

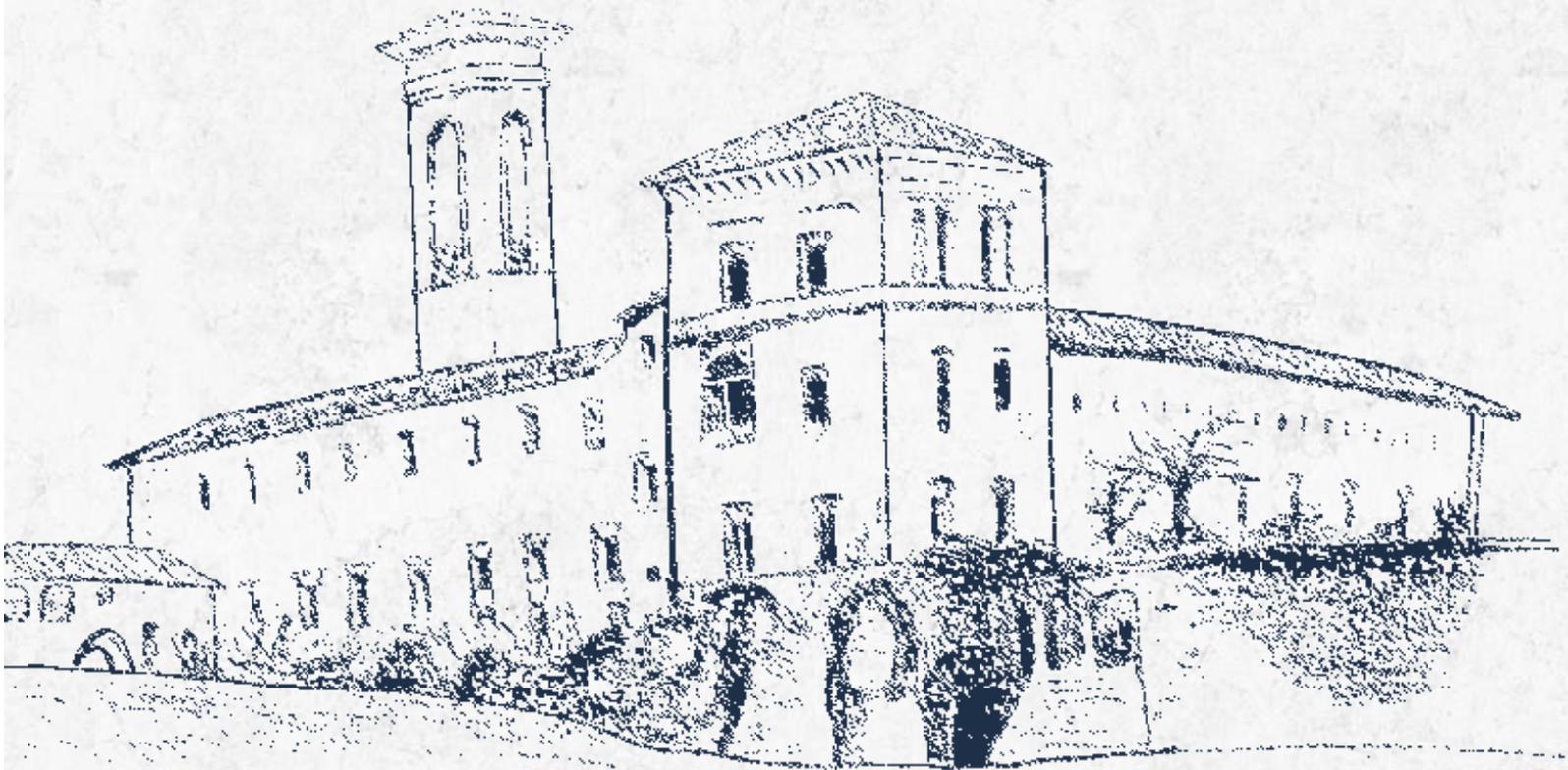
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Timeless Rights, New Tools: Technological Transformations of Trade Union Activity in the Italian Private Sector

Marianna Russo *

Abstract. Even from a collective perspective, the combination of technology and work is significant. Trade unions play a key role in improving the labour conditions of remote workers through collective bargaining. They are also called upon to be protagonists of change, using technology themselves to carry out their activities and prerogatives in the workplace. In this context, the effectiveness of the digitalisation of trade union organisations may serve as a litmus test for the level of technologisation in the workplace. This paper aims to analyse the stakeholders, regulations, and tools involved in the technological transformation of trade union activity in the Italian private sector, identifying both its potential and the most insidious challenges.

