Free Bargaining or State Coercion

Conciliation in the Danish Labour Market

by

Ole Krarup
Professor of law
University of Copenhagen

1. The original system of "free bargaining"

The Danish labour market is probably the most well organized in the World, in many branches with nearby 100% membership of trade unions. Furthermore, the system has, since the beginning of this century been based upon an effective system of collective bargaining; collective agreements have early been recognized as enforceable, they are supported by a real peace obligation, strikes and lockouts are forbidden during the contractual term, and violations may be brought before the Labour Court, while disputes concerning the meaning of a collective agreement has do be decided by mediation or arbitration.

This whole system is almost totally based upon the collective agreements made by the parties themselves: Not only the concrete rights and duties in the industrial relations (payment and working conditions), but the normative system itself - that is to say the regulation of the terms of establishing the concrete agreements for the labour market (which in other countries have been created through legislation) - is a result of collective bargaining. Even the legislation by which the Labour Court (which is a state court) is established is derived from the parties' agreements.

This - apparently harmonious - system of self-regulation has in its earlier stages been described in the international literature of labour law, foremost by Walter Galenson [1)]. In later times, however, the original principle of free bargaining/self-regulation has gradually changed. The fundamental principle which ensures the parties' right to free bargaining (and strike) for a collective agreement has, since it was established early in this century, been regulated by a system of public conciliation and mediation; during the first years this system served mainly as a support of the trade unions, the Employer's Organisation being rather reluctant.

Since the 1930th, the original principle of free bargaining has been inflicted several times by open state intervention. However, that sort of undisguised expropriation of the right to free bargaining is not consistent with the prevailing legal ideology, and it has never been regarded as politically acceptable by the Unions. This fact is

probably the real reason why state intervention in recent years has most often been disguised as "agreement". This hidden state intervention (that means undermining of the free bargaining) has been made possible by using the very legal institution which was created to facilitate the free bargaining. In other words: The system of/right to free bargaining is threatened by the system of conciliation which originally was established with the aim to ensure the conditions for free bargaining.

2. The historical development.[2)]

During the first decades of industrialism (in the Scandinavian context: around the middle of the 18th century), the relation between employers and workers had not yet been established as a *legal relation*. In terms of (later) legal theory, the labour-relation was based upon unconcealed (feudal) power: Wages were fixed unilaterally by the owner of the business, the employer was sovereign in dictating working conditions. No Labour Law system of rules, no legally binding agreements, no judicial power had yet come to existence. Putting it in modern terms: All disputes between the employer and his workers were decided under the formers "managerial prerogative".

The idea of the state taking a position of neutrality towards conflicts between employers and workers constitute one of the favourite conceptions of the prevailing bourgeois ideology. However, the state has never been neutral, especially not in the days of the first socialist labour movement.

The first significant Danish trade unions were established in the 1870th, after the founding of the International Workers Association in 1870. This organisation was fought actively and energetically by the ruling class of industrialists, who were supported actively by the representatives of the State. Both parties were indisputably convinced that the presence of an organized labour movement which might be able to achieve *rights* for organized workers would mean a disastrous threat against the civil society. Consequently, the embryonic labour movement was fought by all possible means. The methods applied in small peaceful Denmark were not quite as horrible as what was witnessed in many places abroad, although they were serious enough. The Copenhagen police used agents at all meetings of the International Workers Association, and the Danish Constitution was openly violated. Finally, the Court of the State lent a hand in the process by sentencing the leaders to brutal punishments.

In the last decade of the century, the Employers' Organisation began, reluctantly and with uncertainty, to recognize the Labour Movement, the establishment of collective bargaining successively being a quite normal method of determining wage and working conditions. The so-called "September Agreement" (1899) constituted the first formal step towards a formal juridification of the collective bargaining system.

This agreement marked the end of an intense fight (lock-out) which lasted 3 months, the aim of the Employers' Federation beeing to crush the trade-unionism itself. As the stoppage continued it, however, became increasingly evident that the employers had miscalculated the powers of trade union resistance. By the Agreement the Danish Employers' Federation for the first time explicitly recognized the very right of workers to organise in unions; in return, the Federation of Trade Unions recognised the employers' managerial prerogative. The third essential point of the Agreement was the mutual acceptance of detailed rules of war at the labour market (strikes, lock outs, blacking and boycott), with other words: rules governing the right of free bargaining.

The principles laid down in the September Agreement have been of paramount importance for the industrial relations; the agreement has been baptised "the Constitution of the Labour Law". It remained in force until the middle of the 20th century, and the leading principles of the Agreement are still valid, formalised in so-called "Main-Agreements".

