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JOB AND UNEMPLOYMENT SECURITY IN POLAND

Ludwik Florek*

INTRODUCTION

The restructuring of the Polish workforce is one of the most important and visible features of Poland's transformation from a centralized to a decentralized market economy. Change is needed from the previous economic structure and operative mechanisms of the Polish labor market under the communist state. The current problems in the Polish labor market can be attributed to several related factors. First, according to the ideological premises of a communist state, everyone should have a job.¹ Second, enterprises employed more workers than necessary under normal conditions due to low work efficiency, bad work organization, or poor technical equipment. Third, enterprises were not only unconcerned about reducing their workforce, they even tried to have a certain reserve of employees.²

As a result, the Polish economy, along with the economies of other Central and Eastern European countries, suffered from an artificial lack of manpower. Low worker discipline and large scale worker turnover or fluctuation were symptomatic of this problem. Accordingly, the communist labor market was in previous decades a vicious circle: low work efficiency required a large scale of employment and this excessive and superfluous employment resulted in low efficiency.

The introduction of economic reform, started in January 1990, has changed the labor market. State-run companies, which made up the majority of the Polish economy at the beginning of economic reform, have had to reduce their manpower.³ The manpower reductions were brought about by the economic reforms, privatization, and the sharp

* Professor of Law, University of Warsaw School of Law.

1. POLISH CONST. art. 68, para. 1 (guaranteeing the right to employment to all workers). Although there was full employment, a large "hidden unemployment" existed — some workers were neither skilled or effective enough for their job nor needed by the enterprises. Bartyzel, *Jobless Figures: Statistical Nightmare*, THE WARSAW VOICE, Jan. 5, 1992, available in LEXIS, Europe Library, AllEur File (reporting on problems in pinpointing accurate unemployment figures in Poland).

2. This reserve was useful in the event that additional tasks were imposed by a state plan or an administrative decision.

3. Bartyzel, *supra* note 1. State-run companies have turned to mass layoffs because they are unable to prevent serious declines in production. *Id.*

decline in production.⁴ Private enterprises, which employ few workers, have been unable to make up the difference.⁵

This Article addresses the state of unemployment and job security in Poland as it has developed since the inception of the economic reform in 1990. Part I analyzes the legal framework of job and unemployment security. This framework must meet the conflicting needs of business enterprises, which require the authority to reduce employment in an effort to survive the economic reform program, and workers, who require employment protection in order to survive the economic reform program. Part II addresses the effects of the economic transformation on the structure of Poland's workforce. The Article suggests that the government's inability to protect the interests of employers and employees simultaneously will create a situation where collective bargaining must play an increasingly important role. The Article concludes that the problem of unemployment will seriously threaten the success of the economic transformation and will cause a painful restructuring for the Polish workforce and economy.

II. THE LEGAL FRAMEWORK OF JOB AND UNEMPLOYMENT SECURITY

Polish law, like that of other continental European countries, has a statutory character. The legal framework of job and unemployment security, therefore, is based upon statutory acts passed by Parliament. The statutory framework of job and unemployment security exists in two parts. The first part provides individual protection pursuant to the employment contract. The second part protects against mass layoffs and unemployment.

A. INDIVIDUAL JOB AND UNEMPLOYMENT PROTECTION

Individual job and unemployment protection, developed mostly after World War II, was first provided for in the Labor Code of 1974.⁶ The Polish courts broadly interpreted many aspects of employment protection.⁷ This protection was weakened, however, when the last communist

4. *Id.* As compared to 1989, state revenues had decreased by 29% and production had fallen by 40%. *Id.*

5. *Number of Private Firms Increases: Economy Improves, KERM Report Finds*, 1 E. Eur. Rep. (BNA) 156 (Dec. 9, 1991) (discussing the recent history of private sector employment in Poland) [hereinafter *Private Firms*].

