Z E S Z Y T Y N A U K O W E UNIWERSYTETU RZESZOWSKIEGO

SERIA PRAWNICZA

ZESZYT 113/2020 PRAWO 31

DOI: 10.15584/znurprawo.2020.31.9

Aneta Kowalczyk

University of Rzeszow
ORCID: 0000-0002-5029-863X

MEDIATOR AND THEIR ROLE IN COLLECTIVE DISPUTES

Interpersonal relations, not only in the social but also legal terms, carry the risk of many conflicts. In the related literature the concept of conflict is defined as a set of behaviours of two social entities directed against each other, where each party pursues their own goals[1]. There are separate stages of conflict evolution, which include: emergence of the conflict, manifestation of the parties' opposing behaviours, escalation of the conflict, subjecting the conflict to observation by the environment, initiating the process of dispute resolution or dispute settlement, and finally, possible resolution or settlement of the dispute. According to this typology, the conflict revealed and subjected to observation by the environment turns into a dispute, which is one of the variations of the conflict[2]. Hence, it can be concluded that a conflict which is not disclosed to the environment, is not subjected to its assessment and does not affect the environment, i.e. has no social effects, will not be perceived as a dispute. According to another typology, four stages of conflict can be distinguished: a preceding situation, a provocation period, an escalation period and a confrontation phase[3]. From the point of view of collective disputes, the first typology of conflicts, where a dispute arises when the conflict is manifested, seems to be more appropriate and graphic. This moment will be reflected by communication of requests formulated by the trade union, and addressed to the employer, if they are not rejected by the latter. Approval of the claims, in the light of the provisions of the Act on solving collective disputes, will mean that the dispute has not started[4]. Submission of requests will

[1] See: A. Korybski, *Alternatywne rozwiązywanie sporów w USA. Studium teoretycznoprawne*, Lublin 1993, p. 352.

[2] *Ibidem*, p. 23.

[3] A. Hankała, *Konflikty międzyludzkie* [in:] *Wielka encyklopedia prawa*, ed. E. Smoktunowicz, Białystok–Warszawa 2000, p. 364.

[4] Art. 7, paragraph 1 of the Act of 23 May 1991 (Dz.U. No. 55, Item 236 as amended).

also be a manifestation of instrumental use of measures, based on dispute resolution methods provided by the legislator, since the moment the dispute starts is treated as the beginning of negotiations[5].

In sociological terms, all kinds of conflicts are treated as natural phenomena that have accompanied the development of civilization since its dawn[6]. Therefore, conflicts are nothing new in collective labour law, however in this case they most often change into disputes which are resolved based on statutory methods, i.e. the conflict turns into a legal dispute[7]. The Polish act on solving collective disputes introduces regulations whose characteristic feature is the fact that disputes may be settled by the parties themselves, without participation of state institutions. The related methods include mediation, during which the mediator helps the parties to resolve the disputes. In accordance with international standards, Polish law introduces peaceful methods of resolving collective disputes, including the least formal method of negotiations, moderately formalized mediation, and the most formal method of arbitration. Since, essentially, mediation involves settlement of the dispute by the parties but with the participation of a third party, it is obvious that the mediator's role is not to resolve the dispute. The Act on solving collective disputes does not specifically describe the role of the mediator, their competences or methods of mediation[8]. It merely indicates that they have the competence to notify the parties about the arrangements made (Art. 13, clause 1), to propose an expert opinion on the employer's economic and financial standing (Art. 13, clause 2), and to make a request to the trade union regarding postponement of the strike (Art. 13, clause 3). In connection with the above, the doctrine of collective labour law distinguishes three groups of mediator's competences, i.e. related to investigation and analyses, organization and formulation of postulates. The first group includes competences related to acquisition of evidence necessary to carry out specific activities, i.e. collecting information, review of documents, or hearings of the parties' representatives. The second group of mediator's competences comprises activities related to organisation of meetings for the parties. Finally, the third group is related to the mediator's right to put forth requests in order to draw the parties' attention to the need for additional or detailed decisions, or for expert opinions (the so-called postulate rights)[9].

