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Bargaining for Sustainable Development and Just Transition: A Mixed Picture from the ‘Agreement’ EU Project

Juan Escribano Gutiérrez and Paolo Tomassetti *

This special issue of the *E-Journal of International and Comparative Labour Studies* (EJICLS) presents and further discusses some of the key findings of *Agreement – A Green Mentality for Collective Bargaining*, the project co-funded by the European Union which in the last few years has investigated the role of collective bargaining and social dialogue in promoting sustainable development and the Just Transition to a low-carbon economy. Coordinated by ADAPT under the scientific direction of Prof. Juan Escribano Gutiérrez, the Agreement project focused on how and why collective bargaining can contribute to embedding the principle of environmental sustainability into labour relations, concurrently reinvigorating the ideals of justice, equality and democracy that justify the traditional goals of the EU social model and collective bargaining.

The timeliness of this project and this special issue is evidenced by the significant number of countries facing the challenges of implementing the UN 2030 Agenda on sustainable development and the COP 21 Paris agreement of 2015-2016, aimed at substantially reducing the impacts of climate change on society by achieving a net-zero emission in the second half of the 21st century. At EU level, the European Green Deal and the post-pandemic recovery measures that Member States have to implement within the massive Next Generation EU plan involve significant investments to make the economy compatible with the goal of decarbonising Europe. Yet these policies came

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with a significant impact on jobs and labour markets. As long as companies compete in a market economy, the costs of regulation are in competition. As a result, environmental policies and regulations have social implications, while the reverse is also true. Coordination between labour law and environmental legislation in lawmaking, policy setting and implementation is therefore crucial to prevent the conflict between the two dimensions, i.e. labour and the environment. Ensuring justice in the transition to a low-carbon economy precisely means avoiding negative externalities of environmental regulation on jobs and communities affected by decarbonisation. In this context, labour law and industrial relations institutions are called on to deconstruct the trade-off between labour and the environment by developing synergies and creating alternatives to the job vs. environment blackmail.

While industrial relations scholars and sociologists have paid attention to how companies and social partners are coping with dilemmas that the transition to a low-carbon economy involves, there was a lack of institutional and socio-legal analysis on how and why collective bargaining systems are responding to sustainable development and Just Transition policies; which normative techniques are used to balance the different and somehow competing interests involved in decarbonisation processes; and what implications these processes generate in labour and environmental law. This special issue was precisely intended to fill this research gap in five core countries: France, Hungary, Italy, Spain and the UK.

The five contributions shed light on the ways through which management and labour are integrating and pursuing labour and environmental protection simultaneously, by means of collective bargaining and social dialogue activities. Despite in the selected countries the legal systems regulating work, on the one hand, and the environment, on the other hand, remain misaligned and siloed, no formal obstacles exist to their integration. For collective bargaining to become a means to integrate both spheres, no legal restrictions apply in the jurisdictions considered, although explicit references and incentives for workers and employers (or their representatives) to bargain over environmental aspects are far less evident.

The key message that this special issue shares with labour law and environmental law scholars, therefore, is that it is up to the social partners to promote environmental sustainability as a goal for collective bargaining or to continue with the traditional inertia that divides labour and environmental policies. In this regard, the papers collected in this special issue provide a mixed picture of what has been achieved in the last few years. While the analysis shows how the social partners, especially trade unions, are more and more willing to include environmental aspects in their industrial relations agenda, the narrative on the trade-off between labour and the environment is

still evident in many cases. Collective agreements could take a leading role in promoting sustainable development and driving the just transition towards a low-carbon economy, but in practice they do not consider this to be a priority. Environmental clauses in collective agreements are still exceptional and lack momentum. Good policy examples exist, but best practices are difficult to generalise. And good examples coexist with very bad practices under which the twentieth century contraposition between industrialism and environmentalism dramatically revives.

Guided by the five contributions through the negatives and positives of existing practices of collective bargaining for sustainable development and Just Transition, readers of this special issue will have the opportunity to assess whether the glass is half empty or half full, and hopefully engage in a discussion with the authors to further expand the analysis of the labour-environment nexus. Further reflection about this crucial issue is needed. And we are grateful to the EJICLS's editors for hosting and echoing this debate within the labour law scientific community and beyond.

'Green' Collective Bargaining in France

Alexis Bugada and Véronique Cohen-Donsimoni *

Abstract

This article provides an overview of collective bargaining in France in relation to environmental sustainability. Rather than discussing all the green clauses laid down in collective agreements, this paper aims to identify the main trends in collective bargaining. It appears that company and sectorial bargaining, especially at transnational level, is the most active on this subject. However, there have been major developments at the interprofessional and branch level too, which raise the question of the impact of wide-ranging bargaining on narrower bargaining perimeters (the 'trickle-down' effect). The social partners are rather active in France, because the right to collective bargaining has been reformed favouring company-level negotiations and because recent legislation has placed environmental issues high on the agenda of collective labour relations.

Keywords: Environmental Social Dialogue; Collective Bargaining; Green Clauses.

1. Introduction

The environment is still given little consideration in France's collective labour agreements. Yet some progress can be reported due to the convergence

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between labour law and environmental law¹. This slowness may appear surprising for a country which appointed a Ministry of Ecological Transition and Solidarity and, more importantly, issued an Environmental Charter later on incorporated into the French Constitution in 2005. This Charter sets out key principles and can underpin policies at the intersection of social ecology and labour law. This document states that the preservation of the environment is one of the fundamental interests of the French nation, but also that everyone has the right to live in a balanced environment that respects their health and that 'everyone' must participate in environment protection. Finally, education and training policies must be implemented to achieve these objectives. If we cross-reference this information with the development of trade union action and collective bargaining rights in France over the last five years, more significant prospects for change can be seen. Moreover, certain large confederations also display a more environmentally responsible posture, whether they are progressive or reformist organisations, or even those with Christian leanings². Two major confederations³ have even modified their statute: environmental protection is included in the wake of the defence of social rights. Others have even issued a general policy declaration with activists and organisations in charge of protecting the environment and tackling exclusion, drawing on the popularity of a former environment minister, i.e. Nicolas Hulot⁴.

¹ General bibliography : M Despax, *Environnement et droit du travail*, Juris-Classeur Environnement Traité, Fasc. 982, 1994 ; A. Bugada, *L'influence du droit de l'environnement sur le droit du travail*, Semaine Sociale Lamy 17 oct. 2005, supplément au n° 1232 ; A. Mazeaud, *Environnement et travail*, in Mélanges offerts à M. Prieur, Pour un droit commun de l'environnement, Dalloz 2007, p. 297 ; M.-P. Blein-Franchomme et I. Desbarats, *Environnement et droit du travail*, Juris-Classeur Environnement, Traité, Fascicule 2330, 2008 ; F. Héas, *La protection de l'environnement en droit du travail*, RDT 2009, p. 565 ; M.-P. Blin-Franchomme et I. Desbarats. et alii, *Droit du travail et droit de l'environnement, Regards croisés sur le développement durable*, Lamy collection, Axe Droit, 2010 ; C. Vanuls, *Travail et environnement – Regards sur une dynamique préventive et normative à la lumière de l'interdépendance des risques professionnels et environnementaux*, PUAM 2012 ; A. Casado, *Le droit social à vocation environnementale*, Dalloz 2019, p. 2425 ; I. Vacarie, *Travail et Développement durable*, RDT 2020, p. 601 ; F. Héas, *Le droit du travail est-il ouvert à la question environnementale*, Rev. Jur. Env. 2020, HS/20, n° spécial. ; C. Vanuls et A. Bugada, *La question de l'implication environnementale de la collectivité de travail*, in *L'apport du droit privé à la protection de l'environnement*, Mare et Martin éd., coll. Droit, science et environnement, 2021.

² J.-Y. Naudet, *La CFTC, le syndicalisme confessionnel et la Doctrine sociale de l'Eglise*, in *la Doctrine sociale de l'Eglise*, Tome 4, PUAM 2020, p. 219.

³ Modified statutes of the CFDT (2014) and CGT (2016).

⁴ *L'urgence d'un pacte social et écologique : pour donner à chacun le pouvoir de vivre (2019)* : www.publicsenar.fr/article/politique/berger-et-hulot-proposent-leur-pacte-social-et-ecologique-138693.

Therefore, if we adopt an empirical approach, it is not surprising that those engaged in social dialogue have already been inventive when concluding collective agreements. It is not time for the full implementation of 'green' agreements, though some 'green' clauses are already in force, irrespective of the level of negotiation. Many topics are covered: the improvement of information and consultation of the institutions representing personnel; collective performance indicators in terms of wage policy (profit-sharing); the promotion of eco-responsible behaviour; training promotion in order to fill green jobs; environmental protection (bad weather, pollution or heatwave); virtuous mobility, including teleworking (which is about to implement the duty of non-mobility). Group- or company-level collective agreements at the international level sometimes prove to be innovative, going beyond traditional occupational health and safety. Some of them even make reference to COP 21, WHO or ILO recommendations or SDOs (sustainable development objectives) promoted by the UN. In other words, some forward-thinking signatories draw on major international statements.

It is therefore interesting to present these developments, by adopting an approach that takes into account the reforms of collective bargaining in France and its conventional structure. The main idea is that company-level bargaining is privileged, allowing for initiatives and innovation. There is certainly a risk that those involved in company-level bargaining might have their social rights limited. Company-level agreements can be less favourable than branch-level ones when it comes to many subjects, as the legislator has reversed the hierarchy of conventional standards. Yet this might also be an opportunity to deal with current environmental issues, rethinking social and environmental democracy in the company. However, normative amendments must be accompanied by a profound cultural change. As predicted by Despax, who was among the first scholars to deal with this subject: "the environment could be negotiated in the same way as it is done wages, time, and working conditions"⁵. That was in 1993 and a lot of progress has been made since then. In order to assess these developments, it is sensible to make reference to a few fundamentals.

French social dialogue (collective bargaining) is characterised by three main levels of collective bargaining: the inter-professional level, the branch level and the company level, which does not exclude other levels (e.g. inter-branch agreements, inter-company agreements and group agreements). There is no longer any hierarchy between these levels. The primacy of company-level negotiations, with some exceptions, encourage other fields to implement

⁵ M. Despax, *Droit du travail et droit de l'environnement*, colloque SFDE 1993, Litec 1994, conclusion générale, p. 52.

subsidiarity. But above all, traditionally, collective bargaining is considered to be the preserve of representative trade unions. The weakening of the trade union audience and the will to promote social dialogue in all firms, including small-size ones, has led the legislator to lay down mechanisms for negotiating with other actors, i.e. workers and their representatives.

It is difficult to identify the reasons that have led to broadening the field of ‘industrial’ negotiations, which are strictly focused on traditional subjects, to include sustainable development. Social awareness – including trade union awareness – is one of these reasons. Among others, we can also mention the competition for the development of ‘soft laws’ (CSR), which in terms of density and diversity has benefitted from the porosity of more traditional standards, influencing collective bargaining. Major corporations have also perceived the interest in coordinating the action of their members in order to protect their brand image in markets that are sensitive to these ethical issues. However, the entry points of worker health and working conditions were seen as uncompartimentalized. The work environment is linked to external circumstances and vice versa⁶. The prevention of work-related accidents has long been given priority, it being so the increase in safety obligations – following a rise in asbestos-related diseases – has affected behaviours and practices in important respects.

2. The Inter-professional Level

The inter-professional level involves trade unions and certified employers’ organisations in manufacturing, construction, trade and services. Inter-professional agreements may be concluded at national, regional or local level, though the first is preferred. Their main purpose is to promote inter-professional solidarity mechanisms, to set the guidelines for branch-level negotiations on essential issues and to prepare legislative reforms. As for national, inter-professional agreements (NIA), the expression ‘legislative negotiation’ is used, as the content of these agreements is often ratified by a subsequent law. Moreover, the legislator has also confirmed the importance of this level of negotiation, by enshrining in the Labour Code⁷ the government’s commitment – in the event of a reform project concerning labour relations and vocational training – to arrange prior consultation with representative organisations at the national, inter-branch level in order to enter into negotiations. Even though inter-professional negotiations have been declining in recent years (9 agreements concluded in 2018 as compared to 18 agreements

⁶ C. Vanuls, *Travail et environnement*, abovementioned.

⁷ Labor Code, article L. 1.

in 2017)⁸, these negotiations are still hold a major role. However, few NIAs relate to sustainable development.

Five agreements may be referred to in this regard: 1) the 1975 framework agreement on the improvement of working conditions⁹, which states that improvement measures must take account of the physical working environment (temperature, lighting, ventilation, noise, dust, vibration, etc.) both for those operating inside the factory and, where appropriate, for those living in the surrounding area 2) the 2013 *Quality of Life at Work* (QLW) NIA¹⁰, which offers a ‘systemic’ social approach to the improvement of working conditions and business performance 3) The NIA on the *Safeguarding of Employment* (2013)¹¹, which contains an appendix on the information to be transmitted to employee representatives from a single database. It is stated that economic and social information should also include elements to assess the environmental consequences of the company’s activity 4) The NIA on *occupational health* recalls an important aspect in the field of occupational risk prevention¹², i.e. external risks must also be taken into account (health and environmental risks). Anticipatory or corrective actions must be implemented by giving priority to primary prevention and by considering the instructions issued by public authorities in the event of a crisis 5) The NIA on telework (2020) was concluded amid the pandemic crisis¹³. The text distinguishes between exceptional telework (during a crisis) and traditional telework (permanent way of working). The agreement considers the local and environmental impacts of telework, recommending that a practical investigation be carried out. It follows that this work arrangement can have positive effects on the environment (travel reduction), while doubts can be cast about the use of digital tools which are likely to increase energy consumption. The social partners therefore call for a balance to be sought between the challenges of ecological transition and digital transformation.

In recent years, some important reforms have changed the role of industry- and enterprise-level bargaining (see below). For this reason, the social partners operating at inter-professional level seek to review social dialogue in order to

⁸ La négociation collective en 2018, Bilan et rapport, Ministère du travail, 2019, 191.

⁹ Framework Agreement of 17 March 1975 amended by the agreement of 16 October 1984 on the improvement of working conditions.

¹⁰ NIA of June 19 2013 towards a policy for improving the quality of life at work and professional equality.

¹¹ NIA of January 11 2013, for a new economic and social model promoting the competitiveness of firms and safeguarding the employment and the career paths of employees.

¹² NIA of 9 dec. 2020, for reinforced prevention and a renewed offer in terms of occupational health and working conditions.

¹³ NIA of 24 Nov. 2020, for a successful implementation of telework.

consider current constraints and deal with subjects of general interest. French employers responded to the union’s proposals at the end of 2018, putting forward an agenda¹⁴ on major topics, including «the consequences of digital and ecological transitions on the organisation of work». It is therefore likely that these issues will be dealt with at the inter-professional level soon. Some agreements concluded at this level cannot be referred to as proper inter-professional collective agreements, so they are loosely referred to as ‘soft law’. In this respect, the CPME (employers’ confederation of SMEs) concluded a “deliberation” on CSR in VSE-SMEs in¹⁵ 2017 with five trade unions¹⁶. The unanimity reached within the employee confederations contrasts with the employers’ division, since the other employers’ interprofessional organisations refused to sign the document. The aim of this deliberation – which takes the form of an agreement – is to offer professional branches and an experimental framework to identify sectoral indicators and to promote CSR strategies in small enterprises (as understood in ISO 26000 standard).

The deliberation is mainly focused on: clarifying the role of representative institutions in CSR, negotiating CSR agreements, creating monitoring indicators, and promoting framework agreements between main and subcontracting SMEs. The deliberation also encourages action in favour of environmental protection. The target of VSEs is interesting, since according to a national survey less than one employee in two (44%) believes that their company is environmentally committed (BVA survey for Club MediaRH, April 2019). This agreement (in the sense of a general commitment) intends to turn CSER into a tool for strengthening social dialogue.

3. Professional Branches

The professional branch level remains a privileged channel for collective bargaining. Following recent reforms (2016-2017), the branch-level bargaining is now given two additional tasks: to define employment terms and working conditions, as well as other aspects expressly referred to by the law¹⁷ (minimum

¹⁴ Proposed social agenda dated October 10 2018, by Medef (Mouvement des entreprises de France), CPME (Confédération des petites et moyennes entreprises) and U2P (Union des entreprises de proximité). –V. Liaisons sociales Quotidien, October 12 2018, 2. – The proposal 2020 from Medef is on the same path: *Proposal for an autonomous social and economic agenda for a useful, renewed paritarism that accompanies transitions* (this new proposal emphasises the climate transition for the companies).

¹⁵ Joint deliberation of the social partners on CSER in VSE-SMEs of December 21st 2017, Liaisons sociales Quotidien, June 18 2018, 2.

¹⁶ CFDT, CFE-CGC, CFTC, CGT and FO.

¹⁷ Labor Code, articles L. 2253-1 and L. 2253-2.

wages, job classifications, etc.) and to deal with aspects of general interest, e.g. regulating the competition between the companies falling within its scope. Since 2014, France has embarked on a major review of professional branches in order to considerably reduce their number¹⁸. The aim is to better structure institutional social dialogue, focusing on sectors possessing high visibility nationwide. Even in this case, the collective agreement is still intended to deal with employment conditions, vocational training and social rights in the professional categories concerned. Yet the collective agreement is concerned with more aspects. Branch-level collective agreements and conventions are negotiated and concluded by the trade unions and employers' organisations representing the branch in question. Branch-level collective bargaining most often takes place at national level (around 75% of agreements). Since 2013, industry-level collective bargaining activity has increased (around 1,300 agreements concluded in 2018)¹⁹.

Negotiations usually involve wages, job classifications, gender equality, vocational training and financial participation. There has also been a significant increase in agreements regarding bargaining conditions. In some professional branches (e.g. public works)²⁰ CSEER agreements are also concluded to encourage companies to promote environmental awareness. Some of these agreements, which concern general policies, are called "declarations", depriving them of the normative connotation making them immediately binding and turning them into a soft-law tool. One example of this is the Declaration of the social partners of public works for infrastructure for ecological transition and employment (November 25 2016). This declaration is interesting because it is sector-based (Public Works) and involves the most relevant employers' federations in the sector and four employee representative federations. It is specified that companies in the public works sector should put forward solutions for climate change, the increase of the efficiency of resources, the preservation of biodiversity, the reduction of pollution (improvement of the living environment). This sector undertakes to identify the new skill needs linked to the ecological transition, to provide ecological training for public works professions, to channel the funds for professional training into the ecological transition, to promote training and research development through partnerships with relevant players. This is *per se* an action programme applied to the entire profession.

¹⁸ Going from 700 branches to 200 branches (or even less).

¹⁹ Collective Bargaining in 2018, Report cited above, 193.

²⁰ Agreement on Corporate Social Responsibility of 7.04.2011.

4. Company-level Bargaining

The enterprise level refers to the local level – i.e. it includes establishment, group or inter-company negotiations. This bargaining level is therefore to be understood in a broad sense. Following the 2016 and 2017 reforms, company-level bargaining has been regarded as the most relevant one. The law reasserts the primacy of the enterprise-level agreement over the branch-level one²¹, specifying when the latter might prevail if includes at least the same safeguards as the former²². The subsidiarity of the branch agreement in relation to the enterprise agreement is legitimised by the ‘majority agreement rule’ now imposed by law²³. The latest reforms reflect the legislator’s will to strengthen and promote collective bargaining in all companies, irrespective of their sizes. To this end, new mechanisms have been introduced to enable companies without trade union representatives to negotiate agreements with other actors²⁴. In very small enterprises without collective representation, the employer may submit a draft collective agreement directly to the staff through a referendum. However, the subsidiary – rather than alternative – nature of this practice is not such as to call into question the acknowledged prevalence of representative trade unions. When they are in the company, they retain a major role in social dialogue. In 2018, there were approximately 62,000 texts (agreements and amendments) concluded in companies and then registered²⁵. The main topics of negotiation concern trade union rights and employee representative institutions, wages, financial participation and working time.

At the company level – and more specifically at the group level – sustainable development and profession of faith the environment are fully covered by collective bargaining, without however being predominant. Examples of this type of agreements include the Terega Group’s agreement on the promotion of gas use and a positive environmental balance (May 2018) and the Total Group’s agreement on sustainable development (March 2016). There are also

²¹ Labor Code, Article L. 2253-3.

²² Labor Code, Articles L. 2253-1 and L. 2253-2.

²³ The majority nature of the agreement is assessed in relation to the number of votes obtained by trade unions in company elections. However, the procedures for concluding the branch-level agreement differ from those of the company-level agreement. The latter must necessarily be concluded by trade unions representing 50% of the votes obtained in elections. The branch-level agreement may be concluded with at least 30% of votes, provided that it is not opposed by the majority of trade unions operating at the branch level): Labor Code, art L. 2232-6.