6. Labor Code Act of June 26, 1974, *Dziennik Ustaw*, No. 24, item 141 (1974).

7. See Szubert, *Protection Against Dismissal In Polish Labor Law*, *STUDIA IN HONOREM LADISLAI NAGY SEPTUAGENARII* 315 (1984) (discussing the development of requirements for the termination of employment). Under the Polish constitution, the

government tried to introduce reform to the economy and the labor market in 1989.⁸ This reform, continued by the current government, is necessary if Poland is to succeed in its transformation into a true market economy. Polish business, to be competitive in the capitalist markets, needs to relieve itself of communist era requirements that every individual have a job. At the same time, the government must protect those who will lose their jobs in the name of advancement toward capitalism.

1. *Justification for Termination*

The Labor Code provides broad protection against unjustified termination of employment on the initiative of the employer.⁹ An employer must have "just cause" to terminate an employee.¹⁰ What constitutes a valid termination of employment, in the case of a dispute, has been left to the discretion of a labor court because the Labor Code provides only a general definition of "just cause."¹¹ Valid reasons for dismissal are based upon either the capacity or conduct of the worker or the operational requirements of the enterprise.¹² To terminate an employee without notice, the dismissal must be based upon the worker's own fault¹³ or the worker must be absent from work for a justified reason (e.g. due to sickness) for a longer period of time than allowed under the Labor Code.¹⁴ In either case the employer must indicate the reason justifying the dismissal of the employee if the employee is a member of a trade union.

courts function only to interpret the law. POLISH CONST. art. 33a, para. 1. See e.g. Swiatkowski, *Current Developments in Labor Law and Labor Relations in Poland*, 12 COMP. LAB. L. 35, 40 (1990)(asserting that since Poland is a continental, civil law country, the judiciary simply analyzes and interprets legislation).

8. See Labor Code Amendment of April 7, 1989, *Dziennik Ustaw*, No. 20, item 107 (1987).

9. Swiatkowski, *Legal Protection Against Unjustified Termination of Individual Contract of Employment*, XIV/XV ARCHIVUM JURIDICUM CRACOVIENSE 141 (1981/1982) (examining the Polish Labor Code's procedural requirements for terminating an employee's contract, including the fault requirement).

10. Szubert, *supra* note 7, at 315.

11. *Id.*

12. *Id.* The courts, when contemplating dismissal, will consider the gravity of the worker's compensation, his length of service and previous performance, whether the incident was an isolated or recurrent one, and whether prior warning or other disciplinary action was taken. *Id.*

13. Swiatkowski, *supra* note 9, at 142-43.

14. See generally Salwa, *The Right to Work in the Polish People's Republic, POLAND AND THE NEW INTERNATIONAL DEMOCRATIC ORDER* 64-65 (1980) (offering a more detailed account of the Polish Labor Code).

2. Consultation of a Dismissal With a Trade Union

An employer has a duty to supply, in writing, the cause of an employee's termination to the employee's trade union.¹⁵ If the trade union considers the dismissal unjustified, it can submit its reservations within three days, in case of termination without notice, or five days, in case of termination with notice.¹⁶ The employer, however, is entitled to terminate employment despite the trade union's reservations.¹⁷

3. Judicial Control of Termination of Employment

If a worker believes his employment has been unjustly terminated, he may appeal the termination to the labor court.¹⁸ The labor court is empowered to examine the reasons given for the termination and other circumstances relating to the case and to render a decision as to whether the termination was justified.¹⁹ If the worker has been terminated in violation of the law, the worker is entitled to claim either reinstatement or compensation.²⁰ A worker selecting reinstatement is entitled to remuneration for the time he was not employed, subject to a specific limit depending upon the termination and the notice period.²¹

4. Special Protection of Certain Groups of Employees

Certain groups of workers are provided additional protection against dismissal consisting of restrictions on the right of the employer to terminate employment.²² For example, a worker shall not be terminated while: (1) on leave; (2) in military service; (3) absent for a certain period for any justified reason; or (4) within two years prior to retire-

15. Swiatkowski, *supra* note 7, at 53.

16. Dziennik Ustaw, No. 24, item 141, art. 38.3 (1974). If the trade union objects to a termination with notice, the enterprise's manager is obliged to submit the issue to the trade union federation of which the company trade union is a member, and the federation may take a stand on the issue within 5 days. *Id.*

