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## SELF-REGULATION VERSUS STATE REGULATION IN SWEDISH INDUSTRIAL RELATIONS

### 1 Introduction

During the formative years of Swedish industrial relations, trade unions and employers were left to themselves to regulate the relations between them. Several circumstances promoted such *self-regulation*, among them the non-repressive character of the Swedish state and the fact that the Liberals – until universal suffrage was introduced – blocked conservative legislation initiatives.<sup>1</sup> In addition, protests from the trade union movement helped stop for example a 1901 committee proposal on a law on employment contracts aimed to curb strikes.<sup>2</sup> Due to the relative absence of legislation the labour market parties had to rely to their own strength during strikes and lockouts; these actions sometimes escalated into huge conflicts, and in 1905 and – in 1906 after threat of a big lockout – resulted in principally important compromises. Still, in the 1930s Sweden had a high rate of conflicts from an international perspective, but this time a basic agreement – the 1938 Saltsjöbaden Agreement – came about after *peaceful* negotiations between the blue-collar confederation LO and the employer confederation SAF. Under the threat of *state regulation*, the labour market parties found they had a common interest in self-regulation.

In this contribution I highlight self-regulation and state regulation in the development of Swedish industrial relations, with views towards some other countries. The first time I used the concept of self-regulation was in a conference paper (1990), where I discussed state regulation versus self-regulation and the combination of centralization and decentralization in the Swedish model of industrial relations.<sup>3</sup> These two dimensions can in turn be combined into a four-field table (Table 1 below).

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<sup>1</sup> S Nycander, *Makten över arbetsmarknaden* (Stockholm, SNS 2008) 28–31.

<sup>2</sup> A Henning, *Tidsbegränsad anställning* (Lund, Juridiska Föreningen i Lund 1984) 44–48.

<sup>3</sup> A Kjellberg, *The Swedish Trade Union System: Centralization and Decentralization*. Presented at XIIth World Congress of Sociology in Madrid 9–13 July 1990. On self-regulation versus state regulation, see also A Kjellberg, 'Sweden: Can the Model Survive?' in A Ferner and R Hyman (eds), (continued)

At the end of the contribution I discuss advantages and disadvantages of self-regulation on the basis of an article by Ann Numhauser-Henning.<sup>4</sup>

First I discuss unilateral self-regulation on the part of employers and trade unions, and then move on to bipartite self-regulation and combinations of state regulation and self-regulation.

## 2 Unilateral self-regulation on the part of employers

One variant of self-regulation refers to unilateral regulation by employers, who through their very ownership of the means of production hold the decisive power. Historically, employer claims on unilateral control have included all employment and working conditions, among them wages and working hours. In Sweden around the turn of the twentieth century, not only paternalistic employers in rural industrial communities (such as iron works and sawmills) but also modern engineering companies like Separator (now Alfa Laval) were keen to protect the employers' unilateral control. In 1903 the managing director of Separator and president of the Engineering Employers' Association (not affiliated to SAF until 1917), John Bernström, declared the 'master's right' (*husbonderätten*) to be applied within Swedish industry, i.e. the powers given in the Servants Charter.<sup>5</sup> Due to the conflicting interests of employers and employees, the exercise of such an *all-encompassing* control has never remained unchallenged, at least not in the long term and, as we will see, not even in a company like Separator with its tough-minded management. At the end of the nineteenth century in particular big Swedish enterprises introduced working regulations (*arbetsreglementen*) to codify the working conditions.<sup>6</sup> In addition to spontaneous resistance and organized efforts to advance the workers' positions, collective agreements and labour legislation have encroached upon

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(continued)

*Industrial Relations in the New Europe* (Oxford, Blackwell 1992), A Kjellberg, 'Sweden: Restoring the Model?' in A Ferner and R Hyman (eds), *Changing Industrial Relations in Europe* (Oxford, Blackwell 1998), A Kjellberg, 'The Multitude of Challenges Facing Swedish Trade Unions' in J Waddington and R Hoffmann (eds), *Trade Unions in Europe: Facing Challenges and Searching For Solutions* (Brussels, European Trade Union Institute, 2000a), and A Kjellberg 'Arbetsgivarstrategier i Sverige under 100 år' in C Strøby Jensen (ed) *Arbejdsgivere i Norden. En sociologisk analyse af arbejdsgiverorganisering i Norge, Sverige, Finland og Danmark* (Copenhagen: Nordisk Ministerråd, 2001).

<sup>4</sup> Professor of Private Law at the Faculty of Law, Lund University.

<sup>5</sup> J Berg, *På spaning efter en svensk modell. Idéer och vägval i arbetsgivarpolitiken 1897–1909* (Enebyberg, Berg Bild Rum & Färg Förlag 2011) 114–115.

<sup>6</sup> A Adlercreutz, *Kollektivavtalet. Studier över dess tillkomstshistoria* (Lund, CWK Gleerup 1954) 268–275.

the powers of employers. Therefore, the scope and degree of unilateral self-regulation vary by time and with respect to workplace, industry and country.

In Sweden the employers' wage-setting authority was restricted by the 1905 Engineering Agreement. Besides admitting the right to join trade unions, employers now accepted fixed minimum wages. On the other hand, the unions had to recognize '*the freedom of work*', i.e. the freedom of enterprises to employ whomever they wanted. From now on, the secret employment bureau *Heros* was assigned the task of recruiting non-socialist workers to the companies. However, this double employer strategy of recognizing union rights and preventing union members from getting jobs failed completely. In the years 1905–1907 it became increasingly apparent that the most attractive workers were members of socialist unions.<sup>7</sup>

With the Engineering Agreement *unilateral* self-regulation was replaced by centralized *bipartite* self-regulation regarding major issues associated with the employer prerogative. At workplace level, the unilateral employer regulation of wages and employment conditions had already been broken in some places by collective agreements, such as the agreement concluded at Kockums shipyard in Malmö in 1898 after a carefully planned strike by the Metalworkers' Union. The failure of the engineering employers to staff workplaces with non-union workers in the years following upon the 1905 agreement shows that important moments in the development of power relations occurred *alongside* collective agreements and the almost non-existent legislation in industrial relations. The Engineering Agreement did not in itself secure basic union rights. The outcome was ultimately dependent on the capacity of unions to defend these rights and the market position of workers affiliated to unions.<sup>8</sup>

The employer prerogative to direct and distribute work and hire and fire whomever they wished was a prominent part of the 1906 December Compromise between LO and SAF. Furthermore, this prerogative was included in SAF's statutes (as paragraph 23, later paragraph 32) and in collective agreements. Through the famous 1932 labour court verdict no 100, the employer prerogative was perceived as a generally prevailing principle of law<sup>9</sup>, which could be

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<sup>7</sup> Y Myrman, *Maktkampen på arbetsmarknaden 1905–1907. En studie av de icke-socialistiska arbetarna som faktor i arbetsgivarpolitiken* (Stockholm, Stockholm Studies in Politics 1973) 115, 126–130.

<sup>8</sup> Called 'marketplace bargaining power' in B Silver, *Forces of Labor. Workers' Movement and Globalization since 1870* (Cambridge, Cambridge University Press 2003) 13.