The juridification of industrial relations was fulfilled in 1910, again - as the September Agreement - on the basis of the parties' own agreement.

The framework in terms of law and organization was created by a Committee established by the Government in 1908 in the wake of a number of enervating labour conflicts in the beginning of the century. The committee was established on the basis of an agreement between the Confederation of Trade Unions and the Employers' Confederation, members of the committee beeing representatives of the parties' big organizations. The chairman was a powerful and competent lawyer, the later President of the Danish National Bank Carl Ussing, who at that time was a High Court Judge.

The committee held a great number of plenary sessions and numerous informal meetings during the following year, and out of these deliberations emerged a report which is of even greater importance than the September Agreement in its impact upon Danish industrial relations. On the basis of this report the Parliament in 1910 enacted the fundamental Labour Laws of the country, establishing

(1) A permanent institution for mediation and conciliation,

(2) A Labour Court.

Furthermore the parties agreed to establish

(3) A system of arbitration.

This process is the first genuine experience of practical mediation an conciliation.

In the words of Ussing the "*delicate area in which there is a permanent class conflict*" was changed into a relation which had to be defined by free bargaining and legal rules in a sophisticated mixture. Before explaining this further (in the following section), it is appropriate to quote the conservative economist Laurits V. Birck, who during the debate in the Parliament 1910 said the prophetic words:

> "What does the working class claim from the state? The working class has one desire, namely to be governed, this has been understood by the Social Democrats. But the working class has two additional claims: Work and Justice. If you offer the working class Bread and Justice, the state will be extremely strong vis a vis the working class."

3. The principle of free bargaining.

The right to demand wages and working conditions to be laid down in collective agreements is entirely intertwined with the right to reject the offers made by employers and, if necessary, to try to have fulfilled ones own demands through a labour conflict. Within the fundamental principles of Labour Law Doctrine this freedom of action has almost an axiomatic validity. It is an elementary part of the Labour Law System that the obligation to maintain peace, which is a consequence of an agreement being entered into, has as its opposite number the right of action which exist so long as no agreement has been concluded. The radical Unions have allways regarded the peace-obligation as the regrettable but necessary price to be paid in return for the right of action.

In Labour Law theory the situation is elucidated by the following table:

No Agreement	*Existing Agreement*
"Conflict of Interest"	"Conflict of Right"
Right of Action	Obligation of Peace

Should some unions reject the wages or working conditions offered by the employer or his organization during negotiations on agreements (that means, according to the conceptual scheme: in "conflicts of interest") they are entitled to refuse to sell the labour until an acceptable agreement has been reached. According to the ideology of liberalism any purchase and sale - including that of labour as a commodity - is a voluntary affair. Furthermore the fact that it is voluntary constitutes an independent justification of the effective obligation to maintain peace: The enforcement system of labour law, including sanctions by way of fines and organizational liability, presupposes that the parties involved violate agreements. And agreements presuppose the right to *free* bargaining.

The act of mediation and conciliation was a fulfilment of this ideology. The explicit aim of the act was to create a system to facilitate the free bargaining. "The

mediation and conciliation act constitutes an attempt by the state to help the labour marked parties to reach acceptable agreements without any labour conflict", it is said in the leading textbook of Danish Labour Law[3)] .

This description has elements of truth as regards the original act of 1910. However, the mediation and conciliation has during the last part of this century, gradually changed its function. To an increasing extent the conciliator has acted as a civil servant whose task has been to implement the Government's economic policy. Although the conciliator under the act has to be independent of the Government, the draft settlements proposed by the conciliator have since the seventies been 100% in accordance with the guidelines for the development of wages which have each time been established in advance by the Government, not only as regards the generally magnitude of wage increases but also regarding the framework of wage conflicts, for instance limitations upon the flexible wage system.

This development has been possible, partly by several changes of the original Act of Conciliation during the century, partly by a new way of legal interpretation of the Act. In the following sections the legal techniques used by the legal authorities will be demonstrated; the level of discussion is strictly legal; the underlying forces behind the changes in the functions of law - the historical and socio-economic factors - will not be fully discussed.

In order to explain the legal technique, the main provisions of the actual Conciliation Act will be quoted in sec. 4.

4. Main provisions of the actual Conciliation Act

Section 1

(1) On the recommendation of the Industrial Court, the Minister of Labour shall for the country as a whole appoint three conciliators, charged with the task of assisting, in the ways set out in this Act, in the settlement of disputes between employers and employees.

