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Article abstract

Until 1980, labour relations in Poland were entirely run by the state. As a result of massive strikes and social negotiations the first independent trade union “Solidarność” was established. The 1989 elections, which lead to the defeat of the Communist government, finally opened the door for legal reform of the Polish industrial relations model. In this article, the author examines the evolution and development of the Polish labour relations system in contrast with the situation and latest trends of labour negotiations in Canada, a democratic country with a market economy.

Conflict and Cooperation in Labour-Management Relations. A Comparative Approach : Canada-Poland

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ABSTRACT

Until 1980, labour relations in Poland were entirely run by the state. As a result of massive strikes and social negotiations the first independent trade union "Solidarność" was established. The 1989 elections, which lead to the defeat of the Communist government, finally opened the door for legal reform of the Polish industrial relations model. In this article, the author examines the evolution and development of the Polish labour relations system in contrast with the situation and latest trends of labour negotiations in Canada, a democratic country with a market economy.

RÉSUMÉ

Jusqu'à 1980, les relations de travail en Pologne étaient entièrement prises en main par l'État. Des grèves intensives et des négociations sociales ont eu pour résultat l'établissement du premier syndicat indépendant appelé « Solidarność». Les élections de 1989 qui ont mené à la défaite du gouvernement communiste, ont finalement ouvert la voie à la réforme légale du modèle polonais des relations industrielles. Dans cet article, l'auteur examine l'évolution et le développement du système polonais des relations du travail comparé à la situation et à l'évolution récente des négociations de travail au Canada, un pays démocratique à économie de marché.

I

The legal system in Poland differs in many aspects from the Canadian one. A good example is the fact that, Polish law, as the other systems of continental Europe, belongs to the Romanistic family originating from Roman law, whereas Canadian law (excluding private law in Québec) is based on the idea of common law. Other differences — on which the author focuses in this article — result from the fact that law in Poland, because of its political dependence in the Post War period, was shaped by the models created in the Communist Soviet Union. Since

1989 the process of cleaning up the law from Communist elements has been taking place. At present, Poland is trying to adjust legal regulations similar to the solutions adopted in Western Europe with the intention to integrate with the European Communities. This trend is also influenced, albeit to a lesser extent, by American and Canadian traditions.

The circumstances mentioned above have been influencing industrial relations in Poland, which are now in the phase of intensive transformation.

In this respect Canada, in contrast with Poland, gives the impression that it is a stabilized country. However, one can observe dissatisfaction with the present *status quo* and some attempts have been undertaken to create a new quality in the field of industrial relations. One may foresee a certain convergence of tendencies in both countries, of which the general circumstance is the assimilation of global standards in democratic countries.

The general tendency in the transformation of industrial relations in Canada — in our opinion — may be described as an attempt to introduce correction to the so far existing model of relations between labour and management, based on the rule of reconciliation of contradictory interests, in other words — the introduction of certain cooperation elements into the model.

Regulation of industrial relations in Canada is based on the Wagnerian Model, that is on assimilation by Canadian legislation, of the solutions of the American so called Wagnerian Law from 1935. The Canadian (federal) labour code — part I[1] and the corresponding provincial legislation take Wagnerian Law as their model.

These acts regulate the rules of collective bargaining relating to the so called bargaining unit representing the majority trade union having exclusive right to conclude agreements with the employer. The state plays an important role in the preparation and the course of bargaining through supervision by the Canadian Labour Relations Board and by offering the parties involved reconciliation and mediation services which aim is to ease the negotiations and prevent open demonstrations of dispute — strikes and lockouts.

Another element of the Wagnerian Model is a system of settlement of collective and individual labour disputes resulting from collective agreements (disputes for rights) and called a grievance procedure with envisages a compulsory arbitration in case of lack of agreement.

The term "collective bargaining" is the key to the Wagnerian Model. It is treated as a measure in ensuring and obtaining compromise between revindicative trade unions struggling to increase the employees' share in the firm's profits and the employer who tries to reduce their share. Legal protection and state regulation are to ensure "freedom of negotiations", "constructive settlement of disputes", and "social peace"[2].