17. M. MATEY, *LABOUR LAW AND INDUSTRIAL RELATIONS IN POLAND* 79 (1988).

18. Swiatkowski, *supra* note 7, at 36. Unlike the American system, under Polish law individual labor disputes cannot be settled by voluntary arbitration — only by labor courts (tribunals). *Id.* Mediation and arbitration can be only used for the settlement of collective labor disputes. See Act on the Settlement of Collective Labor Disputes of May 23, 1991, Dziennik Ustaw, No. 55, item 236 (1991), reprinted in *POLISH LAW ON RESOLVING COLLECTIVE BARGAINING DISPUTES OF 6/91*, DEP'T COMM., PUB. No. PB92-961007.

19. Swiatkowski, *supra* note 7, at 36.

20. M. MATEY, *supra* note 17, at 85.

21. *Id.*

22. *Id.* at 80.

ment.²³ A female worker shall not be terminated while pregnant, on maternity or child-rearing leave, or when her husband is in military service.²⁴ To terminate military disabled persons, members of a local government, or members of a worker's council, the employer must reach an agreement with an appropriate state organ.²⁵ If an employer violates any of these provisions, the worker has the right to claim either reinstatement or the payment of compensation.²⁶ These regulations do not apply to an enterprise upon liquidation or declaration of bankruptcy.²⁷

B. PROTECTION AGAINST MASS LAYOFFS

Until the end of 1989, Polish labor law did not provide any explicit mass layoff and unemployment regulations. Because widespread workforce reductions in many companies were anticipated, the reform legislation package voted by the Sejm (Polish Parliament) in 1989 included two acts intended to protect workers:²⁸ the Act on Dismissal for Reasons on the Employer's Side²⁹ and the Act on Employment (discussed *infra*).³⁰ The Act on Dismissal for Reasons on the Employer's Side provides for a substantial reduction in the worker's protection when dismissed on the employer's initiative. This was intended to support the process of restructuring the Polish workforce, indispensable for realistic economic reform. The Act defines a mass layoff, determines the employer's duties and states the benefits to be provided to the workers by the employer.

1. *What Constitutes a Mass Layoff*

There are two scenarios under which a mass layoff occurs. First, a mass layoff occurs when the workforce is reduced for economic reasons or due to organizational, production, or technological changes, including the situations where such changes are aimed at improvement of the

23. *Id.*

24. *Id.*

25. *Id.*

26. Swiatkowski, *supra* note 7, at 54.

27. M. MATEY, *supra* note 17, at 80.

28. Swiatkowski, *supra* note 7, at 54.

29. The Act of December 28, 1989 on Dismissal for Reason on the Employer's Side, Dziennik Ustaw, No. 4, item 19 (1989), *reprinted in* POLISH LAW GOVERNING THE TERMINATION OF THE LABOR RELATIONSHIP BETWEEN WORKERS AND THE WORKPLACE, DEP'T COMM., PUB. NO. PB91-961001.

30. The Act of December 28, 1989 on Employment, Dziennik Ustaw, No. 75, item 446 (1989), *reprinted in* Matey, *Poland*, 4 INTERNATIONAL ENCYCLOPEDIA FOR LABOR AND INDUSTRIAL RELATIONS 287-320 (R. Blanpain ed. 1990).

working conditions or the natural environment.³¹ Second, a mass layoff occurs if the mentioned changes result in the need to terminate, on one occasion or within a period of up to three months, the employment with a group of at least ten percent of the staff in a company employing up to 1,000 persons, or at least 100 persons in a company employing more than 1,000 persons.³² Bankruptcy or the total liquidation of a company would be regarded as a mass layoff.³³

2. *The Employer's Duties*

As in many other countries,³⁴ Polish law imposes upon the employer two duties in the case of a mass layoff. First, the employer must provide written notification to the workers' trade union organization forty-five days prior to the layoff.³⁵ The notification shall include the reasons for the planned layoff and the number of employees and professional groups to be dismissed.³⁶ The employer must then notify the local labor office of the anticipated mass layoff. The office will search for new jobs

31. Dziennik Ustaw, No. 4, item 19, art. 1.1 (1989). See also *Labor Market: Regulation on Mass Reductions*, POLISH PRESS AGENCY, Mar. 30, 1990, available in LEXIS, Europe Library, AllEur File (reviewing Polish regulations on mass layoffs)[hereinafter *Mass Reductions*].

