



INSTITUTE FOR INTERNATIONAL LAW & HUMAN RIGHTS

LEGAL MEMORANDUM

TRADE UNION AND SYNDICATE LEGISLATION: INTERNATIONAL PRACTICE

JUNE, 2009

What is international practice with respect to the bifurcation of trade union laws and syndicates laws?

SUMMARY

Most countries studied recognize freedom of association in their constitutions. Some constitutions include a right to form trade unions, and others recognize 'syndicates or professional associations' by name. Importantly, most countries' laws on the right of workers to organize are provided by statute rather than as part of a constitution. Countries such as the **United States**, **Germany**, and **Jordan** clearly bifurcate their laws on syndicates and trade unions. In those jurisdictions, the right to collective bargaining is typically given to trade unions, not syndicates. Others, such as **Australia**, extend collective bargaining rights to both syndicates and trade unions.

This memorandum is intended only as a brief overview of the differences between legislation for trade unions versus syndicates. IILHR staff is available to answer any questions that may arise or provide additional information as appropriate.

INTRODUCTION

This memorandum explores the various ways in which legal systems distinguish between trade unions and syndicates. For the purposes of this memorandum, a **syndicate or professional association is defined as an association of professionals or workers formed to promote a common interest, however**

not primarily formed for the purpose of negotiating with employers.¹ In contrast, a union is defined as an organization primarily formed to negotiate with employers about job-related issues.² ‘Collective bargaining’ is defined as “negotiations between an employer and the representatives of organized employees to determine the conditions of employment, such as wages, hours, discipline, and fringe benefits.”³ Most countries make a distinction along those lines. A small minority makes no explicit distinction and extends collective bargaining rights to any organization whether or not they are primarily organized for the purpose of negotiating with employers on behalf of workers.

United States

The United States treats professional associations and trade unions separately. The United States Supreme Court has recognized a right to freedom of association under the United States Constitution.⁴ U.S. statutory law deals specifically with the right to organize trade unions and collectively bargain, and deals separately with professional organizations that do not qualify as trade unions.

The National Labor Relations Act⁵ (NLRA) outlines the rights of employees to organize and collectively bargain. The law allows for “labor organizations” to collectively bargain on behalf of its member employees. The law defines a “labor organization” as “any organization of any kind, or any agency or employee representation committee or plan . . . which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.”⁶ While the definition includes organizations that are not technically trade unions, the words “exists for the purpose, in whole or in part, of dealing with employers” describes the function of what most countries call a trade union. Thus, syndicates that are not at least partly organized for the purpose of collective bargaining are not covered under the NLRA.

Germany

¹ For a similar definition see BLACK’S LAW DICTIONARY (8th ed. 2004).

² *Id.*

³ *Id.*

⁴ Nat’l Ass’n for Advancement of Colored People v. Alabama, 357 U.S. 449, 466 (1958).

⁵ 29 U.S.C. §§ 151-169.

⁶ *Id.* at § 157.

The German Constitution contains general language about freedom of association that covers both syndicates and trade unions. Article 9 guarantees “the right to form associations to safeguard working and economic conditions.”⁷

The majority of German labor law is based on legislation. According to the International Labor Organization’s country profile for Germany, there is no exclusive trade union law; however the Collective Agreements Act governs collective bargaining.⁸ The Act affords collective bargaining power only to trade unions and other associations that state in their standing rules the goal of safeguarding its members’ interest.⁹ Thus, as in the United States, German law does not extend the right of collective bargaining to ‘professional associations’ not organized in part for the purpose of collective bargaining.

Jordan

The Constitution of Jordan does not reference syndicates. Article 23 of the Constitution guarantees that “[f]ree trade unions may be formed within the limit of the law.”¹⁰ Jordanian statutory law references both syndicates and trade unions, and deals with them separately.

The majority of labor relations are based on the Jordanian Labor Code of 1996. The Labor Code of 1996 defines a trade union simply as “an organization of workers in a trade, formed in accordance with the provisions of this Code.”¹¹ The Code elaborates by limiting trade unions to working for the following objectives: “protect the interests of workers in the trade and defend their rights within the framework of this Code”; “provide health and social services to members and set up clinics, social welfare organizations and consumer associations for their benefit”; and “raise the professional, economic and cultural level of its workers.”¹² Thus, the Code makes clear that an organization must have the objective of negotiating workers interest with employers in order to be considered a trade union, and therefore precludes syndicates from participating in collective bargaining.

Jordanian statutory law addresses professional associations, and ‘syndicates,’ separately. Members of professional associations are not allowed to join trade

⁷ GRUNDGESETZ [GG][Constitution] art. 9 (F.R.G.).