.....

Section 3

(1) When there is reason to fear a stoppage of work or one has already occurred, and when the conciliator concerned with the matter attaches social importance to the effects aud scale of the dispute, he may, if the negotiations between the parties have been carried out under the provisions agreed between them and have been declared by

one of the sides as concluded without result, either on his own initiative or at the request of one of the parties, call on the disputing parties to negotiate. The conciliator may also on his own initiative or at the request of one of the parties at an earlier stage provide his assistance for the establishment of fresh agreements, even though the negotiations conducted by the parties have not been declared concluded without result. The parties themselves shall decide by whom they will be represented, except that it shall not be anyone from outside the respective organizations, central organizations or establishments.
.....

Section 4

(1) In the course of the negotiations with the parties the conciliator shall have the right to submit proposals for concessions which seem likely to lead to an amicable settlement of the dispute.

(2) If the conciliator in the course of the proceedings becomes convinced that some or all of the questions at issue between the parties either have not been the subject of actual negotiations on their merits between the parties or, on account of their special occupational character, should be settled by direct negotiation between the parties, he may require such negotiations to be opened and refuse to continue his intervention until these negotiations have taken place. With the consent of both parties, or one of them, the conciliator may decide that the resumed negotiations shall be carried on under the chairmanship of a mediator.
.....
(3) When the conciliator considers it expedient, he may submit a draft settlement (mediation proposal) which may not be made public without his consent until the replies of both parties to the draft settlement are to hand. Before submitting his draft settlement, the conciliator shall, with a view to the formal and technical aspects of the draft, consult representatives of each of the parties, and, if the parties belong to a central organization. also a representative of each of the central organizations.
.....

Section 10

(1) When a draft settlement (mediation proposal) is submitted to a vote in an organization, it shall not be presented except in the conciliator's draft, and only clear Yes or No votes shall be given. Before any voting takes place, the organization shall ensure that all members entitled to vote shall be afforded an opportunity to familiarize themselves with all the general and specific provisions of the draft settlement which concern the organization's members. Every vote on the draft settlement, by both ballot and by a qualified assembly, in employer and employee organizations. shall be secret and in writing. Provisions in rules and statute books concerning the manner in which individual members of the qualified assembly shall vote shall be null and void. When the result of voting is known, the organization shall notify the conciliator in writing of the number of votes for and against. together with the total number of members entitled to vote.
.....

Section 12

(1) The conciliator is empowered to decide in draft settlements providing for a general solution of a conflict submitted by him that these draft settlements shall be considered in part or in full as an entity, regardless of how the trade unions involved in the conflict are organized (as independent local unions, national unions or employer organizations, or grouped as members of an amalgamation of local unions. national unions or employer organizations).
.....

(7) The draft settlement shall be regarded as adopted on the employers' side if there is an overall majority in favour of acceptance, and as adopted on the employees' side provided a majority of those voting, and at least 35 per cent of those entitled to vote, have not voted against it.

Although the task of the Public Conciliator is defined as "assisting" the parties (section 1), it follows from sections 3 and 4 that the conciliator has the power to force a union to join negotiations; when this is done, he is entitled to propose a draft settlement. Furthermore, the Public Conciliation Acts' provisions on voting mean that (contrary to the employers) the wage earners have, for all practical purposes, no possibility of voting no. To have a draft settlement rejected it does not suffice that there is a majority of votes against the draft. Furthermore the negative votes must amount to at least 35% of those entitled to vote. This provision is of particular significance in relation to the

the Public Conciliator's right of *linkage*, i.e. the power to rule that voting on several different proposals shall be taken as one vote - under section 12 - so that the 35% rule is applied in relation to the entire voting area. The provision regarding joined voting and the 35% provision in connection mean that the Public Mediator may force an agreement (upon the entire labour market) provided merely that one particular major voting area is included in the proposal; in *separate* agreement areas the percentage of votes against has often sufficed. But for the *total* labour market it is in practice unobtainable.

5. The Conciliation Act and the Labour Court

It is noteworthy that no union has ever, before 1987 tried to fight legally against the power of the conciliator - whose draft settlements has always reflected the economic policy of the Government.

In 1987, however, the Seamens Union brought a lawsuit before the Labour Court - and later to the International Labour Office (ILO), claiming that the intervention of the conciliator of 1987 constituted a violation of both ILO Convention number 98 (ILO case no. 1418, below sec. 6) and the Conciliatin Act.

