



CODEBAR-project

Decentralised Bargaining in Poland

Jan Czarzasty

jczarz@sgh.waw.pl

in collaboration with

Maciej Pańków

Country Report nr. 6 in the CODEBAR-project; final version in open access on the project's website:

[CODEBAR - AIAS-HSI - University of Amsterdam \(uva.nl\)](https://www.uva.nl/en/research/ias/aias-hsi)

'Comparisons in decentralised bargaining' (CODEBAR). This project is co-financed by the European Commission, Agreement VS/2020/0111 (Improving expertise in the field of industrial relation). The Commission is not responsible for the authors view in this report, nor for any use that may be made of the information it contains.

Table of contents

1. Executive summary

2. Institutional framework of collective bargaining and employee representation in the country

2.1 Polish model of industrial relations

2.2 Position of collective bargaining in the Polish industrial relations system

2.3 Legal framework: roots of the problem

3. Trends and debates in decentralisation and decentralised bargaining in the country

3.1 Tripartism as a substitute for absent sector-level collective bargaining

3.2 Unsuccessful attempts to revive collective bargaining

3.3 Union decline and revitalization attempts

3.4 Introduction of works councils to national industrial relations system and their subsequent failure

4. Case studies

4.1 Case study 1: manufacturing sector, Carmaker Co.

4.2 Case study 2: manufacturing sector, Electronic Parts Co.

4.3 Case study 3: manufacturing sector, Pharmax Co.

4.4 Case study 4: retail sector, FMCG Co.

5. Comparison of the cases and conclusions

References

1. Executive summary

Collective bargaining in Poland is in the state of advanced erosion. It hardly even exists at multi-employer level, and has also been shrinking at single-employer level. Collective bargaining coverage is low, although there is no official, administrative source of data that would allow to determine the bargaining coverage at the national level. Based on various legitimate sources, we assume the coverage rate (as of 2021) at 20%. Multi-employer collective agreements should not be mistaken for sectoral agreements, as the latter notion is not defined by the Polish labour law. There is a general consensus on the main reasons behind the collapse of collective bargaining in the academic debate regarding industrial relations. They all stem from a faulty legal environment. First, Polish law embraces the 'managerial' concept of employer, while in favour of the 'ownership' concept. In other words, from a legal perspective 'employer' is an 'organisational unit' that is a party to employment contract vis-a-vis employee. Second, collective agreements are concluded for indefinite periods, so there are no bargaining rounds, which makes collective bargaining largely dysfunctional. In the past (until 2002) there were also an option envisaged by law to include so called eternity clause in the agreements, stipulating that the agreement will remain binding, even after its dissolution, as long as the parties will not conclude a new one. Despite two major attempts to push forward a major reform of labour law in Poland, with reinvigorating collective bargaining being one of the principal objectives undertaken in the 21st century (2006 and 2018), the deadlock has not been overcome.

The institution of works councils was introduced to the national legal framework by the legislative act implementing the provisions of the Directive 2002/14/EC in 2006 under direct pressure of the European Commission. From the very beginning the body was treated as an 'unwanted child' by social partners on both sides of the industrial relations scene, with the state maintaining an ambivalent approach towards the issue. As a result works councils are poorly equipped with legal prerogatives which has prevented the institution from becoming a viable feature of the industrial relations system and its gradual demise marked by decreasing number of works councils elected and operating. It is a general trend, and such factors as sector or type of ownership of

enterprises (employers) do not contribute to any significant differences as far as incidence of works councils is concerned. As a consequence, while Polish industrial relations in formal terms represent a dual-channel system, they are de facto the case of a single-channel system. At the time of completion of the report prospects for any revival of works councils are bleak, as no major stakeholder, including the state, is interested in enhancing their capacity. Furthermore, bargaining power of trade unions is weak, mainly due to low levels of their power resources, with the dramatically low unionisation (11% as of 2021) being the major reason for the weakness. Employer organisations are also weak, and with their general tendency to abstain from any involvement with collective bargaining at upper levels (which reflects an overwhelming reluctance of individual employers towards collective agreements), they are hardly distinguishable from business associations, being primarily focused on lobbying activities.

The rationale for choosing the following case studies, besides the general objectives of the CODEBAR project (such as two key preconditions regarding selection of sectors to be investigated) is to provide an overview on patterns of industrial relations driven by different determinants of major significance in institutional terms, such as ownership factor (foreign/domestic), and – within the sub-field made up of multinational enterprises – origins of the parent-company, so that cases representative for various types of capitalism (political economy) are covered. Finally, existence of a works council in the company in focus is also taken into account. That explains the structure of the sample, where there are four cases included. The cases are as follows: case 1 – the subsidiary of a German-based multinational corporation in the automotive sector (Carmaker Co.); case 2 - the subsidiary of a French-based multinational corporation manufacturing electronic components for industrial sectors including automotive (Electronic Parts Co.); case 3 - Polish company (formerly state-owned) in the pharmaceutical sector (Pharmax Co.), case 4 – the subsidiary of a French-based multinational corporation in the retail sector (FMCG Co.).

2. Institutional framework of collective bargaining and employee representation in the country

2.1. Polish model of industrial relations

Poland's model of industrial relations is formally dual-channelled but de facto monistic. Besides trade unions and works councils, there is also a spectrum of other, minor form of worker representation (see Table 1). While works councils have been in existence since 2006, when the I&R Directive was transposed via the bipartite agreement of national-level social partners (a very rare case, as most of EU legislation have been adopted via national legislation), the institution from the very beginning seemed like an 'unwanted child', reluctantly accepted only because of the external pressures of the 'old EU' as a part of the aquis. In reality neither trade unions, nor employer organisation showed any interest in promoting the new channel of worker representation. For trade unions, works councils seemed like a competition, while employers remained largely indifferent to the new body.

Table 1. Workplace-level employee representation

	Regulation	Composition	Involvement in company level collective bargaining	Thresholds/rules when they need to be/can be set up
Trade union (Zakładowe organizacje związkowe)	Law	Employees	Yes	At least 10 members
Works council (Rada pracowników)	Law	Elected councillors	No	A) At least 50 employees work for the employer B) At least 10% of employees working for the employer request an election
Employee council	Law	Elected representatives	No	Only in state-owned enterprises
Employee representatives in company boards	Law	Appointed representatives	No	Only in state-controlled private enterprises
Social labour inspectors	Law	Elected, employees	No	Only in unionised workplaces
Ad hoc employee representatives	Law	Appointed, employees	No	Appointed in specific circumstances, as the law requires consultation (for example, extending working time reference periods)

Source: own elaboration

While trade unions retained their dominant position in industrial relations scene, despite ongoing de-unionisation over the years (see Table 2), works councils, after the initial wave of some interest on the part of employees (probable explanation could be a novelty effect), started to vanish in the 2010s (see Table 2).

Table 2 Union density, 1980–2021 (% of employees)

Year	1980	1987	1991	2000	2002	2007	2008	2010	2013	2015	2017	2019	2021
Trade union density (%)	65	38	28	20	18	14	16	15	10	11	11	13	11

Note: statistical error is +/- 3 per cent.

Source: CBOS data

Union density in Poland – which even at the early stage of transformation, with public sector still being dominant in terms of workforce-share had not been very high – deteriorated, and in the 2010s seems to have stabilized at a relatively low level. However, in assessing unionisation, one may rely only on survey data, as not official administrative sources exist. It must be stressed out that trade unions are mostly present in the public sector, with unionisation in the private sector being much lower, at 4% (Feliksiak 2021).

Until 2006 the system of employee interest representation in Poland was predominantly a single-channel one (even though a myriad of other worker representation bodies existed as the Table 1 indicates) built around trade unions for whom company-level constituted the main field of activity with upper-level structures (especially at the branch level) being relatively weaker and less influential.

In the summer of 2004 the Polish government disclosed to the social partners a draft legislation: the ‘Act regarding employee representatives and ‘works councils’’, which was expected to be passed into law and came into force in 2005. The draft legislation proposed by the government arose doubts on the part of employers, trade unions and independent legal experts alike.