<sup>9</sup> R Fahlbeck, 'Industrial Relations and Collective Labour Law: Characteristics, Principles and Basic Features' in P Wahlgren (ed.), *Stability and Change in Nordic Labour Law* (Stockholm, Scandinavian Studies in Law 2002 43) 99.

changed only through legislation.<sup>10</sup> Such legislation was not introduced until the 1974 Law on Employment Protection. The 1932 court verdict, however, signified a first step to increased state regulation of this area. From now on the freedom of employers to hire and fire was no longer subject exclusively to self-regulation (unilateral and in the form of collective agreements). As a consequence of the labour court verdict, the SAF version of the employer prerogative was extended to the engineering industry. The labour court declared that layoffs did not need justification, irrespective of whether or not paragraph 23 was written into collective agreements. The Engineering Agreement did not contain this paragraph<sup>11</sup>, which through the 1932 verdict was introduced as an invisible legal norm subject to industrial peace.<sup>12</sup> The Metalworkers' Union considered this a serious problem because it knew the Engineering Employers' Association as 'completely intransigent in case of disputes over dismissals'.<sup>13</sup>

In 1935, for the first time, LO appointed a commission ('the paragraph 23 commission') to deal with this issue, which at the 1936 congress became one of the most conspicuous.<sup>14</sup> In 1937 the LO commission advocated collective agreements or legislation to determine norms for dismissals. Fears of legislation more or less compelled SAF to accept deliberations with LO about paragraph 23.<sup>15</sup> After negotiations between LO and SAF in the committee preparing the 1938 Saltsjöbaden Agreement, a bipartite council was set up to deal with disputes over redundancies; notices had to be made at least one week before layoffs, the employer had to consult with the union if it demanded it, and a few criteria were specified to select the persons who had to leave (criteria in case of equal competence included the length of employment and the number of dependents.)<sup>16</sup> In this way, the employer prerogative was to some degree restricted through self-regulation (the Saltsjöbaden Agreement), but the employers still had no obligation to justify dismissals.<sup>17</sup>

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<sup>10</sup> Henning (1984) 51.

<sup>11</sup> The Engineering Employers' Association was exempted from paragraph 23 when it was affiliated to SAF in 1917. B Schiller, *LO, paragraf 23 och företagsdemokratien* (Stockholm, Prisma och LO 1974) 35.

<sup>12</sup> Schiller (1974) 54–55.

<sup>13</sup> Schiller (1974) 57.

<sup>14</sup> B Simonson 'Den långa vägen till Saltsjöbaden' in *Saltsjöbadsavtalet 50 år* (Stockholm, Arbetslivscentrum 1989) 48.

<sup>15</sup> Schiller (1974) 60.

<sup>16</sup> Schiller (1974) 60–62, Henning (1984) 59. LO retreated from its original proposal that the length of employment should be the main criteria. Schiller (1974) 59.

<sup>17</sup> S Edlund, 'Saltsjöbadsavtalet i närbild' in *Saltsjöbadsavtalet 50 år* (Stockholm, Arbetslivscentrum 1989) 59–63.

In the UK and other Anglo-Saxon countries trade unions succeeded in encroaching upon the employers' right to hire and fire through closed-shop agreements implying that only union members could be recruited. In the 1980s British closed shops were abolished by legislation introduced under the neoliberal Thatcher government.

In contrast, the Swedish employer prerogative during the 1970s was curtailed by new laws on among other things employment protection and co-determination.

Up to 1908–1909 it was common that Swedish collective agreements established seniority as one of the circumstances to pay attention to in case of dismissals.<sup>18</sup> After the union defeat in the 1909 big strike and lockout, SAF declared that such clauses in the agreements were no longer allowed. At least from the 1930s seniority rules were once again included in a number of collective agreements.<sup>19</sup> The 1938 Saltsjöbaden Agreement stated that the length of employment was one of the circumstances to be taken into account in case of layoffs.<sup>20</sup> The seniority principle was given a prominent position in the 1974 Law on Employment Protection, albeit in a way that allowed a considerable degree of flexibility in practice. The employer prerogative has also been restricted by the 1979 Gender Equality Act, replaced from 2008 by the Non-Discrimination Act.

In some cases, the *employers* have been the most active proponents of state regulation to curtail the freedom of action. A prominent example concerns the Swedish employers' shifting attitude to sympathy conflicts. In the early twentieth century employers attached great importance to a wide a margin of discretion for themselves. In addition to the employer prerogative included in the 1906 December Compromise, LO soon had to accept further SAF demands. From the recession year 1908, clauses on the right to sympathy conflicts during contract periods were increasingly included in collective agreements.<sup>21</sup> This facilitated the employers' policy to escalate small conflicts into big lockouts. One of the issues that defeated a conservative government proposal in 1911 was the existence of diverging views on the right to sympathy conflicts.<sup>22</sup> LO and the Social Democrats argued for a ban on such conflicts

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<sup>18</sup> A Kjellberg, 'Facklig organisering och partsrelationer i Sverige och Danmark' in F Ibsen & S Scheuer (eds), *Septemberförslaget og det 21. århundrede* (Copenhagen, Jurist- og Økonomforbundets Forlag 2000b) 61.

<sup>19</sup> C Calleman, *Tvörordning vid uppsägning* (Stockholm, Norstedts Juridik 2000) 54–57.

<sup>20</sup> Henning (1984) 59.

<sup>21</sup> Adlercreutz (1954) 351.

<sup>22</sup> Nycander (2008) 30–31, J Westerstahl *Svensk fackföreningsrörelse* (Stockholm, Tiden 1945) 312–340.

during contract periods, but SAF was very critical because such actions safeguarded the right to sympathy lockouts. When the 1928 laws on collective agreements and labour court were passed, SAF was very concerned that the right to sympathy conflicts remained intact (other industrial action was banned during contract periods). The fear that the right to sympathy lockouts would be restricted by legislation was a conspicuous motive for SAF when the organization entered the negotiations with LO that resulted in the 1938 Saltsjöbaden Agreement.<sup>23</sup> Since the 1990s SAF and its successor, the Confederation of Swedish Enterprise, have demanded legislation making sympathy conflicts *illegal*.

The Swedish model of bipartite collective self-regulation<sup>24</sup> is maintained by a high coverage of collective agreements, in turn promoted by the high density of employers' associations and the internationally high union density.<sup>25</sup> In USA and other countries with declining union density, collective agreements at many workplaces have been replaced by non-union human resource management and other forms of unilateral employer control. In Britain, national industry agreements have been dismantled in the private sector, with only a few exceptions. Without backup from an industry agreement, the negotiating position of unions at workplace level is weakened, which has undermined the coverage and contents of workplace agreements. In 2004, for workplaces with at least five employees the wage for three out of four employees was unilaterally decided by the employer.<sup>26</sup> Five per cent of the employees negotiated themselves with the employer. In 2015 only 16 per cent of private sector employees were covered by a collective agreement.<sup>27</sup>

Another form of unilateral self-regulation is codes of conduct. They are often adopted after accusations of exploitation of workers and typically contain a commitment to respect fundamental labour rights. A conspicuous problem is how to effectively control that a company really implements the code, particularly in global chains of subcontractors which are common in for example the clothing industry. The system of codes of conduct and the use of

<sup>23</sup> P A Swenson, 'Solidaritet mellan klasserna. Storlockouten och Saltsjöbadsandan' in C Lundh (ed), *Nya perspektiv på Saltsjöbadsavtalet* (Stockholm, SNS Förlag 2009) 47–56, 75–77.

<sup>24</sup> Also labelled in Swedish as *partsreglering* ('regulation by the labour market parties'). See Kjellberg (2001) 162, 172, 178 (unipartite and bipartite), 195, 240, 246, 263, 266.

<sup>25</sup> A Kjellberg, *Kollektivavtalens täckningsgrad samt organisationsgraden hos arbetsgivarförbund och fackförbund* (Lund University: Studies in Social Policy, Industrial Relations, Working Life and Mobility. Research Reports 2017).

<sup>26</sup> J Forth, H Bewley and A Bryson, *Small and Medium-sized Enterprises. Findings from the 2004 Workplace Employment Relations Survey* (London, Department of Trade and Industry 2006).

<sup>27</sup> *Trade Union Membership 2015* (London, Department for Business Innovation & Skills 2015) 35.

external verifiers have been criticized for insufficient inspection of factories and for excluding unions from participation.

Global framework agreements increase the prospects of unions to influence and control employment and working conditions. To be effective, such agreements have to include subcontractors. Companies with global framework agreements may not prevent the workers from joining unions, but the agreements easily become meaningless if production is located in countries where unions are forbidden or free trade unions not allowed, as in China.