Keywords: *Trade union activities; Italian Private Sector; Technological Transition; Remote Work; Digital Tools.*

1. New Technologies and the Collective Dimension of Work: Players, Rules, and Tools

The technological transition is reshaping our lives and, consequently, the way we work. This is not necessarily a negative development, as the interplay between work and technology holds considerable potential. Digitalisation paves the way for new forms of work organisation and job opportunities, fostering emerging sectors and enhancing work-life balance through innovative technological tools. However, it simultaneously raises

* Researcher and Assistant Professor at the University of Campania Luigi Vanvitelli (Italy). Email address: marianna.russo@unicampania.it.

a number of concerns regarding labour rights, psychosocial risks¹, social protections, and extensive technological unemployment². In this context, technological work serves as both a catalyst for opportunities and a source of stress for established legal concepts³, as evidenced by academic discourse and jurisprudence in recent decades⁴.

The very notion of technological work remains contentious. The concept, as gleaned from various international documents⁵, traditionally pertains to employees who utilise integrated telecommunications systems and, at least occasionally, perform their duties outside company premises, that is, teleworkers. Nonetheless, its scope should be much broader, encompassing all workers who primarily rely on digital devices, regardless of the legal classification of their employment relationship⁶, even if they carry out their work on company premises.

A noteworthy advancement in this regard is found in the European Parliament's resolution on the right to disconnect⁷. Although the preamble of this resolution contains numerous references to telework, Article 1 of the accompanying directive proposal stipulates that its provisions apply to all workers who use digital tools for work-related purposes in both the public and private sectors, irrespective of their employment status or work arrangements. This could arguably be interpreted as a significant shift in trend.

¹ EUROFOUND, ILO, *Working anytime, anywhere: The effects on the world of work*, Publications Office of the European Union, Luxembourg, and the International Labour Office, Geneva, 2017, p. 37.

² OECD, *Automation and independent work in a digital economy*, in www.oecd.org, 2016; A. MCAFEE, E. BRYNJOLFSSON, *The Second Machine Age: Work, Progress, and Prosperity in a time of brilliant technologies*, New York, 2016; E. LACKOVA, M. RUSSO, *Regulating (Un)Employment Effects of Automation. Challenges For Employee-Oriented Technological Transition*, in *Hungarian Labour Law E-Journal*, 2022, no. 2, p. 25.

³ “The relationship between innovation and employment is a ‘classical’ controversy, where a clash between two views can be singled out”: V. VAN ROY, D. VÉRTESY, M. VIVARELLI, *Technology and employment: Mass unemployment or job creation? Empirical evidence from European patenting firms*, in *Research Policy*, 2018, no. 47, p. 1762. See also A. DONINI, *Il luogo per l'esercizio dei diritti sindacali: l'unità produttiva nell'impresa frammentata*, in *Labour & Law Issues*, 2019, no. 2, p. 100.

⁴ For a broader overview and references see M. RUSSO, *Twenty years of EU agreements on remote work from 2002 to 2022. What next?*, in *Freedom, Security & Justice: European Legal Studies*, 2023, n. 3, p. 215.

⁵ See EUROFOUND, ILO, *Working anytime, anywhere, cit.*; ILO, *Teleworking during the Covid-19 pandemic and beyond. A practical guide*, ILO publications, Geneva, 2020; ILO, *Working from home: from invisibility to decent work*, ILO publications, Geneva, 2021.

⁶ Subordinate or self-employed workers.

⁷ Issued on 21.01.2021.

