

# TMG Update

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## THE SHAPE OF THINGS TO COME? (Thoughts from recent engagements in Poland)

(by Thomas C. Grimes)

You might recall the famous quote of AFL-CIO President John Sweeney before the National Press Club in January 2006, in which he said that there is "...a corporate-driven strategy to compete in the global marketplace by degrading work and workers...we not only have to think outside the box of corporate control our nation has been trapped in... we have to get rid of the box." Thomas Friedman, in his now prophetic book, "The World is Flat" predicted that globalization was leading us into a world very different than the past, and we must adapt to survive and compete. Labor organizations in the U.S. have taken this admonition seriously, and many would argue that organized labor is attempting to change our labor laws and the role of unions into a "globalized" version which secures their place as formal, and powerful "social partners" in employment that represent all workers/employees.

The global model for such a change already exists in the United Nations (UN), European Union (EU) member states, and the European Trade Union Confederation (ETUC, an organization similar to our own ALF-CIO). Through the activities of the International Labor Organization (ILO), an agency of the United Nations comprised of labor organizations from around the world, there are formally adopted "standards" that include the rights of workers to freedom of association, collective bargaining, and broad "social" security and protection that are hauntingly familiar in the current "climate" of change to labor and social legislation. Such change is currently being promoted and sought by not only U.S. labor

organizations, but also supported by many political candidates during this election year.

It comes as no surprise to those of you who already have operations in Europe and elsewhere that unions often find it a great deal easier to represent workers abroad than unions do here in the U.S.A. However, the thought-provoking reality is that "abroad", even for those without international operations, seems to be getting closer to "home" than ever. While the effort to pass the Employee Free Choice Act (EFCA) and its "authorization card" certification of representation (see *TMG Newsletter, "Employee Free Choice Act", Vol. I, Issue 4, May 2007*) should already be on the minds of most executives and other management leaders, there may be many who have not yet appreciated the broad significance of what many believe is already happening. Some are asking themselves what the future might hold if the kind of labor and social reform suggested by the current climate of change comes to pass, and how even those first steps of change might open the door to a model of labor relations similar to those abroad, and at least for the present, in the European Union (EU). Since we have been most recently involved with clients in Poland, the representation process and social agenda of that country makes an appropriate example of just how far change might take us in the United States under an existing international/global model.

### Poland – Labor and Social Laws in Action

Poland formed a democracy with a

major rebellion against communist rule through efforts led by Lech Walesa of the trade union Solidarity with support from other Polish labor organizations. It has a strong recent history with the labor movement, and provides a good example for this article.

Poland's Constitution and government structure has collective representation and trade unions integrally woven into its language and governmental structure. The Constitution, among other things, guarantee individuals minimum standards in their right to: equal treatment for equal work; a minimum wage; annual paid holidays; social security and social benefits; establish and participate in a trade union; enter into a collective bargaining agreement; and strike. Some of these rights are established as minimum standards that an employer voluntarily, or through the negotiations process, can exceed but cannot reduce. There is also a distinction made between the private and public sectors for essential national services such as postal, mining, defense, police, etc.

Poland, with its Constitution, social principles, and influential labor movement is still developing, but is not significantly different from other EU members except that each member state has their own documented source of "citizen and worker" rights, labor representation process, and specific legal procedures.

For the moment, **consider yourself to be the individual most concerned about employee (worker)**

### **Relations in your company operating in Poland in the private sector.**

As it does elsewhere in the EU, the law regulates employment including an individual employment contract for each worker. There are also mandated minimum social, safety & health, dispute resolution, leaves, paid holidays, anti-discrimination, and other laws for individual protection. The employer is required to create and contribute to a “social fund” for its workers to provide both social opportunities and individual need assistance in case of hardship.

There are other provisions for a “Work Safety & Hygiene Committee” in your organization, and the debated, but likely to be enacted “work councils” that exist under EU membership standards to allow workers a voice and input to your operations and practices. There are legally established labor inspectors whether there is union representation in your company or not. In other words, a great deal of your wage, benefit, safety, health, employee relations, and working conditions are mandated by law rather than established by you or through a negotiations process – although your organization must do almost all of the funding.

