LANDLORD AND TENANT RELATIONS IN SWEDEN
A CASE OF COLLECTIVE BARGAINING

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Collective bargaining between landlords' and tenants' associations over rents and other conditions of tenancy has become very widespread in Sweden. The preconditions for collective bargaining, however, differ from those in the labour market in two important respects—the collective bargaining takes place without access to economic sanctions, and there is a certain degree of public control over rents and other conditions of tenancy. An Act on collective bargaining over conditions of tenancy has recently been passed in Sweden (the Tenancy Bargaining Act 1978).[1] In this paper the development leading to the establishment of a collective bargaining system in this area will be described, together with the system adopted by the new Act.

In most western European countries there are strong organizations on the labour market, and the pattern of their development has been, on the whole, uniform. The industrial revolution meant the abolition of the old regulation system,[2] which, in turn, led to a transition to free contracts of labour for the workers. In order to counteract the domination of the employers the workers organized themselves into unions. Thus they could utilize the strength of the collective. The right to strike and to bargain collectively was recognized. At the same time workers organized themselves into political parties for the protection of their political interests. In many countries, as in Sweden, the employers formed associations of their own. The result was a thoroughly organized labour market —collective bargaining becoming the most important way of establishing wages and other conditions of employment.

No similar development has taken place in landlord and tenant relations. There are tenants' associations in many countries—there is even an international organization, the International Union of Tenants (IUT)—but they are far weaker than the labour unions. Sweden appears to be the only country where there is a tenants' association with a strength not unlike that of the labour unions.

One may point to many factors contributing to this situation. The labour movement has not become involved in matters of housing to the same

[1] *Hyresförhandlingslagen*—a strict translation of the Swedish name of the Act is the Tenancy Bargaining Act.

[2] F. Schmidt, *The Law of Labour Relations in Sweden*, Uppsala 1962, pp. 14–21.

extent as in matters on the labour market. Tenants do not regard themselves as a collective in the same way as do workers. There is in no way the same sense of solidarity in a block of flats as on a shop floor. To many tenants tenancy is no permanent solution. The dream of one's own home is far more realistic than the dream of becoming one's own master. Tenants also look upon themselves as consumers. Even if they are exploited they do not produce any surplus value. According to marxist theory it is the production of a surplus value which constitutes the basis for the workers' claim to ownership of the means of production. Another important factor is the difficulty in using the obvious weapon of the collective group—the strike—in a landlord–tenant relationship. There is a notion of mutual obligations in a contractual relationship—if the workers strike they do not get their wages. A rent strike in a landlord–tenant relationship would mean that the tenants would lose their right to live in the dwelling—at least temporarily. A rent strike with mass evictions as a consequence is socially unacceptable.

Housing policy has become a matter for political decision-makers rather than for organizations of tenants and landlords. Indeed, housing constitutes one of the most thoroughly regulated areas of the law. There are rules for the environment (planning, building, health and welfare), price control, purchase control, control of financing, subsidies, and, of course, a great number of rules for the protection of the tenant, such as rent control, tenants' protection, rules on the duties of the landlord with regard to the standard of the dwelling, etc. This regulation is so complete that there would seem to be little room left for any activity on the part of organizations.

Nevertheless, in Sweden there are strong organizations on both sides. In order to understand this, one has to consider the development from an historical viewpoint. To a foreign observer, the tradition of organization in Sweden is a striking feature. The Swedes seems to form organizations for most purposes and to trust the organizations with important problems. Indeed there is a strong collectivist tradition which has given rise to all kinds of organizations. Some of them act as pressure groups with the primary task of promoting the interests of the group by means of propaganda and lobbying. Some engage in economic bargaining with organizations on the opposite side. Other organizations deal with matters of internal interest to the group such as the coordination and restriction of competition. One particularly fascinating example is the organizational structure of the farmers. The farmers have political representation through the Centre Party in Sweden. They lobby and negotiate with the government over subsidies and food prices. For this they have another

organization, the National Farmers' Union. Finally they have a group of all-embracing producers' cooperatives which own dairy plants, flour mills, slaughter houses, etc.

On the housing market the landlords' associations are by far the oldest. The house property owners' association in Stockholm, which is still the largest landlords' association in Sweden, was founded as early as 1870, well before any labour union. A top organization for landlords (the Swedish House Property Owners' Association) was founded in 1916–18. These organizations started out as pressure groups. Their primary task was to deal with matters of planning legislation as well as to deal with internal affairs. The attention of the landlords' associations did not turn to tenants before the end of the first world war, when the tenants started to organize. In 1917 a tenants' association was founded in Stockholm and in 1923 the present top organization—*Hyresgästernas riksförbund* (the Tenants' National Association)—was formed. At the outset the National Association was quite small—representing 12 associations with some 8 000 members. The tenants' organizations have always had close ties with the Social Democratic Party of Sweden, and, indeed, the tenants' association in Stockholm was formed on the initiative of the Stockholm branch of the Party. Since then, the leaders of the National Association have all been active social democrats.

The tenant movement has always been divided into a militant and a conservative faction. However, in spite of this, the primary task for the movement at the outset was to act as a pressure group in relation to the government. Rent control and tenants' protection were the overriding goals, whilst, at the same time, the movement agitated for increased building in order to reduce the shortage of housing. The tenant movement also took initiatives of its own. In particular, building cooperatives were seen as a means of providing members with good housing on reasonable terms. Thus, in 1923 the tenants' association in Stockholm formed a Tenants' Savings and Building Association—a cooperative with the purpose of building and providing housing for the members. Soon other associations were formed and in 1926 the HSB, the National Association of Tenants' Savings and Building Associations, was formed. Now the HSB dominates cooperative building in Sweden.

The militant faction attempted to solve the problem of high rents by invoking the same methods as the workers had used against employers with such great success. Rent strikes, blockades and picketing against landlords became common during the 1920s.