²⁴ With an employee mandated by a representative trade union in the branch or with elected employee representatives.

²⁵ Ministère du travail, *La négociation collective en 2018, Bilan et rapport*, 2019, 206.

agreements specifically dedicated to CSR (a broader theme than environmental issues). The Casino Group's CSR Agreement (April 2014), the GDF Group's European CSER Agreement (2008), the Merck Santé Group's Agreement to Live-CSR (2010) and the Valéo Group's CSR Agreement (2012) can be mentioned here. However, two observations can be made here. Firstly, these groups have a European or even global dimension, which raises questions about the normative scope of these agreements (mandatory nature, applicable law, etc.). Secondly, it is especially during negotiations on specific topics (profit-sharing, teleworking, quality of life at work, etc.) that clauses incorporating environmental criteria are found. Negotiations on environmental issues are therefore scattered in agreements whose primary purpose does not necessarily reflect this secondary concern.

5. Informal Social Dialogue

It seems that the environmental issue has been given little consideration in formal social dialogue, being dealing with by means of “soft law” instruments, the legal value of which raises questions from a CSR perspective. This form of dialogue can be found at all levels, even if it is more frequent at company- and group level (especially internationally). In this sense, “charters”, “codes of good practice” or “codes of good conduct” are often drawn up unilaterally by managers or, in certain sectors, by professional unions (i.e. employers' unions)²⁶. Some documents take the form of guides²⁷. Sometimes charters are adopted in the framework of agreements signed with staff representatives²⁸ but concluded disregarding the legal provisions on the validity of the negotiated acts. These agreements are then qualified as atypical agreements or unilateral commitments of the employer; they do not have the legal nature of a genuine collective company agreement²⁹. Most of the times, these charters affirm the company's adherence to sustainable development values and lay down principles of action that reflect the will to promote environmental protection³⁰. These texts are based on a purely voluntary approach. They are an integral part

²⁶ Example: the *Environmental Charter* adopted by the Union Nationale des Industries de Carrière et Matériaux de Construction (stone quarry and construction material industry).

²⁷ E.g. CSR Guide (Medef, 2012): *Les Patrons se dotent d'un guide de la RSE*, in *Liaisons sociales Quotidien*, June 14 2012, n. 16121; The Medef and ORSE publish a guide on sectoral CSER initiatives, in *Liaisons sociales Quotidien*, July 22 2016, n. 17127.

²⁸ Solvay Group Charter on *Sustainable Development and Corporate Social Responsibility* adopted by agreement between the Group's management and the European Works Council.

²⁹ Agreement on the Valeo Group's CSR (2012) which integrates the Group's charter and code of ethics but signed with the representatives of the European Works Council Bureau.

³⁰ B. Teyssié, *Les chartes éthiques*, JCP S 2021, 1018.

of the communication strategy of the company or group and do not always carry real legal value. Some charters, for example, mention the need to develop internal communication and awareness-raising actions for employees on the commitments made in terms of environmental protection, but are totally devoid of any comminatory character. Nevertheless, their legal effectiveness can be recognised depending on their content³¹. When they grant employees additional rights or benefits, the existence of a unilateral commitment by the employer may be accepted in order to compel the latter to comply with its obligations³². However, a unilaterally drawn up charter (or code of conduct) may not be the source of obligations for employees, the violation of which could give rise to sanctions³³. However, the impact of these charters should not be minimised insofar as, on the one hand, they raise awareness among employees to adopt eco-responsible behaviour and³⁴, on the other hand, they may encourage companies to take into account the objectives and commitments stated during the negotiation of their collective agreements. There is nothing to prevent CSER from being interfered with at a second stage in collective bargaining rounds. An important national report by the former Director General of Labour (J.-D. Combrexelle)³⁵ submitted to the Prime Minister, suggests precisely the “opening to collective bargaining of new fields of labour relations”, including Corporate Social Responsibility (CSR).

On the borderline between collective bargaining and the development of company charters, there are also public policy actions that take the name of “environmental collective agreements” or “charters”, but in singular normative environments. These documents include sustainable development commitments that can be signed by companies, or professional organisations (generally employers’ organisations) directly with the public authorities. Thus, within the framework of the National Food Programme (PNA)³⁶, operators in

³¹ I. Desbarats, *La RSE en droit français: un champ d'évolutions normatives*, in *Droit social*, 2015, 572.

³² Cass. soc., 14 Jan. 2003, n. 00-43879: Bull. civ 2003, V, n. 7. Some charters include a commitment to provide employees with specific training programmes: e.g. the Antalis Group’s Sustainable Development Charter and the Randstad France Group’s Sustainable Development Charter.

³³ Unless regularly incorporated into the company’s internal rules; V. Cass. soc 8 déc. 2009, Bull. civ 2009, V, n. 276.

³⁴ For example, by taking into account in the evaluation of employees their action in favour of environmental protection in the exercise of their professional activity: e.g. GDF-Suez Group’s Environmental Charter.

³⁵ Report to the Prime Minister, Collective Bargaining, Labour and Employment, September 2015, Proposition 31 (<https://www.gouvernement.fr/partage/5179-rapport-la-negociation-collective-le-travail-et-l-emploi-de-jean-denis-combrexelle>).

³⁶ Inter-ministerial mechanism to promote safe, healthy, sustainable and accessible food for all.

the agri-food sector³⁷ have the possibility of concluding collective agreements with the State that set quantifiable objectives.³⁸ Four examples can be highlighted here:

- the agreement signed by Herta and the Ministry of Agriculture (February 2014) includes various commitments on sustainable production and processing methods and the preservation of natural resources;
- the agreement signed by the Davigel company (July 2016), aimed at «improving the sustainability of production, processing and distribution methods», in particular by reducing the ecological footprint when distributing products (commitment to reduce the energy consumption of its vehicles) and by increasing the volumes of products from farms committed to approaches that promote production with a lower environmental impact;
- the agreement signed in June 2014 by the National Refreshments Union (which includes among its members: Coca-Cola entreprise, Danone eaux France, Nestlé waters France, Pepsico France ...). This agreement includes sustainability commitments (reduction of water consumption, reduction of the impact of packaging and promotion of recycling);
- following the same approach, in the road haulage sector (TRM), the Ministry of Ecology, Sustainable Development and Energy and the French Environment and Energy Management Agency (ADEME), in consultation with professional organisations, have drawn up a document open for signature by companies in the sector and entitled: *Charter of voluntary commitments to reduce CO2 emissions*, known as the *CO2 target charter*. By signing it, the company undertakes to implement a three-year action plan to achieve quantifiable objectives.

These agreements are more like a form of partnership with public institutions allowing companies to obtain a sort of label³⁹. This approach is part of the communication strategy of companies wishing to improve and enhance their

³⁷ Interprofessional organisations, professional federations, trade unions, or even one or more companies justifying a significant impact on a family of products: art R 230-36 of the rural and sea fishing code.

³⁸ Art L. 230-4 of the rural and sea fishing code.

³⁹ For agreements under the PNA (national food programme), it is the Minister in charge of Food who grants State recognition: art R 230-36 of the Rural Code. For the TRM sector, the signature of the CO2 objective charter allows the company to use the *Objectif CO2* logo and to benefit, according to precise criteria, from an environmental label issued by the Ministry and ADEME.

image in the eyes of the public, financial partners and customers who are increasingly sensitive to environmental issues⁴⁰. Moreover, the only sanction provided for in the event of failure to comply with the commitments and objectives set, is the withdrawal of State recognition or labelling. This sanction and the publicity given to it are necessarily likely to affect the image of the companies involved⁴¹. These measures are part of the numerous CSR measures.

6. Transnational Agreements

CSER is one of the preferred topics for companies or groups of companies with a transnational, international or global dimension. This is true of collective bargaining, although the environmental dimension is a special dimension backed up by the promotion of fundamental social rights. This level of negotiation poses many difficulties which will not be dealt with here. These include the problem of recognising the representativeness of the partners, the enforceability of the agreement, the identification of a competent judge (or dispute resolution body) and the applicable law. Here we will focus only on the content (green or eco-friendly clauses).

The European Union space has provided a fruitful framework for free negotiations, without depending on the normative mechanisms of the European Union. There is therefore an interesting community dialogue between European social partners, which goes beyond the institutional dimension alone to also deal with subjects that are free and not programmed by the European Commission (autonomous agreements)⁴². One thinks of the framework agreements on telework (2002), stress at work (2004) or the framework agreement on inclusive labour markets (2010). Some agreements have an inter-professional scope and an evasive texture, while others are sectoral, and become more specific to concern a branch of activity (agriculture, seafarers, telecommunications, etc.). A 2006 agreement is worth mentioning here because it relates to the protection of workers’ health in the handling and use of crystalline silica⁴³ (risk of lung cancer). The environmental issue is not directly addressed but the targeted industrial sectors are numerous (chemicals, ceramics, construction, cosmetics, electronics, coatings, pharmaceuticals, etc.).

⁴⁰ The signature of the CO2 objective Charter leads to the registration of the signatory company on the list on the website.

⁴¹ The withdrawal decision is made public on the Department’s website.

⁴² B. Teyssié, *Droit européen du travail*, 6th ed. LexisNexis, 2019, 648 et seq.

⁴³ Agreement No 2006/C 279/02 of April 28, 2006 on the protection of workers’ health through the observance of good practice in the handling and use of crystalline silica and products containing it.

The agreement mentions that crystalline silica is abundant in nature and represents approximately 12% of the earth's crust, with the industrial sector focusing on the use of quartz and cristobalite. The agreement promotes good practices, including for non-employees occupationally exposed to silica dust. In general, these European agreements serve as a guide for national negotiations (declination) or are transposed by national agreements. Sometimes the Council of Ministers of the European Union takes a decision to make them more immediately enforceable. However, the impetus for environmental promotion through collective bargaining is still sluggish within the European Union, contrary to the initiatives of large European or international companies or groups.

For the time being, Union law accompanies professional or interprofessional agreements. A European framework is still pending for collective agreements with a European dimension for companies or groups. There is no directive on the subject, but a simple resolution of the Parliament is shaping the landscape (2013)⁴⁴. In practice, however, a useful anchoring point can be found when there is already a European works council within the scope of negotiation. This is the case, for example, of the recent agreement of the Michelin group setting up a world works council (Agreement of January 27 2020). This global employee representation body is designed as an economic, social and environmental observatory between the group's management and the trade unions of the various countries concerned⁴⁵. It is based, according to press releases, on the achievements of the Michelin⁴⁶ European Works Council.

That being said, and in terms of substance, certain eco-compatible subjects are more easily addressed from the point of view of social responsibility⁴⁷, well-being at work⁴⁸, ethics (social charter)⁴⁹, the promotion of teleworking⁵⁰ or exposure to heat and cold⁵¹. In reality, in this age of globalisation, the European framework is not always sufficient to satisfy the aspirations of transnational, intercontinental or global companies. Global agreements are booming, as large companies have understood the usefulness of management

⁴⁴ European Parliament resolution, 12/09/ 2013, Social Links Europe, 2013, No. 337, 1.

⁴⁵ Liaisons sociales quotidien, February 6, 2020, 1: The Michelin Group is setting up a worldwide social dialogue body.

⁴⁶ AEF, The Michelin World Committee is officially created by an agreement with IndustriALL Global Union, dispatch 820773, of January 28, 2019.

⁴⁷ Agreement of 17 May 2013, Geopost Group; Agreement of 7 January 2017, Pernod Ricard Group.

⁴⁸ Agreement of May 23, 2013, Lafarge Group; Agreement of November 27, 2014, Bayer Group.

⁴⁹ Agreement July 10, 2013, Air-France KLM Group (social and ethical charter).

⁵⁰ Agreement May 16, 2017, Generali Group.

⁵¹ Agreement July 10, 2018, DS Smith Packaging Group (employee exposure to heat stress).

by social standards, which protect fundamental rights but also their brand image, especially as these companies know how to communicate on this type of agreement⁵². This makes it possible to create a synergy between subsidiaries in order to anticipate foreseeable tragedies. Conventional CSER becomes a receptacle for human rights, the UN Global Compact,⁵³ ILO standards⁵⁴, SDOs and other CSR tools. The legality of international collective agreements is questionable because such tools are confronted with issues relating to international law and are deployed without any real framework⁵⁵. Many of these agreements are thus conceived as «gentlemen’s agreements»⁵⁶ simply taking the appearance of a contract and, when it is more than that, the actors face a puzzle as to the material and territorial scope of application. As one author points out, the international collective agreement “still does not exist as a legal category, even though it is linked to legal orders that are conducive to inter-normativity”⁵⁷. In relation to the content of the green clauses, IFAs are often declamatory: one naturally finds references to support a just transition, to the⁵⁸ reduction of the environmental⁵⁹ footprint, to environmental protection⁶⁰ or to a sustainable development policy⁶¹, including by reference to SDOs or ISO standards (26000 or 14001)⁶². Some agreements specify how they are committed to “environmental management”⁶³ and intend to link the control of professional risks and the reduction of the environmental footprint of their

⁵² R. Bouguignon, A. Mias, *Les accords cadres internationaux: étude comparative des ACI conclus par les entreprises françaises*, Report for the ILO, 2017 (www.ilo.org).

⁵³ Global agreement on social responsibility between Rhodia and ICEM, March 25, 2008; Corporate social responsibility, Global agreement, Total, January 22, 2015.

⁵⁴ International Agreement for the Promotion of Social Dialogue and Diversity for the Respect of Fundamental Rights at Work, Carrefour, October 3 2018.

⁵⁵ M.-A. Moreau, *La spécificité des accords mondiaux d’entreprise en 2017: originalité, nature, fonctions*, ILO Report (www.ilo.org).

⁵⁶ B. Teyssié, *Droit du travail – Relations collectives*, LexisNexis 11th ed. 2018, 837.

⁵⁷ I. Daugareilh, *Enjeux et limites du contrôle des ACI: l’exemple des entreprises françaises*, in *La responsabilité sociale de l’entreprise, vecteur d’un droit de la mondialisation?*, Bruylant, coll. *Paradigme*, 2017, 54.

⁵⁸ EDF Group Global Framework Agreement on Corporate Social Responsibility, June 19, 2018.

⁵⁹ Global Framework Agreement on Social, Societal and Environmental Responsibility between the Renault group and the Renault Group Committee and Industriall, Global Union, July 2nd, 2013.

⁶⁰ Global Agreement on Fundamental Rights, Société Générale, 4 February 2019.

⁶¹ Agreement on fundamental rights and the global social base, BNP Paribas, 18 September 2018; Global Framework Agreement on Working Conditions, Corporate Social Responsibility and Sustainable Development, Safran, 18 October 2017; Global Agreement on Fundamental Rights, Social Dialogue and Sustainable Development, GDF-Suez 19 November 2010.

⁶² Agreement on the social responsibility of the EDF Group, December 10, 2008.

⁶³ Global Framework Agreement on Corporate Social Responsibility of the PSA Group 2017.

activities, in particular by aiming to decarbonise the environment⁶⁴, control energy consumption and combat climate change. References are made to the production of conventional waste, recycling and recovery, landscaping and the dissemination of environmentally friendly technology. A bold formulation was found, inviting the companies covered by the global agreement to apply a “precautionary approach to environmental problems”⁶⁵ (far-reaching reference to the precautionary principle)⁶⁶. Or, for an important Belgian group, the assertion that it was integrating the principles of sustainable development into its decision-making processes⁶⁷. Other clauses relate to patronage⁶⁸ aimed at supporting actions of general interest⁶⁹ via local organisations within the framework of environmental or solidarity projects taking into account the essential needs of local communities. These agreements show great inventiveness, even going so far as to promise special attention to the quality of the food supply and alternative models of catering in the workplace (short and organic circuits)⁷⁰. In this context, three clauses deserve special mention in view of the nature of the commitment they enshrine.

Example 1 (subcontracting): In order to ensure that the agreement is not merely declamatory, a type of clause has been identified concerning the consequences of misconduct, particularly by subcontractors. It stipulates that “any serious breach of the legislation concerning the health and safety of direct and indirect employees, environmental protection and fundamental social rights and which is not corrected after a warning, will lead to the termination of relations with the company concerned in compliance with contractual

⁶⁴ European Agreement on the Social Responsibility of the Gaz de France Group, July 2, 2008

⁶⁵ Global Framework Agreement on Social Responsibility and Sustainable Development, Solvay, 3 February 2017.

⁶⁶ The precautionary approach is present in the EDF agreement (December 10, 2008). But it concerns the voluntary attitude of anticipation and monitoring in scientific and technological fields.

⁶⁷ Global Agreement on Sustainable Development, Umicore, 21 October 2015. For a commentary on this agreement: A. Lamine, *Analyse de l'accord Umicore, mise en oeuvre et valeur juridique*, in *La responsabilité sociale de l'entreprise, vecteur d'un droit de la mondialisation ?* préc. 79.

⁶⁸ Agreement on Fundamental Rights and the Global Social Base of BNP Paribas, 18 September 2018; European Agreement on Corporate Social Responsibility (CSR), Pernod Ricard, 7 January 2017 (the agreement refers to the creation of the Observatory of the Sea (1966). The Paul Ricard Oceanographic Institute is still reportedly the only private environmental sponsorship initiative in Europe).

⁶⁹ Agreement on the social responsibility of the EDF Group, December 10, 2008.

⁷⁰ Building the world of work together within the Renault group – Framework agreement on changes in working life, July 9, 2019.

obligations”⁷¹. This type of clause is interesting in practice. The measure should be put into perspective with the evolution of French law (2017) which imposes a duty of vigilance in the subcontracting and supply chain of large transnational corporations (prevention of serious violations of human rights, fundamental freedoms, health and safety of persons and the environment)⁷².

Example 2 (global warming): “To contribute to the reduction of climate change, the Group undertakes to regularly measure its impact on the generation of greenhouse gases, the main one being CO₂, whether through its direct activities (production sites) or its purchases (emissions due to raw materials or packaging materials purchased from suppliers). This primarily concerns upstream industrial activities, but will have to be extended to distribution activities (transport to and within markets). Thanks to these assessments, priorities will be established to take action to reduce these emissions, notably in dialogue with suppliers but also by encouraging logistics teams to work on several levers: type of transport, load optimisation, planning. When this is not feasible, the Group encourages its subsidiaries to consider the possibility of participating in offsetting actions as defined by recognized programs in this area (carbon credits)”⁷³. This excerpt was chosen because it illustrates how the group, among all other environmental measures, emphasizes the global issue of global warming. The work of the logistics teams is highlighted as well as a general philosophy of compensation and optimization.

Example 3 (promotional action)⁷⁴: “Eurosport ensures that the productions, products and innovations it develops incorporate, in their design and use, the challenges of sustainable development. On the one hand, employees are regularly made aware of the subject of sustainable development through headings in the company’s internal publications, particularly on the intranet site. On the other hand, like any media group, Eurosport’s major environmental impact is its ability to raise public awareness of this issue”. This provision is illustrative of how the collective labour agreement can become the vehicle for widespread internal and external promotional actions in favour of sustainable development. Above all, it is interesting given that it affirms a principle of “integrated” sustainable development at all stages of the group’s economic action.

⁷¹ Lafarge Agreement, Corporate Social Responsibility on international labor relations, May 21, 2013; EDF Agreement, EDF Group Social Responsibility, December 10, 2008.

⁷² Law n. 2017-399 28 March 2017, known as the Sapin II law: Article L. 225-102-4 Commercial Code.

⁷³ Pernod Ricard agreement, abovementioned.

⁷⁴ Global Agreement on Fundamental Social Rights, Eurosport, 10 October 2012

6. Conclusion

The topics of collective bargaining with an environmental sounding (more or less proven) are varied. There are the classic ones relating to health, safety and the environment, especially in high-risk companies. But there are also awareness-raising and promotional actions in favour of eco-responsible behaviour or aid for the transformation of sectors that are moving towards energy transition (green jobs, qualifications, bio-waste, virtuous mobility, reduction of the carbon footprint, remuneration policies, etc.). It is interesting to note that the work of the Citizen's Convention for the Climate⁷⁵ (June 2020) highlighted the challenges of transforming the production apparatus and trades. Many economic players will see their activity disappear under the effect of several factors (including the appearance of new technologies). Adaptation is vital. It is crucial to support companies and employees in this transition. In terms of the environment, innovation cannot only be technical; it must also be social, and therefore cultural. Social dialogue at all levels (cross-industry, branch, group, company) deserves to play a driving role in accompanying the societal change that future generations will be facing.

