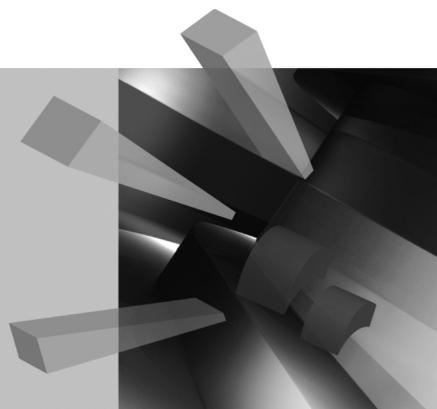


Human and work in a changing organisation. Management oriented on the employee interests



edited by
Małgorzata Gableta
Agata Pietroń-Pyszczek



Reviewers: Halina Czubasiewicz, Aleksy Poczowski, Anna Rakowska,
Agnieszka Sitko-Lutek, Lidia Zbiegień-Maciąg

Copy-editing: Marcin Orszulak

Layout: Barbara Łopusiewicz

Proof-reading: Barbara Łopusiewicz

Typesetting: Adam Dębski

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Anna Cierniak-Emerych

Wrocław University of Economics

LEGALLY PROTECTED EMPLOYEE INTERESTS AND THEIR OBSERVANCE IN POLISH ECONOMIC PRACTICE

Summary: Issues related to employee interest protection are addressed, with emphasis on selected group of legally protected interests. The scope of legally protected employee interests is presented in the light of binding regulations of the Polish law. Problems related to recognition and observance of employee interests in Polish economic practice are presented, based on the results of empirical studies.

Keywords: employee interests, legally protected interests, respecting employee interests.

1. Introduction

Humans and their labour – as emphasised by many authors – constitute a “unique” potential and the most valuable “element” of the asset structure of any organisation. The use of this potential for the continuation and development of an organisation requires protection of interests (expectations) of organisation employees in the course of their labour.

Employee interests may apply to a broad range of issues, such as security of work, fair remuneration (closely related to policies regarding structure and levels of wages), safety and hygiene in the workplace. Other important issues, from the viewpoint of employees, include work satisfaction and opportunities for professional (vocational) career development. In this context, two major groups of employee interests can be distinguished, i.e.:

- the so-called legally protected interests,
- interests revealed in the course of activities related to labour potential management; satisfying those interests is typically in the hands of an employer.

This paper will focus on the first of those interest groups. The range and methods of satisfying those interests are manifested in legal sets of guidelines applying to human labour, expressed mainly within the broad category of “employee rights”. Studies of economic practices reveal a number of obstacles to practical observance of these rights, which clearly disrupt interpersonal relations in the workplace, par-

ticularly in regard to mutual agreement of the two groups representing often largely divergent interests, namely employers and employees. The significance of interpersonal relations in the workplace cannot be overstated, since they affect not only the quality of life of employees, both in professional and extraprofessional settings, but also the realisation of economic objectives of a company as a whole.

This paper presents the set of fundamental rights of human-employee. The scope and methodology of recognizing and observing those laws are set on the basis of Polish legal guidelines in this respect as well as realities of economic life and company functioning in Poland.

For the purpose of this objective's realization, results of empirical studies were analysed, covering more than 230 companies operating in the Lower Silesia region. It must be noted that the studies took the form of questionnaire research and were conducted in the year 2010. To complement the questionnaire studies, in-depth interviews were carried out, using both conversational and structured interviews, in selected companies of the respondent group.¹

2. Employee interests in the light of Polish legislature

In the European Union, employee rights are defined in national legislatures, supplemented and reinforced by guidelines set in documents of international law, in particular – EU *acquis communautaire* and applicable legislature of the Council of Europe.²

In line with the above, Polish legislature (Art. 91, Point 2 of the Constitution of Polish Republic) introduced the requirement of adjusting national regulations and recognizing the superiority of international legislature following the ratification of international agreements [Koradeka (ed.) 2000, p. 28]. Consequently, Poland's integration with EU structures resulted in implementation of EU regulations and guidelines set in EU legislature into the Polish legal structure. This formed the basis for constituting applicable institutional solutions to facilitate the implementation of EU standards in Polish economic practice, among them also those regulations that apply to the realisation of employee interests. As a result, Polish legal statutes, by relating to the EU set of fundamental rights of human-employee, address all the basic aspects of labour, such as:

- specification of employment conditions,

¹ The research study was conducted by the research team of the Department of Labour and Industrial Relations, within the framework of research project No. N N 115 134434 financed by the Polish Ministry of Science and Higher Education. The author of the present article is a member of the team. The research was conducted by the members of the Department and supported by Pentor Research International Wrocław.

