Demoncratic Institutions of Industrial Relations: A Polish Perspective

Ludwik Florek

University of Warsaw Law School

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I. INTRODUCTION

The changes in Poland and other East European countries feature both the transition from a totalitarian Communist State to a democratic society and the transition from a centrally planned economy to a market economy. Both goals are closely connected with the transformation of industrial relations and the resulting need for labor regulation reform.

This essay addresses three issues. The author first describes the major features of the previous Polish industrial relations system which caused it to be undemocratic. He then presents arguments justifying the need for a democracy in industrial relations in Poland. Second, the indispensable premises and elements of three basic democratic institutions of industrial relations are identified: trade union freedom, collective bargaining and the right to strike. These elements were selected for analysis on the basis of international legal instruments, in particular, conventions of the International Labor Organization ("ILO"), as well as U.S. and West European labor legislation. The author then shows the significance of these three basic democratic institutions in the Polish labor context. Finally, the author analyzes the problems and difficulties of introducing democratic collective bargaining and the right to strike into Polish labor relations.

The labor regulations existing before 1980 reflected the dominant role of the State, as ruled by the Communist party, and State ownership of industrial enterprises.1 As a result, trade unions were a part of the Communist establishment. The unions were organized centrally and headed very often by high party functionaries (members of the

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Poliburo). The establishment of new trade unions outside of the official trade union structure was prohibited, thereby preventing the development of trade union pluralism. In addition, the role of trade unions was limited by the factual prohibition of strikes and restricted collective bargaining — wages and other terms of employment were determined by State legislation and decisions of the State administration while collective agreements served only to supplement them. From 1980 to 1982, trade union freedom and a de facto right to strike were allowed by law, but were suspended after the imposition of martial law in December 1981. In the following years, the authorities attempted to change the collective labor law and industrial relations in Poland, even if they were to be adjusted to the changing Communist system. In 1982, a collective labor disputes settlement procedure and a very limited right to strike were introduced. These legal regulations did not play a large role because most strikes were conducted outside of the law in force. In 1986, new legislation on collective agreements was passed. It was not, however, applied practically. Enterprises kept trying to increase employee wages on the basis of their internal wage regulations, and although some formally had the character of enterprise agreements, the majority of the cases were concluded without actual “bargaining.” The State administration continued to block these increases by imposing an especially drastic remuneration tax which still exists in a modified form.

In 1989, after the “Round Table” talks, trade union pluralism was allowed and “Solidarity” was re-legalized. Other industrial relations institutions were not changed. As a result, Poland now faces major changes, in particular, changes in collective labor legislation. The role of this legislation is different than in many countries where practice first shaped industrial relations and the law subsequently sanctioned


4. In centrally planned economies, collective bargaining was defined not as a conflictual process, but as a means of ensuring full cooperation between enterprise managers and workers in carrying out economic and social plans. See INTERNATIONAL LABOUR OFFICE, 2 WORLD LABOUR REPORT 49 (1985).

5. The Round Table Talks were a round of political negotiations between the last Communist government and Solidarity, in addition to opposition leaders.

developments of practice. In Poland and other East European countries, the law in force regulates, often in a very detailed way, most aspects of industrial relations and imposes certain restrictions on those relations. For this reason, the law was not respected in the past. In order that the law be observed, it must be changed quickly. Expediency is also necessary since the new collective labor law can contribute to the development of economic and industrial relations. It is worth mentioning that statutory law will primarily regulate change in the early stages of this process because Poland and other countries of Eastern Europe have a continental European legal tradition marked by the dominant role of statutory law established by the Parliament.

II. THE NEED FOR DEMOCRATIC LABOR RELATIONS

A basic question, therefore, arises: what will the new Polish labor legislation and industrial relations be like? There is no precise and definitive answer to this question due to the many factors exerting influence on the shape of labor law and industrial relations. The most important of these factors are: privatization, the overcoming of the economic crisis and the introduction of a market economy. The only real requirement is that the legal framework of future Polish industrial relations should be democratic.

The need for democratic industrial relations in Poland can be justified in many ways. First, the previous system of industrial relations can be evaluated negatively. Previous industrial relations rules did not prove capable of regulating relations between employees, enterprises, trade unions and State administration. In this area, Poland and other East European countries have experienced, for a long time, quite serious tensions and difficulties. The previous model of industrial relations also has not ensured the sufficient protection of the workers’ interests. In particular, it has not safeguarded social justice, which according to the Marxist tradition was to be one of the main distinguishing features of the Communist system as compared to the Capitalist system. Second, the success of political democracy now being instituted in Poland is impossible without industrial democracy. Accordingly, it is obvious

7. The non-observance of law could be considered a positive thing from the political point of view (e.g., contributing to the dismantling of the Communist system in Eastern Europe, beginning with the wave of illegal strikes in Poland in May 1988). It should be evaluated differently, however, in a democratic society. In terms of social peace, it is better to have a permanent organized labor force instead of temporary strike committees often elected spontaneously during labor disputes.

8. Since freedom of association is an important element of political democracy, it is included in the 1966 International Covenant on Civil and Political Rights (article 22, paragraph 1) and is guaranteed occasionally in constitutions of various countries. See Ziskind, Labor Law in 143 Constitutions, 1 COMP. LAB. L. 205 (1976); J. Javillier, Manuel de Droit du Travail 25
that democracy is indivisible and cannot be guaranteed in an isolated sector of public life. It should be remembered that, in the past decade, the democratization of Polish industrial relations played a decisive role in political change. This democratization was supported by many workers\(^9\) who are still striving to achieve liberal industrial relations. Third, democratic industrial relations constitute an important factor of a market economy.\(^{10}\) This does not mean that trade unions always contribute to political democracy, or that collective bargaining and strikes always contribute to a market economy. Instead, it is suggested that political freedom is impossible without freedom of association and that a genuine market cannot work without a free setting of wages and other terms of employment. Democracy in industrial relations, however, makes it possible to safeguard and promote workers' interests, particularly important in times of economic crises which result in high unemployment. Fourth, Poland also has a certain prewar tradition of democratic industrial relations. Fifth, the introduction of democracy in industrial relations is also justified by international factors. Poland ratified all the basic Conventions of the ILO concerning industrial relations (except ILO Convention No. 154 of 1981 concerning collective bargaining) and both Human Rights Covenants. The international obligations resulting from these documents create a democratic pattern of industrial relations. In addition, if Poland wants to extend its international trade\(^{12}\) and cooperation, and in particular to join the European Community, it will have to adjust its industrial relations to Western democratic standards.