Besides these values the idea of cooperation between labour and management *i.e.* between trade unions (or non-trade union representatives of employees) and employers is not exposed. In Europe like in Poland the idea is expressed by the term "participation": ensuring that the representatives of employees have influence on the decision-making process in the company.

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1. An Act to consolidate certain statutes respecting to labour quoted as *Canada Labour Code*, R.S.C. 1985, c. L-2.

2. See preambule to part I of the Canadian Labour Code, and the title of section VII of this part.

Treating the Wagnerian Model exclusively as a rule for the struggle between labour and management would be one-sided in terms of the importance of collective agreements in the legal system of Canada, being the basic source of labour law which develops employment standards over and above the statutory ones. Therefore collective bargaining, even if the participants perform as opponents, brings positive results in the development of labour law. In this way disagreement is at the same time some kind of cooperation because achieving agreement between two opposite parties also contributes to the improvement of industrial relations. It is also some kind of participation because joint regulation of certain issues by the trade union and employer makes other agreements in individual labour contracts or by the unilateral decision of the employer, impossible. Therefore a certain sphere of vital interests for the employees is shaped in a bilateral way, while in case of lack of agreement the employer would decide upon it unilaterally[3].

Collective agreement as a common result of negotiations between both parties is not the only thing which justifies the statement about the existence of cooperation and participation, elements between partners in industrial relations in Canada. Such elements are also present during collective bargaining previous to the conclusion of a collective agreement and also in mutual contacts between parties involved when the agreement is in force. They are the product of practice and have their base in collective labour agreements. Therefore, conducting collective bargaining requires the establishment of proper representation of employees and employers and it often happens that groups of employee representatives are created to supervise the enforcement of the agreement. They take advantage of some facilities and their protection[4].

In spite of the fact that collective bargaining in Canada or elsewhere has its cooperative dimension, its motivating force in principle remains the conflict between contradictory interests. That is why in Europe, including Poland, the term "participation" is reserved for something other than conducting collective bargaining with the goal of reaching an agreement; it is a form of employee participation in company affairs. In particular, so called representative participation by company councils of employees and representation of employees in supervisory boards of companies. These types of bodies influence decisions in issues other than those relating to collective agreements.

Representative participation which was developed in continental Western Europe is different from the model of industrial relations in Canada. Issues not covered by a collective agreement are in principle the exclusive right of management board decisions[5].

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3. In individual employment contracts in spite of their formal bilateral character, as it is known in practice, it is the will of the employer which prevails.

4. See collective labour agreement mentioned in note 5, article 5.

5. Collective labour agreements stipulate this *expressis verbis*. It is, for example, in conformity with the collective agreement for telecommunication companies, covered by federal law, the exclusive right of Management as accepted by the trade union : "[...] to hire, lay-off, discharge, classify, transfer, promote, demote or discipline employees [...] to operate and manage its business in all respects [...] to determine the number and location of work areas, the methods to be used in operations, schedules, kinds and location of machines and tools to be used, processes and repairing, warehousing and installing, and the control of material and parts to be used". Collective Labour Agreement entered into by Northern Telecom Canada Limited and Canadian Union of Communication Workers Unit no. 2, Montréal — Québec, effective April 22, 1991 — February 25, 1994, article 3.

There have been some deviations from this model of industrial relations in which the conflicts of interests between labour and management are resolved through collective agreements, and in case of conflicts not included in the agreements the employer decides for himself. Range and types of deviations prove the existence of new qualitative elements in industrial relations in Canada[6].

The tendency to introduce participation mechanisms occurred for the first time in the seventies. Later there was a withdrawal from the implementation of the idea of employees co-management.

Now in Canadian companies the expression of employee participation is, in some establishments, joint committees composed of employee and employer representatives separate from labour-management bodies and where a new collective agreement is prepared or its implementation is supervised. These joint committees are also separate from the bodies settling disputes according to the grievance procedure. The activities of these committees exceeds the framework of collective bargaining[7].

These committees may be general if the matters of interest cover all employee problems occurring in a business, or specialized ones, if they are supposed to express their opinions in particular cases. According to another criteria, joint labour-management committees are divided into permanent ones and others created *ad hoc*. An example of the specialized *ad hoc* committees are joint planning committees established in case of mass lay-offs, whose aim is looking for solutions that smooth the effects of lay-offs. An example of permanent specialized committees are the occupational health and safety committees envisaged by law.