The case regards an agreement in the Iron Industri, the first legal question being whether the Public Conciliation Act was applicable in a situation where the parties had reached their result through negotiation without the conciliation board having been involved.

It appears clearly from the by-laws of party involved (the Central Organization of the Metal Industry) that the rules of voting in the Conciliation act (the 35% rule, sec. 12) did not apply in the present case. The by-laws read i.a.:

> "Where the agreement of the Central Organization with the Iron Employers Association is to be renewed, a joint ballot shall be taken among the members in which the result is decided by *ordinary majority*, provided the proposed agreement appears as a result of negotiation directly between the two parties to an agreement.
>
> Should the Central Organization be involved in negotiations where any possible draft is procured either with the cooperation of the main organizations or the Conciliation Board, voting shall take place in accordance with the rules in force at any given time on such voting". [italics added]

Since negotiations in the case under discussion had been carried on independently of the Public Conciliator as well as of the main organizations it is obvious that a ballot

among members should be taken under the provisions given in the first paragraph, i.e. as a separate ballot and by simple majority.

In the draft settlement which was subsequently submitted (11 Feb.1987), the Public Conciliator added the following provision:

> "The results reached through negotiation are to be considered as parts of the draft settlement, in so far the parties have agreed that the result should be incorporated in the draft settlement which the Public Mediator was expected to submit...."

This decision of voting under the Conciliation Act (including the 35% rule) clearly circumvents current organization by-laws; further it was argued that the Conciliator had exceeded his powers under the Conciliation Act. But in spite of petitions submitted by a number of Unions to the parliamentary Ombudsman, cases brought before the sheriff with subsequent appeal to the High Court, and submission of the case to the Labour Court, the infringements could not be stopped. The judgement of the Labour Court of 9 April, 1987 (case no. 87.081) illustrates the fact that the rights of wages earners under the by-laws of an association do not constitute any legal or democratic problem in relation to the powers of the Public Mediator:

> "The right of the Public Mediator to propose agreements under section 4, para 3, of the Act is independent of the provisions of organizational by-laws. Consequently, in proposing an agreement on 11 February 1987 the Public Mediator has not transgressed his jurisdiction and consequently the defendant is exonerated."

6. Complaint to the ILO

Subsequently The Seamen's Union issued a complaint to the ILO. This case illustrates a more general legal point concerning the linking power of the Conciliator (sec. 12). The Union wrote i.a.:

> "The present linking together into one draft settlement means that the Seamen's Union had, in effect, no influence on the adoption or rejection of the draft settlement. In this connection it should be noted that the Danish Federation of Trade Unions is the organisation for more than 700,000 voting members, whereas the Seamen's Union musters some 5,000 seamen."

The reply of the Danish Government contains the official arguments for the present state intervention by way of the extensive use of the Conciliation Act. The reply reads i.a.:

"The fact that virtually all collective and other agreements are renewed at the same time means that the social partners have aimed at and obtained a homogeneous development on the whole organised labour market. Thus extensions of the holiday period and working time reductions have been agreed for the whole labour market at the same time. One advantage - among others - of this system is that it is easier for the undertakings to plan the work and the production as major differences from one occupational field to another are avoided. In order to obtain such parallel results on the labour market the parties traditionally try to coordinate the renewal of the collective agreements renewable as per 1 March and these new collective agreements serve as the model for the collective agreements renewed as per 1 April.

By statute an independent Public Conciliation Board has been set up to assist the parties in connection with the renewal of the collective agreements. The Public Conciliator's only function is to contribute to the conclusion of collective agreements between the parties - in some cases this is ensured by a draft settlement proposed by the Public Conciliator which is then subjected to a ballot among both employers and workers. In his activities the Public Conciliator cannot be bound by regulations or instructions from the Government or other political or administrative authorities. This means that the Public Conciliator is not bound by political considerations in his work; all that he does is to try to make the parties reach agreement concerning the renewal of the collective agreements.

The fact that virtually all collective and other agreements take place at the same time means that it is considered appropriate to find a global solution in connection with the collective bargaining situation. Otherwise, there would be a risk of ending up in the situation where agreement has been reached on the renewal of collective agreements in nearly all fields on the labour market, but where disagreement concerning the renewal of collective agreements in a few minor fields could lead to industrial disputes and notices of sympathetic action could then be given on large parts of the labour market, including those fields where agreement had been reached. In order to prevent such a situation from arising the Public Conciliation Act contains the so-called linking clause which means that the Public Conciliator may choose to let a draft settlement proposal relate to several collective agreements which are subjected to a ballot as a whole. This makes it possible to obtain a global solution for connected parts of the labour market. Such draft settlement

covering a number of collective agreements are quite common in Denmark. As examples of fields where draft settlements have been proposed covering several agreements one could mention the collective agreements renewal as per 1 March concluded between organisations which are members of the Federation of Danish Trade Unions or the Danish Employers' Confederation, the collective agreements in agriculture, and the collective agreements covering academic staff in public employment.

