

Sweden

*by Roger Nilsson **

Historical Background

The upcoming discussion on Board representation has its background in the 68 year movement on democratisation of the working life and society. The outcome of this discussion led to several changes in the legislation of the labour market in Sweden at the beginning of the seventies.

One of the new acts was the act on Board representation from 1973, which was implemented on a temporary basis for two years and then made permanent in 1975. The discussion was criticised in many ways from both the right and the left wing parties. From right-wing politicians and representatives of the employers association came the idea that this was an issue which will have to be solved on a voluntary basis, and that they would therefore invite workers representatives to participate in the meetings with the Board of directors. This was not a successful arrangement as it was only a few companies which took such steps for opening the doors to their meeting rooms. From the left-wing came the traditional criticism of collaboration with capitalists.

The act on Board representation was rewritten in 1987.

Federations and representation

Together with the act on board representation we have two other instruments of perhaps greater importance for the work of co-determination and participation in the workplace: the act on co-determination and the national agreement on Development at the workplace. Depending on the situation, these instruments more gives the framework for the daily activities at the workplace for the local parties.

The Swedish Trade Unions are organised by Industrial class into two main federations: LO (blue collar) and TCO (white collar). Together with those two federations we also have some occupational unions present at the workplace: SACO (academics) and Ledarna (supervisors). The three white collar Unions are also organized in a the private-sector bargaining cartel called PTK. Svenska Metall which is affiliated to LO organize today nearly 4 000 members who have the role of employee representative in boards of directors.

All rights to co-determination, participation and negotiation at the workplace are distributed through the Unions, which have the collective bargaining agreement at the company, by law. Therefore it is only the members of the unions which have the right to elect representatives to all bodies connected to those two acts and the agreement.

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Board Representation Act (1987:1245)

The Act is divided in six different parts:

- Introduction, section 1-3
- The entitlement to board representation, section 4-5
- Appointment of board representatives, section 6-10
- Duties of employees' representative, etc, section 11-14
- Damages, etc, section 15-16
- Miscellaneous provisions, section 17-19

In this section , I will try to give a presentation of the act by given the legal texts together with comments how its works in practise:

Introduction

Section 1.

The purpose for this Act is to afford employee's knowledge of and influence over the Company's activities through representation on the board of directors.

Comment:

The meaning of the first section is to give the employee the opportunity for knowledge and influence on company activities. Even if the direct influences in general are limited, it will give some more opportunities for information and for giving their own opinion. In connection to the two years of temporary legislation, the official agency SIND conducted research on the legislation and made the following conclusion: "even if the legislation has not particularly increased employees influence, it has increased the employees knowledge and also lead to better contacts between the management and the local Trade Union organisations." This conclusion probably remains true today.

Section 2.

Company means, for the purpose of this Act, limited liability companies, banks, mortgage institutions, insurance companies and economic associations.

Comment:

The section gives the different kinds of companies, which are covered by this legislation. This will mean that employees have no right to participate in i.e. the boards of Trade Unions, political parties, religious organisations etc. See also comments on section 14.

Group means, for the purposes of this Act, Swedish legal entities which according to the provisions of Chapter 1, section 5 of the Companies Act (SFS 1975:1385), Chapter 1, section 6 of the Banking Companies Act (SFS 1987:618), Chapter 1, section 2 of the Saving Bank

The Swedish system on corporate governance is given in the Companies Act and the only system mentioned for the private sector of public companies are the single-tier system of board of directors.

Act (SFS 1987:619), Chapter 1, section 5 of the Members' Bankers Act (SFS 1995:1570), Chapter 1, section 9 of the Insurance Business Act (SFS 1982:713) or Chapter 1, section 4 of the Economic Associations Act (SFS 1987:667), are defined as parent companies or subsidiaries in relation to another.

Section 3.

An employee of a principal or parent Company, who is permanently engaged in business in an agent or subsidiary, without being employed there, shall also, in the application of this Act, be treated as an employee of the agent or subsidiary.

In the application of this Act, a collective bargaining agreement between a local employee's organisation and a principal or parent Company, shall also be treated as a collective agreement in relation to the agent or subsidiary.

