COLLECTIVE BARGAINING

Summary: *1. An introduction to the sources of Italian labor law. 1.1. The role of collective agreements among the sources of Italian labor law. - 1.2. The levels and the main content of collective agreements. - 1.3. Collective agreement vs. individual contract. - 2. Collective bargaining and collective agreement in the Italian System of Industrial Relations. - 2.1.Concertation in the Italian system of industrial relations. - 2.2. Collective bargaining in the public sector. An overview. - 2.3. Trends towards a change in the contractual structure. - 3. Cross-Sectoral Agreements from 2011 to 2014: A new reform of the collective bargaining system. 3.1. The "raid" of the Legislator: Article 8 Act No. 148/2011. - 3.2. The scope of application of collective agreements. - 4. The pivotal issue: the mandatory nature and the subjective effects of collective agreements in Italy.*

Sources: Article 39 of the Italian Constitution; Articles 2074 and 2077 of the Civil Code; Article 8 Act No. 148/2011;

1. An introduction to the sources of labor law and industrial relations in Italy. – Scholars traditionally distinguish between heteronomous and autonomous sources of labor law, the latter understood as the set of rules that act both on individual employment relationships and on collective labor relationships.

Among the heteronomous sources, it is due mentioning legislation in a broad sense: Constitutional, Regional and European provisions, National statutes and International standards.

The autonomous sources are paradigmatic of labor law: these are the collective rules, given by collective agreements, which find their discipline under Italian civil law.

This means that the Civil Code rules on the law of contracts apply and determine both the subjective and objective effectiveness of the collective agreements or, in other terms, their scope of application (to whom are the collective agreements applied) and their relationship with the individual labor contract (see *infra*). Conversely, in the past, during the corporatist period and until the beginning of the Republican Era, the collective agreements were sources of law in a strict sense (see Article 2 of the Preliminary Provisions of the Civil Code) and almost all the institutions in matter of employment found their regulation in the latter.

Among the autonomous sources of labor law we could also include the individual employment contract, which carries a relevant function especially for the medium-high categories of workers, that enjoy a significant bargaining power "*uti singuli*", and not only "*uti universi*".

Originally, Article 39 of the Italian Constitution was aimed at drawing up a system of collective labor law, where the unions had to provide themselves with a democratic Statute and to enroll on a State register. Under these two conditions, the unions — acting by means of a sole bargaining unit with proportional representation of workers — could conclude collective agreements with general (*erga omnes*) effects and bind all workers and businesses operating in the related branch of the industry.

However, due to the union opposition to excessive State control of both their activities and instruments (e.g., strikes) and toward any measurement of their own "numbers" or rates of

consensus among workers, Italian industrial relations developed a pluralistic and adversarial system, different from the Constitutional scheme.

Since our trade union system has moved towards the logic of private law, all the answers to the basic questions concerning the phenomenology of collective bargaining have to be found in Civil Law principles.

In fact, the impossibility to implement Article 39 of the Italian Constitution led to a "closed" system of autonomous regulation by the same Industrial Relations System.
In this context, any legislative action was prevented by the same social parties or, more precisely, by the impossibility of the latter to find a shared view on the most delicate issues of the Industrial Relations System (among others, the subjective and objective effects of collective agreements, the competition or even conflict between Sectoral and Enterprise collective agreements, etc.).

Yet, a new push towards the implementation of Article 39 of the Constitution has ultimately arisen, but, at the same time, other voices suggest the abrogation or repeal of the mentioned Article from the Constitutional Charter. None of the two petitions, however, reached the threshold to become Parliamentary Acts, so that we remain anchored to the assessment that Italian Industrial Relations keep on being a (private law) matter regulated internally, i.e. via the frequent and multiple interventions by the social parties especially at cross-federal level (see *infra*).

1.1 The role of collective agreements among the sources of Italian labor law. – The relationship between the aforementioned heteronomous and autonomous sources has radically changed in recent years, starting substantially from the mid-80s, when collective agreements shifted from a purely acquisitive instrument to new forms of concession bargaining.

The traditional model was featured by the key role of the mandatory law, which could not be derogated by collective agreements. At the same time, individual labor contracts could not depart from collective provisions and they could thus turn into an improvement of the working condition of the individual employee.