² The membership in the Council of Europe is one of the formal preconditions for countries that apply for membership in the European Union. Many legislative regulations of the Council of Europe in relation to employee rights are identical or comparable to their EU equivalents.

- shaping material and immaterial elements of work conditions,
- employee participation in decision-making processes.

These aspects, together with corresponding benefits of observing employee rights, are detailed further (see a synthetic overview in Table 1).

Table 1. Employee interests in the light of the Polish legislature

Polish legislature in respect to employee rights	
Addressed aspect	Expected benefit
<ul style="list-style-type: none"> – specification of employment conditions, including, among others, forming fair and transparent system of remuneration, unambiguous description of work location and work time, as well as specification of employee responsibilities – shaping material and immaterial elements of work conditions – employee participation in decision-making processes 	<ul style="list-style-type: none"> – improving security and quality of employment – providing and safeguarding safety and hygiene in the workplace – improving conditions of work and remuneration – counteracting workplace discrimination – improving information flow within organisation; this also applies to prompt recognition of employee interests – improving decision-making processes – increasing work satisfaction and commitment among employees

Source: author’s own research.

Legally protected specification of employment conditions is one of the most important fundamental interests of employees. This aspect covers a broad range of elements closely related to employment security and quality of employment, such as an unambiguous definition of work location, range of duties, form of employment, level and structure of remuneration, wage payment frequency, and conditions of work agreement termination. Respecting these rights should be seen as beneficial not only to employees, but also employers – by directly influencing their potential to meet objectives set up at the company level, since specification of employment and work conditions helps limit conflicts and social unrest in the workplace (among other beneficial effects), which has a direct effect on business performance. The requirement to specify employment conditions and provide employees with any subsequent information related to this aspect or labor is expressed in the regulations of the Labour Code [*Kodeks pracy...* 2011], primarily in Article 29.

The Polish legislature clearly emphasises the aspect of providing employees with workplace safety and hygiene. It must be noted, however, that the form of applicable regulations in the Polish law is somewhat compound and covers such issues as [Gableta (ed.), in press]:

- creating material conditions of work that improve workplace safety;
- identifying hazards to life and health of employees within the structure of material and immaterial elements of work conditions, together with informing employees on all details relevant in this respect;

- limiting professional risk, as an important aspect of workplace safety and hygiene policy,
- prevention as an important element of workplace safety and hygiene; this involves such procedures as regular training and periodic medical examinations for employees;
- shaping work time, with assurance of work breaks and leave benefits, while retaining health and safety standards and interests of both groups, i.e., employees and employers;
- providing conditions for counteracting harassment and mobbing in the workplace.

The protection of interests defined earlier is also reflected in applicable regulations of the Labour Code [*Kodeks pracy...* 2011]. In particular, these issues are addressed in Section X of the Labour Code – “Work Safety and Hygiene” – and selected articles of the Code related to discrimination and mobbing (Section IV, Art. 94), work time (Section VI), and work remuneration (Section III).

The Labour Code is a set of fundamental and, at the same time, minimum-level requirements pertinent to the protection of employee interests in such areas as employment conditions and labour conditions. These regulations are supplemented by specific parliamentary acts and decisions directly addressing specific issues and individual aspects of the area under study. Examples of such acts include the act of April 20, 2004 on the promotion of employment and on institutions of labor market (*Official Gazette* 2004, No. 99, Pos. 101); the act of May 23, 1991 on work unions (*Official Gazette* 2001, No. 79, Pos. 854 with amendments); the act on principles and procedures of work termination for reasons not related to employee actions (*Official Gazette* 2003, No. 90, Pos. 844 with amendments). Another regulation of note here is the act on informing and consulting employees (*Official Gazette* 2006, No. 79, Pos. 550 with amendments). The latter directly addresses issues related to protection of employee rights in respect to their participation in decision-making processes (see Table 1). Safeguarding employee access to information and their right of consultation and/or direct participation in specific decisions made at the company level – although still subject to various impediments – is considered an important step towards respecting employee rights.³

It should be noted at this point that market changeability and growing unpredictability of company environment forces companies to explore new qualities in relations between employers and employees. These are manifested, among others, in the apparent shift towards labour relations contracts based on civil law, such as fee-for-task agreements. This is important since, in the light of Polish regulations, the protection of employee rights presented in Table 1 applies mainly to persons with employee status⁴ and, as such, does not provide sufficient legal protection for non-

³ For more on employee participation, see for example Gładoch [2005].