Comment:

This means that it is not only those employed in the local company who can stand for election to the board of directors, even employees in a mother-company can be elected for such a position. Probably will this be very important for the European Company statue (SE). We will probably see that there will not be any transition of the mother companies structures into the SE depending on the whether they want to do so, they will need a new registration on the stock market, and this will probably lead to decreased influence for the control of the company for the owners. We will probably see that they will reorganise their business segment into an SE owned and controlled by the mother company. Therefore we think that this opportunity/demand for employees at the mother company can be a good contribution for the upcoming legislation and agreements to be decided in the coming negotiations for the SE;

The last paragraph supporting the first paragraph in section 3. See also section 6.

The entitlement to board representation

Section 4.

The employees of a Company which, in the most recent financial year, in Sweden, has employed an average of not less than 25 employees, shall be entitled to two representatives on the board of directors (board representatives) and one alternate for each such member, If the Company conducts business in different branches, and if it has, in the most recent financial year, in Sweden, employed an average of at least 1.000 employees, the employees shall be entitled to

Comments:

The general regulation on how many members the board of directors shall have is given in the Companies Act, which states that a company shall have at least three members. There is no other threshold given in the legislation according i.e. to how many employees the Company have (as in the German legislation). To exemplify that following could be a good example in practice, the Swedish mother company of a big multinational Company which employs more than 15.000 workers in Sweden may have only a board of three members, one representatives for the owners and one employee representative and the Managing Director.

The most common size of board in Swedish companies is of seven members, two of them are employee representatives.

Depending on the situation, the deputies for the employee

three representatives on the board of directors (board representation) and one alternate for each such member.

The employees' entitlement to board representation pursuant to the first paragraph may not, however, result in the number of employee representatives exceeding the number of other board representatives.

If the is a parent Company, the provisions of the first and second paragraphs relating to the companies, shall relate to the group in its entirety, and the right to board representation shall accrue in favour of all employees in the group.

Section 5.

Once the employee members have been appointed, the employees' right to board representation during the period of the mandate shall remain unchanged, notwithstanding any decrease in the number of employees or number of other board members.

Appointment of board representatives

Section 6.

The decision to appoint employees' board representatives shall be taken by a local employee organisation which is bound by a collective bargaining Agreement with the Company.

If the decision relates to a parent Company, the decision shall be taken by a local employees' organisation which is bound by a collective

representatives also have the opportunity to participate in the meetings, do we also often find agreements where the local parties have decreased their rights to employee representation to only two ordinary and two deputies even if the Act gives the right to appoint three of each i.e. in SKF and Sandvik.

No comments:

Comments:

Only the Trade Unions, through the collective bargaining agreement, have the right to decide if they want to appoint employee representatives to the board or not. If the company does not have any collective agreement the employees do not have any rights to raise such demands for employee representation.

The relevant situation where the second paragraph is applicable is i.e. in the Holding Companies, which normally do not have so many employed. In this situation the right to representation moves from the companies in the group to cover the board of directors in the holding company as well.

bargaining Agreement with one of the Companies in the group.

The Company's board of directors shall be informed in writing of the decision to appoint employees' board representatives. Section 10 second paragraph, contains provisions concerning the time at which employee members or their alternates (employees' representatives) may take up their appointment.

Section 7.

The employees' representatives shall be appointed by the local employees' organisations which are bound by collective bargaining Agreements with the Company or, in parent Companies, by the local employees' organisations which are bound by collective bargaining agreements with a company in the group.

Comments:

Look last paragraph in the section of federations and representation on page 1.

Section 8.

Unless the organisations otherwise agree, the following system shall apply for appointment of the employees' representation.

Comments.

Normally the organisations do not have any problem to reach a voluntary agreement by them selves for the appointment of the employee representatives. We find different systems in many companies depending on traditional, regional and practical solutions.

If more than four-fifths of the employees bound by the collective bargaining Agreement at a Company or group belong to the same local employees' organisation, that organisation may appoint all of the employees' representatives. If another such organisation represents at least one twentieth of the employees bound by a collective bargaining Agreement, that organisation may, however, appoint one alternates.

If they have any problem, the four last paragraphs in the section gives the regulation.