Needless to say, this system conferred upon the collective agreement (and thus the social parties) the function of guarantor of the labor conditions, notwithstanding the role of external (domestic and, more recently, supranational) factors.

Ultimately, a shift towards decentralized collective bargaining provoked a (partial) loss of the typical solidarity and equality task of collective agreements and also partially altered the pay structure as well as the systems of labor organization.

In the latest perspective, the law seems to be assigned a new role, well beyond its traditional, protective function (as “mandatory law”).

The widespread delegates embedded in several statutes to the collective parties arrangements often allow the latter to derogate even *in pejus* to the same statutory provisions: among these, it’s due mentioning the provisions in matter of: i) job classification (Article 2013 of the Civil Code, recently amended with the extension of the prerogatives of the collective parties in this field); ii) fixed-term employment; iii) part-time employment. Yet, more than two decades ago the provisions in matter of collective dismissals bestowed a central role in the management of staff

reductions on the collective parties and, ten years later, Legislative Decree No. 276/2003 conferred upon collective agreements several crucial function in the regulation of the labor market.

In brief, the Legislator, with the consent of the collective parties, has been progressively promoting the union involvement in the management of the various and different stages of development and growth of business. Still, these forms of employee (representational) involvement have always been confined to an “external” voice, without shifting towards the forms of employee co-management of companies that are a distinguishing feature of other European experiences (e.g., above all, the German "*Mitbestimmung*").

Moreover, the individual employment contract was recently re-evaluated as well, pursuant to a trend towards the "individualization" of labor relations, even though these pushes did not find the Union approval, as clearly shown by the disputes following the publication of the “White Paper” by the Italian Government in 2002.

1.2. The levels and the main content of collective agreements. – There are different levels of collective bargaining, which basically reflect the structure of trade unions and employer associations throughout the different sectors of activity.

At top level, it is due mentioning the Cross-Sectoral level, where the confederations of unions and employers find their arrangements, which have often become “cornerstones” of labor and industrial relations regulation: not but chance, the Cross-Sectoral Agreement of 23rd July 1993 (so-called “Ciampi-Giugni Protocol”) was referred to as the "Constitution" of labor relations, because it entailed the "rules" governing the collective bargaining system.

Yet, matters like pay, working hours, vacation, breaks, disciplinary sanctions are negotiated at Sectoral level and they thus find their relevant discipline in the Sectoral collective agreements. Those latter are still about 400 in the Italian private sector now: in fact, there are distinct collective agreements according to the sector (metal, chemical, textile, etc.), to the size of the undertaking enterprise (small and medium, large, etc.) and also to the legal category of workers subject to the regulation (employees, agents and self-employed workers), even though the “traditional” collective activity for the setting of standard employment conditions remains largely predominant.

Moreover, the aforementioned “Protocol” of 23 July 1993 expressly opened to forms of “decentralized bargaining”, or, in other terms, to collective negotiations at regional or even enterprise/plant level.

In other words, the Protocol drew and outlined a system of “organized decentralization” (or “centralized decentralization”), where the Sectoral level agreements were conferred the pivotal role of control “from above”. Accordingly, the second level of negotiation and, more specifically, the company agreements could not intervene on institutions and matters that find their regulation at Sectoral level, so that enterprise bargaining becomes the forum for arrangements aimed at increasing labor productivity and the distribution of the subsequent extra income to the employees in the form of variable salary. Therefore, both regional and company level agreements had to find their space among the matters and areas defined by the Sectoral agreements.

Moreover, the Cross-Sectoral level was crucial is times of crisis occurring in the past, like in the '50s, when the central agreements could regulate "universally" fundamental institutions providing the automatic adjustments of salaries to the cost of living increase.

Conversely, Sectoral-level arrangements became extremely relevant in the '60s, when the so-called "Articulated Bargaining" ("Contrattazione Articolata") developed by means of: a) open clauses in the sectoral agreements, allowing the lower level arrangements to intervene on specific matters; b) peace obligation clauses, whereby unions undertook not to resort to industrial conflict until the expiry of the – normally, Sectoral-level – collective agreement.

The mentioned trend continued in the '70s, whereas in the '80s a new stage of decentralization occurred, especially in medium/large companies and in State-owned businesses. A few of these plant level agreements also brought about, in both private and State-owned businesses, significant forms and experiences of employee involvement at company level (IRI; Electrolux; ENI).