There are also hybrids between self-regulation (codes of conduct, global framework agreements) and national state regulation. Before the 2012 London Olympics a legally binding agreement on union rights (linked to Indonesian legislation) was concluded between Indonesian trade unions, global companies (Nike, Adidas etc.) and Indonesian suppliers in the clothing, shoe and sports industries.<sup>28</sup> The Play Fair negotiations were encouraged by the global union federation ITGLWF (which organizes workers in the clothing and shoe industries) and the non-profit organizations Clean Clothes Campaign and Oxfam.

### 3 Unilateral self-regulation on the part of trade unions

Unilateral regulation of employment and working conditions can also be exercised by *trade unions* or by *the workers themselves*. In his classical study of the history of the collective agreement, Swedish labour law professor Axel Adlercreutz discusses self-regulation performed by trade societies and their employer equivalents in nineteenth-century Britain.<sup>29</sup> Long before trade unions were legal in Britain, there were legally enacted piecework pricelists. Trade societies representing the workers initiated prosecution of employers who did not pay in accordance with the lists. Correspondingly, the employers' organizations defended employers accused for derogating from the lists. In this way, each of these two forms of associations exercised a kind of *unilateral self-regulation*, albeit in interaction with the judicial system. Sometimes the parties worked together to construct price lists to be confirmed by judges. In that case, the process was similar to collective bargaining and Adlercreutz (1954) labelled this as *collective self-regulation*.<sup>30</sup>

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<sup>28</sup> N Egels-Zandén, 'Från global självreglering till lokal lagstiftning: Arbetares rättigheter i globala leverantörskedjor' in I Lindberg and A Neergaard (eds), *Bortom horisonten: facketts vägval i globaliseringens tid* (Stockholm, Premiss 2013).

<sup>29</sup> Adlercreutz (1954).

<sup>30</sup> Adlercreutz (1954) VIII (*kollektiv självreglering*) and 65. Cf A Jacobs, 'Collective Self-Regulation' in B Hepple (ed) *The Making of Labour Law in Europe* (London, Mansell Publishing 1986).

The British industrial relations theorist Hugh Clegg uses the term *unilateral trade union regulation* for rules formulated by unions 'specifying the terms on which their members might accept employment'.<sup>31</sup> Unilateral self-regulation was also exercised by craft unions controlling the supply of labour on terms specified by the unions themselves.

The maintenance of unilateral union self-regulation presupposes a strong internal union discipline and a high rate of unionization. The Norwegian sociologist Sverre Lysgaard analyses the informal processes among workers that create the cohesion and discipline necessary to cope with the employers' ever-increasing performance requirements.<sup>32</sup> The formation of a 'workers' collective', developing its own norms, may prevent individual workers from exceeding the current work pace. When piece-work is applied, individual workers can raise their own wage in the short run by working harder, but then there is an obvious risk that the company lowers the piece-work prices. The collective interest of a reasonable pace of work and intact piece-work terms thus might collide with individual behaviour. By preventing what is considered as disloyal behaviour, the workers' collective serves as a countervailing power towards increasing employer demands.

After the introduction of an American-inspired performance pay system, during the 1902 general strike for universal suffrage, Separator managing director John Bernström called the pressure on individual workers not to speed up their work tempo a 'tyranny' exercised by socialist workers.<sup>33</sup> He also threatened to move the company abroad. Unsurprisingly, when the demands for unilateral control were curtailed by self-regulation on the part of the workers, the managing director of this paternalistic company became quite irritated. Three years later, several limitations on employer power of unilateral decision-making were put into writing. After the big 1905 engineering lockout, Bernström – as president of the Engineering Employers' Association – signed the Engineering Agreement, which in addition to fixed minimum wages also contained a limit of weekly working-time, overtime rules and piece-work rules.<sup>34</sup>

Sometimes trade unions have succeeded in shortening the work day through unilateral action. In the mid-1890s the Stockholm building workers' unions

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<sup>31</sup> H Clegg, *Trade Unionism under Collective Bargaining. A theory based on comparisons of six countries* (Oxford, Basil Blackwell 1976) 2, 30.

<sup>32</sup> S Lysgaard, *Arbeiderkollektivet* (Oslo, Universitetsforlaget 1985).

<sup>33</sup> Berg (2011) 102–103.

<sup>34</sup> Berg (2011) 151.

introduced the ten-hour day by encouraging the workers simply to leave their workplaces after ten hours of work!<sup>35</sup>

As we will see below, unilateral regulation may also refer to the *internal* organization of a trade union or a union confederation (or the employers' equivalents).

#### 4 Swedish white-collar workers: self-regulation or state regulation?

At the time when the American 1935 Wagner Act was supposed to secure trade union rights, in the first place for blue-collar workers in the mass production industry, no such legislation was requested by the Swedish LO or its affiliated unions. In their view the issue was regulated by the labour market parties themselves (the 1905 Engineering Agreement and the 1906 December Compromise) and under power relations favourable for the LO unions. In addition, some categories of white-collar workers had succeeded in getting collective agreements, among them engineering officers (*maskinbefäl*) and ship's officers (*fartygsbefäl*).<sup>36</sup> On the other hand, in the early 1930s the white-collar workers in manufacturing, commerce and banking had still failed to enter negotiations with employers. The dominant attitude among private-sector employers was to consider working and employment conditions for white-collar workers as a matter reserved for unilateral employer control, as an employer prerogative. Therefore, in 1931 eight white-collar unions founded Daco (the Confederation of Employees) in order to get the legislation considered necessary to change this situation.

Two options were on the agenda as regards the *form* of legislation. *Procedural* legislation on the right of association and negotiation best conformed with the Swedish model of self-regulation, but at the same time was exceptional in a Swedish context as the blue-collar workers had acquired these rights long ago through their own efforts. This option was most consistently driven by the Daco president Viktor von Zeipel, who also was ombudsman of the Bank Employees' Union and a vehement advocate of negotiations and collective agreements. In 1936 the Law on Rights of Association and Negotiation was enacted with support from the social democratic government. Although this legislation deviates from the Swedish model of self-regulation, there is a world of difference between *negotiated* employment conditions (collective bargaining)

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<sup>35</sup> Adlercreutz (1954) 279.

<sup>36</sup> A Kjellberg, 'Privattjänstemännens fackliga organisationsmiljö 1880–1930', *TAM-Revy* no 2 2003.

and *substantive legislation* on employment conditions, which was the alternative option (see below). In the light of the employers' fierce resistance to negotiations with white-collar unions in manufacturing, commerce and banking, legislation on the right of association and negotiation appeared as the only plausible way forward, at least for white-collar unions preferring collective bargaining to substantive legislation on employment conditions. The 1936 Law on Rights of Association and Negotiation was in accordance with the Swedish labour market model as the right to negotiations was exclusively aimed for the unions, not for the individual employees. Also in accordance with the Swedish model, the law meant no *obligation* for employers to conclude collective agreements. It would have required legislation on compulsory arbitration.<sup>37</sup> Nor did the labour laws introduced in the 1970s contain steps in that direction. The Swedish tradition of self-regulation is based on *voluntary* collective agreements, not agreements forced through law. In addition, Sweden has no legislation on the extension of collective agreements to whole industries. The only way to force employers to enter collective agreements is through collective action. In the 1930s, far from all white-collar unions were prepared to take such actions.

The Association of Office Employees (*Kontoristförbundet*) took a much more defensive approach than Daco. Hesitating to negotiate with the employers, the association argued for substantive legislation on employment conditions. At its 1932 congress, the association gave highest priority to legislation on minimum norms for general employment conditions.<sup>38</sup> The wage issue was considered of secondary importance, but a reorientation towards a more positive view on collective agreements was on the way. A sign of this was that the congress accepted the demand on legislated rights of association and negotiation. The prioritized legislation on employment conditions was based on the so-called *normal contract* adopted by the 1929 congress. To be followed up by individual contracts, it contained minimum rules on working time, holiday, sickness benefits, death allowance, period of notice and pension based upon praxis in large companies already fulfilling these conditions. Several of these points were included in the proposed legislation put forward by the Liberal Association in Stockholm, in reality a product of the Association of Office Employees. The initiative may be seen

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<sup>37</sup> SOU 1975:1 (*Demokrati på arbetsplatsen*) 243–244.