32. Dziennik Ustaw, No. 4, item 19, art. 1.1 (1989).

33. *Id.* art. 1.2.

34. See WORKFORCE REDUCTIONS IN UNDERTAKINGS 6-11 (E. Yemin ed. 1982)(discussing various government and employer-employee initiatives for ebbing the adverse effects of large workforce reductions). In Canada, Japan, and throughout the European Community, procedures exist which require employers to give advance notice of workforce reductions to labor representatives and government officials. *Id.* at 6-7. By requiring prior notice, it is hoped that all the parties involved will seek out alternative proposals and measures for protecting the well-being of affected workers. *Id.* at 10. Notification requirements have not taken hold in the United States where such action is considered to be within the discretion of the employer. *Id.* at 7.

In the United States, Canada, and many European countries agreements exist which require an employer to notify union or labor officials of the introduction of new technologies into the production process. *Id.* at 10. It is believed that such notice gives advance warning of the large number of layoffs that usually follow such technological upgrading. *Id.*

35. Dziennik Ustaw, No. 4, item 19, art. 2.1 (1989). Poland's 45 day notice requirement appears to be more amenable to employers than similar laws of other European nations. In Great Britain, for example, the required notice period for collective redundancies of 100 or more employees is 90 days. See B. HEPPLER & S. FREDMAN, LABOR LAW AND INDUSTRIAL RELATIONS IN GREAT BRITAIN 168 (Kluwer ed. 1986)(discussing Great Britain's Employment Protection Act of 1975).

36. Dziennik Ustaw, No. 4, item 19, art. 2.1 (1989). Not later than 30 days after notification, or not later than 15 days prior to the layoff, the employer and the trade union should enter into written agreement on the reductions. *Id.* art. 4.1. The agreement relieves the employer of the obligation to consult each dismissal with the trade union. *Id.* art. 4.2. If the employer and the trade union cannot negotiate the agreement's content, the employer unilaterally defines regulations for reductions. *Id.* art. 4.3. In that case, however, the employer is obliged to take into account settlements with the

for dismissed workers.³⁷ The Minister of Labor, in consultation with the Minister of Finance, may suspend a mass layoff for a period of up to three months upon the recommendation of a labor office, an all-national trade union organization, or a national trade union.³⁸

3. *Benefits for Dismissed Employees*

The Act on Dismissal for Reasons on the Employer's Side also provides for benefits to which a dismissed employee is entitled. These benefits, however, are granted to all employees dismissed for economic reasons or in connection with organizational and technological changes, and not only to employees dismissed in a mass layoff.³⁹ Every dismissed employee has the right to severance pay⁴⁰ although employees who find a new job no longer have the right to a salary differential.⁴¹ In addition, an employer should re-employ an employee if he offers new employment to other workers from the same professional group and that employee states his intention to be re-employed within a year after being dismissed.⁴² When an enterprise is liquidated or declares bankruptcy, the employee can be terminated even without notice.⁴³ In such a case, however, an employee has the right to remuneration for a notice period, regardless of severance pay.⁴⁴

trade union made in the course of negotiating the agreement and to apply the above presented course of consulting dismissals. *Id.*

37. *Id.* art. 3.

38. *Id.* art. 15.1.

39. *Id.* arts. 8.1, 10.1.