\(^{9}\) It is also worth mentioning that, in the past, owing to the lack of different political and social organizations, plant workforces were the only organized social groups able to protest. Thanks to the fact that they existed in great numbers, they were protected against sanctions which would be enforced against individuals or small political parties.

\(^{10}\) See Summers, *The Usefulness of Unions in a Major Industrial Society — a Comparative Sketch*, 58 TUL. L. REV. 1409, 1410 (1984) on the functions of unions in West Germany, Sweden and Great Britain ("[F]irst, the political function — that is, the union's role in the elective and administrative processes of the government; second, the general economic function of structuring the labor market; third, the specific economic function of obtaining benefits for its members; and fourth, the 'industrial' democracy function of bringing justice, participation, and humane concerns to the workplace.").

\(^{11}\) See J. Bloch, *Labour Legislation and Social Insurance in Poland* 248-59 (1945). Poland, as distinct from other communist countries of Eastern Europe, took over the pre-1939 legal system (for example the 1937 Law on Collective bargaining was in force and partially applied until 1974), assuring only and all necessary completion, modification and interpretation consistent with the needs and goals of a communist system. See Matey, *Essential Traits of Socialist Labor Codes*, 2 COMP. LAB. L. 191 (1977).

\(^{12}\) For example, for many years the United States has tended to include international fair labor standards into its trade treaties. See Perez-Lopez, *Conditioning Trade on Foreign Labor Law: the U.S. Approach*, 9 COMP. LAB. L. 253, 261 (1988).
The introduction of democratic industrial relations, however, requires interpretation of this notion. Interpretation is not simple since so many different meanings and forms exist, a multiplicity especially visible when comparing different Western systems of labor law and industrial relations.\textsuperscript{13}

The notion of “industrial democracy,” having been used in Western countries since the beginning of this century,\textsuperscript{14} is only slightly useful because it is understood in different ways.\textsuperscript{15} For example, the notion of industrial democracy could be associated with collective bargaining as in the United States,\textsuperscript{16} or with workers’ participation in decision-making within undertakings as in most European countries,\textsuperscript{17} especially in Germany\textsuperscript{18} and in Sweden\textsuperscript{19} but also in Great Britain.\textsuperscript{20} For this reason, industrial democracy can be viewed as either “participatory” or “representational.”\textsuperscript{21} Regardless of its meaning, the

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\item \textsuperscript{14} The “industrial democracy” movement commenced out of the social gospel movement before the turn of the century and flowered after World War I, especially in the 1920s. See M. Derber, \textit{The American Idea of Industrial Democracy} 1865-1965, at 109-96 (1970).

\item \textsuperscript{15} See Finkin, \textit{Revisionism in Labor Law}, 43 Md. L. Rev. 23 (1984) (industrial democracy can be viewed as either “participatory” or “representational”); Comment, \textit{Industrial Democracy and the Managerial Employee Exception to the National Labor Relations Act}, 133 U. Pa. L. Rev. 441, 441-42 (1985) (“Industri[democracy] includes the concept that can also be called workplace democracy: the ability of employees through their representatives to shape the form and content of their employment. In this sense, industrial democracy entails worker participation in the decisions that mold their employment. In its most idealized form, workplace democracy means that employees cooperate with management in running the company.”). See also J. Witte, \textit{Democracy, Authority, and Alienation in Work} 3 (1980) (“Industrial democracy implies . . . a set of decision-making mechanisms based on a reasonable assumption of political equality.”).


\item \textsuperscript{17} Since just after World War II, most countries of Western Europe “have required workers’ representation in undertakings over a certain size, whether the workers concerned demanded it or not. The constitution, powers and effectiveness of these representative bodies vary greatly from one country to another and from one industry to another.” See I. MacBeath, \textit{The European Approach to Worker-Management Relationships} 4 (1973). These committees are often referred to in English as “works councils.” As a concept, works councils can be traced back in German history as far as 1848, when they were proposed by the constitutional assembly at Frankfurt. Mueckenberger, \textit{Juridification of Industrial Relations: a German-British Comparison}, 9 COMP. LAB. L. 526, 528 n.7 (1988).

\item \textsuperscript{18} See Richardi, \textit{Worker Participation in Decisions Within Undertakings in the Federal Republic of Germany}, 5 COMP. LAB. L. 23 (1982).

\item \textsuperscript{19} See Bergqvist, \textit{Worker Participation in Decisions Within Undertakings in Sweden}, 5 COMP. LAB. L. 65 (1982).

\item \textsuperscript{20} 5 \textit{International Encyclopaedia for Labour Law and Industrial Relations} 219 (R. Blanpain ed. 1986).

\item \textsuperscript{21} See Finkin, \textit{supra} note 15, at 48.
\end{itemize}
concept "industrial democracy" is usually cited in vague and general terms. Similarly, many other terms used in the literature of labor law and industrial relations, such as "workplace democracy," 22 "social justice," 23 "industrial pluralism," 24 "social harmony," "industrial harmony" and "industrial peace" 25 also have many meanings, and as a result, little value for our consideration.

In addition, a general definition of democracy, a "form of government in which the sovereign power resides in and is exercised by the whole body of free citizens directly or indirectly through a system of representation, as distinguished from a monarchy, aristocracy or oligarchy," 26 only partially suits industrial relations. Even though industrial democracy has provided millions of workers with an effective voice in industrial government 27 and changed the traditional labor relationship, 28 ownership 29 and management are "non-democratic" in the sense that a hierarchical control of the workplace is necessary, and that mobility of capital must be protected. 30 It is evident that the par-

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23. Pope, Labor and the Constitution: from Abolition to Deindustrialization, 65 Tex. L. Rev. 1071, 1087 n.110 (1987) ("The social justice for which we are striving is an incident of our democracy, not the main end. It is rather the result of democracy — perhaps its finest expression — but it rests upon democracy, which implies the rule by the people. And therefore the end for which we must strive is the attainment of rule by the people, and that involves industrial democracy as well as political democracy.").

24. Fox, PATCO and the Courts: Public Sector Labor Law as Ideology, 1985 U. Ill. L. Rev. 245, 257 n.44 ("Most of the American labor movement since World War II has accepted many of the values and assumptions of industrial pluralism . . . .").

25. Dripps, New Directions for the Regulation of Public Employee Strikes, 60 N.Y.U. L. Rev. 590, 594 (1985) ("Since [the Great Depression], 'industrial harmony' has replaced 'equality of bargaining power' as the primary justification of our labor law. 'Industrial peace' now includes extremely broad conceptions of industrial democracy and social integration. The notion that collective bargaining makes a critical contribution to social harmony and economic self-government has become a central theme of contemporary labor relations law and literature.").