<sup>38</sup> *Tidskrift för Sveriges Kontorister* 4 1932, 5.

in the light of SAF's refusal in 1930 to accept the normal contract.<sup>39</sup> In SAF's view this contract reminded too much of a collective regulation. The Liberal Association feared that the dismissive employer attitude might transform the white-collar associations into militant unions similar to those of blue-collar workers. To prevent this, substantive legislation to improve employment conditions was considered necessary.

In the crucial year 1936, however, the difference in views between the Association of Office Employees and the Daco unions had diminished. The association was now positive to legislated negotiation rights.<sup>40</sup> On the other hand, in 1935 the majority of Daco unions had supported, although with hesitation, a government commission proposal on *substantive* legislation on employment conditions.<sup>41</sup> The Union of White-collar Workers in Industry (Sif) and the blue-collar confederation LO strongly opposed it. Had the proposed legislation been achieved, then the law would have had specified different employment conditions for different categories of workers (blue-collar workers, lower-level white-collar workers and higher-level white-collar workers). With a social democratic government in office (1932–1976) such legislation would never have passed. Regarding the desirability of legislation on association and negotiation rights, all Daco unions were united.

#### 4.1 *Substantive white-collar law in Denmark*

In Denmark the turn of events followed a different path as a *substantive* law for white-collar workers, the so-called *funktionærloven*, was introduced in 1938. It contained (among other things) a notice period of three months and sickness benefits, and subsequent revisions included additional benefits. The initiative came from the Conservative Party, which in 1937 – in the competition for the votes of white-collar workers – proposed legislation on individual employment contracts.<sup>42</sup> The aim was to reinforce the middle-class identity of Danish white-collar workers and provide an alternative to collective agreements. By offering white-collar workers better employment conditions than those of blue-collar workers, the idea was that the former would abstain

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<sup>39</sup> H de Geer, *SAF i förhandlingar. Svenska Arbetsgivareföreningen och dess förhandlingsrelationer till LO och tjänstemannaorganisationerna* (Stockholm, SAF 1986) 243.

<sup>40</sup> F Bergstrand, *Daco 1931–1937. En svensk tjänstemannarörelse växer fram* (Stockholm, TAM-Arkiv 2003) 64.

<sup>41</sup> Bergstrand (2003) 76–81.

<sup>42</sup> J Due and J S Madsen, *Hva' nu Larsen...? En sociologisk diskussion om funktionærerne og deres organisationer* (København, Jurist- og Økonomforbundets Forlag 1984) 60–61.

from union membership. The Union of Commercial and Office Employees (HK) in the 1930s did not hesitate, however, to fight for collective agreements in firms affiliated to the Danish Employers' Association (DA). In 1932, to gain access to the bargaining rights in the 1899 basic agreement between DA and the Danish LO (*Septemberforliget*), HK joined the blue-collar confederation LO. Despite this, DA refused HK bargaining rights. After a lengthy legal process, the Supreme Court passed a verdict in 1935 to the advantage of the union.<sup>43</sup> It was followed by a basic agreement between DA and HK; however, this restricted collective agreements to firms with at least five HK members.

While shop assistants and most other sales personnel in Sweden are classified as blue-collar workers, in Denmark and all other countries they are considered white-collar workers. In the 1930s the Union of Commercial and Office Employees (HK) made up the Danish equivalent of three Swedish unions: the Association of Office Employees, the Daco union Sif (union of white-collar workers in industry) and the LO union of commercial workers (*Handelsarbejdereforbundet*).

Successfully fighting for collective agreements, the Danish union HK opposed special white-collar legislation, but as the social democratic government was dependent on the Radical Left Party (*Radikale Venstre*) – which wanted such a law – the government reluctantly agreed to introduce such legislation.<sup>44</sup> The 1938 law was a compromise considerably deviating from the original proposal. Together with the Radical Left Party, HK had a major impact on the contents of the law. As a result, the period of notice became much shorter for the employees (one month) than for employers (three months).<sup>45</sup> In contrast to the corresponding proposed Swedish legislation, which was never passed, the Danish law makes no distinction between different categories of employees ('higher' and 'lower').<sup>46</sup> Like the 1936 Swedish law on the rights of association and negotiations, the Danish white-collar law protects these rights, although in legal terms they are expressed relatively vaguely in the Danish law.<sup>47</sup> Furthermore, the rule on a minimum requirement of five union members in a firm to establish a collective agreement was removed. The law legitimized union membership of white-collar workers, reflected in 1938–39

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<sup>43</sup> J Duch Christensen and S Federspiel, *Fra flipproletar to lønarbejder: HKs historie 1900-2000* (København, HK 2000) 62–63.

<sup>44</sup> Due and Madsen (1984) 61.

<sup>45</sup> Duch and Federspiel (2000) 74.

<sup>46</sup> H Gran, *Eventyret om HK* (København, Handels- og Kontorfunktionærernes Forbund 1975) 52–53.

<sup>47</sup> Due and Madsen (1984) 61–62.

in a considerably increased HK membership.<sup>48</sup> In 1948 HK signed its first national agreement, but collective agreements were – and are – restricted to firms where at least 50 per cent of the employees within the HK area are union members.<sup>49</sup> As a consequence, many of today's HK members still have no collective agreement; this means that through its substantive character, the Danish law on white-collar workers is of great importance for the employment conditions of large groups of employees.

#### *4.2 Normal contracts as an alternative to collective agreements*

In contrast to a collective agreement, a normal contract is not binding; it is merely a recommendation. In 1916 the Journalists' Union concluded such a contract with the Swedish Newspapers Publishers' Association on minimum wages and general employment conditions. Few newspapers took account of it, and compliance continued to be poor. In 1935 less than 40 per cent of the union members got the minimum wage stipulated in the contract.<sup>50</sup> Not until 1954 was a collective agreement concluded with the Newspapers Employer Association.

Another variant of normal contract was elaborated in 1902 by the Theatre Employees' Union, but because there was no organized counterparty it was up to the individual employee to negotiate. This variant may be characterized as a weak form of unilateral self-regulation, functioning at best as individual support. As regards the 1929 normal contract for office employees, a counterparty did exist, but the Association of Office Employees failed to convince the employers to accept it. As the normal contract did not work, the association demanded legislation to enforce the contents of the contract. It turned out to be a dead end because no law on employment contract was enforced. What remained was the path of negotiation, which in any case sooner or later had to be chosen because the office employees' normal contract did not include wages.

Due to its unwillingness to negotiate about collective agreements, the Association of Office Employees was not granted affiliation to Daco until 1936. In 1937 it was transformed to the Commercial Employees' Union (HTF), which in the same year concluded its first large industry agreement. In 2008 HTF and the Union of White-collar Workers in Industry (Sif) merged into *Unionen*, today Sweden's largest white-collar union and the largest private-sector union.

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<sup>48</sup> Due and Madsen (1984) 64–66.

<sup>49</sup> J Due and J S Madsen, *HK og 50%-reglen. Baggrund og effekt* (København, FAOS no 106 2010).

<sup>50</sup> *Journalisten* 11 1935.

In the absence of negotiation rights, younger Swedish public-sector professional employees in the 1930s and 1940s carried out *unilateral actions* in the form of mass layoffs and blockades of hiring of new staff combined with refusal to accept wages below a fixed minimum level.<sup>51</sup> In recent years similar actions have been organized by nurses without assistance of their union, although often with informal union support.