An interesting phenomenon in the eighties was the establishment of joint bodies consisting of representatives of labour and management at the industrial level. Their range of interest covered all issues not included in collective bargaining. First of all, their goal was the planning of changes in employment connected with technological progress and resolving problems related to training and retraining of employees. Among other activities that were dealt with, one could mention the elaboration of programmes to facilitate the introduction of new technological changes in an enterprise by firms and trade unions, joint representation in contacts with the Government, entrepreneurs and trade unions in the area of human resources development, and supporting the desired flow of capital through, for example, undertaking actions towards decreasing taxes in a given industry branch and analyzing export (for example in metal industry), and finally organizing and supporting research.

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6. See M. DARBY, "Labour-Management Cooperation : A Study of Labour-Management Committees in Canada", Industrial Relations Centre, Queens University at Kingston; E. RATON and B. VOOS, "Unions and Contemporary Innovations in Work Organization", (1989) 6 *Queen's Papers in Industrial Relations*; G. W. ADAMS : "Worker Participation in Corporate Decisions-Making : Canada's Future?", (1990) 3 *Queen's Papers in Industrial Relations*; P. WEILER, *Reconcilable Differences, New Directions in Canadian Labour Law*, Toronto, The Carswell Company Limited, 1980, pp. 301-311.

7. The objective of establishing committees in companies is justified by J. Sanderson in the following way : "[...] two sides maintain contact and have discussions on matters of mutual interest during the life of an agreement. The most common means to accomplish this purpose is a labour-management committee, which meets periodically, or as required outside of both the collective bargaining negotiations and the deliberations of a grievance committee. The purpose of such meetings is not to discuss grievances, or to act as a grievance committee, but to examine in a general way in-plant problems that are causing one or both sides some difficulty [...]". J. SANDERSON, *The Art of Collective Bargaining*, 2nd edition, Canada Law Book Inc., p. 33.

The above statements prove that social partners treat sectorial committees as specific lobby groups representing common interests of sectorial branches towards the state. However, the state supports creation of these types of bodies by initiating and assisting in their establishment.

It should be stressed that the committees' activity is based on the non-formal cooperation of social partners. As it has been stated this cooperation is independent from collective agreements. Although the activity of joint labour-management bodies manifests itself outside the bargaining system, it stimulates a better atmosphere for the collective bargaining procedures.

The number of branches in which there are joint labour-management bodies is inconsequential[8] but their creation as well as the phenomenon of cooperation committees in companies, may prove that there are new trends in the field of industrial relations in Canada.

The activity of joint bodies consisting of employees and employers representatives both at the commercial and industrial levels may be perceived as a type of participation in the European understanding of the word. It is a union kind of participation because the employee side is represented in these structures by trade unions; and the typical legal basis for the committee's activity in an enterprise is the provisions of collective agreements.

Apart from the trade union participation trend, there is also a tendency related to non-union participation, which is a form of employee mobilization inspired and supported by employees generally putting trade unions aside. This type of participation mainly concerns lower levels in company structure and is revealed in the creation of so called autonomous or semi-autonomous quality circles.

The movement of quality circles with its slogan "Quality of Working Life" based on Japanese solutions spread out particularly in the United States of North America. It is known in Canada, although less popular[9]. The activities of a quality circle include a group of employees from the same sector who meet regularly to discuss production problems, particularly those related to the quality of products. The activities of these circles enlarge advantages to the company through the possibility to use first-hand experience coming from its employees. Joint meetings integrate employees with the group and the company. Quality circles only have consultative-advisory powers in the area of problems occurring in particular work posts. Therefore their activity does not decrease the management's power to decide.

An example of other types of activities which are supposed to stimulate the activity of employees in the interests of the company without the participation of trade unions in Canada and the USA, is the system of profit sharing programmes or even quasi-grievance procedures. They are designed to give the impression that

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8. The author had the possibility of getting acquainted with the profiles of four such bodies : 1) The Sectorial Skills Council (SSC) operating since 1987 in the electrical and electronic industry, 2) The Canadian Steel Trade Employment Congress (CSTEC) operating since 1985 in the steel industry, 3) The Western Wood Products Forum (WWPF), founded in 1988 for the wood industry, 4) The Centre for Aerospace Manpower Adjustment in Québec (CAMAQ) which is active since 1978 in the aircraft industry.

