

# Collective bargaining in the cultural sector

## The emergence of an institution

**Berend J. Langenberg\*** Collective labour agreements in the cultural sector are seen as peculiar, counter-productive and superfluous. So what's the explanation of the ever-increasing numbers of collective agreements that are presently being made? As member of an employers' delegation Berend J. Langenberg was at one time involved in wage negotiations in the theatre world. He has now investigated the problem stated above, studied the theory from a professional economist's point of view and in a critical manner examined and adapted the explanations that are generally given.

In the middle of a delicate take of the song *Maria* a functionary of the orchestra suddenly announces that the recording session of the musical *West Side Story* is over because of working time regulations. Composer and conductor Leonard Bernstein as well as singer José Carreras burst with anger. It is illustrative that they kept this incident in the film made of that recording: these regulations are discussed predominantly in a negative way. That's why it took the managers of subsidized orchestras in

the Netherlands 38 years to overcome their resistance to sign a collective agreement. At the beginning of the sixties the president of the employers organization in another branch of the arts, the Dutch theatre, formulated this remarkable attitude against labour agreements nicely as 'strong resistance against conforming to a general social pattern'.

The art worlds consider themselves as different. Yet there are agreements, in the Netherlands and abroad. Collective contracts in

the cultural sector in the Netherlands are relatively recent. The first collective agreements at industry level were for broadcasting (1955), cinemas (1963) and stage technicians (1964). After that, several agreements followed. At present there are nearly a dozen industry-wide collective labour agreements in the cultural sector and an unknown amount (but at least another dozen) company-wide contracts. So, notwithstanding a feeling of uneasiness, the habit of collective bargaining has gained ground.

### Collective bargaining and why it emerges

Essentially collective bargaining is the activity of an employer (or of representatives of organized employers) and representatives of organized employees through which they jointly determine wages and working conditions (Hamermesh and Rees 1993, 331). The change from individual bargaining to collective bargaining is expressed by Sidney and Beatrice Webb: 'In unorganized trades the individual workman, applying for a job, accepts or refuses the terms offered by an employer without communications with his fellow-workmen, and without any other consideration than the exigencies of his own position. For the sale of his labour he makes with his employer, a strictly individual bargain. But if a group of workmen work together, and send representatives to conduct the bargain on behalf of the whole body, the position is at once changed. Instead of the employer making separate contracts with isolated individuals, he meets with a collective will, and settles, in a single agreement, the principles upon which, for the time being, all workmen of a particular group, or class, or grade, will be engaged' (Webb and Webb 1902, 178, found in Pencavel 1991, 7).

The traditional economic description of what happens is the emergence of a bilateral monopoly (Pen 1950 and 1952): not only at the

supply side, as the Webbs explained, but also on the demand side, a single organization - the union respectively the employers organization - emerges which has the power to control all the supply respectively all the demand. This control has effects on the price (i.e. the wage) and costs. The effect on price/wage is the most well-known, a union is able to set a monopoly price above the competitive level: the surplus to be achieved. The effect on the costs for management, reducing of negotiation costs and reducing costs to find out workers median preferences (Booth 1995, 67/68), however, is of equal importance. Theory makes clear that the characteristic of this market structure is a contract zone instead of an equilibrium price/wage: there is not one optimum price but several wages that can be optimal, depending on the bargaining skills of both parties. This gives rise to game theories to explain the outcome of the negotiations within this contract zone. In economic terms this is called the efficient bargaining model (f.e. Oswald 1985, 169).

In the Netherlands collective bargaining has grown to be the dominant institution of the labour market. More than 70 per cent of all employees is covered by a collective labour agreement (Korver 1993, 396). In general, this makes collective bargaining a 'sine qua non' and discourages research in the few sectors of the economy where collective bargaining is not the rule. The cultural sector is one of those exceptions to the rule (f.e. IJdens 1992 a and b).