During the depression in the late 1920s and the early 1930s, the conflict between the landlords and the tenants became acute. Rent strikes became

more frequent, and in 1933 and 1936 there were big organized rent strikes in Gothenburg. These strikes proved effective because of their sheer size and because the transport workers refused to assist the authorities in evictions. Here it is interesting to see that the strikes led to negotiations and agreements between the organizations on the housing market. This was unprecedented. In addition, during the 1936 strike the government also appointed a mediation commission. The subsequent agreement contained provisions for "housing peace" and the setting up of a joint negotiating committee.

The unrest on the housing market caused the landlords' associations to create defensive organizations, and funds were established to provide support for landlords in case of conflict. However, no central defensive organization was created.

The disturbances were also noted by the Social Democratic government, and in 1939 a statute on Mediation in Housing Disputes was enacted. In many respects this Act bore a close resemblance to the then existing Act on Mediation in Labour Disputes of 1920.

Several factors thus seemed to point to a development similar to that on the labour market, with bargaining organizations on both sides. It might also have been possible to develop a system of economic sanctions. Any such system, however, presupposes freedom of contract to a considerable extent. The organizations on both sides must be in a position to bargain over the most important terms of the contract between landlord and tenant. The introduction of a rigid rent control in 1942 combined with tenant protection changed the situation drastically. Depression in building necessitated the introduction of rent control intended to contain the soaring rents caused by the housing shortage.

The Rent Control Act left very little room for agreements between organizations or between landlord and tenant. With only a slight exaggeration it might be said that estimates regarding the price for heating were all that was left for the parties to bargain over.

Rent control also changed the goals and tasks of the organizations. Now the most important task was to assist members in the handling of disputes and to deal with other matters under the Rent Control Act. At the same time the organizations were given a role in the administration of the system through representation on the newly created control tribunals and in the Rent Control Agency—the body which supervised the activities of the rent control tribunals. This Agency also had the task of proposing rent increases to the government.

Contact between the organizations became more frequent as a result of the cooperation within the rent control tribunals and the Rent Control

Agency, as well, naturally, as through the organizations' representation of their members in disputes. Consequently, rent control had the effect of cementing the position of the organizations, and of initiating negotiations between them within the framework of rent control. Paradoxically, one might say that rent control favoured the growth of a collective system, since the most controversial questions were taken out of the firing line. It was easier for the organizations to agree about minor matters than about matters of great economic importance. Thus, in this context, since it was obvious that an agreement on the method of estimating the price for heating was desirable, such an agreement was soon reached. However, the parties—the private landlords and the tenants—were unable to reach agreement until 1964 on the actual rent increases which the Rent Control Agency was to propose to the government.

Rent control, which had been in force since 1942, was abolished in stages. This was the starting point for cooperation between the public utility housing enterprises and the tenants' associations. During the 1930s the authorities, as a measure in combating the shortage of housing, began to encourage the communes (towns and cities) to build and administer housing of their own. The communes set up enterprises—companies or foundations—in which they commanded a majority on the board of directors. These enterprises were entitled to government-subsidized loans for building and administering housing. The public utility housing enterprises took a positive view in relation to cooperation with the tenants' associations—with political considerations playing a significant part in the development of this attitude.

When rent control was abolished in 1958 for houses built and managed by public utility enterprises, the SABO (Swedish Public Utility Housing Enterprises—the association of the public utility housing enterprises) and the Tenants' National Association were able to agree on a recommendation to member enterprises and associations to adopt a procedural agreement, in accordance with which disputes between landlords and tenants over rents and other conditions of tenancy were to be negotiated by the landlord and the local association of tenants. These negotiations could be continued between the central organizations. It is noteworthy that negotiations could take place over rents—for this procedural agreement opened the way for collective agreements on rents, so that very soon an advanced system for collective bargaining over rents was brought into existence.

For privately owned houses, rent control continued to exist. The Rent Control Act of 1942 was prolonged on several occasions, a practice which gave rise to considerable political disagreement between the opposition and the governing party. However, when the time came for prolongation

in 1968, the government decided that the time was ripe to give the organizations a decisive influence over the administration of rent control. A degree of freedom of contract was introduced, and it was foreseen that such a system could no longer be administered by the rent control tribunals exclusively, particularly since tenants had a right to file complaints with the tribunals even in relation to rents which they had agreed upon. In the eyes of the government, it seemed a better solution to allow negotiations between the landlord or his organization and the tenants' association to precede disputes coming before the rent control tribunals. If the negotiations led to a collective agreement, this was to apply. The rent control tribunal retained power to set aside the agreement only if the rent fixed there was clearly unfair. A landlord was thus forbidden to demand a rent increase without an agreement between himself or his organization and the tenants' association. If there was no collective agreement, the landlord could turn to the rent control tribunal and ask for an increase. However, with this system the Tenants' National Association was given a monopoly of bargaining over rents within the rent control area, since, in order to bargain, a local association of tenants had to belong to a confederation having nation-wide coverage, and the National Association is the only organization with such a coverage.

This development of legislation had thus created a propitious basis for cooperation between the parties on the housing market and the organizations continued to grow. Practically all public utility housing enterprises now belong to the SABO and, at least in the big cities, the organizational density of private houseowners is high—over 70 per cent. Surprisingly enough, organizational density is higher amongst landlords. The Tenants' National Association has about 600 000 members. This means that approximately one quarter of all flat dwellers in Sweden are organized. It should be noted here that more than half of all flats in Sweden are owned and managed by public utility housing enterprises. Public utility housing is also growing much faster than private housing.

During the final years of rent control, the organizations managed, in the overwhelming majority of cases, to reach agreement on rent increases and other conditions. In this situation, too, the tenants' associations began to favour the abolition of rent control for those areas still governed by the old law. The negotiating system in the domain of public utility housing, coupled with a system for judicial review of unfair demands for rent increases, was considered adequate. Later on rent control was abolished in the privately-owned sector, too. At the same time a negotiating system similar to that in the public utility housing sector was introduced.