Trade unions argued that in enterprises with trade unions were already present, they should become the channel for information and consultation, just like in the case of the Czech Republic. For their part, employers' organizations suggested that the new form of employee representation should be introduced only in enterprises with at least 50 employees. In addition, they expressed concerns about wide spectrum of matters on which information provision would be required, fearing information leakage threatening enterprises' competitiveness. Furthermore, they criticized the proposal to introduce legal sanctions against employers that would not comply with the information requirements. Trade unions and employers' organisations stated that it was not their intention to shift the implementation of the Directive into the distant future. Two taskforce teams within the Tripartite Commission for Social and Economic Affairs (on labour law and on social dialogue, respectively) discussed the implementation of the Directive 2002/14/EC and the government proposal.

It was decided by employers' organisations and unions in October 2004 to launch autonomous talks on the implementation of the Directive without government being involved, and to present the proposal worked out in this manner to the government. It was also agreed that the talks would not concern the government proposal but the Directive itself.

2.2 Position of collective bargaining in the Polish industrial relations system

Collective bargaining has played a marginal role in the national system of industrial relations in Poland. Prior to democratic transformation in 1989 collective agreements, including branch agreements (multi-employer), had been present, yet collective bargaining in a form typical for market economies (regardless of their specific model) did not exist. It was rather a different type of wage bargaining (typical for all socialist economies of the then Soviet Bloc), in which employees and so-called employers (de facto appointees of the government charged with supervisory tasks) would often team up at sectoral level to negotiate better pay and additional bonuses with the central government (at the level of ministries responsible for respective industries) (e.g. Naishul, 1991).

With the onset of political and economic reforms in early 1990s, a new model of industrial relations (and consistently, of collective bargaining) had to be shaped. Even though the radical marketization scenario eventually prevailed – leading to a creation of a political economy system that Bohle and Greskovits (2012) would call ‘embedded neo-liberalism’ – there was once a seriously but only briefly pondered (by major stakeholders of the early wave of reforms including trade union movement) option of going for an economic model that would emulate the social market economy of pre-unification Germany. Given a strong tradition of worker participation exemplified by the rise and the fall of the so-called 1st Solidarity movement in 1980-81, such a scenario was not completely utopian. Had such path been chosen, the new model of industrial relations, of more or less corporatist nature, could have been instilled. However, the neo-liberal direction the reforms followed resulted in a pluralistic model of industrial relations emerged. Such a model would ensure that no institutional barriers potentially obstructing the top-down reforms engineered in an ‘imperative and revolutionary’ way (Morawski, 2001) such as strong sector-level trade unions and corresponding autonomous regulations of labour relation embodied in sectoral (or multi-employer) collective agreements would exist.

As of 2021 collective bargaining in Poland is in a state that can be describe as “near-death experience” (Czarzasty 2020). It plays insignificant role, both in terms of the volume of collective agreements and the number of employees covered. Furthermore, collective bargaining has very little impact on the autonomous regulation of work and employment relations. The de facto absence of collective bargaining hinders the efficiency of the industrial relations system, which remains very fragmented.

The number of collective agreements is low and falling. Multi-employer agreements are extremely rare, which prompts claims the institution may even suffer a demise (Pisarczyk, Rumian 2019). In 2020 there are only 61 multi-employer collective agreements, covering 200,000 employees, largely found in the public sector. The dominant type of collective agreement is the single employer agreement.

Table 3. Single-employer collective agreements registered annually

Year	Number of new agreements	Additional protocols to existing agreements	Accords on application of agreements	Number of employees covered by new agreements
2004	328	2,193	21	166,661
2005	220	1,792	12	119,601
2006	177	1,646	6	68,000
2007	168	1,961	15	121,454
2008	155	1,732	4	62,802
2010	130	1,396	1	172,425
2011	136	1,291	3	49,407
2012	92	1,265	3	61,109
2013	109	1,131	1	43,800
2014	88	1,030	1	43,576
2015	69	909	0	101,473
2016	79	896	–	38,227
2017	50	845	–	28,230
2018	54	945	–	21,067
2019	68	988	5	33,437
2020	49	778	1	13,650
2021	48	788	1	20,407

Note: all figures in rows reported annually; *protokół dodatkowy do układu zbiorowego* (additional protocol to existing collective agreements) is a formal amendment to a collective agreement; the parties are required to notify the labour inspectorate of its conclusion.

Source: National Labour Inspectorate (PIP)

By 2021 12,462 single-employer collective agreements had been registered, covering less than 1.9 million workers, of whom about 1 million from the public sector, and above 800,000 from the private sector. Yet, these figures do not reflect changes overtime. It is estimated that currently only less than 6,800 single-employer collective agreements are still in force (Prawo.pl 2021). Combining available figures on single- and multi-employer collective bargaining coverage, the general figure could be safely estimated at no more than 20%. For the sake of clarity and comparability within the analytical framework of the project, it must be noted that there are other sources of data, which might differ from the national calculations.

2.3 Legal framework: roots of the problem

Poland has ratified the ILO Convention 98, so the state is obliged to support collective bargaining. Moreover, the state is obliged to promote collective bargaining because of the European Social Charter which is also binding for Poland. Nevertheless, it is not possible to identify any action of the national legislative that would aim at fulfilling

Poland's obligations to promote collective bargaining. Shockingly, there are even instances of actions taken by the state which should be seen as obstructive to collective bargaining. For example, amendment to the Act on Higher Education which explicitly excluded the state minister responsible for the educational affairs as a potential party to a multi-enterprise collective agreement covering university employees triggered a protest by the sectoral trade unions, specifically the National Education Section of NSZZ "Solidarność". In the reply the ministry claimed that furnishing the Minister of Science and Higher Education with the right to conclude collective labour agreements could be considered a restriction of the right to negotiate. Moreover, if a minister acted as a party in a multi-enterprise collective labour agreement it would be contrary to the principle of the limited role of the state in collective labour relations (Czarzasty, Surdykowska 2020).

Collective bargaining is regulated by the Chapter 11 of the Labour Code. Yet, there is no explicit definition of collective agreement in the Labour Code. For that reason, the definition is reconstructed based on the jurisdiction and literature, especially, commentaries to the Labour Code. As Świątkowski (2016) explains, 'collective agreements' are normative agreements concluded by social partners. Such agreements made by and between employers or employers' organisations and trade unions determine conditions to be met by employment contracts (*normative provisions* of collective agreements), obligations and rights of the parties to the collective agreement (*obligatory provisions* of collective agreements), and other obligations of the employer towards the groups of employees (*provisions included in the so-called third part of collective agreements*). Following the ruling by the Constitutional Court of 20 January 1988, collective agreements should not be seen as normative acts adopted by state bodies, but rather as special sources of labour law. Regarding collective agreements, the law follows two major principles. One is 'freedom of contract' with the exception of provisions jeopardizing the rights of third parties. The other is 'favourability', by virtue of which collective agreements cannot introduce provisions less favourable for employees than those envisaged by law. Furthermore, there is a possibility of generalization of multi-employer collective agreements, yet it has never been used after 1989. In addition, there is no room for introducing any type of

derogation from the collective agreement in force but the law allows for temporary suspension of the collective agreement in part or fully if the employer is in a difficult economic situation.

Table 4. Principal characteristics of collective bargaining in Poland

Key features	2000	2017
Actors entitled to collective bargaining	Trade unions, employers/employers organisations	
Importance of bargaining levels	Single-employer level dominates	
Favourability principle / possibilities to derogate from (cross-) sectoral agreements	Favourability principle in place/ no possibility to derogate from (cross-) sectoral agreements and/or law	
Extension mechanism (or functional equivalent)	Extension mechanism (by administrative decision) present, albeit not used	

Source: adopted from Czarzasty (2019)

Under the regime of Labour Code, there are two types of collective agreements distinguished:

- **zakładowy układ zbiorowy pracy** (single-employer collective labour agreement), to be concluded by and between employer and representative trade unions.
- **ponadzakładowy układ zbiorowy pracy** (multi-employer collective labour agreement), to be concluded by and between the appropriate statutory body of a multi-enterprise trade union, acting for the employees; and the appropriate statutory body of an employers' association, acting for the employers – on behalf of the employers united in the association. Multi-employer collective agreements are sometimes referred to as 'sectoral', although it is not correct.