However, it is important to acknowledge that remote work—in its various forms and methodologies⁸—plays a crucial role in the technologisation of work. While in 2019 only 11% of European employees worked from home⁹, this figure rose dramatically during the Covid-19 pandemic, as remote work was viewed as the most effective means of maintaining operations while mitigating the spread of contagion in the workplace. Consequently, during the health emergency, nearly 70% of full-time workers across Europe were working from home¹⁰. Although there was a slight decline in 2022¹¹, many employees wish to continue working remotely, at least in part¹², in the future¹³. This upward trend in teleworking is thus poised to continue as technological advancements

⁸ In the EU Framework Agreement, signed on the 16th of July 2002, remote work took the name of telework to emphasize the use of integrated telecommunication systems. It covers a wide and fast-evolving range of circumstances and practices., since it is “a form of organising and performing work, using information technology, in the context of an employment contract/relationship, where work, which could also be performed at the employer’s premises, is carried out away from those premises on a regular basis” (art. 2 of the framework agreement).

⁹ See EUROFOUND, *The rise in telework: Impact on working conditions and regulations*, Publications Office of the European Union, Luxembourg, 2022, p. 7.

¹⁰ EUROPEAN COMMISSION, *Telework in the EU before and after the COVID-19: where we were, where we head to*, 2021, https://joint-research-centre.ec.europa.eu/system/files/2021-06/jrc120945_policy_brief_-_covid_and_telework_final.pdf.

¹¹ Because “remote work is often seen as anathema by some who associate it with laziness, low productivity and the degradation of the social fabric of firms and of their creative and collaborative potential”: N. COUNTOURIS, V. DE STEFANO, *Out of sight, out of mind? Remote work and contractual distancing*, in N. COUNTOURIS, V. DE STEFANO, A. PIASNA, S. RAINONE, *The future of remote work*, ETUI, Brussels, 2023, p. 147.

¹² See the experience of hybrid work (I. DE CLERQ, *Hybrid work. A Manifesto*, Die Keure, Brugge, 2021; VV.AA., *Hybrid workplace*, Harvard Business Review Press, Boston, 2022) and the Italian agile work or, as it is commonly named, smart work (art. 18 and ff. Law 22.05.2017, no. 81. On the topic see, *ex multis*, C. SPINELLI, *Tecnologie digitali e lavoro agile*, Bari, 2018; M. TUFO, *Il lavoro digitale a distanza*, Napoli, 2021; M. RUSSO, *Il datore di lavoro agile. Il potere direttivo nello smart working*, Edizioni Scientifiche Italiane, Napoli, 2023). Hybrid work is characterised by wide freedom of modulation of flexibility of time and place, as it includes both the possibilities to work within the company premises or remotely, from any place where there is an internet connection through digital devices, such as smartphone, tablet or personal computer. The regulatory source of the organisational method is made up of company policies. Similarly, Italian agile workers carry out their performance, partly within company premises and partly outside, without a fixed location, within the limits of maximum duration of daily and weekly working hours, using technological tools.

¹³ EUROFOUND, *The rise in telework*, *cit.*, p. 65.

increase the availability of telework-compatible jobs, and both employee and employer preferences gravitate more towards remote work.

In the years ahead, work will become increasingly technological, necessitating careful consideration not only of individual employment relationships but also of the less-explored “collective” dimension of work. We cannot overlook the fact that the freedom of association and the effective recognition of the right to collective bargaining are considered fundamental principles and rights at work¹⁴, on par with the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, the eradication of discrimination in employment and occupation, and, more recently, the establishment of a safe and healthy working environment¹⁵.

From a collective perspective, the intersection of technology and work is also significant. Trade unions play a vital role in improving the working conditions of remote employees through collective bargaining¹⁶, and their involvement is essential in training initiatives. Assisting workers in maximising the potential of the digital technologies being introduced should rank among the most important tasks for trade unions, as highlighted in the European Social Partners’ Agreement on Digitalisation¹⁷.

Although these responsibilities are challenging, they are insufficient on their own, as trade unions are also expected to actively embrace change by applying technologies in their operations. In this respect, the effectiveness of the digitalisation of trade union organisation could serve as a litmus test for the level of technologisation in the workplace.

Therefore, this paper aims to analyse the players, rules, and tools involved in the technological transformation of trade union activity within the Italian private sector, identifying its potential as well as its most insidious challenges. The scope of this investigation primarily focuses on the activities conducted by trade union representatives within companies, known in Italy as RSA¹⁸ or RSU.¹⁹ Consequently, attention will be directed

¹⁴ See ILO, *Declaration on fundamental principles and rights at work*, adopted in 1998.