The answer to the question, why collective solutions work in Sweden in

spite of the difficulties connected with collectivization in the housing market, is twofold. First, there exists a system of organizations which creates a predisposition for collectivization. This part of the answer has already been dealt with. The other part is linked with the construction of the voluntary system of negotiations which the parties have developed.

The crux of the system is that the Rent Act (*hyreslagen*) which regulates the conditions of renting flats is in many respects mandatory in favour of the tenant. As a matter of principle, all disputes can be taken to court—a civil court of law or a Rent Tribunal similar to the rent control tribunal. This also holds true with regard to disputes over interests. The basic rule is that unfair contract terms are not allowed—a rule which affects prolongation of leases and covers the rent as well as other conditions of tenancy. As a rule, in Sweden, a contract for a lease runs for one year, with a three-month period of notice.

According to sec. 48 of the Rent Act, the rent is to be fixed at a reasonable level when the lease is prolonged. The rent which the landlord demands will be granted if it is not unfair, but the rent demanded is to be considered unfair if it is "tangibly" higher than the rent for dwellings which are considered to be equal with regard to their occupational value for the tenant.

This means that a comparison is to be made with the rent for other dwellings in the same town or city, which from the viewpoint of the average tenant are comparable (equivalent), i.e. have the same or equivalent size, standard, location, etc. Furthermore, when the comparison is made, particular regard is to be paid to the rent for dwellings owned or managed by public utility housing enterprises. These enterprises thus become price leaders. The reason for this is that the public utility housing enterprises apply a non-profit-making system. Thus, in the private sector a rent level is tolerated which does not "tangibly" exceed the public utility housing price level. In simplified terms, it may be said that the difference tolerated is 5 per cent.

With regard to other conditions of tenancy, sec. 48 provides that any clause demanded by the landlord shall be upheld so long as it is not contrary to good practice in tenancy relations or otherwise unfair.

It will be obvious to the reader that the transition from the rent control system to the system of the Rent Act has meant in effect a transition from a rigid system of public control to another, less rigid system.

It was of primary importance in the voluntary system that a procedural agreement—a contract—be valid between the collective parties and that the procedural agreement should give both of them the right to call for negotiations on rents and other conditions of tenancy. The negotiations

were in the first instance to take place between the local association of tenants and the landlord. If these parties failed to reach an agreement, the negotiations could be continued on a central level, i.e. between the national associations on each side. In accordance with the procedural agreements in force, national standing negotiating committees had been set up—one for each of the sectors.[3] The standing negotiating committee had authority to issue a recommendation for a certain solution which the parties on the local level could accept or disregard.

Thus the voluntary system before the introduction of the present Act presupposed that agreements between the organizations could be reached. If the parties did not come to an agreement, the judicial system was to apply. Disputes over rent and other conditions of tenancy could be taken to the rent tribunals, which treated these as individual disputes and not as collective ones. One may say that if the collective system did not lead to an agreement, disputes were tried as though the collective system did not exist. If, however, the collective parties succeeded in reaching an agreement, the individual tenant still had the right to call for a review of the agreement. Under the voluntary system he had to wait until the period of notice to terminate the lease had come to an end. This did not actually mean that there was a termination, since the tenant had the right to notify the landlord of amendments to the lease without terminating. However, under the voluntary system this could take some time—usually between six and nine months—during which period the conditions fixed by the collective agreements would be in force.

At this point, it is important to note another difference from the collective systems of the labour market. In labour law, the binding force of the collective agreement is usually based on membership of the contracting organization. Another common solution—which is sometimes applied simultaneously with that just mentioned—is to impose an obligation on the employer vis-à-vis the contracting organization to apply the terms of the agreement to individual contracts of employment, irrespective of membership.

In the Swedish law of landlord and tenant another solution has been chosen: the individual tenant becomes bound by a collective agreement because of the incorporation of a "bargaining clause" (*förhandlingsklausul*) in the lease. According to the provisions of the Rent Act in force before the present Tenancy Bargaining Act, a "bargaining clause" was a clause in the

[3] There are several sectors involved. Thus there is one standing committee for the public enterprise sector, one for the private sector, one for housing owned and managed by industry, one for the communes and one for tenant-owners' societies.

individual contract—the lease—under which the rent was to be settled by agreement between the landlord, or the landlord and his organization, on the one hand, and the tenants' association, on the other. Now, other types of "bargaining clauses" are used—and these will be discussed later in this paper.

This meant that tenants were bound by the collective agreement as a function of the "bargaining clause". A "bargaining clause" could, and can, be inserted into the lease independently of the tenant's being a member of the tenants' association. It should, however, be noted that the landlord is not obliged to request the insertion of such clauses in contracts with tenants—and there has never been any provision to this effect in any collective agreement between the landlords and the tenants' association. It is a matter solely between the landlord and the individual tenant. Naturally, most landlords are anxious to have such clause inserted, since that it is advantageous to them in a number of ways. Furthermore, according to the rules of the Rent Act in force before July 1, 1978, a dispute between the landlord and the tenant on the insertion of a "bargaining clause" was to be treated according to the provisions of sec. 48 of the Act. Therefore, if the landlord requested that such a clause be inserted, his request would be granted if it was not considered contrary to good practice or otherwise unfair to the tenant.

What then is the reason for the spread of the voluntary system of collective bargaining? One can point to a number of interrelated factors. From the viewpoint of the landlords, the main advantages of the system are that it is less expensive than a system of individual negotiations and that it is efficient. The system applicable in a non-collective relationship presupposes that the landlord shall give notice of termination to the tenants if he wants changes in the contracts—for example, an increase in rent. The total cost is approximately 60 Sw. crowns per tenant (including the cost of notification through a servant of the court). In a non-collective system there are a number of tenants who wish to negotiate their terms with the landlord themselves. Such negotiations are not inexpensive. Furthermore, there are the additional costs of defending cases where tenants take their complaints to the rent tribunal. This they can do without risking either the loss of the lease or having to pay the costs of the proceedings. In cases before rent tribunals and before the Housing Court, which is the forum of appeal, each of the parties bears his own costs. The same principle is applied in all administrative courts—as noted below the rent tribunal is an agency rather than a court.