⁴ In the light of Art. 8 of the Labour Code, an employee is a person rendering labour on the basis of an employment relationship, i.e., through labour contract, placement, appointment, or collective contract [*Kodeks pracy...* 2011].

employment forms of labour relations, with the notable exception of issues directly related to safeguarding the right of health and safety standards at work. Thus, regardless of a particular form of employment, all employees rendering labour or services to a company are entitled to work in safe and healthy conditions, which includes the obligation on part of the employer to provide necessary safety equipment, both on the individual and company level (protective clothing, safety goggles, etc.).

The protection of other worker interests (of those specified in Table 1) is realised through applicable regulations set in civil law and/or individual stipulations made in the course of work agreement under the guidelines of any internal regulations adopted in the company. This also applies to the so-called contracts, including managerial contracts.

Interests of employees and employers (regardless of the form of labour relations) are, by definition, divergent. Consequently, the ultimate balance of positive and negative consequences of recognition and observance of such interests of employed will, to a large extent, depend on both the approach to law regulations and individual preferences of the stakeholders involved, i.e., employers and workers, with the latter including employees in the legal sense of the term. A large part of this arrangement will also depend on the mutual acceptance of the interests recognised in a given setting.

3. Respecting legally protected interests – the results of empirical studies

The questionnaire studies on the recognition and respecting of interests were conducted among 238 companies operating in the Lower Silesia region. Companies under study represented a variety of legal and organisational forms, with majority belonging to the broad category of capital associations (limited liability companies and joint-stock companies). The study included 479 individual respondents performing managerial functions on all the levels of company management as well as employees directly involved in production or services and administration personnel. Data was collected using two questionnaire forms: one designed to address the managerial cadres of all levels, the other – employees not involved in managerial functions. The study was supplemented by in-depth interviews with selected respondents.

As many as 43% of the respondents representing the non-managerial perspective of research were directly involved in production or services. The remaining 57% were employees working in company administration. Sixty percent of the employee population were employed on indefinite employment contracts, 31% – on fixed term contracts, with the remainder employed under other contractual forms of labour relations, such as civil law contracts and fee-for-task agreements. More than 60% of

the respondents in this group were employed on the lowest level of organisational structure.⁵

The respondents of the latter group (i.e., non-managerial personnel employed at the lowest level of organisational structure – were asked to select (from a pre-arranged set of responses)⁶ those interests that were perceived by them as the most important ones that need to be respected. The respondents were allowed to select more than one such response.

The results of the study show that non-managerial employees assign the utmost value to those legally protected interests that relate to the requirement of safe and healthy standards of work (58% of the responses), followed by provision of formal procedures of expressing employee opinions (31%), trade union representation (14%), and works committees (11%). However, the respondents also placed high value on proper information flow (44%), although, as it seems, irrespective of the role of employee participation in this regard. As verified through in-depth interviews, information requirements in this regard were mostly limited to precise specification of employment conditions, i.e., being informed on work location, work time, etc. Those issues are also reflected in relatively high value placed on issues related to security of employment (43% of the responses).

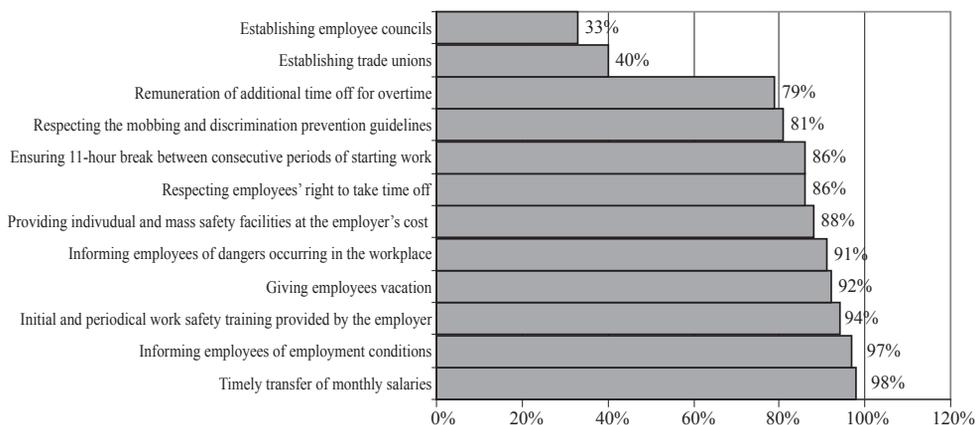


Figure 1. Responses addressing the aspect of observance of legally protected employee rights

Source: author's own research.

The respondents of non-managerial group were also asked to express their opinion on the subject of legally protected employee interests. Figure 1 presents an

⁵ Further deliberations focus on results gathered in this particular group of respondents.

⁶ This category includes both legally protected interests and those interests that are recognized in the course of labour potential management activities.

overview of the responses related to respecting this particular group of employee interests.