¹⁵ It has been added in 2022.

¹⁶ Especially in Western European countries, where collective bargaining is more developed. At European level, in addition to the Framework agreement of 2002, see, lately, the Joint work programme 2022-2024, signed by the European social partners on 28.06.2022. See D. MANGAN, *Agreement to discuss: the Social Partners Address the Digitalisation of Work*, in *Industrial Law Journal*, 2021, no. 4, p. 689.

¹⁷ Signed in June 2020. See T. TREU, *La digitalizzazione del lavoro: proposte europee e piste di ricerca*, in *Federalismi*, 2022, no. 9, p. 190.

¹⁸ See art. 19 of the Italian Workers’ Statute.

towards the technologisation of “traditional” union activities in the Italian private sector.

2. Trade Unions Facing Technological Transition

As remote work has grown exponentially across many sectors since the Covid-19 pandemic, it has become increasingly necessary to regulate this form of work carefully to guarantee the fundamental rights of employees, including trade union rights. If remote work is not collectively negotiated and adequately implemented, it may compromise freedom of association, collective bargaining, and trade union organisation. Therefore, the role of social partners is essential in responding to this new form of work organisation by defining and implementing policies related to remote work and negotiating strong provisions in collective bargaining agreements²⁰ to ensure workers’ rights and conditions.

At the same time, trade unions are affected by the challenging consequences of digitalisation and face the significant task of growing and maintaining their capacity to represent the interests of workers when the physical workplace diminishes in importance²¹ or ceases to exist altogether. Indeed, physical co-presence is crucial for union membership, and remote work threatens the daily union activities of advocacy and representation, as teleworkers are less exposed to unions compared to traditional employees who work on company premises²². Essentially, “remote work is challenging for trade unions in their efforts to recruit and organise members,”²³ potentially paving the way for alternative forms of self-representation²⁴, which increases the risk of disintegration or, as it has

¹⁹ See Interconfederal Agreement of 23.07.1993.

²⁰ On the point, see B. DEDDEN, S. DE SPIEGELAERE, M. HICK, *Remote work: ensuring trade union and workers’ rights through collective bargaining*, in N. COUNTOURIS, V. DE STEFANO, A. PIASNA, S. RAINONE (edited by), *The future of work*, cit., p. 127.

²¹ See L. IMBERTI, *La nuova “cassetta degli attrezzi” del sindacato tra spazi fisici e luoghi digitali: l’esperienza di Toolbox Cgil di Bergamo*, in *Labour & Law Issues*, 2019, no. 2, p. 117.

²² K. VANDAELE, A. PIASNA, *Sowing the seeds of unionisation? Exploring remote work and work-based online communities in Europe during the Covid-19 pandemic*, in N. COUNTOURIS, V. DE STEFANO, A. PIASNA, S. RAINONE (edited by), *The future of work*, cit., p. 103.

²³ K. VANDAELE, A. PIASNA, *Sowing the seeds of unionisation?*, cit., p. 105.

²⁴ M. MAGNANI, *Nuove tecnologie e diritti sindacali*, in *Labour & Law Issues*, 2019, no. 2, p. 4; S. BINI, *Il social network: da luogo a soggetto della rappresentanza sindacale digitale?*, in *Labour & Law Issues*, 2019, no. 2, p. 19; B. CAPONETTI, *Social media e rappresentanza sindacale: quali scenari?*, in *Labour & Law Issues*, 2019, no. 2, p. 31.

been termed, “trade union disintermediation”²⁵. Such disintermediation could destabilise the already fragile collective balance, affecting not only Italy but also Europe and the United States²⁶. This phenomenon poses a risk of the marginalisation of trade unions or, at the very least, dualisation, as evidenced by work-based online communities that emerged in Europe during the Covid-19 pandemic²⁷. Through these spontaneous communities, workers utilise online communication channels, such as social networking sites, to interact regarding their employment conditions, share ideas and information, and seek mutual aid. These grassroots communities are a direct consequence of the loss of in-person interactions among workers in traditional work environments.

However, the excessive fragmentation and individualisation of interests could conflict with the principle of solidarity²⁸ upon which the Italian Constitutional Charter is founded, and which is expressed²⁹ in Article 39 of the Constitution—and, consequently, the Italian Workers’ Statute³⁰.

