of his fellow workers as well as company property. Both the Socialist and the Christian unions took part in the strike; the Socialist unions also engaged in an industrywide strike. At some point in the dispute, the government conciliator proposed that the issue be submitted to an arbitration panel, and although the Socialist union might have accepted this proposal, it was rejected by the Christian union and the employers' association, the employers claiming that arbitration would be illegal, as such disputes were matters for the labor courts to resolve.

Because grievance arbitration is rarely used in European countries and in some instances is outlawed, the Belgian employers' refusal to submit the dispute to arbitration may be considered typical. In Belgium, for example, various labor laws specify that neither the employer nor the employees can agree in advance to submit grievances pertaining to the employment relationship to arbitration,[1] nor can collective bargaining agreements or work rules contain such provisions. However, once a dispute between the parties has arisen, they then may agree to settle it by arbitration, as the government conciliator suggested in the BP case. In practice, this procedure is rarely, if ever, used.

Nor is arbitration of individual grievances available any longer in France since the jurisdiction of labor courts was extended in 1958 to cover such cases. In 1957, the Cour de Cassation held that "la cause compromissoire" was valid only in commercial disputes: [2] "The aim of the French Legislature to discourage parties from bringing cases before a private arbitrator instead of a labor court has been achieved." [3]

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[1] With the exception of employees in charge of daily running of the enterprise.

[2] X. Blanc-Jouvan, in LABOR COURTS AND GRIEVANCE SETTLEMENT IN WESTERN EUROPE, ed. Benjamin Aaron (Berkeley: University of California Press, 1971), at 60–61; Cass., 20.6.1957, *Droit Social*, 1957, at 556–57.

[3] Blanc-Jouvan, *id.*

Formal arbitration of grievances is also prohibited in Italy, the rationale being not unlike that which supports the prohibition in Belgium and France: "[s]ubmission to arbitration, like a compromise, was deemed a disposition of unwaiverable rights. By avoiding adjudication of the State and by granting the power of deciding a dispute to a private party, the worker would implicitly accept a private settlement that might not be in his favor and might even deprive him of vested rights." [4]

Although arbitration is legally possible in the Netherlands, Windmiller's assessment is that "[a]rbitration as the final step for resolving differences over contract interpretation has been written into only a few collective agreements and is only rarely used." [5] However, H. L. Bakels, professor of labor law at Groningen, citing a 1973 publication of the Dutch Department of Social Affairs, states that many agreements do contain a clause specifying a dispute-settlement procedure, either obligatory or voluntary. In most cases, the decision of the dispute-settlement commission is binding; in a minority of situations, the commission's decision is only advisory.

Bakels agrees with Windmiller's conclusion that these collectively bargained provisions for resolving disputes are rarely used in practice. Individual grievances usually are settled informally, discharge cases go to the courts for resolution, and collective disputes, if not settled informally, are delayed until the next bargaining round.[6] Moreover, the law provides that such grievance-arbitration clauses cannot be extended by the government to cover all employer and employees within a given industry.

British law provides for voluntary arbitration, but resort to the formal procedure is infrequent.[7] Most disputes arising out of the employment relationship in the United Kingdom are settled informally, the procedures consisting primarily of tacit understandings and arrangements based on past practice and custom. There

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[4] G. Guigni, in LABOR COURTS AND GRIEVANCE SETTLEMENT IN WESTERN EUROPE, *supra* note 2, at 305.

[5] John P. Windmiller, LABOR RELATIONS IN THE NETHERLANDS (Ithaca: Cornell University Press, 1969), 417. A well-known exception can be found in the printing industry. See also H. L. Bakels-Opheikens, SCHETS VAN HET NEDERLANDS ARBEIDSRECHT (Deventer, 1974), at 70–71.

[6] In a personal communication.