40. *Id.* art. 8.1. Discharge money is calculated like vacation leave and paid in the following amounts: (1) one-months pay if an employee's total period of employment is under ten years; (2) two-months pay if an employee's total period of employment is ten or more years but less than 20; and (3) three-months pay if an employee's total period of employment is 20 or more years. *Mass Reductions, supra* note 31. The amount of discharge money paid by an enterprise dismissing an employee is dependent on the employee's entire period of employment, i.e. the period covering both his employment in the enterprise dismissing him and in all previous workplaces. *Id.*

41. Act on Changes of Acts Concerning Employment and Old-Age Pensions of February 15, 1992, *Dziennik Ustaw*, No. 21, item 84 (1992). A compensatory allowance used to be paid by an enterprise which employed a dismissed employee, if his remuneration in a new workplace is lower than the one received before his dismissal. *Dziennik Ustaw*, No. 4, item 19, art. 8.1 (1989).

42. *Dziennik Ustaw*, No. 4, item 19, art. 12 (1989).

43. *Liquidation in the Light of the Law*, POLISH PRESS AGENCY, Oct. 12, 1990, available in LEXIS, Europe Library, AllEur File.

44. See Amendment of Act on Dismissal for Reasons on the Employer's Side of August 24, 1991, *Dziennik Ustaw*, No. 83, item 372 (1991).

III. EFFECTS OF THE RESTRUCTURING OF THE WORKFORCE

A. INCREASING UNEMPLOYMENT

The most visible outcome of the restructuring of the workforce in Poland is unemployment. In December 1990, 1.2 million Polish workers were unemployed.⁴⁵ Mass layoffs accounted for thirty-seven percent of those unemployed.⁴⁶ By the end of 1991, unemployment figures jumped to 2.2 million, which constitutes eleven percent of the entire Polish workforce.⁴⁷ Although part of this unemployment is transitional and temporary, a large portion is structural, which means that many of those now unemployed will not find new jobs in the future.⁴⁸

B. MEASURES TO BE TAKEN TO DECREASE UNEMPLOYMENT

The Act on Employment, part of the reform package passed by the Sejm in 1989 to lessen the impact of anticipated unemployment, has been amended a number of times. The Act on Employment and Unemployment, which recently amended the Act on Employment, provides for unemployment benefits and labor exchange.⁴⁹ Labor exchange, which assists persons in finding an appropriate job and employing institutions in finding adequate workers, is carried out by labor offices free

45. *Business News From Poland*, POLISH PRESS AGENCY, Feb. 1, 1991, available in LEXIS, Nexis Library, Currrt File.

46. *Id.* The Polish Press Agency reports that of the 1.2 million Poles unemployed at the end of 1990, 418,000 lost their jobs as a result of mass layoff initiatives. *Id.*

47. *Report on the State of the Nation*, POLISH NEWS BULL., Feb. 12, 1992, available in LEXIS, Nexis Library, Currrt File. Reportedly, many of the Poles who registered as unemployed do have jobs but are illicitly supplementing their incomes with unemployment benefits. *Id.* In May 1991, the Polish Labor Minister, Michal Boni, estimated that of the 1.2 million unemployed persons, only 14% were victims of factory closings. *Eastern Europe; Better Sorry Than Safe*, THE ECONOMIST, May 4, 1991, at 51 [hereinafter *Better Sorry Than Safe*]. Another 40% are said to be school graduates or drop-outs. *Id.* He believes that many of these people are engaging in unregistered private economic activity while receiving unemployment benefits. *Id.*

48. *Areas Facing Threat of Structural Unemployment*, POLISH PRESS AGENCY, Dec. 7, 1990, available in, LEXIS, Europe Library, AllEur File. Recent school graduates are entitled to the same unemployment benefits as unemployed workers upon their graduation. Law on Changes to 1989 Employment Law, Dziennik Ustaw, No. 56, item 323, art. 1.5 (1990), reprinted in POLISH LAW ON CHANGES TO 1989 LAW ON EMPLOYMENT, DEP'T COMM., PUB. NO. PB91-96017. In the first six months after graduation, graduates from the highest school are entitled to benefits equaling 125% of minimum wage while graduates from vocational school receive benefits amounting to 110% of minimum wage. *Id.* After six months, all graduates receive benefits equaling 95% of minimum wage. *Id.*