27. One view holds that the workplace under collective bargaining can be analogized to a political democracy. Finkin, supra note 15, at 56. Also, Senator Wagner's intention was that "[d]emocracy in industry must be based on the same principles as democracy in government." 79 Cong. Rec. 7571 (1935).


29. The importance of understanding and justifying the distinct functions and prerogatives of ownership vis-à-vis all employee groups, including managers, was emphasized by Hayek, who contended that it is in the best interests of the employed — the majority — that there be a minority group of "independents" who "accept the risk and responsibility of organizing the use of resources." F. Hayek, THE CONSTITUTION OF LIBERTY 118-24 (1960).

30. See Fox, supra note 24. See also J. Atleson, supra note 28, at 62 (maintaining that American labor law is animated by the belief that it is in the public interest for management to
ties to the employment relationship do not stand on equal footing due to the employees' economic dependence on the employer.\(^3\)

Since the general notions of "democracy" and "industrial democracy" are not very useful for creating a model of democratic industrial relations for Poland and other East European countries, a model should be designed on the basis of international standards and Western labor law and practice. In particular, the Conventions and Recommendations of the ILO are of special significance for Polish and other East European industrial relations.\(^3\) They were conceived with the conditions of various countries, including those of Eastern Europe, in mind. Additionally, in the past, ILO organs drew attention to Poland in cases of violation of ILO standards, suggesting changes in labor legislation.\(^3\)

Unfortunately, ILO standards are insufficient in that they do not cover all the aspects of industrial relations, particularly aspects of trade union freedom. The right to strike is based only on interpretations by ILO organs.\(^3\) In addition, workers' participation requirements are not included in any convention. As a result, the model for Polish labor law and industrial relations should be influenced by Western labor legislation and practice.

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\(34\) R. Ben-Israel, International Labor Standards: The Case of The Freedom to Strike 42-43 (1988). The only specific effort to include a right to strike in the ILO Conventions was made by the Polish and Czech members in 1949, and it was ruled out of order by the Chairman of the Conference Committee, who was from New Zealand. The International Labor Office generally excluded from its drafts any guarantee of the right to strike. Ben-Israel notes that the refusal to discuss the right to strike in the ILO proceedings may well have been related to the Cold War. See also Merrifield, Book Review, 10 Comp. Lab. L. 563, 564 (1989) (reviewing R. Ben-Israel, supra).
III. THE THREE FUNDAMENTAL ELEMENTS OF DEMOCRATIC LABOR RELATIONS

Despite differences in labor law and industrial relations in Western countries, certain common elements exist. These elements enable international regulation of democratic industrial relations. The fact that this regulation is not exhaustive shows that only some elements of democratic industrial relations are considered common for most of the nations. If we consider international instruments and Western legislation, there are three elements which are found in any democratic country and which are indispensable for democratic industrial relations: 1) trade union freedom; 2) collective bargaining;\(^35\) and 3) the right to strike.\(^35\) These elements are considered to be the three basic democratic institutions of industrial relations. This essay therefore deals with "democratic institutions" rather than "industrial democracy," because, as mentioned above, the notion of "industrial democracy" is vague and controversial while the basic term "democratic institutions" is quite evident and concrete.

The three elements are inter-connected.\(^37\) Trade unions do not have a goal in themselves but instead protect, advance, defend and promote occupational or economic rights and interests of workers. Such assistance to workers cannot be provided without trade union freedom, collective bargaining and the right to strike. In most industrial relations systems, negotiations between trade unions and employers are considered to be the very *raison d'etre* of trade unionism.\(^38\) Bargaining and striking, however, require organized labor. The prohi-

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35. "[D]emocracy in industry means fair participation by those who work in the decisions vitally affecting their lives and livelihood . . . [W]orkers . . . can enjoy this participation only if allowed to organize and bargain collectively through representatives of their own choosing." N.Y. Times, Apr. 13, 1937, at 20, col. 1 (quoting Senator Wagner).


37. It is controversial whether collective bargaining and the right to strike are part of trade union freedom or whether they constitute independent institutions. The first view is presented by the ILO, which in my opinion could be explained by the fact that international protection of the right to strike is not independent of, but only related to, trade union freedom. Similarly, the protection of collective bargaining has been weaker than the protection of trade union freedom. Before 1981, when the Convention No. 154 concerning collective bargaining was passed, this protection was based only on the general provision of article 4 of Convention No. 98. In addition, the number of ratifications of Convention No. 154 is less than the ratifications of Convention No. 87. Thus, although the presented view of ILO organs guaranteed better international protection of the right to strike and collective bargaining, they are still considered separate institutions in most national legislation, due to their specific features, premises and principles as compared with the freedom of trade union. In addition, recognition of trade union freedom does not imply necessarily the right to strike, as in the case of public officials.

bition or substantial restriction of any one of these items thus constitutes an important danger for democracy in industrial relations.

Although the existence of these three institutions is essential for democratic industrial relations, it is much more difficult to determine what features and components they should have. In particular, a problem arises as to how the functioning of these institutions relate to other rights and interests of similar or equal value which are prevalent in society.\(^3\) For example, what limits should be placed on the right of the parties to exert economic force in their own interest?\(^4\) In order to answer this question, it is necessary to take into consideration more detailed patterns of democratic industrial relations resulting from international standards and Western legislation.\(^4\)

A. Freedom of Trade Unions

The cornerstone of democratic industrial relations is the freedom of trade unions, also called the freedom of association\(^4\) (for trade union purposes) or the right of workers to organize. Trade union freedom is sometimes divided into individual freedom, also called the right to organize,\(^4\) and collective freedom. Individual freedom is related to the relationship between workers and employers, whereas collective freedom is connected with the rights of unions.\(^4\) These two aspects are often connected, especially in the case of protection against discrimination by anti-union employers, which often requires the protection of both individual workers and their trade unions.\(^4\) In addition, from the legal point of view, when we talk about "freedom of organization," we mean two different things: the absence of prohibitions or

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40. Bok, *supra* note 36, at 1396.
41. It is also useful from the point of view presented in Summers, *Worker Participation in the U.S. and West Germany: A Comparative Study from an American Perspective*, 28 AM. J. COMP. L. 367, 367-68 (1980) ("The primary value in making comparisons in labor law, it seems to me, is that it helps us better understand our own system by seeing it from a different perspective. . . . We may realize that certain elements which we have assumed were essential for the system to work are more a product of history than of necessity. . . . Comparisons in labor law do open our minds to the need for change, the possibility for change, and the range of potential solutions.").
42. This term is preferable when we take into consideration the employers' right to organize.
45. See Hepple & Fredman, *Great Britain*, in 5 INTERNATIONAL ENCYCLOPAEDIA FOR LABOUR LAW AND INDUSTRIAL RELATIONS 193 (R. Blanpain ed. 1988) (arguing that, under British law, the rights in this case belong to individuals and though they protect a collective freedom, they cannot be enforced by the trade union but only by the employee against his employer.) It seems possible, however, that trade unions could use a special procedure against an employer discriminating against its members.
restraints on organization and the presence of positive guarantees for its exercise.46