9. See A. VERMA and T. KOCHAN, "Two paths to Innovations in Industrial Relations : The Case of Canada and the United States", (1990) *Labour Law Journal*. A broader comparison of industrial relations in Canada and in the United States is comprised in the study of P. KUMAR, Industrial Relations in Canada and the United States : From Uniformity to Divergence, (1991) 2 *Queen's Papers in Industrial Relations*.

rights of employees in the non-unionized enterprises are not worse off than in unionized ones.

These kinds of acts of employers described as "human resources practices" are generally negatively evaluated by the trade unions, which express the opinion that this presents employer eagerness to undermine the union's influences and to establish autocratic management in the company, which in the opinion of employers — leads to a decrease in costs and improves competitiveness. Human resources practices are treated by analysts, as one of the main reasons (apart from the increase in the number of small enterprises, capital outflow from the country, and unemployment) for the decrease in the rate of unionization of Canadian enterprises. Meanwhile the Canadian economy — as it is often stressed[10] — has been affected by the most severe crisis for many years and in order to handle the challenges it faces it must make a breakthrough in the area of innovations. Modern solutions in industrial relations play a special role in the above situation. However the key factor of success is the cooperation between employers and trade unions, not attempts to eliminate the latter ones. It requires — as it is underlined by authors dealing with this issue[11] — a change of attitude in all three main participants of industrial relations: employers, trade unions and the State. Employers, among others, should look first for an agreement with trade unions before the introduction of such innovations takes place, and trade unions should be able to elaborate their own innovative programmes, and on this basis, start constructive talks, so as to respond to initiatives other than on the side of management. Such postulates submitted to social partners pointed out their different roles in the Wagnerian Model. Therefore it is often stated that the very idea of collective bargaining should be modified. So called distributive bargaining carried out from antagonistic positions to define the rules of sharing profits brought by a company, should be complemented by so called integrative bargaining through cooperation so as to solve common problems[12].

Situating decentralized collective bargaining at the branch level and increasing the possibility of expanding the decrees system of agreement stimulates the creation of new specific forms of cooperation. It also serves the establishment of a more cooperative relationship. An example of such forms are parity committees, consisting mainly of representatives of collective agreement parties, who

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10. For example, according to the opinion of trade unions, Canadian labour has been in the worst crisis since the time of the Great Depression. Nineteenth Constitutional Convention, Canadian Labour Congress, Policy Statements (We can do it!), Vancouver, June 1992; Training and Unemployment Insurance Policy Statement.

11. See A. VERMA, *The Prospects for Innovation in Canadian Industrial Relations in the 1990s*, Canadian Federation of Labour and World Trade Centres Joint Committee, May 1990; T. KOCHAN, *Transforming Industrial Relations: A Blueprint for Change*, Industrial Relations Centre, Queens University, 1992.

12. In respect to differentiation between both types of bargaining see N. HERRICK, *Joint Management and Employee Participation. Labour and Management at the Crossroads*, Jossey-Bass Publishers, San Francisco, 1990, pp. 71-78. An example of a totally new trade union approach to their functions in economy is the establishment, by the Federation of Québec Employees (Fédération des Travailleurs du Québec — 400 000 members), of a so called Solidarity Fund invested in companies facing economic difficulties. In this case the trade union works as a great share holder influencing in the management of the business. L. FOURNIER, *Solidarité. Un nouveau syndicalisme créateur d'emplois*, Montréal, Éditions Québec/Amérique, 1980.

supervise and ensure implementation of decrees concerning the judicial extension of collective agreement on the basis of the Act of 1977 in force in Québec since 1977[13].

II

When focusing on a comparative presentation of industrial relations in Poland there should be a distinction made between the previous model, characteristic of a totalitarian state, and the new democratic one which is being created.