When it comes to legitimacy of the signatories, representativeness for collective bargaining is regulated by the Labour Code. In order to enter into bargaining with a view of signing the single-employer agreement, trade unions must meet at least one of the following conditions: 1) belong to supra-enterprise trade union organisation deemed representative (see below) and represent at least seven percent of the staff employed by the employer or 2) represent at least ten percent of the staff employed by the employer. In case no union organisation can fulfil any of the criteria, the largest trade union

active in the company is deemed representative, and, as such, has the right to become a party to a single-employer agreement.

As far as multi-employer agreements are concerned, article 241/17 of the Labour Code sets the following representativeness criteria of which trade unions have to fulfil at least one: 1) having representative status¹ as defined by ustawa o Radzie Dialogu Społecznego i innych instytucjach dialogu społecznego (Act on Social Dialogue Council and Other Social Dialogue Institutions); 2) representing at least 10 per cent of all employees within a formally demarcated domain, not less, however, than 10,000 members; or 3) having the highest number of members within the group of employees to be covered by a multi-employer agreement (i.e. the largest of all unions concerned). By virtue of the article 241/14 of the Labour Code, any employer organisation whose domain is related to the domain of representative trade unions at supra-enterprise level can become a party to a multi-employer agreement.

The following characteristics of collective agreements should be highlighted as making significant impact on the state of collective bargaining in Poland. **Firstly**, the legal definition of employer, who is defined by Clause 3 of the Labour Code as ‘an organisational unit, even if it has no legal personality, or an individual, provided it employs employees.’ In other words, Polish law embraces the ‘managerial’ concept of employer, while rejecting the ‘ownership’ concept. So it makes no difference whether or not the ‘employer’ actually owns the enterprise or not. Especially in medium and large enterprises with complex, often territorially dispersed, organizational structures it poses a serious problem, because ‘organisational unit’ – which in line with the law is the ‘employer’ – could simply be an establishment represented by its head-manager, with little or no capacity to decide on matters exceeding day-to-day operations. Paradoxically, it is also a challenge to collective bargaining in the public sector,

¹ 1) being a national-level trade union or 2) being national-level association (federation) of trade unions or 3) being a national-level inter-union organisation (confederation) with at least 300,000 members that covers entities pursuing operations in least half of all sections of the Polish Activities Classification (PKD), yet no more than 100,000 members employed in a given PKD section can be counted. For employers’ organisations, the conditions are as follows: 1) pursuing operations on a national scale; 2) member entities employing at least 300,000 people in total; 3) member entities pursuing operations in at least half of all sections of the Polish Activities Classification (PKD), yet no more than 100,000 employees can be counted for each section.

especially in local government. Those actually in control of financial resources, such as the head of a municipality, cannot be addressed directly with pay demands by trade unions during any industrial dispute. For instance, if public school teachers seek wage increases they must present their postulates to the head teacher, as he/she is the formal employer in line with the binding legal definition. Obviously, head teachers are powerless about making any decisions on raising wages, as they hold no control over municipal finances. Ultimately, the wage demands can only be passed forward to the mayor. From the point of view of trade unions, it undermines the legitimacy of their negotiating partner, and the credibility of agreements. **Secondly**, collective agreements are concluded for unlimited duration, which effectively eliminates any possibility for adjusting/renegotiating the agreement as the environment changes. With no legal prerequisite for bargaining rounds, this is a factor clearly discouraging the employer side from entering into collective bargaining. **Thirdly**, until 2002 there was so called eternity clause (*klauzula wieczystości*) in use. In line with the Clause 241/7 § 4 of the Labour Code, 'in the event of a resolution of a binding collective agreement until the entry into force of the new agreement the provisions of the former apply, unless the parties agreed in the agreement or by a separate accord a different term for the application of the agreement'. Following the ruling of the Constitutional Court, the regulation is now defunct as breaching the Constitution. However, in spite of its removal from the legal system, there are still collective agreements in force with 'eternity clauses' embedded, stipulating that the agreement will remain binding, even after its dissolution, as long as the parties will not conclude a new one.

As far as security of bargaining is concerned, trade unions are furnished with a legal monopoly to represent employees in collective bargaining. What is more, collective agreements are to be signed on behalf of, and for all, employees, which excludes any possibility of devising 'closed-shop' type of agreements intended to cover only a part/selected groups of employees. This is clearly a factor that encourages free-riding. Employers have no right to call a lock-out, while only trade unions can legally engage in a strike action on the employee side. Works councils are not allowed to call for a strike, and wildcat strikes by ad hoc groups are against the law.

Scope of bargaining is very traditional. There are mostly issues belonging to the core of industrial relations present in collective agreements. According to National Labour Inspectorates' annual reports, pay and pay-related issues dominate in single-employer agreements. Besides those to be usually found in agreements are also such issues as employers' and employees' mutual obligations and entitlements; working time; pay structure, conventional pay, flexible elements of pay including awards, performance bonuses, seniority bonuses, death allowances and rules on determination; workplace safety rules and regulations; and holiday and other forms of leave. Issues beyond the horizon of traditional collective bargaining like, for instance, gender mainstreaming, Corporate Social Responsibility, environmental issues etc. are virtually non-existent.

When it comes to depth of bargaining, collective agreements in Poland appear shallow. This looks like a paradox, because very advanced decentralization of bargaining seemingly should help local union officers get involved in administration of agreements. Establishment-level unions are responsible for administration of single-employer agreements. Industry-level unions, federations or national-level occupational unions, being party to the multi-employer agreement are formally responsible for the administration thereof. On the employer side, the signatory is responsible for administration of a single-employer agreement. Administration of multi-employer agreements is executed by either employers' organisations that are signatories to the agreement or the specific branch of the local government in case of multi-employer agreements for non-teachers in public education. Collective agreements are to be registered, with, respectively, regional labour inspectorates (single-employer) or the Ministry of Labour (multi-employer). Any changes to the content of agreements must be done in writing. Such 'additional protocol' to the agreement must also be registered in the same way as the amended agreement.

In Poland, the degree of control of collective agreements – understood as impact which collective agreements make on actual terms and conditions of employment and, mechanisms of controlling and monitoring implementation of collective agreements – is limited. National Labour Inspectorate, a body responsible for registration of single-employer agreements on numerous occasions commented on modesty of the

collective agreements' content, pointing to the fact that they seldom offer anything above the level of provisions guaranteed by the labour law. This allows to make a plausible claim that collective bargaining, even if it takes place, is often ritualistic with no substantive outcomes, which makes it look no different from social dialogue.

3. Trends and debates in decentralisation and decentralised bargaining in the country

3.1 Tripartism as a substitute for absent collective bargaining

Tripartite social dialogue is sometimes mentioned as a substitute for the lacking sectoral collective bargaining (e.g. Czarzasty, Mrozowicki 2018). Such claim is justified as far as national minimum wage is negotiated and set. The right to negotiate the national minimum wage belongs to the central-level tripartite body, until 2015 the Tripartite Commission for Social and Economic Affairs (Trójstronna Komisja ds. Społeczno-Gospodarczych) replaced – following its de facto paralysis (2013–2015) – by the Social Dialogue Council (Rada Dialogu Społecznego). The government presents the offer for annual increase which becomes a starting point of bipartite talks. Yet, despite being equipped with such quite a potent instrument of exercising influence on public policy making, neither the former nor the later body would be able to reach a consensus. In case of failed negotiations, it is the government that makes the ultimate decision, and in taking which it is only limited by its own original offer; that is the absolute minimum for the increase. Since 2015, when the tripartite social dialogue was re-launched after two years of hiatus, the government twice (2016 and 2019) outbid the trade unions' joint proposal regarding the minimum wage raise. Especially, in 2019 the government's move was unexpected, because the level of minimum wage for 2020 actually not only surpassed the unions' bid but was also much higher than the government's original offer (by 6%). That move was commented as an

intentional attempt of diminishing not only institutional but societal (symbolic) power of trade unions (Czarzasty, Rogalewski 2022).