However, in a system based on collective agreements at different level, a fundamental issue concerned the legal relationship between those latter, which, according to settled case-law, could be based on three alternative criterions: a) the criterion of favor, whereby the employment relationship is regulated by the arrangement which is most protective towards the employee, pursuant to Article 2077 of the Civil Code; b) the criterion of hierarchy, whereby higher level agreements prevail on lower level ones; c) the criterion of specialty, whereby the prevailing agreement is the one which is closest to the matter to be regulated (it is the case, for instance, of proximity agreements in their scope of application: see Article 8 Act No. 148/2011, *infra*).

Still, another legal problem regards the subjective effect of collective agreements, i.e. their scope of application, either to the mere employees and employers belonging to the Unions and Employer Associations which stipulated the relevant agreement, or even to those who are not members of any union nor employer association.

In this sense, as above depicted, the basic principles of private law apply, with the exception of the salary matter, whereby case-law found under Article 36 of the Italian Constitution the rationale for the extension – *de facto* – of collective rates of pay also to employees and employers legally (and lawfully) unbound by any collective agreement (see *infra*, M. Biasi). Plus, collective agreements (and their pay rates) may be applied by those latter if the individual employment contract makes an explicit or implicit reference to the collective arrangements.

Outside these specific cases, since Article 39 of the Constitution did not find its implementation, the principles of private law apply and thus no employer (nor employee) can be bound to a collective agreement that the first did not stipulate or that was negotiated by an employer association the employer is a members of.

1.3. Collective agreement vs. individual contract. - The individual contract plays a relevant role only for specific categories of employees: these are the executives and, more generally, the high-

skilled workers and the matters which are individually negotiated are normally pay (bonuses, fringe benefits, stock options: see *infra*, M. Biasi) or, eventually, shared modifications of the working conditions (transfer, re-deployment, etc.).

Moreover, it is noteworthy how the introduction of new instruments aimed at encouraging individual transactions and settlements could push towards a further consideration of the position of the individual employee (see Article 410 of the Civil Procedure Code; Article 2113, para. 4 of the Civil Code), with an increasing role of the so-called "Certification Commissions" (see Article 75 Legislative Decree No. 276/2003).

Still, a progressive "individualization" of labor relations is a staple in the recent years, along with a relevant (quantitative more than qualitative) growth of self-employment, which can be – at least in part – explained with the proliferation of figures that lie on the border between employment and self-employed (e.g. the various forms of "atypical" work: part-time, fixed-term work, apprenticeship, job on call, job sharing, etc.).

The new "fissured workplace" certainly produces negative effects in terms of union representation and union density, also considering that the phenomenon of Unionism was calibrated to the "standard" employee carrying out his/her activity in a vertical, "fordistic" Firm.

2. Collective bargaining and collective agreement in the Italian System of Industrial Relations. - To define the concept of *Industrial Relations*, it is necessary to identify, as of now, how industrial relations historically stemmed from the objective to mitigate conflicts.

The "regime" of industrial relations imposed itself in the United States and in the United Kingdom during the '20s, in a context of relative absence of legal regulation. It tackled labor related issues from an interdisciplinary perspective, namely, sociological, economic and organizational. Industrial relations are also relevant for the parallel field of *Human Resource Management*, which regards the employee (the individual) as a factor of production and puts the emphasis rather on the object of the relationship (the working activity), regarded as just another commodity.

Ultimately, Italian studies on industrial relations are carried out abroad and successively imported by authoritative scholars. As a discipline, industrial relations gained a foothold in our country in the course of the '60s, in a context of decentralized production and increasing diversification of productive models, which eventually put an end to the labor market reforms adopted at the time. The publication of the first Italian monographs on the issue goes back to the following years, namely, the early '80s. Industrial relations commonly tackle three subject matters: collective agreements, trade unions and conflict resolution.

This being said, industrial relations may be defined as a combination of relationships between different actors on the labor market: Representative organizations of workers (at the company, local or national level), companies and their representative organizations, the State (in its different dimensions: central, regional, local and so on). In such a system, the State actively participates in

these relations as it may grant benefits, sanction, facilitates stakeholders' meetings and involve as well as be conditioned by lobbies (the so-called concertation).

However, while in England and in the United States one may observe a reduced influence of collective organizations, in Italy, the existence of constitutional norms on freedom of association (Article 39 of the Constitution) and the right to strike (Article 40 of the Constitution) has also favored the development and analysis of unionism, after the demise of the guild system.

