

COLLECTIVE BARGAIN AND OCCUPATIONAL HEALTH IN SPAIN

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ABSTRACT

The collective bargain process has increasingly deteriorated in Spain as a result of changes in the role of one of the major players in the labor relations system: the state. The worsening of working conditions along with less government regulation on such aspects have led to the increase of employers' arbitrary powers

The Spanish regulatory framework on occupational health and safety was reformulated in 1995 with a new Act on the Prevention of Occupational Risks, due largely to trade union pressures and to the need to adapt Spanish regulation to the EU health and safety legal framework. This framework for more balanced health and safety provisions calls for the development of certain aspects of collective bargain. The restructuring of collective bargain after several reforms shows an irregular and globally insufficient implementation of health and safety regulation.

Key words

Collective bargain, occupational health and safety, negotiation, occupational risks, workers' representatives, regulatory framework.

Introducing the concept of collective bargain

Collective bargain is a cornerstone in the regulation of labour whose primary feature is being the consequence of a conflict and negotiation process between two of the three major players in any labour relations system: workers/unions and employers/employers' associations. The state, as a third party, constitutes the authority that establishes the regulatory framework in which such negotiations develop.

Collective bargain agreements are a result of confrontation between capital and labour that outline, among other rules, the ways employers use labour force, i.e.: the regulatory framework in which employers turn labour force into effective labour. For the development of this process it is necessary for

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both parties to recognize and legitimize each other as major players. Legitimization may be enforced by government regulation or, in cases where such regulation does not exist, by employers and union practices³.

Collective bargain is not a homogenous process and in fact its pattern and extent varies depending on national standards, practices and circumstances. Furthermore, negotiation frameworks often undergo significant changes as a result of alterations in production patterns and structures, and especially due to the role of social players and factors directly or indirectly involved in the process, namely authorities and the evolution of regulatory frameworks.

It is necessary to draw a distinction between the formal regulatory framework in which collective bargain processes develop, their results in the form of collective bargain agreements and their implementation in the labour and production structure where they originate. The basis of the collective regulatory framework and its implementation are the result of different social processes, i.e. rules do not guarantee the exercise of rights.

Another significant factor to be considered in the characterization of collective bargain is the extent of the process, not only in terms of coverage, more or less universal, but also in terms of the number of issues covered and the depth of their treatment.

From this perspective the main focus is on the higher or lower level of enhancement of collective bargain processes in terms of the amount and diversity of negotiated issues: wages, occupational health, training, social responsibility, environmental aspects, contracting modalities, etc. In this case, there are also significant differences between the productive, social and labour scopes of collective bargain, mostly due to different approaches on negotiation. It must be taken into account that the inalienable and unwaiverable nature of workers' rights is one of the main characteristics of labour rights understood as a whole.⁴

The extent of unwaiverable (compulsory) rights is an essential factor in occupational health policies and by definition in collective bargaining. Obviously collective bargain is labour's social response to the capitalist productive model. It is a joint response to the so called "social question". In a production model with few legal provisions, and no union representation (unions were banned for decades) exploitation of labour force was a degrading factor for workers. Therefore the need to limit the exploitation of working classes by capital is the origin of trade union movements and collective bargain processes.

Reduction of working hours, increase of salaries to grant subsistence, improvement of health and safety policies, prohibition of child labour, improvement of health/unemployment benefits are some of the key issues behind

³ García Calavia, Miguel Ángel (2012). *Relaciones Laborales en Europa Occidental* (Labour Relations in Western Europe).

⁴ Rodríguez-Piñero Miguel "Indisponibilidad de los derechos y conciliación en las relaciones laborales". *Temas Laborales* nº 70. 2003. Págs. 23-42

the conflicting and irregular collective bargain processes in which unions and employers were involved in the late 19th and early 20th century. Regulation on occupational health and safety issues was one among the first provisions to be implemented⁵. This process led to the consolidation of different labour institutions: labour rights, labour inspection, insurance against workplace accidents, etc.