---

[5] K.W. Baran, *Komentarz do art. 8 ustawy o rozwiązywaniu sporów zbiorowych*, www.lex.edu.pl; J. Łukaszewicz, *Aksjologiczne i prakseologiczne przesłanki polubownego rozstrzygania sporów i mediacji* [in:] *Sądy polubowne i mediacja*, ed. J. Olszewski, Warszawa 2008, p. 6.

[6] See: R Dahrendorf, *Teoria konfliktu w społeczeństwie przemysłowym* [in:] *Elementy teorii socjologicznych*, Warszawa 1975, p. 433

[7] See: A. Gryniuk, *Przymus prawny jako środek rozwiązywania konfliktów społecznych w dużych i wielkich grupach społecznych*, Toruń 1990, p. 51.

[8] J. Żołyński, *Ustawa o rozwiązywaniu sporów zbiorowych. Komentarz. Wzory pism*, Warszawa 2012, Lex.

[9] See: W. Masewicz, *Zatarg zbiorowy pracy*, Bydgoszcz 1994, p. 137.

The above classification is undoubtedly based on statutory regulations, but it does not provide a clear-cut answer to the question about the role of the mediator in collective labour disputes. The mediator's powers related to investigation and analyses, in terms of the subject matter, comprise their statutory competence to determine whether or not the resolution of a collective dispute requires additional and detailed decisions, and subsequently to notify the parties of this fact. If the mediator is to come to the above conclusions, they must gather and then analyse information which will undoubtedly come from the parties to the collective dispute. In turn, postulative rights are equivalent to the statutory competences for notifying the parties about a need for expert opinions regarding the employer's economic situation. It should be noted, however, that in order to reach the above conclusion the mediator must first investigate whether such expert opinion is necessary, hence this competence also reflects their powers related to investigation and analyses. In practice, this classification may turn out to be blurry.

The mediator's competences set forth in the Act do not exhaust all manifestations of the rights constituting the above-mentioned groups. Some of these rights result from the essence of mediation. This unquestionably includes the power to organize meetings of the parties or setting the date and place of these meetings. However, appointment of the mediator to chair the parties' meetings and to manage the course of these meetings, as agreed by the parties, may raise doubts. Since those involved in the dispute are the parties to the conflict, and nothing is changed by the fact that the third-party mediator is present, the parties conduct discussions during which they present their positions. It does not seem necessary for the mediator to chair such meetings merely to ensure order[10]. It would be too big of a simplification of the mediator's role. However, in order to try to clarify this role, one should consider what the essence of mediation is.

Mediation is one of the alternative methods of resolving collective disputes, referred to as ADR (Alternative Dispute Resolution)[11]. Common features of these methods include: involvement of an impartial third party with no competences in the dispute resolution, lack of full formalism, the parties' direct involvement and their cooperation. According to the objectives of ADR methods, the parties should focus on a conflict resolution, rather than on competition[12]. Such method is sometimes defined as a technique for resolving conflicts, a forum where all parties to the conflict are helped to find a satisfactory solution[13].

Mediation, as an alternative form of dispute resolution, was already known in ancient times. Today it is assumed that a pioneering role in this area was played by the United States of America, where in the 1970s and 1980s alterna-

[10] On the contrary: *ibidem*, p. 137.

[11] In addition to mediation, ADR methods also include conciliation and arbitration.

[12] See: E. Gmurzyńska, R. Morek, *Mediacja teoria i praktyka*, Warszawa 2009, p. 21.

[13] A. Nocuń, J. Szmagalski, *Podstawowe umiejętności w pracy socjalnej i ich kształtowanie. Porozumiewanie się, rozwiązywanie problemów i konfliktów*, Katowice–Kraków 1998, p. 143.

tive methods of conflict resolution emerged[14]. In the related literature it is defined as "a structured process in which an impartial mediator facilitates communication between those involved in the dispute, to enable them to better understand each other and achieve solutions acceptable to both parties"[15]. Mediation as an alternative method of resolving collective disputes, by its essence, requires involvement of a third party in the process, but the mediator is to act as an intermediary "in the communication between the parties, to facilitate agreement reached by them, while trying to eliminate differences between the parties through rational persuasion"; however a mediator may not say that either party is right[16]. Their task is therefore to propose solutions rather than resolve the dispute, because they do not act as an arbitrator. However, the question arises whether the mediator's role is passive, basically resembling the role of an observer having no right to suggest solutions, or whether it is an active role. This is a problem related not only to collective labour law, where there are no regulations specifying the role of a mediator, but also in the case of other branches of law where amicable dispute resolution methods are in place.