### The labour market in the cultural sector

The labour market in the sector of art and culture is characterized by some general traits that have been confirmed in several studies all over the western world (for an overview see Throsby 1994, 16-20 or Towse 1996):

- it is difficult to define what the cultural sector includes and who may be considered an artist;

- besides some groups of artists working as employees (mostly performing artists), the majority of artists is self-employed;
- many people in the sector hold more than one job, inside as well as outside the cultural field;
- there are high rates of unemployment;
- an individual worker's earnings are more variable across time, than income patterns in other sectors of society;
- there is a very skewed income-distribution among workers at a given point of time (a few workers, the stars, with a very high income and a vast majority with a very low income);
- the role of education is not as influential in the cultural sector as in other sectors.

The most important explanations of the last five points are: overly optimistic expectations on the part of youngsters concerning the potential for employment and income in art and culture (Menger 1989, Abbing 1989, Towse 1993), uncertainty of the production-process and environment (Menger 1989) and high costs to gain knowledge about who is talented and who is not (Adler 1985, Towse 1993).

IJdens (1992a) applies the typology of labour relations by Ten Have and Vissers (1987) fruitfully to the case of employer-employee relations in the cultural sector. The two criteria in this typology are autonomy in the work and investment by the employer in training of the employee. This results in a distinction in spotmarket relations (low autonomy, low intern training), professional relations (high autonomy, low intern training), bureaucratic relations (low autonomy, high intern training) and clan relations (high autonomy, high intern training). IJdens concludes that spotmarket and professional relations are the most relevant in the arts and culture. This explains in general the absence of regulations in the arts and culture. In this environment one would not

expect collective agreements. The star (with a professional relation towards her employer) does not accept a regulated income because she wants 'more than anyone else' (Towse 1993, V). The unknown (spotmarket relation) does look for regulations, but his employer does not: there are so many alternatives that the employer can take his pick. Every regulation is an annoying hindrance. In the words of Williamson about this market: 'management will normally resist efforts to unionize' (Williamson 1985, 272). For the union there is no surplus to be achieved by collective bargaining.

Contrary to these expectations a remarkable growth of collective bargaining in the arts and culture can be observed in the Netherlands.<sup>1</sup> This gave rise to an enquiry into the emergence of these bargaining-habits.

#### **The institutional approach for our enquiry**

A traditional economic approach combined with some new institutional insights provides an explanation for collective bargaining in general and for typical aspects of the labour market in the cultural sector but does not explain the increase of collective bargaining in the Netherlands. Korver's article of 1993, giving his view on the general labour market in the Netherlands gives a partial clue. He observes major steps in the semi-public sector (which includes the subsidized cultural sector) in the direction of establishing normal bargaining relationships, by which he means collective bargaining. But Korver does not explain why collective bargaining became established in the semi-public sector, let alone in the cultural sector; and this exactly is what we are looking for. Given the assumption that we can call collective bargaining an institution, the emergence of collective bargaining can be seen as a kind of institutional change for which we do not yet have a satisfactory explanation. Flanagan et al. (1993, 441) mention some reasons

as to why institutions in the labour market change. Often institutions emerge suddenly because of historical accidents. The authors also distinguish three different explanations as to why these institutions change more slowly over time:

1. Costs of change. Institutions will only be changed if the expected efficiency gains of the new institutions are large enough to offset the costs of change;
2. Market forces. Inefficient institutions can only survive in monopolistic situations protected from the forces of competition;
3. Public choice. Forceful pro-labour pressure groups can bring about institutions that protect the workers.

#### **The empirical research**

Collective bargaining requires at minimum a form of association on the side of employees to negotiate with the other side. The first unions in the arts in the Netherlands emerged at the end of the nineteenth century. It is broadly accepted that the ATV (Amsterdamsche Toonkunstenaars Vereniging i.e. the Association of Amsterdam Musicians) which was founded in 1894 was the first union of artists. Thereafter unions were founded in several sectors of the arts to realize improvement in working conditions. The statutes of these unions mentioned promoting material interests, and archives reveal ideals such as pensionfunds and strikefunds (Diepenbrock 1994, 15). In those days however this was not very remarkable: unionism was on the rise in all western societies. The really remarkable thing is, that these unions in the arts achieved hardly anything. Employers refused to negotiate in fact and could remain entrenched in that attitude. Even nationwide strikes by musicians and actors in the revolution year 1918 failed to bring employers to the negotiating table, let alone

succeed in reaching a collective agreement (Lelieveldt 1994, 37). In all accounts by various artists' representatives prior to World War II the *Leitmotiv* is this almost total lack of progress in the area of establishing collective bargaining. Some relatively established organizations as the City Theatre in Amsterdam had written contracts for artists (Vogel 1899). However, these contracts contained mainly duties for the worker and scarcely any rights. Moreover, and more salient to our enquiry - these rights were not subject to any form of negotiation. This 'take it or leave it' situation lasted until the first years after World War II.