Now turn your attention to **the matter of union representation**. In Poland, the “Trade Union Act” regulates all trade unions in their existence and operation. The administration of all labor laws are handled by the government through its Legislative branch for the laws, and, through the Judicial branch and its various courts, tribunals, State and/or “Voluntary Inspectors” (where a trade union represents workers), as well as a Labor Office for enforcement of the laws. The judicial system provides the process and recourse for either collective or individual employment issues. If you are faced with a **union “organizing campaign”**, you are surprised to learn that often only 10 workers at a company location are necessary to make a “declaration” of representation.

These declarations then must be reviewed and registered with the appropriate Provincial Court to be recognized as the collective representative of those workers, although, as you will learn later, the results of that representation will affect all of your workers. Fortunately, in Poland, you have some latitude in determining which managers and supervisors are excluded as “workers”, but in general principle, many that we consider to be “statutory supervisors” are included as workers for representation under their labor laws. The law states that admission to and resignation from a trade union by an employee is voluntary. The duty to recognize the union is mandatory for an employer once the validation and registration is completed. No secret or public ballot vote regarding representation is required – only the declarations, validation and registration by the Provincial Court. Multiple unions within a company can exist, and although the law is not especially clear about the process, multiple unions can come together as a group for “collective negotiations” under the process described below. A union can also bargain to exceed the provisions of another settlement you might have reached with a different trade union that affects your workers.

With relative ease in obtaining representation, you now wonder **what representation and union recognition mean** for you and your company. The union has legally gained certain rights of which you now must be aware. Employers are legally required to allow the Union to act “freely” within the enterprise, however there are not specific guidelines regarding what this requirement includes. Further, a worker who is designated as a union representative must be given paid leave time from work and logistical support to perform union related duties. Also, that worker/union representative is generally protected from termination without union permission during his or her tenure. Unions represent their members for collective issues, such

as pay and working conditions, during negotiations. Individual issues for members cannot be handled through negotiations but must be accomplished by providing assistance through the formal process for all workers through the employer and labor courts. Individual issues for non-represented workers would continue to be handled under Poland’s governmental structure in the same manner without trade union assistance. However, there are other forms of assistance available to a non-trade union represented worker who requests such help from the system or from an outside, non-trade union representative. In any event, trade unions must be advised of termination issues when they occur.

Of course, what would a labor relationship be without a **negotiations process and strikes**? In Poland, bargaining is regulated by the “Collective Bargaining Settlement Act.” Collective bargaining subjects include working conditions, wages, social benefits, as well as other employee rights and freedoms that are not typically well defined in the laws. Rather than specific topics of bargaining, an employer and a union may also enter into a general “Principles of Agreement” to govern their relationship. If you reach a settlement at any point during the negotiations process over specific bargaining topics, you are required to extend the full terms of that settlement to all employees, union represented or not, and, at all locations of the enterprise within Poland – not merely for the represented individuals at a specific location.

Negotiations over specific bargaining topics are triggered by a **“labor conflict notification”** from the union – and could occur annually when wages and benefits are to be considered. The District Labor Inspector must be officially notified of the labor conflict notification by the employer. You are free to accept

or reject the notification; however, a union is free to call a **two hour “warning strike” if the notification is rejected. If an agreement is reached, then the parties sign a “conciliation deed.” If an agreement cannot be reached, there is a mediation process** available to the parties in which the mediator is mutually agreed upon by the parties, or will be appointed by the Minister of Labor and Social Policy if no selection agreement is reached.