Like a living doctrine, social ecology is also spreading more widely in collective bargaining spaces. The law is gradually distilling subjects with a strong influence on collective labour relations. Firstly, it broadened the scope of reporting on extra-financial performance for companies with more than 500 employees (2012)⁷⁶. It then introduced an environmental alert right for employee representatives (2013)⁷⁷. The legislator has strengthened conventional initiative and innovation by giving primacy to company agreements (2016-2018). In 2019, it adopted a law on mobility obliging companies to negotiate on virtuous transport⁷⁸. In the same year, the Pact law amended the civil code by stating that all companies are managed with social and environmental issues in mind⁷⁹. In March 2021, a law inspired by the Citizen's Climate Convention is being debated in the National Assembly, reinforcing the environmental rights of staff representation (information/consultation) and collective bargaining on the evolution of skills

⁷⁵ The citizens' convention was decided by the President of the Republic. Built on the format of discussion groups based on a conception of participatory democracy (national level), it has 150 members, made up of citizens and representatives of civil society. Its purpose is to formalise proposals with a view to the preparation of possible bills: www.conventioncitoyennepourleclimat.fr.

⁷⁶ Labor code, art. L. 2312-25, II, 2°.

⁷⁷ Labor code, art. L. 4133-1.

⁷⁸ Labor code, art. L. 2242-17.

⁷⁹ Civil code, art. 1833.

and trades in the face of the green transition⁸⁰. Inevitably, in the light of this development, trade union organisations are gradually deploying their policies and practices on the subject, also thanks to the influence of other civil society actors, such as non-governmental associations. Current events are prompting them to no longer dissociate social and environmental issues. It is true that companies did not wait long to develop CSR programmes, with a lot of publicity, involving employee representatives at several levels. The new generations of working people, who make up the rising cohort of workers, are now accustomed to the risks of environmental disturbances (of which global warming is - alas - only one of the most salient aspects). They are sensitive to this; they will change the company and the labour relations that are being built up in it. This is self-evident. Will they succeed? This is another question based on individual and collective responsibilities.

⁸⁰ Bill against climate change and building resilience to its effects (project n° 3875)

Collective Bargaining, Labour and Environmental Rights: the Spanish Experience

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Abstract

This article focuses on the Spanish Just Transition process through the role of collective bargaining, following the adoption of Law 2/2011, of 4 March, on Sustainable Economy. Taking into account the main findings of the Agreement project, this article deals with the ‘green’ clauses in Spanish collective agreements. Through the analysis of collective agreements signed at sectoral and company level, negotiators have included many environmental clauses, ranging from environmental principles of action of companies as economic agents and as an employer in labour relations to rights and obligations related to wages, transport, health and safety and information and consultation with workers. The new collective representation of workers and the interests in environmental matters are also examined. The important role of social dialogue is highlighted in relation to the conclusion of the new Just Transition Agreements. It is argued in favour of the interrelation of collective bargaining and environmental protection across the subjects analysed, highlighting the need to explore green jobs through new occupational categories and the potential of social dialogue at all levels.

Keywords: Just transition, collective bargaining, green clauses.

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1. Introduction

Collective bargaining in Spain is expected to play an important role in the transition from the current production model to a more sustainable one, not only in environmental but also in social terms. On the one hand, the Spanish government approved the Just Transition Strategy, adapting the criteria included in the International Labour Organisation (ILO) ‘Guidelines for a just transition towards environmentally sustainable economies and societies for all’ (2015). However, the Spanish strategy focuses on the actions of public authorities and the review of public policies, overlooking the role that social partners can play in the implementation of just transition. On the other hand, the ILO Guidelines contemplate the actions that trade unions and employers’ organisations can implement, thus claiming their leading role.

As pointed out by Chacartegui Jávega and Canalda Criado¹, collective bargaining in Spain shows a growing concern for environmental issues since Law No. 2 of 4 March 2011 on Sustainable Economy came into force². Through the analysis of collective agreements signed at sectoral and company level, negotiators have included different environmental clauses, ranging from environmental principles of action of companies as economic agents and as an employer in labour relations to rights and obligations related to wages, transport, health and safety and information and consultation with workers. This paper aims to highlight the most important aspects arrived at from the analysis and to underline the debates raised by environmental clauses in collective bargaining in Spain.

The examination of environmental clauses included in collective bargaining must begin with the constitutional recognition of both the right of workers to bargain collectively and the protection of the environment. On the one hand, the right to collective bargaining is recognized in Title I, Chapter II, Section 2 of the Spanish Constitution, under the heading ‘Rights and Duties of Citizens’. Article 37 of the Spanish Constitution represents a constitutional framework that requires further regulation to give substance to the law. There are three direct consequences of the location of this right in Section 2 of the Spanish Constitution: a) the right to collective bargaining prompts public authorities to take action; b) the regulation of the right to collective bargaining corresponds to the law (articles 37.1 and 53.1 of the Spanish Constitution) and c) if a legal provision violates the essential content of this right, it could be

¹ C. Chacartegui Jávega and S. Canalda Criado, *Labour and Environmental Sustainability. Spanish Report*, ADAPT, 2020. The research is currently being carried out under the Spanish project funded by the Spanish Ministry of Science ‘Decent working conditions in the frame of the Spanish Strategy of Just Transition’ (PID2019-108628GB-I00).

² Official State Gazette, 5 of March 2011.

unconstitutional pursuant to art. 61(a). However, Article 45 of the Constitution specifies that everyone has the right to enjoy a proper environment for personal development, as well as the duty to preserve it.

Our approach takes into account a point of contact between two elements: environmental aspects and labour rights³. The protective nature of both fields, particularly in terms of occupational health and safety, is a shared objective in Spanish collective agreements⁴. Moreover, in the field of workers' participation, the sustainable use of resources, the protection of the environment, the health of workers and the improvement of competitiveness have been included in statutory collective agreements.

2. Green Regulatory Clauses Relating to Working Conditions: a Win-Win Negotiation Strategy

The right to collective bargaining is laid down in Title III of the Workers' Statute⁵. Collective bargaining is part of the changing dynamics of collective action⁶. Collective agreements in Spain can be negotiated at the firm level or at the sector level. Regarding firm-level collective bargaining, Article 87(2) of the Workers' Statute establishes that not only unions but also works councils, which are compulsory in undertakings with more than 50 workers, and workforce delegates, which are compulsory in undertakings with 11 to 49 workers, can be signatory parties. Moreover, according to Article 87(2) of the Workers' Statute, unions can be signatories to collective agreements concluded at the national, regional or local level when applying to more than one firm. The legal effects of the collective agreement are generally applicable for the period for which the agreement has been concluded according to Article 82(3) of the Workers' Statute. In addition, Article 86 states that the conditions of a collective agreement have a certain effect that extends beyond the end of the agreement period. Moreover, the Workers' Statute distinguishes between 'regulatory clauses' (*cláusulas normativas*) and 'obligation clauses' (*cláusulas obligacionales*).

³ M. Rodríguez-Piñero y Bravo Ferrer, Medio ambiente y relaciones de trabajo, in *Temas Laborales*, 1999, n. 50, 7-18; M.P. Rivas Vallejo, La protección del medio ambiente en el marco de las relaciones laborales, in *Tribuna Social*, 1999, no. 103, pp. 9-27.

⁴ J. Jordano Fraga, *La protección del derecho a un medio ambiente adecuado*, Ediciones Bosch, Barcelona, 1995.

⁵ Royal Decree 2/2015, of 23 October 2015, Official State Gazette, 24 of October 2015.

⁶ J. López López, *Collective Bargaining and Collective Action. Labour Agency and Governance in the 21st Century?*, Hart Publishing, Oxford / Portland, 2019.

As for the need to change the Spanish productive model, the complexity of environmental problems demands a holistic and proactive approach⁷, rather than traditional enforcement mechanisms⁸. Regarding the regulatory clauses provided in sectoral collective agreements, some ‘green’ aspects include: the new job classification system and all the training duties associated to this; the impact of the environmental issues on remuneration; and sustainable transport plans. Following Dobson and Bell⁹, the question could be focused on the idea of what kind of subject one would have to be to fulfil the expectations of the good environmental citizenship, and employers and workers are not exceptions to this objective. Moreover, this query must be completed looking at the assumptions that underpin the construction of this idea in terms of environmental sustainability in the workplace¹⁰.

The provisions in the Spanish collective bargaining of the ‘green jobs classification’ show a clear objective of the social actors to provide employees with adequate new green skills and expertise in order to improve environmental performance¹¹. It is crucial for the green Spanish strategy to attract highly qualified staff by offering attractive employment opportunities in the field of green research and development, which drives the innovative capacity and technical progress of sustainable industry. In this sense, the most representatives trade unions and employers’ associations have paid attention to high and adequate qualifications, training and initiatives for lifelong learning as important preconditions for a competitive sustainable labour market, particularly in the ecological agriculture sector. Recalling the ILO recommendations in the early identification of skill needs for the low-carbon economy, Spanish social actors should engage in skill needs anticipation,

⁷ M.A. García-Muñoz Alhambra, *Derecho del trabajo y ecología: repensar el trabajo para un cambio de modelo productivo y de civilización que tenga en cuenta la dimensión medioambiental*, in L. Mora Cabello De Alba, J. Escribano Gutiérrez (eds.) *La ecología del trabajo: el trabajo que sostiene la vida*, Bomarzo, Albacete, 2015, pp. 39-54.

⁸ F. Pérez Amorós, *Derecho del trabajo y medio ambiente: unas notas introductorias*, in *Revista Técnico Laboral*, 2010, no. 124, pp. 173-200.

⁹ A. Dobson And D. Bell (eds) *Environmental citizenship*. MIT Press, Cambridge, MA, 2006.

¹⁰ J.F. Alenza García, G.L. Barrios Baudor, C. San Martín Mazzucconi, *La negociación colectiva como fuente del Derecho ambiental*, in *Revista Aranzadi de Derecho Ambiental*, Pamplona, 2003, no. 3, pp. 17-32; G.L. Barrios Baudor, *La negociación colectiva como instrumento de protección y educación ambiental*, in J.F. Alenza García (ed.), *Ambiente natural, empresa y relaciones laborales*, Aranzadi, Pamplona, 2009, pp. 691-821; C. Chacartegui Javega, *Negociación colectiva y sostenibilidad medioambiental. Un compromiso social y ecológico*, Bomarzo, Albacete, 2018.

¹¹ ILO, *Green jobs for Sustainable Development. A case study of Spain*, Paralelo Edición, Madrid, 2012. Available at https://www.ilo.org/global/topics/green-jobs/publications/WCMS_186715/lang--en/index.htm.

implementing either a quantitative or qualitative method¹², in sectors such as the metal industry, cement activities and alimentary industry. Thus, the growing concern for the environment and sustainable development leads the signatory parties to ratify in the agreements their commitment to the improvement of some actions, e.g. increasing the training and information of workers, taking into account the environmental regulations, as well as the improvements contained in Royal Decree 1/2016 of December 16, of Integrated Pollution Prevention and Control¹³. According to the skills that are necessary for the successful performance of the new tasks, collective agreements require urgent innovations in order to include provisions connecting working conditions with sustainability duties and obligations, particularly as regards remuneration. Where a job classification system is used for determining pay, it must be based on new skills and abilities, considering that feminist ecological patterns might be helpful tools¹⁴. As an illustration, these job classifications must to be revised in order to exclude gender discrimination, due to the new current regulations provided by Law 3/2007 of 22 March, on equal treatment between women and men¹⁵ and Royal Decree 902/2020 of 13 October, on equal payment between women and men¹⁶, according the provisions of Article 141(3) of the Treaty, and Articles 21 and 23 of the Charter of Fundamental Rights of the European Union and the Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast). The training duties associated with the new skills involve specialized knowledge relevant to implementing the Spanish green strategy¹⁷. Some skills are likely to become obsolete due to structural changes in the labour market (e.g. the production of coal heating systems or traditional light bulbs); some new skills will be created as new ‘green-collar’ occupations emerge, while some existing jobs will change. The primary questions are quantitative – in particular, how many entrants will be needed for the occupation – and this also requires one to define new training systems for the apprenticeship, combining on-the-job training and work experience with institution-based training¹⁸.

¹² ILO, *Anticipating skill needs for green jobs: A practical guide*, International Labour Organization Publications, Geneva, 2015, p. 12.

¹³ Official State Gazette, 31 of December 2016.

¹⁴ A. Zbyszewska, *Regulating Work with People and Nature in Mind: Feminist Reflections*, in *Comparative Labor Law & Policy Journal*, Vol. 40, no. 1, 2018, pp. 9-28.

¹⁵ Official State Gazette, 23 of March 2007.

¹⁶ Official State Gazette, 14 of October 2020.

¹⁷ H. Álvarez Cuesta, *Empleos verdes: una aproximación desde el Derecho del Trabajo*, Bomarzo, Albacete, 2016.

¹⁸ This is the case of the ‘Digital and Green Skills Vallès’ project managed by the County Council of the Vallès Occidental (Consell Comarcal del Vallès)¹⁸ in Catalonia which develops

A clear example is the new provisions concerning staff performing tasks in special environments, using technical skills and professional abilities, e.g. the cement industry¹⁹. Taking into account these new green skills, Spanish collective agreements have included some innovations concerning the wages of workers who perform tasks using technical skills and professional abilities. Thus, the impact on remuneration in some sectors –i.e. the cement industry²⁰— is designed through ‘green-friendly incentives’, which take into account the difficult environmental circumstances in which the tasks are carried out.

The mobility model based on collective transport and non-motorized means constitutes one of the sustainability foundations²¹. One of the proposals in Spanish sectoral collective bargaining is the progressive introduction of sustainable means of transport for workers. These methods are combined with energy-efficient, eco-driving practices, such as the gradual implementation of sustainable mobility plans for workers. For example, in the retail sector the most representative trade unions and employers’ association have concluded an agreement to improve the distribution of environmentally-friendly products. They have also committed to reducing emissions, increasing the use of sustainable vehicles or reorganizing routes through individual and collective mobility plans.

specific training programs focused on the circular economy and recycling operations meeting high standards of environmental protection and occupational health and safety. <https://digital4circular.com/>.

¹⁹ See the III agreement for the Sustainable Use of Resources, the Protection of the Environment, the Health of the Community and the Improvement of the Competitiveness of the Cement Industry (Spanish Official Journal 24 October 2017).

²⁰ S. Rodríguez Escanciano, “Sostenibilidad ambiental y prevención de riesgos laborales: reflexiones sobre el sector de la construcción ecológica”, *Revista del Ministerio de Trabajo, Migraciones y Seguridad Social*, núm. 138, 2018, p. 219-270; H. Álvarez Cuesta, “La sostenibilidad ambiental y social en el sector cementero. Comentario al III Acuerdo para el uso sostenible de los recursos. la protección del medio ambiente, la salud de las personas y la mejora de la competitividad del sector cementero español”, *Revista General de Derecho del Trabajo y de la Seguridad Social*, núm. 48, 2018, p. 420.

²¹ R. Sastre Ibarreche, Empleo y desarrollo del Protocolo de Kyoto: los derechos de implicación de los trabajadores, in *Revista General de Derecho del Trabajo y de la Seguridad Social*, 2009, no. 9.

3. Improving Occupational Health and Safety Provisions: an Environmental Perspective

Occupational health is a field of confluence when it comes to socio-ecological interests²². The organization of work according to sustainable patterns must take account of the general principle of adapting work to the worker. Furthermore, this is a context where decent work arguments become crucial²³. In this sense, the transition to a green economy has the potential to reduce exposure to workplace hazards and pollution risks. Taking into account these synergies, workers' involvement is promoted in order to overcome the erroneous perception of work and the environment as conflicting realities²⁴. As a result of global warming and the Spanish idiosyncrasy of extremely hot temperatures and heat waves, increased heat stress has become an obstacle to decent working conditions.

The notion of 'work environment' overlaps with that of the 'environment', due to many factors²⁵. This confusion between internal environment and external environment is a common trend in many sectors²⁶. Furthermore, experiences in some sectors, for example, tourism and construction, show that regulatory tools are crucial in order to implement measures to improve occupational

²² M.J. Rodríguez Ramos, M.J., Salud laboral versus medio ambiente: por una política de prevención de riesgos laborales también en el medio externo, in *Aranzadi Social*, 2002, n. 22, 1191-1214; P. Rivas Vallejo, El tratamiento del ambiente natural en el marco de las relaciones laborales, in J.F. Alenza García (ed.), *Ambiente natural, empresa y relaciones laborales*, Aranzadi, Pamplona, 2009, pp. 597-690.

²³ Álvarez Cuesta, *Empleos verdes: una aproximación desde el Derecho del Trabajo*, op. cit.

²⁴ J. Escribano Gutiérrez, Lavoro e ambiente: le prospettive giuslavoristiche, in *Diritto delle Relazioni Industriali*, 2016, no. 3, pp. 679-704.

²⁵ P. Tomassetti, Labour law and environmental sustainability, in *Comparative Labor Law & Policy Journal*, vol. 40, no. 1, 2018, p. 63.

²⁶ See, e.g. XXI collective agreement of extractive industry, glass and ceramic industry (Spanish Official Journal 23 November 2018); XIX collective agreement of chemical industry (Spanish Official Journal 26 July 2018); collective agreement of wood (Spanish Official Journal 11 September 2018); collective agreement of service stations (Spanish Official Journal 11 March 2020); collective agreement of paper and cardboard paste (Spanish Official Journal 9 July 2019); collective agreement of perfumes (Spanish Official Journal 20 August 2019); collective agreement of waste recycling (Spanish Official Journal 29 March 2019); IV collective agreement of rail services (Spanish Official Journal 28.3.2017); collective agreement of rail services' contractors (Spanish Official Journal 6 March 2018); III collective agreement of the metal industry (CEM) (Spanish Official Journal 11 December 2019); V collective agreement of the gardening sector (Spanish Official Journal 17 July 2018); collective agreement of the construction sector (Spanish Official Journal 21 September 2017); VI collective agreement for the real-estate sector (Spanish Official Journal 27 December 2019).

health and safety, such as new working time schemes, frequent rest breaks and workers' rehydration²⁷.

Health risks associated with environmental degradation should be prevented²⁸. Collective bargaining is indispensable for the successful implementation of adaptation measures. In the Spanish context, we find examples in sectors such as agriculture, forestry, fishery, energy, manufacturing, recycling, transport, construction and the chemical industry. The social partners in the Spanish chemical industry were convinced that high benefits in the area of health and safety and the reduction of occupational diseases would be difficult to achieve through legislation on chemical substances. In this field, the primary objective was to evaluate health and safety, with its comparably low record of occupational diseases. For example, social actors want to strengthen workers' protection by introducing endocrine disruptors as a category of hazardous substances under occupational health and safety rules and increasing the enforcement capacity in collective bargaining. To this end, the parties undertake to ensure that the prevention of occupational hazards and the protection of the environment are inseparable elements in the daily activities of companies and workers. They promote the study of the environmental processes and products used in the sector, proposing improvements and/or replacements with other products, when economically viable. From a gender perspective, women's bodies can act as chemical bio-accumulators and suffer consequences such as changes in the reproductive system and the outbreak of fibromyalgia, multiple-chemical sensitivity, chronic fatigue syndrome and an increase in breast cancer. Many toxic insecticides, solvents and heavy metals can accumulate particularly in women's bodies due to their higher concentration of fat cells²⁹. Nevertheless, the gender perspective is absent in the great majority of Spanish sectoral collective agreements. For this reason, the Spanish scholars underline the need to include specific provisions of occupational health from a gender perspective³⁰.

²⁷ III agreement for the Sustainable Use of Resources, the Protection of the Environment, the Health of the Community and the Improvement of the Competitiveness of the Cement Industry (Spanish Official Journal 24 October 2017; collective agreement of the construction sector (Spanish Official Journal 21 September 2017).

²⁸ C. Chacartegui, Workers' participation and green governance, in *Comparative Labor Law & Policy Journal*, vol. 40, no. 1, 2018, pp. 89-108.

²⁹ C. Valls-Llobet, Contaminación ambiental y salud de las mujeres, in *Investigaciones Feministas*, 2010, n. 1. From the same author, see Sesgos de género en medio ambiente y salud, in A. H. Puleo García (ed.), *Ecología y género en diálogo interdisciplinar*, Plaza y Valdés Ediciones, 2015, pp. 21-36.

³⁰ L. Mora Cabello De Alba, J. Escribano Gutiérrez (Eds.), *La ecología del trabajo: el trabajo que sostiene la vida*, Bomarzo, 2015; C. Chacartegui Jávega, *Ecofeminismo y corresponsabilidad: una*

Moreover, the proportion of lost working days work due to work-related injuries attributable to changing temperatures at work has been calculated, and the results also underscore the potential economic costs of this exposure³¹. The role of employers' associations and unions in developing sustainable solutions and fostering technical innovation is fundamental, especially regarding recent technologies and standards. Due to the importance of agriculture, tourism and construction in Spain³², heat stress affects workers in a negative way in terms of occupational health, particularly those that are vulnerable to extreme temperatures—as outdoor workers or workers with chronic medical conditions, e.g. heart or circulatory conditions, lung conditions, kidney problems or diabetes³³.