As an integrated social and labour practice in democratic societies, collective bargain processes represent a historical conquest for the labour movement that imply employers' acceptance of an interlocutor (trade unions) that represent the common interests of working class against the interests of capital. Such acceptance eventually expresses that the conditions of exploitation cannot be imposed unilaterally without previous negotiation with workers⁶. Collective bargain also becomes one of the most effective mechanisms to channel social and class conflict. Collective bargain brings into question employers' power over employees, it restrains "market forces" and sets exploitation "standards" and a primary redistribution of wealth generated by work, obviously more equitable than in preceding production models. It must also be noted that this negotiation legitimizes the practice of exploitation of labour force and the capitalist production model.

The construction or rather reconstruction of labour relation systems in Western Europe began with conclusion of the Second World War (countries under political dictatorships such as Spain, deprived of basic collective and individual freedom necessary for negotiation, were excluded from this process). However those labour relations systems were articulated with different patterns depending on the historical and political circumstances in each country.

From the 1970's labour relations in western European countries underwent drastic alterations under the prevailing power of neoliberal social and economic policies that began to emerge at the time.

This economic doctrine is characterized by the reduction of government's functions and role in industrial and economic relations (reduction of public spending, privatization, fiscal austerity, private management of basic public services, deregulation of labour markets, reduction of government's redistribution capability, etc.). In this ideological perspective government and trade unions come under attack and are perceived as an obstacle, a restraint to free markets that ensure economic growth, full employment, welfare and distribution of wealth according to each individual's productivity. The forces of the free market are considered the factors that guarantee economic growth and social success. The curious and contradictory fact is that maintaining free-market policies involves curtailing individual and collective freedoms, hindering trade union activity, increasing job insecurity and reducing, among other issues,

5 Silvestre Javier y Pons Jerónia. El seguro de accidentes de trabajo 1900-1935. XVI Encuentro de Economía Pública. 2009.

6 Alós-Moner Ramón y Martín Artilles Antonio. Teorías del conflicto y negociación laboral. Una perspectiva sociológica. FUOC.

workers' social protection.

In Western Europe, those changes substantiated in a greater deregulation of the labour market and in a clear process of individualization of labour relations, but perhaps the most interesting aspect in this process is the attack on basic pillars of labour relations that were built after World War II, regardless of national differences.

One of the priority neoliberal targets is the reduction of trade union power. Measures to crack down on unions implemented by Margaret Thatcher's government in the UK and similar measures applied by Ronald Reagan's administration in the US in the 1980's are clear examples of such policies⁷.

Attacks on union movements are not only enforced by anti-union regulation, but also in an indirect way through two main processes common to economic policies implemented by western governments: the privatization of the public sector and the deregulation of labour markets. These policies which are common to conservative and some social democratic governments have undoubtedly played in major role in the change of labour relations and the structure of collective bargain, and not only have reduced the coverage of collective agreements but also affected their capability to regulate labour relations.

Collective bargain that formerly reinforced and improved labor rights (understood as a basic for the regulation of labor relations and working conditions) is nowadays severely limited and has increasingly become a mechanism for adaptation to different corporate and industrial situations.

Furthermore, the reinforcement of employers' unilateral powers redefines collective bargain as a limitation of employers' arbitrariness in a context of reinforced corporate power. Collective autonomy is limited to the regulation of certain issues in an attempt to *recover o reestablish its former status without opposing the general adaptation purposes stipulated by regulation, but trying to introduce certain reasonable limits to uncontrolled and arbitrary labor*⁸.

The increased waivering of certain rights⁹ leaves the arbitration of certain sector or corporate issues to the autonomy of the parties with a subsequent increased of inequalities in working conditions. These issues are unequally solved by collective bargain process in accordance with the existing balance of power. Discretionary increase of corporate power against workers and their unions has been a constant element since the 1970s and integrated into deregulation, increased job insecurity and facilitates even more dismissal and

7 Thatcher's hard line decisions during the 1984 miner's strike and Reagan's massive layoff of air traffic controllers during the 1981 strike, which eventually led to the dissolution of union organizations, clearly define hostile policies on trade unions.

8 Sanguinetti Raymond, Wilfredo (coord.). Los espacios de la negociación colectiva tras las reformas laborales de 2010, 2011 y 2012. Observatorio de la negociación colectiva. Colección Biblioteca de Ciencias Sociales nº 20. Ediciones Cinca. 2013.