Until 1980 the system of industrial relations was subordinated to a Communist model. Stated briefly, the system was characterized by a lack of authentic employers and their organizations because of the total subordination of the economy to the State, which played the role of indirect employer for all employees. Although trade unions existed, they were not independent organizations. They were connected with the party structure and the function of employee protection, being the usual task of trade unions in democratic countries, turned out to be less important in comparison to so called production function which meant stimulation of staff in order to fulfill economic plans. On the other hand trade unions in plants had a wide range of powers in labour relations. Taking advantage of these powers served the protection of employees particularly in individual cases. At higher levels unions were involved in state machinery to a great extent by participation in the fulfillment of state functions. During certain periods unions partially managed the activity of social insurance and heard labour dispute cases : until 1981 labour inspection had been subordinated to unions. Collective disputes and strikes were not openly forbidden, however in practice, they were not tolerated because of the ideological presumption that there could be no contradiction between the working class and socialist state. Collective agreements were concluded at the industrial level. However there were no opportunities to express the conflict between the interests of "labour" and "management" because their content was determined by outside forces.

The previously outlined system of Communist industrial relations was characterized by a centrally imposed cooperation between trade unions and management of enterprises and the state, which did not exclude trade unions from being critical in some situations. Mechanisms of industrial relations existing at that time did not allow the expression of employee interest and conflicts. Therefore articulation of these interests took place outside of the system by spontaneous action and later by the creation of illegal organizations. The fact that instead of real employers existed an autocratic and ideological state dependent on outside power caused the building of social conflicts over the years with an additional political and national dimension.

Obviously Canada did not face such experiences. The position of social partners, the role of state in industrial relations and political implications of social conflicts were always situated in the frame of democratic order.

The turning point of transformation in Poland was — as it was mentioned above — the year 1980, when large strikes and social pacts were concluded and the trade union "Solidarność" was established (the first independent trade union in the Communist block) which caused the change to the industrial relations model. At that time the freedom of trade unions accepted in democratic states and

13. *Collective Agreement Decrees Act*, Québec, 1977 (later amended).

international law was introduced : the right to the free foundation of trade unions, union pluralism, independence of unions from the party and state organs, right of collective bargaining and strikes, etc.

The changes during the 16 months of "Solidarność's" legal activity, from August 1980 until 13 December 1981, had a provisional character. The changes took place while the old legislation of the totalitarian state was still in force. It allowed the Communist authorities, after the introduction of the Martial law, to restore the former model, although it did not happen to a full extent. For example, the right to strike, although very restricted, was still in force.

Long lasting changes were finally possible in 1989 as a result of the overtaking power of the opposition after the Round Table Agreement and the parliamentary election won by the opposition in June 1989. After that time, "Solidarność" "was re-legalized and the process to prepare new bills in the field of union law was started. Finally these bills were accepted by the Parliament on 23 May 1991. These three acts referring to trade unions[14], employers organizations[15], settlement of collective disputes[16] have created the foundations for the new model of industrial relations in postcommunist Poland.

This model reflects standards applied in democratic countries that have a market economy and accepted by international law.

It is based on the assumption of a self-regulated economy in which trade union representatives of employees, employers and their organizations participate freely. Disputes between parties involved are treated as a normal expression of the struggle between opposite interests, and a strike as a final measure which trade unions can use to support their demands. The role of the state has been determined as serving the parties involved, who for example may use the list of mediators at the office of the Minister of Labour and Social Policy.

These general assumptions may be treated as convergent with the system of industrial relations in many countries, like in Canada. There are nevertheless some exceptions. For instance in Polish law, the grievance procedure is unknown, there is no right for a lockout. Meanwhile in Canada the grievance procedure is applied in dispute settlements including individual conflicts resulting from the application of collective agreements. According to Polish law on collective dispute settlements, it is not possible to start this sort of dispute in order to support individual employee demands if the court is capable of giving a verdict (article 14, paragraphe 1)[17]. Such demands can be exclusively claimed in court. In principle, so called "conflicts of interests" were left to trade unions. It does not mean that labour law in Poland is regulated more "peacefully". Exclusion of employee claims from the sphere of industrial relations causes them to be claimed in court. Only the judicial way of settlement may be treated as the state's interference (the judicature) in the area of autonomous position of parties involved in case of disputes resulting from collective agreements. It is difficult to evaluate which of these systems contribute more to resolving conflicts in industrial relations.