Extreme ambient conditions have serious consequences for occupational health at work, and reversing this trend from a shared social and ecological perspective requires empowerment. Spanish Royal Decree 485/1997 regulates the conditions of minimum and maximum temperature in the workplace, stating that the temperature should be between 17 and 27°C where sedentary work is taking place and between 14 and 25°C for light physical work. Temperatures exceeding 40° C are common in Spanish summers, but these can leave workers unable to work or cause a partial disability. The occupational health planning instruments provided by collective agreements could significantly help to mitigate heat stress and promote health benefits. These instruments are based on guiding principles. Firstly, mainstreaming climate change adaptation to companies' planning processes and diagnosing the health risks associated with heat stress and current climate variabilities. Secondly, adaptability through the implementation of occupational health responses—identification of the main risks and the implementation and adoption of specific measures for the monitoring of on-site weather conditions—to the main problems of health linked to heat stress. Thirdly, coordination of the overall health and safety adaptation process as a keystone for company strategies on this matter.

mirada desde Cataluña, in J. López López (ed.) *Derechos@género*, 2019, Bomarzo, Albacete, pp. 247-271.

³¹ E. Martínez-Solanas et al., Evaluation of the impact of ambient temperatures on occupational injuries in Spain, In *Environment Health Perspective* 2018, vol. 126, no. 6.

³² S. Rodríguez Escanciano, Sostenibilidad ambiental y prevención de riesgos laborales: reflexiones sobre el sector de la construcción ecológica, in *Revista del Ministerio de Empleo y Seguridad Social*, no. 138, 2020. pp. 219-270.

³³ J.L. Monereo Pérez, Medio ambiente de trabajo y protección de la salud: hacia una organización integral de las políticas públicas de prevención de riesgos laborales y calidad ambiental, in *Relaciones Laborales*, 2009, no. 100, pp. 481-538.

4. Information and Consultation of Workers on Environmental Matters: the Creation of 'Green' Employee Representative Bodies

The collective dimension of eco-labour rights is widespread in collective agreements including environmental clauses in Spain. As the analysis of collective bargaining showed,³⁴ around 50 per cent of company-level collective agreements (35 per cent if sectoral collective agreements are considered) that included environmental clauses contained provisions on the creation of new forms of collective representation of workers with environmental skills. These representative bodies have similarities with other entities in Germany and the UK.³⁵

As has been pointed out in earlier research³⁶, the creation of bodies representing workers' interests in environmental matters has been given new momentum since 2007, with the transposition in Spain of the 2002 Directive on information and consultation rights.³⁷ The transposition law included environmental matters among the possible terms of the information and consultation processes, although this was not provided for in the transposed Directive. However, the creation of the model for the representation of workers' interests and the structure of collective bargaining in Spain may have played a decisive role in promoting the creation of workers' representative bodies having a say on environmental issues.

Firstly, with regard to the model of worker representation, the law provides for the formation of unitary representation bodies (works councils and staff delegates) in workplaces. In addition, trade union organisations can create, through their affiliates, an internal structure within companies (trade union sections and delegates) to develop their trade union action. Despite this distinction, the fact remains that trade union organisations actively participate in the bodies of unitary representation for which they can submit their candidatures. In this way, they extend their action, strengthening the link between the action of trade union organisations and unitary representation bodies.

³⁴ C. Chacartegui Jávega and S. Canalda Criado, *Labour and Environmental Sustainability. Spanish Report, op. cit.*

³⁵ Eurofound, *Industrial Relations and Sustainability: the Role of Social Partners in the Transition towards a Green Economy*, Luxembourg, 2011, p. 8

³⁶ S Canalda Criado, La representación de los intereses de los trabajadores en materia medioambiental: la creación convencional de los 'delegados medioambientales', in *El Estatuto de los Trabajadores. 40 años después*, Ministerio de Trabajo y Economía Social, Madrid, 2020, pp. 1627-1648

³⁷ Official Journal of the European Union, L 80, 23 March 2002, pp. 29–34

However, the structure of collective bargaining has been articulated through bipartite agreements at state level between trade union organisations and the most representative employers' associations, especially since the decentralisation of bargaining promoted in the 1994 labour reform. At that time, the legislator regulated a new role for workers' representatives to implement certain company decisions. Since then, the social partners have taken over the promotion of information and consultation procedures through bipartite agreements signed at the State level. However, the social partners have also distributed the subjects that should be dealt with at the different levels of negotiation, including environmental matters. Specifically, these agreements have distributed environmental matters on two levels. On the one hand, since the bipartite agreement of 2003, environmental matters have appeared as a subject for the bilateral sectoral observatories created by the most representative trade union and employers' organisations. On the other hand, since the 2007 agreement, the actors have affirmed that informing workers' representatives about environmental actions that have direct repercussions on employment can count on the technological improvement of companies and thus overcome the impacts that could derive from environmental regulations.

In this context, it is possible to state that the creation of collective representation bodies specialised in environmental matters responds not only to a commitment of the social partners to facilitate dialogue in this field but it was also triggered by both legislation.³⁸ However, the creation of green workers' representative bodies by collective agreements has taken place in different ways, differing in the subjects involved, the scope of their functions and competences – especially in terms of information and consultation – and, finally, the guarantees of protection in the exercise of their competences.

Firstly, in both sectoral and company-level collective agreements, two ways of creating a green representative body can be distinguished: on the one hand, by extending the functions of existing workers' representative bodies, which include workers' health and safety representatives; and, on the other hand, by creating a genuine figure specialising in environmental matters. This new form of representation can be undertaken by a single worker called an 'environmental delegate' (*delegado medioambiental*). In very few cases does the new form of representation take the form of joint environmental commissions in the cleaning sector of Melilla³⁹ or environmental committees, the latter being

³⁸ P Tomassetti, Labour law and environmental sustainability, *op. cit.*, p. 80, highlighted the potential role of both EU and national legislation on information and consultation of workers.

³⁹ Melilla Official Journal 7 march 2014.

an exception among company-level collective agreements.⁴⁰ Although environmental delegates are often appointed from among the existing representatives, this does not imply an extension of the functions of the other bodies: the creation of the new figure usually confers new responsibilities and a direct dialogue with the company beyond the information and consultation processes provided for the other representative bodies.

Accordingly, the creation of green employee representative bodies represents an important innovation that favours the defense of workers' interests in environmental protection. On the one hand, it guarantees direct and specific dialogue between workers and employers on environmental matters, isolating environmental issues from other matters addressed by unitary representation bodies. In addition, if environmental representatives have received specialized training, the effectiveness of the dialogue would exponentially increase. On the other hand, unlike health and safety committees, whose competencies do not include collective bargaining, green employee representative bodies can negotiate and sign pacts on environmental issues if they have acquired this competence, reaching a high degree of influence on the environmental management of the company.

Secondly, the functions and competences that are granted to the environmental delegates often reproduce the functions and competences of the other employee representation bodies but restrict their material scope to environmental matters. However, as already discussed in another work,⁴¹ it would be desirable to explore other competences beyond information and consultation rights, strengthening the participation of workers' representatives in environmental decision-making, taking into account the provisions of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage.

And thirdly, the provisions contained in the collective agreements regarding guarantees for the exercise of environmental functions are noteworthy. Of all the sectoral agreements, the agreement for the sustainability of the cement industry stands out among the sectoral agreements where 'the time used by the environmental representatives for the assigned functions will be considered as the exercise of their competences as representatives and this time takes part of the use of the monthly paid hours'. This right to be paid for the time used for the exercise of their environmental functions is also very frequent in company-

⁴⁰ C. Chacartegui Jávega and S. Canalda Criado, *Labour and Environmental Sustainability. Spanish Report*, *op. cit.*, p. 86.

⁴¹ S Canalda Criado, 'La representación de los intereses de los trabajadores en materia medioambiental: la creación convencional de los 'delegados medioambientales'', *op cit.*

level collective agreements that have opted for the creation of environmental delegates.

In summary, the creation of collective representation of workers through environmental delegates is called to play a fundamental role so as it gives voice to workers at the workplace during the economic transition from our current production model to a more sustainable one. However, workers' approach to the environment –although not unique⁴²– must also be acknowledged by governments and other policy actors outside the workplace. In this sense, the need to give voice to workers has been pointed out by other authors such as Novitz in relation to the role of the ILO and the Sustainable Development Goals.⁴³

5. Social Dialogue and the Environmental Issue: New Perspectives Through Just Transition Agreements

The interest of the social partners – notably on the side of the trade unions⁴⁴– in the environmental issue is not limited to the inclusion of green clauses in collective agreements. As noted in that report, there have been other expressions of collective autonomy that have paid attention to the environmental issue.⁴⁵

Firstly, there have been experiences of institutional participation of social agents in social dialogue roundtables with governments to deal with environmental issues.⁴⁶ Recently, the Spanish Government and the social partners have recently signed the 'Agreement for Economic Recovery and Employment' (*Acuerdo por la Reactivación Económica y el Empleo*), stating that the strength and sustainability of the economic recovery is directly linked to the generation of new opportunities and jobs in emerging sectors, including the green transition of all productive sectors and the circular economy.

Secondly, the social partners have reached bipartite agreements where they express their concern to favour the inclusion of environmental clauses in collective bargaining. As mentioned above, the bipartite agreement of 2003

⁴² N Rätzl and D Uzzell, 'Trade unions and climate change: The jobs versus environment dilemma', in *Global Environmental Change*, 21, 2011, p. 1215–1223

⁴³ T. Novitz, 'Engagement with sustainability at the International Labour Organization and wider implications for collective worker voice in *International Labour Review*', vol. 159, no. 4, 2020, pp. 463–482.

⁴⁴ M. Gutiérrez Pérez, 'La protección del medio ambiente como factor condicionante de las relaciones laborales', *Revista Doctrinal Aranzadi Social*, vol. 3, no. 3, 2010, pp. 95–124.

⁴⁵ From a comparative point of view, the Spanish case would coincide with the initiatives implemented by the social partners autonomously or jointly with governments. See Eurofound, *Greening the European economy: Responses and initiatives by Member States and social partners*, 2009.

⁴⁶ See H. Álvarez Cuesta, *Empleos verdes: una aproximación desde el Derecho del Trabajo*, op. cit.

proposed including environmental issues as a subject for the bilateral sectoral observatories set up by the most representative trade union and employers' organisations. Later, the 2007 agreement suggested the introduction of environmental issues in the information and consultation processes. More recently, the 2015 bipartite agreement suggests negotiating measures to avoid, reduce or prevent the negative effects of 'environmental restructuring' on competitiveness and employment.

According with the ILO's view that cooperation between governments and the social partners will be key to the success of the green transformation of the economy,⁴⁷ it is noteworthy the involvement of social partners in the so-called 'just transition agreements' (*convenios de transición justa*) included in the Spanish Just Transition Strategy. Specifically, the Spanish government approved in 2019 the Just Transition Strategy with the aim of contributing to the transformation of the labour market and job creation during the energy transition of the economy. Furthermore, following the approval in the European Union of the Multiannual Financial Framework 2021-2027 and the NextGenerationEU fund, it is envisaged that the Just Transition Agreements will be instruments that facilitate the capture and management of the resources made available through the European Just Transition Fund.⁴⁸ In this framework, Just Transition Agreements are comprehensive territorial action plans established in those territories where the energy and ecological transition may put businesses and economic activities in difficulty and which may include measures relating to employment, social protection and training activities to encourage the adaptation of workers.

The drafting of these agreements includes the participation of the social partners through the constitution of dialogue roundtables in which other actors such as local entities, regional administrations and other relevant social actors also participate. At present, more than 15 agreements are being drawn up in different Spanish regions and in all of them, together with the corresponding administrations, the participation of representatives of each of the most representative business and trade union organisations is ensured.

In short, this innovative instrument has facilitated the participation of the social partners in environmental matters and, more specifically, in the green policies relating to employment or vocational training that are developed in those regions. However, it should be pointed out that this participation is exclusively for consultation purposes, without the social partners being directly

⁴⁷ ILO, *Working towards sustainable development: Opportunities for decent work and social inclusion in a green economy*, Geneva, 2012, p. 179.

⁴⁸ Ver S. Canalda Criado, *La Estrategia de Transición Justa: Una pieza clave para la aplicación del fondo de recuperación de la UE*, in *Trabajo y derecho*, no.73, 2021 (forthcoming).

involved in the management of the agreement, thus it would be contrary to the ‘active’ role expected from social dialogue in the European Green Deal⁴⁹.

6. Conclusions

Over the last decade, Spain has been involved in a process of climate emergency that obliges the governments, unions, employers’ associations, workers and employers to adapt themselves to the new environmental requirements. It has been an emerging concern for the social and environmental dimensions of the corporate social responsibility and sustainability, especially in the matter that is referred to as the concept of green jobs and decent work. The interrelated protection of labour rights and environmental sustainability is possible through the constitutional contents of the Article 37 and 45 of the Spanish Constitution. Moreover, the interconnections and synergies between labour rights and environmental sustainability take the collective agreements as a crucial instrument of implementation of the 2030 Agenda for Sustainable Development, adopted by all United Nations Member States in 2015. Although environmental and labour rights have not much interacted in the Spanish collective bargaining context, in the last decade both fields are overlapping and influencing one another, bringing social rights into the climate change debates. As it was shown in the work of Chacartegui Jávega and Canalda Criado, the insertion of green clauses is highly influenced by the Law 2/2011, of 4 March, on Sustainable Economy. It is a fact that Spanish social partners are trying to include green clauses in collective bargaining, especially, since the mentioned law, and this has been path that has culminated in the Spanish strategy on companies’ corporate social responsibility practices (2014-2020).

Identifying and anticipating the new skills required for Spanish green labour market means that social actors must adapt their existing approach to jobs classifications relating to the transition to the low-carbon economy. Providing the skills required to improve sustainability in a sector of activity can create also a need for new occupations with very distinctive new specialization or set of new skills within an existing occupation. This is the experience in sectors as cement and construction, ecological agriculture, metal and food farming industry. Moreover, a new green conception of training and working rights and occupational health and safety is at the core of this new perspective. In the Spanish context, experiences in sectors, as tourism and construction, show that labour law negotiated instruments of regulation are crucial in order to

⁴⁹ European Commission, The European Green Deal, COM(2019) 640 final, 11 December 2019.

implement measures to improve the protection of occupational health and safety.

Drawing conclusions from the analysis of the Spanish collective bargaining, employers' associations and unions welcome the opportunity to have a permanent constructive dialogue with the social partners at all levels, European and national, in order to rebalance the three essential pillars of energy policy: sustainability, security of supply and competitiveness. The recourse to social dialogue and collective bargaining is expected to culminate in public and enforceable agreements that facilitate just transition objectives of social and economic sustainability. From an analytical perspective on the green strategies, there is a need to focus attention on the sectoral level. The enormous quantity of employers and workers affected by the different sectoral agreements provides us with an idea of the importance of these instruments in creating a green-friendly culture of rights.

Environmental Sustainability in Collective Agreements and Other Policies in Hungarian Practice

Balázs Rossu¹

Abstract

This paper presents Hungary's current situation regarding the inclusion of environmental questions in collective agreements and negotiations between employers and trade unions. It draws on data from interviews with social partners and professionals, analysing agreements and exploring the possibilities permitted by law. The paper places emphasis on the nature and general content of different types of agreements in order to identify the main focus of trade unions as well as understand the different approaches of employers. Suggestions are put forward to deal with flaws, along with some good practices.

Keywords: Collective Bargaining; Environmental Sustainability; Employers' Trends.

1. Opening Remarks

This paper discusses sustainability regarding labour and environmental issues in Hungary and mainly focuses on this question from the perspective of the "average" social partners². Since the European Union places emphasis on this

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² I. Szabó, *Hungary: Inertia of the Old Actors, Constrained Innovation from the New*, in *Innovative Union Practices in Central-Eastern Europe* ed. M. Bernaciak, M. Kahancová, etui., Brussels, 2017, pp. 91-109.

subject³, some legislation in force and other regulations reflect such emphasis, though in practice this is not always the case in Hungary. Although trade unions prioritise fighting for fair labour standards in general⁴, not many of them seem to have the opportunity and/or possess the means to move further than the basic questions.

This study takes Hungary's energy sector⁵ into consideration. However, in order to be able to present the situation more accurately, it places more emphasis on sectors like public transportation⁶ and food processing⁷. The main reason is that these sectors are also known to have a relatively significant impact on the environment but are usually not monitored closely by the state in relation to the energy policies of their respective companies (as opposed to those that are operating within the energy sector).

In spite of being a member of the European Union, Hungary shall not neglect the directions of labour and environmental policies of the European Community, and trade unions are rarely given an active role in this respect. Although some of the employers' representative bodies are supportive of environmental actions, those representing employees are mostly focusing on labour-related questions, holding off dealing with environmental protection. When asked directly, they give a positive response regarding its importance, but in practice they rarely (if never) include it in negotiations.

2. Information Regarding Collective Agreements Reviewed and Partners Interviewed

There is no normative obstacle set up by any legal regulation that would deny trade unions and employers the possibility to include norms or regulations on environmental protection, environmental consciousness and sustainability in their respective collective agreements. In order to understand the trends followed by trade unions and employers during their negotiation processes and

³ As well summarized by T. Novitz, *The Paradigm of Sustainability in a European Social Context: Collective Participation in Protection of Future Interests?* in *International Journal of Comparative Labour Law and Industrial Relations* Volume 31, Issue 3, 2015 pp. 243-262.

⁴ Sz. P. Szmrecsányi, *Amit a bértárgyalásokról tudni kell*, 2nd Edition, VDSZ, 2003, p. 12.

⁵ F. Sáfián, *Modelling the Hungarian energy system – The first step towards sustainable energy planning*, in *Energy*, Volume 69, May 2014, Elsevier, pp. 58-66.

⁶ A. Buzási, M. Csete, *Sustainability Indicators in Assessing Urban Transport Systems*, in *Periodica Polytechnica Transportation Engineering*, 43(3), pp. 138-145.

⁷ Cs. Szűcs, G. Vanó, and F. Korsós-Schlessler, *Agricultural and Food Production in Hungary: On the Road to Sustainability*, in *Visegrad Journal on Bioeconomy and Sustainable Development*, Volume 6: Issue 2, Sciendo, 2017, pp. 59-63.

the agreements they execute, 103 collective bargaining agreements⁸ were analysed.

Regarding methodology, the aim was to cover the entire country with the inclusion of as many sectors as possible, avoiding showing an untrue result for the average level of country in relation to the topic researched. There is one factor that also hindered the analysis and that is the willingness of trade unions to share the text and contents of their collective agreements.

Some institutions, either operating in the public sector (such as institutions of healthcare and education) or which are among the leading companies in their respective industries, share their collective agreements openly by uploading them on their websites and making them easily accessible not only to their own employees, but to the public as well, although this is not the situation in most cases. Even after reaching out to local-level trade unions directly and explaining the purpose of the research and also promising not to disclose the texts to third parties, they would still not share them, making reference to regulations regarding business confidentiality and trade secrets.⁹ This mentality is common regardless of the sectors or profiles within the private sector, even though it is required by law to register a new collective agreement together with relevant amendments and termination details¹⁰.

Some trade unions seemed really motivated and interested in participating and even offered to contact other trade unions they work closely with, asking them to participate as well. This resulted in 103 collective agreements made available for review. Interestingly enough, the trend of not sending the most recent version of the agreements is widespread. As a result, after reviewing all available collective agreements, many of them could not be used. Some agreements made available are still in force solely because they were concluded for an indefinite period years ago (in certain cases decades ago) and in some cases one or both the signing parties have changed in part or in full, without indications of such change in the collective agreement. Yet the inclusion of these agreements still serves a purpose regarding the current research

⁸ Some collective bargaining agreements are available to the public, but most are only shared by their members. Professional as well as personal connections are needed with smaller (local) trade unions in order for them to trust a third party (be it a researcher or another entity) with the text of their agreements in force.

⁹ During the research phase of a project done by the Democratic League of Independent Trade Unions (or “Liga” for short) in 2015, experts faced a similar problem. The solution to it was that the trade union confederations were asked to talk to their member trade unions and convince them to share the texts of their collective agreements with the experts conducting the research.

¹⁰ FMM (Ministry of Employment and Labour) Decree No. 2 of 2004 on the Arrangements for the Notification and Registration of Collective Agreements.

questions, namely if they contain any environmental clause that would have implications to the external environment either directly or indirectly.