The basic premises of trade union freedom are outlined in ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise (1948) and ILO Convention No. 98 on the Right to Organise and Collective Bargaining (1949). These conventions are more specific in this respect than other international instruments such as the International Covenants on Human Rights (1966)47 or the European Social Charter (1961).48 In addition, they are complemented by very detailed interpretations by ILO organs.49

According to Convention No. 87, workers (and employers) have rights to form and join trade unions of their own choice without prior authorization (article 2). Consequently, the right to organize belongs to any workers' group and, thus, legislation should not set the minimum number of members of a trade union too high.50 In other words, workers can establish a trade union even if they are a minority of the workforce within a specific plant. The phrase "own choice" also means that workers can establish or join any trade union regardless of existing ones (trade union pluralism or multi-unionism).51 Accordingly, trade union freedom implies the right of workers to regulate their internal rules, programs and affairs without any interference by public authorities or employers (article 3, section 1 of ILO Convention No. 87).

These principles are very important for Polish labor relations since, for many decades, a trade union monopoly was imposed and regulated under State control. With regard to the right to form and join a trade union without prior authorization, Polish legislation required the registration of trade unions by the courts,52 as do many

46. See P. Davies & M. Freedland, Kahn-Freund's Labour and the Law 201 (1983). See also Sciarra, supra note 32, at 153 ("What has historically marked a line of separation between Britain and other European countries with systems of union pluralism is . . . the absence of a legal right to organise").

47. For this reason, both Covenants refer to ILO Convention No. 87.

48. This would be true even if these documents provided a slightly broader protection of trade union freedom. A comparison of ILO Conventions with other international standards is presented in N. Valticos, International Labour Law 92 (1979).

49. This particularly involves the interpretations of the Committee of Experts on the Application of Conventions and Recommendations and decisions and principles made by the Freedom of Association Committee of the Governing Body of the ILO.


52. See article 20, 1982 Trade Union Act, supra note 2, regarding the Corporate Body and right to operate.
nations. Even when the conditions for granting registration were defined clearly and reasonably, and the procedure of registration was simple, this requirement was abused after the imposition of martial law when some courts refused the registration of some politically undesirable trade unions. In a new political situation, however, especially with independent judges and civil rights guarantees, the requirement of registration would not impair trade union freedom.

1. Protection Against State and Employer Intervention

Trade union rights should be protected from State intervention. This means that public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof (article 1, section 2 of ILO Convention No. 87). In addition, the State must take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize (article 11 of ILO Convention No. 87). The State should also not distinguish between various unions (with the exception of certain rights granted to the most representative union).

The State should, however, not only refrain from actively discouraging trade unions but also go further and protect the right to organize from interference by employers. First, this means that workers should be protected against any kind of discrimination resulting from the use of freedom of association. In particular, it is evident that so-called "yellow-dog" contracts, under which workers agree not to join a union during the term of their employment, should be voided. Discrimination against employees "in regard to hire or tenure of employment or any term or condition of employment to... discourage membership in any labor organization" also should be prohibited. Second, an employer, like the State, should not distinguish between various unions acting in its enterprise.

Under Polish conditions, these two aspects of trade union freedom have changed in significance. Previously, both the establishment of trade unions and their activities could be subject to State interference,

53. See 1982 Trade Union Act, supra note 2, at art. 19.
54. See Treu, Italy, in 7 INTERNATIONAL ENCYCLOPAEDIA FOR LABOUR LAW AND INDUSTRIAL RELATIONS 113 (R. Blanpain ed. 1986) ("[T]rade union freedom operates basically as a guarantee of the individual's and organisation's right vis-a-vis the State").
55. This distinction should not have the effect of depriving a trade union which is not recognized as being the most representative of the essential means for defending the occupational interests of its members. See DIGEST OF DECISIONS, supra note 50, case 236.
since an independent trade union constituted a danger to the monopolistic power. Now, as the State withdraws from both the economy and industrial relations, the threat of interference is more real from employers. New private employers can hinder and delay the establishment of trade unions in newly founded enterprises or try to restrict the activity in privatized companies. Thus, a special procedure would be required to protect workers’ concerted activity against unfair labor practices of employers, as under U.S. law. Currently, the Polish law in force generally provides only a fine for the violation of the 1982 Trade Union Act.

2. Negative Freedom of Association

Another specific aspect of trade union freedom is the freedom not to join a trade union or to withdraw freely from it, often called the “negative freedom of association.” This freedom also should be considered a substantial element of political democracy because no one should be forced to join a trade union. Negative freedom of association is also important for the internal democracy of trade unions since the possibility of withdrawing from a trade union is one of its practical guarantees. It is uncontested (except in Great Britain) that “closed shop” or union shop arrangements violate the negative trade union freedom.

A more difficult question arises as to how far the union is allowed to provide privileges for its members. Sometimes conflict exists between support for trade union freedom and negative freedom protecting workers who are not willing to become union members, especially on the plant level.

This aspect of trade union freedom has not posed serious problems in Poland so far, due mainly to historical features of Polish industrial relations. The very high level of unionization (before 1980 - over 90%, in the 1980s above 60%) and the restrictions imposed on trade unions have given, until recent times, absolute priority to the defense of positive trade union freedom of all workers towards the State, making less relevant — or even non-feasible — the problem of discrimination by

58. This anticipation is based on American experience since one of the two great trends in American labor relations remains more unfair labor practices committed by employers (a part of the decline of the percentage of the American workforce belonging to trade unions). See Weiler, Promises to Keep: Securing Workers’ Rights to Self-Organization Under the NLRA, 96 Harv. L. Rev. 1769, 1778-80 (1983) (citing NLRB annual reports from 1950-1980).

59. 1982 Trade Union Act, supra note 2, at art. 53.

60. See Sciarra, supra note 32, at 153.

61. Weiss, supra note 44, at 107. For a British point of view, see Hepple & Fredman, supra note 45, at 197 (“[T]he right not to belong is not as obvious as the freedom of association”).

the unions themselves. This situation may change in the future, since competitive trade unions can exert influence upon workers or employers in order to increase the number of their members.