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14. D. USTAW, Journal of Law, no. 55, item 234.
15. *Id.*, item 235.
16. *Id.*, item 236.
17. However, the *Act of 1937* (about collective agreements), which was in force until 1975, allowed the settlement of disputes by the arbitration system. Such possibilities concerned the disputes connected with the implementation of agreements between its participants as well as the disputes resulting from individual employment contracts based on the agreements between individual workers and employers (article 25, item 1).

The characteristic feature of collective disputes — inherited from the previous period in Poland — is the fact that employee claims are often addressed not directly to employers but to the state. It results from the fact that the employing subject in the public sector is difficult to identify : directors of enterprises in this sector are deprived of the employer's consciousness and conditions deciding on the effectiveness of an enterprise and situation of the employed are still determined by outside factors, it means that the state is the indirect employer. The state, for example restricts the increase of wages and salaries in this sector by using fiscal methods because of anti-inflationary policies. These are the remains of the previous system. The programme for the privatization of state enterprises should remove this type of pathology. In case of success of the above mentioned programme, collective disputes in the Polish economy will become similar to those known in democratic states with market oriented economies. It will be a direct conflict of economic magnitude between trade unions, employers and employer organizations, and not a political conflict in which the state is involved[18]. Then it would be possible to compare the roles of industrial relations in the context of relations between labour and management in both countries. At present many collective disputes in enterprise practices exceed the subject of the Act on collective dispute settlements.

Three acts from 1991 do not fully cover the relations included in industrial relations. According to the canon in force in Poland, legal regulation is required in two areas : collective bargaining and employee participation in the management of enterprises.

In both areas Communist regulations are still in force. In the field of collective agreements, chapter XI of the 1974 Labour Code relating to collective agreements at the level of the enterprise[19] is binding. In conformity with the above, law collective agreements are concluded at the industry level. The substitutes of collective agreements at the commercial level are commercial collective agreements relating to remuneration, for which the legal basis is the Act of 1984 relating to the rules of the commercial system of remuneration (later repeatedly revised)[20]. In practice the most significant role played by the above mentioned agreements are the regulation of wages and salaries both for state and private enterprises.

Regulations relating to collective agreements are not adjusted to the market conditions, first of all, because they regulate levels at which agreements can be concluded, they restrict the free will of parties with reference to the content of agreements, and they point out to the state (a competent minister) who is a party representing employers.

In respect to the subject of regulation, the equivalent of the Labour Code (part XI) and other regulations relating to company agreements at the federal level in Canada is part I of the Canadian Labour Code, which additionally covers problems of collective bargaining which correspond to the Polish Act on collective dispute settlements.

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18. An extreme example of the extent to which strikes can be used as a political weapon was a notice (in March 1993) of a strike involving the whole industry branch in Poland against the supposed decision by the German government which planned the extradition, to the United States, of Polish citizens accused of a crime.

19. In the words of the revised Labour Code Act of 1986.

20. Final text of Act published in D. USTAW, *Journal of Law*, no. 69, 1990.

A characteristic feature of Canadian law is the fact that the burden of regulation lies in the procedures leading to the conclusion of an agreement. Whereas in Polish law the actual agreement is stressed — definition of parties involved, context of the agreement, procedure of registration, etc. Therefore one can say Canadian law relates more to collective bargaining, and Polish law — to the result of bargaining : the agreement and other things of similar character. It means, that in spite of regulating the same subject, legislations of both countries are very difficult to compare in the specific solutions applied.

Drafts of new legislation in the field of collective bargaining in Poland have been prepared since the political turning point in 1989. Finally a draft version of the new collective agreement law was agreed on after long and difficult negotiations between the government, several trade unions and employers organizations within the framework of the so called Pact on State enterprise dated 22 February 1993.