[7] See B. Hepple and P. O'Higgins, ENCYCLOPEDIA OF LABOUR RELATIONS LAW, I, Nos. 1061–1086; K. W. Wedderburn and P. L. Davies, EMPLOYMENT GRIEVANCES AND DISPUTES PROCEDURES IN BRITAIN (Berkeley: University of California Press, 1969).

is no distinction between disputes of rights and disputes of interest, as in the United States.

Labor courts occupy the preeminent position in Germany for the settlement of individual grievances. Private arbitration is possible only for "stage and film actors, entertainers, or captains and members of ships' crews," [8] provided that the parties to the collective agreement approve of arbitration. As Ramm explains, "[T]he Labor Courts Act of 1926 had left arbitration in individual disputes to the discretion of the parties to collective bargaining agreements. However, they failed to establish arbitration boards on a larger scale, and even their own attorneys complained of the lengthy procedure, the lack of procedural rules, the necessity of having to go to the labor courts for sworn testimony from witnesses and experts, and of the arbitrator's range of discretion. Both the employers' associations and the unions took a stand against arbitration in individual disputes when the draft of the Labor Court Act of 1953 was debated. Apparently, they were satisfied with the labor courts in view of their performance during the Weimar Republic." [9]

These reported negative attitudes in Belgium, France, Italy, and Germany toward arbitration of individual grievances may lead us to conclude that arbitration plays no role whatever in these and other European countries. Such is not the case.

In Sweden, "[i]t is a normal pattern to have arbitral boards for the adjudication of special types of cases and to submit possible disputes on other matters to the labor court." [10] For example, disputes over dismissals can be arbitrated. In the building-construction industry, piece-rate disputes are settled by arbitration, as are disputes in the metal-working industry over the skill classification of workers and apprenticeship.[11] It is a basic principle of Swedish law that arbitration and court adjudication of labor-management disputes are alternatives of equal value, and an arbitration award can be enforced, upon review, by the chief executor. However, in recent years the Swedish unions' interest in arbitration has been declining, and following the enactment of a law on employment security, effective July 1, 1974,

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[8] T. Ramm, in LABOR COURTS AND GRIEVANCE SETTLEMENT IN WESTERN EUROPE, *supra* note 2, at 132 (§101, II, Arbeitsgerichtsgesetz).

[9] *Id.*, at 132–33.

[10] F. Schmidt, in LABOR COURTS AND GRIEVANCE SETTLEMENT IN WESTERN EUROPE, *supra*, note 2, at 227.

[11] *Ibid.*

most clauses calling for arbitration of discharge cases have been deleted from collective agreements.

So-called "informal" arbitration has been successful for the settlement of disputes over dismissals and job classifications in Italy.[12] Even in Belgium there is (illegal) arbitration of grievances over the discharge of shop stewards in general and of apprenticeship problems in the diamond industry, and the law provides for binding decision-making by joint committees of employers and union representatives at the industry level over plant-level work rules and over whether economic or technical conditions are such that dismissal of works council members is allowed.

Collective Labor Disputes

Arbitration is distinctly secondary to conciliation as a system for the settlement of collective labor disputes.[13] There is no interest arbitration in Belgium, largely because of trade union opposition to it. Although the French government at one time favored arbitration of collective disputes, the arbitration option has not been used. In Luxembourg, interest arbitration consists of formulating proposals by a government official which the parties may accept or reject. Fact-finding inquiries are important in Italy. Arbitration is more common in Germany[14] and the Netherlands, but even then it is limited primarily to disputes concerning the interpretation of existing agreements.

In Sweden, the basic agreement[15] provides for arbitration to settle disputes over the limitations on "strikes, lockouts, and other offensive actions in the interest of public policy and neutral third parties."[16] According to Robin Smith,[17] the number of arbitration cases in the United Kingdom has trebled since the Advisory, Conciliation and Arbitration Service (ACAS) was established

[12] "Informal arbitration is often described as a 'blank' agreement to compromise between two parties who appoint a third party to supply the terms. In its simplest form, it consists of a signed, blank sheet of paper that thus is given to the arbitrator for completion. This legal device was upheld by the courts as having the same force as an agreement—not as a judgment." *Id.*, at 305–306.