3. The Scope of Protected Persons

Another important aspect of the democratic framework of industrial relations is the scope of trade union freedom in terms of persons protected. Convention No. 87 (article 9, section 1) allows only the exclusion of the armed forces and police members. Convention No. 151 (1978) permits the imposition of certain limits on the rights to organize in the public service, concerning high-level employees whose function normally is considered policy-making or managerial, or employees whose duties are of a highly confidential nature (cf. article 1, section 2). Accordingly, apart from these groups of employees, all others shall enjoy the full right to organize.

This rule was not observed in Poland after 1982, when most public servants were deprived totally of the right to organize. It should be noted, however, that in Poland all civil servants, due to certain political and ideological premises, become employees, as opposed to, for example, Germany where generally civil servants are excluded from labor law and accordingly from trade union freedom. Thus, certain limits on trade union freedom in the Polish public service should be allowed, especially with regard to public employees that act on behalf of the State (where the freedom of trade unions can contradict their duties) and are not considered employees in some other countries.

4. Sanctions and Limits

Important aspects of democratic industrial relations are the sanctions and limits which can be imposed on a trade union. It is obvious that sanctions should not deprive workers of their representation, but should only prevent or punish certain activities of a trade union, its leaders or members. The rights of a trade union can be restricted in order to protect rights or interests of similar or equal value which are prevalent in society. Such interests include national security, public order and the protection of individual rights and freedoms of others.

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64. *Id.* at 287.
67. It should be remembered that ILO conventions, specifically Convention No. 87, do not allow any restrictions of this kind. See *International Labour Conventions and Recom*
The practical significance of these limits depends not only on legal provisions but also on the possibility to use or even abuse them—which in turn depends on the general political situation and civil rights in a specific country. This emphasis is very important under Polish conditions since the introduction of martial law in December 1981 and the suspension and dissolution of trade unions officially was justified by the threat to the life of the nation in relation to article 4, section 1 of the International Covenant on Civil and Political Rights.

5. Internal Trade Union Democracy

Democratic industrial relations are strongly connected with internal trade union democracy.\textsuperscript{68} In particular, collective bargaining can serve the goals of industrial democracy only if the union is itself democratic.\textsuperscript{69} When we consider the legal framework of these relations, however, internal union democracy imposed by the law presents an issue of some controversy where this democracy is to be imposed by the law. The imposition of trade union democracy by State authority may serve the interests of union members and prevent union corruption.\textsuperscript{70} It may prove dangerous, however, in two respects. First, it may undermine the efficiency of trade union activity, due to the certain concentration of power and relative room to maneuver at the disposal of the leaders which permit them to decide and react on the spot whenever necessary, a danger especially visible in finance and election issues. The second and even greater danger is that, under the pretext of introducing democracy into the union structures, the State will come, if not to dominate union structures, at least to control their activities. Here arises the famous debate between trade union democracy and union autonomy. Although these two notions are not necessarily incompatible with each other, a risk of conflict admittedly exists between them.\textsuperscript{71} Thus, as a rule, the law should not regulate relation-

\textsuperscript{68} Sometimes the notion of "industrial democracy" includes this aspect of industrial relations. \textit{See} Comment, \textit{supra} note 15, at 441.

\textsuperscript{69} Id. at 1209.

\textsuperscript{71} Blanc-Jouvan, \textit{Trade Union Democracy and Industrial Relations}, 17 BULL. COMP. LAB. REL. 7 (1988).
ships between the union and its members. It can, however, prohibit undemocratic (unfair) trade union practices directed against other trade unions, workers (non-members of a trade union in question) or employers since these practices are not internal issues of a trade union.

6. The Employer's Right to Organize

Freedom of association also refers to the right of employers to organize for the defense of their occupational interests. Obviously, democratic industrial relations require a certain balance between parties, which is not possible without the right to organize on both sides. Accordingly, employers should have a right to organize similar to that of workers. Polish legislation will guarantee these rights in a special act.

B. Democratic Collective Bargaining

The second fundamental democratic institution of industrial relations is the right to bargain freely with employers with respect to wages and other terms of employment. Collective bargaining should be independent from the State power. In some countries, this is called the autonomy of collective bargaining. Accordingly, public authorities should refrain from any interference which would restrict or impede the lawful exercise of this right. In particular, the parties in industrial relations should be allowed to determine independently the level of collective bargaining (e.g., plant, industry or national) and its scope, provided that collective bargaining covers wages, working conditions and other terms of employment. Even though in some countries the scope of collective bargaining is much broader, this breadth is not required in terms of democratic industrial relations. The results of col-

72. See ILO Convention No. 87, arts. 1-5. It is a paradox of history that during the discussion on the draft of ILO Convention No. 87 in 1948 Poland and Czechoslovakia were against spreading the freedom of association to employers, and now both countries are trying to use this provision to promote and develop the employers' side of industrial relations.

73. This does not mean, of course, that employers will have to establish an organization. For example, in the United States the individual employer has been strongly inclined to act independently in working out his labor and personnel policy. See Bok, supra note 36, at 1405.


76. See INTERNATIONAL LABOUR OFFICE, supra note 4, at 39.
lective bargaining should also be independent. Thus, the public authorities should not, as a rule, intervene in order to modify the contents of collective agreements which have been concluded freely.\textsuperscript{77} In particular, the prior approval of this agreement by a governmental authority should not be required.\textsuperscript{78} Thus, instead of making the validity of collective agreements subject to governmental approval, if the public authority considered that the terms of the proposed agreement were manifestly in conflict with the economic policy objectives recognized as being in the general interest, the proposal might be submitted for advice and recommendation to an appropriate consultative body, it being understood, however, that the final decision in the matter would rest with the parties to the agreement.\textsuperscript{79}

All these elements were restricted in Polish legislation. The scope of collective bargaining was limited and the introduction of broader or more advantageous workers' rights required statutory or governmental authorization.\textsuperscript{80} In addition, before 1986 the Labor Minister had to approve the draft of a collective agreement.\textsuperscript{81} After 1986, the Labor Minister reserved the right to examine the conformity of the agreement's provisions to law and to the social and economic policy of the State. If he found that an agreement failed to conform to these guidelines, he could refuse to register it (necessary to give a legal effect to an agreement). If this happened, the refusal would be reviewed by a court (in the case of violation of law) or by a special joint governmental and trade union commission (in the case of incompatibility with the State policy).\textsuperscript{82}

1. Problems of Democratic Collective Bargaining

A few elements of collective bargaining are not fully precise in terms of democratic industrial relations. One element of collective bargaining involves the duty to bargain. This duty can be imposed by law on the employer's side or by both parties through collective bargaining\textsuperscript{83} (concerning, as a rule, certain specific matters\textsuperscript{84}). On one hand,