In this sense, it is possible to distinguish between a *state legal order* (as provided for by State rules) and an *inter-union order* (deriving from the relations of collective parties with one another as mentioned above). Nevertheless, industrial relations present themselves, above all, as a process of norm creation pertaining to two broad subject-matters: employment relationships and the resolution of conflicts, thus moving away from a(n) (objective) conflict of interest between parties.

The *external context* has a significant impact on industrial relations and it includes: economic, technological, social, political, legislative factors and the major productive sectors. However, the most typical feature of the inter-union order consists in the collective interest - distinct from individual interest, which constitutes the grounding "principle" of any system of industrial relations and, as a result, of collective bargaining. It is not a coincidence if industrial relations scholars are the ones highlighting a few characteristics of collective bargaining: its scope, namely, the number of involved workers, its level (central of decentralized), its depth or the degree of participation of union actors in the agreements, unions' prerogatives, the control over the adopted agreements through unions' management of disputes and the content of collective agreements that may either rule on a single issue (for instance, collective dismissal, generally at the cross-sectoral level) or more aspects.

2.1. Concertation in the Italian system of industrial relations. - Concertation reached its *momentum* in the early years 1990. Following "Tangentopoli" Scandal, so-called "technical" governments (coming to power with a parliamentary, but not political majority) enacted rigorous financial measures as well as public employment and pensions reforms, essentially aimed at restoring public budget.

In this respect, the "Amato government" in 1992 abolished the contingency benefits and above all, it approved a piece of legislation on pensions reform and on the rationalization of public expenditure by intervening on the regulation of public employment. This underlines the so-called privatization of public employment, through the extension of civil norms and the *erga omnes* direct applicability of collective bargaining.

As previously mentioned, the 1993 Cross-Sectoral Agreement designed the new contractual system. As part of the Economic and Financial Programmatic Document, the government indicated a *planned* inflation rate on the basis of which (only) Sectoral agreements might increase wages. It also provided for compulsory biannual Cross-Sectoral meetings, a suspension of bargaining on wages at the company level (to avoid further inflation), the identification of a new system of

unitary union delegations (*Rappresentanze Sindacali Unitary – "RSU"*) and the launch of a still awaited active labor policy in order to foster major employability, especially for youth employment.

The Protocol promoted a model of "centralized decentralization". Without prejudice to the Sectoral agreement, a form of contractual decentralization was carried out, whereby the company agreement ruled on issues other from those addressed by Sectoral agreements, with the exception of wage-related aspects relating to the economic performance of the company.

In this respect, the major trade unions were split: CGIL advocated for a strong impact of the Sectoral agreement, unlike CISL that was more sensitive to the issue of decentralization at the company level.

At a later stage, a center-left government attempted to replace concertation, according to which social parties actively took part in the definition of governments' economic and social policies, with the so-called social dialogue whereby the participation of social parties in the plan of government policies was restricted to releasing opinions and recommendations that were not obviously mandatory.

Indeed, concertation has been criticized insofar as government and parliamentary action could be vetoed by social parties. Such a power, however, was (and still is) political and not formally legal.

Finally, with the adoption of the Legislative Decree No. 276/2003 of 10 September 2003, implementing the so-called Biagi Act, the Sectoral level has been weakened to strengthen the Cross-Sectoral level.

2.2. Collective bargaining in the public sector. An overview. - As regards the public sector, Legislative Decree No. 29/1993 of 3rd February 1993, as amended by the Legislative Decrees No. 80/1998 and 387/1998 and later clarified by the Consolidated Act (*Testo Unico*) entailing general rules on employment in the public sector (Legislative Decree No. 165/2001 of 30 March 2001), also dealt with the issues at stake, with a view to reduce public expenditure on public administration and to privatize the employment relationship in the public sector.

This means that the rules of the private sector apply to employment relationships in the public sector, except from the issues regulated by the decree.

The adoption of a collective agreement in the public sector takes place following the approval of the Economic and Financial Programmatic Document, through which the Minister in charge of the budget allocates the resources. The Agency for Bargaining Representation (*Agenzia per la rappresentanza negoziale - Aran*) is an autonomous institution, whose task is to represent public administration in labor relations and to negotiate on resources allocations between, originally, 8 departments. Such collective agreements are entered into by the Aran and Unions reaching at least the threshold of 5% as average between the employee membership and the electoral results. The collective agreement applies to all public administration (regardless of registration to Aran) if

it reaches the threshold of 51% of the signatories (registered at the Aran) in the relevant department.

