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# Trade unions in Poland

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# Background

Although Poland has a strong trade union tradition, exemplified by the “Solidarity” social movement of the 1980s, research carried out in 2007 revealed that only 12.8% of employees admitted being trade union members.

The main reason for this is that the employees do not really believe that trade unions can represent their interests or that their mediation is needed. Trade union officers appear to only care about their own interests and enjoy substantial privileges (they remain on companies’ payrolls, are protected against dismissal, etc.). The second reason is that the rights of trade unions are statutorily limited and there are few measures that they can use to effectively protect their members against company decisions in individual cases.

Currently, the two largest trade union organisations in Poland are:

- OPZZ (the All-Poland Alliance of Trade Unions), headquartered in Warsaw, with nearly 3 million members (including 500,000 pensioners)
- NSZZ "Solidarność" (the Solidarity Independent and Self-Governing Trade Union), with its national committee in Gdańsk with 900,000 members.

Both OPZZ and Solidarity trade unions have strong political links. Solidarity is closer to the conservative “right” of the political scene while the OPZZ is nearer the socialist “left”.

The smaller union organisations include the Solidarity '80 Independent and Self-Governing Trade Union and Konfederacja Pracy – Ogólnopolski Pracowniczy Związek Zawodowy (the National Employee Trade Union) as well as some unions representing specific groups of workers, such as a miners' union, a teachers' union, a railway workers' union or a nurses' and midwives' union.

## Most important legislation

Trade unions in Poland operate on the basis of:

- the Act of 23 May 1991 on Trade Unions (unified text Journal of Laws of 2001, No. 79, item 854, as amended), hereinafter referred to as the “**Act on Trade Unions**”
- the Polish Labour Code of 26 June 1974 (unified text Journal of Laws of 1998, No. 21, item 94, as amended) hereinafter referred to as the “**LC**”
- the Act of 6 July 2001 on Tri-lateral Committee for Social and Economic Affairs and regional committees for social dialogue (Journal of Laws No. 100, item 1080, as amended)
- the Act of 23 May 1991 on solving collective disputes (Journal of Laws No. 55, item 236, as amended).

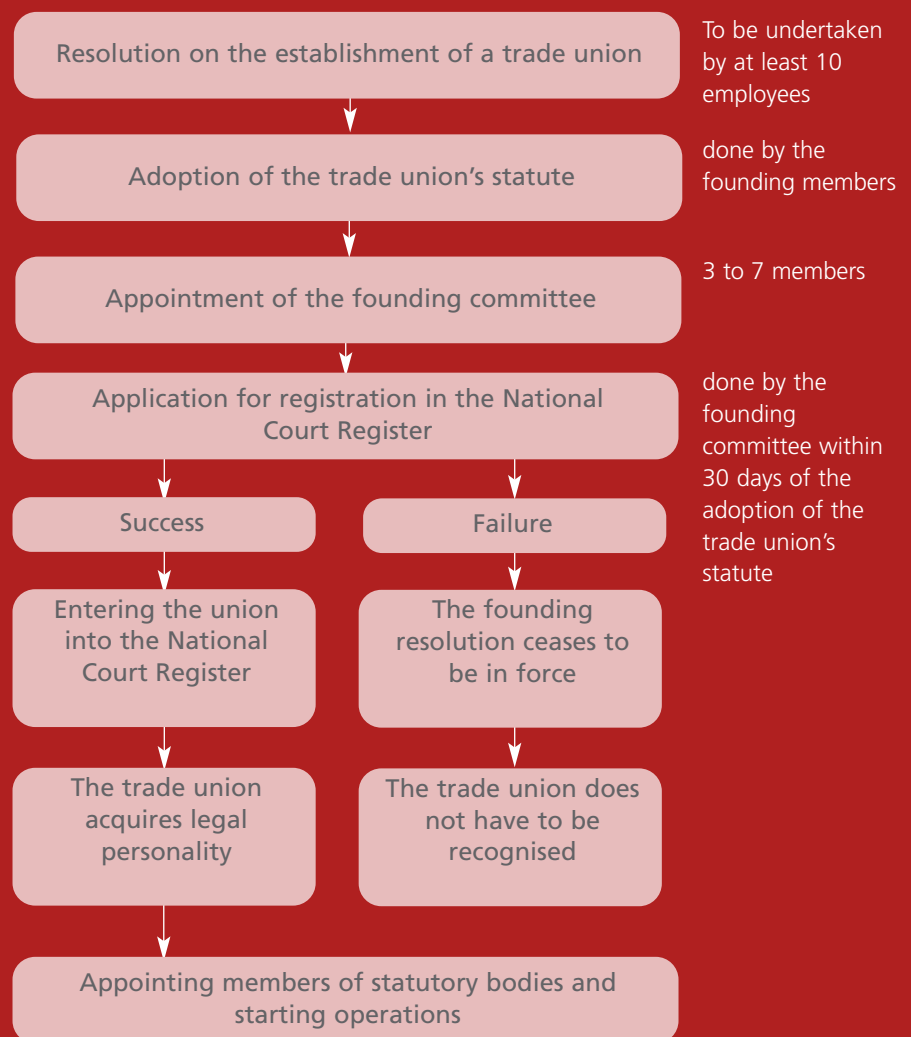
# How is a trade union established in a company?