If there is no organisation which represents more than

four-fifths of the employees bound by a collective bargaining Agreement with the Company or group, the two local employees' organisations which represent the largest number of such employees appoint one member each and one alternate. If the employees are entitled to three members and three alternates the larger of the two organisations may appoint two members and two alternates.

If, pursuant to the provisions of section 4, second paragraph, only one employees' representative and one alternate are to be appointed, this will be done by the local employees' organisation which represents the greatest number of employees bound by a collective bargaining Agreement with the Company or the group.

In applying the provisions of this section, local employees' organisations which belong to the same central organisation shall be deemed to be one organisation.

Section 9.

The employees' representatives should be appointed from the employees at the Company or, so far as a parent Company concerned within the group.

A person who is an employees' representative on the board of one Company, may not, except with the specific authority of the Board Representation Tribunal, be appointed as employees' representative for another Company. The aforementioned shall not, however, apply, if the Company agrees otherwise or

Comments:

The companies concerned employ 99,9 percent of all the employee representatives on the board of directors. It is very unusual that the representation comes from outside the company, i.e. by appointment of Trade Union Officials. Sometimes this will occur in the situation when the employee representative gets subsequently employed by the union and holds the seat in the board of directors until finishing the term of appointment.

if the companies form part of the same group.

Section 10.

The term of an employees' representative's appointment shall be fixed by the party appointing him. The mandate may not, however, exceed four financial years. The term of the appointment shall be fixed so that it concludes at the close of an annual general meeting at which the Board of directors is discharged.

The party appointing the employees' representatives shall determine when the representative may take up his appointment. Unless the Company's Board indicates otherwise. The representative may not, however, take up his appointment until at least three months after the board of directors received notice pursuant to section 6, third paragraph.

Duties of the employees' representative, etc.

Section 11.

Unless this Act provides to the contrary, the provision of other acts or legislative instruments concerning members of the Boards of Directors and alternate members of a Company's board of directors shall apply to employee members and alternate for such members.

Comments:

The limited period for an employee representative's appointment to the board of directors is four years. It is only the bodies that have elected the employee representative, which can dismiss him. In special circumstances the employer can dismiss him by legal action from the appointment if the representative has misused his appointment for damaging the company business. In fact, this situation has never occurred.

Comments:

Here is one of the most important section in the Act. It clarifies that the employee representatives have the same responsibilities and duties as the other members of the board appointed by the stockholders.

But how does it work it works in practise? One of the big issues at European level today is the level of remuneration to for board members. Compared with other European countries that have employee representation at the board, the Swedish representatives can seem like 'the poor cousins from the country'. But, almost all of the Swedish representatives are comfortable with the situation and solution.

One survey made in 1998 showed the following result in this field:

	LO	PTK
Remuneration for reading papers, etc	15%	13%
Remuneration as the Stockholders members	9%	7%
Remuneration which is lower than the Stockholders members	12%	12%
No remuneration at all	64%	68%

The figures have their background in the common situation that the board or the shareholders meeting decide that members of the board who are employed by the company shall not have any remuneration for their appointment. Normally the board also includes the managing Director who is also affected by such a decision.

The most important issue is not the question of remuneration. It is probably rather how the employee representatives are treated by the President and Managing Director of the company in the area of participation and information in the work of the Board.

When the Act was introduced one of the statements from the shop floor was "now they will move the decision making to another room". And in some Companies that happens as well, but most companies continue the decision making in the board meetings. Below there are some examples of how the employee representatives act in conducting their work in the board

Section 12.

An alternate for an employee member is entitled to be present and express his view at meetings in the board of directors and at the Company's shareholders' meetings, notwithstanding that the members are present

Comments:

One of the most interesting regulations in the Swedish Act on Board Representation is the right for deputies to participate and also give their own opinion and contribution in this position at the board meetings. It seems that this aspect of the regulation is only found in practice in Sweden.

The regulation has also an important influence in the discussions on the distribution of seats between the different unions involved at the company. See also section 8, paragraph 2.

Section 13.

One of the employees' representatives may be present and participate in deliberations when a matter, which is later to be dealt with by the board of directors, or representatives of the Company, specifically

Comments:

In the situation where the board makes special activities or has standing committees for preparing further decisions the employees representatives always have the right to one seat in those activities.