#### *4.3 Registration at the Board of Social Affairs – a temporary exception in the history of Swedish industrial relations*

Swedish trade unions are not registered by any state agency. However, there is one notable historical exception. A number of white-collar unions did register themselves at the Board of Social Affairs in accordance with a procedure specified in the third chapter of the 1936 Law on Rights of Association and Negotiation, which came into force 1 January 1937.<sup>52</sup> A complicated negotiating procedure including the right to an ‘impartial chairman’ was offered to the registered unions, among them the Association of Office Employees / HTF and the Union of Supervisors, which was the only registered union of the eight unions that founded Daco. A common feature for the unions using this option was that they were not prepared to enter strikes and felt a need of state support when negotiating with employers. A small white-collar union was registered as late as 1967.

While French labour legislation assigns the large union confederations status as *representative* unions, no equivalent exists in Sweden. Swedish labour law, however, restricts the right to take part in joint regulation under the 1976 Co-Determination Act and other statutory imposed cooperation between employers and unions to the so-called *established* unions, by which is meant all unions that are parties to a collective agreement.<sup>53</sup>

## 5 The Swedish model of industrial relations: unilateral and bipartite self-regulation preferred to state regulation

The 1905 Engineering Agreement and the 2006 December Compromise paved the way for the Swedish model of bipartite self-regulation distinguished by industry-wide collective agreements, high union density and a high rate of affiliation to employers’ associations. The big combined strike and lockout in

<sup>51</sup> S-E Strand, *SACO i historiens backspegel* (Stockholm, TAM-Arkiv 2013) 163–170.

<sup>52</sup> C Schmidt, ‘Tredje kapitlet’ i *De första decennierna* (Stockholm, HTF 1957).

<sup>53</sup> Fahlbeck (2002) 117.

1909 was a temporary setback in this development. The spirit of cooperation between the labour market parties did not appear until the mid-1930s. The decisive breakthrough occurred with the conclusion of the 1938 Saltsjöbaden Agreement between LO and SAF, which established a set of rules, procedures and bipartite bodies to regulate relations between the labour market parties. A series of cooperation agreements followed, among them one on occupational safety (1942).<sup>54</sup>

The centralization of LO in 1941 may be described as unilateral self-regulation and as a supplement to the Saltsjöbaden Agreement. In 1935 a government commission had recommended the LO to centralize, and the labour market parties to define rules of conduct safeguarding industrial peace. Only if the parties failed to introduce such rules would the state intervene. To secure industrial peace, the commission proposed that the peak organizations were given the final (veto) right of decision concerning collective agreements and labour disputes. Consequently, it was considered inappropriate to arrange membership ballots on proposals of collective agreements already approved by union negotiators. The employer confederation SAF, which already was very centralized, also desired tightened union rules for decision-making.<sup>55</sup> The 1936 LO congress, on the initiative of the Metalworkers' Union<sup>56</sup>, appointed a committee to present a proposal on centralization at the 1941 congress. Therefore, SAF did not pursue this issue in the 1936-1938 Saltsjöbaden negotiations. Nevertheless, centralization in 1941 was very much a logical follow-up of the 1938 agreement.

Union centralization in Sweden was quite different from the corresponding processes in Denmark and Norway. Although collective agreements distinguish all Nordic countries, Sweden is in a class of its own with respect to self-regulated wage formation and conflict resolution.<sup>57</sup> The Danish state has played a prominent coordinating role since the 1930s through the authority of state mediators to link ballots of draft settlements. In Norway a similar procedure was introduced by the union movement itself, included in the 1935 basic agreement. The more fragmented union structure in Denmark and Norway made centralization through coordinated ballots more or less necessary.

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<sup>54</sup> A Thörnquist, 'The Swedish Occupational Safety and Health Model Lost in Transition?', *OSH & Developments* October 2008.

<sup>55</sup> S Höglund, *Storföretagen, Svenska Arbetsgivareföreningen och beslutsordningen i arbetarnas fackliga organisationer* (Umeå, Department of Sociology 1978) 55-57.

<sup>56</sup> Motivated by improved prospects for a solidaristic wage policy. Swenson (2009) 73-74.

<sup>57</sup> N Elvander, 'The Labour Market Regimes in the Nordic Countries: A Comparative Analysis', *Scandinavian Political Studies* 25 2002.

While in the 1930s the Swedish state advocated *abolishment* of membership ballots, in 1984 the British state did the opposite by *imposing* ballots before strikes. The aim of the Swedish LO 1941 centralization and the 1984 legislation under the Thatcher government was the same – to reduce the number of strikes – but the means and form of regulation were diametrically opposite: union self-regulation to abolish ballots versus state regulation to make ballots compulsory. In contrast to the UK, in Sweden there is no law regulating the internal affairs of unions.<sup>58</sup>

German labour law is also designed to curb strikes. One of most prominent objectives of the legislation on works councils is to favour peaceful relations. The councils may not participate in conflictual action. The statutory regulation of works councils means that the workplace representation of employees is regulated in detail by the state. Therefore, German unions at workplace level have to work through the councils and not by setting up their own organizations like the Swedish ‘union clubs’.

Similarly, French unions at workplace level are represented through works committees, established by law after the Second World War. The five so-called *representative* union confederations are given a privileged role in the election to the committees.<sup>59</sup> New legislation introduced from the 1980s has encouraged more decentralized negotiations. In this way the state has played a crucial role in the emergence of this new system of decentralized firm-level industrial relations.<sup>60</sup>

The strong position of the French state also applies to industrial relations at higher levels. Despite the extremely low union density (8 per cent), the coverage of collective agreements is about 90 per cent as a result of state mechanisms to extend sectoral agreements to all workers in a sector. According to Gumbrell-McCormick & Hyman (2013). ‘many sectoral agreements merely replicate what is already prescribed by law (some even specify minimum wages *below* the statutory level)’.<sup>61</sup> Sweden also has a very high coverage of collective agreements, but *without* extension mechanisms. Nor does Sweden have statutory minimum wages. French unions are

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<sup>58</sup> P Norberg and A Numhauser-Henning, ‘Collective Bargaining in Sweden’ in *Collective Bargaining in Europe* (Madrid, Ministerio de Trabajo y Asuntos Sociales 2004) 245.

<sup>59</sup> R Gumbrell-McCormick and R Hyman, ‘Embedded collectivism? Workplace representation in France and Germany’, *Industrial Relations Journal* 37:5, 2006 473–491.

<sup>60</sup> C Howell, ‘The Transformation of French Industrial Relations: Labor Representation and the State in a Post-Dirigiste Era’, *Politics & Society* 37:229–256, 2009 240.

<sup>61</sup> R Gumbrell-McCormick and R Hyman, *Trade Unions in Western Europe* (Oxford, Oxford University Press 2013) 21.

financially supported by the state through large subsidies, which make unions less dependent on membership fees. All this illustrates that France and Sweden represent opposite poles with regard to the dimension self-regulation versus state regulation.

Up to the 1970s bipartite self-regulation almost completely dominated the Swedish model of industrial relations. In the solidaristic wage policy, LO found a formula facilitating the simultaneous fulfilment of solidarity and 'social responsibility'. Expanding export industries could benefit from wage restraint at the same time that the rate of 'structural rationalization' could be increased. State regulation (active labour market policy) played a *supplementary* role to self-regulation (solidaristic wage policy). From a union perspective it was of vital importance that the government did not intervene directly in collective bargaining. If so, unions would risk being seen as superfluous. The solidaristic wage policy thus offered an opportunity to live up to the objective of the 1951 LO report, that is, 'preserving a system under which wage formation take place by collective agreements between free organizations and without state involvement in the form of compulsory arbitration or laws regulating wages'.<sup>62</sup> The Swedish model of self-regulation under the auspices of the confederations LO and SAF could be labelled *centralized self-regulation*.<sup>63</sup> In the 1980s the employers changed strategy and initiated a model of more decentralized bargaining. By the time of the 1997 Industrial Agreement, however, centralizing forces regained the initiative.