## Procedure of establishing a company trade union

A trade union organisation can only be formed by ten or more members. If these ten founding members are employed in the same company, they can establish a company trade union organisation. There is no statutory limit to the number of trade union organisations that may operate within one company.

The company cannot block or delay the formation of a trade union but it does not have to recognise the trade union unless it is fully registered in the National Court Register (this does not mean however, that an employer e.g. may dismiss the members of a founding committee, as they may be specially protected against that).

Basically, the procedure for establishing a company trade union and having it recognised may be summarised as follows:

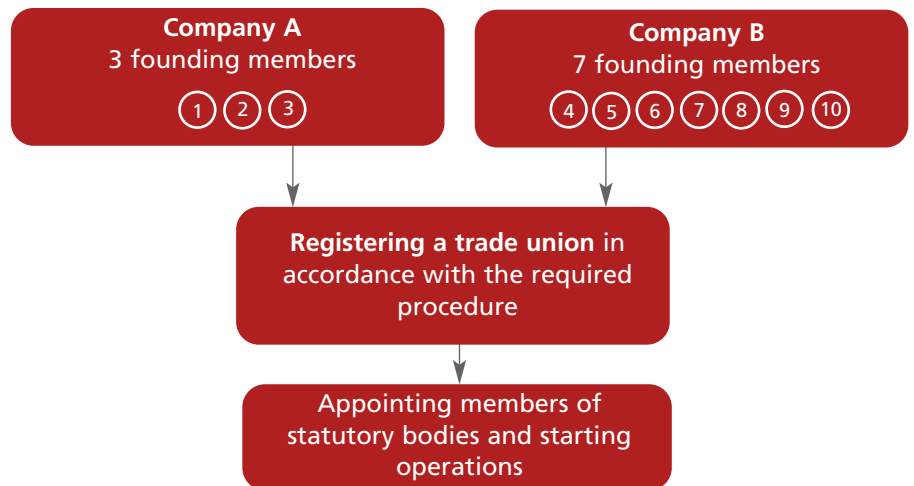


If the number of members falls below 10 for a period longer than 3 months, the company may request the court to deregister the trade union from the National Court Register.

### Founding an intra-company trade union

The required 10 founding members do not have to be employed in one company. It is possible for employees of two or more companies to get together to establish an intra-company trade union (provided that there are 10 members in total).

The procedure of establishing an intra-company trade union is basically the same as in the case of a company trade union (page 4).



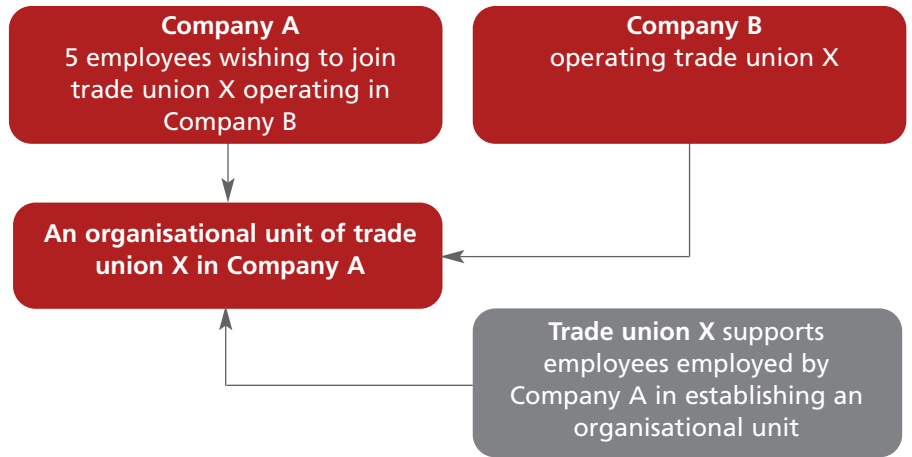
In order to be recognised by a given company, a trade union must have at least one member in that company.

### Joining an existing trade union

In order to become trade union members, employees of a given company do not need to establish their own trade union. Instead, the employees may join an existing and already operating trade union (typically OPZZ or NSZZ "Solidarność") and create an internal organisational unit of this trade union in the company where they are employed.

The provisions on how to establish an organisational unit of a trade union are included in the respective trade union's statutes. In particular, such statutes establish the minimum number of employees who must join the trade union in order to establish an organisational unit in the company.

This way of establishing a trade union allows the employees wishing to set up a trade union to avoid going through the full founding and registering procedure. They may use the trade union's know-how in this respect (they may simply adopt ready statutes and use the remaining documentation already prepared by the trade union) and do not necessarily have to individually register it in the National Court Register (this will depend on certain statutes of the trade union). In this way the establishment of the union may be significantly shortened.