The historical accident that gave rise to a change in the habits concerning collective bargaining in the arts was the German occupation. The nazis substantially increased the subsidy by the central government for the orchestras and theatre companies and realized a general wage scheme for the orchestra musicians comparable with Germany (Micheels 1993). Research in the archives of the subsequent period, in particular those of the Ministry of Social Affairs, reveals some remarkable facts about the long road to collective bargaining in the cultural sector.

#### **Orchestras**

After the liberation the Dutch central government sustained the increased budget for the arts as well as the general wage scheme for orchestra musicians, which gave rise to the idea that these wages should be negotiable by social partners. But negotiations were constantly evaded by the employers, the orchestras. In 1954, after a special request by the Dutch parliament, the important Labour Foundation (Stichting van de Arbeid) began an investigation to realize a collective labour agreement for the subsidized orchestras. This forced the orchestras to form the Association of Dutch Orchestras

(Contactorgaan Nederlandse Orkesten, CNO) in that same year. But all attempts to stimulate collective bargaining failed. In the meantime the government, or more precisely the Commission of State Mediators (Commissie van Rijksbemiddelaars), dictated yearly that the wage scheme be indexed on parity with wage hikes of civil servants - in accordance with a post-war proviso in the labour law allowing for unilateral wage setting by the mediators.

This one-sided dictate was abolished by the 1970 Act on Wage formation. It still took nearly two years before the social partners reached an agreement (October 1971). There was a severe lack in bargaining experience. From 1970 onwards, the Ministry of Social Affairs and the Labour Foundation insisted repeatedly on collective bargaining concerning not only wages but also other terms of employment. One can assemble a long list of letters to the social partners containing the same request: why was there not a collective labour agreement at industry level instead of merely following the government's central wage guidelines? After a long history of various attempts by the government as well as by the unions, the first collective agreement for all subsidized orchestras was finally signed in 1992.

Many confrontations, within CNO as well as between CNO and either the ministries or the unions in the period 1954 and 1992, show that for a long time employers had no need whatsoever for collective bargaining at industry level. As early as 1967, one of the representatives on the employers' side called his fifteen page account of all the failing negotiations since 1954 'a long, long way of the Cross'. It is striking that, until 1965, the CNO did not adopt a legal status which would enable them to even sign a collective agreement. When finally in 1966 the CNO revised its statutes so it became an official association, legally empowered to bargain collectively, any

decisions on contracts required unanimity, which made it almost impossible to make decisions on these matters.

In 1974/75 the CNO discussed extensively the functioning of the association. Many members doubted the ability to act as a real employers' organization, though the union was eager to have a reliable bargaining opponent. In 1977 the union changed its strategy and decided to negotiate with each orchestra separately. Talks between CNO and the union had failed to commit CNO members in any way and were vague and totally inconclusive. Not surprisingly, the spending department as well as the cities that co-subsidized these orchestras felt a strong need to control their budgets. Knowing that circa 80 per cent of the subsidy was spent on salaries, they were content to perpetuate the predictable general wage scheme which had been introduced by the Germans.

The real push for collective bargaining came from the Ministry of Social Affairs and was motivated by general concepts of social-economic policy: proper labour conditions in the private sector must be a result of collective bargaining between unions and one or more employers' organizations. Given the private status of the orchestras, direct (after 1970: indirect) government intervention in the area of labour relations had to be curtailed. Between 1984 and 1989, this concept was reiterated several times by the ILO (International Labour Organization) in regard to the entire semi-public sector in the Netherlands. The ILO based its judgement on generally accepted norms in labour relations: freedom of association and of collective bargaining.<sup>2</sup> Responding to the ILO, the central policy theme of the Ministry of Social Affairs in the nineties was to strengthen the responsibility of the subsidized employers so that they could not hide behind government agencies (SER 1992, 45). It can not be denied that

the pressure of unions and employers' organizations in the powerful semi-public sectors as health and social welfare played an important role in the attitude of this ministry. They informed ILO and hammered on the change towards freedom of collective bargaining. The cultural sector jumped on the band wagon.