\textsuperscript{77} DIGEST OF DECISIONS, supra note 50, case 593.
\textsuperscript{78} DIGEST OF DECISIONS, supra note 50, case 635.
\textsuperscript{79} DIGEST OF DECISIONS, supra note 50, case 664.
\textsuperscript{80} See Florek, Le Nouveau Droit de Conventions Collectives de Travail, DROIT POLONAIS CONTEMPORAIN, nos. 1-4, at 84-87 (1987).
\textsuperscript{81} 1974 Labor Code, supra note 3, at art. 241(2).
\textsuperscript{82} Id. at art. 241(7) (as amended in 1986).
\textsuperscript{83} See R. GORMAN, BASIC TEXT ON LABOR LAW: UNIONIZATION AND COLLECTIVE BARGAINING 496-98 (1976); C. MORRIS, THE DEVELOPING LABOR LAW 761-64 (2d ed. 1983); Treu, supra note 54, at 161.
\textsuperscript{84} In American law, mandatory subjects are the statutorily prescribed "wages, hours, and other terms and conditions of employment" (National Labor Relations Act, 29 U.S.C. § 158(d)
imposing the duty through collective bargaining could contribute to the increased role of collective bargaining and the better resolution of conflicts in industrial relations. On the other hand, it seems to be sufficient to guarantee trade unions the right to bargain collectively and the option to force collective bargaining by strike or a threat of strike.

A second question concerns which trade union is representative when more than one union exists on a specific bargaining level. Keeping in mind democratic goals, a representative trade union should be determined by objective criteria in an independent manner. The representative union could be a trade union or trade unions which associate and represent a majority of workers, or a trade union elected by workers (majority rule as exists in the United States). It seems, however, that given the East European tradition and conditions (i.e., a high level of unionization), a majority rule similar to the U.S. system would be unnecessary. The autonomy of collective bargaining would be impaired if State legislation or a governmental decision tried to exclude the most representative trade union from bargaining.

A third difficult problem of collective bargaining is connected with its scope in terms of persons protected. The importance of collective

(1988)) about which either party must bargain at the behest of the other. Permissive subjects are all other lawful items, including a broad array of so-called managerial prerogatives or internal union affairs, which are often of intense interest to unions or management, respectively, but about which they cannot demand bargaining if the other party objects. Id. The distinction between subjects of mandatory bargaining and subjects of optional bargaining was emphasized by the Borg-Warner decision (NLRB v. Wooster Div. of Borg-Warner Corp., 356 U.S. 342 (1958)). Accordingly, it established the principle that a whole range of issues — especially issues relating to investment, production, site location and the like — were not things about which management was required to bargain under section 8(d) of the Act, although they surely have a powerful impact on workers' employment prospects and conditions. It is additionally justified by an argument that "[m]anagement must be free from the constraints of the bargaining process to the extent essential for the running of a profitable business." First Nat'l Maintenance Corp. v. NLRB, 452 U.S. 666, 678-79 (1981); see also Fried, Individual and Collective Rights in Work Relations: Reflections on the Current State of Labor Law and Its Prospects, 51 U. CHI. L. REV. 988, 1013-14 (1984). However, sometimes this dichotomy is considered "rigid and unrealistic." See St. Antoine, Federal Regulation of the Workplace in the Next Half Century, 61 CHI.-KENT. L. REV. 631, 649 (1985).

85. This is true especially where, as in American law, it is a duty to bargain in good faith. See, e.g., Cox, The Duty to Bargain in Good Faith, 71 HARV. L. REV. 1401 (1958).

86. This is true provided that the determination of the most representative trade union organization does not affect the right of other trade unions to function in a normal way. See N. VALTICOS, supra note 48, at 83; see also Rosen, Labor Law Reform: Dead or Alive?, 57 U. DET. J. URB. L. 1, 33 (1979-80) ("Because labor policy is premised upon majority rule and representation orders bind not only the majority and the employer, but also those employees in the bargaining unit who do not favor union representation, it is vitally important that the process by which majority will is determined be as accurate, fair, and effective as possible.").

87. Bok, supra note 36, at 1397 ("Only the United States has developed the principles of majority rule and exclusive representation and the process of representation elections with its network of rules governing campaign tactics and unit determination.").
bargaining requires that all workers and employers have the right to bargain collectively. This principle is also laid down in the European Social Charter (article 6). Yet, as mentioned before, due to certain political and ideological premises in Poland, all public servants (including those acting on behalf of the State) become "workers." Thus, their coverage by collective bargaining would involve the State authority in this bargaining. For this reason, it would be better to exclude from collective bargaining public servants engaged in the administration of the State (article 6 of ILO Convention No. 98). In fact, this situation exists in many Western countries.  

2. The Role of the State

Another difficult problem of collective bargaining is connected with the role of the State in the regulation of wages and other terms of employment. In each country, the question emerges as to what extent the terms and conditions of employment should be established through negotiations between unions and employers and to what extent by direct governmental action in the form of minimum wages, compulsory social insurance, protective legislation and the like. According to the Western concept of labor relations, the role of the State should be limited. Admittedly, in almost every country State power regulates terms of employment to a certain extent. As a result, most West European countries have extensive protective labor legislation. Generally speaking, we can say that the role of the State in industrial relations cannot be considered in itself "democratic" or "undemocratic." Such characterizations depend on the State and its role, as well as the tradition of a specific State.
In Poland and East Europe, it is quite obvious now that the State should withdraw from the regulation of most terms of employment, leaving this to the parties in collective bargaining. Specifically, the State should not prohibit the improvement of wages and other terms of employment, as was previously the case. However, it is not clear to what extent the State should allow parties in collective bargaining to reduce the terms of employment. Detailed regulation of terms of employment was not only a characteristic feature of a totalitarian State, but also protection of workers' rights. Accordingly, if we wanted to allow working conditions to deteriorate through collective bargaining, it would be necessary to lift protective State legislation because statutory terms of employment could not be worsened by a collective agreement. Yet the question arises as to whether, after the deregulation of terms of employment, the level of workers' rights so far guaranteed by State legislation can be achieved through collective bargaining. Therefore, it seems that the State cannot withdraw immediately and totally from industrial relations, leaving all the issues (e.g., life and health protection, job security, protection of weaker groups of employees) to collective bargaining, as long as the parties are not sufficiently able to take social issues into account.

Another problem relating to the role of the State concerns State participation in collective bargaining. As pointed out above, collective bargaining should be independent. Such participation could be considered incompatible with democratic industrial relations, especially if the State uses its presence to exert pressure on parties in collective bargaining. If the State merely helps the representatives of labor and capital to find a compromise, however, this participation should not be prohibited, even though State participation very often also serves the economic policy of the State.