Matters for such activities can be, restructuring, finance, remuneration or profit sharing programs etc.

appointed for that purpose.

If, pursuant to a decision according to Chapter 7, section 6, second paragraph of the Banking Companies Act (SFS 1987:618) or Chapter 3, section 6, second paragraph of the Saving Bank Act (SFS 1987:619) or Chapter 6, section 6, second paragraph of the Members' Bankers Act (SFS 1995:1570), an assignment is given to a regional board or a similar organ in a region, the employees within the region are entitled to determine that one representative for them and one alternate shall be a part of the assignment. Such representative shall have the same rights as are referred to in the first paragraph.

If the employees' organisations do not otherwise agree, the representative referred to in the first and second paragraph shall be appointed by the organisation which represents the largest number of employees bound by a collective bargaining agreement with the Company or, with respect to a parent Company, within the group.

Section 14.

Employees' representatives may not participate in the treatment of issues which relate to the collective bargaining agreement or industrial action or other issues where a Union organisation at the workplace has a material interest which may conflict with the interests of the Company.

If the business of a Company is of such a nature or has an object as is referred to in

Comments.

We shall not participate in decisions, which can harm our interests as Union members.

Section two of the Employment (Co-Determination in the Workplace) Act has the following wording "An employer's activities that are of a religious, scientific, artistic, or other non-profit making nature, or that have co-operative, labour union, political or other opinion-forming aims shall be exempted from the scope of this act with respect to the aims and focus of such activities."

This means that in this kind of company such a scope of activities are excluded from co-determination at the workplace, but it doesn't cover other areas of interest for

section 2 of the Employment (Co-Determination in the Workplace) Act (SFS 1976:580), the employees' representatives are not entitled to participate in a decision which concerns the object or focus of the business.

discussion such as work organization, training programmes etc between parties at the workplace.

Damages, etc

Section 15.

An employer, or an employee organisation, which breaches this Act, shall pay damages for any damage sustained. The damages shall cover both compensation for any loss sustained and compensation for the infringement of rights consequent to the breach of the Act. If it is reasonable, the damages may be reduced in whole or in part.

Comments:

In fact there has been no legal action according to the regulation in this Act. And therefore will no damages have been paid.

Disputes appear mostly in the area of the day-to-day co-determination activities at the workplace. Normally when the company have failed to handle their activities and responsibilities in a proper way in their contacts with the local organisations.

An employees' organisation may not, on basis of this Act, claim damages from another employees' organisation.

Section 16.

Any person wishing to claim damages pursuant to this Act shall give notice to the other party of his claim within four months from the time the damage arose. If during that period, negotiations have been requested with respect to the claim pursuant to the Employment (Co-Determination in the Workplace) Act (SFS 1976:580), or on the basis of a collective bargaining agreement, proceedings shall be commenced within four months after the negotiation have been concluded. In other circumstances, proceedings shall be commenced within eight months from the time the damage arose.

Comments:

The Swedish systems for handling disputes in the labour market are divided in three different levels. The first level is the local parties have to negotiate on the issue, in a meaningful way and with a willingness for solving the problems (local negotiation). If they cannot or are not successful in their negotiation, one or both parties have to call for the National organisations to solve the problem in a central negotiation. If the National bodies fail to solve the problem the final decision will be made by the Labour court.

Miscellaneous provisions

Section 17.

An exemption may be granted from this Act if employees' board representation would result in material inconvenience for a Company because:

1. the composition of the board of directors is dependent upon relative political strength or on the relationship between different interests or interest groups which appear from articles of association, the constitutive documents, agreements or other circumstances; or

2. the articles of association or other equivalent provisions prescribe a qualified majority vote for the adoption of decisions by the board of directors.

An exemption to the first paragraph may only be granted if the inconvenience cannot otherwise be avoided. The exemption shall be combined with conditions concerning measures, which in some or other manner, satisfy the employees' interests in insight into, and influence over, the business of the Company.

Section 18.

The Board Representation Tribunal shall determine the issues arising pursuant to section 9, second paragraph, or exemptions pursuant to section 17.

The Tribunal may, until such time as final decision is reached, order that an employees' representative

Comments:

It is very unusual that the leadership of the company will try to use the legal aspects of this section. If they do or if they want to find another solution instead of Board representation they will take up the issue for negotiation with the local employee organisations for making other bodies for information and consultation.