## 6 A new mix of self-regulation and state regulation

A departure from the traditional Swedish model of industrial relations occurred with the series of labour laws introduced in the 1970s on employees' board representation (1973), occupational safety (revised law 1973), employment protection (1974), the position of union representatives in the workplace (1974), co-determination (1976), working environment (1977), and on equality of men and women in working life (1979). The first of these was the law on employment protection for old employees (1971), which was prepared by a committee appointed by the social democratic government two years earlier. The Swedish labour market researcher Svante Nycander has shown that as late as 1970-71, the Metalworkers' Union and LO had a sceptical

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<sup>62</sup> *Fackföreningsrörelsen och den fulla sysselsättningen* (Stockholm, LO 1951) 145-146.

<sup>63</sup> Kjellberg (1992) 94; Kjellberg (1998) 79.

attitude towards legislation on this issue.<sup>64</sup> At any rate, it appears that LO strongly influenced the decision to break out the issue of employment protection for elderly employees from the planned general legislation on employment protection.<sup>65</sup> The 1971 LO congress was worried by the vulnerable position of elderly blue-collar workers during the rapid transformation of the labour market. At the end of the 1960s unemployment increased much faster among those older than 55 years than among young persons.<sup>66</sup> The consequences for blue-collar workers were accentuated by the short period of notice in the LO-SAF agreements, which recommended at least 14 days for workers employed at least nine months.<sup>67</sup> That was less than for white-collar workers, who in the engineering industry got one to six months depending on age, wage and length of employment (two to six months for white-collar workers in a supervisory position).<sup>68</sup> Already in the early 1930s a notice period of at least one month was applied for the majority of private-sector white-collar workers.<sup>69</sup>

SAF had repeatedly proposed negotiations on an extended period for blue-collar workers but LO rejected the invitations as the employers demanded reciprocity. For older blue-collar workers the 1971 law prolonged the 14-day period of notice to at least two paid months. With the 1974 Law on Employment Protection, employees aged 45 years or older got six months paid period of notice (when the law was revised in 1997 age was replaced by the length of employment). This law is by far the most criticized by the employers due to its seniority principle in case of redundancy. Mia Rönnmar and Ann-Numhauser-Henning, however, stress that the employer is given 'a unilateral right to decide when and whether there is a redundancy situation' and that 'the seniority rules are "semi-compulsory" and the employer and the trade union may, in virtually all respects deviate from the statutory rules when determining the order of dismissals.'<sup>70</sup> Furthermore, the law is complemented by collective agreements on redundancy programmes (so-called *omställningsavtal*, transition

<sup>64</sup> S Nycander, *Sist in, först ut. LAS och den svenska modellen* (Stockholm, SNS 2010) 21–28.

<sup>65</sup> Henning (1984) 85.

<sup>66</sup> Henning (1984) 84.

<sup>67</sup> One week introduced with the 1938 Saltsjöbaden Agreement, extended to two weeks from 1947 according to the 1946 agreement between LO and SAF on works councils and the revised Saltsjöbaden Agreement.

<sup>68</sup> Henning (1984) 80–81.

<sup>69</sup> Henning (1984) 58.

<sup>70</sup> M Rönnmar and A Numhauser-Henning, 'Swedish Employment Protection in Times of Flexicurity Policies and Economic Crisis', *The International Journal of Comparative Labour Law and Industrial Relations*, 28(4) 2012 453–454.

agreements). In the wake of the global financial crisis a number of crisis agreements were concluded in 2009, thus opening up for local negotiations on decreased working time and monthly wage to avoid or reduce the number of redundancies.

To summarize, it is true that the law on employment protection encroaches upon the employer prerogative, but the law allows the statutory regulations to be replaced by collective agreements, labelled by Susanne Fransson and Eberhard Stüber as *legally conditioned self-regulation*.<sup>71</sup> Considering also the agreements on redundancy programmes, there are grounds to designate this area as a mix of state regulation and self-regulation.

Within collective bargaining the far-reaching self-regulation continued during the decades dominated by the axis LO-SAF and the subsequent decades, although the growth of white-collar unions and public-sector unions in the 1970s made the negotiations more complicated. This was manifested in the big 1980 conflict, the outcome of which was a major disappointment for the employers who changed strategy to decentralized negotiations. In 1990 SAF closed its wage bargaining unit, but towards the end of the decade its role to coordinate the affiliated employers' associations increased significantly. The 1990s was a decade of change and transition to a new model of wage formation. Almost simultaneously as SAF abdicated from centralized bargaining, a two-year super-centralization of wage negotiations was started under the auspices of the Rehnberg government commission.

In both 1993 and 1995 employers, headed by the Association of Engineering Employers, demanded completely decentralized bargaining to restore Swedish competitiveness and to obtain a more individualized and flexible wage-setting. National agreements should contain nothing but a peace clause. In 1992, to counter such demands, the LO blue-collar union Metall (today IF Metall), together with the white-collar unions Sif (today Unionen) and the Association of Graduate Engineers formed the cross-collar Bargaining Council (Sif/Unionen affiliated to TCO, the Swedish Confederation of Professional Employees; the Association of Graduate Engineers affiliated to Saco, the Swedish Confederation of Professional Associations).

The social democratic government considered it necessary to slow the pace of wage growth. After the conflict-ridden 1995 bargaining round the

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<sup>71</sup> S Fransson and E Stüber, 'Inflytande och makt över lönebildning och lönesättning' in M Holmqvist (ed), *Makt och inflytande i arbetslivet* (Stockholm, Premiss 2016) 98. Cf 'enforced self-regulation' in R Baldwin and M Cave *Understanding Regulation: Theory, Strategy and Practice* (Oxford, Oxford University Press 1999) 39–41.

government again signalled increased state intervention unless the labour market parties reformed the wage formation process to bring the rate of wage growth down to the level of Sweden's most important competitors.

To forestall both completely decentralized wage formation and increased state regulation – and to prevent wage inflation – the unions behind the Bargaining Council together with other unions formed the organization 'Unions in Manufacturing', which in 1996 invited the employers in manufacturing to deliberate on industrial development, training and wage formation. The 1997 Industry Agreement between the unions in manufacturing and corresponding SAF associations has clear parallels to the 1938 basic agreement with respect to origin (threat of state regulation), contents (negotiation procedure, conflict resolution) and the spirit of cooperation.

The new reinforced National Mediation Office (2000) received, in addition to its mediation role in labour disputes, the task of promoting 'an efficient wage formation process.' That means that no wage increases can be higher than those given in the manufacturing industry, a sector heavily exposed to international competition. At the same time that much of the concrete contents of collective bargaining have been successively decentralized, the Swedish bargaining system comprises strong coordinating forces: the National Mediation Office, the internal coordination within LO and within the Confederation of Swedish Enterprise (the remodelled SAF) and the parties behind the Industry Agreement. In contrast to the three-tier bargaining system from the 1950s that continued to the end of the 1980s (excepting some years in the latter decade), today's negotiations take place at industry level followed up by workplace negotiations. Today there is no top-level bargaining (except for pensions, redundancy programmes etc.) but compensated by a coordination stronger than in the 1970s and 1980s, now more or less comprising all sectors and industries.

By the time that the 1997 Industry Agreement, the new reinforced National Mediation Office and the increased coordination within SAF and LO had come into being, a new mix of self-regulation and state regulation appeared.

## 7 The Swedish model of industrial relations

The Swedish model of industrial relations is dominated by self-regulation on the part of trade unions and employers' associations:

1. Bipartite self-regulation at central level, 'centralized self-regulation'<sup>72</sup> (at present by sector/industry; previously also wage agreements at confederal level) implemented at workplace level by negotiations between the local employers and 'union clubs'. This combination of centralization and decentralization has been conducive for the high union density and the high coverage of collective agreements – and thereby for the strong position of self-regulation in the Swedish system of industrial relations.
2. Unilateral self-regulation: unions and employers' associations regulating their internal affairs and the absence of statutory works councils.