Table 1 shows the number of collective bargaining agreements reviewed by sector on a local level, while Table 2 shows statistics regarding the sectoral level agreements reviewed in different sectors. It should be noted that it is common to conclude an agreement in Hungary to bind a sub-sector only or multiple companies in a given sector, but not all of them. These agreements are still considered to be sectorial ones.

Table 1 – Number of Local Level Collective Agreements Reviewed by Sector of Operation or Profile

Sector or Profile	Number of Agreements Reviewed
Archives	1
Construction	3
Education	17
Electricity-, Gas-, Steam Supply and Air Conditioning	7
Food-, Drink- and Tobacco Production	2
Healthcare	5
Information Technology and Communication	3
Manufacture of Chemicals and Chemical Products	1
Manufacture of Computer, Electronic and Optical Products	1
Manufacture of Electrical Equipment	2
Manufacture of Machinery and Equipment N.E.C.	5
Manufacture of Rubber and Plastic Products, and Other Non-metallic Mineral Products	2
Manufacture of Transport Equipment	1
Manufacturing Basic Metals and Fabricated Metal Products	1
Mining and Quarrying	1
National Defence Activities and Law Enforcement	6
Postal Services	1
Science	1
Transport, Storage	18
Water Supply; Sewerage, Waste Management and Remediation Activities	5
Total	83

Table 2. Number of Sectoral Level Collective Agreements Reviewed by Sector of Operation

Sector	Number of Agreements Reviewed
Agriculture	1
Construction	5
Electricity-, Gas-, Steam Supply and Air Conditioning	4
Forestry and Logging	1
Hotels, Catering and Tourism	2
Leather Industry	1
Private Security	1
Sugar Industry	1
Transportation	2
Water Supply	2
Total	20

The collective agreements available are mostly local level ones, because this is the dominant level for collective bargaining in Hungary. Most collective agreements executed on a sectoral level¹¹ are made widely available, which is why many of them were used in our review. However, it should be noted that the review ratio (4 to 1) regarding the level of negotiation is not representative of Hungarian practice. More than 50% of the sectoral level collective agreements reviewed are signed by multiple employers, but these do not bind all employees in a given sector, save for those who are employed by the employers signing the agreement. It should also be highlighted that out of 103 collective agreements reviewed, only 64 are currently in force, with the current version of the text being the one reviewed. 41% of the collective agreements investigated were concluded during the previous 5 years, which is noteworthy as it is common practice in Hungary that a 5-year duration is placed to fixed-

¹¹ Collective agreements that cover an entire sector are ones that have their scopes extended through a ministry decree as regulated by Act 74 of 2009 on Dialogue Committees at Sectoral Level and on Certain Issues of Intermediate Level Social Dialogue.

term collective agreements decided upon by the parties. Even though over 70% of the collective agreements analysed were signed by the parties for an indefinite time, this still means that most collective agreements are likely to be reviewed by the parties soon in order to decide whether to extend them or to conclude a new one. Though the data collected by analysing the collective agreements may not be considered as representative of the country's overall situation, they illustrate the usual trends followed by the employers and employees engaging in collective bargaining in Hungary, at least regarding the questions discussed and topics covered by collective agreements. The process of reviewing and analysing collective agreements was followed by 9 interviews, in order to better frame findings. These interviews were conducted with social partners from various fields and sectors in Hungary. Emphasis was placed on finding partners having different hierarchical status, as their opinions and experience may vary even in the same business sector.

In the case of the interviews, the methodology adopted when choosing partners was based on the sectors they represented. As mentioned above, focusing only on sectors that are legally required to place emphasis on environmental protection or other forms of regulations might have yielded better results in a numerical sense but would have been far from the current situation. This is why partners from sectors such as transportation, education and food processing were selected in higher numbers than those representing the energy sector itself. The interviewees include partners representing the following sectors:

On the trade unions' side:

- a trade union official within a branch of the Democratic League of Independent Trade Unions representing the following industrial branches (among others) throughout the country: Construction, Power, Agriculture, Transportation, IT;
- a representative of a local trade union in the Construction sector;
- a Member of the Presidential Board of the Workers Council and Federation of Workers' Councils representing the Transportation sector;
- a trade union partner working with representatives of the Power sector throughout the entire country; and
- a Member of Civil Workers' Council, representing the Education sector.

On the employers' side:

- an Industrial Relations Expert, Labour/ Employment Lawyer representing the employer in the Power sector;

- a Head of Personnel and Services Office covering the entire road transport of the country (Transportation sector);
- a CEO and a Human Resources Manager of a company in the Construction sector; and
- a Human Resources Manager working with employers' representatives of the meat (Food processing) industry.

3. Recent Changes in Legislation

Though the changes in regulation brought by the “new” Labour Code¹² affected the overall bargaining process of trade unions, some might say that with the amendments to the Labour Code, the rules governing the employment relationship have changed radically. This does not concern the topics covered by a collective bargaining agreement.

The “old” Labour Code directly authorized the parties to bargain over any matter that would determine or affect the employment relationship, the working conditions or the relations of the parties in the framework of a collective agreement. The “new” Labour Code does seem to take on a new approach. By substantially narrowing down the scope of these issues and indicating at the end of each chapter the issues the parties might derogate from, in what form and to what extent, as well as the general outcome (to be understood as the contents of the collective agreements signed), this version of the Code does not put forward drastic changes when compared to the “old” one.

There is one major difference which is worth mentioning when comparing the regulation set forth by the two version of the Labour Code. The “new” one allows derogations not only in collective agreements but also through works agreements (where applicable) and individual agreements between the employer and the employee. Furthermore, these derogations are mostly dispositive, i.e. they may be done in favour of both the employers and the employees. This naturally causes preoccupation among trade unions, though the reason is that the “new” Labour Code basically contains most of the language of the “old” one, which can be kept in force on a local level, should both parties decide that this is the most suitable solution for them¹³. This creates the strange situation of having to keep the legal regulation of an act

¹² T. Gyulavári, G. Kártyás, *The Hungarian Labour Law Reform. The Great Leap Towards Full Employment?*, in *Dereito* Vol. 21, n°2, pp. 167-188.

¹³ T. Gyulavári, G. Kártyás, *Effects of the New Hungarian Labour Code: The Most Flexible Labour Market in the World?*, in *The Lawyer Quarterly* Vol 5, No 4, 2015, pp. 233-245.

already amended still in place, as in many cases these regulations serve as a base for collective agreements.

4. Contents of Collective Agreements

It was made obvious during the analysis of the collective agreements that the parties usually aim to answer the most general questions regarding the employment relationships at a company level and use collective agreements as a way of enhancing the regulations set forth in the Labour Code. This means that some basic questions could be found in more than 90% of the collective agreements reviewed. These include the following: Relations between the contracting parties; Employment issues; Working hours; Rest periods; Remuneration of work, agreement regarding wages; Fringe benefits; Social benefits.

The questions covered by most agreements are basic and concern the relations between the parties to the collective bargaining agreement, including regulations regarding the possible amendment and termination of the agreement as well as trade union rights and employers' obligations. They tackle employment issues, generally focusing on hiring and probationary periods, working hours and rest periods, which in some cases only differ from the legal text of the Labour Code currently in force because the parties still refer to the previous Labour Code as the basis for regulation – in this aspect at least – and remuneration of work, including different fringe and social benefits.

Over 90% of the collective agreements reviewed include some regulation on the possible amendment of the collective agreement in the future, mentioning at least this possibility, as well as the means and applicable deadlines. In most cases, the in-depth regulation only exists to the extent that it requires agreement between the parties. Usually, the text of the Labour Code is not extended, but only repeated or partially rephrased. The right of amendment shall be held by the parties who originally signed the agreement as well as any trade union meeting the requirements set forth by the Labour Code in order to become an eligible party. It is commonly emphasized as a general rule that invitations to negotiate a collective bargaining agreement or its amendment may not be refused by the employer. This may seem unnecessary but the Labour Code empowers the collective agreements to include special regulations regarding legal disputes based on the text of the agreement itself. Rules applicable in the case of termination of the collective agreement are also common, even if these only set the exact deadlines already mentioned by the Labour Code. Unfortunately, few collective agreements (less than 10%) include regulation on the start of a new negotiation process upon termination of a collective agreement.

In some instances, the collective agreements included topics other than the ones listed above, but the trend seemed to be the same in this sense, too. The aim is to repeat the most important regulations of the Labour Code (in many cases using the same wording) and sometimes through some explanations to the legal text or changes to the numbers to better benefit one party or the other. The parties might argue that repeating the legal text might limit the power of the collective bargaining agreement, as many other aspects could be decided and agreed on in terms of content. Others see it differently, stating that the average employee never goes through the Labour Code to learn about his/ her rights. Therefore, providing a brief overview of the most important regulations affecting his/ her employment relationship can be beneficial.

5. Environment and Sustainability Aspects in Collective Agreements

When it comes to the inclusion of environmental issues in collective bargaining agreements, the situation is far from ideal. Even though there is no normative or legislative obstacle that would deny the parties the right to include these regulations in their agreements, neither side seems to do so in practice. Out of the 103 collective bargaining agreements analysed, only 5 would include or even mention the environment or relating issues. These 5 collective agreements were all local level ones concluded in the following sectors: 1 agreement in the Construction Sector, 1 in the Transportation Sector, 1 in the Energy Sector and 2 agreements in the Education Sector.

Apart from the incredibly low number of occurrences, the reference to the aspects mentioned is far from satisfactory. 2 cases out of 5 are regulations that required active behaviour and cooperation on behalf of the parties. These collective agreements included the plan to set up covered bicycle storage areas on the employer's premises in order to promote commuting using a bicycle. Naturally, this concerns environmentally friendly transportation and contributes to decreasing the ecological footprint of the employees, but in both cases, it was a request filed by the employees who already used the bike and found it hard to safely store it while at work. Plus, the trade union only voiced the request towards the employer who eventually approved the initiative. This means that even if the request can easily be linked to environmental issues, the original idea had little to do with environmental consciousness.

Less than 5% of the collective bargaining agreements investigated contain any reference to the environment and even in these cases they mostly concern other rules of procedures or internal regulations that are supposed to detail applicable standards relating to the environment. These include the following:

- Mentioning the topic of environmental protection in the appendices of the actual collective agreement that lists all company level regulations including the

code of conduct, occupational health and safety protocols, dispute resolution and complaints, privacy policy. Most regulations, rules and standards only seem to repeat applicable legal standards.

- Mentioning the importance of environmental protection in a way that it requires trade union officials to promote active projects and tenders the company is participating in.

According to regulations in force regarding labour issues, the eligible trade union and the employer may cover basically any right and obligation arising out of or in connection with employment relationships. This can take place so long as these documents do not contain restrictions concerning the provisions regarding the employees' free will to join a trade union or disclosure of such information to the employer, as well as derogations regarding the basic regulations on industrial relations and works councils at the workplace. This means that there is no legal or normative regulation that would prevent the parties from including and discussing environmental protection and sustainability in their agreements. This points to the fact that the problem must be elsewhere.

6. Environment and Sustainability Aspects in Other Policies

In consideration of the above, it would seem fitting to discuss these questions in works agreements rather than in collective bargaining agreements, especially since the "new" Labour Code significantly broadens the range of issues that can be regulated by works agreements. While under the "old" Labour Code, it was only possible to cover the rules of cooperation between the parties, costs of operation and the remuneration of the chairman, according to the "new" Labour Code it is possible to regulate all rights and obligations related to the employment relationship (with the exception of wages and protection). Since works councils operate on the principle of cooperation, employers too should be able to feel more confident when sharing financial information regarding the company's investments and financial status. However, this would only be possible theoretically, as the Labour Code only authorizes the conclusion of works agreements if the employer is not subject to a collective agreement and if there is no trade union entitled to sign one at the employer's premises. It would be possible to change the current system into a dual channel process, which would utilize works councils and allow a company to have a collective bargaining agreement and a works agreement at the same time (though focusing on different topics). However, since the current regulations and possibilities regarding works councils (with special regard to enhancing works agreements) are still not welcome by most trade unions, this is not likely to happen any time soon.

7. The “Three Categories” of Companies Investing in Environmental Sustainability in Practice

According to experts¹⁴, Hungary needs some time (one of them spoke of twenty more years, but another one said even more time is necessary) to catch up with “the western world” in order to focus on issues like environmental protection¹⁵ through collective bargaining. An interviewee even mentioned fifty years as the time needed to develop a preferable “collective manner of thinking” that would be a base recommendation for these issues to be addressed effectively. Investments related to environmental protection, environmental consciousness and renewable energy may be divided into three categories, based on the goal of the investing company.

The first category includes the small group of companies with long-term goals, in which case the funds and subsidies are properly used and will have a longer lasting effect on the company, the region, and ideally, on the community (they are mostly overseas investors).

The second category consists of the broad group of companies engaged in so called “Showcase Activities”, according to which the only goal is to use the subsidies and other funds available and “show something” for them.

Finally, the third category is made up of “Thinkers” or “Survivors”, who make decisions based primarily on financial aspects but find a connection to “popular” issues like environmental consciousness or sustainability. They highlight the contact points with the actions already carried out, gaining profit by setting up actual marketing or PR policies around such actions and decisions, thus becoming “local heroes” in terms of corporate social responsibility.

8. Situation Regarding Good Practices

There are some good practices available but most of them revolve around economic decisions, i.e. one-sided decisions made by the employers, in some cases without prior consultations with the trade unions or even the works councils, especially in the third group of investors mentioned above. This should not be viewed negatively, also because the main reason for employers’ one-sided decision making is that he/she is responsible for financial aspects

¹⁴ M. Antal, *How the Regime Hampered a Transition to Renewable Electricity In Hungary*, in Environmental Innovation and Societal Transitions Volume 33, November 2019, Elsevier, pp. 162-182.

¹⁵ B. Szent-Iványi, Zs. Végh & S. Lightfoot, *Branding for business? Hungary and the sustainable development goals*, in Journal of International Relations and Development volume 23, 2020, pp. 190-209.

and in most cases trade unions do not have economic- and energy-efficiency experts to refer to in order to put forward better solutions. These decisions include:

- Providing separate waste collection by material (e.g. placing different coloured bins throughout company premises);
- Installing motion sensors in common areas in order to save energy that would be wasted otherwise, should employees fail to turn off the lights when they leave; and
- Reducing the use of paper by switching to electronic systems to be used for payrolls and accounting.

There are some examples of how cooperation between employers and employees' representatives should work, but unfortunately sustainability and environmental protection is rarely considered. In some cases, these ideas include the need for governmental programs. There are also some employers who dedicate to implementing programs on their own that provide rewards for any employee engaged in an activity that is aimed at sustainability and/or environmental protection. Other employers however deliberately rely on trade unions and are only willing to adhere to their proposals offering rewards upon completion.

Not all employers support the idea of rewarding employees in order to develop an environmentally-friendly approach, as they should do so in their own interest. Other employers accept the fact that if the employees are required to do an activity unrelated to their jobs, something should always be offered as compensation for their time and effort. This compensation should be proportionate to the action(s) and activities carried out and does not have to have economic character.

9. How Social Partners View the Situation

According to the employers interviewed¹⁶, sometimes trade union officials are not to be considered experts in the field of labour regulations. In some cases, trade unions want to include regulations in the collective agreement that would only hinder both parties instead of helping them. This includes the work pattern, for example. Once the work pattern becomes part of the collective agreement, it could only be amended through agreement of both parties, whereas originally this should solely be the right of the employer only when a good reason is supplied.

¹⁶ Zsolt BESSENYEI (for example), Human Resources Manager at Pick Szeged Zrt. working with employers' representatives of the meat industry named Magyar Húsiparosok Szövetsége.

When it comes to collective agreements containing regulations that would bind the parties to have more obligations resulting from the agreement, the attitude of the parties seem to differ widely. Employers in general do not like to be limited, whereas the higher ranks of trade unions welcome the idea of taking up more responsibility. Local level trade union officials seem to be uninterested in and rather unconcerned with adding the topic of environmental protection to collective bargaining on a regular basis.

It is evident from the abovementioned disagreement regarding further responsibility that the system is unable to function properly. In many cases, it is unclear who is entitled to do what (e.g. the same person may be a chairman of the works council and a trade union official). This should be the first thing to clarify, as even the Labour Code seems to be vague on this point. Clarifying this aspect would also benefit the overall relationship between employees and employers, as receiving the right information from the right source should be the basis of cooperation.

It is important for employers to understand the needs of employees. Some good practices include the reduction of paper usage by switching to electronic systems for payrolls, accounting, leave and basically all labour related issues that could be accessed through an online interface. Some employees complained that they are used to paper forms and would not change if they were given the opportunity to do so. In a situation like this, the only effective way to settle the dispute is by ensuring open communication and adjusting company goals to reasonable employee demands.

Some employers argue that the government should not interfere with the collective bargaining process, not even through strict policymaking. Others view it differently and maintain that local governments and municipalities are not supportive when it comes to discussions about innovation regarding environmental issues. If the state was really supportive, change would always start from the top¹⁷. Strictly following relating policies on a national level and placing more focus on the issue might be a possible solution to have the process started, but the current system has flaws and lacks important players. It would be possible for a local community to have a good idea which then could be passed on to sectoral committees, which would send it further to the top. Yet the current system is rigid and not suitable for this information flow.

¹⁷ I. Krén, *Hungary – Labour Relations and Social Dialogue* in. Regional Project on Labour Relations and Social Dialogue, Annual Review 2013, FES Publikation, Warsaw, 2017, pp. 3-7.

10. Possible Solutions and Relating Dangers

A possible way to implement a bottom-up approach is to change company culture and influence and, more importantly, motivate the employees to change, too. Whenever something new is requested from the employees which is not strictly in connection with their assignments, they should be rewarded in one way or another for their time and effort. It is important that the reward is proportionate to the task required of the employee. If the reward is small, they will lose interest soon. If the reward is big, it will cost too much to maintain the system.

Just Transition and Industrial Relations: the Italian Patterns

Paolo Tomassetti *

Abstract

This article investigates historical and current patterns of the Italian Just Transition process. Drawing on the main findings of the Agreement project, this article discusses the contribution of industrial relations institutions to the decarbonisation of Italian capitalism. The nuances of the Italian case are emphasised, along with the complexities and dilemmas that the transition to a low-carbon economy involves for workers, firms and their representatives. These complexities are the result of broader contradictions of Italian capitalism, which are illustrated by the historical evolution of industrial relations as well as by contemporary Just Transition policies. The article concludes that industrial relations institutions are both part of the problem and part of the solution: by embracing the ideals of Just Transition and sustainable development, they deconstruct the trade-off between labour and the environment but at the same time they reproduce it, legitimising the industrial socio-economic model and the correlated environmental and social disfunctions.

Keywords: Labour; Environment; Unions; Just Transition.

1. Introduction

Despite the doctrinal emphasis on the need to coordinate employment and environmental legislation, labour and environment are subjected to silos regulation in Italy. The principle of sustainable development is not integrated within Italian labour legislation, nor environmental law has implications for the domain of labour law. In contrast, the system of industrial relations stands out

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as a potential channel of integration and convergence between labour and environmental sustainability. As in other jurisdictions¹, legal and institutional characteristics of collective bargaining in Italy allow firms, workers' and employers' representatives to negotiate over environmental issues and bringing justice in the transition to a low-carbon economy, avoiding that environmental regulation has negative externalities on jobs and communities affected by decarbonisation. By creating alternatives to the job vs. environment blackmail, industrial relations institutions have the power to deconstruct the trade-off between labour and the environment, empowering workers' capability to react to environmental stress.

Italy has a long-standing tradition of industrial relations: institutions like trade unions, employers' associations and collective bargaining still play a relatively important role in shaping Italy's growth model and labour market regulation. To some extent, Italian industrial relations institutions affect both the creation and redistribution of power and resources from capital to labour, thus influencing the level of decommodification of Polanyi's other fictitious commodities, including land (i.e. natural resources, the environment)². In principle, the three main trade unions confederations – Cgil³, Cisl⁴ and Uil⁵ – fit Hyman's typology of unionism based on class, market, and societal affinities⁶, and their positionalities on the labour/environmental nexus parallel with the taxonomy elaborated by Hampton⁷, who classifies Just Transition approaches into three groups: the *radical*, adopted by class-oriented trade unions; the *neoliberal*, adopted by market-oriented trade unions; the *progressive*, adopted by society-oriented trade unions.

Despite an explicit convergence between labour and environmental sustainability is currently visible in Italian industrial relations, however, views and policies of central-level actors in Italy swing within such theoretical taxonomies, and do not necessarily translate into coherent actions at local level⁸. While Italy has always represented the difficulty of applying analytical

¹ See the other contributions in this special issue, as well as the comparative analysis on France, Hungary, Italy, The Netherlands, Spain, and the UK in J. Escribano Gutiérrez, P. Tomassetti, *Labour and Environmental Sustainability. Comparative Report*, ADAPT University Press, 2020, p. 18 ff., *passim*.