The text agreed upon is subsequently transmitted by the Aran to the Sectoral committee of the department: if the committee expresses a favorable opinion, it is transmitted to the Court of Auditors, which certifies its compatibility with budgetary constraints. In the case of a positive outcome, the President of the Aran approves the agreement, which, since then, applies *erga omnes*.

2.3. Trends towards a change in the contractual structure. - A new orientation on the issues related to the "structure" of collective bargaining and especially its diverse levels emerges in the previously mentioned 2002 White Paper, whereby Sectoral agreement would have to "secure the purchasing power of minimum wages" and to "set up *standard* common minima", as already stated by 1993 Protocol.

Besides, it would not only apply for two years as previously for economic purposes, but more widely, thus eliminating the "intermediate contractual lapse" which was essential for recovering the lost purchasing power. However, contractual decentralization was not defined more precisely - with a clear definition of competence (as was already provided for by 1993 Protocol) and it did not give the impetus to the decentralization of bargaining relations as it should have.

In this respect, one may recall how the possible relation between the expected outcome of the White Paper and the simultaneous reform of Title V of the Constitution regarding the legislative power of the regions was critically observed by doctrine. This might amount to "pure and simple destructuration of what was not even an embryonic idea of regulation of the industrial relations systems."

Towards the end of the last decades, such institutions have been disciplined as part of a continuous re-regulation of the discipline, albeit through agreements and not legislation.

3. Cross-Sectoral Agreements from 2011 to 2014: A new reform of the collective bargaining system. - The current state of labor relations in Italy results from an evolution (or regression?), whereby a key role was played by certain agreements which were under the scrutiny of the judiciary as well. This was the case of the framework agreement of 22 January 2009 and the cross-sectoral agreement of 15 April 2009. One may add to that list the agreements of 28 June 2011 and 31 May 2013 and last – but not least- the so-called "Consolidated Act" of 10 January 2014.

Just as what happened in the years 1992/1993, and probably with a view to further bring order to the messy Italian system of labor relations in the globalization era, social parties decided to find a solution to their "divisions".

This "internal" reform was intended to define autonomously the rules of the system itself, thus preventing any possible escape to basic unionism. This hypothesis was confirmed at the Sectoral (national) level, subject to Cross-Sectoral control.

In fact, Sectoral agreements had been already substantially deprived of their normative influence in 2009 and 2011, before the adoption of Article 8 of Act No. 148/2011.

The transition of the Italian Automotive Company FIAT to the "global" company FCA lies in the background of this reform. However, the question of union representativeness remains unsolved, although 2011 Cross-Sectoral agreement explicitly promoted second-level collective bargaining.

Moreover, 2011 "unitary" agreement is far from substantially reducing the influence of company level agreements, since it only refers – in quite a permissive way – to the fact that derogatory agreements must "adapt to the specific productive context", thus making the technical and productive factors of each company tantamount to objective and legitimate criteria.

To foster the development and diffusion of company level agreements, 2011 Agreement adopted the expression "in whole or in part" in order to refer to the issues delegated by the Sectoral collective agreement. At the same time, it ruled on the general subjective effectiveness of company agreements under its validating mechanism. Therefore, even in the absence of Sectoral agreements provisions, company agreements might still be concluded between union representatives at company level. Such company level agreements should aim at managing *crises* or *significant investments aiming at fostering economic development and employment* in the company and they may do so by ruling on matters traditionally addressed by the Sectoral agreement: working conditions, working hours and work organization: in other words, basically all matters.

In a nutshell, provided that the principle of fair wage laid down by Article 36 of the Constitution, the discrimination ban as well as further limitations resulting from acquired rights are observed, company level agreements could and may still disregard sectoral (national) agreements even *in pejus*.

Accordingly, it seems that 2011 Agreement has largely crossed what many labor lawyers used to consider and still regard – more for political than strictly legal reasons – the "Maginot line" in the relationship between agreements of different levels.