The controversy related to the mediator's essential competences is reflected e.g. by the question whether or not conciliators and mediators are equally involved. In the related doctrine there are a few different model opinions regarding the above issues. According to one approach, conciliation is defined as a separate alternative method enabling dispute settlement where a third party, assisting those involved in the dispute, proposes a solution; this is in contrast to the role of a mediator who can only facilitate dialogue, motivating the parties to independently conclude the dispute[17]. According to this approach, a conciliator concentrates on reaching a settlement, while a mediator focuses on stimulating proper communication between the parties[18]. A conciliator formulates the resolution of the dispute on their own, whereas a mediator does it jointly with the parties[19].

---

[14] Cf. E. Gmurzyńska, *Mediacja w sprawach cywilnych w amerykańskim systemie prawnym – zastosowanie w Europie i w Polsce*, Warszawa 2006, p. 1; A. Bieliński, *Uwagi wstępne na temat mediacji* [in:] *Sądy polubowne i mediacja*, ed. J. Olszewski, Warszawa 2008, p. 37. In the literature you can also find the claim that the ARD (Alternative Dispute Resolution) movement was born in Great Britain, from where it was transferred to the United States of America. See: A. Kalisz, A. Zienkiewicz, *Mediacja sądowa i pozasądowa. Zarys wykładu*, Warszawa 2009, p.26.

[15] N. Doherty, M. Guyler, *Mediacja i rozwiązywanie konfliktów w pracy*, Warszawa 2010, p. 19.

[16] A. Kalisz, A. Zienkiewicz, *Mediacja sądowa*…, p.33.

[17] See: A. Wach, *Delimitacja mediacji i koncyliacji jako samodzielnych form ADR*, „Radca Prawny" 2003, No. 1, p. 96 n.; *idem*, *Alternatywne formy rozwiązywania sporów sportowych*, Warszawa 2005, p. 217; L. Bouelle, *Australian ADR and the Issue of Judicial Discretion* [in:] *ADR International Applications, International Court of Arbitration Bulletin Special Supplement*, Paris 2001, p. 41, based on: R. Morek, *Razem czy osobno: uwagi o znaczeniach pojęć mediacji i koncyliacji* [in:] *Sądy polubowne i mediacja*, ed. J. Olszewski, Warszawa 2008, p. 24.

[18] J.W.S. Davis, *Dispute Resolution in Japan*, Cambridge, Mass. 1996, p. 152, after: R. Morek, *Razem czy osobno*…, p. 23.

[19] See: R. Bierzanek, J. Simonides, *Prawo międzynarodowe*, Warszawa 1997, p. 334.

There are also comments in the literature suggesting that the above distinction of mediation and conciliation refers to the historical model of mediation, since the concept functioning today is broader[20]. According to this approach, conciliation is not a separate alternative method of resolving disputes, because modern mediation can take various forms, such as evaluative mediation. The only criterion for distinguishing conciliation cannot be based on the degree of involvement of these two entities, if other characteristic features such as voluntary accession and reaching an agreement, conciliatory environment and autonomy of the parties are similar. Therefore, these concepts can be treated as equivalent[21].

According to another trend, conciliation and mediation are not identical concepts, and they can be distinguished based on the degree of the third party's involvement. However, it is the mediator, not the conciliator, who is more active and can propose their own solutions to the dispute. The conciliator, on the other hand, helps the parties to reach an agreement by encouraging them to continue meetings and discuss contentious issues, and by encouraging them to compromise[22]. A similar understanding of the concepts of conciliation and mediation was adopted in the draft recommendation of the Committee of Ministers of the Council of Europe (Recommendation No. (2001) 9 of 2001)[23].