² K. Polanyi, *The Great Transformation. The Political and Economic Origins of Our Time*, Beacon Press, 1944.

³ Cgil – Confederazione generale italiana dei lavoratori.

⁴ Cisl – Confederazione italiana sindacati lavoratori.

⁵ Uil – Unione italiana del lavoro.

⁶ R. Hyman, *Understanding European trade unionism: Between market, class and society*, Sage, 2001.

⁷ P. Hampton, *Workers and Trade Unions for Climate Solidarity*, Routledge, 2015.

⁸ I. Regalia, M. Regini, *Between voluntarism and institutionalization: Industrial relations and human resources practices in Italy*, in R. Locke, T. Kochan, M. Piore (eds), *Employment Relations in a*

categories developed for the purposes of comparison⁹, the historical evolution of industrial relations in this country shades light on the continuity and tension between two contrasting patterns: one in which growth, income and job protection tend to prevail over environmental interests and those of local communities in contiguity with industries; the other in which the social partners seek to advance the (controversial) ideas of Just Transition and sustainable developments in parallel with the protection of jobs and decent work. This article investigates both patterns through the lenses of the Italian industrial relations system. Drawing on the main findings of the Agreement project¹⁰, this article discusses how, why and to what extent environmental sustainability as a value and normative goal has been embraced by Italian trade unions, employers' associations, firms and public authorities. Fails and successes to deconstruct the trade-off between labour and the environment and to promote the Just Transition to a low-carbon economy will be discussed, along with the theoretical implications for labour law and industrial relations theory.

2. Just Transition: a Retrospective

During the *Trente Glorieuses* of Italian capitalism, environmental concerns were rarely a matter for collective bargaining, except for some occupational health and safety issues, originally limited to protecting the so-called 'internal environment'. Collective action was first of all aimed at bringing democracy to the workplace and making industrial development compatible with decent work. Historically, Italian unions have dealt with environmental sustainability as a short-term problem: only when and where the environmental crisis materialized or was linked to contingent problems of workers and their

Changing World Economy, MIT Press, 1998, 131–163; M. Regini, *Uncertain Boundaries. The Social and Political Construction of European Economies*, Cambridge University Press, 1995; R. Locke, *Remaking the Italian Economy*, Cornell University Press, 1995.

⁹ Taxonomies used in comparative analysis 'are apparently less clear, less generally applicable and less able to yield unequivocal results in Italy than they are in the other countries with which comparisons are made' M. Regini, *Uncertain Boundaries*, cit., 68.

¹⁰ This article summarises the main findings of a research conducted within the project *Agreement – A Green Mentality for Collective Bargaining*, co-funded by the European Commission, DG Employment, Social Affairs and Inclusion, under budget heading VP/2017/004, Improving expertise in the field of industrial relations (Grant Agreement VP/2017/004/0037). For all the methodological aspects of the research, see P. Tomassetti, *Labour and Environmental Sustainability. Italian Report*, ADAPT University Press, 2020, pp. 4, 51 and 61. This article also builds on novel research about the labour and environment nexus which has received funding from the European Union's Horizon 2020 research and innovation programme under the Marie Skłodowska-Curie grant agreement No 101025998.

communities, was collective action taken in defence of the environment. Environmental sustainability was considered as an instrumental goal (the anthropocentric perspective), a means toward accomplishing labour contingent needs.

Following the approval of the Italian Constitution, Italian civil society awareness of the environmental implications of industrial activity has been slow to mature. The idea that health is an indispensable and inalienable right of workers and citizens also developed with some delay in the Italian trade union movement¹¹. In the post-World War II reconstruction, growth and industrialization have been political and socio-economic priorities necessary to build up Italy's democratic order, while the environmental effects of new models of production lagged behind in trade unions' agenda: they were considered a minimal sacrifice that was worth paying on the 'altar of industrialization'¹². When businesses unleashed a strong offensive against workers' rights, thanks to the wide accessibility of a low-cost and low-skilled workforce flowing from the agricultural exodus, unions responses focused not only on protecting the health of workers inside factories, but on elaborating a collective strategy to address contingent workers' needs to guarantee their basic livelihood.

Despite growth and institutional stability being the main drivers of collective action during much of the modern (post-World War II) industrial era, a long wave of Just Transition can be identified starting from the late 1960s, as Italian trade unions' struggles for decent and healthier working environments contributed to making production processes more sustainable for the broader environment and communities far beyond the workplace. All across the country the contiguity between industry and residence triggered environmental protests by local communities and the local unions¹³. Union 'awakening' to the environmental and health implications of industrial activities paralleled workers' rapid political development. The intense bargaining round concerning environmental conditions of work involved thousands of workers in the 'warm autumn' of the early 1970s: this was not only a step forward in improving occupational health and safety and overall working conditions, but a remarkable example of collective participation in a different and more sustainable design of work organization.

The Seveso Icmesa disaster of 10 July 1976 was the first episode in Italian history in which environmental risk showed its destructive potential far beyond

¹¹ L. Montuschi, *Diritto alla salute e organizzazione del lavoro*, Franco Angeli, 1976, p. 11.

¹² Ivi, p. 42.

¹³ Full references to the historical information of this section are provided in P. Tomassetti, *Labour and Environmental Sustainability. Italian Report*, ADAPT University Press, 2020, p. 19 ff.

the workplace: unions' attitude towards the relationship between the factory, the environment and local communities changed forever. The Seveso drama was a turning point between two moments: from a situation in which workers' health and safety in the factory became the priority, to one in which the public dimension of health and safety enlarged to a wider and complex scenario wherein the environmental effects of production are suffered by the environment and communities surrounding the industrial plant. The illusion that what happened inside factories would have had no substantial impact on the natural environment and communities demonstrated its fallacy. The environmental disaster of Seveso, and the one that followed at the Anic (Enichem) in Manfredonia (September 26, 1976), contributed to deconstructing not only a popular belief, but also a mindset that characterized the attitude of unions, politicians and the judiciary system.

Both environmental law and labour law began to deal with the issue of sustainability of production processes for workers and the environment. However, instead of converging on a shared and holistic programme for sustainable development, the contradictions between the social and environmental dimensions of sustainability emerged, turning into a dramatic conflict between two cultures that, at that time, appeared hardly reconcilable: the industrialist one, strongly supported by the labour movement, and the environmentalist one. When the economic crisis of the mid-1980s put production costs under pressure, the trade-off between labour and the environment re-emerged, and the bargaining priorities of unions refocused on the primary objective of protecting jobs and plants, detracting from the defence of workers' rights and control over the environmental impact of production. In this context, conflicts between individual and collective interests concerning the strategies to tackle the environmental impact of production arose within the labour movement: the Montedison case in the Marghera harbour was emblematic, as here the sensitivity and complaints of individual workers regarding the protection of health and the environment inside and outside the factory, ended up in collision with the interests of production and the 'controversial position of the confederal unions'.

As welfare and social benefits linked to growth reduced with plant shutdowns and the physical environment deteriorated following the industrial desertification of many areas of the country, unions were again more willing to generalise their voice and collective action for environmental purposes. The 'rising expectations' of well-being, employment development and welfare generated by industrial activities was inevitably followed by de-industrialization and a new environmental awareness spread amongst citizens and workers. Environmental disasters and the industrial desertification process not only involved an increase in abandoned areas of high environmental risk, but also

the development of a new political and social awareness of the need to preserve the natural environment and local commons, which until then was perceived as optional compared to primary interests linked to income and job protection¹⁴.

The Chernobyl disaster of 26 April 1986 and the following anti-nuclear referendum also contributed to bringing the so-called ‘external environment’ back on unions’ agenda. For the first time, the collective agreements of the late 1980s and early 1990s introduced measures to prevent environmental risk and promote energy efficiency and conservation. In 1988, Bruno Trentin (the then General Secretary of Cgil) defined a healthy, safe and clean environment as a fundamental right of workers and citizens: this stance represented a turning point, because that right had not been considered as essential for a long time within the union movement.

Despite these positive developments, the area of consensus among Italian social partners on environmental policies remained relatively narrow during the 1990s, with emphasis placed on verified compliance with legislation, the improvement of environmental audits, and increasing use of environmental representatives in plants in some sectors. The social partners did not yet recognize environmental concerns as a priority for negotiation, except for occupational health and safety issues. Since the implementation of Directive 89/391/EEC of 12 June 1989, Italian legislation has promoted a holistic regulatory framework to ensure occupational health and safety that goes beyond the mere protection of the working environment by attributing to business and to all its relevant stakeholders – including workers and trade unions – an active role in defining and implementing a sustainable and regenerative system of production and work organisation¹⁵. However, responsibility for companies’ environmental policy largely remained a firm prerogative and only in exceptional cases were they ready to involve shop floor and trade-union representatives.

3. Routes to Just Transition in Contemporary Industrial Relations

The long but weak wave of Just Transition identified in the industrial era of Italian capitalism is nowadays reinforced and made more visible by an explicit integration of labour and environmental protection through collective bargaining and social partnerships. Recently, decarbonisation has been

¹⁴ M. Tiraboschi, *Preventing and Managing Natural and Environmental Disasters: Employment Protection, Welfare and Industrial Relations Systems*, in *E-Journal of International and Comparative Labour Studies*, vol. 4, 2015, n. 3.

¹⁵ R. Del Punta, *Tutela della sicurezza sul lavoro e questione ambientale*, in *Diritto delle relazioni industriali*, 1999, n. 2, pp. 151 ff.

prioritized in social partners' agenda. A movement (institutional change) towards the incorporation of environmental sustainability in industrial relations has been observed in the last two decades, which takes on different forms and patterns. In some sectors, firms and areas, change is incremental, in others it is more discontinuous. It might be cooperative or confrontational, depending on sectors, local variables and structural constraints, more than on unions attitude. Statutory legislation is still unable to reflect this change, but industrial relations institutions are allowed to lead it, irrespective of legal provisions.

Since the early 2000s, many companies in Italy have faced significant restructuring processes to convert carbon fossil and other highly polluting industrial activities into renewable energy productions. While in some cases restructuring has been successful, without major social costs for workers and local communities, in others the energy transition came with significant implications for jobs and industrial relations. Social dialogue with trade unions and local communities was important to balance the different interests involved in the process of decarbonisation, despite an inevitable divide between winners and losers in some cases emerged.

More recent developments were driven by three main convergent forces: (i) the escalation of the global environmental crisis and the consequent normative initiatives adopted at both UN and EU levels, including the Paris commitments of 2015¹⁶ and the UN 2030 Agenda¹⁷, which also prompted international union confederation to take action against climate change and coordinate the efforts of national affiliates towards this goal; (ii) the acceleration of the environmental crisis within certain areas of Italy, the consequent growing awareness by civil society of the effects that climate change can produce on vast areas of the country; (iii) and the parallel process of transition away from coal that many companies have initiated during the last decade in response to national and international normative pressures, such as the 2017 National Energy Strategy (NES), a ten-year plan of the Italian government to anticipate and manage change in the energy system¹⁸. Beyond these reasons, the illusion of "infinite growth on a finite planet" came to an end as a matter of fact in Italy: as the country's economy has stagnated since the early 1990s and low growth rates made capital redistribution difficult, the problem of balancing labour and the environment became structural and a long-term sensibility to environmental sustainability emerged among social partners and civil society.

¹⁶ United Nations, *Paris Agreement*, 2015.

¹⁷ United Nations, *2030 Agenda on Sustainable Development*, 2015.

¹⁸ Ministero dello Sviluppo Economico, Ministero dell'Ambiente, *Strategia Energetica Nazionale 2017*, 2017, adopted through decree 10 November 2017 by the Ministry of Economic Development and the Ministry of the Environment.

The 2011 policy agreement on energy efficiency and conservation concluded by the union confederations, Cgil, Cisl and Uil, and the employers' association, Confindustria, was a milestone of the Italian industrial relations strategy underpinning Just Transition¹⁹. This document was based on the idea that social dialogue and collective bargaining on energy efficiency can bring significant productivity improvements and positive environmental outcomes, allowing the production of the same output by consuming fewer natural and energy resources (so-called “decoupling”). The document called for a renewed industrial policy under which the implementation of EU policies on energy efficiency is not seen as a cost, but as an investment. In line with this approach, an overall consensus of national unions and employers' confederation is currently observable around the idea that, thanks to technological advancements, the circular economy and Industry 4.0²⁰, growth can be relaunched and decoupled from environmental degradation.

Far beyond the “technological-fit discourse”²¹, we find examples of multilateral alliances for sustainable development²², as well as social dialogue and policy initiatives with clear commitments on Just Transition, how to achieve it and how to make labour and environmental sustainability convergent.

On 26th September 2019 Cgil, Cisl and Uil launched a policy document for a model of sustainable development driven by industrial relations²³. The document emphasises the need for a holistic approach that integrates the three dimensions of sustainability. The document is based on the idea that despite many good practices and technologies exist in the country, there is a lack of systematisation able to detect the overall complexity of social, environmental and economic sustainability. Moreover, sustainable development requires a deep change in personal and organisational behaviours, as well as a consistency between sustainability values, goals and daily practices of workers and firms. Based on these considerations, the policy document sets a number of recommendations for the trade unions structures operating at a sectoral and local level, divided into the following key areas: ecosystems; climate emergency and just transition; sustainable cities; circular economy. The key means of achieving the sustainability goals linked to these policy areas are concertation with public authorities and collective bargaining with employers' associations

¹⁹ Confindustria, Cgil, Cisl, Uil, *Avviso Comune. Efficienza energetica, opportunità di crescita per il Paese*, 21 December 2011.

²⁰ F. Seghezzi, M. Tiraboschi, *Italy's Industry 4.0 Plan: An Analysis from a Labour Law Perspective*, in *E-Journal of International and Comparative Labour Studies*, vol. 7, 2018, n. 1, pp. 1 ss.

²¹ N. Räthzel, D. Uzzell, *Trade unions and climate change: The jobs versus environment dilemma*, in *Global Environmental Change*, Vol. 21, 2011, n. 4, pp. 1215-1223.

²² See for example *Asvis – Associazione Italiana per lo Sviluppo Sostenibile*.

²³ Cgil, Cisl e Uil, *Per un modello di sviluppo sostenibile*, 26 September 2019.

and firms. Governmental industrial policies based on the principle of sustainable development and backed by sound incentives to promote the green economy are also seen as necessary.

Drawing on the existing contents of sectoral and firm-level collective agreements, concrete examples of bargaining measures to combine labour and environmental sustainability are provided within the document. Social partnerships on these aspects include the involvement of workers representatives in environmental decisions or the integration of environmental policies within the occupational health and safety realm. Other examples include the negotiation of pay raises linked to green targets, such as energy efficiency and conservation, or the promotion of sustainable forms of workforce mobility and commuting.

Most collective bargaining measures refer to involvement and participation of workers in environmental decisions. Participation of workers in decision making is confirmed as the best road to give workers a voice on firms' decarbonisation strategies and green governance²⁴. Environmental representatives are good examples in this direction. Many national collective labour agreements (NCLAs) have autonomously expanded traditional prerogatives of workers' representatives for occupational health and safety to environmental sustainability²⁵. These institutions are entitled with information, consultation and training rights concerned with firms' environmental policies and Just Transition strategies.

While NCLAs in core sectors play a key role in establishing and regulating competences, objectives and prerogatives of such institutions, firm-level collective bargaining is the prevalent channel for developing an integrated approach to the regulation of labour and the environment. The input in negotiation varies significantly. In some cases, social dialogue and collective bargaining contribute to shaping company commitment towards environmental goals and energy transition, while in others it is rather the context of corporate social responsibilities (CSR) policies to prompt collective bargaining on green issues. Overall, the focus on environmental sustainability at a firm level tends to be managed unilaterally, within the codes of conduct or CSR charts. Although several codes of conduct of multinational enterprises with operations in Italy explicitly establish norms concerned with the respect of environmental standards and the principle of sustainability, the process of energy transition itself requires cooperation from the workforce and unions: it

²⁴ Cfr. C. Chacartegui, *Workers' Participation and Green Governance*, in *Comparative Labor Law & Policy Journal*, Vol. 40, 2018, n. 1, pp. 89-108.

²⁵ See for example the NCLAs in the chemical sector, the electricity sector, the energy and oil sector, the wooden sector.

is therefore more common to find firm-level collective agreements regulating procedural aspects, joint mechanisms and normative measures to anticipate and manage the challenges and the opportunities that the decarbonisation process involves.

The negotiation of re-skilling, redeployment and early retirement plans to deal with job displacement exemplifies the unconventional industrial relations pattern, along with collective bargaining measures to make job classification systems more respondent to the green jobs labour market²⁶. While in many transitional cases plant closures and job losses are inevitable, unions' support in labour market transitions may reduce workers' vulnerability and empower them to react to environmental stress. Effective transitional labour markets governed by mature industrial relations institutions can reduce societal and labour vulnerabilities, increasing workers' independence from coal and other highly intensive industrial activities²⁷. Good practices in this regard include a mix of active and passive labour market policies, functional and geographical mobilities for workers involved in Just Transition, as well as the use of joint inter-professional funds to support transitional arrangements and training for green skills.

Beyond classical collective bargaining measures, other initiatives involve public authorities at both national and local level: in some cases, tripartite social dialogue has resulted in public-private partnerships to provide integrated responses to labour and environmental challenges²⁸. Of note are also those territorial agreements between social partners and local authorities through which trade unions, employers' associations and other relevant stakeholders seek to enhance general interests linked to the local dimension of sustainable development²⁹, especially in the most vulnerable areas³⁰.

²⁶ L. Rustico, M. Tiraboschi, *Employment Prospects in the Green Economy: Myth and Reality*, in *International Journal of Comparative Labour Law and Industrial Relations*, Vol. 26, 2010, n. 4, pp. 369-387.

²⁷ L. Casano, *Skills and professions for a "Just Transition". Some reflections for legal research*, in *E-Journal of International and Comparative Labour Studies*, Vol. 8, 2019, n. 3, pp. 31-46.

²⁸ See for example the *Patto per il lavoro e il clima* signed the 15th December 2020 between the Emilia-Romagna Region, the regional provinces, the local municipalities and the related universities, along with environmental associations and the regional cross-sectoral social partners organizations.

²⁹ See for example the *Protocollo per lo sviluppo sostenibile* signed the 18th of September 2019 between the Lombardy Region and the regional cross-sectoral social partners organizations.

³⁰ See for example the cases of Savona and La Spezia: E. Battaglini, *La negozialità territoriale dell'innovazione nell'era digitale. Generatività sociale come nuova prospettiva interpretativa?*, in A. Pepe, S. Leonardi (a cura di), *La contrattazione che cambia*, Annali della Fondazione Di Vittorio, 2019, pp. 199-260.

4. Just Transition Dilemmas

Despite these positive developments, there is still a wide gap between words and deeds on the need to combat global climate change, and opinions and reality on Just Transition in Italy are often oceans apart. While everyone agrees that the decarbonisation of the Italian economy should be “just” (nobody argues in favor of an “unjust transition”), the idea of justice is still open to debate and conflict. In many cases, labour and capital interests still prevail over environmental ones and new dimensions of unsustainability emerge in the Just Transition era. Central policies on Just Transition and sustainable development do not necessarily translate into coherent actions at local level, which is the dimension in which transitional dilemmas take place and hit harder. Good policy examples exist, but best practices are sectional and hard to generalise³¹. The same goes for collective bargaining: the coverage of collective agreements dealing with environmental issues is still limited.

Most of the story is about distributional conflicts. Green growth driven by technological innovation emerges as a shared interest that can be mediated within the industrial relations system, increasing the possibility of capital redistribution between labour and the environment and preventing competition between the two. In a market economy, however, “the cake” must be shared and this process generates distributional conflicts between capital, labour and the environment³². Things get more complex since “the cake” cannot grow anymore: global warming and climate change demonstrate that the idea of infinite growth on a finite planet is illusory. Climate change is the most evident sign that the industrial social contract is broken. And labour law was a key element of the industrial social contract, which was based on the illusion of infinite growth on a finite planet. With the aim of increasing the share of resources redistributed from capital to labour, labour law and industrial relations in Western countries embraced the capitalistic mantras of productivity and consumption, detracting from the implication of growth on the environment³³. Global warming and climate change pose challenges not only to labour law, but to the entire social contract within which labour law was socially constructed.

When it comes to the role of labour law and industrial relations in Just Transition, therefore, growth is still the black beast for Italian trade unions. On

³¹ See for example the Enel case: S. Rugiero, *Decarbonisation in the Italian energy sector: the role of social dialogue in achieving a just transition – the case of Enel*, in B. Galgóczi (ed), *Towards a just transition: coal, cars and the world of work*, Etui, 2019, pp. 109-133.