**If mediation fails, a formal “protocol of differences” must be issued and the union is free to call a general strike** with appropriate notifications. **Arbitration is the next and final option** available in the collective bargaining process, but can only be initiated by a union that has **not** called a strike. However, either party can decide not to use arbitration if it feels the process is not in its best interests. Nonetheless, **in order for arbitration to be binding, both parties must agree to be bound by the arbitrator’s decision before the proceedings begin.** An arbitrator is either mutually agreed to by both parties, or the Provincial or Polish Supreme Court appoints the arbitrator. **If the arbitrator’s decision is rejected by either party** when there is not an agreement to be bound by that decision, **the union is free to strike in an attempt to impose its demands, while the employer is free to implement its proposals.**

**In the event of a strike,** worker participation is voluntary and even members of the union cannot be forced to participate. If the union wishes to call a general strike, a majority of workers (union and non-union) at the enterprise location must vote to agree to strike, and at least 50% of all the workers at that location must participate in the vote in order for the strike to be considered legal under Polish law. However, there is no legally established voting procedure, and the union is generally free to determine how the vote will be conducted. Workers who participate in a legal strike remain workers employed by the

company and receive no wages if the employer chooses not to pay them. However, they do remain eligible for all of their social benefits (insurance and others) under the law. Workers who participate in any strike that is not legal could be fined by the government and/or disciplined up to and including termination by the employer. And as you would expect, non-striking workers continue to receive full pay and benefits. As you might not expect, however, it is a requirement under the law that the union’s “strike organizer” cooperate with management to protect the company’s fixed assets and the safety and health of all workers.

#### **An International Model for Change Here?**

By now, you might be telling yourself that you are glad you’re not in Poland, and that similar labor laws will never be acceptable here in the United States. However, return your thoughts to the U.S. “climate” of change that was mentioned earlier. Do you believe that things like the EFCA and other proposed changes in areas like health care and worker “social welfare” (think of the Family Medical Leave Act, for example) are similar to the social agenda of the UN, ILO, ETUC and EU? Let’s take a look at just a few examples of recent events that might make even the most casual observers of the labor movement in our country scratch their heads to answer that question.

The **multi-national retailer and supermarket chain, Tesco**, based in the United Kingdom (UK), recently decided to venture into select U.S. markets with a series of consumer friendly, “green” and convenient grocery stores called *Fresh & Easy*. As you would expect, large U.S. based grocery chains, including Wal-Mart, are reacting with competitive spirit to maintain their market share. However, in what could be an example of the future, is the reaction of organized labor to their venture. Even as the Company modestly staffed its first U.S. headquarters, pressure from organized labor in the UK regarding the Company’s position with regard to union recognition in the U.S. was

mounted.

Upon Tesco’s arrival in the U.S., the UFCW, with support from sympathetic local and regional political figures, community activists, and other allied labor organizations, immediately requested, then demanded a meeting to discuss the Company’s plans for the treatment of employees as well as the Tesco-USA position on union representation. The Company responded that any such meeting was ill-advised and premature without its own plans fully formulated, since not a single store was opened or retail employee hired, and that, in any event, it respected the legal right of its employees to choose under the existing labor laws of the U.S. As the Company’s plans began to develop and emerge, this same union, political figures, activist groups, and sympathetic journalists engaged in public efforts criticizing the Company in its refusal to meet. Soon, the union and its supporters started filing legal actions to block construction of the Company’s first distribution center, circulated flyers in communities with planned store locations claiming that the company in Europe was “lax” in selling alcohol to underage buyers, demonstrated at the Company’s “hiring fairs”, sought to “salt” the new employee workforce, and continued to instigate news articles demeaning and questioning the Company for its silence. In other words, there was an almost immediate escalation into a corporate campaign against Tesco. In the meantime, international trade union pressure in the UK continued along with a flow of information to the UFCW and its support group that was intended to support their corporate campaign effort. International cooperation to achieve global union goals will likely increase in both directions as U.S. companies expand to markets abroad.