49. The Act on Employment and Unemployment of October 16, 1991, Dziennik Ustaw, No. 106, item 457 (1991).

of charge.⁵⁰ In case it proves impossible to provide the unemployed with appropriate jobs, labor offices: (1) organize professional training or requalification of the unemployed; (2) grant and pay training benefits during that training or requalification,⁵¹ and finance those activities; (3) initiate the creation of additional jobs at employing institutions, and assist those institutions financially in this sphere; (4) initiate or organize, as well as finance, intervention works; and (5) grant loans for those unemployed who want to run their own business.⁵²

Although this law has been in effect for almost two years, its impact on unemployment has been minimal. The financial resources of the labor offices are very restricted and only limited numbers of unemployed have benefitted from labor exchange.⁵³ Thus, unemployment benefits play a central role in unemployment protection.

C. UNEMPLOYMENT BENEFITS

Unemployment benefits are available from the day of registration provided that no appropriate job, professional training, or requalification can be offered to the unemployed worker and the unemployed worker cannot be directed to intervention works or a specially created additional post.⁵⁴ The unemployed worker must have been employed at least 180 days over the past twelve months before the day of registra-

50. *Id.* art. 11. Labor exchange shall be based upon the following principles: (1) access to employment services for all persons looking for a job and for employing institutions; (2) discretionary use of employment services for both parties concerned; (3) equality, and it is the employment agencies' duty to render assistance to all persons looking for a job irrespective of their nationality, sex, religion, membership in political and social organizations, or any other circumstances; and (4) openness, all vacancies of which the agency has been informed should be made known to persons looking for a job. *Id.*

51. The training benefit shall amount to 80% of wages, and to 100% of wages for persons who lost the capability to perform their former job as a result of an accident at work or on the way to or from work, or an occupational disease. *Id.* art. 15. The benefit, however, shall not amount to less than 40 and not more than 110% of the average wages. *Id.* In January 1992, the average wage in Poland amounted to 2 million zlotys a month, which is the equivalent of approximately \$200. Myers, *Solidarity to Strike Against Price Hikes*, CHI. TRIB., Jan. 12, 1992, at 23. The training benefit shall amount to 115% of unemployment benefits. Dziennik Ustaw, No. 106, item 457, art. 15.1 (1991) amended by Dziennik Ustaw, No. 21, item 84, art. 4 (1992).

52. Dziennik Ustaw, No. 106, art. 13 (1991).

53. Bartyzel, *supra* note 1.

54. Dziennik Ustaw, No. 56, Item 323, art. 1.1 (1990). See also Urbaniak, *Employment Legislation: An Uphill Road*, POLISH NEWS BULL., Nov. 12, 1991, available in LEXIS, Europe Library, AllEur File (discussing the employment legislation passed to amend the Act on Employment). The unemployment benefits amount to 70% of wages during the first three months of unemployment, 50% of wages during the following six months, and 40% of wages after nine months of unemployment. *Better Sorry Than Safe*, *supra* note 47, at 51.

tion to be eligible for benefits.⁵⁵ In the early stages of implementation of the 1989 Act on Employment, the right to unemployment benefits was not dependent on preceding employment and many people who had never worked or who had worked unofficially were registered as unemployed and claimed unemployment benefits.⁵⁶ After the introduction of a required period of preceding employment, the number of persons entitled to these benefits dropped significantly.⁵⁷

The high level of unemployment has brought about economic difficulties for the Labor Fund,⁵⁸ which finances unemployment benefits. These difficulties have resulted in the imposition of a twelve month limitation on the drawing period for unemployment benefits.⁵⁹ After this period an unemployed person who does not have any other income can receive social welfare assistance.⁶⁰ An unemployed person shall be deprived of benefits if he: (1) fails to appear on the appointed day at the labor office, and cannot justify that failure; (2) declines, without justification, an offer of an appropriate job, professional training, or requalification necessary to find a job; (3) refuses, without justification, to perform intervention works; (4) earns in the last month more than the minimum wage; or (5) receives pecuniary allowances resulting from social insurance.⁶¹