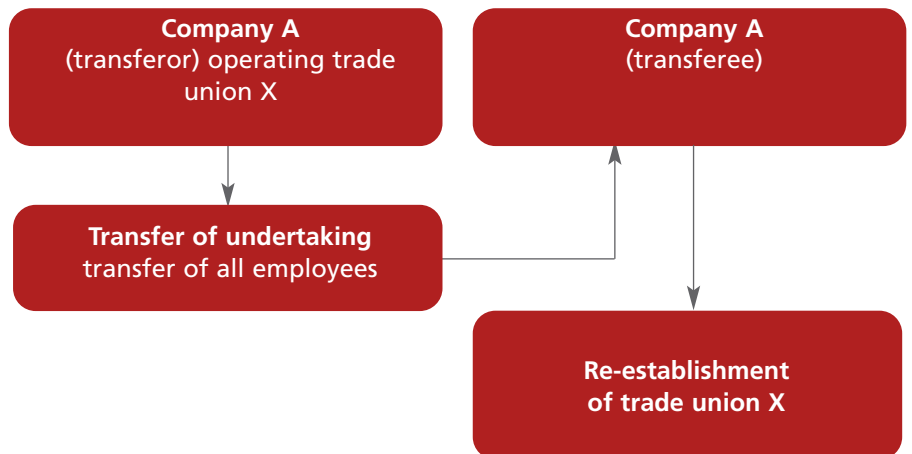
### In-sourcing a trade union

A company may involuntarily in-source a trade union organisation when acquiring an undertaking or its organised part from another company where a trade union operates.

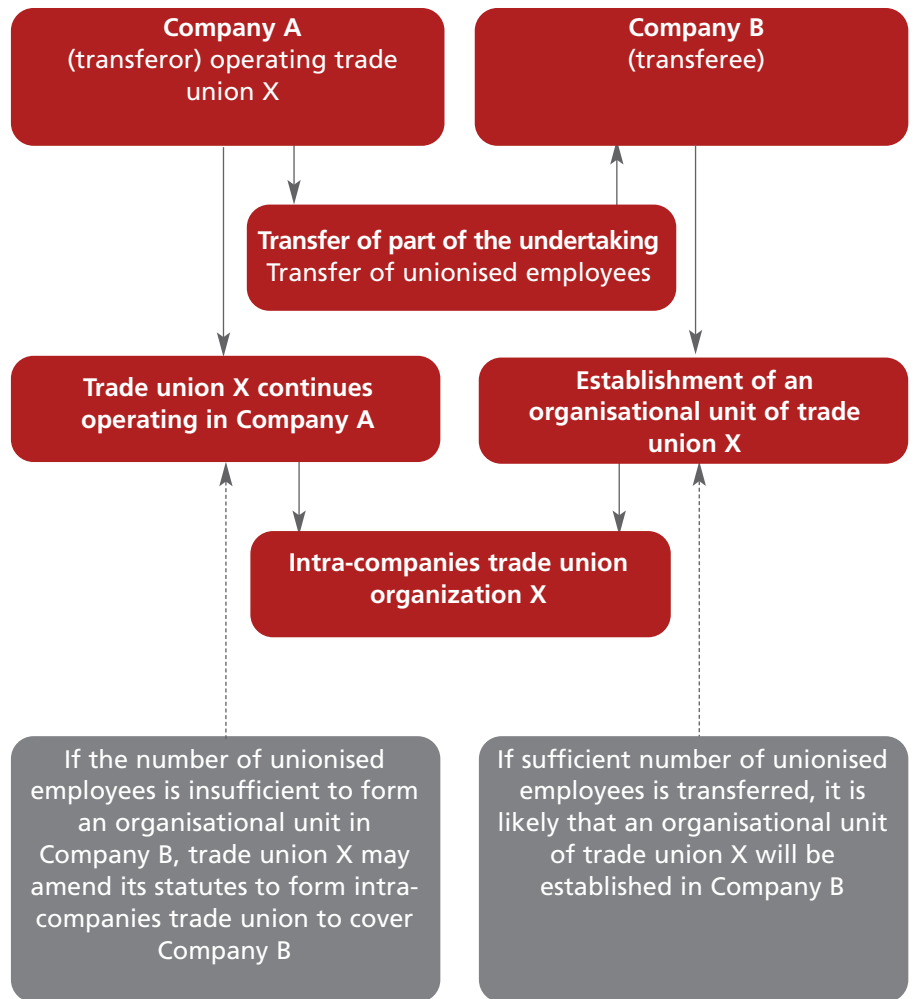
The concept is based on EU legislation – namely the Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, which guarantees the continuity of employee representation after a transfer of undertaking.

These are the most common scenarios which may occur when a trade union is in-sourced as a result of acquiring a company:

- transfer of the entire undertaking resulting in re-establishing a complete trade union structure at the transferee



- transfer of part of an undertaking resulting in establishing an incomplete trade union structure at the transferee



### Recognition of a trade union

In general all trade union organisations in a company must be recognised by the company if it has been notified of them by trade union officers. From the date of notification the company is obliged to respect a trade union's rights and privileges prescribed by the Trade Unions Act.

In order to exercise its full rights, a trade union must constantly associate at least 10 members who are either employees of one company if this is a company trade union organisation or employees of companies covered by the same intra-companies trade union organisation (provided that at least one member is employed by each of these companies).

A trade union must periodically (on a quarterly basis) provide the company with information on the total number of its members, including information on the members employed in this company. It does not have to present names. General figures are sufficient.