3.2 Unsuccessful attempts to revive collective bargaining

Somewhat like in the case of works councils, the attitudes of major stakeholders play part in the continuous stalemate. However, the picture is more complex and nuanced as far as collective bargaining is concerned. Employers are arguably the least interested. At the workplace level it can be largely attributed to cultural factors, whose resilience has led to reproduction of voluntaristic, often leaning on autocratic management style (e.g. Czarzasty 2019, Hryniewicz 2007). This claim is reinforced by observation that enterprises with foreign capital tend to be relatively more open to trade union presence and collective bargaining than domestic ones (Gardawski 2009). At the supra-enterprise level, the key obstacle appears to be that employer organisations do not promote supra-enterprise collective bargaining, because they are afraid that their members, unhappy about the prospects of self-imposed obligations possibly undermining their competitiveness against their market rivals unbound by collective agreements will flee. On the other hand, inability of employer organisations to aggregate and represent collective interests of their constituency discourages potential members from joining. So there seems to be a vicious circle in which employer organisations are trapped. Their disengagement with collective bargaining allows to wonder whether they are truly employer organizations or just business associations (Czarzasty, Mrozowicki 2018). Trade unions are arguably victims of the dominant model of workers representation which is not only pluralistic but also workplace-centred. The former results in lack of coordination and encourages employers to effectuate *divide et impera* type of strategies in their dealings with trade unions, which sometimes involves presence and activities of yellow unions. The latter can be be illustrated by the following quote by Czarnecki (2014: 116-117), who claims that “for many years in the labour law doctrine dysfunctionalities of Trade Unions Act have been highlighted, with emphasis on the fact the model of trade unionism the legislation entails brings about number of negative consequences for the development of collective bargaining. The problem is

the existing regulation, which facilitates power of trade unions at the establishment level and thus promotes a so-called establishment-centred trade union movement.”

As for the state, it is all fair to note that it initiated two attempts for introducing major reforms of labour law, whose important feature would be in case enhancing collective bargaining. Both were unsuccessful. The first one, of 2005-2006 triggered resistance of social partners as they were excluded from the expert panel drafting two separate labour codes (individual and collective). In case of the second attempt launched in 2016, there were social partner delegates appointed to the expert panel. As far as collective bargaining is concerned, the aims of the drafted project were ambitious, including such solutions as: 1) introducing a derogation mechanism by allowing less favourable measures in multi-employer agreements than those provided by single-employer agreements, 2) making collective agreements for fixed periods of 36 months and automatically prolonged for another 12 months, unless one of the parties objects; 3) setting the rule that following dissolution of an agreement, its provisions remain binding for the next 12 months, with the exception of pay regulations remaining binding for 18 months; 4) widening the circle of entities entitled to entering into a multi-employer agreement, so not only employer organisations, government ministers and local government but also ‘groups of employers’, economic chambers and craft chambers could participate; 5) obligating employers with at least 50 employees on the payroll with no collective agreement to initiate negotiations with a proposal comprising, at least, provisions on pay, equal treatment and professional development. However, once the term of the expert panel came to an end in March 2018, the parties (employer organisations and trade unions) failed to reach consensus on the uniform text of the draft. As a result, the government decided to discontinue the complex reform, vaguely declaring it would try to introduce incremental changes to the Labour Code in place by implementing bits of the abandoned project. So far, no regulations on collective bargaining have been subject to any changes reflecting the then debated solutions.

3.3 Union decline and revitalization attempts

As mentioned in the above section the key feature of trade unionism in Poland is its fragmentation and decentralization. There are three large union organisations deemed

representative at the national level, two of which are confederations (OPZZ and FZZ), and the other one is unitary (general workers) union (NSZZ Solidarność). Apart from them, there are also quite a large number of smaller autonomous unions. The total number of active unions in Poland amounted to 12,500 in 2018 (GUS 2019), of which 82.6% (10,325) were affiliated to NSZZ Solidarność, OPZZ or FZZ, and the remaining 17.4% (2,175) were unaffiliated. The 'big three' cover about 87.5% of all unionised workers, while autonomous unions the rest (12.5%) of the unionised workforce in 2018 (GUS 2019, own calculation).

NSZZ Solidarność, OPZZ and FZZ are all-grades, multi-sector organisations, covering workers across industries. To attain the status of nationally representative organisation, each must have more than 300,000 members across at least half of all industries specified by the Polish Classification of (Economic) Activity (see Footnote 1). Following the emergence of FZZ in 2002, the landscape of trade unionism at the national level has remained fairly stable with no major amalgamations or acquisitions, despite a gradual consolidation trend. The total number of autonomous unions decreased from 2,700 in 2014, when they covered 21 % of total active unions, to 2,175 comprising 17.4 % of active unions in 2018 (GUS 2015).

The three largest, nationally representative confederations differ in terms of their internal structures. To begin with the two 'historic trade unions' (once political adversaries), OPZZ (established 1984) is an umbrella organisation for 78 affiliates, mostly professional union federations, industrial unions and general workers unions. OPZZ affiliates are divided into seven industry structure: (1) mining and energy; (2) manufacturing; (3) education and science; (4) public services; (5) construction and timber; (6) transport; (7) commerce, services, culture and art. There are also 16 regional structures in 'voivodships', main regional administrative units. Sectoral structures has always played more important role than territorial ones within OPZZ, which has been decentralised confederation with a limited only extent of control by the central authorities over the affiliates (Czarzasty et al. 2014).

NSZZ Solidarność (established 1980) is the largest national-level trade union organisation. NSZZ Solidarność is a general workers' union where 'company-level union organisations do not have separate legal status'. NSZZ Solidarność is much more centralised than OPZZ and FZZ with hierarchical structure of company-level union organisations, inter-company union organisations and regional branches. In territorial dimension, there are 38 'regions' or territorial structures and 14 branch secretariats: (1) energy and mine workers; (2) metalworkers; (3) food industry workers; (4) science and education workers; (5) rural workers; (6) construction workers; (7) chemical workers; (8) postal workers; (9) transport workers; (10) public services workers; (11) media and entertainment workers; (12) banks, commerce and insurance workers; (13) natural resources, environmental protection and forestry workers; and (14) pensioners. Most 'secretariats' are further divided into 'sections'.

FZZ is the youngest (established 2002) and smallest nationally representative confederation. The impulse for consolidating 17 independent and breakaway (from OPZZ) unions came from enactment of the Act on Tripartite Commission of 2001 which established the criteria for national-level representativeness at 300,000 members. There was a premium to be claimed but only available for large organisations. Nowadays, there are 54 unitary unions and union federations of all types congregated in the confederation, and the biggest occupational groups represented come from public services, health care, education, transport and state security.

The roots of decentralization within the union movement can be traced back to the pre-1989 era of authoritarian state socialism. Workplace-centred union movement, emerged in period of the 1st Solidarity (1980–81). Even after banning the Solidarity, the new 'official' trade unions established in 198 as OPZZ would be shaped as a loosely coupled confederation. OPZZ was built in a bottom-up (yet administered from above by the government) manner. First, company-level organisations were organized, then sectoral unions (autonomous organisations and federations) were set up, and finally a national-level association was called into existence. Such a project was highly unusual in the Eastern Bloc, as in all other countries therein the monistic, centralized trade unions were retained. There was, however, a rational motivation of the authoritarian

government behind such decision: it stemmed from the fear that another working-class rebellion would happen (Gardawski, Mrozowicki, Czarzasty, 2012).

What happened to trade unions, industrial relations and collective bargaining was also a consequence of strategic decisions taken by major trade unions. While negotiating the terms of democratic transition, trade unions representing the opposite side of political barricade stepped forward with quite contrasting concepts of union movement. The 'official', socialist unions of the All-Poland Alliance of Trade Unions (Ogólnopolskie Porozumienie Związków Zawodowych, OPZZ) confederation advertised the 'one union per workplace', Anglo-Saxon model (representative trade union elected by workers in a general ballot). The 'Solidarity' union (being the core of the opposition camp), on the other hand, was pushing for the pluralistic model, and this vision eventually prevailed. Historical irony is that had the OPZZ concept been successful, there would likely have been only 'Solidarity' left in workplaces, given strong anti-communist sentiments in the Polish society of early 1990s. (Gardawski, 2009). Leaving the speculations aside, what followed was politicization of trade unions, petrification of enterprise-based model of unionism with feeble supra-enterprise (sectoral) structures and inability of trade unions to break into the private sector despite a series of organising campaigns (see Czarzasty, Mrozowicki 2018).