3.1. The "raid" of the Legislator: Article 8 Act No. 148/2011. - Last but not least, it is due mentioning Article 8 of Legislative Decree No. 138/2011, subsequently converted into Act No. 148/2011, entitled: "*support to proximity agreements*".

This provision replaced the traditional mechanism ensuring the mandatory nature of Labor Law Statutes with a semi-imperative mechanism, allowing proximity agreements (Regional and Company Level Collective Agreements) to depart from the latter as well as from Sectoral Arrangements.

Still, proximity agreements cannot derogate Constitutional provisions, not European or International Labor standards.

This provision has to be linked to the mentioned 2011 Agreement, also because on 21st September 2011 the collective parties committed themselves to rely on the latter Agreement provisions and not on Article 8 Act No. 148/2011.

Yet, as for the matters that are non-mandatory for company (and regional) agreements, their scope may at first appear broader than what has been provided in the 2011 Agreement, even though the latter practically considered the whole constitutional domain of the rules on employment. Article 8, on the other hand, meets with express and implicit limitations introduced by the legislator, precisely to shield from any risk of unconstitutionality.

3.2. The scope of application of collective agreements. - As an act of private nature, collective agreement provides for a three-year validity (starting with 2011 Agreement).

However, in the absence of renewal or if the agreement expires, it would cease to produce any legal effect: indeed, Article 2074 of the Civil Code, which regulated the so called "after effect" of (corporative) collective agreements, does not apply in this case.

While the so-called "normative part" of the collective agreement deals with individual employment relationship, the "collective part" rules on the relations between collective parties. With regard to the latter, some obligations stem from collective agreements: the exercise of "influence" on behalf of the employees and in some cases the much more stringent obligation resulting from no-strike clauses (or peace obligation clauses), in other words, renouncing to act. It should be specified, nevertheless, that such an obligation does not extend to individual workers who are not exposed to disciplinary sanction for the mere fact of having exercised their right to strike in breach of the no-strike clause. This pattern has been confirmed in the most recent Cross-Sectoral agreements.

4. The pivotal issue: the mandatory nature and the subjective effects of collective agreements in Italy. - The legal issues related to collective bargaining and collective agreements are still the same today as originally, despite the numerous attempts that have been mentioned previously: legislation now seems firmly set as regards inderogability *in pejus*, except for the hypotheses mentioned under Article 8 Act No. 148/2011.

As for the rules laid down in Sectoral agreements, they may, on the other hand, be departed from by the decentralized agreement (at company or regional level), which was in fact already possible given the well-settled case-law, even before the most recent legislative intervention (and 2011 Cross-Sectoral Agreement).

The most delicate issues remain firmly rooted in the absence of a legislative measure on trade unions representation/representativeness, even if Cross-sectoral agreements now set numerical limitation in view of taking part in the negotiations (an average of 5% between the membership and electoral results, for Sectoral bargaining) or for the Sectoral agreement to apply *erga omnes*

(50% of sectoral representation plus 1), subject to the approval of the unitary platform of workers' delegations.

Conversely, company agreements apply to all the workers of the company if they were approved by the majority of the members of the RSU, or, in the lack of the latter, by the approval of RSA plus employee ballot (see *supra*).

Selected Bibliography:

F. Carinci…..
A. Lassandari, *La contrattazione e il contratto collettivo*, Roma, 2003;
S. Liebman, *Contributo allo studio della contrattazione collettiva nell'ordinamento giuridico italiano*, Milano, 1986;
F. Lunardon, *Efficacia soggettiva del contratto collettivo e democrazia sindacale*, Torino, 1999;
L. Mariucci, *La contrattazione collettiva*, Bologna, 1985;
M. Persiani, *Saggio sull'autonomia privata collettiva*, Padova, 1972;
G. Prosperetti, *L'efficacia dei contratti collettivi nel pluralismo sindacale*, Milano, 1989;
M. Rusciano, *Contratto collettivo e autonomia sindacale*, Torino, 2003;
G. Vardaro, *Contrattazione collettiva e sistema giuridico*, Napoli, 1984;
B. Veneziani, *La contrattazione collettiva in Italia (1945-1970)*, Milano, 1971;

La contrattazione collettiva
Scheda di sintesi

Selected Bibliography:

V. Bavaro, *Azienda, contratto e sindacato*, Cacucci, Bari, 2012

M. Biasi, *Appunti sulla rappresentatività delle organizzazioni datoriali in Italia*, in F, Carinci (a cura di), *Il Testo Unico sulla rappresentanza 10 gennaio 2014*, ADAPT University Press, Modena, 2014;

F. Carinci, *Al capezzale del sistema contrattuale: il giudice, il sindacato, il legislatore*, WP C.S.D.L.E. "Massimo D'Antona" – IT, 133/2011;

G.P. Cella, T. Treu, *Relazioni industriali e contrattazione collettiva*, Il Mulino, Bologna, 2009;

B. Caruso, "*Costituzionalizzare" il sindacato. I sindacati italiani alla ricerca di regole: tra crisi di legittimità e ipertrofia pubblicista*, in *LD*, 2014, 4

M. D'Antona, L'a*utonomia individuale e le fonti del diritto del lavoro*, in *DLRI*, 1991;

R. Del Punta, *Il contratto collettivo aziendale*, in M. D'Antona (a cura di), *Lezioni di diritto sindacale*, Napoli, 1990;

A. Lassandari, *La contrattazione e il contratto collettivo*, Roma, 2003;

S. Liebman, *Contributo allo studio della contrattazione collettiva nell'ordinamento giuridico italiano*, Milano, 1986;

F. Lunardon, *Efficacia soggettiva del contratto collettivo e democrazia sindacale*, Torino, 1999;

L. Mariucci, *La contrattazione collettiva*, Bologna, 1985;

R. Nunin, *Il dialogo sociale europeo: attori, procedure, prospettive*, Giuffrè, 2001;

G. Pera, *Diritto del lavoro*, Cedam, Padova, Cedam, Padova, 1988;

M. Persiani, *Saggio sull'autonomia privata collettiva*, Padova, 1972;

G. Prosperetti, *L'efficacia dei contratti collettivi nel pluralismo sindacale*, Milano, 1989;

M. Rusciano, *Contratto collettivo e autonomia sindacale*, Torino, 2003;

G. Santoro Passarelli, *Il contratto aziendale in deroga*, in *WP "Massimo D'Antona".IT*, 2015, 254

G. Vardaro, *Contrattazione collettiva e sistema giuridico*, Napoli, 1984;

B. Veneziani, *La contrattazione collettiva in Italia (1945-1970)*, Milano, 1971;

G. Zilio Grandi, *La contrattazione collettiva nella rete di imprese*, in G. Zilio Grandi, M. Biasi, *Contratto di rete e diritto del lavoro*, Cedam, Padova, 2014, 170 ss

G. Zilio Grandi, *La retribuzione collegata alla produttività aziendale: quadro normativo di riferimento e impatto dell'Accordo sui livelli retributivi*, in *DLM*, 2013, 1;

G. Zilio Grandi, *Struttura della contrattazione e sistema di rapporti collettivi. Il 1993: una sorta di "anno zero*?", in *Studi economico-giuridici* della Facoltà di Giurisprudenza dell'Università di Cagliari, Giappichelli, Torino, 1997;

G. Zilio Grandi, *Spunti sui modelli relazionali tra Stato, Sindacato e Imprese negli Stati membri e nell'Unione europea*, in *DRI*, 2003, 4

G. Zilio Grandi, M. Biasi, *Retribuzione di produttività e nuove prospettive partecipative*, *paper* discusso al Workshop Aisri e Aiel, su *Relazioni industriali, produttività e crescita in Italia*, Roma, 18 ottobre 2013.

La contrattazione collettiva

Scheda di sintesi

1. Le fonti del diritto del lavoro.

- Le fonti del diritto del lavoro italiano si distinguono in eteronome e autonome. Tra le prime vanno menzionate le fonti del diritto internazionale, del diritto comunitario, degli stati nazionali nelle loro diverse configurazioni (ed. es. legge, decreto legge, decreto legislativo, legge regionale). Tra quelle autonome vanno menzionati, oggi, il contratto collettivo c.d. di diritto comune e il contratto individuale. A loro volta i contratti collettivi si distinguono per livello, ovvero interconfederale, nazionale di categoria, territoriale e aziendale. Dal 1993 i livelli praticabili risultano quello nazionale e quello decentrato, alternativamente territoriale e decentrato.