# Cooperating with a trade union...

## ...in matters involving individual and collective interest

If a trade union operates in a company, it must be informed and consulted on a wide range of issues, including the individual dismissal of trade union members or persons whose rights the trade union has agreed to protect, social fund issues, and collective redundancies.

### **Consultation on internal-by laws and policies**

Once a trade union is present in a given employer, the employer is required to consult it on the introduction or change of any internal by-laws, such as:

- workplace regulations (*Regulamin Pracy*)
- remuneration regulations (*Regulamin Wynagradzania*)
- bonus regulations (*Regulamin Premiowania*)
- social fund regulations (*Regulamin Zakładowego Funduszu Świadczeń Socjalnych*)
- and any internal policies.

If a trade union starts to operate after the company has adopted the by-laws, only changes to such by-laws will require consultation.

The course of consultations may vary, depending in particular on the number of trade unions involved.

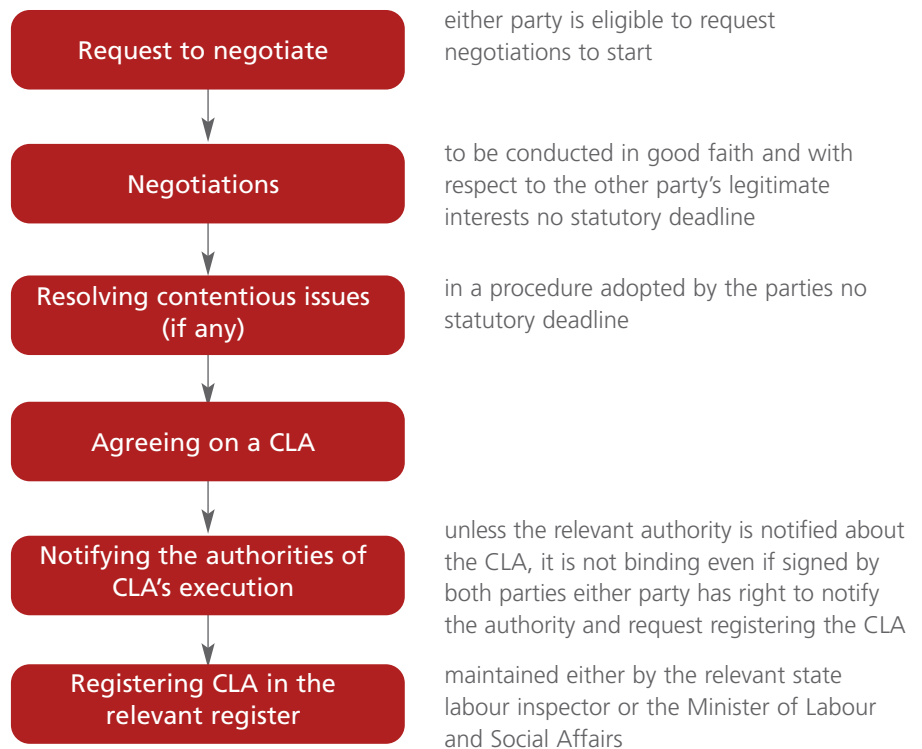
Generally, if there is more than one trade union operating within a company, all the unions should provide a joint position.

### **Collective bargaining**

Trade unions have the right to initiate and conduct collective negotiations and enter into collective labour agreements (CLA) with the company.

Typically a CLA specifies the terms and conditions of employment that are more favourable than the statutory entitlements. It may also describe a company's special obligations pertaining to informing and consulting trade unions on different issues.

A CLA is established through negotiations between the parties. Where there is more than one trade union in a given company those trade unions should generally negotiate a CLA jointly.



### Consultation on group dismissals

The consultation procedure applies to companies employing at least 20 employees and only if the company intends to make a prescribed number of employees redundant within 30 consecutive days.

The applicable thresholds are:

- 10 employees - if an employer employs less than 100 employees
- 10% of employees - if an employer employs at least 100 employees, but less than 300 employees
- 30 employees - if an employer employs at least 300 employees.

Terminations upon mutual agreement of the parties are included in the above thresholds if they are made upon an employer's initiative and there are at least 5 of such terminations.

Small companies (employing less than 20 employees) are not subject to group dismissal procedure and can proceed without any prior notification/consultation with trade unions.

The company must first notify the trade union, then consult it about:

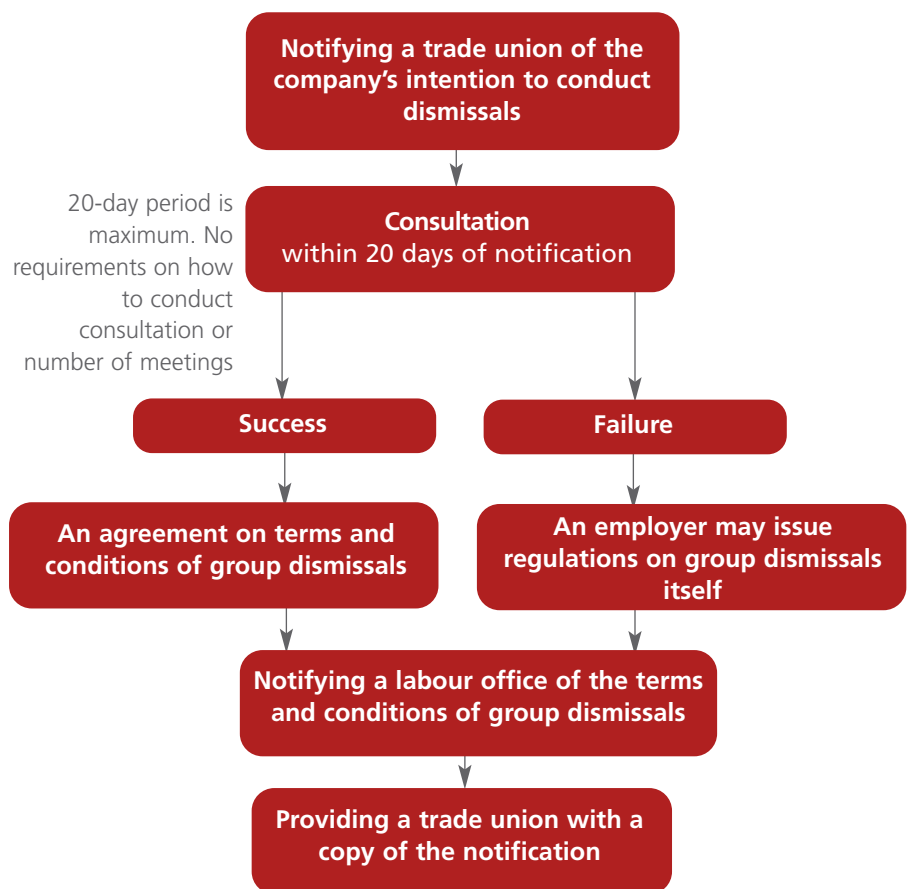
- the causes of the planned group dismissal
- the number of employees and their professions
- the professions of the employees to be made redundant
- the period within which the group dismissal is to take place
- suggested selection criteria of employees to be made redundant

- the sequence of the planned group dismissal
- suggestions on resolving employee matters relating to the planned group dismissal
- the mode of ascertaining the amount of any financial benefits granted.

Consultation must be conducted within 20 days of the initial notification. If an agreement is reached, a special agreement on collective dismissals is signed with a trade union and the company must follow with the arrangements made in this agreement. If no agreement is reached within this deadline, the company may decide on the group dismissals itself by issuing so-called redundancy by-laws. It should generally take into account the conduct of the consultation when construing the wording of the by-laws.

At the end of the day, consultation cannot block the dismissals.

The consultation procedure may be summarised as follows:



### Consultation on transfer of undertaking

At least 30 days before the planned transfer date, both the transferor and the transferee must notify trade unions, if any operate in their business operations.

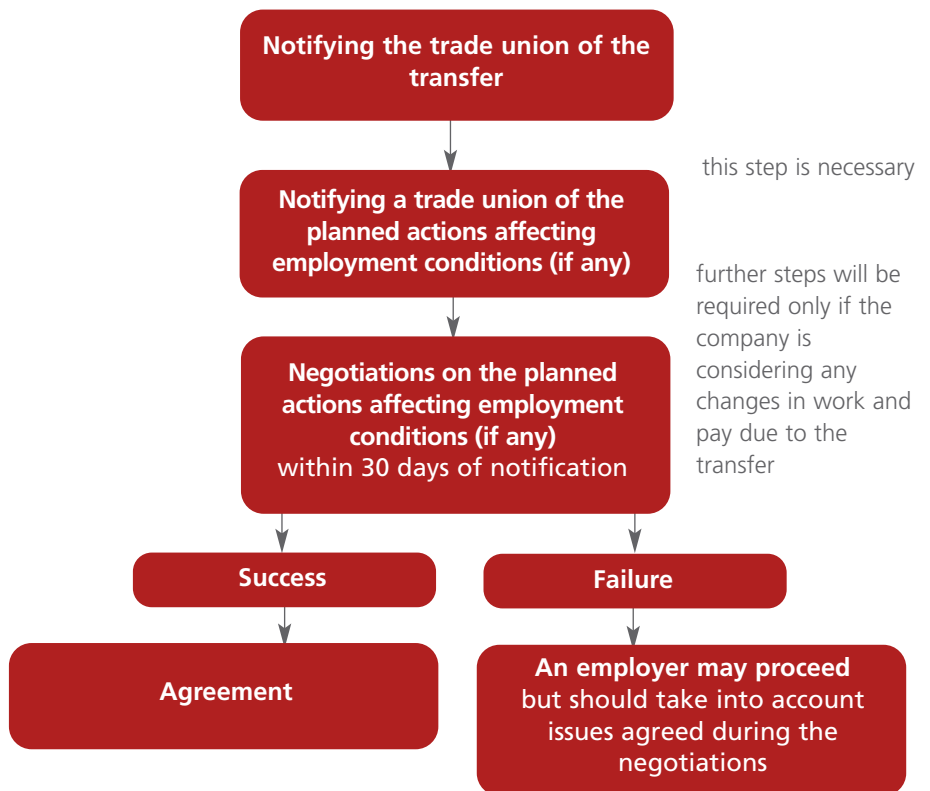
Notice should include the following information:

- the expected date of the transfer
- reasons for the transfer of the undertaking
- legal, economic, and social implications of the transfer for the employees

- the envisaged actions regarding terms and conditions of employment in relation to the transfer, in particular in terms of work organisation, staffing levels and possible reductions, remuneration and re-qualification.