Sometimes do we find such solutions, mostly in investments and holding Companies with a several different business areas, where most of the strategy discussions on the business development are handled by the local management. We will therefore not find any common interest by involved organisations for having employee representation in the investment or holding companies board.

The solutions, which appear in that situation, almost always extend the activities for co-determination at local level.

No Comments:

may not take up an appointment as board member or alternate.

No appeal shall lie from decisions of the tribunal.

Section 19.

In other respects, the provisions of the Labour Disputes (Judicial Procedure) Act (SFS 1974:371) shall apply with respect to proceedings concerning the application of this Act, to extend the dispute relates to the relationship between the Company and the employees.

Comments:

See the comments on section 16 regarding the procedure for handling disputes at the labour market.

Survey on Board representation

In the Comments to section 11 a survey from 1998 was mentioned. This survey was made on the 25th anniversary of the Board Representation Act. 326 Presidents of the Board, 422 Managing Directors, 405 employee representatives from LO and 433 employee representatives from PTK answered the survey.

The following figures are a short summary of the survey, which may be of interest.

Table 1. What is the general summary -positive or negative - of the company's experience with the employee representation on the board (question to Managing Directors (MD) and Presidents (P)).

	MD	P
Very positive	19%	23%
Positive	42%	46%
Neither positive or negative	30%	26%
Negative	8%	5%
Very negative	1%	-

Table 2. The Presidents and Managing Directors own experiences of the employee representatives participation in the Board.

	MD	P
They contribute to a positive climate for cooperation.	64%	61%
The understanding of the employees at the Company concerning decisions of the board have improved.	59%	65%
Difficult decisions are easier to carry out.	47%	55%
The disagreements in the Board can arise.	7%	6%
Its getting harder in the decision making process.	12%	13%
Too many issues of irrelevancy coming up.	17%	17%
The risk for leak on confidentiality will increase.	40%	37%

Table 3. Difficulties in the board work of representatives for LO and PTK.

	LO	PTK
The decisions are made outside the Board.	31%	21%
Not enough of time for preparation.	29%	23%
Time pressure during meetings.	18%	15%
Too many issues are complicated and difficult to understand.	16%	8%
Language problem when another language than Swedish is used in the meetings.	13%	6%
Have not received information they have asked for.	9%	4%

Table 4. Has the board representation got importance for other Trade Union activities at the workplace.

	LO	PTK
Very big importance.	21%	19%
Big importance.	44%	39%
Less importance.	20%	19%
No importance.	6%	11%

The survey also made the conclusion that the employee representatives were most active in discussions and decisions on the following issues:

- Human resources,
- Production,
- Reorganisation and,
- Work environment.

Training

The general training program for employee representatives are provided by the central organisations LO and PTK. The company pays the training during five independent weeks with studies at home during the training program. The program contains the following headlines:

- Week 1. The legal framework for the role as an employee representative. Responsibilities and authority.
- Week 2. Knowledge on accountancy principals and to make relevant analysis of this information.
- Week 3. Knowledge on the Company's strategically, budget, calculation methods.
- Week 4. Knowledge at the Company's crisis, investments and accusations.
- Week 5. Knowledge on the National economy principals as well the economical conditions in the Company in the procedure of decision making in the Board.

Final conclusion

It's very important to divide the activities between the Employment (Co-Determination in the Workplace) Act and the Act on Board Representation.

The Act on Board Representation with the Companies Act gives the regulation that the employee representatives together with the stockholders representatives always shall act in the best interests of the company's development as an assignment for their appointment.

The Co-determination Act together with the National Agreement on development at the workplace has the starting point of the situation that the employer and the Trade Unions are in opposite positions and different interests.

References

Makten över arbetsmarknaden, Svante Nycander, 2002

Anställdas representation i företagsstyrelser, LO, PTK, Arbetslivsinstitutet, 1999

Introduktion för Metalls ledamöter i bolagsstyrelser, 1999

Websites

Translated legal texts in English are available at

www.naring.regeringen.se/bestallning/arbetsliv/index.htm

25-year anniversary on board representation are available in Swedish at www.ptk.se