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Rasmus Hästbacka
Syndicalism With Extra Everything
How to Cut Through the Legal Thicket
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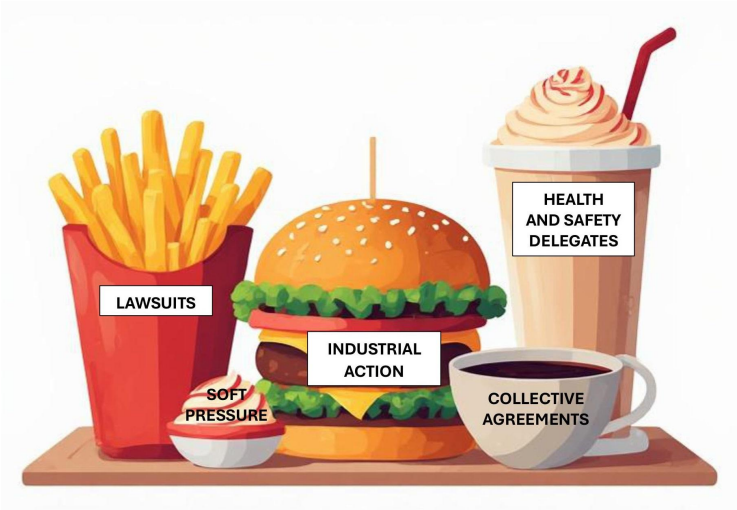
Syndicalism With Extra Everything

How to Cut Through the Legal Thicket

Rasmus Hästbacka



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cils in Swedish Corporations). He has been a member of the Umeå Local of SAC since 1997.

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FACTS ABOUT SAC

The Central Organization of Workers in Sweden (in Swedish: *Sveriges arbetares centralorganisation, SAC*) was founded in 1910. SAC is built on Locals open to workers in all industries, abbreviated LS.

At a workplace, several members form a section, a job branch. Several sections in the same industry in a locality form a syndicate, an industrial branch. All branches within an industry together form a nationwide federation.

Syndicalists build workplace sections with the aim of ultimately implementing workplace democracy. That is seen as the foundation for egalitarian societies, a libertarian socialism.

In the 1930s, SAC had nearly forty thousand members. Today, membership stands at just over three thousand but has grown in recent years.

Official website: www.sac.se

can always pay damages and ignore the court's decision (according to Section 39 of the Employment Protection act). Large sums of taxpayer money are spent on buying out union shop stewards and health and safety delegates.

Extra Everything

In the brutal labor market of today, we need a syndicalism with Extra Everything. More soft pressure as a prelude to industrial action! More lawsuits and wage-extraction blockades to recover unpaid wages! More industrial action that motivates employers to come to the bargaining table and reinstate our sacked fellow workers! More syndicalist collective agreements! And more health and safety delegates!

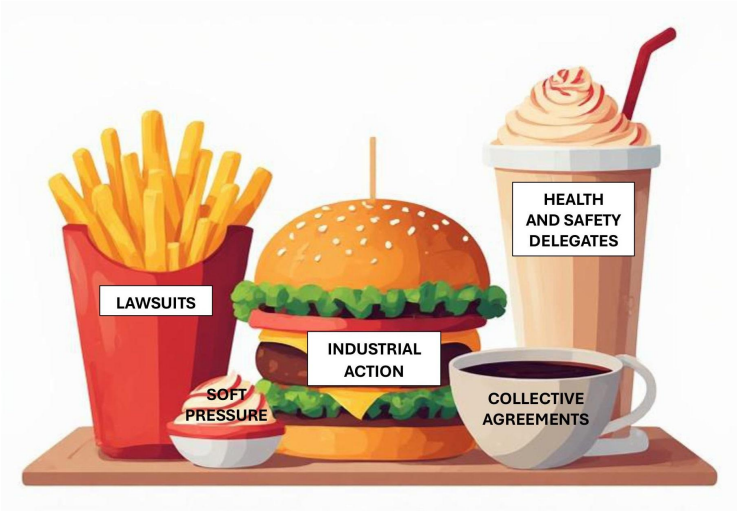
All of this presupposes more workers beginning to organize on the job. As lawyers, we can help by getting the legal tangle out of the way, so that workers can focus on organizing.