[13] R. Blanpain, *Prevention and Settlement of Collective Labour Disputes in the EEC Countries*, INDUSTRIAL LAW JOURNAL (1972), at 154.

[14] See also G. Schaub, ARBEITSRECHT—HANDBUCH (2. Aufl.) (1975), at 799–806.

[15] Which covers most private industry. Schmidt, *supra* note 10, at 227.

[16] *Ibid.*

[17] University of Durham, in a personal communication.

under the Trade Union and Labor Relations Act of 1974.[18] ACAS, a new government agency, now provides all advisory, conciliation, and arbitration services formerly the responsibility of the Department of Employment, plus the investigatory work that had been done by the Commission on Industrial Relations (also abolished in 1974). Resort to ACAS arbitration procedures is essentially voluntary, and the consent of both parties is required both for the reference of the dispute and for the type of arbitration used. It is noteworthy that 80 percent of the cases have been handled by a single arbitrator, usually an academician.

Arbitration procedures are gaining in importance within the framework of workers' participation. In Germany, an employer and a works council may appeal to an arbitration committee to settle disagreements on such matters as the beginning and end of daily shifts, breaks, time and location of payment of wages, vacation schedules, participation in vocational training, condition of the work place, workers' conduct in the plant, rules on piece-rate and assembly-line wages, basic wages, and the introduction of a new wage structure. The committee consists of an equal number of employer and works council representatives and a neutral chairman, who is agreed upon by both parties. Decision is by majority vote.

Arbitration is also being recommended as an expeditious way to settle disputes within the framework of workers' participation in the projected statute for European Companies.[19] According to this statute, one third of the members of the supervisory board of the European Company shall be representatives of the shareholders, one third representatives of the employees, and one third members selected by the other two groups. If there is no agreement on the selection of one or more members of the latter group, an arbitration board shall determine their appointment. The board shall consist of one of the shareholders' representatives on the supervisory board, one representative from the employee group, and a chairman—the chairman to be named by the other two representatives. If they cannot agree, the chairman shall be appointed by the court within whose jurisdiction the registered office of the European Company is situated.

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[18] The increase in arbitration is evident from the figures: Sept. 1972–Aug. 1973, 62 cases; Sept. 1973–Aug. 1974, 90 cases; Sept. 1974–Aug. 1975, 294 cases.

[19] Proposal for a regulation issued by the Commission of the European Communities, Brussels, May 13, 1975.

The statute for the European Company also foresees an arbitration procedure to settle disputes between the European Works Council and the Board of Management. An arbitration board shall be competent to settle "all questions of procedure in matters requiring consultation with or the provision of information to the European Works Council." It shall also decide on matters that require the approval of the European Works Council; namely, (a) rules relating to recruitment, promotion, and dismissal of employees; (b) implementation of vocational training; (c) fixing of terms of remuneration and introduction of new methods of computing remuneration; (d) measures relating to industrial safety, health, and hygiene; (e) introduction and management of social facilities; (f) establishment of general criteria for the daily times of commencement and termination of work; and (g) establishment of general criteria for preparing holiday schedules.

Summary

One can state that, in general, arbitration plays only a minor role in most European countries in the settlement of both individual and collective labor disputes. In many countries, such disputes are settled either by negotiations between union and employer representatives or by labor courts.

Research in Belgium reveals that almost 90 percent of the disputes brought before the labor court are discharge cases. As it seems to be psychologically impossible for a worker to sue an employer while he is still an employee, most disputes between an employee and his employer are settled through a grievance procedure in which the employee is represented by a shop steward or union business agent, or by unilateral employer action. What this means in fact is that, unlike private arbitration, many grievances are settled on the basis of relative power rather than by reference to statutory law, the collective agreement (which may be an industrywide agreement) or other sources of labor law, work rules, individual contracts, or past practice. In my opinion, private arbitration could contribute a great deal to the peaceful settlement of disputes in Europe.