The final step to a single collective labour agreement for all subsidized orchestras could only be realized with the help of a professional employers' organization in the market sector: the General Employers Association (Algemene Werkgevers-Vereniging, AW-V). Representatives of this organization with a great deal of bargaining experience finally concluded the negotiations in 1992 with an agreement for a one year term. The contract has since been renewed several times.

For the orchestras, the benefits of the change were potentially higher than the costs: during the 1980s each of eight orchestras were conducting individual negotiations with the unions. The archives of the Ministry of Social Affairs show that of these eight only two reached a certified collective agreement. The negotiators in the other orchestras were maddened by the bureaucracy and broke off talks.

### Theatre

The history of the emergence of collective bargaining in theatre provides another example of the influence of the above mentioned social-economic policy to establish proper labour relations. After the war a substantially higher level of central government spending on theatre introduced during the German occupation was sustained just as for the orchestras. However, the Germans failed to introduce a general wage scheme for actors as they had for musicians. The long struggle for generally accepted

regulations for working conditions in the theatre is equally remarkable.

The Actors Union was founded in 1945 (Nederlandse Vereniging van Toneelkunstenaars, NVT) and introduced in that very first year a draft for a general contract. But different companies rejected the draft proposal, in particular the proposed wage scheme. Not even repeated interventions by the central government convinced employers to adhere to general regulations on salaries though their so-called Coordination Office (de Toneelcoördinatie) had previously endorsed the scheme formally. This Office lacked the sanctions to hold the companies to their word. The unknown actors got less, better known actors got more than the regulation. In the second half of the 1950s, an intervention by the powerful Commission of State Mediators of the Ministry of Social Affairs, strongly influenced by the union and representatives of the spending department, forced the first obligatory general wage scheme for all subsidized theatre companies (1959). The union wrote that with this scheme for the first time the profession had achieved 'a place in society' and called it 'no less than a historical fact' (NVT Annual Report 1956-1959). Yet there was still no collective bargaining.

In subsequent years, civil servants of the Ministry of Social Affairs asked repeatedly for independent bargaining, just as they had in the case of the orchestras. They expressed reluctance to dictate obligatory regulations year after year.<sup>3</sup> The union launched extensive discussions on this bargaining issue (1961). The successful example of the stage technicians, who came to their first collective labour agreement in 1964, eventually convinced the actors that collective bargaining acknowledging the distinction between employers and employees could produce results that could not otherwise be achieved: subsidized wage increases,

vacation, pensions et cetera. Collective bargaining for actors became more or less institutionalized in the first half of the seventies.

The first formal collective labour agreement including actors was reached in 1977. However, the long periods from 1972-1977 and from 1986-1992 during which no new collective agreement was reached reveal a remarkably nonchalant attitude. It was only when extra subsidy could be acquired by re-negotiating the agreement that talks were held (for example when a public sector guideline was issued to boost employment by lowering of working time).

The conclusion is that partners (especially employers) are not very fond of collective bargaining. The real incentives for negotiating came from civil servants of the Ministry of Social Affairs and especially from remunerations from the central government for arrangements made by collective agreement.

### Dance

An even clearer example of this social-economic policy by 'seduction' can be seen in the subsidized dance sector. For a long time, even after the war, there was no regulation of terms of employment in the dance. The first humble steps by the union in the beginning of the 1960's failed because of the total absence of any cooperation between the dance companies' employers. And it takes two to tango. Reference to the wage schemes of the orchestra-musicians and the actors and technicians were not yet convincing enough in those days. The first successful steps were taken when an agreement held the promise of extra money. The first collective labour agreements were exclusively for the regulation of financing (via premiums paid by employer and employee) education and resettlement at the end of a dance career (1986) and a pension fund (1987). A collective agreement was the only legal way to arrange the

contributions by employees and employers for these funds. So the dance world was forced to establish an employers' organization (Directie Overleg Dansgezelschappen, DOD, unofficially started in 1982, officially founded for this first agreement in 1986) to come to agreements with the union.