Conversely, online communities may act as substitutes for unions where their presence is absent or weak, generating a form of replacement for established trade unions. They may also complement existing unions by playing a “supplementary role”³¹. Practically, online communities can create a “virtual workplace” alongside the physical and traditional one.

²⁵ B. CARUSO, *La rappresentanza delle organizzazioni di interessi tra disintermediazione e re-intermediazione*, in *Biblioteca 20 Maggio*, 2017, no. 1, p. 232. See also S. CIUCCIOVINO, *Le nuove questioni di regolazione del lavoro nell’industria 4.0. e nella gig economy: un problem framework per la riflessione*, in *Diritto delle relazioni industriali*, 2018, no. 4, p. 1043; B. CARUSO, *Il sindacato tra funzioni e valori nella “grande trasformazione”. L’innovazione sociale in sei tappe*, in B. CARUSO, R. DEL PUNTA, T. TREU (edited by), *Il diritto del lavoro e la grande trasformazione*, Il Mulino, Bologna, 2020, p. 145; L. ZAPPALÀ, *Intelligenza artificiale, sindacato e diritti collettivi*, in M. BIASI (edited by), *Diritto del lavoro e intelligenza artificiale*, Giuffrè, Milano, 2024, p. 173.

²⁶ ILO, *Trade unions in the balance*, ILO publications, Geneva, 2019.

²⁷ K. VANDAELE, A. PIASNA, *Sowing the seeds of unionisation? Exploring remote work and work-based online communities in Europe during the Covid-19 pandemic*, *cit.*, p. 105.

²⁸ Art. 2 of the Italian Constitution: “The Republic recognises and guarantees the inviolable rights of human beings, both as an individual and in the social formations where their personality develops and requires the fulfilment of the mandatory duties of political, economic and social solidarity”.

²⁹ On the point, Constitutional Court 5.02.1975, no. 15, in www.cortecostituzionale.it. See also Constitutional Court 24.03.1988, no. 334, in *Massimario di Giurisprudenza del Lavoro*, 1988, p. 186; Constitutional Court 26.01.1990, no. 30, in *Giurisprudenza Costituzionale*, 1990, p. 103.

³⁰ See next paragraph.

³¹ Constitutional Court 5.02.1975, no. 15, *cit.*

From another perspective, technological changes and their associated challenges could be viewed as opportunities for union revitalisation. The greater utilisation of technological tools in the exercise of trade union activities may significantly expand the capacity of trade unions to aggregate and mobilise support, thus more easily engaging younger workers³² and those whose work does not follow traditional patterns³³, while simultaneously garnering public support. Indeed, the use of social media can serve as a “sounding board,” not only for disseminating actions taken but also for attracting solidarity and support for their claims, thereby influencing the choices of users/consumers and significantly increasing the “contractual” strength of trade unions in their negotiations with employers.

It is evident that the various scenarios prompted by the multiple possibilities afforded by technological progress could displace trade unions as traditionally understood. However, this shift need not entail a rejection of these tools, nor should there be an inclination to remain entrenched in the complacency of “it has always been done this way”³⁴. Such reactions are understandable, particularly in light of the sudden and overwhelming acceleration of digitalisation brought about by the Covid-19 pandemic. This may explain the hesitancy to fully harness the potential of available technology. The lack of case law³⁵ on this issue, coupled with the limited regulation concerning the use of technology in trade union

³² Who use digital devices more frequently.