As shown in Figure 1, the reservations of respondents were mostly expressed in relation to such issues as forming works committees (33% of the responses) and trade union structures (40% of the responses). At the same time, however, it must be noted that those two forms of employee participation placed low in the revealed hierarchy of employee interests. One of the reasons for relatively low placement of these forms, apart from their apparent shortcomings,⁷ may result from the fact that the two forms of participation – in the light of pending laws – are perceived as instruments of employee participation (in legal sense of the term), as opposed to the broad definition of worker representation.

The research findings confirm that non-managerial personnel perceives positive aspects of respecting such legally protected interest as prompt payment of monthly salaries (98% of the responses), informing on employment conditions (97%), preliminary and periodic health and safety training at employer's expenses (94%), and leave benefits (92%). In the light of similar studies conducted in recent years by National Work Inspectorate (PIP) in Polish companies, one of the most encouraging aspects of the findings is the relatively high number of responses on prompt payment of monthly salaries, reported by more than 90% of the non-managerial respondents, since PIP reports show that, despite pending legal protection of this particular element of employee interests, Polish economic practice still displays cases of non-compliance and/or downgrading this area of employee interests in the hierarchy of company operation principles. PIP report of 2010 shows a steady increase in the volume of withheld payments. In 2009, employers withheld a total amount of 114 million PLN, affecting *ca.* 121 thousand of employees. In 2010, the total volume of withheld payments exceeded 144 million PLN [*PIP: Mniej wypadków... 2010; O wypłacie wynagrodzeń... 2010*].

Regardless of a fairly positive evaluation of abidance for legally protected employee interests – as shown in Figure 1 – the companies included in our team research displayed a notable range of noncompliance in this respect.

In the follow-up in-depth interviews, the respondents reported, among other issues, numerous examples of negligence in the area of work health and safety standards. These involved noncompliance with legally binding health and safety regulations; in particular, negligence in respect to material conditions of work, exceeding the legally binding limit of weekly work hours plus overtime as well as neglect in respect to proper evaluation of vocational risk. Several of the companies included in the study displayed outright disrespect for the latter, perceiving this area of their duties as an opportunity for cutting their operational costs. One of the most frequent methods of eliminating the high cost of professional risk evaluation involves using

⁷ For more on the subject, see for example Wratny, Bednarski (eds.) [2010].

risk evaluation templates published online with no regard for a subsequent verification of their content with the realities of their trade.

The research covered another important aspect of employee interests protection, namely: counteracting mobbing practices. The study did not identify explicit cases of mobbing in companies under study. However, in-depth interviews revealed several cases of intimidation and even humiliation of employees. These involved threats of employment termination in response to negative opinions on work standards or remuneration adequacy. Mobbing-related phenomena, such as poignant remarks as well as unfounded and demeaning assessment of professional abilities and work methods were reported also by workers employed on flexible terms. It should be noted that this group of workers (civil law contractors) are not legally protected against mobbing in the light of pertinent Labour Code regulations, a fact that some employers seem to perceive as opportunity for harassment.

As shown in the present deliberations, some employers still resort to peculiar management practices that may be summed up by a phrase “motivation through intimidation”. Employees are often given to understand that being employed is a strong enough incentive, and their aspirations for improvement of work conditions are often dismissed as “whimsical”. At the same time, due to recent labour market deficiencies caused, among other things, by global economic crisis, employees are reluctant to display their dissatisfaction with working conditions, mainly out of fear of being laid off.

4. Conclusions

Competitive advantage in modern economy requires considerable effort towards boosting employee creativity and involvement, as contrasted with the obsolete model of treating employees as a source of company cost. At the same time, however, this should be emphasised by proper respect for employee interests, most notably those interests that are legally protected by applicable laws and regulations. It seems that some employers still show their preference for short-term economic profits over activities and strategies that provide long-term benefits, also those of social character. Another important problem in respect to the area under study is the apparent inadequacy of legal sanctions and punitive measures left at the disposal of Polish supervising organisations, such as the National Labour Inspectorate.

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INTERESY PRACOBIORCÓW CHRONIONE PRAWEM ORAZ ICH RESPEKTOWANIE W POLSKIEJ PRAKTYCE GOSPODARCZEJ

Streszczenie: W opracowaniu odniesiono się do problematyki ochrony interesów pracobiorców. Uwagę skoncentrowano na grupie interesów określanych jako interesy chronione prawem. Przybliżono ich zakres odwołując się do regulacji prawa polskiego. Ponadto w nawiązaniu do wyników badań empirycznych, wskazano na przejawy ich rozpoznawania i respektowania w polskiej praktyce gospodarczej.

Słowa kluczowe: interesy pracobiorców, interesy chronione prawem, respektowanie interesów pracobiorców.