

Dear Readers,

we are happy to present the July issue of *HR Perspectives*.

We have devoted it entirely to **the procedure of verifying the number of trade union members** and managing trade union relations.

By Friday, 10 July 2020, you should receive information from unions about the number of their members. Once it is submitted, you have 30 days to make potential objections in this regard. We recommend using this possibility if you have any doubts about the number of members and the rights granted to the union based on that number.

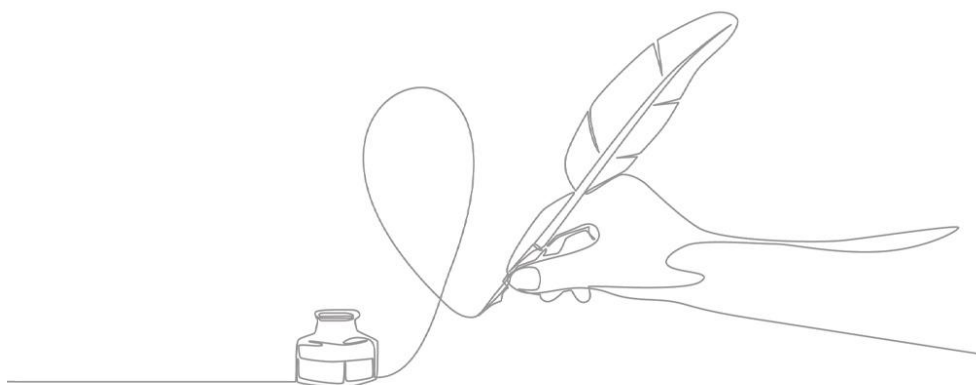
Below we describe our experiences in conducting such proceedings. We indicate the benefits if the court finds that the declared number of members differs from the actual number. Moreover, we explain when and why it is worth to verify whether the union has the status of a representative union organization.

Processes related to determining the number of unions' members, contrary to appearances, are not easy and require a considerable effort on the part of the employer. A recipe for success is an efficient, tailor-made strategy. Our team has considerable experience in managing unions relations and carrying out proceedings to verify the number of unions' members. Hand in hand with our Clients we have recently won another two cases – in one of them the actual number of union's members turned out to be a several dozen people lower than declared; in the other – as many as a several hundred people (i.e. over 30%) lower than declared.

We are pleased to share our experience with you.

Enjoy your reading!

**Sławomir Paruch,
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Trade unions should report numbers by 10 July. What next?

By 10 July 2020, the company and inter-company union organizations must provide employers with information on the number of their members as of 30 June 2020.

Once the information is received, employers have 30 days to make potential objections to the number of members declared by the union.

If the objections are made, the union has 30 days to apply to the court to determine the number of its members. If it fails to do so within the prescribed deadline, it will not be able to exercise the rights of a company (or an inter-company) union organization, as of the day following the deadline (until the application is actually submitted).

The court shall consider the case in non-contentious proceedings within 60 days following the day when the union submitted the application. In practice, however, the average length of proceedings is much longer and lasts 3, 6 or even 9 months. Considering that either party may lodge an appeal, possible proceedings before the court of the second instance may be even longer.

Advantages for employer

The procedure for determining the number of unions' members is one of very few mechanisms that allow employer to introduce a bit transparency into union relations and to verify the reliability of statements made by unions. This "transparency" is important in the context of the overall relations with unions. It is in the interest of an employer cooperating with a union, but also of all employees represented by that union.

Establishing the number of members also allows to verify the scope of rights granted to the unions, in particular with regard to the right to release from work or special protection of employment for unions' representatives.

Trade unions tend to overestimate the number of their members, either to obtain additional rights (e.g. in terms of the right to release from work or special employment protection mentioned above) or to show off to superiors in the regional or national union structures. The legislator has noticed this problem and decided to introduce the mechanism of verifying the number of unions' members precisely as a response to the abuses arising in this area. It is worth to have that in mind when deciding to make an objection.

Court proceedings - employer's role

The employer takes part in the proceedings as a participant. It is entitled to, among others, access the case files. The law limits only the employer's right to process personal data regarding the union membership. Therefore, if a union submits respective resolutions to the case file, the employer is only forbidden to see who they relate to (only the relevant data should be protected against the access by the employer). Nonetheless, the employer has the right to verify these documents, in particular their formal correctness (in terms of dates, document markings, order numbers, signatures, etc.).

The court procedure itself should not be limited to a mere comparison of the member list provided by the union with the employer's list of employees. Unfortunately, we have met with such a practice in the courts more than once. The court should verify whether the number declared by the union is correct. This is not hindered by the principles of self-government and unions' independence. The union is not above the law and its activities are subject to verification by the court under the general rules. If certain provisions were set out (in particular in the union's bylaws), the union is obliged to comply with them.

Verification of unions' representativeness

If an agreement with all the employer's unions cannot be reached, some arrangements may be agreed only with those which are the "representative unions". This applies in particular to setting rules and internal work or remuneration regulations, negotiating and concluding collective agreements, including those set out by anti-crisis laws.

The employer has a mechanism to establish which organization is representative and which is not, and which union is the one the employer is obliged to negotiate and conclude an agreement with. In order to do so, the employer must follow the same steps as in the case of determining the number of unions' members, namely, the employer should make an objection re: representativeness of a union and the union submits an application for determining its representativeness to the court.

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