In the spring of 1987 we had a situation where the employers and workers in the metal industry had at a comparatively early stage reached agreement concerning the basis for renewal of their collective agreements and subsequently other negotiating parties reached an agreement on the basis for the renewal of the collective agreements within their respective fields on terms which were more or less the same as those agreed upon in the metal industry. It was a common feature for all these negotiation results that it was an element of the basis for the renewal that the parties were agreed that their agreements should from part of the draft settlement which the parties expected the Public Conciliator to propose in order to solve the problems in those fields on the labour market where the collective agreements are renewable as per 1 March. The purpose was to obtain a general solution of the bargaining situation, and in particular that the parties, especially the worker side, wanted to avoid ending up in a situation where the results obtained in one field were considerably poorer than those obtained in other fields.

When the Public Conciliator put forward his draft settlement on 11 February 1987 he had, as wished by the parties to the settlement, included those agreements which had been concluded without the assistance of the Public Conciliator, but which the parties had agreed should from part of the settlement. It should be noted that the agreements negotiated with the assistance of the Public Conciliator were renewed on terms corresponding to those laid down in the negotiation results which had been obtained without the assistance of the Public Conciliator. It can be added here that a draft settlement is in Denmark traditionally structured in such a way that it includes both changes that the parties have agreed on and the Public Conciliator's proposals as regards the terms for a renewal of the collective agreements in those fields where the parties have not reached agreement.

After the Public Conciliator had made public the draft settlement which included the negotiation results achieved without the assistance of the Public

> Conciliator the question of whether the Public Conciliator was authorized to include negotiation results achieved without the assistance of the Public Conciliator in a draft settlement was brought before the Industrial Court. It should be noted that disputes concerning the authority of the Public Conciliator may according to the Public Conciliation Act, section IS(2) be brought before the Industrial Court.
>
> By order delivered by the Industrial Court on 9 april 1987 it was established that the Public Conciliator had not overstepped his powers. In its decision the Industrial Court emphasized that the negotiation results obtained without the assistance of the Public Conciliator had not manifested themselves in agreements concluded, but that it was actually a question of negotiation results obtained on the understanding that similar results would be the outcome of the negotiations on the rest of the labour market. If this should turn out not to be the case - against the expectations - work stoppages could also take place in the fields mentioned. It should be noted in this connection that notices of industrial disputes were exchanged by the parties in these fields after the negotiation results had been achieved. The Industrial Court consequently found that the Public Conciliator was entitled to include the mentioned negotiation results in his draft settlement as he tried to obtain a global solution for the sectors of the labour market in question."

Although the coercion vis a vis the Seamen's Union in the present case is quite patent, it is symptomatic that the Government's statement to the ILO maintains the legal illusion of the free bargaining, by stating that the Public Conciliator's "*only function is to contribute to the conclusion of collective agreements between the parties*".

This sort of legal witchcraft was not convincing to the ILO Committee of Freedom of Association. The crucial criticism is contained in the following passage of the committee's report:

> "The Committee considers that the *de officio* intervention by the Public Conciliator to impose a Draft Settlement on the entire private sector, when one category in that sector was proceeding with bargaining towards its own agreement, infringed the principle of free collective bargaining with a view to the regulation of terms and conditions of employment by means of collective agreements, contained in article 4 of convention no. 98"[4].

Neither the Government nor the Public Conciliator have taken any serious note of the ILO criticism. The Government claims that the Committee has "misunderstood" the system of conciliation.

7. The latest case.

During the spring 1991 the Public Conciliator once again was brought before the Labour Court, this time by the Union of Computerworkers (PROSA). The background was that the conciliator had linked PROSA to the general draft concerning the Unions of Federation of Danish Trade Unions. The conciliator had done this although PROSA - who is not a member of the Federation - and its counterpart had not yet commenced bargaining. To impose an "agreement" even before the start of any negotiation between the parties does of course mean a real abandoning of the very idea of bargaining.