³³ The use of new technologies increases the attractiveness of the unions also towards workers in the Gig Economy: M. FORLIVESI, *La sfida della rappresentanza dei lavoratori 2.0*, in *Diritto delle Relazioni Industriali*, 2016, no. 3, p. 662; A. LASSANDARI, *Problemi di rappresentanza e tutela collettiva dei lavoratori che utilizzano le tecnologie digitali*, in *Quaderni della Rivista Giuridica del Lavoro*, 2017, no. 1, p. 59; M. FORLIVESI, *Alla ricerca di tutele collettive per i lavoratori digitali: organizzazione, rappresentanza, contrattazione*, in *Labour & Law Issues*, 2018, no. 1, p. 38; G. RECCHIA, *Alone in the Crowd? La rappresentanza e l'azione collettiva ai tempi della sharing economy*, in *Rivista Giuridica del Lavoro*, 2018, no. 1, p. 141; P. TULLINI, *L'economia digitale alla prova dell'interesse collettivo*, in *Labour & Law Issues*, 2018, no. 1, p. 4; M. MAGNANI, *Nuove tecnologie e diritti sindacali*, *cit.*, p. 4; M. MARRONE, *Rights against the machines! Il lavoro digitale e le lotte dei riders*, Mimesis Edizioni, Milano, 2021; F. MARTELLONI, *Quali diritti sindacali per le Unions dei riders?*, in *Labour & Law Issues*, 2021, no. 1, p. 213; L. MONTEROSSO, *Tecnologie digitali, nuovi modelli di organizzazione del lavoro e sfide per il sindacato*, in *Federalismi.it*, 9.08.2023, p. 241.

³⁴ See M. RUSSO, *L'attività sindacale nel prisma della transizione tecnologica: il punto sulla giurisprudenza*, in *Argomenti di Diritto del Lavoro*, 2023, no. 5, p. 1088.

³⁵ There is little case law on the matter: see Court of cassation 21.06.2019, no. 16746, in *DeJure*; Court of cassation 5.12.2022, no. 35643 and 35644, in *DeJure*; Court of cassation 17.03.2023, no. 779, in *DeJure*.

activities through collective bargaining at both national and company levels, further highlights this shortage of technological adoption. Nevertheless, this inertia—or, worse, an attempt to revert to the pre-pandemic status quo, disregarding the technological advancements made during that time—cannot be justified. Therefore, it is both necessary and urgent to identify how trade unions can fulfil their fundamental role in this new work reality through the adoption of available technological tools.

3. The Italian Workers' Statute Tested by New Technologies

In Italy, the Magna Carta of trade union activity is the Workers' Statute³⁶, which serves as the concrete implementation of the principle of freedom of trade union organisation enshrined in Article 39 of the Constitution³⁷. This significant law recognises and ensures the freedom of association³⁸ and the freedom of trade union activity in the workplace, particularly in its third section³⁹, which encompasses Articles 19 to 27. Although it was enacted in 1970, the Statute remains surprisingly innovative due to its openness to technological progress. Furthermore, its regulatory provisions are characterised by broad wording. The rules pertaining to trade union activity—ranging from assemblies to referenda, from trade union permits to posters and proselytism⁴⁰—exhibit an all-encompassing and wide-ranging formulation, reflecting a judicious balance between productive and collective interests. Consequently, these rights can be interpreted in a manner that accommodates technological developments without necessitating *de iure condendo* interventions. Additionally, the constant reference to collective bargaining for establishing “better conditions” or, more appropriately, “further modalities” fosters the active role of

³⁶ Law 20.05.1970, no. 300. See G. GIUGNI, *Diritto sindacale*, Cacucci, Bari, 2015; F. LUNARDON, M. PERSIANI, *Diritto sindacale*, Giappichelli, Torino, 2021; F. CORSO, *Il diritto sindacale*, Giappichelli, Torino, 2022; G. SANTORO PASSARELLI, *Diritto dei lavori e dell'occupazione*, Giappichelli, Torino, 2022, p. 65 ff.; M.V. BALLESTRERO, *Diritto sindacale*, Giappichelli, Torino, 2023.

³⁷ “Legal scholarship has always recognized in the Statute a ‘constitutional’ and a ‘promotional soul’: F. CARINCI, *Fifty years of the Workers' Statute (1970-2020)*, in *Italian Labour Law e-Journal*, 2020, no. 2, p. 4.

³⁸ Art. 14 law no. 300/1970.

³⁹ For instance, although this law was issued 54 years ago, it even regulated audio-visual surveillance at work in art. 4. However, this article has been modified by legislative decree 14.09.2015, no. 151 and legislative decree 24.09.2016, no. 185.

⁴⁰ See next paragraph.

collective autonomy in the technological evolution of trade union activities, eliminating the need for legal modifications. Thus, these rules are prepared to facilitate the exercise of trade union rights through technological means.