Table 5. Trade union structure types in Poland: overview

Trade union type	Description
Company-level trade union organisation	Basic trade union organisation covering one enterprise of one employer
Departmental trade union organisation	Lower-level trade union structure within a (usually nationwide) company-level trade union
Supracompany trade union / nationwide trade union	Trade union covering more than one employer – unitary trade unions, inter-company trade unions, federations and confederations. Supra-company trade unions are synonymous with nationwide trade unions. They can be single-sector or multi-sector trade unions
Unitary trade union	Supra-company trade union in which company-level union organisations do not have a separate legal status. The unitary union is considered a single legal entity on Polish territory. It encompasses company-level unions with the same statutes and name
Inter-company trade union organisation	Trade union organisation that covers at least two enterprises belonging to two different employers
Trade union federation	Supra-company (nationwide) trade union that associates company-level trade unions
Trade union confederation	Supra-company (nationwide) organisation to which company-level trade unions and trade union federations are affiliated

Source: Gardawski et al. (2010: 75).

For historical reasons, CEE trade unions lacked the internal resources which supported organizing in the Anglo-Saxon countries (Mrozowicki 2014: 5), thus the original impulse would have to come from the West. Poland was the first country in the Central and Eastern Europe where Anglo-Saxon organising model was adopted. In the late 1990s US AFL-CIO came to contact with the Solidarity and instigated a transfer of knowledge plus organizational and financial support aiming at establishing a special unit within the union dedicated to organizing campaigns. The initial campaigns targeting private sectors produced some success, i.a. in retail (see Czarzasty 2010), yet in the long run they proved not be an adequate weapon to fight the long-term de-unionisation trend. As the long-term statistics show, union density has remained low, albeit relatively stable for past several years.

3.4 Introduction of works councils to national industrial relations system and their subsequent failure

In April 2006, the Polish parliament finally adopted new legislation on information and consultation procedures in the workplace (hereinafter: I&C Act). The new law envisaged two paths for establishment of a works council: in unionised workplaces, the representative trade unions would appoint the council members, whilst in non-unionised

workplaces councilors were to be elected. I&C Act also established an interim period (lasting until March 2008), when only employers with at least 100 staff would be bound by the law.

Table 6. Number of works councils elected for a new term, 2006-2021

Year	1 st term (2006/2008)	2 nd term (2010/2012)	3 rd term (2014/2016)
Number of works councils	3,401	567	299

Source: own calculations based on the data available from the Ministry of Labour

According to the Ministry of Labour official register, while 3,401 works councils were established for the first term (2006/2008), only 567 works councils were re-elected for the second term (2010/2012), and in the third term the number dropped down even more – to 299 (2014/2016). The failure of works councils can be attributed to several factors, albeit the key one is their limited scope of prerogatives. A close look at the powers of works councils facilitated by law reveals that the only case of ‘added value’ that a works council can provide for employees stems from their right to access financial data of the employer’s performance which under the law are out of reach of trade unions. While it seems to be a potentially substantial advantage of works councils over unions, it has not prevented the body’s slow but steady demise. Research on companies with actual dual-channel representation (parallel existence of trade union/s and works council) in place suggest that due to the fact that trade unions enjoy much broader powers, and at the same time, elected works council members represent unions, operations of the works council tend to assume increasingly ritualistic form over time (Czarzasty, Towalski 2012).

Works councils that are still operating have devised various strategies for survival. According to Skorupińska-Cieślak (2019: 12-13), there are three models of works council operations.

“1. **‘Perfunctory’ council:** In this model, the I&C process is very limited (a council receives incomplete information and in general there is a lack of consultation); the approach of the employer to the council is reluctant or indifferent, indicating that the council is not necessary, or the council may be under the employer’s influence; there is little

or no interest in the council's activities among the workers; if there are trade unions in the company, their involvement in cooperation with the council is generally small or the council may even not cooperate with the unions at all; and thus the council occupies a weak or even marginal position in the company.

2. **Councils as a 'complement to unions'**: The council is in principle subordinated to unions, which are the main representative of workers and the partner for the employer in a company; the cooperation between council and trade unions is strong and such councils often operate in a company with a very high level of unionization; in general the activity of councillors is small and councils mainly provide support for unions in the relations with the employer; the activity of councillors increases in situations of high tension between unions and the employer, in which case unions treat the council as a tool to obtain useful information; in principle a council receives sufficient information, but the consultation process is very limited – although when meetings of a council with the employer are held together with the trade unions, the I&C is more intensive; the position of council in a company is moderate or weak.

3. **'Constructive' council**: In this group there is a real dialogue and cooperation between a council and employer, albeit at a varying level. In some cases the I&C process is very intensive, extending to reaching an agreement on job cuts during restructuring processes; in other cases the range of information is wide but consultation mainly takes place only with respect to changes in work organization – however the council understands the limitations of the employer, thus taking a pragmatic approach; here one can also find works councils which play a specific role in a company as an advisory body for the employer or a good communicator between the employer and workers; in all cases, however, the employer has a positive attitude towards the council while maintaining, nevertheless, a cautious stance; if there are unions in a company, they cooperate with the council but leave it autonomy of action; thus the council occupies a generally significant position in the company.”

There are continuous attempts to revive works councils undertaken by non-union NGOs, including draft proposals on how to amend the current legislation (ISO: 2016)

but with no visible effects, which can largely be attributed to disinterest of all major stakeholders (trade unions, employer organisations and state alike).

4. Case studies

4.1 Case study 1: manufacturing sector, Carmaker Co.

The Carmaker Co. belongs to the German-based global corporation. The company is located in and around Poznań and has four production plants. It was established in 1993 as a joint venture between the parent company and the domestic car plant in Poznań. With 11,000 employees, it is the largest employer in the region. It manufactures commercial vehicles and their components. The company's facilities include assembly plants as well as a foundry, which was launched in 1996. The company intensively cooperates with local vocational schools, running patronage classes. Its total investment expenditure since its establishment in Poland amounts to over PLN 12 billion (approximately EUR 2.7 billion) (Rzeczpospolita 2019). Sales revenues in 2020 reached nearly PLN 18.5 billion (approx. EUR 4 billion), and gross profit almost PLN 0.5 billion (approx. EUR 0.1 billion) (Lista 2000 2020). There are also other companies belonging to the corporation, located in Poland.

A very characteristic feature of a corporation is the model of co-governance defined in post-war legislation, the *Mitbestimmung* (co-determination). At the top corporate level, this means the presence on the supervisory board in a 1:1 ratio of the Land of Lower Saxony representatives and the employer, on the one hand, and employee representatives, on the other. In addition, 20% of the shares are non-transferable and 81% of the shareholder vote is required for key decisions to transfer plants, investments etc. What is more, the federal state representative votes in the same way as the employee representatives. Thus, for key employee topics, the social side has the majority of votes in the supervisory board. An equal number of representatives of capital and labour is also in the so-called *Beirat*, i.e. a quasi-supervisory board established for the commercial vehicles brand.

Significant in this case is the success of the representative inter-company organisation of the Independent Self-Governing Trade Union "Solidarność" (NSZZ "Solidarność") in terms of developing a strong position in the company and involvement in the *Mitbestimmung* mechanisms. Although in the Carmaker Co., representatives of the staff are not present in statutory bodies such as the supervisory board, but they maintain close contacts with trade unionists from the foreign headquarters participating in the statutory bodies, and are also delegates to the European works council. A representative of the authorities of the Polish union also sits in the *Beirat*. The trade union associates about 60% of the employees, which should be considered a high value for Polish conditions. Importantly, a collective agreement was concluded in the 1990s, which is still in force today and is updated relatively frequently. In addition, in 2010, a letter of intent was signed, in accordance with the pattern adopted throughout the corporation, in which the union declared its willingness to participate in the co-governance of the enterprise in accordance with the *Mitbestimmung* model, and the Polish management board accepted it and undertook to act in such a participatory model. A necessary requirement for the social side was the existence of a strong and coherent employee representation – according to the interviewee representing the trade union, it would not be possible if the company had many conflicting trade unions – as well as competent and ready to take responsibility for the company's situation .