D. ROLE OF COLLECTIVE BARGAINING

Job and unemployment protection has been regulated almost entirely by state legislation. Although it is a continental European tradition that job protection is shaped by the Parliament, it can be expected that the deregulation of Polish labor will encourage intensified collective

55. Dziennik Ustaw, No. 106, item 457, art. 20.1 (1991). Exceptions to the rule are provided for people who have lost their jobs as the result of mass lay-offs or have just completed their education or military service. *Id.*

56. *Id.*

57. *Macroeconomic Indicators*, WARSAW VOICE, Mar. 22, 1992, available in LEXIS, Europe Library, AllEur File (discussing the impact of the new employment law on the number of individuals filing for unemployment).

58. Bartyzel, *supra* note 1. The Labor Fund is funded by enterprises, which set aside 2% of their remuneration fund, and grants-in-aid from the central state budget. *Id.* Unemployment benefits cost the government over 10 billion zlotys (\$860,000) in 1991. *Joblessness May Threaten Economic Program, Report Says*, 2 E. Eur. Rep. (BNA) 124 (Feb. 17, 1992)[hereinafter *Joblessness*].

59. Dziennik Ustaw, No. 106, item 457, art. 21.2 (1991).

60. See Act of November 29, 1990 on Social Welfare, Dziennik Ustaw, No. 87, item 506, art. 31 (1990). The Act provides only for a periodic, not a permanent, social welfare benefit for persons who are not able to find a job. *Id.* In addition, unemployed persons can be provided with food and clothing, and their medical expenses can be covered as well. *Id.* arts. 13, 22.

61. Swiatkowski, *supra* note 7, at 60.

bargaining efforts in order to protect the rights and interests of the trade unions.⁶² For example, the criteria for the selection of persons to be affected by mass layoffs could be protected in collective bargaining because this area has not been regulated by statutory law. It is possible, however, that parties of collective bargaining will change or even diminish job protection in cases where it would be necessary to keep enterprises in good condition and to protect them from bankruptcy.

The future shape of job protection is strongly connected with the private sector of the economy. Most private enterprises, however, are very small⁶³ and the relationship between a small private employer and his employees is different from the relationship between the employees and management of a large state enterprise. For example, very often a small entrepreneur cannot afford to continue employing workers he does not need. Thus, the law conceived in the past for large state companies is inadequate for small enterprises. Polish law does not provide for special regulations in the field of job security for very small enterprises.

The future of job security also depends on the development of the trade union movement. Two years ago, at the beginning of a democratic era, the scale of unionization in state enterprises was very high.⁶⁴ The number of trade union members and trade union plant organizations has decreased since then. In the private sector virtually no trade unions have been established. Thus, it is unclear what the real position

62. See *id.* at 43 (discussing the role of collective bargaining agreements in establishing employment conditions). Swiatkowski points out, however, that under the Polish Labor Code, only wages and other select terms may be set through collective bargaining. *Id.* He argues that the scope of working conditions which are subject to collective bargaining must be expanded in order for such efforts to have any meaningful effect. *Id.* at 43-44.

Genuine collective bargaining also requires the development of independent trade unions. See Szubert, *New Trends in Polish Labor Relations*, 12 COMP. LAB. L. 62, 68 (1990) (noting that independent trade unions "pave[d] the way for the development of authentic collective agreements"). According to Szubert, the essential ingredient of union independence and bargaining leverage is the ability and right to strike. *Id.* at 66-67.

63. *Private Firms*, *supra* note 5, at 156. As of late 1991, 600,000 new private companies employed 1.6 million workers. *Id.*

64. Many of the unions were then dominated by the Communist Party. Cf. Dobbs, *Lines Drawn in Warsaw Labor Contest; Unions Vie for Allegiance of Warsaw Steelworkers; Rival Union Blocs Target Warsaw's Steelworkers; Unions Vie for Steelworker's Loyalty*, WASH. POST, Oct. 9, 1980, at A37 (reporting on Solidarity efforts to oust the communist controlled steelworker's union from the Warsaw steelworks). The large membership in these "official" unions may be explained, in part, by their authority to allocate social benefits among workers, and other perks such as time in union controlled holiday homes. *Id.*

of trade unions will be after the economy is privatized, especially in the case of newly created private enterprises.