It has also been mentioned earlier that the public utility housing enterprises are for political reasons anxious to have friendly relations with the

tenants' associations. Among the public utility housing enterprises there is no independent owner's group. On the contrary, indeed, these enterprises are interested in the tenants exercising as much control as possible. The only obvious ownership interest is to cover costs in order to avoid a depletion of capital investments.

Tenants have a primary interest in keeping rents down, an interest which is best looked after by an organization which commands adequate expertise in the area. There are two points to be made here. When bargaining with the price-leading public utility housing enterprise, which is governed by a non-profit-making principle, the tenants' association can call for a full account of the expenses and needs of the enterprise. The bargaining will be concerned with the need for the enterprise to make rent increases in order to cover various costs. During the subsequent stages of bargaining the amount needed to cover these costs will be distributed as rent increases for the various houses and flats belonging to the enterprise. Many of the public utility housing enterprises apply an advanced system of rent distribution very similar to the systems for job evaluation used in the labour market. The fact that the public utility enterprises act as price leaders in the market gives this kind of bargaining a strategic importance, although this may be less important to the individual tenant.

The bargaining conducted by the tenants' associations with the private landlords has other goals. It aims primarily at applying whatever rule in the Rent Act for fixing rents is most advantageous to the individual tenant, which means that a comparison between the rents for public utility housing and the rents for privately-owned housing has to be made. The outcome of the bargaining is largely governed by what the parties consider would be the probable result of a case brought before a rent tribunal, so that it is in effect a matter of applying rules of law.

For the individual tenant, however, it is extremely difficult to conduct such negotiations. They presuppose access to adequate material for comparison of rent levels—and, particularly with regard to public utility housing, a thorough knowledge of rent levels and structures is necessary, and, if the bargaining fails, the individual tenant will be expected to present such material to the rent tribunal as evidence. Obviously, it will often be difficult for an individual to obtain the material and make use of it. The landlord, on the other hand, will find this considerably easier, particularly if the landlord is an enterprise of some size. However, for a tenants' association such matters do not constitute a great problem, and the association can bargain with the landlord on an equal footing.

To summarize: The success of the organizations on the housing market depends to a great extent on the fact that they act as effective parties to bargaining. They administer the rules in a way that is advantageous to both

sides, and they act as representatives of the parties in disputes, giving legal aid and advice.

Furthermore, many tenants are interested in an increased degree of influence over their conditions of tenancy as well as in the conditions connected with the management of the property. On their own, they are hardly in a position to exercise any considerable degree of influence; "housing democracy" presupposes collective action. The tenants' associations provide the most important channelling of such efforts. At present, experiments in co-determination and even self-determination for tenants are conducted mainly within the public utility housing sector. At the time of writing, a recommendation to member enterprises and associations is in preparation by the Swedish Public Utility Housing Enterprises and the Tenants' National Association. Negotiations over the recommendations are conducted on the basis of a draft from the Tenants' National Association which to a significant extent utilizes labour-law techniques employed in the Swedish Act on the Joint Regulation of Working Life.[4]

It will be clear from the foregoing discussion that the Swedish legislator has given support in various ways to organizational activity on the housing market. The activity of the organizations has appeared praiseworthy for political as well as for practical reasons. This development took place mainly during the period of Social Democratic government, 1932–76. The legislator consequently proceeded to support the organizational activities. It was thought that the voluntary system of negotiations should be strengthened and given a wider scope and, with the task of preparing a draft statute along these lines, a government committee was appointed in 1973. However, it was the non-socialist coalition government (1976–78) which introduced a Bill on the subject in Parliament. The fact that the Bill was presented by a non-socialist government has certainly affected the drafting on many points, but it was nevertheless passed without much disagreement from the Social Democratic opposition.

The new Act—the Act on Collective Bargaining in Tenancy Relations, here referred to as the Tenancy Bargaining Act—is based on the voluntary system of bargaining in existence before the Act, which has been described earlier. It introduces, however, several important changes in that system.

The system under the Act is based on the following contractual elements:

— procedural collective agreement
— substantive collective agreement
— "bargaining clause"
— individual contract (lease)

[4] An English translation of the Act is to be found in F. Schmidt, *Law and Industrial Relations in Sweden*, Stockholm 1977, pp. 234–46.