If the company intends to undertake actions affecting the terms and conditions of the employment of its employees, in addition to notification it must initiate negotiations with the trade union aiming at concluding an agreement in this regard.

The agreement should be made within 30 days of the day the trade union is notified of the employer's intended actions. Failure of the negotiations cannot block the planned changes or transfer of undertaking itself but the company should take into account the arrangements agreed during the negotiations.



### Consultation on individual cases

The company must consult a trade union if it wishes to terminate an employment contract with an employee, who is:

- a trade union member, or
- is not a trade union member, but a trade union agrees to protect his/her interests.

Consultation is required only if the company wishes:

- to terminate a permanent employment contract with notice or adversely change the work and pay conditions of an employee employed under such a contract, or
- to terminate any type of employment contract without notice.

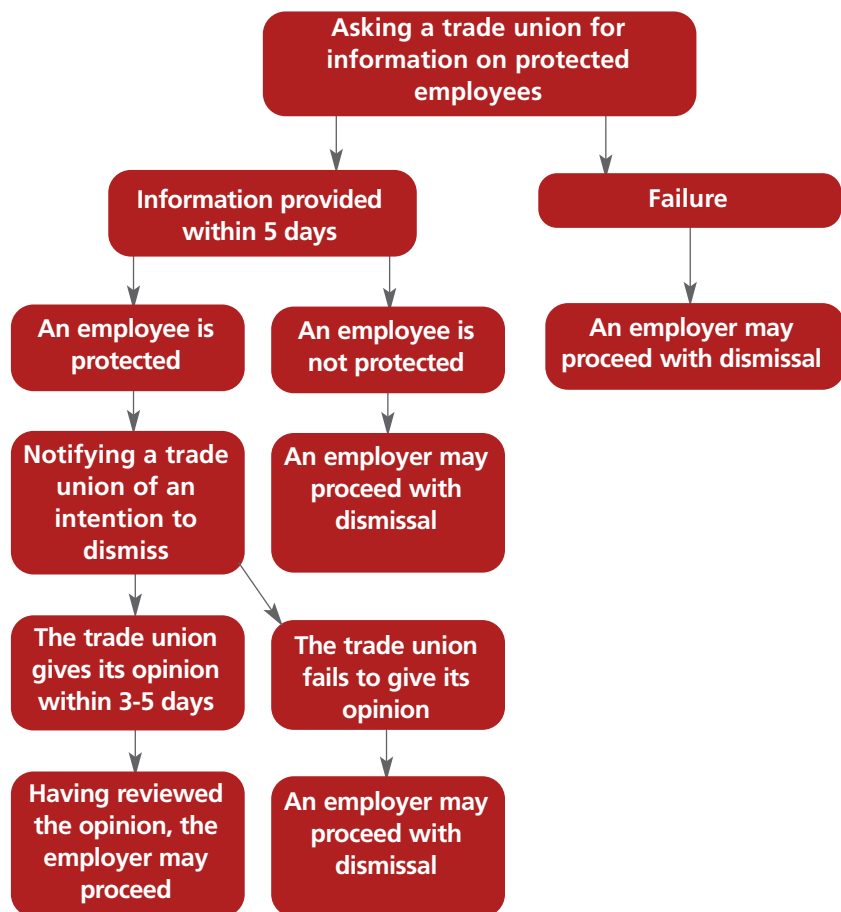
If the company is unsure whether an employee is a trade union member or is represented by a trade union, it should first ask all trade unions in place whether they represent the employee in question. A trade union's failure to provide information within 5 days releases the company from the duty to cooperate with a trade union organisation in this particular case.

A trade union has a right to present its opinion on the planned dismissal within 3-5 days (depending on the case), but this is not binding for the company. However, in the case of a legal dispute, the trade union's opinion may be taken into account by the labour court when examining the case.

Specific rules on consultation apply in the case of terminating the contracts of pregnant employees.

Trade unions also participate in a disciplinary procedure.

The termination procedure involving a trade union may be summarised as follows:



### Cooperating on health and safety issues

The company is required to cooperate with trade unions on health and safety issues and trade unions have the right to supervise observance of h&s rules and regulations in the employing establishment.

Trade unions are also entitled to cooperate with the state labour inspection in this respect.