Appearing as a witness before the Industrial Court the Public Mediator explained that she *"had not given any thought to the relevance of the fact that the plaintiff (PROSA/SAS) had not submitted their demands"*. The offhand manner - or perhaps even the arrogance of power - inherent in the way in which employers and the Public Mediator apply the Public Mediator Act as an authority to impose agreements by force regardless of the parties' own negotiations is furthermore brought into focus by the fact that PROSA was not even invited to participate in the technical presentation of the proposed agreement which took place on 16. March.

PROSA claimed that the Public Conciliator could not legally submit any draft settlement so long as the parties had not entered into the negotiations. This is so regardless wether an agreement has expired or not. According to PROSA this follows from the fact that the parties' own bargaining constitute the fundamental basis of the agreement system. Intervention by the Public Mediator presupposes that negotiations have broken down.

The Public Conciliator and the Danish Employers Association on their part claimed "that for technical reasons PROSA/SAS had refused to enter into negotiations attempting to place themselves in a separate position giving them the possibility of carrying on a particulary serious conflict with SAS".

However, it follows from section 3, paragraph 1, that the Public Conciliator does not have the legal power to intervene unless negotiations have broken down. This is one of the main points in the original report behind the Act:

"The Public Conciliator should not intervene until the possibilities of reaching an agreement between the parties themselves have been exhausted ... so that one first and foremost to the greatest possible extent taken into account the parties' own efforts to avoid a labour conflict".

This statement contains a strong argument against the Conciliatior's right to impose any draft settlement unless the parties themselves have abandoned the bargaining.

However, the second sentence of sec. 3 the Conciliation Act contains a supplementary rules which apparently extend the competence of the Public Mediator:

> "The conciliator may also on his own initiative or at the request of one of the parties at an earlier stage provide his assistance for the establishment for fresh agreements, even though the negotiations conducted by the parties have not been declared concluded without result".

This supplementary rule was included when amending the act in 1958. It does not appear from the statutory provision precisely what it means that the Public Mediator shall "provide his assistance"; and the conditions under which he may do so are vague. The rule does not (as the first paragraph of article 3) presuppose that negotiations have actually broken down; but it is however clear that *negotiations between the parties shall have taken place.*

But according to traditional principles of interpretation, there is no valid argument for the proposition that this new provision should do away with the original principles for the Conciliator's intervention: The only justification given for the new rule of sec. 3 under discussion consisted in the *purely technical point* that the federation of trade unions and the Danish Employers Association had agreed upon amended rules of negotiation which presupposed that the parties could approach the conciliation board even *prior* to negotiations breaking down.

In other words, there is no doubt that the main provision of the Public Mediator Act must be interpreted in the light of the fundamental *principle of free bargaining* which prevails in the Danish labour market. This means that the Public Mediator *shall respect the parties' own negotiations* as well as the member rights stemming therefrom.

The judgement in the case says the following:

> "In the light of what has been brought out including information regarding the two parties' previous negotiations and the time of an agreement of a new wage system it cannot be established that the plaintiffs have prevented negotiations from coming under way through delay or protraction.
>
> Consequently, the Labour Court concludes that at the time when the defendant submitted his proposal there have not yet been any negotiations between the two parties of the nature which is a conditions for the Public Mediator intervening under section 3, para 1 (2) of the Public Conciliation Act.
>
> Consequently the plaintiffs are upheld in their claim.

The judgement of the Court is as follows:

"The defendant the Public Mediator was unjustified in including the relation between the plaintives PROSA/SAS and SAS in the agreement proposal of 16 March 1991".

The reasons given for the court's result raise problems in that it is clearly indicated that the entirely vague rule of section 3, par 1(2) (regarding the possibility of the Public Mediator to "render his assistance" even prior to negotiations breaking down) may constitute sufficient legal basis for the Public Mediator intervention, namely where the Industrial Court finds that a party "protract" or "obstruct" negotiations on an agreement.

This means that by means of the voting rules of the act (article 12) the Public Mediator may force upon the wage earners and agreement on which they do not have the least influence.

1.Galenson, W.,*The Danish System of Labor Relations* (Harvard University Press 1952).

2.The historical development of the Danish system has been described in Schledermann, Helmuth, *The Strike and the Law in Danish History* in M. Rotondi (ed.), Inchieste di Diritto Comparato no.9 (Milano 1987).

3.Per Jacobsen, *Kollektiv Arbejdsret* (4th. ed. 1987).

4. Committee on Freedom of Association, report no. 254 case no. 1418. The criticism is mentioned in Report of the Committee of Experts 76 th session 1989.