2. Contrattazione collettiva e contratto collettivo nel sistema italiano di relazioni industriali.

- Nell'ambito del più ampio campo delle relazioni industriali va altresì segnalato il ruolo della concertazione, ovvero il livello di negoziazione nel quale si inserisce lo stesso Stato, assegnando risorse e prevedendo meccanismi di scambio tra le parti contrapposte. Il possibile limite di tale importante strumento consiste nella possibilità che esso si trasformi in un "diritto di veto" da parte di una qualsivoglia organizzazione sindacale.
- La contrattazione collettiva ed il contratto collettivo si atteggiano diversamente nel lavoro alle dipendenze dalle amministrazioni. In tale contesto infatti la legge è intervenuta direttamente a regolare il fenomeno sindacale, sia sul versante dei soggetti sindacali, sia su quello della efficacia dei contratti collettivi, applicabili *ex lege*, con una serie di meccanismi ritenuti costituzionalmente legittimi, a tutti i dipendenti e alle diverse pubbliche amministrazioni ed enti.

3. Gli accordi interconfederali tra il 2011 e il 2014: una nuova riforma del sistema?

- Il sistema della contrattazione collettiva, dopo una prima regolamentazione, sempre in via "autonoma" con il Protocollo del luglio 1993 (c.d. Protocollo Ciampi), ha visto in anni recenti una serie di ampi interventi, mai legislativi se si eccettua l'art. 8 della l. n. 148/2011, di estremo interesse. In particolare occorre segnalare come dal 2009, anche sulla scorta di una progressiva tendenza alla aziendalizzazione delle relazioni sindacali in tutta Europa, e altresì in considerazione di rilevanti richieste del mondo imprenditoriale (basti citare la vicenda del passaggio da Fiat a Fca), si siano succeduti plurimi accordi interconfederali, tutti orientati appunto al decentramento contrattuale e, quel che più conta in una prospettiva tecnico giuridica, alla derogabilità del contratto collettivo nazionale da pare di quello decentrato (territoriale/aziendale).
- Inoltre, gli accordi del 2009, del 2011, del 2012 ed il c.d. testi unico sulla rappresentanza del gennaio 2014, affrontano altri due cruciali problemi del sistema: l'uno organizzativo, l'esigenza di una maggiore produttività dell'impresa; l'altro giuridico, del passaggio da un sistema di rappresentatività presunta ad uno di effettiva e misurata rappresentanza dei lavoratori ma anche dei datori di lavoro.

- In questo contesto di deregolazione, forse gradito alle organizzazioni sindacali sin dai primi anni ’50, si inserisce, improvvisamente, il citato art. 8 della l. n. 148/2011. Con esso viene non solo confermata il processo di decentramento contrattuale e la contestuale derogabilità del livello “classico” di contrattazione da parte di quello “di prossimità”, ma prevista anche la derogabilità da parte del contrato aziendale/territoriale delle previsioni di legge, fermi restando i principi costituzionali, comunitari ed internazionali in materia. Si tratta, come è evidente, di un passaggio problematico, che le stesse parti sociali hanno, con un ulteriore accordo nel settembre del 2011, cercato di arginare; senza tuttavia poterlo fare effettivamente, stante anche il periodo di crisi economico che ha imposto, comunque, una gestione “di prossimità” delle diverse situazioni aziendali, anche derogando a quanto previsto nei contratti collettivi nazionali di categoria; e ha riproposto il tema di una regolazione per legale dell’intero fenomeno sindacale.

4. I problemi giuridici del contratto collettivo e della contrattazione collettiva in Italia.

- Nonostante le evoluzioni/involuzioni del sistema sindacale, i problemi sul tavolo rimangono i medesimi del periodo post costituzionale.
- In particolare risulta aperto, anzi apertissimo, il problema dell’efficacia soggettiva, in specie del contratto aziendale, sempre più frequentemente derogatorio rispetto al contratto nazionale; ma appare altresì non risolta la questione della effettiva rappresentanza/rappresentatività dei lavoratori (e delle imprese) che costituisce probabilmente il perno attorno al quale ruoterà l’intero nuovo assetto del sistema sindacale nel nostro paese.
- Quanto al connesso ruolo del contratto individuale, e dunque al principio di inderogabilità della norma lavoristica in sede individuale, l’ordinamento sembra recentemente attribuire ad esso un maggiore significato, in una con un precipuo ruolo attribuito alle sedi di prevenzione delle controversie.