³² P. Tomassetti, *Labor Law and Environmental Sustainability*, in *Comparative Labor Law & Policy Journal*, Vol. 40, 2018, n. 1, pp. 61-86.

³³ A. Schnaiberg, *The environment: From surplus to scarcity*, Oxford University Press, 1980, *passim*.

the one hand, growth is associated to more industrial activities, pollution and environmental degradation. On the other hand, growth increases capability and freedom of choices: it reduces dependency and subordination. It comes as no surprise that Unjust Transition takes place in depressed areas and sectors with low added value and growth capacity, where monopsonist labour markets preclude any alternative option to plant closure or continuation of industrial activities dangerous to health and the environment.

Latent contradictions between the social and environmental dimensions of sustainability emerge around many transitional hard cases in Italy, turning into a conflict of interests that apparently replicated the contraposition between industrialism and environmentalism³⁴. While vertical cleavages materialise between central unions and the government, on the one hand, and local unions and environmental groups on the other, the debate around decarbonisation of the Italian economy tends to create horizontal divisions within the labour front, with some sectoral union federations contesting the continuation of extractive and polluting activities and others advancing more radical solutions. Hard transitional cases show how difficult it is for both public institutions and social partners to envisage concrete alternatives to the continuation of industrial activity, which are sustainable for both local communities and the environment, without externalizing the social and environmental costs of decarbonisation elsewhere. In a globalised market economy, closing a plant in a country for environmental reasons could imply the outsourcing of production elsewhere, with the externalisation of its social and environmental costs. In these contexts, transitional dilemmas become more accentuated and unions are on the defensive. Even if in principle they refuse the job vs environment blackmail and accept the integration of environmental sustainability in their agendas, they are still dependent on firms' monopsonist power when private investment is necessary to close the transition, especially if public resources are unavailable or insufficient³⁵. In these cases, a partnership with firms is the best road to combine environmental and labour protection.

5. Concluding Remarks

Beyond a romanticised idea of Just Transition, these complexities reflect the broader contradiction on the role of trade unions in capitalism. Unions are

³⁴ See for example the Ilva (ArcelorMittal) case: P. Tomassetti, *From Treadmill of Production to Just Transition and Beyond*, in *European Journal of Industrial Relations*, Vol. 26, 2020, n. 4, pp. 439-457 and S. Barca, E. Leonardi, *Working-class ecology and union politics: a conceptual topology*, in *Globalizations*, Vol. 15, 2018, n. 4, pp. 487-503.

³⁵ For a wider discussion on this issue, see P. Tomassetti, *From Treadmill of Production to Just Transition and Beyond*, cit.

both part of the problem and part of the solution: they deconstruct the trade-off between labour and the environment but at the same time they reproduce it, legitimising the industrial socio-economic model and the correlated environmental and social disfunctions. In 1975 Richard Hyman argued that “the function of collective bargaining is to relieve or suppress symptoms rather than to cure the underlying malady”³⁶. To some extent, the same metaphor suits to collective bargaining on Just Transition and sustainable development in Italy.

Industrial capitalism is still the dominant economic framework for Italian industrial relations institutions to envisage and justify their role in the Just Transition. Technological utopianism perpetuates the illusion of “infinite growth on a finite planet”, and this is somehow problematic as for some the “golden rule of capitalism” is simply incompatible with long-term environmental sustainability. Capra and Mattei, for example, observe that it is not the outcome of some law of nature that “many workers today, whether unionized or not, will not fight for higher wages or better working conditions out of fear that their jobs will be moved to another municipality, or even abroad”³⁷. Instead, it is the outcome of the “extractive legal setting put in place when the need was to transform the abundant commons into capital that at the time was too scarce. This legal setting is based in a particular conception of property law, based on the assumed freedom to extract resources and exploit labour”³⁸. In the same vein, Hampton argues that “the commodification of labour power and the ‘free gifts of nature’ (including the atmosphere) are the parallel process through which capital simultaneously exploits labour while imperilling the atmosphere”³⁹.

In analysing Just Transition patterns, the nuances of the Italian case might reflect the fact that unions’ logic of collective action is blurred and much less ideologised than in the past. Institutional differences in Italian industrial relations and diversified union approaches have progressively emerged across and within sectors, within different types of firms and, above all, within different industrial contexts. Just Transition dilemmas and structural constraints make these complexities more accentuated and generate pragmatic and adaptive responses in which contextual variables are extremely important. Overall, the integration of labour and environmental values through collective bargaining and social partnerships is emerging as a process of incremental institutional change in Italy, with an emphasis on balancing power and interests

³⁶ R. Hyman, *Industrial relations. A Marxist introduction*, Macmillan, 1975, p. 98.

³⁷ F. Capra, U. Mattei, *The Ecology of Law: Toward a Legal System in Tune with Nature and Community*, Berrett-Koehler, 2015, p. 121.

³⁸ *Ibidem*.

³⁹ P. Hampton, *Workers and Trade Unions for Climate Solidarity...*, *cit.*, p. 186.

that decarbonisation implies. Institutional alliances, public-private cooperation and bargaining policies for sustainable development are examples of a neo-pluralistic evolution of Italian industrial relations⁴⁰. However, what actually constitutes a constraint to be eliminated or a resource to be utilized is still unclear in contemporary social partners' strategies to promote Just Transition. As for any transitional phase in which a new stable model has not yet emerged, this situation generates pragmatic and adaptive behaviours in which contextual variables are of paramount importance. Because of this, the social realm of Just Transition can be seen as a continuum of interrelated practices that social partners may or may not share according to the specific situation. What Italian social partners produce in order to overcome the trade-off between labour and the environment, is not a coherent and uniform logic of collective action but sets of policies and practices arising out of different attempts to pragmatically face the dilemmas that transitional practices involve depending on costs and structural constraints.

⁴⁰ P. Ackers, *Reframing employment relations: the case for neo-pluralism*, in *Industrial Relations Journal*, 2002, vol. 33, n. 1, pp. 2-19; P. Ackers, A. Wilkinson, *British Industrial Relations Paradigm: A Critical Outline History and Prognosis*, in *The Journal of Industrial Relations*, 2005, vol. 47, n. 4, p. 452; P. Ackers, *Rethinking the employment relationship: a neo-pluralist critique of British industrial relations orthodoxy*, in *The International Journal of Human Resource Management*, 2014, vol. 25, n. 18, pp. 2608-2625.

Working with and around Voluntarism: Union Engagement with Environmental Sustainability in the UK

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Abstract

Drawing on documentary review and interview data, this paper examines the strategic repertoire used by UK unions over the last fifteen years to integrate environmental sustainability issues into workplace negotiation and bargaining. As we show, these strategies evidence efforts to work *with* (the promise) and *around* (the challenges of) the voluntarist industrial relations framework. While capacity building efforts work within the first dynamic, the power asymmetries currently characterising contemporary British industrial relations render the promise of voluntarism often an empty one in practice, despite the capacity that exists on the ground. Strategies of law reform and coalition building respond to the problem of power and the limitations it poses to voluntarist practice but do so with varying levels of success.

Keywords: unions; collective bargaining; environmental sustainability; voluntarism

1. Introduction

British unions have a long tradition of engaging with environmental protection and sustainability issues.¹ The ‘peak’ labour institution, the Trades Union

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¹ N. Räthzel, D. Uzzell, *Mending the Breach between Labour and Nature, in Trade Unions in the Green Economy. Working for the Environment*, Routledge, New York, 2013. As Räthzel and Uzzell note, however, this tradition is not entirely straightforward and unproblematic.

Congress (TUC), has promoted this agenda since the 1980s along the twin tracks of capacity building and political campaigning for union representatives (reps) to have statutory rights for inspection, information, and training on environmental, pollution, and climate issues.² The period between 2005 and 2015, saw a particular effervescence in TUC activities on this front, with its constitutive unions following suit to develop their own policies, campaigns, and training modules to raise awareness and capacity among their ranks. These efforts have precipitated numerous workplace initiatives pertaining to environment/labour nexus,³ pointing to the potential for workers and unions to be influential environmental and climate actors,⁴ and for institutions of labour relations and collective bargaining to play an important role in ecological conversion of workplaces, and just transition.⁵

Drawing on research carried out under the umbrella of the project *Agreement*, this paper examines the strategies utilized by UK unions in relation to collective bargaining and negotiation on environmental and climate-change related issues, focusing on the 2005-2020 period. Our methodology involved extensive review of policy outputs of the TUC and unions in the public and private sectors, available through online resources or directly obtained from our union contacts and the Labour Research Department (LRD). In addition, we conducted qualitative, semi-structured interviews with 12 key informants, whom we identified through our preliminary research and the use of snowballing technique. Included in our selection were union officers at the national, regional and workplace levels, ex-union officers still involved in the labour movement and particularly active on the labour/environmental agenda,

² P. Hampton, *Trade Unions and Climate Politics: Prisoners of Neoliberalism or Swords of Climate Justice?*, *Globalizations* vol. 15, n. 4, 2018, 473. As Hampton notes, TUC's early advocacy included calls for union reps to have statutory rights for inspection, information, and training on environmental, pollution, and climate issues. As we discuss here, the TUC still has the same demands today.

³ See LRD reports *Unions and Climate Change – The Case for Union Environmental Reps*, LRD, London, June 2009 and *Green Unions at Work 2012*, LRD, London, May 2012. A 2019 draft update of these reports is on file with authors.

⁴ P. Hampton, *Workers and Trade Unions for Climate Solidarity*, Routledge, New York, 2015.

⁵ See P. Tomassetti, *Labor Law and Environmental Sustainability*, *Comparative Labor Law and Policy Journal*, vol. 40, 2018-2019, 61 for supporting argument. However, the literature on union engagements along these lines shows a significant range of orientations, depending on the sectoral context, geographical location, and ideological or positional alignment vis-à-vis different social, economic and political forces/actors. See for example: Hampton 2015, 2018 *op cit.*; D. Snell and P. Fairbrother, *Unions as Environmental Actors*, *Transfer*, vol. 16 no. 3, 2010, 411-424; R. Felli, *An Alternative Socio-ecological Strategy? International Trade Unions' Engagement with Climate Change*. *Review of International Political Economy*, vol. 21, no. 2, 2014, 372-398; contributions to the special issue edited by D. Stevis, D. Uzzell, N. Räthzel, *The Labour-Nature Relationship: Varieties of Labour Environmentalism*, *Globalizations*, vol 15, no. 4, 2018, 439-453.

policy officers or managers of public and private sector organizations, and a Local Enterprise Partnership (LEP) officer.⁶ Everyone we interviewed played an active role or had a well demonstrated interest in attempting to foreground the relationship between labour and environmental issues in the context of labour relations. Many of the interviewees were policy officers at different levels within their unions or in the labour movement more broadly, who were charged with developing 'green' policies and managing 'green' portfolios. The managers we interviewed, as well as the LEP officer were also actively engaged with issues of sustainability and were known to some of our union-side interviewees. The main objective of these interviews was to supplement our documentary and policy analysis, and to better understand the apparent gap between the significant capacity building efforts undertaken by unions on the one hand, and the comparatively few reports of concrete collective bargaining agreements on sustainability issues on the other hand; a gap, which our research revealed early on. Among others, we wanted to learn whether our documentary research had failed to surface information about grounded practices, and to hear from those engaged on the ground about the possibilities and limits they navigated. The present paper draws primarily on the data obtained from our union-side policy analysis and interviews.

The institutional context and the political-economic milieu in which unions operate present particular opportunities and impediments to action, including action on environmental and climate-related issues.⁷ The UK is an interesting case because the British voluntarist model of industrial relations does not in principle foreclose negotiations on any issue, leaving it to representatives of the recognized union and employers to collectively determine the scope of negotiation.⁸ While this creates significant opportunities for expanding the scope of negotiable issues in line with emergent concerns, the quality of workplace relations and the relative power of the parties are significant factors. Given that union density has been undergoing steady decline since the late

⁶ These categories have been coded in the following way: UON, UOR, UOL, LA, M, LEP. Numbers assigned to these codes represent specific interviewees in each category.

⁷ See D. Stevis *Labour Unions and Green Transitions in the USA: Contestations and Explanations*, Working Paper #108, Adapting Canadian Work and Workplaces to Respond to Climate Change: Canada in International Perspective (ACW), 2019 on the role of micro, meso and macro dynamics in shaping union environmental sustainability and climate-related orientations and strategies.

⁸ Kahn-Freund characterized the British system of collective bargaining as 'dynamic' because of what he perceived as a capacity and openness of parties to, within fixed institutional and procedural framework, dynamically engage in norm creation though adaptation of existing standards to changing conditions: O. Kahn-Freund, *Intergroup Conflicts and their Settlement*, *The British Journal of Sociology*, vol. 5, no. 3, 1954, 193-227.

1970s⁹ and collective bargaining has fallen and been decentralized,¹⁰ the balance of power in contemporary UK workplaces tends benefit the employers. The erosion of union power has been widely attributed to ongoing policy and regulatory interventions initiated during the Thatcher-era, and most recently continued by the Conservative government in 2016. Among others, these changes dismantled the institutional and policy supports for collective bargaining that facilitated voluntarist action at the height of collective laissez faire model,¹¹ and legislated new barriers to unionization. More recent reforms to the Trade Union and Labour Relations (Consolidation) Act 1992, including the limitations on the right to strike¹² and the law on picketing,¹³ have continued this trajectory, further constraining union power by limiting the repertoire of pressure tools they have at their disposal. Moreover, provisions related to the statutory recognition procedure, which has also been subject to unfavourable changes,¹⁴ identify a narrow scope of possible negotiable issues that unions utilizing this procedure can pursue.¹⁵ While this scope, in principle, imposes no limits on bargaining practice for voluntarily recognized unions, in light of the broader realities of declining union power the statutory scope can act as a *de facto* baseline for negotiation in all workplaces. As such, coupled with the fact that the legislation and ACAS Code of Practice also narrowly approach the question of recognized and legislatively protected workplace actions for union representatives,¹⁶ the operation of statutory norms alongside voluntarist

⁹ Union membership has halved since 1979 and dropped to 23.2% of the workforce in 2017 – although with important differences between the private (13.5%) and public (51.8%) sectors: Department for Business, Energy, and Industrial Strategy, *Trade Union Membership 2017: Statistical Bulletin*, 2017, 4.

¹⁰ W. Brown, *The Contraction of Collective Bargaining in Britain*, *British Journal of Industrial Relations* vol. 31, n. 2, 1993, 194-195; H.C. Katz, *The Decentralization of Collective Bargaining: A Literature Review and Comparative Analysis*, *Industrial and Labor Relations Review* vol. 47, 1993, 10.

¹¹ While voluntarism tends to be associated with the notion of state abstentionism, many contemporary commentators have challenged this understanding. Bogg, for example, argues that rather than being absent, the state has historically played a key facilitating function through institutionalizing and providing various auxiliary supports for the voluntary, autonomous ‘social regulation’ of the workplace: A. Bogg, *The Democratic Aspects of Trade Union Recognition* (Bloomsbury Publishing, 2009). See also, A. Bogg, *Representation of Employees in Collective Bargaining within the Firm: Voluntarism in the UK*. Report to the XVIIth International Congress of Comparative Law, July 2006.

¹² Sections 2 and 3, Trade Union Act 2016.

¹³ Section 10, Trade Union Act 2016.

¹⁴ Sections 16-21, Trade Union Act 2016, give wider powers to the Certification Officer.

¹⁵ This includes conditions of work (pay, hours, holiday), allocation of work duties, disciplinary matters, facility time for representatives and other trade union matters: See Section 178(2), Trade Union and Labour Relations (Consolidation) Act 1992.

¹⁶ Currently, two categories of union representatives are legally recognised: health and safety representatives, and union learning representatives: Regulation 4(2) of the Safety

practice tend to militate against broad take up of non-traditional issues such as environmental matters in the negotiating agenda, even in workplaces where recognition is voluntary.

As we show here, the strategic repertoire adopted by UK unions, especially over the last fifteen years, evidence efforts to work *with* (the promise) and *around* (the challenges of) the voluntarist industrial relations framework. We describe and examine three sets of strategies that emerge from our review of union policy literature, namely: 1) those aimed at capacity building, training, and support of workplace negotiation; 2) those aimed at legal reform; and 3) those aimed at building coalitions with social movements. As we show in the following section, the first set of strategies has facilitated union action on environment/labour nexus by tapping into the opportunities that voluntarism presents. However, as our interview data and review of union outputs suggests, unions have also come across limits of voluntarist practice in a context of declining union power. The latter two strategies provide two different ways of responding to this problem. We look at these strategies in section three and follow with concluding discussion in section four.

2. Making the Most of Voluntarism?

a) *Strategy 1: Capacity Building*

Capacity building strategies have been long utilized by the TUC and its constitutive unions. These strategies include awareness raising, training and other forms of support that seek to prepare union members to proactively or reactively engage with employers on environmental sustainability and climate-change mitigation related workplace issues. The TUC publications such as *How to 'Green' Your Workplace – a TUC Guide*¹⁷, *Go Green at Work*¹⁸, *Greener Deals: Negotiating on Environmental Issues at Work*¹⁹, and *The Union Effect: Greening the Workplace*²⁰, set out UK labour movement's policy positions on a range of environmental issues, articulating the role for unions in taking action and engaging management in this realm, and providing practical advice for members seeking to get involved. These publications feature illustrative case studies derived from the TUC's GreenWorkplaces initiatives which were launched in two separate two-year cycles, in 2006 and 2008, with support from

Representatives & Safety Committees Regulations; Section 168A, Trade Union and Labour Relations (Consolidation) Act 1992; ACAS, *Time Off for Trade Union Duties and Activities*, 2010.

¹⁷ TUC, *How to 'Green' Your Workplace – a TUC Guide*, 2007.

¹⁸ TUC, *Go Green at Work: A Handbook for Union Green Representatives*, 2008.

¹⁹ TUC and Unionlearn, *Greener Deals: Negotiating on Environmental Issues at Work*, 2010.

²⁰ TUC, *The Union Effect: Greening the Workplace*, Economic Report Series, 2014.

the Carbon Trust and the Union Modernization Fund.²¹ At the time these projects were running, the TUC also published a regular Green Newsletter and coordinated a network of Green Workplaces. Unions including PCS, Prospect, Unite, Unison, and UCU²² and others produced their own handbooks and guides to encourage members to engage in the action of workplace greening, and some, like PCS and UCU, maintain dedicated webpages where member resources are available. More recently, smaller unions such as the BFAWU, began to publish a monthly ‘Green Stuff’ newsletter to disseminate information and raise awareness among staff and union members.²³

In the interest of building capacity, the TUC and individual unions developed various tools (i.e., checklists, forms, surveys) to help members carry out workplace audits, conduct staff surveys and other types of information gathering exercises necessary to establish the baseline from which improvements and actions can be planned. For example, the TUC’s *How to ‘Green’ Your Workplace* guide contains a workplace checklist of twenty questions designed to determine how green a workplace already is, while the *Go Green at Work* document provides a whole suite of resources on how to calculate carbon footprints and savings, advice on how to run a union ‘green event’, and a range of forms (e.g. sample survey, transport review, union green representative appointment form).²⁴ Likewise, Prospect published a range of guidance documents on specific issues such as zero carbon travel and transport, energy efficiency, and carbon management plans,²⁵ while PCS has produced a workplace environmental audit checklist that can be used to assess state of play in a range of areas (e.g. waste and recycling, energy efficiency, procurement, travel), to assist with development of a Workplace Environmental Action Plan.²⁶

Training has been another important aspect of unions’ capacity building work. TUC working with the Trade Unions Sustainable Development Advisory Committee (TUSDAC) offered its first major training course *Environmental*

²¹ Department for Business Innovation and Skills, *TUC GreenWorkplaces – Greening the Work Environment*, 2010.

²² UCU, *Staff Organizing for Sustainability: UCU Environment Reps Handbook*, 2014; UCU, *Branch Guidance on Environment Reps*, 2015; Unison, *Greening the Workplace: Unison’s Policy on Climate Change, the Environment and the Workplace*, 2013; Unison, *Steps Towards a Green Workplace: Evidence from Unison Branch Case Studies*, 2013; Prospect, *Getting Started – They Did!*, 2016.

²³ Interview UOR2.

²⁴ TUC, *Go Green at Work*, *op. cit.*

²⁵ Prospect, Members Resource. *Workplace Bargaining: Carbon Management Plans*, 2016. Many of these resources have now been archived on Prospect’s online library page and are not publicly available.

²⁶ LRD 2019 (unpublished draft, on file with the authors).