Then there is the matter of **the Polish Union, August 80**, which

us an indication of the attitude and mentality of trade unions in other parts of the world—many of whom are the more recent allies of U.S. labor organizations as they gather at International Labor Organization Conferences. These are conferences that develop programs and cooperative relationships that could bring the United States more into line with the labor movement abroad. August 80 is another Polish trade union that popularly established itself and its aggressive reputation representing mine workers through its proactive role with Solidarity in bringing democracy to Poland. However, due to Poland's recent economic sluggishness and the limited market for new members in the mining industry (which is in the public sector), the Union recently decided to expand its membership and influence to manufacturing and retail employees in the private sector. Formerly aligned with Solidarity, August 80, now accuses that union of "populism" and describes it as no longer "a real trade union" (much like the unions that comprise the Change to Win Federation challenged the AFL-CIO and some of its members here in the States).

In a recent newspaper article (entitled "Are You Right, Mr. Chavez" written by journalist Rafal Kalukin and published on 7 April 2008 in the Polish national daily, *Gazeta Wyborcza*), **the current chairman of August 80, Boguslaw Ziętek, was quoted as saying,** "It is said that we want to hang capitalists. This is not true. We only want to rip them off...people are getting more and more aware that they are being exploited and do not want to live on crumbs from the master's table." Because the newspaper article also dug deeply into August 80's financial support, philosophy, and relationships, the admiration of Chairman Ziętek for Hugo Chavez, President of Venezuela, as well as his attitude toward democracy in the United States, was revealed. "This (Poland) is also a democracy, however different. I do not think that the

*USA, the country where people live in caravans and every tenth Black man is in prison, is a role-model of democracy."*

As a final example, there is a **recent decision by the ILO's Committee on Freedom of Association** in response to a complaint filed with that body by our very own AFL-CIO. The complaint was in reaction to the National Labor Relations Board (NLRB) *Oakwood Healthcare, Inc.* decision involving the statutory definition of supervisory status under our nation's National Labor Relations Act (NLRA), including what it means to "assign" other employees and responsibly "direct" others. The ILO ruled that the NLRB decision violated the ILO labor standard which states that all workers "without distinction whatsoever" have the right to join unions and that the NLRB ruling was in violation of its "principles of free association." In its decision, the ILO asks the U.S. government "to take all necessary steps in consultations with the social partners, to ensure that the exclusion that may be made of supervisory staff under the NLRA is limited to those workers genuinely representing the interests of employers." Furthermore, the ILO also requested that the U.S. government keep the ILO Committee "informed of progress made in this respect" and about "concerns raised by the complainant on the possible clogging of the representation and collective bargaining process through an increase in appeals filed (sic) by employers with a view to challenging the status of employees in bargaining units." Interestingly enough, the Bureau of National Affairs (BNA) reported that both the AFL-CIO and the U.S. Chamber of Commerce "laud" the ILO decision, with the AFL-CIO stating it was "comfortable" with that decision, and the Chamber further stating that it was "consistent with U.S. law." (Labor Relations Week, Vol. 22, No. 13, p. 435, 3-27-08) Do you think the U.S. Government (executive,

legislative, or judicial branches) should "take all the necessary steps" and keep the ILO "informed" about its actions regarding these or other U.S. labor law issues?

Don't be deceived into thinking that union leadership in the melding of ideas, philosophy and tactics are coming from just one direction. The labor movement abroad, especially in the EU, has adopted many social tactics and organizing philosophies developed here in the United States by our own "home grown" labor organizations. Women's issues, immigration, and corporate "greed", for example, are just several of the more recent issues being embraced by trade unions abroad that have borrowed U.S. union experiences and are now beginning to significantly impact businesses abroad. They are discovering new diversity and gender issues for their employee/worker relations agenda and its link to trade union organizing efforts. These companies are accused of being the "masters" that give workers only the "crumbs from their table" to live on. The "exchange process" is mutual, particularly between internationally cooperative labor organizations in certain regions of our world.

As labor unions on both sides of the Atlantic work together to assist each other, the tenor of U.S. labor unions and that of their European counterparts is more and more likely to mirror one another. And if that is the case, it appears more and more likely that European labor relations may represent THE SHAPE OF THINGS TO COME here in the U.S. The employee Free Choice Act (EFCA), the Family Medical Leave Act (FMLA), and universal health care may only be the beginning.

The Mickus Group has assisted many of its clients in their international operations regarding employee and labor relations