UNIT 3: COLLECTIVE BARGAINING

Prof. Dr. David Montoya Medina
Department of Labour Law & Social Security Law
University of Alicante
COLLECTIVE AGREEMENT DEFINITION

1. Written standard
2. Stemmed from a bargaining process between employers (or representatives) and workers (or representatives)

3. Aimed at regulating
   - Working conditions
   - Employer & workers representatives relationship
   - Agreement signatories relationship

* Legal nature: *Hybrid with contract shape and law soul* (Carnelutti)
<table>
<thead>
<tr>
<th>Coll. Agreem. current functions:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Improving working conditions laid down in Relat. Mandat. Standards</td>
</tr>
<tr>
<td>2. Replacing non mandatory standards (E.g. art. 14.1 WS, art. 29.1 WS)</td>
</tr>
<tr>
<td>3. Completing legal standards regulation (E.g. art. 23 WS)</td>
</tr>
<tr>
<td>4. Fully regulating some labour matters (E.g art. 24 WS)</td>
</tr>
</tbody>
</table>

Coll. Agreem. regulatory role:

- Originally: confined to wages and working days
- Nowadays: Wide range of labour matters, economic matters and workers collective action
Art. 37.1 SC: The Law shall guarantee the right to labour collective bargaining between employers and workers’ representatives, as well as the binding force of the collective agreements.

1. **Location consequences**: Enforceable in courts/but not challenged in amparo

   - Recognised directly by the S.C
   - Recognised only by Law

2. **Binding force** = Normative legal efficacy

3. **The right holders**: Restriction on Title III WS

   - Tit. III WS unconstitutional
   - Two types of coll. agreeem.
COLLECTIVE AGREEMENTS EFFICACY

**Legal Efficacy**

- Normative: Coll. agreeem as a source of Law
- Contractual: Coll. agreeem as a common law contract

**Personal Efficacy**

- General/erga omnes: all individuals included under its personal scope
- Limited: only individuals represented by the signing parties
COLLECTIVE AGREEMENTS EFFICACY

- **Estatutario Coll Agreem**
  - Normative legal efficacy
  - Erga omnes personal efficacy

- **Extraestatutario Coll Agreem**
  - Contractual legal efficacy
  - Limited personal efficacy
**COLLECTIVE AGREEMENT LEGAL EFFICACY**

**ESTATUTARIO: Normative**
- Source of Law: Substantive Law
- Imperatively/Automatically applied
- Rights can’t be lawfully waived
- No less favourable terms in contract
- Published in Official Bulletin
- Subject to hierarchy&modernity principles
- Court rulings breaching the C.A can be challenged on grounds of Law infringement

**EXTRAESTATUTARIO: Contractual**
- Not a source of Law: subjective rights
- Terms shall be freely incorporated to the employment contract
- Rights can be lawfully waived
- Worse terms lawfully contained in the employment contract
- Not published in Official Bulletin
- Not subject to hierarchy&modernity principles
- Courts rulings breaching the CA can’t be appealed on grounds of Law breach

* Legal Basis: Restrictive interpretation of art. 37.1 SC
COLLECTIVE AGREEMENT PERSONAL EFFICACY

ESTATUTARIO: ERGA OMNES

Legally binding to all employers and employees included within their application scope (art. 82.3 WS)

EXTRAESTATUTARIO: LIMITED

Only applied to individuals directly represented by the signatories parties:

1) Employers associated to the employers’ associations who signed the agreement
2) Employees affiliated to the unions who have negotiated the agreement

* Legal Basis: Art. 82.3 WS: “The C.A regulated by this law are binding on all employers and employees....”
FRAMEWORK COLLECTIVE AGREEMENTS (Art. 83.2 WS)

- Proper Framework Coll. Agreements

- Improper Framework Coll. Agreements
  - V National Col. Agreements Temporary Work Agencies

What’s their role?

1. To lay down structure of col. barg.

2. To set rules resolving conflicts between col. agreements
1. Replacement Workforce Agreements (Eg. Arts. 22 y 24 WS)

2. Alternation Workforce Agreements (Art. 31 WS)

3. Opt out Workforce Agreements (Art. 82.3 WS)
NEGOTIATION UNITS & SCOPE OF COLLECTIVE AGREEMENTS

Negotiation/Bargaining unit \( \equiv \) Coll. Agreem. scope

- Functional scope
- Territorial scope

Coll. Agreem. Scope

- Personal scope
SCOPE OF COLLECTIVE AGREEMENTS

Bargaining parties shall freely determine the scope of the Collect. Agreem (Art. 83.1 WS)

LIMITS:

1) Legal standing rules (arts. 87-88 WS)

2) The nature of things (functional scope shall be sensible & not arbitrary)

3) Equality & Non-discrimination principles (prevent excluding groups with no representantives)
Art. 84 WS: “During its term, a collective agreement must not be affected by what is set forth in agreements of different scope, barring…”

Concurrence arises when two or more coll. agreem are sharing their scope, resulting in a conflict between legal standards
TYPES OF CONCURRENCE

Concurrence by inclusión

Statewide Textile Collectv. Agreem

Textile Collectv. Agreem. Alicante’s Province
TYPES OF CONCURRENCE

Concurrence by intersection

Agriculture Valencian Autonom. Region

Agriculture South East of Spain

Alicante’s agriculture companies
CONCURRENCE LEGAL BANNING (Art.-. 84 WS)

REMARKS

1.- Operates only while the Coll. Agreem is in force, until it is expired by giving notice of its termination

2.- “To affect”: fully or partly modifying a pre-existing coll. agreem.