The respondent representing the trade union indicated that involvement of the representative trade union in the company requires a consistent proactive attitude. In other words, trade unions relatively strong position has not been a gift from the management, they have earned it themselves. According to the interviewee, relations with the employer are 'as they should be'. The organisation must constantly strive for its and employees' rights, recall specific provisions of a collective agreement or regulations being in force in the enterprise. Dialogue in the analysed enterprise at different levels of domestic plants usually takes place within the triangle: trade union - HR department - specific production department concerned by a given case.

Involvement in the adopted model of participation also creates additional difficulties consisting in the need to maintain the 'legitimacy' of the union among employees. Involving the corporation in the decision-making process may give some workforce the impression that the union is not sufficiently defending the interests of the employees, and, instead, is on the side of the employer. Therefore, it is necessary to maintain a certain balance and take into account the rights of both parties by the union. The respondent declared that his organisation was not conciliatory - for example, he described wage bargaining as 'hard' in many cases, and the trade union had not hesitated in the past to react vigorously to contentious issues, including suggesting entering into a collective dispute. In the opinion of the interviewee, working under this model is also a challenge for managers, not all of whom are able to share management competences with the trade unions.

The relationship [with the employer] is good, but that doesn't mean it's so colourful. (...) it's not that someone gave us because he loves it, likes it or wants it. [Excerpt from an interview, trade union officer].

Employees sometimes have a dissonance, they ask: *"Who do you represent, the company or us?" (...) You are between a hammer and an anvil, and the question of how to convince workers to this model so that they want to belong to a union. [Excerpt from an interview, trade union officer]*

According to the respondent, the result of trade unionists' efforts is the fact that they managed to lead workers unscathed through the crisis caused by the Covid-19 pandemic – everyone received full remuneration, practically no one was dismissed, except for employees whose employment contract for a fixed period was not extended. Another manifestation of the well-established position of the union is its visual and symbolic presence on the company's premises. As declared by the respondent, this means not only the presence of banners or emblems of the organisation around the company's premises, but also involvement in specific actions (e.g. fundraising for NGOs) or even naming one street in each plant with the name of NSZZ "Solidarność", which took place in 2021. The union also operates of group insurance scheme for employees.

The corporation has a European and a world works council. Both of these bodies include delegates from the Carmaker. The secretary general of one of them for a year has been a Pole - a trade unionist from the Carmaker Motor plant in Polkowice, who for some time was the HR director in Russia. Polish trade unionists maintain close contacts with their colleagues from Germany who are members of the IG Metall federation. However, there is no works council at Carmaker. In the opinion of the union representative, this information and consultation body is not very useful from the point of view of social side.

In the opinion of the interviewee, the pandemic even enhanced the social dialogue in the company. Both sides have learned to use remote means of communication. The trade union is a participant in various Covid task-forces and crisis teams. Remedial measures are mutually agreed, there is reporting on the epidemic situation in the plants. Employees have learned to work remotely. Nevertheless, the union representative looks to the future from the social dialogue with moderate optimism. Currently, an agreement with the employer is in force, which guarantees employment to all employees based on a contract of employment until 2023. At the same time, the attitudes of young people are worrying. Social involvement among 'millennials' is not high. New forms of work are emerging, which also make the future uncertain. The respondent does not expect any significant further improvements in the social dialogue in the coming years.

4.2 Case study 2: manufacturing sector, Electronic Parts Co.

The company was founded in France in the 1970s. Its main field of activity is manufacturing of electronic components for various industries, also for the automotive industry, being one of the main recipients. The plant located in Poland, established at the end of the 1990s, employs nearly 2,000 out of a total of over 3,000 employees of the group. In Poland its capital expenditure in 2017 amounted to approx. PLN 9 million (EUR 2 million), sales revenues - nearly PLN 800 million (EUR 180 million), and gross profit - approx. PLN 50 million (over EUR 10 million) (List 2000). According to a trade union

representative, approximately 70% of employees in Poland are employed in the production of components for the automotive industry. In addition, the company produces for the telecommunications, aerospace and defence industries. Temporarily, the Polish plant employed over 2,000 employees, but their number slightly decreased in the period after the outbreak of the Covid-19 pandemic.

There is only one trade union in the company, belonging to the national headquarters of NSZZ 'Solidarność'. It has approximately 550 employees, which makes it representative. Interestingly, the chair declared that the organisation's authorities do not use the option of switching of becoming professional trade union officers (paid by the employer), even though they could legally request it, due to the size of the organisation. In effect, they perform their functions practically on voluntary basis, besides their regular professional activities. According to the respondent, who has been chairing the union for 12 years, the union has existed in the plant from the very beginning of its operation, albeit with variable commitment. It can be concluded that both the activity of the organisation and the number of affiliated employees have increased in the last decade. There is no works council in the company.

In the opinion of the respondent, the social dialogue in the Polish plant of the company runs properly, the union is involved in various areas of activity, e.g. within the Organisational Health and Safety (OHS) committee. The right of trade union to conduct inspections in this area is respected. Various aspects of employment are negotiated or consulted - e.g. wages, employment regulations. If some problems occur, the employer efficiently allows meetings and discussing important issues. At the same time, however, there is no collective agreement in force at the company.

The history of struggles eventually leading to establishment of the European Works Council deserves special attention. The process took about ten years (sic!) altogether. Its initiator was the respondent, after she became the leader of the union. She was interested in the possibility of creating such a body by a colleague from the regional structures of the union, working in another company. The respondent contacted foreign colleagues thanks to the help of Polish and foreign sectoral structures. It turned out,

however, that trade unionists from other countries, although declaring their interest in this project, did not want to act as initiators of the creation of the council. Later colleagues from Western Europe proved to be rather passive and reserved about the idea of creating the EWC. Additionally, there were personnel changes, e.g. related to the retirement of one trade union member involved in this issue. This additionally slowed down the process, as the interviewee had to look for his successor at the company level through national structures of the trade union (with support of the Polish sectoral structure). The situation changed when the company started to invest more intensively in Poland, relocating part of the production to our country and reducing jobs in one of the Western countries. Colleagues from this country became interested in the establishing a council as an additional channel for obtaining information about the company's planned activities. This led to the signing of a joint letter of intent by trade unionists.

Then, however, difficulties appeared on the side of the employer, which initially delayed responding to the letter. Only the determination of Polish trade unionists, constantly asking the Polish HR director for the reply, made it possible to obtain it. It must be admitted, however, that the management board of the corporation proved to be a reliable partner and, despite the lack of enthusiasm, made it possible to negotiate the agreement on the formation of the council disclosing, among others, all the information necessary to initiate this process. However, it was not without further difficulties, which the representative of the trade union ascribes to the specific style of managing the enterprise, which is a family business. Among other things, on the occasion of a meeting organised in Poland, delegates from different countries were provided accommodation in various cities, making communication difficult for them. Additionally, the HR directors in Poland and other countries have changed in the meantime. Later, restrictions related to the Covid-19 pandemic appeared as an additional obstacle, but the determination of the trade unions eventually led to the establishment of the council in 2021. So far, one of its meetings has been held remotely, during which the employer has provided all the necessary conditions for the proper conduct of talks, including sessions, in which only representatives of the social side participated.

4.3 Case study 3: manufacturing sector, Pharmax Co.

The company is Polish-owned, located in Warsaw and belongs to the largest domestic pharmaceutical group. The current volume of employment is 480. A former state-owned company, it underwent so-called commercialization process (that is, become incorporated with the state being the major shareholder and employees being minor shareholders) in the 1990s. In 2004 it was included in a state-controlled holding group comprising three companies formed by the decision of the government, much to disdain of the employees and their representation, who considered the move politically motivated and a threat to the future of the company, as the two other entities' economic and financial performance was reportedly weaker. After dissolution of the holding, the company was acquired by the current owner in 2012. The company is set to discontinue its operations which are to be transferred to other companies with the group at the end of 2023. This means that the company will also cease to exist in formal and legal terms. The main rationale behind that move, as explained by union representatives interviewed, is the owner's intention to transform the site where the company is located (4ha next to the central business district in Warsaw) into the area of commercial real estate development.