⁸ Germany – National Labor Law Profile, <http://www.ilo.org/public/english/dialogue/ifpdial/info/national/ger.htm>.

⁹ “Capacity to Conclude Collective Agreements,” <http://www.eurofound.europa.eu/emire/GERMANY/CAPACITYTOCONCLUDECOLLECTIVEAGREEMENTS-DE.htm>.

¹⁰ Constitution of the Hashemite Kingdom of Jordan 1952 art. 23.

¹¹ Labor Code, Law No. 8, § 2 (1996) (Jordan).

¹² Labor Code, Law No. 8, § 99 (1996) (Jordan).

unions¹³. The professional associations may take part in certain advocacy activities, but the law restricts their collective bargaining power.¹⁴ As an example of such advocacy activities, professional associations in Jordan have organized demonstrations in opposition to the U.S. war in Iraq.¹⁵

Australia

The Australian Constitution does not acknowledge a distinction between trade unions and syndicates. Article 51 of the Constitution grants the federal government the power to make laws regarding “*conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State.*”¹⁶ However, statutory law in Australia regulates most labor relations.

Australia does not clearly distinguish between trade unions and professional associations. The definition of a ‘trade union’ includes both “*an organization of employees,*” otherwise known as syndicates, as well as “*an association of employees a principal purpose of which is the protection and promotion of the employee’s interests in matters concerning their employment.*”¹⁷ Thus, a ‘syndicate’ for the purposes of this Memorandum might qualify as a trade union in Australia.

Australian law does not restrict collective bargaining to trade unions. The primary piece of labor legislation is the Workplace Relations Act of 1996. The Act authorizes an organization of employees to enter into collective agreements as long as that organization “*has at least one member whose employment in a single business...will be subject to the agreement*” and “*is entitled to represent the industrial interests of the member in relation to the work that will be subject to the agreement.*”¹⁸ Thus, Australian law does not require an organization of professionals to be organized ‘for the purpose of negotiating with employers about job related issues’ in order to take part in collective bargaining.

Czech Republic

Article 3 of the Constitution of the Czech Republic guarantees freedom of association and the right to establish trade unions.¹⁹ The Labor Code further

¹³ SOLIDARITY CTR., THE STRUGGLE FOR WORKERS RIGHTS IN JORDAN 1, 15-16 (2005).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ AUSTRALIAN CONST. ch. V, art. xxxv.

¹⁷ Workplace Relations Act 1996, § 4 (Austl.).

¹⁸ Workplace Relations Act 1996, § 328 (Austl.).

¹⁹ Constitution of the Czech Republic art. 3.

distinguishes between trade unions and other types of syndicates known as “work councils.”²⁰

Curiously, the Labor Code does not explicitly define what it means by ‘trade union.’ However, in accordance with the Labor Code, *“the right to conclude a collective (bargaining) agreement on behalf of employees pertains only to the (competent) trade union organization.”*²¹ Thus, only trade unions are authorized to collectively bargain with employers. Under Section 320 of the Labor Code, trade unions also enjoy consultancy power with regards to draft legislation on labor matters: *“Bills (draft legislation) and other proposed regulations concerning employees’ important interests...shall be consulted with the competent trade union organization bodies and the competent employers’ associations.”*

The Labor Code does not envisage the inclusion of syndicates. However, in 2001, the Labor Code introduced ‘works councils’ as a new form of employee representation for employees of organizations not belonging to a trade union. Although the Labor Code does not explicitly define works councils, it summarizes their function as follows: *“In order to ensure the right to information and consultation, employees who are employed by an undertaking where there is no trade union may elect a works council or a representative (or representatives) concerned with occupational safety and health protection...”*²² Thus ‘works councils’ are limited to providing information to the workers they represent, and consulting with the government on safety and health matters. The Labor Code does not authorize works councils to collectively bargain or call strikes. Thus, while labor law in the Czech Republic is silent as to ‘syndicates,’ it clearly limits the bargaining power of any association that is not a trade union.

CONCLUSION

Most national legal frameworks surveyed in this memorandum distinguish between syndicates and trade unions either by explicitly reserving collective bargaining rights for trade unions, or by limiting collective bargaining to associations organized ‘primarily for the purpose of protecting workers interest.’ A minority of jurisdictions makes no such distinction.

²⁰ National Labor Law Profile – Czech Republic, <http://www.ilo.org/public/english/dialogue/ifpdial/info/national/cz.htm>.

²¹ Zákon č. 262/2006 Sb. zákoník práce (Labor Code), available at <http://www.mvcr.cz/sbirka/2006/sbo84-06.pdf>.

²² *Id.*