The adoption of a law referring to collective labour agreement legislation as well as many other acts agreed upon in the previously mentioned Pact, is connected with the idea of accelerating the privatization process, which within six months should cover more than 6,000 state companies. In practice, the new collective bargaining law will be binding for private companies which will help avoid difficulties identifying the employer. The most controversial issue during negotiations over the draft collective agreement law, was the problem of trade union representation at various levels, in light of the existing pluralism and the progressive dispersion of trade unions in Poland.

This problem does not occur in Canadian legislation, where the only union that may participate in negotiations on behalf of employees is the union that holds the majority.

After enforcing the Act agreed upon in the Pact and putting back into practice the conclusion of collective agreements, the agreements will play the same role in industrial relations as they do in countries with a market economy. This means that they will enable Liberal imposition of labour standards by trade unions and employers, based on the existing labour legislation. In this respect collective agreements in Poland will become similar to industrial relations in Canada. Discrepancies between these two countries will result — from different models of bargaining and collective agreements in North America and continental Europe. For example, in conformity with Polish and European tradition, collective labour agreements are concluded at the company level. Therefore it is probable that at this level the agreement practice will develop on the basis of the new law although the draft of the law does not exclude other levels of negotiation including the company level. In Canada, however, collective bargaining is carried out on the company level (negotiation units).

Consequently, collective dispute in Poland will be in conformity with the law in force relating to collective disputes and the draft law on collective labour agreement — which relates first of all to conflicts over interests during the actual collective bargaining.

The next question to be asked relates to mechanisms serving the present and future development of cooperation between social partners — labour and management.

These mechanisms, according to European terminology, are called employee participation.

The present state of the participation is not adjusted to the conditions of the market economy at all. The Act of 25 September 1981 on self-government of a state enterprise's staff is still in force[21]. The workers' councils participate in management of the enterprise to extend it to the self-management model. It is enough to say that the designation of enterprise directors is in their competence.

With the progress of the implementation of state sector privatization under the 13 July 1991 Act on Privatization of state companies; (as it was agreed with trade unions the programme is supposed to be accelerated — compare above) the number of companies in which organs of staff self-management function decreases. In privatized companies transformed into share holder companies, organs of the company overtake the place of employee self-management.

The only employee representation envisaged under the Privatization Act, is that the staff is granted one third of the supervisory board's membership into the companies established as a result of state company privatization[23]. At the company level, the appointment of representative bodies of the entire staff is not envisaged as it is in the German model of employee councils or in the case of other similar representations known in most of the Western Europe countries.

In summary, one can state that industrial relations law in Poland tends towards the model, which could find the solution between the interests of labour and management, whenever this conflict appears in the way characteristic for the capitalistic system. In the field of employee participation there is a lack of understanding of the idea of cooperation between parties involved. The managerial model of running a company is strongly preferred[24]. There is certain fundamental convergence in these trends — in spite of many observed differences between the aims of the industrial relations model in Poland and the present (Wagnerian) model of industrial relations in Canada. Another similar element is looking for new forms of cooperation between trade unions, employer organizations and state through the creation of facts without legal regulation, which is exemplified in Poland by the above mentioned Pact on state enterprises. The Pact stipulates that a tripartite group shall be formed at a nation-wide level to negotiate certain important solutions for labour and employers[25]. In Canada, as it seems, the efforts to start cooperation between social partners are more decentralized and focus mainly on the commercial and economic sectors.

In both countries the problem of participation forms relevant to the needs of management at commercial and higher levels seems to have a key importance in new challenges facing the future.

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21. D. USTAW, *Journal of Law*, no. 24, 1981; item 123 with amendments.
22. D. USTAW, *Journal of Law*, no. 51, 1990; item 298.
23. According to the changes agreed on in the Pact on state enterprises the number of employee representatives will be decreased and after privatization there will be : one representative in the supervisory board consisting of 5 to 10 members, two representatives in an 11 to 15 member supervisory board and three representatives in a board exceeding 16 members.
24. However, according to some opinions expressed recently, the rule of employee participation in the management of enterprise should be maintained. See the *Resolution of Labour Problems and Social Policy Committee in Polish Academy of Science*, Polityka Spoleczna no. 9, 1992, p. 39.
25. Tripartite Committee comprising of representatives of government, employer organizations and nation-wide trade union headquarters for the monitoring of the economic processes and shaping fundamental macroeconomic proportions.