9 Comisión Consultiva Nacional de Convenios Colectivos. La reforma del sistema de negociación colectiva y el análisis de las cláusulas de revisión salarial. XIX y XX Jornadas de estudio sobre Negociación Colectiva. Serie Relaciones Laborales número 87. 2008.

changes of working conditions¹⁰.

Increased job insecurity, represented by new job categories that diverge from full-time permanent jobs (temporary jobs, interim and training work, part-time work and self-employment) represents, along with high unemployment rates, a serious defeat for the trade union movement.

These new, insecure job modalities concentrate in more vulnerable groups with less negotiating power, such as younger workers, female or migrant workers, which leads to a fragmentation both in labor and social terms.

Another significant process that has occurred during the last two decades and significantly weakened union power is the decentralization of production (outsourcing), since it implies a fragmentation of production and staff. This practice developed over the last decades in a favorable institutional and regulatory framework, and a fragmentation of value chains that initially started in each country and at international level to benefit from “competitive advantages” (offshoring). These relocation processes are based on the use of improved technology (mostly IT and communication technologies), and free movement of capital (ensuring suitable financial returns). This practice does not only imply downsizing or outsourcing but also the “relocation”, in the best cases, of workers covered by weak collective bargain agreements. These processes have increased “labor competitiveness” to absorb production investments and associated jobs. Increased competitiveness is closely associated to deregulation and loss of labor rights for workers. Job insecurity, fragmentation, relocation and individualization lead to several preventive schemes that question the efficiency of workers’ protection, that as a legally protected right, should ensure the same level of safeguard for all workers regardless of the type of employment contract. The weakening of labor’s regulatory framework eventually affects workers’ health and safety.

Collective bargain and occupational health

In order to understand collective bargain on occupational health it must be taken into account that both the Spanish Occupational Health and Safety Act (LPRL) and associated regulatory provisions have a status of compulsory essential requirement¹¹. Therefore the conventional framework is an instrument for the improvement of legal provisions. It is not possible to introduce in any agreements elements to reduce the level of health and safety protection for workers.

Several interpretations explain this subject as an example of a poor approach based on a conventional health and safety framework that eventually

10 Fundación Primero de Mayo. 34 Reformas Laborales. Análisis de su alcance y efectos. Menos ocupación, más desempleo y más precariedad Laboral. Colección Informes, número 77. 2014.

11 ACT ON PREVENTION OF OCCUPATIONAL RISKS art. 2.2: “The provisions of labour character contained in this Act and its regulations shall be in all case considered as the minimum compulsory essential requirements, being subject to improvement and development by collective agreements.”

becomes a mere translation of legal provisions. This often unnecessary reference to regulation was in many cases an expression of parties' will to recognize the significance of the issue and at the same time as an educational tool that brought occupational health closer to workers who undoubtedly are more familiarized with of the conventional framework that regulates their working conditions than with legal provisions. Such practices that accelerated the necessary integration of preventive activity into corporate management systems, in a period in which the health and safety act and its provisions extended their effects, must always be taken into account since they constitute an example of educational practice, i.e. direct translation of regulation into collective bargain eventually achieved the familiarization of workers with health and safety regulation.

Regardless of the compulsory, unwaiverable status of rights, it must be noted that the law regards certain organizational aspects as non-compulsory, i.e. it refers to collective bargain as an example to establish "*other ways to appoint health and safety representatives*"¹², or to the exercise of their competences/functions that may be "*assumed by specific bodies created by the agreement*"¹³. In addition collective bargain on health and safety must be established as a complementary element to regulation in order to adapt legal provisions to the specific conditions in a given sector or company.

However, collective bargain and unions generally confer little or insignificant attention to this issue, either due to lack of information or because negotiating processes focus on other aspects. This fact is supported by the poor development of contents even though most processes include health and safety issues and best practices are included in collective agreements¹⁴. It becomes necessary to enhance the capabilities of collective bargain to regulate significant issues and improve occupational health and safety.