After all, the courts are an arena fundamentally rigged in favor of employers. At best, law can be used to defend current rights of workers, but not to push the frontline forward. It is on home ground that we move forward – in our own backyard, the workplaces.

Rasmus Hästbacka

This article was translated from the Swedish magazine Brand. The English version has been extended and modified for a wider audience. The Swedish article, in turn, is based on a more extensive education material.

Hästbacka is the author of the book Swedish syndicalism – An outline of its ideology and practice (available free online). In 2017 he completed a licentiate thesis in legal science entitled Europeiska företagsråd i svenska koncerner (European Works Coun-



When workers organize and fight for their interests, they often encounter a complex legal framework – not least rules restricting strikes, blockades and other forms of industrial action. "As lawyers, we can help by getting the legal tangle out of the way, so that workers can focus on organizing." This is how Rasmus Hästbacka, a lawyer at the Swedish union SAC, puts it. In today's brutal labor markets, he advocates syndicalism with "Extra Everything".

Even though workers are usually referred to in labor law as *the weaker party*, they are far from helpless. When workers come together in unions, they create the capacity to organize industrial action and win collective bargaining. When this happens on a broad front, unions become the vehicle through which the working class moves toward a brighter future.

Not even those workers who may appear the most vulnerable – migrant workers – are helpless. On the contrary, once the organizing gets going, they can become both an engine and a spearhead of class struggle.

In recent years, a small trade union in Sweden – the syndicalist union SAC, particularly its Stockholm Local – has distinguished itself by defending migrant workers against all kinds of crooks. A rambunctious Russian-speaking union shakes up Sweden's labor movement, writes the freelance journalist Volodya Vagner. In Jacobin Magazine, he urges Swedish unions to wake up to new forms of exploitation and points to syndicalist examples of direct action.

But then labor law enters the drama offering help on the way as well as pitfalls and roadblocks. In 2019, the Swedish parliament introduced an *anti-strike law*. The law was pushed through by the Social Democratic government with support from top leaders of the three big union confederations – LO, TCO and Saco. The law entails certain amendments to the Swedish Co-Determination Act (abbreviated MBL). This has turned MBL into a legal thicket, a miserable mess.

duty to bargain is forbidden, as it constitutes pressure in a legal dispute. Nevertheless, lawful industrial action in pursuit of a collective agreement can have the bonus effect of bringing employers to the bargaining table.

If a syndicalist union finds itself in the type-three situation (that is, the union is not bound by a collective agreement while the employer is bound by agreements with other unions), the union must first propose a collective agreement in negotiations. Once the employer rejects the proposal, the union may take industrial action. However, if the employer refuses to negotiate, industrial action may be taken even without prior negotiations.

In type-two situations, there are even greater possibilities to motivate employers to show up at the bargaining table. In such situations, the purpose of industrial action doesn't have to be the conclusion of a collective agreement. The union may take industrial action for almost any demand, which may also have the effect of bringing the counterparty to negotiations. It is only in type-one situations – when the union is a party to a collective agreement – that the industrial peace obligation is almost total (Section 41 of MBL).

A Brutal Labor Market

In recent years, the number of cases in which Swedish syndicalists have sued employers has increased dramatically. This is understandable, given how often employers refuse to pay wages and refuse to meet with unions in negotiations. Even supposedly serious employers in Sweden's public sector refuse to negotiate time and again.

Public sector employers are also quick to use taxpayer money to buy out workers, with or against the workers' will. How do employers do this? When Swedish workers are unlawfully dismissed and win their case in court, there is no guarantee that they will get their jobs back. The employer

problems in exchange for the union refraining from industrial action and from demanding a collective agreement. This offer was accepted. At the same time, the union retained the right to resume industrial action in pursuit of a collective agreement.

Industrial Action and Reinstatement

Swedish law provides for a specific kind of negotiation intended to function as private enforcement of labour law. This procedure is known as *tvisteförhandling*, which translates to *legal dispute negotiation*. When unions request such negotiations, they claim damages for the employer violating the law and demand that the counterparty comply with its legal obligations.

Industrial action to win a legal dispute negotiation is forbidden precisely because it amounts to exerting pressure in a *legal dispute* (Section 41e of MBL). As mentioned above, unions may not use industrial action to demand that employers comply with the Employment Protection Act. However, industrial action in *interest disputes* falls outside this prohibition. In such disputes, the union is not asserting a specific interpretation of law but simply asserting workers' interests.