# Collective dispute resolution

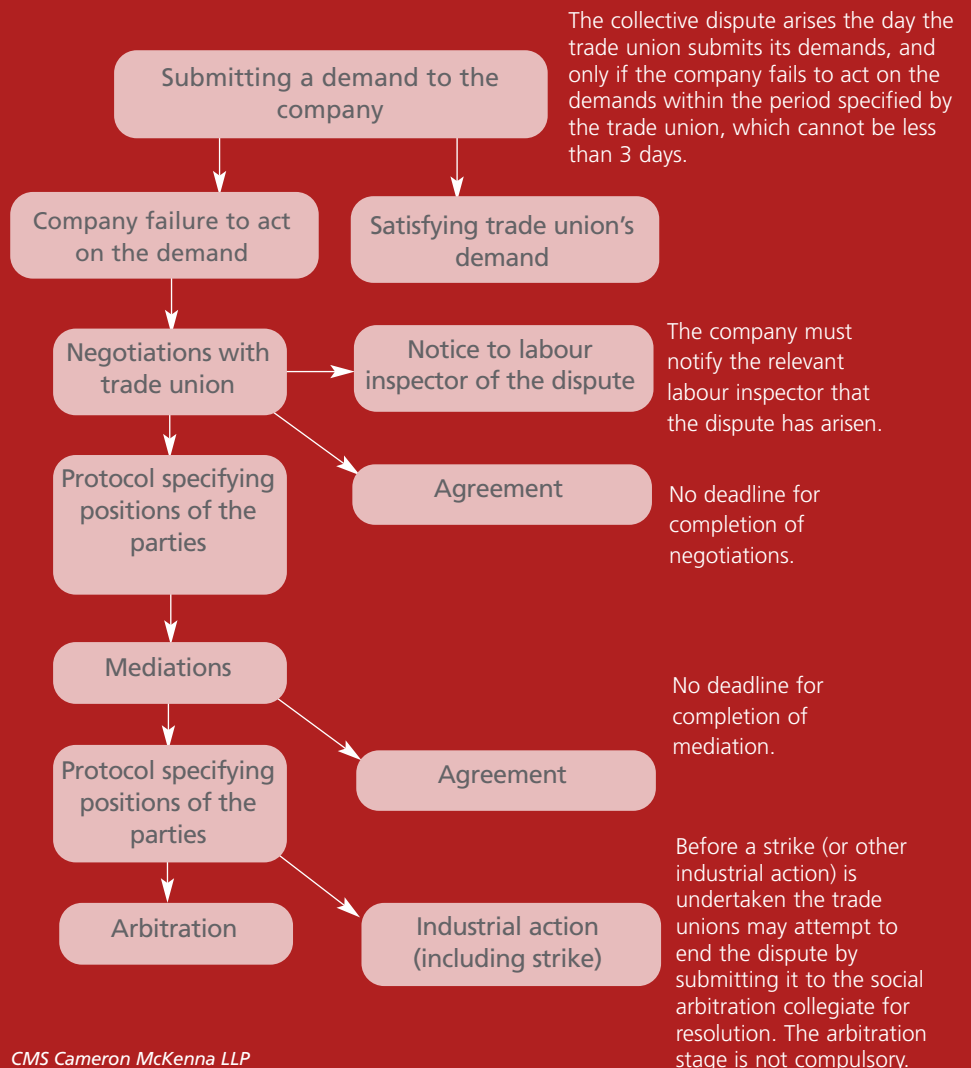
## General information

Employment disputes are divided into two categories: individual and collective disputes. Individual disputes are those involving a single worker whereas collective disputes involve groups of workers represented by a trade union.

Collective disputes can further be divided into two sub-categories: rights disputes and interest disputes. A rights dispute arises where there is disagreement over the implementation or interpretation of workers' statutory rights including a worker's membership or non-membership of a trade union. By contrast, an interest dispute concerns cases where there is disagreement over the determination of rights and obligations beyond the statutory minimum, in particular in terms of work and pay and social benefits.

## Collective dispute – phases

With respect to resolving these different types of dispute there are essentially three phases: private negotiations (between trade unions and company), mediation and arbitration. Mediation and arbitration involve the intervention of a third party and the degree of intervention differentiates one phase from another.



### **Industrial action (strike)**

While the prevailing view is that industrial action is an option of last resort, if the mediation proceeds in such a manner that there is reason to believe that the dispute will not be resolved within 14 days of it arising – a one-off warning strike may be organised, lasting no more than 2 hours.

A regular strike may not start before 14 days have passed from the day of announcing the dispute. If the mediator concludes that further arrangements are needed to resolve the dispute or an expert opinion is needed, the mediator may submit a request with the trade unions for the date of the strike commencing to be postponed.

While laws protect the right of a union to strike, they also demand that the strike be peaceful. Coercion, threats or acts of violence, and damage to property are strictly prohibited by law. A union can be held liable for any illegal action that occurs during a strike.

At the same time, the company has a legal right to keep its operations running and all employees are protected in their right to enter the plant and continue working, free from bodily harm or any threat of physical violence.

Employees may voluntarily join the strike. An employee's participation in a lawful strike may not result in dismissal, retaliation or any other detrimental measures.

The striking employees retain the right to all social security benefits and other entitlements provided for under their employment contracts except for the right to remuneration (which means that their salaries will not be paid for the time they are on strike). Although they do not receive salaries during the strike, employees' employment contracts cannot be deemed suspended. The period of the strike is counted towards the total length of time of employment in the company.