Conciliation and mediation are separate concepts in some European countries, where, unlike in Poland, there are legal grounds for doing so. Belgium, France or Italy can serve as examples[24].

In the literature on collective labour law one can find another approach to the concepts of conciliation and mediation according to which the former is nothing more than direct negotiations between the parties[25]. A justification for this position can be sought in the etymology of the concept of conciliation. Latin *conciliatio* means agreement, *conciliare* – to unite, *concilium* – gathering. According to this approach, conciliation involves meeting of and communicate between parties, i.e. discussions intended to resolve a dispute; this corresponds to the first stage of collective bargaining, i.e. negotiations[26]. It should be noted, however, that according to the views presented earlier, conciliation is a method

[20] See: Z. Kmieciak, *Mediacja i koncyliacja w prawie administracyjnym*, Kraków 2004, p. 27 n.

[21] See: E. Gmurzyńska, *Mediacja w sprawach sądowych w amerykańskim systemie prawnym – zastosowanie w Europie i w Polsce*, Warszawa 2006, p. 27 n.

[22] See: B Skulimowska, *Tryb i procedury rozwiązywania zatargów zbiorowych w Polsce na tle porównawczym*, Warszawa 1992, p. 25; *eadem*, *Procedury pojednawstwa i rozjemstwa w zatargach zbiorowych (studium porównawcze)*, Warszawa 1982, p. 31.

[23] E. Gmurzyńska, *Mediacja w sparwach*…, p. 264 n.

[24] More broadly on this subject: R. Morek, *Razem czy osobno*…, pp. 26, 27.

[25] T. Zieliński, *Prawo pracy. Zarys systemu. cz. III*, Warszawa 1986, p. 130; K.W. Baran, *Model polubownego likwidowania zbiorowych sporów pracy w systemie prawa polskiego*, „ Praca i Zabezpieczenie Społeczne" 1992, No. 3, p. 18 n.

[26] After: B. Skulimowska, *Sądy polubowne*…, p. 62.

of amicable dispute resolution, characterized by involvement of a third party[27]. Therefore, it would be difficult to put a sign of equality between both methods, since the bargaining regulations do not provide for participation of a third party. On the other hand, they also do not exclude such participation. Therefore, it cannot be ruled out that the parties decide to invite a third party to participate in negotiations if, in their opinion, such assistance would be needed[28]. In this case, however, such entity would participate in the negotiations informally, so we would not be dealing with conciliation or mediation in this case, either[29].

Just as there is no unanimity as to the extent of mediator's involvement in resolving various disputes by using peaceful methods, opinions about the manifestations of the mediator's activity in resolving collective labour disputes are also greatly varied. It is suggested that mediator's competences may vary and include ability to facilitate communication between the parties, conduct analytical and research activities, advise or encourage settlement of the dispute[30]. There are also views that mediator's basic task should be to competently identify facts based on which the parties may draw clear conclusions. However, they should not focus on pressing the parties towards a compromise. The findings acquired by them will provide better arguments[31]. The need for the mediator to build the trust between the parties of a dispute is also emphasised. They should not urge the parties to enter into an agreement against their will. The mediator's role is also to make it clear to the parties that termination of a dispute does not end their relation, as they will have to function in normal conditions[32].

It seems that the most convincing position is that the mediator's competences are diverse, and therefore the manifestations of their involvement will be varied. A characteristic feature of mediation is its low degree of formalization, and this should not be considered in terms of defective legal structures. The low degree of formalism in mediation guarantees a great deal of flexibility for the mediator in selecting mediation techniques and adapting them to a particular situation[33]. However, for these broad statutory regulations to become an advantage

---

[27] T. Stręk, *Indywidualne spory pracy. Poradnik praktyczny*, Kraków 2003, pp. 12, 13.

[28] A different approach: A.M. Świątkowski, *Ustawa o rozwiązywaniu sporów zbiorowych* [in:] *Zbiorowe prawo pracy. Komentarz*, eds. J. Wratny, K. Walczak, Warszawa 2009, p. 340.

[29] Another opinion presented in the literature suggests that the mediator may join the dispute in the first phase, i.e. at the negotiation stage. See: W. Masewicz, *Ustawa o związkach zawodowych. Ustawa o rozwiązywaniu sporów zbiorowych. Ustawa o organizacjach pracodawców*, Warszawa 1998, p. 171.