The company presents a very unusual case in the context of Polish industrial relations, as it is an environment where all employee representation bodies are present. Furthermore, there are two trade unions, NSZZ "Solidarność" and the Inter-company Trade Unions of Chemists by the Warsaw Pharmaceutical Factory Polfa, associated with the All-Poland Alliance of Trade Unions (OPZZ) and the mutual relations between the two are very much cooperative, with no significant conflicts reported. The company has always been highly unionized, with union density reaching the level of 70% at its peak, with the two unions closely matching each other in terms of headcount. Besides trade unions, there are: a works council and social labour inspectors. Finally, employee representative holds a seat on the management board of the company and the supervisory board as well. There is also a company-level (single-employer) collective agreement signed in 1995.

Such untypical situation can be explained largely in terms of the company's organisational culture inherited from the past, as it used to be a state-owned company. Even the milestone the privatisation was have not altered the employee-friendly climate in company-level industrial relations. However, the decision of closing the company down has led to social dialogue focusing mostly on the issues which can be described in terms of defensive bargaining aiming at securing a 'safety cushion' for as many employees as possible. According to trade unions and works council representatives, the process has been proceeding quite smoothly and is not marked by any open forms of employee dissent. One of the key reasons is the advanced average age of employees, so substantial part of them will either be eligible for retirement once the employer ceases to exist or have a relatively short period to bridge before reaching the retirement age (65 for men, 60 for women). Those who will not enter retirement have a chance to be transferred to another company owned and operated by the group. If not qualified for a transfer, they will face redundancy, which activates certain compensation instruments, envisaged in the collective agreement such as so-called 3/6/9 rule pertaining to severance. It translates into severance package equal to three-, six- or nine-times worth of monthly remuneration depending on span of employment with the company. This is a top-up to the statutory severance. In addition, the collective agreement stipulates that employer donates a lump sum to each trade union on annual basis.

The company is a genuine case of dual-channel representation, a rarity in the Polish industrial relations landscape. The two bodies – trade unions and the works council – are closely bound on personal terms, as the councillors since the inception of the council (in 2006) have been exclusively union members, with the chairs of the two union organisations seating in the body. Yet, the works council is described as more symbolic than substantial body, secondary to trade unions in terms of influence.

What is unique is that there are employee representatives in the company organs: the management board and the supervisory board. While it might seem advantageous to the employee representation at first glance, in practice it is less productive. According to union delegates seating on the bodies, their rights have been observed on equal

terms with the rest of the members, yet individual inquiries for information, usually concerning employee issues, are likely to be declined. The scope of responsibilities of the member of the management board on the union side has been described as limited. Nevertheless, in the eyes of employee representatives, “it is better to have than not have”, when they comment the access to governing bodies,

4.4 Case study 4: retail sector, FMCG Co.

One of the largest, nationwide retail chains in Poland, including outlets of various formats (hypermarkets, mid-sized supermarkets and small, local franchise stores). The company comes from a West European country. In Poland the first stores owned and operated by the subsidiary of the parent company opened in late 1990s. The company subsequently acquired several smaller retail chains, growing into one of the leading players in the retail market in Poland. Sales revenues in 2020 exceeded PLN 8 billion (about EUR 1.7 billion) (Lista 2000), and the net profit was above PLN 100 million (some EUR 22 million). According to the information on the company's website, it employs over 15,000 people in all stores.

The trade union in the company was established in 2001. It operates in hypermarkets and supermarkets, and currently reports to have roughly 1,200 members. It enjoys the status of a representative organisation at the company level, and is part of a unitary trade union NSZZ ‘Solidarność’ which is representative at the national level. The union has branches in stores in a number of large and medium-sized cities in various regions of the country. In the opinion of the representative of the organisation, such dispersion of activities makes coordination difficult. From a formal point of view, the organisation has a status of a so-called company organisation with a separate branch in each store. Before the recent changes in the employer structure, the union had a form an inter-company organisation. It is presided over by a plant committee.

As the organisation has existed for more than 20 years, the respondent could comment on the quality of social dialogue in the company over quite a long period. The quality

of dialogue varied, depending on current situation on the labour market: with unemployment increasing, the position of employees would become weaker, thus the company would be less amicable towards the union as consequence. With the state of labour market improving, the company would be more interested in having good relations with employee representation. In the interviewee's opinion, the employer-trade union relationship has deteriorated since 2021, as a result the union's position on some significant organisational changes proposed by the company. The idea was to introduce multitasking as a system of work organisation, which translated into increasing workload the staff had to cope with, coupled with a very small growth in remuneration. The union also took a firm position on the plan of collective redundancies, effectively halting them. The company's reaction was to change its structure: previously, each store had the status of a separate employer, but now, from a formal point of view, the entire Polish branch of the company has become one employer. This made it possible to change the employment regulations and to force through changes unfavourable for employees. In the opinion of the respondent, the loss of employment was even greater than it resulted from the group layoff plans - apart from 300 dismissed people, even the same number left because they would not accept new, worse employment conditions.

At the same time, the company projected an image of a socially responsible employer, respecting the rights of worker representation and principles of social dialogue. Yet last the 2021 dispute between the union and the employer led to a significant deterioration in social dialogue. From the union's point of view it is described as 'sham' or 'façade'. There is an implicit message conveyed to trade unions that since 'they did not help the company in need, we will not get along with you either'. The pandemic, treated as a kind of game-changer, has also served as justification for the enterprise's position in relation to employee representatives. Among other issues, bonuses for working in pandemic conditions have not been introduced, which has happened in some other retail chains.

The restructuring of the company resulted in eradication of the works council, and the pandemic situation at the time of the interview was a justification for the employer not

to take steps to create a new one. The works council consisted of 12 to 14 members (the number fluctuated over time), all trade union delegates, and would meet once a quarter on average. The economic information requested by the council was usually released, although 'they conveyed what they wanted to convey; they did not disclose everything', according to a trade union officer interviewed. These included, for example current information on the strategic moves of the management board like introducing automated check-outs. The council practically performed only an informative function, and the questions, comments, suggestions or inquiries made by the councillors were generally not taken into account by the management. Nevertheless, the union officer's view of the works councils was appreciative, as it was seen as a valuable source of knowledge about the plans of the company.

European Works Council in the company is also seen as a body that can make a limited impact on social dialogue from by the employees' representatives. Polish trade unionists currently have two delegates in the council. In their opinion, the main advantage is the possibility of exchanging information with colleagues from other countries about what is happening or planned in various locations. Subsequently, thanks such networking, EWC delegates can better prepare for talks with the employer. However, the answers given by the company's representative are often evasive.

Another, very small trade union (approx. 30 members), affiliated to the nationwide federation of trade unions OPZZ, has recently been operating in the company. It is made up of a group of former members of NSZZ 'Solidarność' who - in the opinion of the respondent for ambitious reasons - decided to establish a separate organisation. The relations with this union have been correct so far, which is what the authorities of the company organisation are striving for, as they realise that any discrepancies may be used by the employer.

In the past, NSZZ 'Solidarność' attempted to enter into collective bargaining with the employer in order to conclude a company collective agreement. About six to seven years ago, these procedures took a specific shape: labour law experts were engaged and prepared a draft agreement containing, among others, regulations concerning

working time and days off. The company, however, withdrew from negotiations, arguing it needed to remain flexible and able to quickly adapt to changes taking place in a dynamic market.

In the opinion of the union officer, the future of the organisation and social dialogue in the company is uncertain and difficult to predict in the coming years. On the one hand, demographic changes tend to favour the workers' side, as labour demand remains high. On the other hand, however, the position of employees is threatened by automation (self-service checkouts), as well as progressing individualism, especially among of younger staff.