In the 1970s state regulation increased through new labour laws and in the year 2000 through the new, reinforced mediation institute, which has resulted in a new mix of self-regulation and state regulation, but with self-regulation as the dominating element. The importance attached to self-regulation by the legislator is evident from the semi-dispositive character of for example the 1974 Law on Employment Protection, which means that the selection of persons to be laid off in case of redundancies may be determined through local collective agreements. The power of the Mediation Office to enforce mediation does not apply to trade unions and employers' associations which have concluded negotiating agreements like the 1997 Industry Agreement. Consequently, this power is only semi-mandatory. At present there are about 15 such agreements covering most of the Swedish labour market. The task of the Mediation Office to counter-check wage increases which exceed those in manufacturing industry even justifies the characterization of this authority as a follow-up and complement to the Industry Agreement.

Table 1 contains an overview of the Swedish industrial relations system as regards the combined (1) self-regulation/state regulation and (2) centralization/decentralization. There are combinations *between* (1) and (2) as well as *within* each of them.

Centralization is required for central compromises guaranteeing union rights and reducing fears about joining unions at the individual workplace. It also increases the share of workplaces covered by collective agreements, and

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<sup>72</sup> Kjellberg (1998) 79–80; A Kjellberg, 'The Swedish Model of Industrial Relations: Self-Regulation and Combined Centralisation-Decentralisation' in C Phelan (ed.) *Trade Unionism since 1945: Towards a Global History* (Oxford, Peter Lang 2009) 171–172.

where employers do not resist unions, it provides a high coverage of employers' associations. Another illustration of interaction between central and local levels to the advantage of unions is that bargaining power at national level facilitates local negotiations, particularly at workplaces with weak union representation.

Decentralization refers to the extensive coverage of union workplace organizations vertically integrated into national unions. The workplace 'clubs' bring unions close to rank-and-file members and offer unique chances for reciprocal communication between unions and members. They also constitute an arena for formulating demands and delivering goods to where the workers are located. Union workplace organizations promote membership recruitment not only from a social aspect (face-to-face contacts) but also from a utility aspect (results of union activities directly at the workplace) and by reducing fears about joining unions. Many of the labour laws introduced in the 1970s promoted workplace union strength and bargaining power, for example the Law on Union Representatives – which is of great importance for carrying out union activities during paid working time: see the field combining state regulation and decentralization in Table 1.

On the other hand, both one-sided centralization and one-sided decentralization may be highly problematic for unions. Power relations are often strongly biased to the employers' advantage in such cases. After World War II Dutch unions had to abstain from their workplace presence in order to be accepted as cooperation partners at central level. Similarly, one-sided decentralization results in fragmentary union coverage, as in USA, Japan and Britain. Generally speaking, industrial relations systems with a strong decentralized or centralized bias militate against a high union density, while a combination of centralization and decentralization offers more sanguine prospects for unions.

The dominant view among Swedish industrial relations researchers has been that the trade unions were the driving force behind the extensive labour legislation introduced in the 1970s. Svante Nycander has questioned this conclusion<sup>73</sup> and showed that political forces were the initiators of the Employment Protection Act.<sup>74</sup> According to Nycander the initiatives for legislation taken before 1971 came from 'the political side' – the political parties and the government. It was a political offensive, not a union offensive. As regards the Co-determination Act, it is true that the first LO congress to

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<sup>73</sup> Nycander (2008) 282, 299–300, Nycander (2010).

<sup>74</sup> Nycander (2008) 262–275.

	Centralization	Decentralization
Self-Regulation (bipartite and unilateral)	<p><b>A. On the part of unions and employers' associations*</b>                      Engineering Agreement 1905                      December Compromise LO-SAF 1906                      Salsjöbaden Agreement LO-SAF 1938                      Joint Industrial Safety Council LO-SAF-PTK 1942/1978                      Basic Agreement in Government Sector 1965                      Centralized bargaining LO-SAF and PTK-SAF                      Industry Agreement on wage formation 1997                      Central agreements LO-(SAF/SN and PTK-SAF/SN on other issues than wages (pensions, redundancy programmes, etc.)                      Wage agreements by sector/industry</p> <p><b>B. On the part of unions or employers' associations**</b>                      Centralized employers' associations (VF and SAF)                      Transition to industrial unionism in the 1920s (LO)                      Centralization of LO 1941                      Solidaristic wage policy (LO)                      Public sector bargaining cartels (white-collar workers)                      PTK (bargaining cartel for private sector white-collar workers) 1973                      Bargaining Council for unions in engineering industry 1992                      Unions within Manufacturing 1996                      Intensified internal coordination within LO and SAF/SN</p>	<p><b>A. On the part of unions and employers' associations*</b>                      Frequent local negotiations on piece-work                      Workplace agreements                      The 1983 Engineering Agreement concluded without preceding participation in the LO-SAF negotiations                      Decentralization of collective bargaining since the 1990s:                      (1) centralised bargaining with SAF on wages abolished from 1990                      (2) industry agreements kept, but substantive contents successively less detailed and increasingly left to local negotiations                      Increased space for individualised wage setting and figureless agreements                      Global frame agreements between unions and transnational companies</p> <p><b>B. On the part of unions or employers' associations**</b>                      Workplace union organizations ('union clubs') since the 1890s                      Employers' associations expanded their regional organization (VF from the 1970s)                      SAF decision in 1990 to abdicate from collective bargaining                      Codes of conduct (transnational companies)</p>
Bipartite Regulation (state and unions)	State-supported union unemployment funds (union-run funds administering the unemployment insurance regulated by law; partly financed by the state, partly by membership fees)	
Tripartite Regulation	Stabilization agreements 1990-93: the government Rehnberg Commission, trade unions and employers' associations Labour court (tripartite composition) 1928-	
State Regulation	Laws on labour court and collective agreements 1928 Law on rights of association and negotiation 1936 (private sector white-collar workers) Increased <i>de facto</i> role of state mediators 1993-99 National Mediation Office 2000 Role of the Bank of Sweden in fighting inflation EU directives implemented by law/collective agreements	Laws on co-determination (MBL), board representation in companies, employment protection (LAS), trade union representatives and revised law on occupational safety strengthen union workplace organizations and union safety representatives (1970s) EU regulation on European Works Councils implemented by Swedish law EC court verdict in the Laval case: decentralization in the sense of increased autonomy of foreign companies with posted workers to decide wages, but centralization by the intervention of the EC court into national wage formation and conflict rules.

\* Bipartite self-regulation; \*\* Unilateral self-regulation  
 For explanations of abbreviations, see the list at the end of the chapter.

Table 1. The Swedish model of self-regulation versus state regulation and combined centralization and decentralization

choose the legislative route was not held until 1971. Yet it would be more correct to assign the initiative of this law to *the union movement* rather than to any political party. In the years 1967–68 the centre-right parties submitted bills to the parliament on increased employee influence in enterprises, but none of them recommended *legislation*.<sup>75</sup> At the end of 1968 the Social Democratic party still had not adopted a clear position on the issue, and LO upheld its traditional sceptical view towards ending up sitting on two chairs – representing both the workers and taking responsibility for the enterprise.<sup>76</sup> Only the Communist Party argued for legislation, while LO preferred self-regulation and referred to the value of the Saltsjöbaden spirit of cooperation.<sup>77</sup>

The union reversal from the Saltsjöbaden line took place at the September 1969 congress of the Metalworkers' Union.<sup>78</sup> Shortly afterwards, two things happened: (1) LO appointed a commission led by the vice president of the Metalworkers' Union to present a proposal to the 1971 congress, and (2) the social democratic congress took the same direction as the Metall congress.<sup>79</sup> In this way the Metalworkers' Union paved the way for the position taken by the 1971 LO congress. Now legislation was considered unavoidable to abolish paragraph 32 (the former paragraph 23) as regards the employer prerogative to direct and distribute work.<sup>80</sup> Several months before (in early 1971), the LO president Arne Geijer (also a Social Democratic MP) submitted a bill to the parliament on labour legislation to introduce negotiation rights on co-determination issues.<sup>81</sup> It got support from almost all political parties. The real turnaround of LO thus occurred long before its 1971 congress. Part of the background was growing discontent with the revised 1966 agreement on works councils, according to which (as the unions viewed it) decisions on structural rationalizations and large layoffs should be preceded by consultations with unions. That was far from always being the case when the transformation of Swedish economy accelerated from the mid-1960s.<sup>82</sup>

The Co-determination Act was passed in 1976 and came into force on 1 January 1977. It was aimed to be followed up by collective agreements on co-

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<sup>75</sup> A Hadenius, *Medbestämmandereformen* (Stockholm, Almqvist & Wiksell International 1983) 48–50, 55 ff.