[30] See: G. Goździewicz, *Arbitraż i mediacja w prawie pracy* [in:] *Arbitraż i mediacja w prawie pracy. Doświadczenia amerykańskie i polskie*, Lublin 2005, p. 18; J. Piątkowski, *Uprawnienia zakładowej organizacji związkowe*j, Toruń 2005, p. 283.

[31] See: J. Jończyk, *Prawo pracy*, Warszawa 1995, p. 234.

[32] See: M. Lewandowicz-Machnikowska, A. Górnicz-Mulcahy, *Mediacja w sporze zbiorowym*, „ADR" 2011, No. 2, p. 56.

[33] Cf. K.W. Baran, *Komentarz*…

rather than a disadvantage, the parties must trust the mediator. What qualities should a mediator have to earn this trust? It is difficult to create an objective catalogue of such attributes because trust can be assessed mainly based on premises of a subjective nature. However, since the mediator is an entity that, through their actions and behaviour, can contribute to building a new quality of collective labour relations, they should also meet objective conditions, and actually one can try to objectify the premises that the parties use when choosing a mediator.

Mediation is an art and a mission of good will[34]. The requirements set for the mediator by the parties should therefore correspond to the importance of this art. One can undoubtedly include here knowledge and competences in the field of psychology. This is because a lack of expert knowledge can be compensated for by the use expert's opinion. This, however, is impossible if the mediator has insufficient psychological knowledge, as it would undermine their competences. The mediator should be well acquainted with negotiation techniques, because this will be helpful in choosing the right methods of mediation. They should also be able to act in a composed manner, so as not to intensify the tension between the parties of the conflict. The ability to listen to others may be a quality that is essential when conducting mediation in a competent way. It will allow to obtain information necessary for efficient and effective mediation. The mediator should also be flexible, as a result to which, depending on the needs, they will be able to withdraw from the discussion or take a more dominant position. They should also enjoy good reputation, which seems necessary for the parties to trust them. Therefore, to be an effective mediator, not only knowledge and skills, but also appropriate personality traits are needed.

Choice of appropriate mediation techniques is, and should be, up to the mediator; this is directly related to the degree of their involvement. It seems that the latter should be determined by the parties of the collective dispute[35]. Indeed, one must not forget that, irrespective of the matter requiring mediation, it is the parties to the dispute that are the hosts. The mediator is only to help them communicate in such a way that the conflict does not escalate during the mediation process. The mediation procedure largely depends on the scale of the problem to which the collective dispute relates, which in turn affects the degree of emotional involvement of the parties, and their willingness to make concessions. All of these factors are not less important than the mediator's professionalism. It should also be emphasized that, compared to other disputes, collective disputes are characterized by a specificity reflected by the parties involved, and the subjective scope of the problem to which the dispute relates. Parties to such disputes include employee repre-

[34] Cf. A. Sobczyk, A. Daszczyńska, *Dialog społeczny jako narzędzie zbiorowego prawa pracy* [in:] *Dialog społeczny w praktyce przedsiębiorstw*, ed. J. Stelina, Gdańsk 2010, p. 26.

[35] Cf. K.W. Baran, *Modele polubownego likwidowania zbiorowych sporów pracy w systemie prawa polskiego*, „Praca i Zabezpieczenie Społeczne" 1992, No. 3, p. 21.

sentatives, i.e. trade unions, while in individual disputes it is persons directly involved in the conflict which then takes the form of a dispute. Collective disputes, being an externalised form of conflict, may stem from many individual conflicts, which due to their subjective scope and the homogeneity of the matter concerned transform into disputes of collective nature. The specificity of the parties to a collective dispute may, on one hand, reduce the intensity of the emotional factor, on the other, it may increase the sense of responsibility for the course and termination of the dispute, which bodes well for its settlement by agreement. This specificity also impacts the mediation model, since it is pointless to apply some of its models because of the parties' less emotional or personal approach to the dispute. Other methods cannot be applied either, given the parties' desire to end the dispute in agreement. This eliminates such methods as transformative or humanistic mediation. Classical mediation, however, can be used, but it may prove ineffective due to the fact that a resolution to the dispute, in this case, cannot be recommended by the mediator. Hence, classical mediation with elements of evaluative mediation cannot be ruled out, as it gives the mediator an opportunity to suggest solutions. It may be applied only if it is assumed that the mediator will remain impartial and will take into account the interests of both parties to the dispute[36]. However, it seems that the importance of an appropriate mediation technique cannot be overstated and it can be concluded that it will have a decisive impact on the successful completion of mediation.