3.- Concurrence ban on Title III WS: only affecting Estatuarios Col. Agr.
CONCURRENCE LEGAL BANNING
EXCEPTIONS

1. - Framework collective agreements (either proper or improper)

2. - Any collective agreement may allow subsequent ones to prevail (Concurrence Banning is a not mandatory rule)

3. - 2012 Labour Law reform: Company level Col. Agreem can lawfully be negotiated while an upper level one is still in force (Just on some major matters/Not waivable by Framework Agreeem)

4. - Regional level Coll. Agreem. can lawfully be negotiated while an statewide one is still in force (Some matters are no-negotiable items/Non mandatory rule for the Frame Work Agreement)
HOW THE CONCURRENCE CONFLICTS SHALL BE SOLVED?

- The former collect. agreem shall prevail
- The latter shall not be applied until the expiration of the 1st one

(Rule implicit in art. 84 WS)
COLLECTIVE AGREEMENT CONTENT

Matters that may be regulated by the collective agreement:

1. **NORMATIVE CONTENT** (clauses for employers & workers)
   - E.g. Working time, wages, holidays etc

2. **OBLIGATIONAL CONTENT** (clauses for the agreement’ signatories)
   - E.g. Duty of absolute peace
   - E.g. Conditions for coll. agreem. termination
   - E.g. Constitution & powers of the paritary commission
Minimum content of the collective agreement:

1.- Parties who have negotiated it
2.- Personal, functional & territorial scope
3.- Procedures to solve disagreements arising from the collective agree. opting out procedure (art. 82.3 WS)
4.- Forms & conditions for giving notice of the collective agreement. Termination & period in advance for such notice
5.- Constitution of the Parityary Commission made up of both bargaining bodies.
- MAIN FEATURES -
(Art. 83.2 WS)

1.- Exception to the general/erga omnes personal efficacy of the estatutario collective agreement

2.- Basis: Working conditions flexible regulation at any company, through a workplace agreement (opt-out agreement).

3.- Grounds: a justified reason is needed: Economic, technical, organisational, productive causes (all defined by art. 83.2 WS)
Collective agreement terms which can be opted out

- Working days
- **Timetable (work schedule) & working time distribution**
- **Shift work legal regime**
- **Compensation system & salary**
- **Working and performance system**
- **Functions**
- **Voluntary improvements to the protective action of Social Security**
Opting out procedure: the consultation period

- It shall be discussed with workers representatives (Unitary representation/Unions sections)
- It will not last more than 15 days (prevent long bargaining process)
  - Grounds for the employer’s decision
  - Purpose:
    - Possibility of preventing/reducing its effects
    - Necessary measures to attenuate consequences for workers
- Duty to bargains in *good faith* in order to reaching an agreement
1. An agreement is reached.
   - Employer’s invoked grounds will be presumed: agreement only may be challenged before social courts on the grounds of fraud, deceit, duress or right abuse.
   - The agreement shall lay down:
     - New working conditions
     - Its length: Limit (not beyond the time a new collective agreement, applicable in the company, has come into force)
2. A disagreement is reached: 3 steps aimed at solving it:

1) Disagreement Voluntary submission to the Paritary Commission

2) Conventional mechanisms for collective labour disputes resolution (Arbitration & Mediation procedures laid down in Statewide & Autonomous Regions agreements on this issue)

3) Arbitration through the National Consultive Commission on Collective Agreements
LENGTH & VALIDITY OF THE COLLEC. AGREEM
(Art. 86 WS)

Coll. Agreeem parties shall freely agree

- Length: date on which it will come into force & period of duration
- Form, conditions & time in advance for giving notice of its termination (art. 85.1 WS)
- They can also agree the amendment of the Col. Agree. Without waiting for its termination date
LENGTH & VALIDITY OF THE COLLEC. AGREEM.  
(Art. 86 WS)

1.- Notice of termination is NOT given by any of parties

Automatic Extension of the Col Agreeem for a year (unless otherwise agreed)

2.- Notice of termination is given

Ultra-activity of the Col Agreeem will be triggered (Normative content will provisionally remains in force during the negotiation of the new Col. Agreeem)
1.- It only operates “unless otherwise agreed”: Parties may freely regulate ultra-activity (setting the matters which will continue in force and the time for its validity or simply eliminating ultra-activity)

2.- Partial agreements can be reached (to adapt working conditions to prevailing production circumstances)

3.- Disagreements shall be submitted to Colective Labour Disputes mechanisms (regulated by Statewide & Autonomous Regions agreements which must lay down the possibility of arbitration and its voluntary/mandatory nature)

4.- One year after the termination notice, the Coll. Agreeem will no longer be in effect (“unless otherwise agreed”)
Legal mechanisms through which a collective agreement may be applied to a certain group of employers & workers who were not initially included within their personal scope
ADHESION

- Decided by individuals empowered to negotiate a coll. agreem.

- Decision must be communicated to Labour Administration (registration)

- It must be to the whole Coll. Agreem (No partial adhesion)
EXTENSION

- Decided by Labour Administration through an administrative act

- Not decided ex officio. Must be requested by stakeholders

- Aimed at avoiding gaps in working conditions regulation

- Conditions:
  1) Group of employers & workers with no applicable collect. agreem. & not entitled to negotiate a new one

  2) Harming by the impossibility of bargaining an own col. agreem.