



English summary  
of Fafo-rapport 2023:32

---

## Use of compulsory arbitration in Norwegian labour disputes 2013–2023

# Use of compulsory arbitration in Norwegian labour disputes 2013–2023

---

This report concerns the use of compulsory arbitration in Norway in the period 2013–2023. Compulsory arbitration aims to bring ongoing labour disputes to an end, with employees returning to work, while the National Wages Board is tasked with determining the content of the new collective agreement. The report is a continuation of Seip (2013), which addresses the interventions from 1990 to 2012.

In the period 2013–2023, there were 14 interventions in labour disputes. The issues covered in this report are as follows:

- What was the course of events in the conflicts in which the government intervened, and what strategies did the parties employ to reduce the risk of the conflict posing a danger to life and health?
- How were the interventions justified? To what extent were the decisions based on assessments by the competent authorities, and in what way?
- Which interventions were dealt with by international legal bodies, and what was the outcome?
- Do the interventions in this period differ from earlier interventions – is there a uniform practice, or have the parties' strategies and the authorities' assessments changed?

The report is based on a desk study of the rulings of the National Wages Board, media reports, information from trade unions' and employers' organisations' web-sites, and statements from international legal bodies. In addition, we conducted 13 qualitative interviews with representatives of the parties involved in the conflicts.

Chapter 2 provides a retrospective look at the findings in Seip (2013), which covers the interventions before 2013. The report observed a slight tendency for strikes to last longer prior to government intervention during the period in question. Furthermore, the report concluded that criticism of the use of this instrument has led the authorities to focus on the consequences of labour disputes. The authorities also give a more detailed justification of interventions, supported by reports from supervisory authorities that have gathered information on the effects of labour disputes. This resulted in supervisory authorities being given greater responsibility and a more extensive role during conflicts, and this has been particularly marked in the Norwegian Board of Health Supervision.

English summary of Fafo-rapport 2023:32

Use of compulsory arbitration in Norwegian labour disputes 2013–2023  
Kristin Alsos, Balder Blinkenberg, Kristine Nergaard og Åsmund Arup Seip

© Fafo 2023

In Chapter 3, we review the interventions in the period 2013–2023. The overview shows that seven out of fourteen interventions aimed at bringing an end to industrial action were in the health and care sector. Several strikes were also halted because the industrial action was affecting access to health services. There is considerable variation in how long the authorities have allowed labour disputes to continue before imposing arbitration, but the average was 22 days. The primary justification for intervention was almost always that the industrial action poses, or may pose, a risk to life and health. This applies to 11 of the 14 interventions in the period 2013–2023. The parties’ handling of exemptions was also cited as part of the rationale for justifying compulsory arbitration.

In Chapter 4, we examine the role of supervisory authorities during labour disputes. The focus is on the Norwegian Board of Health Supervision, as this is the authority that is most often involved in identifying the consequences of a labour dispute. In the period 2013–2023, 11 of the interventions involved the Norwegian Board of Health Supervision, while five involved other directorates or supervisory bodies. The supervisory bodies submit reports on the consequences of an ongoing labour dispute to their respective ministries, which then forward them to the Ministry of Labour and Social Inclusion. During a labour dispute, the standard operational supervisory department in the Norwegian Board of Health Supervision is responsible for monitoring how municipal health and care services and the specialist health service fulfil their obligation to meet the health and care needs of the population. The supervisory body must also monitor the consequences of labour disputes in other parts of society if they affect healthcare services. The supervisory body does not have direct contact with the parties prior to a labour dispute. During the conflict, the main source of information is the county governors, who often send daily reports to the Norwegian Board of Health Supervision through their contact with the health service. When the Norwegian Board of Health Supervision determines that there is a threat to life and health, this may be based on a specific situation where the lives and health of individuals are at risk, or it can be based on a comprehensive assessment of the risk of health and care service failings. The supervisory body endeavours only to report that life and health are in danger when it is deemed absolutely necessary, and it also considers whether mitigating measures have been taken or are possible. The role of supervisory authorities was one of the themes in the interviews with trade unions and employers’ organisations directly affected by compulsory arbitration interventions. The parties’ views differ on this: employers’ organisations generally find the supervisory approach to be effective, while some of the trade unions are critical of the fact that supervisory bodies do not require businesses to apply for an exemption where there is a risk to life and health. Some trade unions also report that they no longer have the opportunity to provide comprehensive information to the supervisory body about the consequences of a conflict, which they believe may result in cases being less well informed than they might have been.

