Abstract
This article focuses on collective disputes in the public health care system. Due to their specific nature, collective disputes in the health care system deserve a separate analysis and require taking a special approach to be resolved. The article will deal with issues such as conflict, collective labour relations, and, in particular, the issue of collective labour disputes, to finally focus on collective disputes in health care. Due to its limited volume, the article does not exhaust the entire issue, and the issues raised will be outlined only briefly.

Keywords: Collective Disputes, Healthcare Management, Mediation

JEL Classification: I18, J52, M54

1. Introduction
The issue of organizational conflict has already been extensively described in scientific and popular literature (Deutsch, Coleman 2005; Mucha 2014). Conflicts can be analysed from various perspectives, therefore, due to the limited space, the paper will present the following typology of approaches towards the understanding of conflict: “The first can be described as structural. There is a conflict when, in a given social system and at a given time, we perceive objectively existing (that is, the ones that can be proven by methods considered to be scientific but not necessarily known by social actors) conflicts of interest. The terms <conflict of interest> or <clashing interests> are often used. This contradiction lies in the fact that, due to the limited number of demanded goods, it is impossible to fully satisfy the interests or goals of the groups that make up a given system at the same time. The second concept is of a behavioural or interactive nature. The term <conflict> is often used here. A conflict is a system of interactions, usually organized or intentionally related to one another, where the goal of social actors is to achieve their own interests or goals at the expense of other participants of the interaction. (…) The third concept of conflict is psychosocial. A conflict can be regarded as a state of hostility (or at least aversion) between the (individual or collective) participants of a given social system. A term often used here is <antagonism>. Such a conflict may (but does not necessarily have to) be based on an objectively existing conflict of interest, may (but does not have to) lead to a fight, and thus a behavioural conflict." (Harvard Business Review 2005). As a general rule, in the case of collective disputes, the structural approach should play a key role in the resolution of such conflict, but in practice, the difference between the real conflict of interests and the conflict of perception is extremely difficult to determine. In the following sections, however, we will mainly deal with a structural conflict resulting from the differences in the bargaining power of individual actors.
1. The causes of the conflict

Further issues that need to be addressed are the causes of the conflict. There are three factors that cause conflict between groups within organizations:

1. The need for shared making - particularly risky in the circumstances of interdependence and limited resources. (e.g. dislocation of budget funds) and interdependence while coordinating activities, when the most important commodity to be distributed is time.

2. Differences in goals - when two groups want to achieve mutually exclusive goals.

3. Differences in perception - resulting, for example, from differences in the flow of information between individual organizational units (Organ, Bateman 1991)

2. Collective labour relations

Another issue that needs to be addressed is the position of collective disputes within the realm of considerations on collective labour relations. Collective disputes fall within the area known as industrial conflict, which is part of the industrial relationship. Although the word "industrial" is used in the discussed term, it does not mean that these phenomena are related only to industry. The term encompasses all types of organizations where employee interests are represented collectively, i.e. by trade unions. The industrial conflict is thus an element of a complex system of relations that can be defined as "relations between the main actors operating in the sphere of the economy". In terms of the actions undertaken by collective actors, the subjects of these relations are the organizations of employees and employers as well as state authorities. These relations consist in adopting various strategies of action and mutual impact within the framework of the rules of the socio-economic order as well as the specific properties of economic organizations. These relations can be divided into: a) relations of power, b) tender and negotiation, c) conflict and d) cooperation - participation. " (Gilejko 1994)

3. Collective dispute

The resolution of labour conflicts in Poland was legally codified in 1991 by the Act on Resolution of Collective Disputes, thanks to which mediation entered Polish legislation. The institution of mediation in collective disputes was established to efficiently resolve conflicts between employers and employees represented by trade unions. Since the interests of employees are represented collectively, not individually, this procedure is known as a collective labour dispute. (Cichobłaziński 2014)

According to this Act, a collective dispute has the following stages:

1. Submission of the trade union’s list of demands to the employer. These demands may only refer to the issues enumerated by the Act and are as follows: work and pay conditions, social benefits, and trade union's rights and freedoms. As far as the dynamics of the conflict are concerned, it is extremely important to have a regulation that allows only the employee side to initiate a dispute, while the employer does not have such a right. Thus, the initiative in a collective dispute always belongs to the employees, while the role and position of the employer in a collective dispute is, by definition, defensive.