4. Examining the Trade Union Tools in the Workplace

In accordance with the provisions of the third section of the Workers' Statute, it is pertinent to analyse the tools available for exercising trade union activity in the workplace⁴¹, especially the most commonly used ones, such as assemblies (Article 20 of the Workers' Statute), referenda (Article 21), union permits (Articles 23 and 24), and the right to post (Article 25).

4.1. Assembly

Assembly⁴² is the clearest demonstration of freedom of expression in the workplace⁴³ and simultaneously a measure of the effectiveness of trade union activities within a company, as guaranteed by Article 14 of the Workers' Statute. The regulatory provision concerning the right of assembly involves not only trade union representatives, responsible for convening meetings, but also the collaboration of the employer, who must provide the premises and accept the suspension of production activities, subject to the established annual limit of hours⁴⁴.

Assemblies are invaluable for forming and expressing workers' consensus. Therefore, the impact of new technologies on this intricate and delicate mechanism warrants particular attention.

First, we must acknowledge the significant advantages—particularly in terms of increased worker involvement and participation—that the digitalisation of this vital union activity can offer. In this context, it is important to highlight the essential role played by tele-assemblies (i.e.,

⁴¹ For a broad overview on the technologisation of trade union activity see V. ANIBALLI, *Diritti e libertà sindacali nell'ecosistema digitale*, ESI, Napoli, 2022. See also A. GABRIELE, *I diritti sindacali in azienda*, Giappichelli, Torino, 2017; M. MARAZZA, *Digitalizzazione dei diritti sindacali: spunti di riflessione*, in V. ANIBALLI, C. INANNOTTI DA ROCHA, R. NEI BARBOSA DE FREITAS FILHO, M. MOCELLA, *Il diritto del lavoro nell'era digitale*, Giapeto, 2021, p. 498 ff.

⁴² Art. 20.

⁴³ Regulated in art. 1 of the Workers' Statute.

⁴⁴ The art. 20 of the Workers' Statute establishes no. 10 hours per year, but collective bargaining can provide for better conditions.

meetings conducted via video conferencing platforms) during the Covid-19 pandemic. These virtual meetings facilitated the continuation of dialogue and discussion among workers on matters of union and work-related interests, even during periods of enforced isolation (the so-called lockdown), thus overcoming or, at the very least, mitigating the risks of individualism and fragmentation of the collective fabric.

If we maintain the possibility of online or hybrid assemblies⁴⁵, we could more readily guarantee the active participation of individuals such as teleworkers who perform their tasks remotely in a consistent and stable manner. Although teleworkers are entitled to exercise their collective rights⁴⁶, no specific provisions have been established to facilitate their effective participation. Indeed, it is expressly stated that teleworkers “must be able to participate in the union activity carried out in the company,” thereby reinforcing the significance of the “physical” workplace. However, examination of collective bargaining agreements concerning teleworking reveals that the categories targeted by this modality chiefly include disabled individuals, workers with disadvantaged family situations, pregnant employees, those with minor children, or workers residing a substantial distance from the company headquarters. Consequently, it is objectively unlikely that teleworkers, even if interested in the agenda, will physically attend company premises for union meetings, thereby nullifying or considerably diminishing the effectiveness of their exercise of trade union rights.

Moreover, online or hybrid assemblies may also be beneficial for employees who are unable to attend in person on the day of the meeting due to reasons such as opting to work remotely, being on holiday, or being legitimately absent for other reasons. Regarding smart workers, the National Protocol on agile working⁴⁷ establishes that “performing work in an agile manner does not modify the system of individual and collective trade union rights and freedoms defined by law and collective bargaining”⁴⁸ and delegates the determination of the methods for exercising these rights, including their remote implementation, to the social partners. Furthermore, it confirms the right of remote workers to exercise their rights in person if they so choose.

⁴⁵ Trade union meetings held in person, but with the aid of remote connection to allow the participation of workers who are not physically in the workplace.

⁴⁶ For the private sector see art. 11 of the Inter-confederal Agreement of 9.06.2004, which implements the European Framework Agreement on teleworking.

⁴⁷ Signed on 7.12.2021.

⁴⁸ Art. 8, par. 1.