English summary of Fafo-rapport 2023:32

Use of compulsory arbitration in Norwegian labour disputes 2013–2023  
Kristin Alsos, Balder Blinkenberg, Kristine Nergaard og Åsmund Arup Seip

© Fafo 2023

In Chapter 5, we examine the instruments at the social partners' disposal to reduce the likelihood of a labour dispute endangering life and health. An overview is given of the regulations of various collective agreements in relation to pre-agreements and exemptions during the conflict. Pre-agreements do not seem to have played a major role in the conflicts that ended with compulsory arbitration. Some employers' organisations are considered much more restrictive when it comes to seeking exemptions than they were before. This means that any potential industrial action must be carefully evaluated in areas where a conflict could impact on life and health. In the municipal sector, where exemptions are still fairly common, exemptions seem to be processed without any significant disagreement. Later in the chapter, we explain what the parties whose labour disputes have been brought to a halt think about the use of compulsory arbitration. There has been discussion about the practice of collective interventions in cases of parallel strike action, where the strikers are from different sectors but have collective bargaining agreements of the same scope. Here, the Norwegian Confederation of Trade Unions (LO) has been critical of industrial action being halted if the intervention was triggered by members of the Confederation of Vocational Unions (YS) going on strike.

After the supervisory authority has intervened, the National Wages Board is to decide the new collective agreement. The interviewees were concerned about various aspects of the National Wages Board. One is the time from when the intervention takes place until the case is processed, and another is the Board's 'conservative' approach, which makes it difficult to get them to make changes to the collective agreements beyond what other parties have already agreed. Furthermore, some believe that the fact their wage increase comes into effect later than for those who have not been involved in a labour dispute is a form of punishment. Even though some unions strongly disagree with the authorities regarding the need to intervene, this does not mean that they believe compulsory arbitration should never be used. Several indicate that they understand the need for an 'emergency brake' to be applied when there is a threat to life and health. However, some believe that interventions are carried out more often than necessary.

Chapter 6 reviews statements from the ILO's Committee on Freedom of Association (CFA) and the European Committee of Social Rights (ECSR), which monitors compliance with the European Social Charter. Between 2013 and 2023, three complaints from Norwegian trade unions were submitted to the ILO, but the most recent one has not yet been processed as of December 2023. In the statement related to the intervention in the laundry workers' strike, the CFA recommended that the Norwegian authorities explore new solutions to ensure minimum staffing levels to avoid such interventions being necessary in the future. The strike by the Norwegian Nurses' Organisation in 2018 was considered to fall within the

English summary of Fafo-rapport 2023:32

Use of compulsory arbitration in Norwegian labour disputes 2013–2023  
Kristin Alsos, Balder Blinkenberg, Kristine Nergaard og Åsmund Arup Seip

© Fafo 2023

category of ‘essential services’, and the CFA stated that the intervention was not therefore in conflict with the right to strike. For the period 2014–2018, the ECSR concluded that none of the interventions contravened Article 6-4. The rationale behind this was that, in the committee’s view, all interventions could be related to sectors in which interventions are permitted.

Finally, in Chapter 7, a comparison is made of the periods 2013–2023 and 1990–2012. The number of administrative decisions in the period 2013–2023 does not differ significantly from the period 2000–2012. The assessment confirms earlier findings indicating that health risks are a key justification for imposing compulsory arbitration to halt labour disputes. It is challenging to assess whether it has become more difficult to take industrial action that directly or indirectly affects the health and care sector. With few exceptions, labour disputes that have ended with compulsory arbitration have been ongoing for some time before the intervention is imposed. The practice of allowing conflicts to go on for some time before intervening has thus been continued. Supervisory authorities play a key role in assessing whether a conflict poses a threat to life and health or essential societal interests. The Norwegian Board of Health Supervision appears to have drawn lines in its routines in terms of what type of information they collect and who they collect it from, whether all possibilities for implementing compensatory measures have been exhausted, and how to balance the right to strike and the consideration for the population’s life and health. The challenges for the supervisory authorities are likely to increase when the consequences cannot be linked to a single event but require more general impact assessments, as was the case, for example, during the teachers’ strike in 2022. The review of conflicts shows that the parties’ strategies, such as the use of pre-agreements and exemptions during the conflicts, affect the balance of power between the parties and the progress of the conflict. The majority of strikes that escalate into a lock-out also end up in compulsory arbitration. In terms of the need to change the existing balance of power, there are two areas in particular that can be discussed. One is whether the parties should have a greater collective responsibility for industrial action. The others concern the predictability of interventions and arbitration proceedings. If the parties perceive there to be a higher risk by resorting to compulsory arbitration, this will also affect their willingness to negotiate.