2. The employer's reply. The further course of the dispute depends on the employer's reaction. It can be twofold:

   a) positive - all requests have been met
b) negative - at least one request has not been met

3. If the employer's answer was negative, a collective dispute begins in the sense defined by the Act, and the employer is obliged to report the dispute to the District Labour Inspectorate.

4. Negotiations - bilateral talks between the employer and trade unions aimed at resolving disputes.

5. Mediation - if the negotiations have resulted in a resolution to the conflict, the collective dispute is ended. If the negotiations did not lead to an agreement, the next obligatory stage is mediation, which constitutes a separate institution and consists of several phases. Their type and number depend on the path chosen by the parties to the dispute, as the Act leaves them a certain amount of discretion in this respect. (Cichobłaziński 2010)

6. If, as a result of the mediation procedure, a protocol of discrepancy is drawn up, the parties to the dispute have two options. One is arbitration conducted before the Social Arbitration Board, and the other is a strike. The first solution is rarely used because the judgment of the board is binding on the parties if they so agree. In turn, a strike requires satisfying additional requirements, the most important of which is the strike referendum.

Conflicts in health care

The most important type of conflict referred to in the context of public health care is the conflict that arises between the service provider and the payer, i.e. the National Health Fund [NFZ]. The negotiations between the managers of health care institutions and the NFZ officials are among the most difficult due to the very unequal bargaining power of the parties. Sometimes, the position of the National Health Fund in negotiations with health care institutions is referred to in relevant literature as a quasi-market position (Panteli, Sagan 2011). This position is also referred to as monopsony (Mądrała 2013).

Conflicts of interest between health care institutions and the National Health Fund cannot cause collective disputes directly but have a huge indirect impact on their course. Collective disputes most often concern remuneration, and these will depend to a large extent on the results of the negotiations with the NFZ. The relations between the trade unions and the employers are extremely important in light of organizational effectiveness in public health care. However, these are very difficult and complicated. This state of affairs has several causes. In this sector, direct employers, i.e. managers who are legally a party to a collective dispute and a partner for trade unions, have limited influence on the budget, as it is passed by the controlling entity - city or voivodship self-government authorities. The managers have a certain budget approved by the ownership body and cannot freely raise wages without violating budgetary discipline. Therefore, the employer's discretion is very limited, especially in financial matters, which are most important to trade unions. This causes a number of difficulties and non-standard actions by trade unionists.

The second aspect of collective labour relations in health care that proves their specificity is the relatively large number of trade unions operating in this sector. In addition to NSZZ "Solidarność", with the National Secretariat for Healthcare representing all health care workers, there are also trade unions such as: the National Trade Union of Nurses and Midwives, the National Trade Union of Midwives, the National Trade Union of Administration and Service Employees of the Health Service (all associated in the Trade Union Forum). Moreover, in many health care units, especially hospitals, there are trade unions established exclusively by the employees of that very unit. All of this makes the negotiations often extremely complex, as there are many trade unions participating. The specificity of labour
conflicts in public health care is also due to the character of the work in this sector. Healthcare professionals follow a code of ethics that puts the patient's best interests first. Therefore, strikes in health care occur less frequently than in other organizations, and if they do occur, they are often more like protests than strikes typical in, for example, industry. Of course, there are strikes sensu stricto, but even in such cases, the strikers provide care for the sick for the duration of the strike. (Cichobłaziński 2014; Albrzychiewicz-Słocińska 2021)

4. Case study – Methodology and Data Analysis

The mediations in question took place at the Provincial Specialist Hospital in central Poland, employing approximately 1,000 employees. The employer was represented by the hospital director accompanied by the head of the personnel department, the chief accountant and a legal advisor. The trade unions consisted of several trade union organizations operating on the hospital’s premises. Apart from the largest organization i.e. NSZZ "Solidarność", the mediation was also attended by the Trade Union of Nurses and Midwives, the Union of Medical Analysts and the trade union of employees of the hospital in question. In the negotiations with the employer, the union side was represented by the president of the largest union, that is NSZZ "Solidarność". There were three mediation sessions at intervals of several days.

The mediations concerned the following issues:

1. Introducing new regulations regarding remuneration.

2. Awarding Hospital employees with bonuses for the previous year under the Bonus Regulations, i.e. 5% of the personal wage bill and payment of these arrears to employees.