<sup>76</sup> Hadenius (1983) 50–52, 58.

<sup>77</sup> Hadenius (1983) 58–59.

<sup>78</sup> Hadenius (1983) 62–63, A Kjellberg, 'Från industriell demokrati till medbestämmande – fackliga utvecklingslinjer 1917–1980' *Arkiv* 21–22 1981.

<sup>79</sup> Kjellberg (1981) 72–73, Hadenius (1983) 63–66.

<sup>80</sup> Hadenius (1983) 78–82.

<sup>81</sup> Hadenius (1983) 82–85.

<sup>82</sup> Kjellberg (1981) 68–69, 74.

determination. It was not until 1982 that such an agreement was concluded between SAF, LO and PTK. This illustrates the absence of Swedish legislation that enforces collective agreements (compare above about the 1936 Law on Rights of Association and Negotiation).

## 8 Forms of regulation: advantages and disadvantages

As we have seen, there are different forms of regulation within the industrial relations area: self-regulation (unilateral and bipartite<sup>83</sup>), state regulation (legislation, court judgements, decisions of state mediators, etc) and combinations between them, for example tripartite regulation and state regulation supplemented by self-regulation (Table 1 above). Each of them has its own advantages and disadvantages depending on the perspective that is applied. Due to conflicting interests and diverging ideological/political preferences trade unions, employers' associations and states may have different views. They may also have common views based on common interests, common norms and so on.

Ann Numhauser-Henning poses a question in an inventive article: whether labour law should be based on legislation or self-regulation.<sup>84</sup> Her answer is 'both of them' should. One reason is that implementation of EU labour law appears to require legislation to supplement collective agreements. Numhauser-Henning labels the emergence of the Swedish system of collective bargaining as 'genuine self-regulation', which means that it was developed without assistance of the legislator. The early labour law, exemplified by the 1928 laws on labour court and collective agreement, "codified" the praxis that the labour market parties already had developed.<sup>85</sup> The labour law researcher Susanne Fransson characterizes Swedish labour law during the early decades of the twentieth century as 'primitive' because the relations between the labour market parties (up until 1928) were 'the subject of collective self-regulation, never of formal legislation'.<sup>86</sup>

Numhauser-Henning emphasizes that the extensive labour legislation introduced in the 1970s mainly is semi-dispositive and leaves significant

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<sup>83</sup> Jacobs (1986) uses 'collective self-regulation' with respect to joint regulation by employers and trade union.

<sup>84</sup> A Numhauser-Henning, 'Lagstiftning eller självreglering i arbetsrätten? Svaret är både ock'. *Svensk JuristTidning* 3 2001.

<sup>85</sup> Numhauser-Henning (2001) 315.

<sup>86</sup> S Fransson, 'Freedom of Contract, Parity and Collective Regulation: Collective Labour Law in Sweden' in M van der Linden and R Price (eds), *The Rise and Development of Collective Labour Law* (Bern, Peter Lang 2000) 237.

leeway for the labour market parties to implement it through collective agreements. This is facilitated by the high density of unions and employers' associations. In the absence of state extension mechanisms the high coverage of collective agreements is also a result of the efforts of the labour market parties themselves (self-regulation). Numhauser-Henning highlights in particular three advantages of self-regulation:<sup>87</sup>

- Regulation by collective agreements enables implementation and control at the individual workplace in a way 'that the legislator can only dream of'.
- Employment conditions formulated by the parties themselves often give a higher legitimacy than legislation.
- Collective agreements enable adjustment to local and sectoral conditions, which is also a reason why legislation, where it is introduced, often admits derogations through collective agreements. 'Processual flexibility' through negotiations is often considered superior to substantive legislation on material conditions (cf the white-collar confederation Daco's preference for procedural to substantive legislation).

The decentralization of bargaining underlines the importance of union presence at workplace level. The declining Swedish union density poses a challenge for unions in implementing and enforcing collective agreements at workplaces, particularly in private-sector services such as the hotel and restaurant industry (52 per cent unionized in 2006, 28 per cent in 2015)<sup>88</sup>. About two thirds of the massive union membership losses in 2007 and 2008 were caused by the centre-right government's policy of considerably raising and differentiating the fees paid into unemployment funds.<sup>89</sup> The union unemployment funds represent a mix of unilateral self-regulation (union-run funds, although in the 2000s with growing autonomy from trade unions) and state regulation (regulated by law and partly financed by the state). At any rate, no state intervention has ever caused such a large decline of Swedish union density as the remodelling of the Swedish unemployment insurance during the centre-right Reinfeldt government. Declining union density and dumping of wages and other conditions caused by EU regulations have raised the issue in some industries of statutory minimum wages.

Sometimes bipartite self-regulation is not sufficient for finding desirable solutions. The 1997 Industry Agreement meant a restoration of the Swedish model of collective bargaining, containing a kind of private mediation

<sup>87</sup> Numhauser-Henning (2001) 316–317.

<sup>88</sup> Refers to blue-collar hotel and restaurant workers. Kjellberg (2017).

<sup>89</sup> A Kjellberg, 'The Decline in Swedish Union Density since 2007' *Nordic Journal of Working Life Studies* 1(1) 2011.

institute, but in 2000 this was complemented by a new reinforced National Mediation Office. Its most important task is to prevent wage agreements in other sectors from exceeding those in the manufacturing industry. A combination of self-regulation and state regulation was considered to have better prospects than any other alternative to get wage formation functioning better than previously. The prominent role of self-regulation is also evident in the design of the Mediation Office. Among its instruments are compulsory mediation and the right to postpone industrial actions for two weeks, but this is only semi-mandatory as this order can be replaced by collective agreements on negotiation procedures and conflict resolution.<sup>90</sup>

Since 1997 the remodelled Swedish system of wage formation, still strongly dominated by self-regulation, is considered by most observers to be successful. The following advantages are often mentioned: reduced growth of nominal wages to the advantage of Sweden's competitiveness, increasing real wages and a low rate of labour conflicts.

### *List of Abbreviations*

DA	Dansk Arbejdsgiverforening (Danish Employers' Confederation)
Daco	De anställdas centralorganisation (Confederation of Employees)
HTF	Handelstjänstemannaförbundet (Commercial Employees' Union)
HK	Handels- og Kontorfunktionærernes Forbund (Union of Commercial and Office Employees)
IF Metall	Industrifacket Metall (Industrial Union Metall)
ITGLWF	International Textile, Garment and Leather Workers' Federation
LO	Landsorganisationen i Danmark (Danish Confederation of Trade Unions)
LO	Landsorganisationen i Sverige (Swedish Confederation of Trade Unions)
Metall	Svenska Metallindustriarbetareförbundet (Swedish Metalworkers' Union)
PTK	Privattjänstemannakartellen (The Bargaining Cartel of Private Sector White-Collar Workers)
Saco	Sveriges Akademikers Centralorganisation (Swedish Confederation of Professional Associations)
SAF	Svenska Arbetsgivareföreningen (Swedish Employers' Confederation)
Sif	Svenska Industritjänstemannaförbundet (Swedish Union of Clerical and Technical Employees in Industry)
SN	Svenskt Näringsliv (Confederation of Swedish Enterprise)
TCO	Tjänstemännens Centralorganisation (Swedish Confederation of Professional Employees)
VF	Verkstadsföreningen (Swedish Engineering Employers' Association)

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<sup>90</sup> Norberg and Numhauser-Henning (2004) 261.