For example, to push for the reinstatement of dismissed workers through industrial action constitutes pressure in an interest dispute (not pressure in a legal dispute). Such action is probably lawful when the employer isn't bound by any collective agreement – that is, the above-mentioned type-two situation. In this situation, the purpose of industrial action doesn't have to be the conclusion of a collective agreement.

Bringing the Employer to the Bargaining Table

Swedish employers often refuse to bargain. However, industrial action aimed at forcing employers to fulfil their legal

At this point, the MBL framework may be difficult to grasp, but workers shouldn't give up – for then employers have already won. Despite the anti-strike law, Swedish unions still have the right to launch so-called wage-extraction blockades to recover unpaid wages and take solidarity action in support of other workers. And this is just for starters – so join me for a closer analysis!

I will begin by discussing so-called soft pressure as a prelude to industrial action.

Soft Pressure

These are methods that don't count as industrial action (in legal terms) and therefore aren't covered by prohibitions against industrial action. This includes various forms of moral and psychological pressure, ranging from employees speaking with one voice to management at staff meetings to launching petitions and excluding bosses from workers' social gatherings.

Soft pressure shouldn't be underestimated. When employers aren't receptive to arguments and facts, soft pressure can sometimes work wonders – simply because it creates a very uncomfortable situation for bosses.

Soft pressure also functions as a kind of union strength training. When a group of co-workers have successfully carried out soft pressure, they are soon ready for industrial action. Perhaps slowdowns, maybe an overtime blockade, perhaps even a strike. Once management has experienced industrial action, soft pressure too tends to become a sharper weapon. Management then knows that soft pressure may be followed by something even more uncomfortable. At that point, it might very well be deemed best to meet the staff's demands.

Now, let's proceed to industrial action and the legal framework in Sweden.

Three Types of Situations

To get a clear picture of the MBL framework, we need to distinguish three types of situations. I start from the assumption that a syndicalist union wants to know if it has the right to take industrial action.

In the *first* type of situation, the syndicalist union is bound by a collective agreement (a union contract, as it's called in the U.S.). This entails an almost total ban on industrial action (under Section 41 of MBL). In other words, a no-strike clause automatically follows every collective agreement. This contrasts with U.S. labor law, which allows union contracts without such clauses.

In the *second* type of situation, the employer is not bound by any collective agreement at all. In this situation, it is permitted to take industrial action for almost any demand but forbidden to take action with the purpose of exerting pressure in a legal dispute (under Section 41e of MBL). For example, it's forbidden to respond to unlawful dismissals of workers with industrial action demanding that employers comply with the Swedish Employment Protection Act. Unions are expected to resolve legal disputes in negotiations and ultimately in court.

In the *third* type of situation, the syndicalist union is not bound by a collective agreement, while the employer is bound by agreements with other unions. In this situation, the purpose of the syndicalist union's industrial action must be to conclude a collective agreement (under Section 41d of MBL). For industrial action to be allowed, the union must first propose a collective agreement in negotiations and subsequently have that proposal rejected by the employer.

The mentioned ban on industrial action in legal disputes applies in all situations, not only type-two situations.

Exceptions to the Peace Obligation

In legal terms, when industrial action is prohibited, unions are said to be under an industrial peace obligation. In all three types of situations outlined above, there are exceptions to this obligation. I have already mentioned the two most important ones in Swedish labor law: wage-extraction blockades and solidarity actions.

In Sweden's private labor market sector, unions always have the right to take solidarity action in support of lawful industrial conflicts. In the public sector, however, restrictions apply to employees who exercise public authority, for example case officers in government agencies. These employees may (according to Section 23 of The Public Employment Act) participate in solidarity actions in support of conflicts solely within the public sector (not the private).

Now, given the rules governing the industrial peace obligation and its exceptions, what practical possibilities are at hand?

Flexible Syndicalists

As noted above, industrial action aimed at concluding a collective agreement is lawful in Sweden when a union finds itself in the type-three situation. Such actions can create many possibilities for resolving conflicts in the workplace. A real-life example involves a syndicalist union that demanded a collective agreement granting it the right to appoint health and safety delegates (in Swedish: *skyddsombud*).

The syndicalist union issued a notice of industrial action in support of this demand. The employer refused to conclude an agreement but offered to remedy certain work environment