Bibliogrpahy

Baran K.W., *Komentarz do art. 8 ustawy o rozwiązywaniu sporów zbiorowych*, www. lex.edu.pl.

Baran K.W., *Model polubownego likwidowania zbiorowych sporów pracy w systemie prawa polskiego*, „ Praca i Zabezpieczenie Społeczne" 1992, No. 3.

Bieliński A., *Uwagi wstępne na temat mediacji* [in:] *Sądy polubowne i mediacja*, ed. J. Olszewski, Warszawa 2008.

Bierzanek R., Simonides J., *Prawo międzynarodowe*, Warszawa 1997.

Bouelle L., *Australian ADR and the Issue of Judicial Discretion* [in:] *ADR International Applications, International Court of Arbitration Bulletin Special Supplement*, Paris 2001.

Dahrendorf R., *Teoria konfliktu w społeczeństwie przemysłowym* [in:] *Elementy teorii socjologicznych*, ed. R. Dahrendorf, Warszawa 1975.

Davis J.W.S., *Dispute Resolution in Japan*, Cambridge, Mass. 1996.

Dialog społeczny w praktyce przedsiębiorstw, ed. J. Stelina, Gdańsk 2010.

Doherty N., Guyler M., *Mediacja i rozwiązywanie konfliktów w pracy*, Warszawa 2010.

Elementy teorii socjologicznych, ed. R. Dahrendorf, Warszawa 1975.

Gmurzyńska E., *Mediacja w sprawach cywilnych w amerykańskim systemie prawnym – zastosowanie w Europie i w Polsce*, Warszawa 2006.

[36] A. Kowalczyk, *Pojęcie sporu zbiorowego oraz pokojowe metody jego rozwiązywania w prawie polskim*, Rzeszów 2017, p. 168.