The second case was extra government money for non-artistic and non-technical functions. The government acknowledged the need to improve working conditions for these functions but would only provide the extra subsidy on the condition a collective labour agreement was established.<sup>4</sup> This seduction led to the first full blown collective labour agreement of 1991.

The third case concerned extra government funding to improve dancers' wages. Here too, the condition for extra funding was to bring the dancers' wages under the above mentioned collective agreement.<sup>5</sup> Social partners were forced to bargain over these wages and other terms of employment before they got the money. This led with some other adjustments to the second collective labour agreement in 1993, which now covered all functions of the ten subsidized dance companies. The combined reward in these last two cases was Dfl. 1,4 + Dfl. 6,6 = ± Dfl. 8 million yearly extra, which is about 13 per cent of the total budget of these dance companies. For the dance world changing to collective bargaining was a matter of costs and revenue.

### Museums

The last case study of the emergence of collective bargaining in the cultural sector is of a somewhat different nature: the state subsidized museums. The difference here is that 21 of the 23 museums subjected to the current collective labour agreement were totally state-owned until 1994. The personnel belonged legally to the Civil Service, which implied that

all terms of employment were decided upon by the Ministry of Home Affairs. As a result, flexibility in personnel management was low (Vollebergh en Laan, 1995). As part of a remarkable privatization program of the Dutch central government these museums became private foundations. An important restriction was that the collections as well as the buildings remained state-owned. Only the organizations became private, but this meant that the terms of employment for the staff were no longer dictated by the Ministry.

In the Act concerning the reform, Parliament ordered that the terms of employment in the new situation would generally not be worse than before.<sup>6</sup> Government urged the newly founded Association of State Museums (Vereniging van Rijksge subsidieerde Museum-instellingen, VRM) to negotiate a collective labour agreement which would guarantee this condition (see the so called Guideline that was ordered by the Ministry in February 1992 alongside the Act). As long as the unions were not certain of the outcomes of the agreement they refused to sign and the reform could not be implemented: a perfect power-position. The final emergence of the first collective agreement (1995) was hardly the result of bargaining. It was more a result of a condition dictated by Parliament. But in the near future this agreement will make collective bargaining necessary when adjustments in terms of employment become necessary. So the principal-agent arguments brought in for the whole reform, i.e. a more responsible role for the agent c.q. the museum are also applicable to managing labour relations. Separate negotiations for the museum branch make it easier to tailor a collective agreement to the specific needs of museums. (Ministry of Welfare, Health and Culture 1994, 47) But this does not seem to be the whole explanation.

It is typical for our argument that

government saw a collective labour agreement not only as an efficient solution for the request for flexible personnel management in the future but also as a proper and controllable solution to fulfil the task of Parliament: the guarantee for at least the same terms of employment as before.

### Analysis

We are confronted with a remarkable growth of collective bargaining in the cultural sector since the beginning of the sixties. Arguments from the principal-agent theory - which stresses a greater responsibility for the subsidized agent to realize certain goals - are applicable to the museum case as well as to other cases. This greater responsibility could also include bargaining on terms of employment to achieve the best fit for the organization. But this is not the whole story.

Our case studies reveal government intervention in the labour market of the cultural sector inspired by conventions about socially acceptable labour relations. To begin with, the German occupation introduced the development of the central governments' responsibility for improving wages in the arts. After the war the well-known Dutch government policy of strictly-guiding wages after consultation with central employers' organizations and union confederations (1945-1962) spilled over into the cultural sector where wage regulations were also imposed. When, after 1962, government policy advocated withdrawing from general wage determination, the Ministry of Social Affairs pushed even more strongly for collective bargaining in the cultural sector. Despite their urging, there was no incentive for social partners in the arts to react to this push. The orthodox economic explanation for collective bargaining works here: there was no surplus to be achieved. In the seventies there was much discussion on the

topic of the role of the three actors in labour relations in the subsidized cultural sector: central government, union and employers. The period of the so called 'tripartite' negotiations (1979-1984) was not very fruitful because of an attitude of hiding behind each others' backs. Responsibilities became clearer with the new law on labour conditions in the semi-public sector (WAGGS 1985) and the repeal of the whole law in 1995 as a result of ILO interference induced by unions and employers' organizations in the semi-public sector.