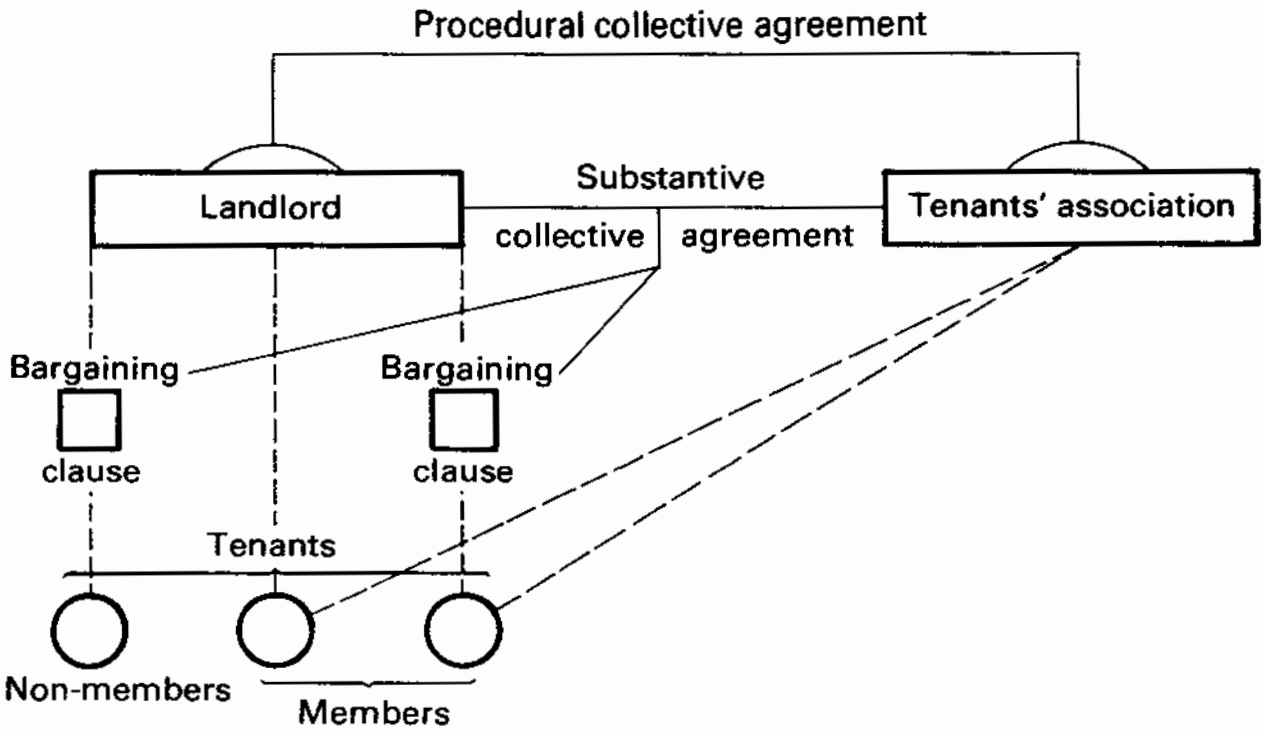

Fig. 1 shows the interconnection of these elements.

The Act is not based on a general right to negotiate and bargain, i.e. there is no duty to bargain unless there is an agreement to that effect. Thus, the Act presupposes the existence of a procedural collective agreement between the parties conferring upon the parties a right of negotiation (and bargaining) over rents and other conditions of tenancy.[5] The existence of a procedural agreement is also a precondition for the making of substantive collective agreements which have normative effect. Collective agreements reached outside bargaining conducted under a procedural agreement are made void by the Act. The implication of this is that tenants are not bound by such agreements.

The procedural collective agreement has a mandatory content. The landlord is always under a duty to bargain with the contracting tenants' association over increases in rents—a so-called primary duty to bargain. If the landlord fails to bargain, increases in rents cannot be made and individual contracts with the tenants are null and void. Nor can the landlord appear before the rent tribunal with his requests. The failure to bargain constitutes a procedural bar, with the result that the rent tribunal is not permitted to hear the case. Furthermore, the landlord will have to pay damages to the tenants' association if he fails to bargain.

[5] A. Victorin, *Hyresförhandlingslagen*, Stockholm 1978, p. 18.

Unless the parties stipulate otherwise in the procedural agreement, such an agreement includes a right for the parties to call for nzgotiations over

- the rent and other conditions of tenancy
- the condition (state) of the dwellings and the building
- common utilities in the building
- other conditions of residence to the extent that they concern the tenants in common

Finally, the procedural agreement gives the tenants' association the right to call for negotiations with the landlord over matters of dispute concerning the application of provisions in individual contracts. A precondition for this is, however, that a provision to that effect has been inserted into the procedural collective agreement and that the tenant has given the association a power of attorney to negotiate with the landlord.

The procedural collective agreement gives the parties the right to bargain and negotiate for all flats in one or several houses unless certain flats have been expressly excluded. This means that negotiations may take place regardless of whether the individual tenant is a member of the tenants' association. Negotiations also take place independently of whether a "bargaining clause" has been incorporated into the lease. The fact that in the absence of such a clause the individual tenant will not be bound by an agreement is quite another matter. The rules on the procedural collective agreement give the contracting tenants' association an exclusive right of representation on the collective level. This means that other associations are excluded from the right to sign procedural collective agreements for the same set of houses so long as an agreement is in force. This, of course, gives rise to particular problems as regards which organization is to be granted the procedural agreement. It also entails problems with regard to discrimination against non-member tenants. In order to give the system of negotiations and bargaining a broader scope, the Tenancy Bargaining Act introduces a right for each side to reach a procedural collective agreement by means of a decision by the rent tribunal notwithstanding the refusal of the other party. This means that a court will make a contract at the request of one of the parties, and a procedural collective agreement brought about in this way will have the content discussed above. It is stressed in the Act that the landlord must give good reasons to show why the application of the tenants' association for a procedural agreement should not be granted.

On the basis of the procedural collective agreements, negotiations and bargaining over substantive matters are carried on according to rules which correspond almost completely to the rules of labour law obtaining in Sweden. There are rules concerning the request to negotiate, the time

within which negotiations are to commence, and the contents of the duty to negotiate.

The parties are under no obligation to reach an agreement during the negotiations. Nor are they obliged to execute a written document concerning an agreement. However, if they want an agreement to be lawful according to the rules of the Tenancy Bargaining Act, they have to reduce it to writing. Where a procedural agreement exists, substantive collective agreements can be made on all matters covered by the procedural agreement.

The primary effect of a substantive collective agreement is that the agreement, through the "bargaining clauses" entailed by it, can be applied in relation to individual tenants without the landlord having to give formal notice of termination and wait for the lease to expire. The Tenancy Bargaining Act has retained the previously mentioned system of "bargaining clauses", which means that the insertion of a "bargaining clause" is wholly a matter between landlord and tenant.

The definition of a "bargaining clause" differs somewhat from the definition in the Rent Act mentioned before. According to the Tenancy Bargaining Act, a bargaining clause is a provision in a lease according to which the tenant agrees that the provisions concerning rent and other conditions of tenancy of a substantivehcollective agreement, based on a procedural agreement established in accordance with the Tenancy Bargaining Act, may be applied against him without notice of termination of, or alteration to, the lease.

It should be noted that under this definition of a "bargaining clause" only the tenant is bound by the provisions of the substantive collective agreement. The substantive collective agreement does not become part of the lease and therefore the tenant cannot claim that the landlord is bound by virtue of it. Evidently the landlord is under no obligation to apply the provisions of the collective agreement to the lease. This seems rather lopsided—one might have expected the parties to the lease to be mutually bound. There is, however, nothing in the Act which prohibits the use of a "bargaining clause" making the obligations mutual, and, indeed, such a "bargaining clause" has been recommended for the private housing sector by the organizations on both sides.