<b>Stages</b>	<b>Actions</b>	<b>Entity performing action</b>	<b>Comment</b>
Trade union's demand	Submitting of trade union's demand to the company	Trade union	The company may satisfy demand voluntarily. The trade union must specify the deadline during which the company may consider this option, which cannot be less than 3 days.
Dispute arising	N/A	To be done automatically after deadline expires	It is possible to announce a poll regarding a strike – but the strike may not start before 14 days have passed from the day of announcing the dispute.
Negotiations	Commencement of negotiations	The company	The company is obliged to immediately enter into negotiations to resolve the dispute by reaching an agreement.
	Notification of district labour inspectors	The company	Notification of the proper labour inspectors that the dispute has arisen.
	Holding of negotiations	The company and the trade union	Negotiations should be held as long as there is a chance of an understanding being reached. The lack of consent of one of the parties to the continuation of negotiations results in de facto completion of negotiations.
	Completion of negotiations	The company and the trade union	The negotiations end when the following are signed: 1) an agreement – in cases in which the dispute ends; or 2) a protocol specifying differences, and the positions of the parties – in cases in which no agreement is reached.
Protest action	Taking protest action	Trade union	Once negotiations have ended trade unions may take action other than a strike, for example work to rule, picketing, putting out banners.
Mediation	Commencement of mediation	Trade union	If the trade unions uphold their demands, the mediation stage commences, with a mediator.
	Appointment of mediator	The company and the trade union	The mediator is appointed by the company and the trade unions.
	Motion for appointment of mediator	The company or the trade union	The parties are given 5 days to agree upon a mediator and where they cannot agree, they may request the Ministry of Labour to appoint one from a government list drawn up in consultation with the social partners.
	Holding of mediation	The company and the trade union	Statutory law does not provide for the deadline for completion of mediation.
	Completion of mediation	The company and the trade union	The mediation ends when the following are signed: 1) an agreement – in cases in which the dispute ends; or 2) a protocol specifying differences, and the positions of the parties – in cases in which no agreement is reached.

Stages	Actions	Entity performing action	Comment
Mediation	One-off warning strike, maximum two hours	Trade union	If the mediation proceeds in such a manner that there is reason to believe that the dispute will not be resolved within 14 days of it arising – a one-off warning strike may be organised, lasting no more than 2 hours and it cannot be repeated.
Arbitration	Submission of the dispute to the social arbitration collegiate	Trade union	Before a strike is undertaken the trade unions may attempt to end the dispute by submitting it to the social arbitration collegiate for resolution. The arbitration stage is not compulsory.
Industrial actions trade	Strike	Trade union	<p>The company may <b>not</b> claim in advance from the union a list of those employees who are going to join the strike.</p> <p>The company may <b>not</b> request the individual employees to state <b>prior</b> to the strike if s/he wishes to join the strike. However, the company is allowed to establish who actually joins the industrial action during the strike (in order to record working time for the payroll).</p> <p>During a strike the striking employees are obliged to behave in a peaceful manner and cannot attempt to intimidate the other employees or to force them to remain outside the workplace or stop their work.</p> <p>The picket cannot stop anyone or any vehicle from entering the company premises.</p>

# Privileges of trade union members

## **Protection against dismissal for union activities**

Acting as a trade union member might put an employee at risk of being dismissed. For this reason the Act on Trade Unions provides for special protection of trade union officers and other trade union members who need such protection due to their union activities.

Special protection means that an employer cannot terminate an employment contract (either with or without notice) or change work or pay conditions to the detriment of the employee enjoying such protection without the trade union's prior consent to do so.

Polish law protects two groups of trade union members:

- members of the board of the trade union
- other members of the company's trade union authorised to represent the union towards an employer or authorities.

The number of trade union officers protected against dismissal for union activities depends on the total number of members of a given trade union in one company.

In order to be protected each trade union officer must be named in the trade union board's resolution. If a trade union does not present the company with a list of protected trade union officers, default protection until further notice, is automatically granted to a chairman of the board of a trade union.

Protection against dismissal applies during the period specified in the resolution of a trade union's board and for an additional period corresponding to half of the period specified by the resolution. In any case however, protection shall expire a year after the final date specified in the resolution.

Special protection is also granted to not more than three employees named in the founding committee's resolution, for six months from the day the founding committee is established.

The table illustrates the protection of trade union officers compared to regular trade union members and other employees.

Category of employees Way in which contract is terminated	TU officer or other trade union member representing a trade union (if named in the resolution)	Employee who is a trade union member or whose interests the trade union has agreed to represent	Employee not represented by a trade union
<b>Termination with notice</b>	Fully protected	Prior consultation required – 5 days in advance (only permanent employees)	Generally not protected
<b>Termination without notice</b>	Fully protected	Prior consultation required – 3 days in advance	Generally not protected

### Release from the obligation to perform work

Members of a trade union elected to its board have the right to time off during their term in office. The number of board members entitled to time off may vary and is defined in the Act on Trade Unions, depending on either the total number of members of a given trade union or the number of the management staff.

Depending on the trade union, such time off is granted with or without the right to remuneration. Typically trade unions request paid time off for all eligible trade union officers.

### Other privileges

In addition to the privileges described above, each company where a trade union operates has to provide the premises and technical facilities necessary for conducting union activities in the workplace to this trade union, based on an agreement to be executed with the trade union.



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