C. The Right to Strike

The right to strike is the other essential means, besides collective bargaining, through which workers and their organizations may pro-
mote and defend their economic and social interests. The right to strike is recognized by the 1966 International Covenant on Economic, Social and Cultural Rights (article 8(d)) and the 1961 European Social Charter (article 6, paragraph 4). Interpretation by ILO organs has also confirmed the existence of such a right. It is therefore obvious that strikes cannot be prohibited absolutely for all workers legally or factually. Mere recognition of this right, however, is not sufficient; the exercise of this right should also be possible. Given the negative consequences of work stoppage for a specific enterprise and the interest of the whole economy, most pieces of State legislation provide certain limits and restrictions of strikes. For instance, such legislation has sought to cover the goals of the strike, conditions of its calling, the exercise thereof, temporary exclusion from the right to strike and the prohibition of strikes in certain services. The evaluation of the right to strike in terms of democratic institutions of industrial relations relates to these limits and restrictions. Generally speaking, the conditions that have to be fulfilled under the law in order to render a strike lawful should be reasonable and, in any event, not such as to place substantial limitations or restrictions on this right. A temporary restriction on strikes until a certain procedure for settlement of collective labor disputes is exhausted can be considered reasonable. A strike can be restricted or even prohibited in civil service situations only in the strict sense of this term, i.e., civil servants acting on behalf of the public authorities and in essential services, or services where the interruption of such service would endanger the life, personal safety or health of the whole or part of the population. A legal strike, however, should not be considered a breach of the contract of employment. Thus, the dismissal of workers or refusal to re-employ them on the claim that the workers organized or participated in a legal strike constitutes a violation of the democratic right to strike.

Most of these principles were not respected in Poland. Although the 1982 Trade Union Act provided the right to strike for the first time


97. Digest of Decisions, supra note 50, cases 393 and 394.

98. From this point of view, it may be a controversial issue whether the possibility of permanent replacement of the strikers existing in American law (NLRB v. Mackay Radio & Tel. Co., 304 U.S. 333 (1938)) is democratic. Unless the strike was provoked by an employer's unfair labor practice, the employer does not have to reinstate any replaced strikers when the strike ends or pay any of them their back wages. See Posner, Some Economics of Labor Law, 51 U. Chi. L. Rev. 988, 998 (1982). Elimination of an employer's right to replace strikers was suggested by Weiler, Striking a New Balance: Freedom of Contract and the Prospects for Union Representation, 98 Harv. L. Rev. 351, 412-14 (1984). See also Fried, supra note 84, at 1014.
in a Communist country, the exercise of this right has been subject to many conditions specified in the Act (among others, a quite long procedure for the settlement of collective disputes which must precede a strike). The law contains a very long list of public employees and essential services in which strikes are not permitted, although their interruption would not always endanger the population, e.g., radio or television. In addition, the above-mentioned 1986 Amendment to the Labor Code prohibited strikes during collective bargaining. Because of the difficulty involved with conducting a legal strike, almost all the strikes in the 1980s were unlawful.99

IV. ADDITIONAL ELEMENTS OF DEMOCRATIC LABOR RELATIONS

A. Settlement of Disputes

According to most publications on industrial relations, a special system for the settlement of collective disputes is not considered a necessary element of industrial democracy. This opinion is justified supposedly by the fact that democratic collective bargaining and a reasonable right to strike sufficiently insure the promotion of workers' interests in labor relations (which is one of the goals of industrial democracy). Nevertheless, the creation of a special procedure for settlement of collective labor disputes is often very useful in order either to prevent or resolve a conflict of interests (in particular during collective bargaining) or to reduce the number of strikes.100 Thus, such a procedure may be regarded as a democratic institution in the sense that employees can achieve similar goals in a peaceful way rather than by strike. Despite this benefit, the procedure in question should not strip other democratic institutions from workers, in particular the right to strike101 and independent collective bargaining.

B. Workers' Participation

An analysis of Western legislation shows that worker participation in decision-making within undertakings is not an indispensable part of industrial relations, although participation does make them more dem-

99. Wildcat strikes also continued after the recognition of the Solidarity unions in 1988. Despite their illegal character, sanctions were not imposed on the strikers because the general political climate of the country did not permit the rigid application of the law. See Szubert, supra note 1, at 68.

100. See INTERNATIONAL LABOUR OFFICE, CONCILIATION AND ARBITRATION PROCE- DURES IN LABOUR DISPUTES: A COMPARATIVE STUDY 13 (1980).

101. As mentioned above, strikes can be temporarily restricted, but such restrictions should be accompanied by an adequate, impartial and speedy settlement procedure in which concerned parties can participate at every stage. See DIGEST OF DECISIONS, supra note 50, case 390.
This conclusion can be reached when we compare American, British and Canadian legislation with German or Austrian legislation.

One reason the author does not deal with the issue of workers' participation in this paper is that its future in Poland is unsure. Despite a certain tradition of workers' participation and despite the fact that the power of workers' councils is much stronger than during the many decades of Communist rule, the councils in their existing form will be dissolved in the course of privatization. In their place, employees shall elect one-third of the Board of Directors. As a kind of political compensation, employees of a State enterprise transformed into a corporation shall enjoy the right to acquire on preferential terms up to 20% of all stocks of the said corporation held by the State Treasury. Though the dissolution of workers' councils in privatized enterprises can be considered controversial in terms of democracy, at least two arguments can be given in its support. First, the functions of trade union councils and workers' councils on the plant level can be exercised by workers' representatives. Second, the abolition of workers' councils will diminish the possibility of conflict between management and workers on an everyday basis, an important requirement for newly transformed or founded companies. The participation of workers' representatives in directors' boards and workers' stock can also contribute to the democratization of industrial rela-

102. See, e.g., INTERNATIONAL LABOUR OFFICE, WORKERS' PARTICIPATION IN DECISIONS WITHIN UNDERTAKINGS 10 (1981); Klare, Traditional Labor Law Scholarship and the Crisis of Collective Bargaining Law: A Reply to Professor Finkin, 44 MD. L. REV. 731, 808-09 (1985) ("Of course collective bargaining is itself a form of worker participation and, as such, an essential component of industrial democracy. But it is also true that the legal structure of conventional collective bargaining has not been particularly encouraging toward either day-to-day employee participation in managing the pace and flow of work or toward co-determination by workers and management at the level of major capital investment."); EUROPEAN CONFERENCE ON LABOUR LAW AND INDUSTRIAL RELATIONS, supra note 75, at 235 ("Speaking about participation without relating it to the concept of 'democracy' tends to undermine the essential meaning of our subject matter."); Sartori, Democracy, in 4 INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES 114 (1968) ("In its ultimate form, industrial democracy calls for self-government by the workers in a plant.").