As will be discussed later, however, the Act does make the landlord bound by the substantive collective agreement in some respects.

From a legal viewpoint it is odd that a substantive collective agreement has legal effects only for the relationship between landlord and tenant. In the contractual relationship between the parties to a substantive collective agreement there are in practice no legal effects, since the agreement is not

sanctioned in an effective way. Although damages may theoretically be awarded for economic loss, no such economic loss will in practice be suffered in the relationship between the landlord and the tenants' association. The Act does not make provision for compensation for loss of a "moral" nature, i.e. infringement of the interest enjoyed by a party to a contract in carrying on his activities undisturbed, a type of damages, known as "general damages", which plays an important role in Swedish labour law.

Why then has the legislator chosen not to make the substantive collective agreement binding for the relationship between the contracting parties? In adopting such a solution the legislator has deviated from a fundamental principle in Swedish labour law, that of allowing collective agreements to take legal effect primarily between the contracting parties. They are the ones who administer the agreement and it is they who are primarily responsible for its implementation.

The question just posed can be answered in two different ways. First, the parties on the housing market are not used to the sanction of damages in their internal relationship and they have not wanted such a sanction to be introduced. The parties have feared that the introduction of damages will make it more difficult to reach substantive collective agreements within the framework of the procedural collective agreement. There is a good deal of common sense in this. Since the party making demands—as a rule the tenants' association—is not in a position to resort to economic actions against its counterparty in order to force it to accept the demands or even to force it to bargain, any factor which would make the counterparty unwilling to reach an agreement is to be avoided. Furthermore, the voluntary bargaining systems in force have been very effective. Almost invariably recommendations issued by the central organizations have been followed. Even if the substantive collective agreements are regarded as gentlemen's agreements, the internal activity of the organizations guarantees that those agreements will be honoured. The alternative—a situation without even procedural agreements—seems so unattractive that the parties are anxious to maintain the precious balance in their relations. One may say that the threat of cooperation coming to an end is the best sanction. In the present author's view, this line of reasoning shows that in many areas where organizations are active there is no need for legal sanctions. The parties want their conflicts to be settled—by themselves or by an impartial umpire—and nothing else. This should also be the case in labour law. The author submits that the present use in Swedish labour law of stiff damages of a punitive character is unfortunate.

Secondly, the Act itself, through the provision on the primary duty to

negotiate, does give legal sanction to substantive collective agreements on the most important point, the rent. If a landlord should consider requesting a higher rent than is provided for in the collective agreement, he has to negotiate. Should he fail to do so, he will be liable in damages—in this case "general damages"—to the organization. In relation to the individual tenant a contract in conflict with the collective agreement is null and void.

Nevertheless, the system devised by the Act is incomplete. Because of the solution chosen—the agreement is made binding on the individual level by virtue of a bargaining clause—other difficulties arise. The bargaining clause covers *rent and other conditions of lease.* Even if the bargaining clause were mutually binding and the tenants were entitled to invoke the collective agreement and claim damages and specific performance, the coverage of the bargaining clause means that the rights of the tenants are restricted to such provisions in the substantive collective agreements as can be regarded as rent or other conditions of lease. This also emerges from the fact that the right of the individual tenant to bring a case to the rent tribunal for a review of the collective agreement is restricted to that part of the collective agreement which concerns him exclusively. Under these assumptions a breach of a clause in a collective agreement concerning common interests may in many cases fall outside the scope of the tenant's right to claim damages or specific performance. In many instances, the borderline between what is to be considered part of the lease and what is not is somewhat blurred.

It is logical that the individual tenant should have influence only over provisions in the collective agreement which affect him personally. The construction of the Act, in making the collective agreement binding only on the level of the lease, means that the "collective" part of substantive collective agreements falls outside all legal sanctions. It is deplorable that agreements concerning, *inter alia,* co-determination for tenants in collective forms are only voluntary undertakings on the part of the landlord—they cannot be imposed on the landlord either by economic actions or through a decision by the rent tribunal. In addition, they are unsanctioned—neither the association nor the tenant can bring a claim to court or before a rent tribunal for breach of the collective agreement.

None the less, there is currently great interest in "housing democracy" and a rapid development is taking place. This, however, almost exclusively concerns the public utility housing sector.

The rules relating to two other important issues also make it clear that the centre of gravity in the system of thehTenancy Bargaining Act is the individual contract—the lease. These are the rules on procedure when the collective bargaining has broken down, and the rules relating to the right

of an individual to ask for judicial review of the substantive collective agreement.

It has been mentioned earlier that, under the voluntary system which operated before the enactment of the Tenancy Bargaining Act, the collective system more or less ceased to apply when the bargaining had broken down, in which case the individual system of the Rent Act was to apply. The conditions for renewal of the lease were brought to the rent tribunal by the landlords and the individual tenants. One disadvantage of this system was the fact that the time for giving notice to terminate the lease had often passed, and the contract had been renewed for a certain period of time, normally one year. In such a case no amendments were possible before the end of that period. Such a rule could hardly be said to further the efficacy of the collective bargaining machinery.

In the Tenancy Bargaining Act the matter is solved in the opposite way. If the parties bargaining under a procedural collective agreement have failed to reach a substantive agreement, the landlord or the tenant may, without giving notice of termination, apply to the rent tribunal for amendment of the lease provided that any amendments requested have been the subject of bargaining. This gives the parties the possibility of continuing negotiations irrespective of the period of notice and the time of termination of the leases.

Nevertheless, the collective system still ceases to function after an impasse in negotiations has been reached. The collective parties do not appear before the rent tribunal in their own right, and they cannot ask for a collective solution. However, they will often appear as representatives of the members and the rent tribunal processes all the individual claims with uniformity.