In view of such factors, the Third Agreement on Employment and Collective Bargain¹⁵ includes guidelines for the regulation of collective agreements in issues like the integration of preventive activity, health surveillance, workers' information/training, and participation in the different phases of preventive management and implementation in the company, among other aspects. The development of a truly participatory management system is essential for the protection of workers' health and it must be consolidated as a key goal of trade union action in companies.

As it was expressed in the Third Agreement on Employment and Collective Bargain, preventive activity in companies must integrate in company poli-

12 Health and safety representatives

13 LPRL, 31/1995, art. 35.4

14 ISTAS. La salud laboral en la negociación colectiva en España (1995-2002). Recopilación de buenas cláusulas. Available online in Spanish at <http://www.istas.net/web/abreenlace.asp?idenlace=1449>

15 Agreement for Employment and Collective Bargain: an agreement signed by major Spanish employers' associations: Spanish Employers' Confederation (CEOE), Spanish small and medium-sized companies' confederation (CEPY-ME) and major Spanish trade unions (Comisiones Obreras and Unión General de Trabajadores). The agreement is a non-binding document that includes criteria and guidelines to develop collective bargain processes in different scopes of negotiation (sector or company)

cies through the documented implementation of the Act on the Prevention of Occupational Risks. Such preventive activity must be integral and integrated, i.e.: it must cover all production activities and phases. It must also be introduced across all company departments and activities, involving the whole staff (employees and managers).

During the initial period of implementation of the Health and Safety Act, the trade union confederation (CC.OO.) maintained that occupational health and safety policies could not be addressed as a secondary activity to production. Compliance with regulation will only have a truly preventive nature if health and safety activity covers all productive phases and processes –from the design to the smallest productive development. The planning of preventive activity must focus on avoiding/ eliminating risks that will otherwise be assessed to adopt protective measures.

Such an approach requires the implementation of necessary preventive measures to protect workers from the earliest stages of productive activity (design and start), considering available technical expertise.

The Act 54/2003, of 12 December on the reform of the regulatory framework on health and safety includes in its memorandum that the Health and Safety Act articulates on principles of efficiency, coordination and participation and focuses on responsibility, cooperation and compliance with a new regulatory perspective that would help create a unified vision on occupational risks.

“The implementation of the Occupational Health and Safety Act and all its additional provisions related to workplace preventive activity, not only seeks the definition of obligations and responsibilities of players directly involved in workplace activity, but also promote preventive culture, in such a way that any requirement for workplace action would go beyond formal compliance with duties and obligations and require the planning of preventive activities from the very design of the corporate project, initial risk assessment and periodical updates responding to changes of working conditions, as well as the planning of coherent preventive measures adjusted to the type of risks, and the monitoring of their efficiency.”¹⁶

Effective preventive activity can hardly be achieved without the integration of occupational health issues in company’s management policies. The integration of preventive activity goes beyond formal compliance; it must run across the company’s management system at all levels, as stipulated by the Royal Decree 604/2006 reforming the Regulation on Preventive Services¹⁷.

In this perspective, the monitoring of implication and preventive responsibilities (employers’ commitment) by collective bargain agreements is a most significant factor. Agreements that include payments for exposure to occupational risks must not be accepted. Risk management, identification, assessment and planning of preventive measures must be priority aspects.

16 Act 54/2003, of December 12, on the reform of the regulatory framework on occupational health and safety. Memorandum I.

17 Health and safety services. They may be external or company-based (in the case of large companies)

It must be taken into account that, in spite of the fact that several labor reforms have reinforced employers' unilateral powers to determine and modify working conditions, the law maintains employers' obligation to periodically update risk assessments as those conditions change, i.e.: the health and safety regulation extends protection rights to all workers, which compels employers to carry out an adequate management of modifications on the basis of preventive action to eliminate risks if they cannot be assessed.

The Spanish regulatory framework generally establishes the convenience of occupational health management based on the company's own resources, although it stipulates obligation to set up a preventive services for companies employing more than 500 employees, or more than 250 if the company carries out dangerous activities. Such scheme has led most companies to contract the services of external preventive agencies. The quality of such services is an essential factor for effective preventive activities. A valid preventive service must provide advisory and guidance to employers on their legal obligations, but also contribute to the design, implementation and monitoring of preventive programs, especially in small and medium-sized companies.