103. Since March 1990, workers have been entitled to elect or dismiss the management of a State-run enterprise. Last year, 90% of management was changed on the initiative of workers' councils.


105. This provision is also related to the workers' lack of capital for buying shares of privatized companies.


107. The abolition of workers' councils was also influenced by the fact that foreign investors had been against keeping workers' councils in private companies (even where investors came from countries such as Germany or Austria where the position of workers' councils is very strong).
V. DIFFICULTIES INVOLVED IN THE INTRODUCTION OF DEMOCRATIC INSTITUTIONS

The introduction of proposed democratic institutions into Polish and other East European industrial relations encounters certain difficulties and obstacles. There is a difference between trade union freedom on the one hand, and collective bargaining and the right to strike on the other. It is much more difficult to introduce and guarantee independent collective bargaining and the right to strike than trade union freedom (even if this freedom could also be subject to many restrictions). Trade union freedom requires only political change, while collective bargaining and the right to strike are strongly connected with the economy and social relations of a specific country. In particular, the introduction of collective bargaining meets three obstacles: (1) the absence of the employers' side of collective bargaining; (2) the absence of a market; and (3) the lasting economic crisis.

First, the State economy has lacked a factual (genuine) employer who would object to workers' demands. Managers of State enterprises have not played this role because they often tried, together with their employees, to increase wages and to improve other terms of employment. All this resulted from the deformation of industrial relations caused when two parties act in the same direction.

Second, no real market existed which featured economic competition and the risk of bankruptcy which could force an employer to object to workers' demands. Both sides of collective bargaining were not able to determine the ceiling on wage improvement and other terms of employment since these measures are determined by the market.

Third, for many years, economic conditions conducive to the introduction of collective bargaining have not existed. First, collective bargaining has not been an aim in itself but rather forms one of the means with which wages and other terms of employment are improved. When wages do not improve but deteriorate steadily as they do in Poland, a tension between parties in collective bargaining could make it impossible to bargain. This aspect of collective bargaining is especially visible during economic recession, when employees' pressure to increase their wages intensifies and the possibility of improving working conditions decreases. Second, some aspects of collective bargaining may hamper and impede the process of overcoming the economic crisis or restructuring the economy. Recent developments have shown that there is a continuing tension between the requirements for reviv-
ing economic activity and reducing inflation on the one hand, and improving working conditions and protecting workers against crisis on the other. The unlimited vindication of workers’ rights, even if socially justified, can damage the economy because workers and their organizations do not always respect the economic consequences of fulfilling their demands.  

Third, the decentralized regulation of wages through collective bargaining may result in the more influential workers receiving benefits at the expense of others, thus contributing to a rise in the cost of living and an increase in the inflation rate.  

As regards the right to strike and collective labor disputes, a tradition of legally resolving such disputes has not existed, since in the past most disputes were settled informally and often hidden from public opinion. As a result, these elements have not been used, although the existing procedure for settlement of collective disputes contains several elements shaped along Western patterns, such as negotiations, conciliation and arbitrations. Although resort to the procedure is required before a strike, most collective labor disputes have actually begun with a strike. The procedure also lacks appropriate people who could serve as mediators (provided in draft legislation) or arbitrators (so far, there have been labor judges, but their qualifications were considered insufficient for solving economic disputes). Under current Polish economic conditions, strikes are undesirable since Poland’s weak economy can hardly carry their burden. In addition, since many State enterprises still hold a monopolistic position, their production, sometimes very important for the whole economy, cannot be substituted by a supply of another enterprise in the event of a strike. Accordingly, the question arises as to whether Poland can afford a liberal strike legislation. A liberal strike legislation can contribute to an increase in the number of strikes although other factors beyond the liberal framework also play a role.  

It is not clear, however, how illegal strikes can be punished. Previously, there were penal sanctions which could be applied by the State. The draft law also keeps the fine as a basic sanction for those who lead an unlawful strike. This means that the State itself still tries to restrict the right to strike. The necessary withdrawal of the State from industrial relations also requires a neutral position of the State in industrial  

108. See INTERNATIONAL LABOUR OFFICE, supra note 4, at 39.  
109. See Szubert, supra note 1, at 69, citing O. KAHN-FREUND, LABOR RELATIONS: HERITAGE AND ADJUSTMENT (1979), in which the author had made the same observation in relation to the British practice.  
110. See 1982 Trade Union Act, supra note 2, arts. 40-42.  
111. See BUSINESS NEWS FROM POLAND, supra note 74, arts. 12-16.
conflicts, with the exception of situations such as threats to national welfare. Accordingly, it would be better if sanctions against illegal strikes were executed by an employer. In case of an illegal strike, the employer could discharge striking workers or sue a union for money damages. The only problem is that, in the transitional period from a State-planned to a market economy, "a real employer" willing to enforce illegal strikes is generally lacking.

VI. CONCLUSION

Obviously, the transition from a totalitarian system, where the State power centrally regulates all aspects of societal activity, to a political democracy, social pluralism and a market economy requires democratic industrial relations.

Even if we are not in a position to say precisely what democracy means in industrial relations (especially since there is no model of democratic industrial relations which can be applied to post-Communist conditions), we can determine its three basic indispensable elements: trade union freedom, the right to strike and collective bargaining. The premises and principles of these institutions presented above are taken partially from international instruments, and partially from the main trends of Western labor legislation, taking into consideration the pre-war tradition of the relevant countries.

The application of Western examples to Polish and East European industrial relations presumes a certain similarity of economic and social conditions. In particular, it is necessary to establish and solidify the employer's side of these relations. This can be achieved, first of all, by property changes, namely, reprivatization of the State sector and development of the private sector.

The democratic institutions of industrial relations should be provided and guaranteed by labor legislation. This legislation should only regulate the basic conditions of democracy in industrial relations and should not be excessively specific in order to provide the parties the possibility to shape their relations (this also constitutes one of the elements of democracy in industrial relations) and to allow trade unions to regulate their internal democracy. The parties in industrial relations should also be able to shape wages and other terms of employment independently (social self-government), with the exception of State protective legislation.

The principles and premises of democratic institutions in labor relations, as characterized above, can be regarded as modest when compared with the developed systems of industrial relations in democratic Western countries. They consist of only minimal and indispensable
conditions and can be completed subsequently through other regulations and institutions which are optional for industrial democracy. Most importantly, the implementation of these basic democratic institutions will create a new model of labor relations regulated, not by State legislation as in the past, but primarily by the autonomous decisions of social partners.