There is, however, one particular rule which is likely to diminish the positive effect of this system from the viewpoint of the collective parties. Out of concern for the individual tenants the Act provides that the rent tribunal may not grant retrospective rent increases for more than three months unless special reasons so warrant.

The right of the individual tenant to call for judicial review of the substantive collective agreement in so far as it affects him is also of great importance. However, the tenant must file his complaint within three months of gaining knowledge of the contents of the collective agreement, or, in the case of rent, of the date on which the provision was applied against him.

Review by the rent tribunal is governed by the rules in sec. 48 of the Rent Act concerning review of unfair contract terms and the terms for renewal of leases. According to this provision, the rent tribunal will not allow a rent

tangibly exceeding the occupational value of comparable dwellings. Thus the rules on occupational value are made mandatory in favour of the tenants even when the dwellings are subject to collective bargaining. In this context, it should be noted that review can only be made to the advantage of the tenant. The landlord has no right to ask for conditions other than those stated in the collective agreement.

In reality the right of review by the rent tribunal serves as a guarantee against abuse of power on the part of the tenants' association and in most cases the review will not lead to amendments of the provisions of agreements between the landlord and the tenants' association in the parts concerning the individual tenant. It may be said that there will only be changes if the collective parties have made a mistake or there is some misunderstanding. One other obvious case is overt discrimination against a particular individual or a group. This means, however, that the provisions of the Rent Act also cover collective agreements. There is no room whatsoever to deviate from the rules in the Rent Act which are mandatory in favour of the individual tenant.

The right of the tenant to ask for a review and to claim conditions other than those laid down in the collective agreement must be seen in relation to the question of which organization is to be granted the right of representation and the question of safeguards against discrimination against non-members.

Answering the latter question first, it has appeared extremely important to the legislator to create safeguards against discrimination towards non-members. Here it should be mentioned that there is no general legal protection in Swedish labour law against discrimination towards non-union members. Only employees organized in another union enjoy protection under the rules relating to the right to organize. The issue here is rather different, however. In labour law, protection is also provided against discrimination towards non-members and other groups in so far as the union is not entitled to bargain over the rights of non-union members. One may compare the relationship between the rules on rent fixing in the Rent Act and the rules on bargaining in the Tenancy Bargaining Act with the right of the organizations on the labour market to bargain over seniority in a case of redundancy falling within the Employment Protection Act. An agreement establishing an order of seniority which discriminates against non-union members is to be considered unfair and void.

According to the Tenancy Bargaining Act there are two safeguards against discrimination between various categories of tenants. First, there is a provision to the effect that in a collective agreement on rent flats of equal size in a building are to have the same rent unless there is a difference

between them as regards what is known to the parties about the condition of the flats and other circumstances.

This provision means that the tenant, when asking for a review, may successfully claim that he should pay the same rent as would be payable for comparable flats in the building. His claim will be upheld unless the landlord can show that a difference is justifiable because of the standard or the condition of the apartment.

Secondly, there is a provision to the effect that in a collective agreement on rents it may be stipulated that a certain amount of money be included in the rent as remuneration to the tenants' association for its bargaining activity. This applies to all dwellings—including those of non-members. The individual tenant has been given a right to ask for review of the fairness and reasonableness of his contribution without asking for a review of the fairness of the total rent.

This latter provision reveals a certain amount of scepticism towards the tenants' associations on the part of the legislator. On the other hand, one might also say that, since the legislator adopts a favourable attitude towards the activity of the tenants' associations—mainly in their capacity as efficient parties to bargaining—and has even provided that these associations have a right to procedural agreements, he has a particular responsibility towards those who do not wish to become involved in the collective system. This is even more so since the procedural agreement also gives rise to other effects. At this point, another important factor becomes relevant, viz. which organization is to represent the tenants.

It has just been mentioned that the Tenancy Bargaining Act introduces a right to a procedural agreement and that such an agreement confers an exclusive right of representation on the contracting tenants' association. The tenants' association as well as the landlord can bring a case before the rent tribunal requesting that a procedural agreement shall take effect between the parties. Such a claim will be granted unless it can be proved to be unfair towards the landlord, the tenants' association or the tenants because of the qualifications of the organization, the attitude of the tenants or any other circumstances. Provided that it is the landlord who refuses to agree to a procedural agreement—which will probably be the most frequent situation—the landlord, according to this rule, must show that it is unreasonable (unfair) for a procedural agreement to be established—for which purpose he may point to circumstances which concern the tenants' association or himself, as well as the tenants.

There are certain requirements in relation to a tenants' association which claims recognition as party to a procedural agreement. Among formal requirements is that the association shall be an association accord-

ing to the uncodified rules of Swedish law, which means that it must have adopted bye-laws and that it must have a board. In addition, the aim of the association must be to represent the tenants in relation to the landlord. The substantive requirements include the association's possession of such qualifications as are necessary to conduct the bargaining and other contacts with the landlord in a responsible way. This means, above all, that the association must have adequate manpower resources. For his own part the landlord may in order to gain exemption point to such circumstances as to the fact that the building is very small, or that his tenants are mostly personal friends of his or members of his family or relatives, etc.

In actions for recognition great importance should be attached to the attitude of the tenants. A tenants' association does not have to count a majority of the tenants of a building as members, but the tenants must not, in general, be opposed to such an agreement. One problem of course is how the opinion of the tenants is to be expressed before the rent tribunal. In most cases one might expect the parties to conduct surveys of the attitude of the tenants and to call witnesses from among the tenants. However, the rent tribunal also has a duty to investigate the attitude of the tenants so that, if the parties fail to present satisfactory evidence about the matter, the rent tribunal has to investigate the matter on its own motion. It should be noted that according to Swedish law the rent tribunal is not a proper court, but rather an administrative body.

If, on the other hand, the landlord asks for a procedural agreement and the tenants' association refuses, the association may maintain before the rent tribunal that it is in no position to "take on" the landlord because of its lack of resources.