Collective bargain can and must play a key role in the setting of criteria to assess the activities of preventive services, whether they are external or company-based. Assessment of preventive management must be conducted in accordance with previously established quality standards and include the participation of workers' health and safety representatives.

Health surveillance is an of the Third Agreement for Employment and Collective Bargain and one of the basic tools to verify if preventive activity is efficient or leaves certain aspects unprotected. Health effects caused by risk exposure are the starting point for verification and correction of working conditions that may cause such exposure. Health surveillance is a preventive mechanism and as such it must be included in health and safety management systems.

Health surveillance requirements must comply with article 22 of the Occupational Health and Safety Act. As the rights included in the Act are minimum compulsory requirements, i.e. they establish rules to determine minimum conditions to comply with. Hence, any renounce or reduction of such rights through individual agreement is not acceptable and legal requirements can only be improved through collective bargain.

The right to effective health surveillance includes a series of issues that must be always observed. Health surveillance must be provided by employers to all workers free of charge on a periodical basis, covering even post retirement periods if exposure implies long-term effects. As a right, health surveillance is based on the voluntary acceptance of workers to guarantee their integrity. Confidentiality must always be granted and health surveillance results may not be used with discrimination purposes or against workers.

Employers may only have access to information with preventive repercussions, i.e.: individual or collective information necessary to implement me-

asures for the improvement of working conditions. Employees' "aptitude" must be necessarily associated with a plan for the improvement of working conditions until employees are fully recovered or their working conditions no longer represent a risk for them or third parties.

The law stipulates the rights to consultation and participation in the organization and development of preventive activities. Collective Bargain agreements must include clauses that allow workers representatives to exercise their control and present their initiatives for the planning of workplace health surveillance programs, i.e.: participation in the discussion on health surveillance protocols for each workplace, types of tests and preventive significance of results, avoiding qualifications of "unfit for work" that lead to employees' eventual dismissal, and introducing activities aimed to adjust working conditions to particularly sensitive workers, either on a temporary (pregnant workers) or permanent basis.

A basic aspect of preventive activity is the theoretical and practical training on occupational risks. Training has two dimensions: training received by employees for their protection; and training to carry out preventive activities.

The first category is a direct responsibility of employers that must provide such training either with its own resources or through external training agencies. Collective bargain has competences to define training procedures and ensure efficient training to grant workers' health and safety and also as a qualifying element to promote workers' proactive capability.

A *National Training Program* was adopted as a result of the agreements signed under the National Health and Safety Strategy. The programmed included mostly formal training, but also addressed aspects related to the training of health and safety representatives in order to provide general training for them, allowing companies to involve in specific additional training upon agreement with workers representatives.

It is important to note that specific training programs must cover each and every workplace risk. Collective bargain must guarantee the inclusion in training programs of all the aspects detected in risk assessments, since training is a right designed to support workers.

Other issues that must be included in conventional regulation are:

- the designation of health and safety representatives, whose procedures must be adjusted to company/sector specific conditions to grant the effective functions of representatives
- granted time-off for health and safety representatives to independently conduct their activities
- criteria for the collaboration between specialized representatives and company managers to improve preventive activity

The preventive factors behind the implementation of systems based on

participation suggest the development and adjustment of such participation across all the phases of the management system and the setting of criteria for access to specific information through the whole production process.

To conclude, it must be mentioned that the Third Agreement for Employment and Collective Bargain considers sector collective agreements as the adequate scope for the development, implementation and effective compliance with health and safety requirements by both employers and workers. Such agreement is expected to produce valuable practices to address health and safety challenges, through adjustment to specific conditions of existing risks and production processes.

The development of health and safety policies in different sectors and companies calls for, as the regulatory framework shows, further development in the field of collective bargain. The period in which the Spanish regulatory framework began to adjust to different regulations through the Health and Safety Act coincides with a period of labor reforms (1994-2012) that translate to collective bargain a series of issues that were formerly regulated by the state. These reforms, along with increased job insecurity and worsening working conditions have significantly weakened workers' and trade union power against an increased discretionary corporate power. As a result, in the best cases, many aspects have developed unequally in negotiation processes where the translation of regulatory provisions to collective bargain has been a prevailing factor.

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