Gmurzyńska E., Morek R., *Mediacja teoria i praktyka*, Warszawa 2009.
Goździewicz G., *Arbitraż i mediacja w prawie pracy* [in:] *Arbitraż i mediacja w prawie pracy. Doświadczenia amerykańskie i polskie*, ed. G. Goździewicz, Lublin 2005.
Gryniuk A., *Przymus prawny jako środek rozwiązywania konfliktów społecznych w dużych i wielkich grupach społecznych*, Toruń 1990.
Hankała A., *Konflikty międzyludzkie* [in:] *Wielka encyklopedia prawa*, ed. E. Smoktunowicz, Białystok–Warszawa 2000.
Jończyk J., *Prawo pracy*, Warszawa 1995.
Kalisz A., Zienkiewicz A., *Mediacja sądowa i pozasądowa. Zarys wykładu*, Warszawa 2009.
Kmieciak Z., *Mediacja i koncyliacja w prawie administracyjnym*, Kraków 2004.
Korybski A., *Alternatywne rozwiązywanie sporów w USA. Studium teoretycznoprawne*, Lublin 1993.
Kowalczyk A., *Pojęcie sporu zbiorowego oraz pokojowe metody jego rozwiązywania w prawie polskim*, Rzeszów 2017.
Lewandowicz-Machnikowska M., Górnicz-Mulcahy A., *Mediacja w sporze zbiorowym*, „ADR" 2011, No. 2.
Łukaszewicz Ł., *Aksjologiczne i prakseologiczne przesłanki polubownego rozstrzygania sporów i mediacji* [in:] *Sądy polubowne i mediacja*, ed. J. Olszewski, Warszawa 2008.
Masewicz W., *Ustawa o związkach zawodowych. Ustawa o rozwiązywaniu sporów zbiorowych. Ustawa o organizacjach pracodawców*, Warszawa 1998.
Masewicz W., *Zatarg zbiorowy pracy*, Bydgoszcz 1994.
Morek R., *Razem czy osobno: uwagi o znaczeniach pojęć mediacji i koncyliacji* [in:] *Sądy polubowne i mediacja*, ed. J. Olszewski, Warszawa 2008.
Nocuń A., Szmagalski J., *Podstawowe umiejętności w pracy socjalnej i ich kształtowanie. Porozumiewanie się, rozwiązywanie problemów i konfliktów*, Katowice–Kraków 1998.
Piątkowski J., *Uprawnienia zakładowej organizacji związkowej*, Toruń 2005.
Sądy polubowne i mediacja, ed. J. Olszewski, Warszawa 2008.
Skulimowska B., *Procedury pojednawstwa i rozjemstwa w zatargach zbiorowych (studium porównawcze)*, Warszawa 1982.
Skulimowska B., *Tryb i procedury rozwiązywania zatargów zbiorowych w Polsce na tle porównawczym*, Warszawa 1992.
Sobczyk A., Daszczyńska A., *Dialog społeczny jako narzędzie zbiorowego prawa pracy* [in:] *Dialog społeczny w praktyce przedsiębiorstw*, ed. J. Stelina, Gdańsk 2010.
Stręk T., *Indywidualne spory pracy. Poradnik praktyczny*, Kraków 2003.
Świątkowski A.M., *Ustawa o rozwiązywaniu sporów zbiorowych* [in:] *Zbiorowe prawo pracy. Komentarz*, eds. J. Wratny, K. Walczak, Warszawa 2009.
Wach A., *Alternatywne formy rozwiązywania sporów sportowych*, Warszawa 2005,
Wach A., *Delimitacja mediacji i koncyliacji jako samodzielnych form ADR*, „Radca Prawny" 2003, No. 1.
Wielka encyklopedia prawa, ed. E. Smoktunowicz, Białystok–Warszawa 2000.
Zbiorowe prawo pracy. Komentarz, eds. J. Wratny, K. Walczak, Warszawa 2009.
Zieliński T., *Prawo pracy. Zarys systemu. Cz. III*, Warszawa 1986.
Żołyński J., *Ustawa o rozwiązywaniu sporów zbiorowych. Komentarz. Wzory pism*, Warszawa 2012, Lex.

Summary

Mediation, as a way of resolving disputes, including collective disputes, is associated with relatively small regulatory interference by the legislator, which is reflected by one of its features, i.e. a lack of formal constraints. Therefore, the question arises about the mediator's role in resolving

collective disputes. Undoubtedly, they must guarantee to be impartial, however, it should be remembered that parties to a collective dispute are its hosts. Hence, it seems that the importance of an appropriate mediation technique cannot be overstated and it can be concluded that it will have a decisive impact on the successful completion of mediation. Therefore, the mediator's role is primarily to help the parties communicate so that the conflict does not escalate during the mediation process.

Keywords: peace, conciliation, mediation, dispute, conflict

MEDIATOR I JEGO ROLA W SPORACH ZBIOROWYCH

Streszczenie

Mediacja jako sposób rozwiązywania sporów, w tym sporów zbiorowych, wiąże się ze stosunkowo małą ingerencją ustawodawcy w jej doregulowanie, co jest odzwierciedleniem jednej z jej cech w postaci odformalizowania. Pojawia się w związku z tym pytanie o rolę mediatora w rozwiązywaniu sporów zbiorowych. Bez wątpienia musi on być gwarantem bezstronności, należy jednak pamiętać, że w przypadku sporu zbiorowego strony są jego gospodarzami. Wydaje się zatem, że nie można przeceniać zastosowania odpowiedniej techniki mediacyjnej i wnioskować, że będzie ona miała decydujący wpływ na zakończenie mediacji powodzeniem. Rolą mediatora jest zatem przede wszystkim pomoc w komunikowaniu się stronom w taki sposób, aby nie doszło do eskalacji konfliktu w czasie trwania procesu mediacji.

Słowa kluczowe: pokojowy, pojednanie, mediacja, spór, konflikt