It should be emphasized that certain employees took legal action, wanting to obtain due pay raises, but not all of them wanted to expose their employers to court proceedings, and therefore the trade unions wanted to resolve the matter systemically. The mediator was proposed by the trade unions, but the employer approved. The unions asked the Ministry of Labour and Social Policy to appoint a mediator, and the Ministry did as requested. On the first day, the mediator interviewed each party to the dispute separately. The employer presented their position, blaming the trade unions for the dispute. The director of the hospital refused to comply with the demands, arguing that there was a new regulation under which the thirteenth salary was to be paid within the guaranteed funds. Moreover, the employer argued that a new remuneration regulation was being prepared, which was to be presented to the unions shortly. The employer tentatively agreed to begin talks on the same day. However, due to the absence of some persons, these talks were postponed to the next week with the approval of the trade unions.

The second meeting was already a tripartite one. The union side was represented by the president of the largest union operating in the hospital and two members of the Works Council, and the employer's side was represented by the hospital’s director, attorney-at-law and chief accountant. After the routine commencement of the meeting by the mediator, consisting in explaining to the parties the rules of mediation and the role of the mediator, the chairman of the workplace trade union organization was the first to speak. The talks took place in an atmosphere of increasing hostility. After less than thirty minutes, the parties stopped listening to one another and the talks focused only on personnel issues and allegations regarding previously unregulated problems. The current substantive issues have not only been relegated to the background, but have ceased to be the subject of analysis at all. Attempts by the mediator to break the deadlock, consisting mainly in reducing the level of agitation and later even aggression, were unsuccessful. This was reflected, among others, in the protocol of discrepancies, in which "the employer undertakes to negotiate an increase in remuneration at
a time when the interpretation of the relevant legal provisions is known and when he obtains funds as a result of renegotiating the contract with the National Health Fund".

In response, trade unions stated that "it is possible to start determining the amount of pay rises now" and that "proposals for salary increases should be prepared by the employer and presented to the trade unions for approval". The employer replied that it was not possible, because they did not have the data that, at that time, would allow for an adequate assessment of the hospital’s future financial situation, and any provisions passed now will have to be respected later, regardless of the financial capacity of the hospital.

The mediations ended with a discrepancy protocol. However, the parties reached an agreement on one point. It was a matter of the annual salary, i.e. the "thirteenth salary" that the employer agreed to pay.

5. Case study – Discussion

When analysing the presented case, attention should be paid to the specificity of collective disputes in health care. Solving them using the mediation procedure is fundamentally different from similar actions taken in other organizations, such as in enterprises. The conducted analysis allows to distinguish the following issues:

1. Conducting mediation in an institution whose budget depended on the controlling authority (in this case, the voivode) was difficult due to the limited resources available to the organization for distribution. The employer was limited by the size of the budget received from the controlling authority. Secondly, the employer was also limited during negotiations with the recipient of services (the NFZ), acting as a monopsony in the negotiations with health care units. (It should be added that in such a situation the trade unions are resorting to accusing the management of the inability to negotiate with the NFZ. This argument is most often of a personal nature and cannot be verified.)

2. In such circumstances, we can point to the unwillingness to cooperate, resulting from the lack of trust (otherwise based on real premises) in possible agreement. Lack of "faith" is nothing but a low level of trust. The second variable negatively influencing the possibility of reaching an agreement was the high level of reluctance between the parties, especially between the president of the trade union and the hospital director. In such circumstances, the mediator could not influence the parties to change the way they communicated. Even individual sessions, during which the parties did not show a willingness to cooperate, did not help, much like during the tripartite meetings. Only the level of negative emotions was lower.

3. In such situations, mediation very often serves as a tool for trade unions to put pressure on the founding body to increase the budget, and if this is impossible, at least to change the director. Such attempts take place despite the fact that the change of the employer - under the Act on Resolution of Collective Disputes - may not be the subject of a dispute.

4. In undertaking his mission in these circumstances, the mediator can only ensure that the negative result of mediation is achieved at the lowest possible cost in the form of destruction of mutual relations between the parties to the dispute, which are already very bad anyway.
6. Conclusions

The specificity of collective labour relations in public health care outlined above highlights the need to develop a special approach to resolving them, especially at the stage of the mediation procedure. A mediator in health care does not only face a conflict of interest between the employer and employees represented by trade unions. Such disputes are conditioned by many factors not found in other sectors of the economy, e.g. in the industry. These include the interests of actors such as the state with its legislation, founding bodies in the form of local governments, a large number of professional groups with various interests, and a particularly important actor in this complex system of interests - the patient.

References