CONCLUSION

In the future, unemployment and its protection will depend on the situation in the labor market, and in particular, the number of unemployed and the standing of the state budget which partly funds unemployment benefits. The transformation of the Polish economy, especially in the privatization of state-run enterprises and the growth of the private sector,⁶⁵ will be critical. The restructuring of the Polish workforce should be an integral part of the economic transformation in Poland.

This transformation is still in its early stages. So far, state enterprises have dismissed many workers and created very few new jobs.⁶⁶ Private enterprises, which currently employ fewer workers than the number dismissed from the state sector, will be the source of future employment. It is uncertain how long the economic transformation can be continued at this pace because growing unemployment is producing serious social tensions and becoming a dangerous political factor.⁶⁷

65. See generally Rapaczynski & Frydman, *Analysis of Privatization Program*, 2 SOVIET & E. EUR. L. 1 (Feb. 1991) (analyzing the plan to privatize Poland's 500 largest state enterprises); Rapaczynski & Frydman, *Poland: Privatizing Privatization*, 1 SOVIET & E. EUR. L. 1 (Oct. 1990) (discussing privatization in Poland); Soltysinski & Kawecki, *Privatization Laws Radically Change Ownership Structure in Poland*, 1 SOVIET & E. EUR. L. 3 (Sept. 1990). See also *Private Firms*, *supra* note 5, at 156 (discussing recent results in private sector expansion).

66. Cf. Bartyzel, *supra* note 1. Reportedly, in 1990 there existed 26 job offers for every one Polish worker. *Id.* In 1992, some 70 peoples fight for every employment opening. *Id.* At a recent job fair, 5,000 students applied for only 90 job offers. Bartyzel, *Job Hunters Fare Poorly*, THE WARSAW VOICE, Dec. 22, 1991, available in LEXIS, Europe Library, AllEur File.

67. Cf. Mrozinski, *Poles Vote Sunday as Walesa Warns of Communist Upsurge*, AGENCE FRANCE PRESSE, Oct. 28, 1991, available in LEXIS, Europe Library, AllEur File (reporting on efforts of the communist-led Alliance of the democratic Left to exploit the collapse of the Polish economy on the eve of Poland's first free elections since the end of World War II). Prior to the elections, stalwart communists launched a comeback campaign, blaming the recent political and economic reforms at the cause of skyrocketing unemployment, and the plunging standard of living. *Id.* As a result, the democratic union's 62 seats in parliament now share government power with the 61 seats held by the former communists. *Walesa Proposes Himself as Prime Minister*, AGENCE FRANCE PRESSE, Oct. 29, 1991, available in LEXIS, Europe Library, AllEur File.

Unemployment, projected to increase to 3.3 million workers by the end of 1992, is still a threat to the national economic program. *Joblessness*, *supra* note 58, at 124. Many Poles want social welfare benefit programs expanded, a move that would further burden the state budget and could threaten the economic reform program. *Discontent With Reform Results Running High Going Into Elections*, 1 E. Eur. Rep. (BNA) 11 (Oct. 28, 1991).

Special consideration must be given to the weak state of unemployment protection since the recent changes in legislation. Even if a large number of the unemployed have additional incomes, the remaining live in poverty.⁶⁸ As the economic transformation continues, the quick liquidation of the state sector brings about a sharp decline in budget incomes, resulting in a lack of money for unemployment and social security benefits.

The painful restructuring of the Polish workforce and economy is not assured of success. The problem of future job and unemployment security in Poland is a perplexing hurdle; because of these problems, it is difficult to make predictions concerning the development of job and unemployment security, not to mention the future of Poland itself.

68. *Joblessness*, *supra* note 58, at 124. Of the families affected by unemployment in 1991, 80% had incomes lower than \$70 per month and 52% had per capita incomes no higher than \$26 per month. *Id.* The average monthly wage in Poland is \$191. *Id.*