Dear Readers,

The first issue of HR Perspectives this year focuses entirely on the pressing issue of managing the relations with trade unions, with particular emphasis on how to verify the number of **trade union members.**

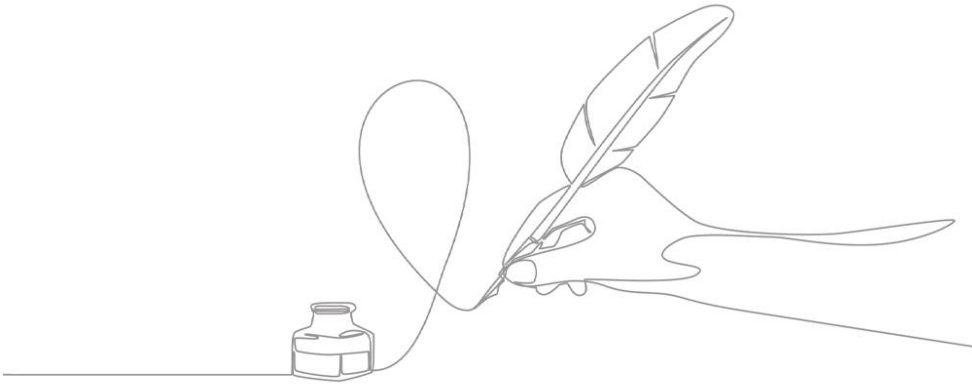
By now, each employer should have been informed by the trade union about the number of its members on 31 December 2020. Within 30 day from the date such information was provided, the employer can challenge it. We recommend to use this opportunity if there are any doubts as to the number of trade union members and the extent of rights granted to trade unions based on that number. We will show you how to do it effectively and why it is worth your time.

We also share some insights on other aspects of working with trade unions, such as participation of trade union members in individual employee meetings (e.g. concerning the annual performance review or employment termination); elections of social labour inspectors and potential abuses in the process or the issue of providing trade unions with necessary information.

Enjoy your reading!