5. Comparison of the cases and conclusions

The study reveals that in the environment of weak institutions and advanced pluralisation of work and employment relations the issue of collective bargaining is contextual and varies across specific workplaces. Trade unions are weak, employer organisations' conduct make them look more like business associations and works councils have failed to make any significant impact. In the report not only subsidiaries of multinational companies are included but also a domestic company. Paradoxically, it is the local company (Case 3) where the employee rights and entitlements are best observed at the moment. Ironically, the company is about to discontinue its operations and cease to exist, which means that the owner seeks route to escape the burden – from their point of view – of occupational welfare and employee voice. Among the multinationals covered, the patterns of dealing with employee representation vary but still signs (albeit of uneven strength) of opportunistic behaviour are common. As Case 1 reveals, the parent company devised and methodically built a workplace model of industrial relations which very much follows the principles of the home-country system of company-level industrial relations adapted to specificity of local legal environment. In that case, the leading trade union in an enterprise de facto assumed a role similar to German works council (*Betriebsrat*). Case 2 shows that resilience of trade unions may secure

their existence in the company but low bargaining power will not translate into any further institutional breakthroughs in social dialogue and industrial relations at the local level, which is exemplified by the absence of a collective agreement. On the other hand, establishment of the EWC shows that with a support and cooperation of trade unions from other countries where the parent company operates, it is possible to make institutional advancements. Characteristically, it seems that launching a EWC was more important than establishing a works council. Case 4 provides evidence of rather opportunistic behaviour on the part of the employer. Shifting attitudes towards social dialogue, removal of the works council in course of the recent major restructuring and reorganisation process (and using the pandemic situation as an excuse for not calling elections to a new works council, as trade unions claim), and finally, refusal to negotiate a collective agreement are all proofs of a resilient voluntarism and instrumental approach towards social dialogue and worker representation. There is an interesting similarity between Cases 2 and 4, namely, the stance of the local unions towards EWC, seen as an important channel for employee voice. It is yet another piece of evidence that in the environment of weak institutions (that still prevails in semi-peripheral countries of Central and Eastern Europe), employee representation in the multinational corporations tends to seek external leverage of their activities by turning to supranational bodies of worker representation. It is also noteworthy that patterns of relations between workplace union organisations and works councils vary. Case 2 provides an illustration of an actual single-channel system of employee voice with only one trade union present. Case 4 shows that trade unions may co-exist with a works council, as long as they maintain control of the body, and their negative reactions to the employer's unwillingness to call new elections are quite meaningful. Case 1, on the other hand, pictures a highly untypical arrangement, where trade union has actually been acting as a quasi-works council. In Poland, collective bargaining is nearly extinct in formal terms. In actual terms, there are some symptoms of micro-bargaining, yet with generally unfavourable state of institutional environment (vide: two failed attempts on labour law reform), it is unlikely that the situation can change substantially any soon. Works councils also appear to be largely lifeless bodies, and the prospects for reviving that specific institution of worker representation seem very thin.

References

- Badora B. (2019) Związki zawodowe w Polsce, Komunikat Z Badan 138/2019, Warsaw, Centrum Badania Opinii Społecznej (CBOS).
- Czarnecki, P. (2014), Bariery prawne w zakresie rokowań zbiorowych w sektorze prywatnym w Polsce, in: Czarzasty, J. (ed.), Rokowania zbiorowe w cieniu globalizacji: rola i miejsce związków zawodowych w korporacjach ponadnarodowych, Warszawa: Scholar: 115-130.
- Czarzasty J. (2019) Collective bargaining in Poland: a near-death experience, in Müller T., Vandaele K. and Waddington J. (eds.) Collective bargaining in Europe: towards an endgame, Brussels, ETUI, 465–481.
- Czarzasty J. and Mrozowicki A. (2014) Organizowanie związków zawodowych w Europie. Badanie i praktyka społeczna, Warsaw, Wydawnictwo Naukowe 'Scholar'.
- Czarzasty J. and Mrozowicki A. (2018) Industrial relations in Poland: historical background, institutional evolution and research trends, *Employee Relations*, 40 (4), 674–691.
- Czarzasty J., Gajewska K. and Mrozowicki A. (2014) Institutions and strategies: trends and obstacles to recruiting workers into trade unions in Poland, *British Journal of Industrial Relations*, 52 (1), 112–135.
- Czarzasty, J. Rogalewski A. (2022), Polish Unions Towards Populism: Strategies and Dilemmas, in Colfer B. (ed.), *European Trade Unions in the 21st Century. The Future of Solidarity and Workplace Democracy*. Palgrave Macmillan.
- Czarzasty, J., Surdykowska, B. (2020) Legal conditions and practice of social dialogue in the local government sector in Poland, in Czarzasty, J. (ed.), *Local Government and Trade Unions – the conditions, potential and perspectives of social dialogue*
- Czarzasty, J. Towalski R. (2012), National information and consultation practices (unpublished study)
- Feliksiak M. (2013) Członkostwo w związkach zawodowych i opinie o ich działalności, Report BS/62/2013, Warsaw, Centrum Badania Opinii Społecznej. http://www.cbos.pl/SPISKOM.POL/2013/K_062_13.PDF

- Feliksiak M. (2017) Działalność związków zawodowych w Polsce, Komunikat zBadan 87/2017, Warsaw, Centrum Badania Opinii Społecznej.
https://www.cbos.pl/SPISKOM.POL/2017/K_087_17.PDF
- Feliksiak M. (2021) Związki zawodowe w Polsce, Komunikat zBadan 140/2021, Warsaw, Centrum Badania Opinii Społecznej.
- Gardawski J. (2003) Konfliktowy pluralizm polskich związków zawodowych, Warsaw, Friedrich Ebert Foundation.
- Gardawski J. and Meardi G. (2010) Keep trying? Polish failures and half-successes in social pacting, in Pochet P., Keune M. and Natali D. (eds.) After the Euro and enlargement: social pacts in the EU, Brussels, ETUI, 371–394.
- Gardawski J., Mrozowicki A. and Czarzasty J. (2012) Trade unions in Poland, Brussels, ETUI.
- GUS (2015) Związki zawodowe w Polsce w 2014 r., Notatka informacyjna, 13 July 2015. https://stat.gov.pl/download/gfx/portalinformacyjny/pl/defaultaktualnosci/5490/10/1/1/notatka_zz_1007_ost.pdf
- GUS (2019) Partnerzy dialogu społecznego – związki zawodowe i organizacje pracodawców – wyniki wstępne, 27 August 2019.
- Hryniewicz, J.T. (2007), Stosunki pracy w polskich organizacjach, Scholar, Warszawa.
- ISO (2016), Projekt nowelizacji ustawy z dnia 7 kwietnia 2006 r.O informowaniu pracowników i przeprowadzaniu z nimi konsultacji – przygotowany przez ekspertów INSPRO w 2016 r., available at:
https://radypracownikow.info/wp-content/uploads/2008/02/nowelizacja_ustawy.pdf
(last checked: 8 June, 2022).
- Lista 2000. Lista 2000 - ranking największych firm w Polsce dziennika 'Rzeczpospolita [ranking of the largest companies in Poland by the daily 'Rzeczpospolita']. Available from: <https://rankingi.rp.pl/lista2000/2021> (last checked: 8 June, 2022).
- Mrozowicki A. (2014) Varieties of trade union organizing in Central and Eastern Europe: a comparison of the retail and automotive sectors, European Journal of Industrial Relations, 20 (4), 297–315.
- Ost D. (2011) 'Illusory corporatism' ten years later, Warsaw Forum of Economic Sociology, 2:1 (3), 19–49.

- Pisarczyk, Ł., & Rumian, J. (2019). Ponadzakładowe układy zbiorowe: zmierzch instytucji?. *Praca i Zabezpieczenie Społeczne*, (11), 2-10.
- Prawo.pl (2021) PIP: Coraz mniej zakładowych układów zbiorowych pracy, <https://www.prawo.pl/kadry/coraz-mniej-zakladowych-ukladow-zbiorowych-pracy,511973.html> (last checked: 8 June, 2022).
- Schmalz S., Ludwig C. and Webster E. (2018) The power resources approach: developments and challenges, *Global Labour Journal*, 9 (2), 113–134.
- Skorupińska-Cieślak, K. (2019). What determines the role and position of works councils? Models of councils in Polish organizations. *Economic and Industrial Democracy*, 0143831X19846344.
- Wenzel M. (2009) Związki zawodowe w badaniach CBOS 1980–2008', in Gardawski J. (ed.) *Polacy pracujący a kryzys fordyzmu*, Warsaw, Wydawnictwo Naukowe Scholar, 533–550.