The question of the resources of the tenants' association and the attitude of the tenants assumes particular importance when two tenants' associations compete for a procedural agreement. As mentioned earlier, there is only one big organization for tenants in Sweden—the Tenants' National Association. Under the Rent Control Act previously in force this organization had a monopoly of representation—a point which gave rise to much dispute. At the same time, the Tenants' National Association is *per se* a controversial organization, with critics coming from the right as well as from the left. In the leftist camp, voices are raised for a more militant organizational policy. From the rightist camp there are allegations of "bossism" and undemocratic tendencies in general. (Such allegations also come from the left, although there is a fundamental difference in the point of departure.) Although the big organization dominates the field, there seems to be a tendency to create small independent organizations having as their purpose to protect the interests of the tenants of a particular building

or of a small residential area. So far, however, these tendencies have not materialized to any great extent.

The non-socialist government which presented the Bill on the Tenancy Bargaining Act has taken the criticism against "bossism" seriously. The tenants of a particular house or a residential area should have the right to decide for themselves whether they want representation and, if so, by what organization, and a great deal of attention is paid to the situation where a small local organization competes with the big national association. According to clear statements in the *travaux préparatoires* of the Act, the attitude of the tenants should be decisive. If a majority of the tenants support the small organization, that organization will be awarded the procedural agreement provided that it meets the above-mentioned requirements. The tenants can also prevent a negotiating agreement from being established at all. It should also be mentioned here that the individual tenant has the right, under certain circumstances, to remain outside the collective system. The insertion of a bargaining clause into the lease is, as has been mentioned earlier, a matter for the landlord and the individual tenant, but if the landlord claims to have a bargaining clause inserted, the tenant may take the matter to the rent tribunal, which will refuse to incorporate a bargaining clause if this is considered unfair to the tenant. Such a decision by the rent tribunal implies that the tenant will be excluded from the application of the procedural agreement.

The tenants may as a collective or as individual claimants request to remain outside the collective system. If the number is sufficiently large—and, in particular, if the reason is that the tenants wish to be represented by another association—the rent tribunal may declare the procedural agreement inapplicable. Another organization will then be able to ask for a new procedural agreement.

These rules also mean that the Tenancy Bargaining Act contains provisions o the bargaining unit and on recognition of an association resembling those of the American National Labor Relations Act. Such rules have never been part of Swedish labour law before. Naturally, it is the rules on the right to a procedural agreement which create the necessity for rules on the bargaining unit and on recognition, but, at the same time, the situation on the housing market is such that the complications which may be caused on the labour market are of much less significance.

One may summarize the rules of the Tenancy Bargaining Act on bargaining units and on recognition as a party to a procedural collective agreement in the following way. The bargaining unit will be the building or the residential area where the organization seeking a procedural collective agreement commands the support of a majority of tenants. The fact

that also small units may achieve the status of a bargaining unit is due to the limited impact of collective bargaining on the landlord's ability to conduct his business or render services. Naturally it can be very inconvenient for a large real estate management enterprise to bargain with several tenants' associations. In the last resort this will be a matter of administrative costs and the tenants will have to contribute to these although, on the other hand, it can be argued that the aim of the Act in making the contracting mechanisms as efficient as possible is counteracted by the fact of the bargaining unit being so small.

The issues of who is entitled to a procedural collective agreement and that discrimination against non-members of the tenants' association should not be allowed assume particular importance when set against the question of whether non-members are to contribute towards the bargaining activity of the association. Tenants' associations, like the labour unions, have looked upon "free riders" with disgust and the tenants' associations have long demanded a solution to the problem of non-members benefiting from the bargaining activity of the associations. One proposed solution has involved the introduction of rent rebates for members of the tenants' associations but the landlords have, in most cases, rejected such proposals, although, within the public utility housing enterprises, it has been common to make contributions to the tenants' associations to help defray the costs of their bargaining activity. In the Tenancy Bargaining Act the parties to a substantive collective agreement on rents have been given the right to provide that a certain part of the rent of all dwellings shall constitute a contribution towards the costs of the tenants' association's bargaining activity. Such agreements have already been made in the private sector although the amounts are rather small—varying between 15 and 30 Sw. crowns a year per dwelling. The contribution may cover only the costs of the bargaining activity and not any internal association activity. One may say that the rules on contributions to the tenants' association create a particular claim from the unorganized tenants not to be discriminated against. Nevertheless, the members of the tenants' association are favoured in many ways—for example legal aid from the association, and the chance of influencing the outcome of the bargaining as a whole—but these favours can hardly be regarded as constituting discrimination against non-members.

The problems of financing union activity have been solved in Swedish labour law by giving the union representatives at the workplace the right to carry on in the employer's time union activity which concerns the relationship with their own employer. In this way the employer finances part of the union activity. However, the same kinds of limitations to this financing

are imposed. Time off on full pay must only be used for bargaining and other union activity concerning the relationship to the employer, and not for any internal union activity. It may be said that the solution provided by the Tenancy Bargaining Act to this difficult problem is more elegant than the solution offered by labour law in Sweden. In addition, under the system introduced by the Tenancy Bargaining Act costs are made visible to a greater extent. The tenants' association is given a budget and does not have unlimited access to the purse of the landlord. Furthermore, as on the labour market, the association which in practice bargains on behalf of all tenants is given a right to take contributions from all tenants. In return, the tenant have a right to fair representation irrespective of membership.

In spite of the incomplete collective system created under the Tenancy Bargaining Act, work towards increased influence for tenants in matters of the living environment and housing management continues. However, it is uncertain to what extent these aspirations towards actual self-determination for tenants can be reconciled with the Rent Act and the Tenancy Bargaining Act. Nevertheless, there are certain structural similarities on this point between the Tenancy Bargaining Act and the Swedish Act on the Joint Regulation of Working Life. Regardless of this, however, the rules of labour law seem to serve as a pattern for "housing democracy". For several years, experiments in housing democracy have been conducted in the public utility housing sector. Increased influence for tenants is seen as a means of making the tenants' residential areas more attractive—the aim being to make conditions as similar as possible to those for tenant-owners' societies.