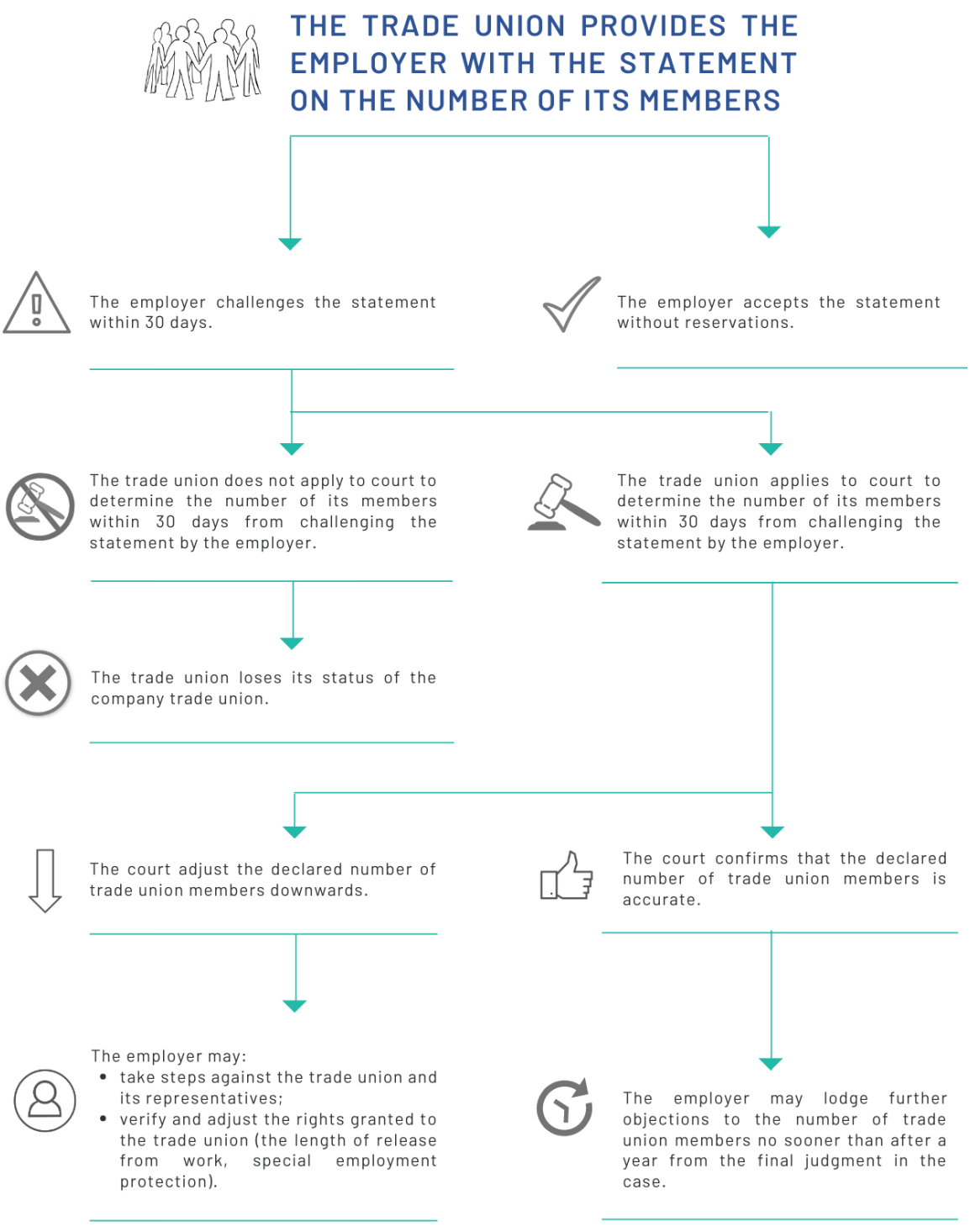
Sławomir Paruch,

Robert Stępień



Verifying the number trade union members – it pays off

Within 30 days from receiving information from the trade union on the number of its members, the employer may challenge that number. A trade union whose number of members has been challenged must apply to court to determine the number of its members. Otherwise, it loses the status and rights of a company (inter-company) trade union organisation.



The size of a trade union determines many issues, such as:

- the number of hours and union posts granted to the trade union;
- the number of employees covered by special protection of employment;
- the status of a representative trade union in a company or many companies;
- the position of a given trade union compared to other trade unions at the workplace.

The procedure for determining the number of trade union members is one of very few mechanisms enabling the employer to introduce transparency into trade union relations. The level of transparency and fairness of the trade union in informing the employer of its membership numbers sets the tone for the relations with the trade union in general.

A proactive attitude of the employer who takes part in the proceedings for determining the number of trade union members is the key to success. The employer, as a party to the proceedings, has the right to actively participate. No one but the employer with its best interest in mind is able to provide the court with compelling, first-hand evidence to prove that the doubts about the number of trade union members were reasonable. In practice, it is the employer who has the inside knowledge of irregularities concerning the number of members declared by the union. The court cannot exclude the employer from participating in the proceedings. Furthermore, conducting such proceedings without the participation of the employer would make no sense as it would render the aim of the proceedings, namely to verify in a reliable manner the number of trade union members, unattainable. The purpose of the proceedings is not to confirm the union's declaration by the virtue of court's authority but to verify it objectively.

Advantages for employers:

- verifying the accuracy of the trade union's statement (unfortunately, overstating the number of members by trade unions are not isolated incidents);
- introducing transparency in relations with the unions;
- verifying the extent of rights granted to the union (release from work, employment protection);
- establishing whether a trade union has a status of a representative union;
- taking steps against people responsible for overstating the number of trade union members (e.g. recovery of unduly paid remuneration, termination of employment contracts).

Individual employee meetings - no legal grounds for trade union participation

Recently, an increasing number of requests have been made by trade unions to allow their representatives to participate in individual meetings of the employer with its employees. These meetings mostly concern the annual performance review of a particular employee (or challenging a performance evaluation) or the termination of an employment contract.

Trade unions demand to be allowed to take part in such meetings, based on the provisions of the Trade Union Act, which stipulates they represent the rights and interest of their members and have the right to take a position on individual employee matters.

