

# T rade unions in litigation



Agnieszka Lisiecka



Katarzyna Żukowska

**In disputes involving collective labour law, although the point is debatable it should generally be accepted that there is a right to seek relief in the courts. But this does not necessarily mean that the trade union has standing to file suit in a collective dispute. A lack of standing will result in denial of the claim. Nonetheless, the validity of the claim should always be evaluated.**

### Dispute over raises

When pay negotiations between an employer and its trade unions failed, the trade unions, parties to a collective labour arrangement, applied to the labour court for declaration of the existence of a collective dispute over the employees' pay raises.

Following the breakdown of the negotiations, the trade unions sent a notice to the employer on commencement of a collective dispute concerning pay raises. Relying on Art. 4(2) of the Act on Resolution of Collective Disputes, the employer refused to recognise it as a lawful dispute, arguing that issues of annual pay raises in the event of failure to reach agreement by the parties to the collective arrangement were exhaustively and unambiguously addressed in the collective labour arrangement and the arrangement had never been terminated.

The collective arrangement provided that if the parties failed to reach agreement on pay by the end of the first quarter of a calendar year, the employees' base salaries would be mandatorily increased by the rate of inflation in the preceding year. In this case the inflation rate in the previous year was zero, resulting in no pay raises for the staff.

Under these circumstances, the trade unions applied to the labour court for a finding of the existence of a collective dispute. The suit fell within the controversial area of the permissibility of resort to the courts in collective labour law cases, and, if resort to the courts was upheld, an evaluation of the validity of the claim. Both issues were raised by the defendant company during the litigation.

### Permissibility of collective dispute

A dispute over pay raises is generally covered by the area of collective disputes. But if there is a collective labour arrangement in force with the employer, a dispute over pay raises will not always be legal (i.e. permissible and consistent with the law). The legality of the dispute will depend on the scope of the demands and whether it is necessary to terminate the arrangement.

Under Art. 4(2) of the Act on Resolution of Collective Disputes, if a collective dispute concerns the content of a collective labour arrangement which the trade union organisation is a party to, then a dispute seeking to modify the arrangement may be initiated and pursued no earlier than the date notice of termination of the arrangement is given. This is known as the "social concord" clause, prohibiting commencement of collective disputes in situations where an arrangement is in force reflecting the terms negotiated by the social partners. This applies not only to initiating and conducting collective disputes seeking to modify an arrangement

that is still in force, but also where the demand requires amendment of the arrangement. This was the case here, in the company's view, because the existing arrangement provided a clear and exhaustive mechanism for setting pay raises if the parties to the arrangement failed to reach agreement on salaries. In that situation, pursuing a collective dispute over pay raises would mean *de facto* conducting a dispute over the contents of the arrangement, that is, the rules for establishing employees' pay raises, which until notice of termination of the arrangement were given would violate Art. 4(2) of the Act on Resolution of Collective Disputes.

### Permissibility of resort to the courts

In response to the statement of claim, the defendant alleged as a precaution that resort to the courts was not permissible, as the dispute was not a civil case within the meaning of Art. 1 of the Civil Procedure Code which could be heard by the general courts. A finding by the labour court that the dispute was not justiciable would result in dismissal of the claim.

The defendant argued that the only labour disputes that fall within the scope of civil cases are those listed in Civil Procedure Code Art. 476 §1, i.e. cases involving claims of individual employees connected with the employment relationship with a specific employer, asserted against the employer. A collective dispute, by its nature, is not individual, and the party to the dispute will always be the trade union, not the individual employees.

A specific procedure is provided for resolving collective labour disputes based on the Act on Resolution of Collective Disputes. Moreover, under Art. 37 of the Trade Unions Act, disputes between trade unions and employers concerning employee interests shall be resolved under the rules set forth in a separate act—which is the Act on Resolution of Collective Disputes.

However, the labour court did not grant the application to dismiss the claim. It found instead that the right of access to the courts is expressly provided for in Art. 45(1) of the Polish Constitution. The court also pointed out that the Constitution prohibits enactment of regulations foreclosing anyone's resort to the courts or preventing them from enforcing their rights and freedoms that have been violated, while Art. 177 of the Constitution establishes a presumption that the general courts have jurisdiction in all matters, except for those statutorily reserved for the jurisdiction of other courts.

### Validity of the claim

The defendant made an alternative plea to deny the claim due to the lack of standing on the part of the trade union organisations under Civil Procedure Code Art. 189.

A substantive legal condition for the validity of a claim seeking a declaratory judgment on the existence or non-existence of a legal relationship or right pursued under Art. 189 of the code is the existence of a legal interest in assertion of the claim on the part of the plaintiff. As a rule, if the plaintiff has no legal interest in asserting the claim, the claim should be denied.

A legal interest exists if the effect achieved by issuance of the declaratory judgment will ensure the plaintiff protection of its legally protected interests, that is, definitively end an existing dispute or prevent a dispute from arising in the future. The need for legal protection in this respect must be objective, that is, actually existing. Conversely, no legal interest as grounds for a claim under Art. 189 exists when the plaintiff has no need for establishment of a right or legal relationship because the plaintiff's legal domain has not been violated or threatened.

In this case, in the defendant's view, the demand asserted by the trade union organisation for a declaratory judgment was essentially aimed at resolving an uncertainty as to whether the dispute initiated by the trade unions was a collective dispute within the meaning of the Act on Resolution of Collective Disputes, and consequently whether in the event of an industrial action, the plaintiff could be exposed to liability as the organiser of an illegal strike. However, a mere showing by the plaintiff of a legal need to resolve uncertainty as to a certain state of affairs is insufficient for an effective claim under Civil Procedure Code Art. 189. The plaintiff must also show that it has a legal interest in asserting the claim against the specific defendant.

The defendant also argued that the collective interests of the employees whom the trade unions are appointed to represent cannot be equated with the trade union's own legal interest for purposes of Art. 189. This provision refers to the plaintiff's own legal interest, not the legal interest of other persons. While the trade unions were appointed to represent and protect the rights and interests of the employees, this does not mean that the employees' interests can be equated with the trade

unions' own interests (as legal persons or parties with capacity to sue and be sued). The trade unions are only supposed to represent the interests of employees, which means that these interests (which the trade unions only represent) are different from the interests of the trade unions themselves as distinct legal entities. Trade unions are supposed to defend and represent the rights and interests of employees, which means that their activity in this respect is a duty on their part, and not a legal interest.

In the defendant's view, in filing suit seeking a declaratory judgment, the plaintiff trade union organisations essentially sought only a determination in the interest of the employees in general whether the dispute initiated by them was a collective dispute—which is not the purpose of a proceeding under Art. 189 of the Civil Procedure Code.

This position and the reasoning presented above were upheld by the labour court. The court held that in this case the trade union organisations had no legal interest in obtaining a declaratory judgment on the existence or non-existence of a collective dispute, stressing that a claim asserted by trade unions for a declaratory judgment on the existence of a collective dispute will always refer to the interests of persons other than the plaintiff, namely the overall group of employees. The court pointed out in this regard that there is no collective dispute without the interests of the employees, as a collective dispute is genetically linked with the collective interests and rights of the employees. The labour court also shared the defendant's position and arguments that in this case there was no possibility of commencing a legal collective dispute, in light of the prohibition set forth in Art. 4(2) of the Act on Resolution of Collective Disputes. Consequently, the court denied the claim as groundless.

*Agnieszka Lisiecka, adwokat, partner, head of the Employment practice*

*Katarzyna Żukowska, Employment practice*