Education for Trade Unionists in 2005 (a follow up from an earlier 2002 pilot)²⁷, and then ran two-day training courses in subsequent years. During the 2005-2015 period, PCS and UCU also offered training on environmental issues, as have Unite, Prospect and Unison. Since 2018, more training courses have been offered again by the UCU and Prospect,²⁸ while BFAWU carried a motion during the 2020 General Federation of Trade Unions general council meeting calling for GFTU to establish and provide training for environmental reps in order to support representatives from smaller unions that do not have resources to develop their own courses.²⁹

The intention behind these various strategies seems to be that they would bolster member capacity to undertake actions at the workplace level, and the TUC's early position in *Go Green at Work* was that workers involvement on environmental issues should, where possible, take form of traditional negotiation and bargaining. Namely, TUC encouraged union members to pursue formal (standalone) agreements on environment and climate change along the TUC model³⁰, with provisions on joint consultation and negotiations structures, and recognition of dedicated environmental representatives.³¹ The union Community, for instance, proposed that members negotiate Sustainable Workplaces Framework Agreements encompassing joint commitments to improve environmental performance, while Unison encourages negotiation of 'green agreements' as one of its five steps to a green workplace.³² Likewise, Prospect has developed a sample text for Environmental (Sustainability) Charter or CSR policy it encourages members to negotiate. The union also issued bargaining advice related to 'carbon management plans'³³, which members are encouraged to co-produce with employers, or seek consultation rights on. PCS also produced an example of a Workplace Environmental Action Plan as a template for members seeking to form joint agreement with management.³⁴ As reported by LRD, transport union TSSA has recently

²⁷ Select Committee on Environmental Audit, Appendix 42 Memorandum from the Trade Union members of the Trade Union Sustainable Development Advisory Committee (TUSDAC), 2004.

²⁸ LRD 2019 (unpublished draft, on file with the authors).

²⁹ Interview UOR2.

³⁰ TUC, *Go Green at Work*, *op. cit.*

³¹ Alternately, TUC advised members to integrate the latter within existing arrangements and recognition agreements. Specific unions have issued advice along the same lines.

³² Unison, *Steps Towards op. cit.*, 9-10.

³³ Prospect, for example, issued a bargaining guidance to its members in 2016, which considers how involvement in development of carbon management policies and plans (CMP) can benefit union members. CMPs are used by UK firms to facilitate compliance with carbon targets and budgets imposed by the Climate Change Act 2008: Prospect, *Workplace Bargaining*, *op. cit.*

³⁴ LRD 2019 (unpublished draft, on file with the authors).

produced a negotiating guidance for union organizers seeking to agree a sustainable framework agreement for non-core payments. The guidance includes: a wider brief for union representatives to include sustainable development in negotiations; giving reps the right to pursue environmentally friendly measures, such as energy saving, waste strategies and travel plans; and union involvement in environmental monitoring and management systems.³⁵

b) Assessing Outcomes

All the activities and efforts to prepare members to engage with management outlined above rest on presumption that expansion of unions' workplace representation and negotiating agendas to include environment-related issues is possible within the voluntarist system. And indeed, there is much evidence that the strategy of capacity building has not only put environmental issues on members' radars, but also led to proliferation of environment-related actions at the workplace level.

The surveys conducted by the LRD in 2009³⁶ and 2012³⁷, as well as more recent union press releases, training materials, and other outputs we reviewed, report a growing awareness of and interest in environment-related actions. This interest is evidenced in part by the growing number of members who attended or requested training sessions, electing to become 'green' reps, and branches reporting discussions on environmental issues starting to take place within existing (typically, health and safety committees) or newly established joint consultation and negotiation structures such as 'green' forums or joint environment committees.³⁸ In some cases, unions managed to secure agreements, encompassing both, representation on a joint dedicated forum, and official recognition for environmental rep positions, with paid facilities time.³⁹

³⁵ LRD 2019 (unpublished draft, on file with the authors).

³⁶ LRD 2009, *op. cit.*

³⁷ LRD 2012, *op. cit.*

³⁸ According to the 2009 and 2012 LRD surveys, 16% and 46%, respectively, of workplaces that answered the survey reported that some union-management discussion on climate change and environmental issues was taking place within the context of established joint health and safety committees. The surveys also noted that reports of joint environment committees relayed by respondents went up from 6% to 28%.

³⁹ See for example, B. Hall, *Prospect Leads the Way on Workplace Environmental Sustainability at Davenport Royal Dockyard*, 25 November 2016, on the 2016 agreement between Prospect, GMB and Unite at the Davenport Royal Dockyard, or Unison, *Steps Towards 2013*, *op. cit.* on recognition agreements between UCU and South Thames College and between Unison, GMP and Unite and Bristol City Council. For more detail on different types of agreements see the UK Report for the project Agreement.

Union members also reported concluding agreements with management expressing the commitment to achieve certain jointly identified green goals and targets, or ones focused specifically on delivery of training events and one-off workplace initiatives either by the union or on a joint basis with employers.⁴⁰ Such initiatives include setting up and running workplace programs and actions related to waste and recycling, reduction of energy consumption, monitoring and reduction of emissions, improvement of the work environment (i.e. through introduction of pollution-reducing plants), development of alternative transport options (cycling, electric, hydrogen, etc.), sustainable food and catering, curriculum development, various community-oriented initiatives and projects (i.e. tree planting, ecological restoration, etc.).

However, sustaining these engagements and turning them into bargaining issues and widespread practice has proven to be more challenging. Our interviewees told us, for example, that even when various workplace initiatives on environment are formally negotiated, they are often not incorporated into official written agreements,⁴¹ which can render them fragile. Moreover, management openness to initiatives of this nature is often “dependent on the good relations between union reps and the company,”⁴² as well as strength of the particular bargaining unit.⁴³ Absent those conditions (of good relations and/or strength), the leverage that unions and workers have around issues that are not traditionally – or legislatively – recognized as bargaining issues is more limited. As one interviewee observed: “[I] management don’t care about staff salaries/work conditions – why would they care about environment?”⁴⁴

Translating capacity and members’ enthusiasm into lasting action is especially challenging in those organizations where no formal channels for consultation on these issues have been established,⁴⁵ or where environment reps have not been officially recognized by the employer or provided with facility time and pay. Although in some cases unions have chosen to frame environmental issues as ones of health and safety to get around the problem of recognition, some of our interviewees have expressed concern that this strategy would likely keep environment “at the bottom of the priority list”.⁴⁶ Namely, some noted that given the resource (time and money) problems that even legally sanctioned union reps must contend with, environmental issues might be perceived by

⁴⁰ Unison, *Steps Towards*, *op. cit.*, 6-8; TUC, *The Union Effect*, *op. cit.*, 16-22.

⁴¹ Interviews LA2, UON1, UOR2.

⁴² Interview LA1.

⁴³ Interview UOL2.

⁴⁴ Interview UOL1.

⁴⁵ Interview M1.

⁴⁶ Interview UON1.

reps as competing with ‘bread and butter’ issues such as pay, working conditions, and health and safety, and be given less priority.⁴⁷

3. Working around Voluntarism

To what extent can the above noted challenges of translating capacity into even more widespread action in a voluntarist context be attenuated? As we outline here, law reform and coalition building are two strategies that unions have pursued alongside capacity building, albeit with variable levels of success.

a) Strategy 2: Law Reform

A number of our interviewees suggested that the current legal framework, especially the narrow legislative framing of the representative roles for union representatives, stands in a way of even more robust engagement with environmental issues in the workplace.⁴⁸ Indeed, TUC and union advocacy in relation to legislative recognition of environmental reps has sought to formalize roles that union members were being encouraged to take on, and thus address the problem of reliance on voluntary employer recognition of those union members who assumed these roles on their own time and on an unremunerated basis.

Currently, trade union representatives, who are “official[s] of an independent trade union recognised by the employer”⁴⁹, are legally entitled to “reasonable”⁵⁰ time-off for training purposes⁵¹, for carrying out their official duties, including negotiations⁵², and for taking part in any union (or related) activity⁵³. It is

⁴⁷ Indeed, it is not just at the workplace level that resource issues render environmental issues are fragile. As a number of interviewees related, austerity-related funding cuts, and shifting union priorities related the changing political landscape, government policy, and Brexit contributed to a significant loss of momentum in TUC and constitutive unions’ capacity building efforts and advocacy on environment. Our research revealed a significant information and engagement gap between 2016 and 2018, as TUC’s dedicated webpages ceased to exist or became more difficult to access (as they became archived, and many hyperlinks were not functioning). This was also the case for some individual unions’ online resources, policy support and training offerings. In the public sector, many trained environmental reps were lost to job cuts (Interview UON1)

⁴⁸ Interview LA2, UON1, UON2, M1.

⁴⁹ Section 168(1), Trade Union and Labour Relations (Consolidation) Act 1992.

⁵⁰ Section 168(3), Trade Union and Labour Relations (Consolidation) Act 1992.

⁵¹ Training should be approved by the TUC or by the independent trade union of which the employee is an official. See section 168(2), Trade Union and Labour Relations (Consolidation) Act 1992.

⁵² Section 168(1), Trade Union and Labour Relations (Consolidation) Act 1992.

⁵³ Section 170(1), Trade Union and Labour Relations (Consolidation) Act 1992.

important to note that representatives are entitled to *paid* time off to carry out union *duties* – which covers collective bargaining⁵⁴ –, but only to *unpaid* time off to take part in union *activities*⁵⁵. Time off taken for training purposes will be paid⁵⁶. Currently, two categories of union representatives are legally recognised: health and safety representatives⁵⁷, and union learning representatives⁵⁸. Formal agreements regarding time off in relation to other sorts of duties than those covered by statute may be negotiated⁵⁹ but, again, this is voluntary.

Against this backdrop, the TUC has campaigned for statutory recognition of environmental reps, including dedicated facility time to carry out union functions,⁶⁰ on the basis that it would have a “transformative effect in the area of the environment at work”⁶¹. Specifically, the following three areas were identified as pertinent: (1) sufficient time off for appropriate and relevant environmental training⁶²; (2) sufficient time to carry out an energy and environmental audit with management⁶³; and (3) by agreement with management, the option to establish a joint environment forum⁶⁴ for the purpose of consultation between green reps and management.⁶⁵

Review of TUC’s constitutive unions’ policies, resolutions and motions evidence that many have been making similar calls and commitments to lobbying government for legislative change⁶⁶, or to amend the ACAS Code of

⁵⁴ ACAS, 2010, *op. cit.*, 10.

⁵⁵ TUC, *Facility Time A TUC Guide to Defending the Right to Represent Members*, 2017, 4. For a full list of union duties and activities, please see the ACAS Code, *op. cit.*.

⁵⁶ See ACAS, 2010, *op. cit.*, 23.

⁵⁷ Regulation 4(2) of the Safety Representatives & Safety Committees Regulations.

⁵⁸ Section 168A, Trade Union and Labour Relations (Consolidation) Act 1992.

⁵⁹ ACAS, 2010, *op. cit.*, 32.

⁶⁰ TUC, *Go Green at Work*, *op. cit.*; also see TUC, *Greener Deals: Negotiating on Environmental Issues at Work*, (n.d.), 4; TUC, *The Union Effect*, *op. cit.*, 8.

⁶¹ TUC, *The Union Effect*, *op. cit.*, 8.

⁶² TUC, for example, has advocated for ten days of accredited training in the twelve months following reps’ appointment: *The Union Effect*, *op. cit.*; also see TUC, *Greener Deals*, *op. cit.*, 4; TUC, *Go Green at Work*, *op. cit.*, 13; UCU, *UCU Annual Environment Report 2016*, 2016, 7.

⁶³ TUC, *The Union Effect*, *op. cit.*, 9; and LRD, 2012, *op. cit.*, 48; see also UCU, *Environmental News*, n. 6, Feb 2009 for UCU’s work in this area.

⁶⁴ TUC, *The Union Effect*, *op. cit.*, 9.

⁶⁵ LRD, 2012, *op. cit.*, 48; TUC, *The Union Effect*, *op. cit.*, 9 and 46; TUC, *Greener Deals*, *op. cit.*, 4; and UCU, *Environmental News*, *opt. cit.*

⁶⁶ BFAWU, *BFAWU Environmental Strategy*, 2017; FBU, *Climate Change and Environmental Reps. Resolution 79*, 2007; PCS, *Motions to PCS 2015 Annual Delegate Conference*, 2015; PCS, *Motions to PCS 2016 Annual Delegate Conference*; PCS, *Call for Transition to Zero Carbon Economy*, 2016; PCS, *PCS Green Policies*; UCU, UCU *Guidance Leaflet, ‘Energy Management – What role for the UCU?’*, 2010, 5; also see UCU Wales, *‘A Sustainable Wales Better Choices for a Better Future: Consultation on Proposals for a Sustainable Development Bill’*, UCU *Response*, 2013, 3; UCU, *UCU Environment Reps Handbook*, 2014; Unison, *Green Jobs, Green Services, Green Workplace Reps, motion to the Local*

Practice on Time Off for Trade Union Duties.⁶⁷ To bolster their case for statutory recognition and furnish evidence of workplace practice, some unions also encouraged members to work on negotiating change with individual employers⁶⁸ or at a sectoral level,⁶⁹ and by encouraging branches to appoint reps and seek to negotiate joint agreements regardless of their legal status.⁷⁰ To support members willing to take on these roles, Prospect, for example, published a guide for environmental reps to help them negotiate formal recognitions agreement with employers⁷¹.

However, this law reform strategy did not bear fruit so far. The revised ACAS Code of Practice does currently acknowledge the role of environmental rep as present in some UK workplaces, but ultimately leaves the questions of recognition, facility time and pay, to voluntary agreement between unions and management.

c) Strategy 3: Building Coalitions

Working in coalition with other unions, employers and social actors is another strategy that unions have drawn on to work around the challenges they encountered. Based on our research, such coalition-based work takes many forms but can be roughly classified as involving collaboration among unions acting in the same workplace or employer; wider localized or regional project-based coalitions involving unions, environmental and community groups, educational institutions, employers and business leaders; and integration with broad-based activism on climate justice.⁷²

The TUC has supported coalition building generally, and through specific coalition-based projects. For example, TUC Battersea and Wandsworth funded the Greener Jobs Alliance, to act as liaison between unions, educational

Government Service Group Conference, 2010; Unison, *Greening the Workplace UNISON's Policy on Climate Change, the Environment and the Workplace*, 2013, 3; Unison, *Facility Time Guidance*, 2017, 3.

⁶⁷ Unison, *Greening Further Education*, motion to the Local Government Service Group Conference, 2009.

⁶⁸ For example, in 2009, UCU reps in South Thames College requested that the college formally recognise environmental reps: UCU Environmental News, *op. cit.* see also Unison, 'UNISON, *Steps Towards*, *op. cit.*, 5; Community, 'Health, Safety, and the Environment'.

⁶⁹ UCU Wales called in 2013 for the automatic recognition of environmental reps by public sector bodies: UCU, *A Sustainable Wales*, *op. cit.*, 3.

⁷⁰ UCU, *Branch Guidance*, *op. cit.*, 1; PCS 2018 Annual Delegate Conference adopted a policy underlined the importance of environmental reps in reaching local environmental agreements and action plans: PCS, *Environment Policy Agreed at PCS Annual Delegate Conference (ADC)*, 2018.

⁷¹ Prospect, *Getting Started*, *op. cit.*, 14.

⁷² Our interviewees also spoke to the importance of such coalitions and many are actively engaged in this capacity: e.g. Interviews LA1, LA2, UOR2, UOR1, UON1, UON2, M1, M2.

organizations, community groups, and employers around issues related to ‘green’ skills development, as well as training⁷³ and education on climate change adaptation, carbon reduction and transitional justice. Also, TUC Yorkshire and Humber established the Low Carbon Task Force, a regional initiative which involves unions and regional employers from carbon-intensive sectors, as well as the Local Economic Partnership, and a range of local environmental groups and organizations involved in skills and training.⁷⁴ The Task Force has been charged with developing and coordinating a regional low carbon ‘just transition’ plan. As part of the undertaking the TUC Yorkshire and Humber have developed and run training courses for union representatives. Beyond specific project-based coalitions, unions have long engaged with environmentalists in the realm of the Campaign Against Climate Change (CACC). The CACC’s dedicated Trade Union Group developed the One Million Climate Jobs campaign, engaged in climate strikes, and is actively campaigning on a range of environmental issues such as fracking, aviation expansion, and divestment.

To what extent do these coalition-based approaches deliver results? Review of the union surveys and publications reporting on environment-related actions and agreements suggests that while single unions managed to negotiate narrower agreements on recognition or stand-alone workplace actions, most of the more comprehensive or multi-faceted agreements that have been concluded in the last 15 years involved several unions negotiating collectively, at times involving also other actors. For example, the 2016 Davenport Royal Dockyard concluded by Prospect, GMB and Unite with the Ministry of Defense, Interserve and Babcock Marine and Technology incorporated recognition of 35 environmental representatives and the unions’ seat on the management’s environment committee, energy efficiency group, and committees tasked with addressing waste and water management as well as new infrastructure and building projects on site. It also incorporated commitments on union participation in actions related to a wide range of environment related issues (e.g., energy consumption and efficiency, carbon reduction, resource use and optimization, clean transport strategy, identification of environmental risks and accident prevention).⁷⁵ Similarly, GMB, Unison and Unite reps worked together to negotiate an agreement at the Bristol City Council. There, the unions managed to negotiate facility time of two days per month for 12 environmental reps constituting a Green Reps

⁷³ More recently, the Greener Jobs Alliance has developed and offered online courses for unionists on Climate Change Awareness, Air Pollution, and Just Transition at Work. See the [Greener Jobs Alliance website](#).

⁷⁴ TUC, *Low Carbon Task Force in Yorkshire and Humber*, 19 April 2018.

⁷⁵ Hall *op. cit.*, The Agreement is archived on Prospect’s website.

Committee. The management also agreed to the work programme that the Green Reps Committee developed, and which included initiatives on waste and recycling, replacing large bottle water dispensers with filtered, cooled mains water, developing waste management policies for Council organized events and establishing an eco-driving scheme.⁷⁶

Beyond specific agreements, working in coalition with a range of other actors, including employers and the business community, appears also to be effective for building support to deal with longer-term local or regional initiatives related to climate change adaptation and just transition. As we learned from our interviewees, these broader multi-stakeholder coalitions and initiatives, such as the Furzedown Low Carbon Zone initiative, which was developed together with Greener Jobs Alliance as a union-college-community project,⁷⁷ or the Low Carbon Task Force, create the space for communication and exchange between management, labour, and other local players. The latter is particularly crucial in the policy context where labour and unions have been largely marginalized within institutional structures and in the dialogue on industrial strategy and economic development.⁷⁸

4. Concluding Discussion

Above, we outlined three types of strategy that unions in the UK have used to engage with environmental sustainability and climate-change related issues at work. While we presented and assessed the three strategies separately, in practice they clearly interact to each other. While the first set of strategies seeks to work *with* the possibilities inherent in voluntarist industrial relations, the latter two can be seen as working *around* the challenges that voluntarism poses by responding to the problem of power. Namely, the power asymmetries currently characterising contemporary British industrial relations render the promise of voluntarism – that ‘sky is the limit’ in negotiation, if parties agree – often an empty one in practice. Our qualitative interview data confirms that while there is interest and willingness amongst unions and workers to engage

⁷⁶ Unison, *Steps Towards op. cit.*

⁷⁷ TUC, *The Union Effect, op. cit.*, 30.

⁷⁸ Interviews UOR1, LEP1. While UK has signed and ratified the Paris Agreement and endorsed the Silesia Declaration, the industrial strategy adopted by the Conservatives in 2017 made no reference to either just transition or social dialogue, despite identifying clean growth as one of the four ‘grand challenges’ for the British economy. These omissions are unsurprising given longer-term tendency of UK governments to marginalize organized labour in the realm of policy development. As others have already shown, consultative tripartite bodies established by previous governments – Labour’s Forum on Just Transition (2009) and Coalition’s Green Economy Council (2010) – failed to institutionalize meaningful social dialogue on just transition, or much else: Hampton, 2015, *op. cit.*, 75-76.

management on sustainability, issues of capacity, resources and the limits of law keep these issues in a fairly marginal position, especially when workplace relations and structures of consultation and negotiation at work are not conducive. Thus, union strategies aimed at legal reform seek to get around these problems, and the broader problem of power imbalance within the workplace, and to expand the scope of bargaining issues by bolstering rights of union representatives to put these issues on the agenda. The third set of strategies also aims at changing the balance of power. Specifically, the coalition route helps unions work around the limits of power by attenuating the power imbalance in the workplace (where several unions join together) but also bolstering union's social power and legitimacy through working with and for the mutual benefit with allies in other organizations and local communities.

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