However, the above-mentioned provisions do not provide legal grounds for allowing trade union representatives to participate in meetings with employees, and the employer is not obliged to agree to this. Firstly, the provisions of the Trade Union Act refer to "taking a position" on individual employee matters. So the trade union can express its opinion, and nothing more. The right to "take a position" is not tantamount to the right to participate in a meeting or conversation with an employee.

Moreover, the provisions of the Act stipulate that the trade union takes a position "within the scope regulated by the employment legislation". The applicable law provides a clearly defined, complete list of individual employee matters and sets out the way in which a trade union can take its position regarding such matters (e.g. consultation on the termination of an employment contract for an indefinite period, termination of an employment contract without notice, consultation on the rejection of an objection to a disciplinary penalty). It would be unreasonable to extend this list by providing trade unions with rights that were not intended by the legislature (e.g. a trade union can express its opinion on the termination of an employee contract, but has no right to participate in a meeting with the employee concerning such termination).

Election of social labour inspectors - watch out for abuses!

Recently, many of you have reported that trade unions are planning to appoint or have already appointed a social labour inspectorate (SLI) at your workplace. Experience suggests that more often than not the SLI elections are either not held in compliance with the law or do not take place at all, and social inspectors are actually appointed by the union. We recommend that you stay alert and immediately report any observed irregularities to the union.

We suggest that you pay especially close attention to the following issues:

1. Social labour inspectors are elected and dismissed by all employees - this means that **an SLI inspector cannot be nominated by a trade union.**

2. As it happens, trade unions "elect" as social labour inspectors employees selected by the employer for termination and who, consequently, have "escaped" on sick leave. If such an election was not carried out in compliance with the applicable law, it is considered invalid. Therefore, such employees should not be covered by special employment protection.

3. Although the structure of the SIP is determined by the trade union, it should be adjusted to the structure of the workplace and the resulting health and safety needs. The number of social inspectors cannot be set arbitrarily.

4. Detailed election rules should be set out by the trade union in its internal regulations, which should be made known to all employees in advance.

5. Due to the current pandemic situation, the election may take place online - the employer, as well as any employee, has the right to request information from the trade union on how the election was held and what measures were taken to protect personal data or confidential information.

6. An SLI should have the necessary knowledge of the issues within its scope of duty (health and safety at work and fire safety regulations, the labour law).

Not all information available to trade unions

The employer is obliged to provide the trade union with information necessary for the union to carry out its activities. This obligation concerns in particular information related to remuneration terms and conditions, the employer's economic situation, employment level and structure, as well as any foreseeable changes that may affect the employment matters. Once the request for information is submitted, the employer has 30 days to provide the information. However, it does not mean that every request made by the trade union must be granted.

Trade unions often abuse their right to information. They frequently demand access to information which is not necessary for trade union activities. In such a case, the employer may ask the trade union to demonstrate that the requested information is in fact necessary to carry out trade union activities. If the trade union fails to prove the 'necessity' of a particular piece of information, the employer can refuse to provide such information, as there is no legal basis to do so.

The employer may require union representatives to sign confidentiality agreements before providing the union with any information concerning the workplace. The signing of such an agreement will confirm the union's obligation, and therefore cannot be objected to or considered as an impediment to union activity. Such precaution measures are particularly justified in the case of inter-company trade unions, where the risk of information disclosure is particularly high.

PCS | MeetUp: Verification of a trade union's size – why to do it and how to do it effectively?

We would like to invite you to the next PCS | MeetUp.

Date: 26 January 2021, time: 11:00 – 11:30.

Hosted by: Sławomir Paruch and Robert Stępień.

Please register here: perspektywyhr@pcslegal.pl. More details: *here*.

Pozna(j)ń HR: HR Challenges for 2021

We would like to invite you to the first “Pozna(j)ń HR” meeting.

Date: 2 February 2021, time: 11:00 - 12:00.

Hosted by: Robert Stępień and Miłosz Awedyk.

Please register here: perspektywyhr@pcslegal.pl. More details: *here*.