The new attitude of central government towards the semi-public sector concerning labour relations stressed firstly the freedom of collective bargaining as a fundamental right and secondly the joint responsibility of employers' organizations and unions to realize 'normal' terms of employment (SER 1992, 17 en 18). The explanation as to why the prevailing institution of collective bargaining was copied in the semi-public sector and even in the heterodox cultural sector seems to lie in the widely accepted ideologically conventions about proper labour relations (ILO: freedom of collective bargaining, see: Plessen 1996, 361). This coincides with the importance neo-institutionalists give to institutions as 'norms' or 'people doing' (Neale 1988) as an explanation of revealed economic activities.

In the commercial sector collective bargaining has transformed through continuity from an instrument for efficient outcomes for both parties into an institution: 'something valued as such and for its own sake' (Korver 1993). This institution was transferred to sectors where out of pure efficiency this kind of bargaining would not have been expected. This transfer was inspired mostly by 'good manners' in labour policy: wages and other labour conditions ought to be a result of collective bargaining. This new policy attitude, however, was only adopted in the cultural sector when

the requested 'good habits' of collective bargaining were rewarded with a 'good sense' economic surplus: rewards in extra subsidy for negotiating collectively on working hours, pensions, vocational training, et cetera.

### Conclusions

Of the reasons Flanagan cs suggest for the change or the emergence of this institution - a historical event - had some influence: the German occupation set a tone for the central government to assume responsibility for better labour conditions in the arts. The main explanations however have to be found in slow changes over time after the war. Market forces are not very convincing causes here. Public choice and costs of change emerge as the more important explanations. Public choice because of forceful pro-labour pressure groups in the health and in the social welfare sectors. Their lobby had side effects in the cultural sector. The costs of change are an explanation for the changed attitude in the sector itself. Government only realized the changed bargaining-habits when it rewarded the partners financially.

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### Notes

1. For a list of these agreements see appendix 1. In Great Britain and the USA collective labour agreements have a much longer history, especially in the performing arts, caused by the closed shop system (for USA see: Moskw 1966). In Germany there is also a longer history, but here the workers are civil servants (f.e. Towse 1993, App. 3)
2. For example: Reports of the Committee of Experts on the Application of Conventions and Recommendations at the International Labour Conference 70th Session 1984 as well as 76th Session 1989. Both Report III (Part 4A). For a detailed analysis of the ILO enquiries: Plessen 1996.
3. See f.e. the letter of the Commission to the union 14.4.1961.
4. Dfl. 1,4 million on a yearly base. See: *DOD Annual Report 1990-1991*, 6.
5. Dfl. 6,6 million on a yearly base. See: *DOD Annual Report 1992-1993*, 5. Dfl. 1,6 million of this Dfl. 6,6 million was labeled for the ad hoc dance projects and passed on to the Performing arts Fund (Fonds voor de Podiumkunsten).
6. Act 24th June 1993. See: *Staatsblad*, 1993, no. 398, art. 5.4.

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6. Cao gesubsidieerd toneel (subsidized theatre)
7. Cao orkesten (orchestras)
8. Cao mime (mime)
9. Cao dans (dance)
10. Cao verzelfstandigde rijksmusea (privatized musea that used to be owned by central government).

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#### Appendix 1

Collective labour agreements at industry level in the cultural sector in the Netherlands (summer 1996)

1. Cao omroeperspersoneel (employees in broadcasting)
2. Cao bioscoopbedrijf (cinema)
3. Cao openbare bibliotheken (public libraries)
4. Cao kunstzinnige vorming (art training)
5. Cao podiumkunsten TV (performing arts/television)