However, in considering the organisation of assemblies in virtual or hybrid formats, several critical issues may arise. For instance, Article 27 of the Workers' Statute stipulates that the employer must provide premises for union meetings, either permanently or as required, based on the size of the company. But what should occur in the case of an online or hybrid assembly? Tele-assemblies require adequate hardware and software infrastructure, and hybrid meetings may prove even more burdensome for the employer, who must arrange for both a suitable location for in-person participants and ensure sufficient IT support, including a stable internet connection, computers, a video projector, and a large screen.

This aspect is pivotal, as demonstrated by a ruling from the Milan Court⁴⁹, which, even during the epidemiological emergency, ruled that the employer's failure to provide the necessary tools for hosting virtual meetings was not anti-union in nature, due to the absence of an explicit contractual provision. Article 20 of the Workers' Statute empowers the social partners to determine "better conditions"; however, currently, collective bargaining remains silent on this matter. Even during the Covid-19 pandemic, the shared protocol for regulating measures to combat and contain the spread of the virus in workplaces⁵⁰, as well as the Prime Ministerial Decree of 24th October 2020⁵¹, while encouraging the use of remote modes for all types of meetings, imposed no obligations on the employer.

Conversely, the agreement signed in the sector of supply agencies on 24th November 2020⁵² stipulates that the IT platform should be provided by the RSA/RSU and/or trade unions requesting the assembly. Even if the employer were to furnish the necessary technological equipment, challenges could arise regarding the safeguarding of the privacy of trade union communication⁵³, as will be elaborated in the next paragraph.

⁴⁹ Milan Court 30.07.2020, mentioned in S. CASSAR, *Lavoro 2.0 e diritti sindacali: spunti di riflessione e proposte operative su tele-assembly e referendum sindacale on line*, in *Lavoro e previdenza oggi*, 2021, no. 7-8, p. 436, e da V. ANIBALLI, *Diritti e libertà sindacali*, cit., p. 154.

⁵⁰ For the private sector it was signed on 14 March 2020 and updated on the 24th of April 2020, the 6th of April 2021 and the 30th of June 2022.

⁵¹ Art. 1, par. 9, lett. o).

⁵² It was signed by Assolavoro and trade unions.

⁵³ On the point see M. ESPOSITO, *La conformazione dello spazio e del tempo nelle relazioni di lavoro: itinerari dell'autonomia collettiva. Relazione alle Giornate di Studio AIDLASS 2023*, in www.aidlass.it.

4.2. Referendum

Critical issues concerning privacy can also be raised in relation to the digitalisation of the referendum⁵⁴, which is another valid tool governed by the Workers' Statute⁵⁵. A referendum serves as an instrument of direct democracy, allowing all workers—regardless of their membership in a trade union organisation—to participate in consultations on matters pertaining to trade union activity and to express their votes, thereby contributing to the formation of collective will.

On one hand, the use of electronic systems facilitates the conduct of referendums, ensures maximum flexibility, and increases participation⁵⁶, thereby reinvigorating trade union activity within companies. On the other hand, however, challenges emerge regarding the protection of employee privacy, as well as the transparency and reliability of voting processes.

Key concerns revolve around the operational aspects of the referendum, particularly in ensuring the identification of participants and the secrecy and integrity of their votes. There is also a notable gap in collective bargaining, as these issues could be easily addressed through specific regulations, even at the company level. The adoption of established electronic democracy models⁵⁷, which guarantee the immediacy and confidentiality of voting and scrutiny procedures, may prove effective. Furthermore, the electronic voting systems currently available in the marketplace are often based on blockchain technologies⁵⁸ and encompass all the organisational procedures associated with the electoral event—from the setup of the system to the distribution of credentials, from the collection of ballots to the counting of votes, and finally to the publication of results—thus relieving the organiser of the responsibility for ensuring vote anonymity and integrity.

⁵⁴ In doctrine, see F. BASENGHI, *Il referendum*, in C. ZOLI, C. CESTER (edited by), *Diritto del lavoro*, vol. I, *Le fonti. Il diritto sindacale*, Wolters Kluwer, Milano, 2007, p. 196 ff.; M. V. BALLESTRERO, *Diritto sindacale*, cit. p. 171; A. PESSI, *Referendum nei luoghi di lavoro*, in *Enc. Treccani online*, 2014.

⁵⁵ Art. 21.

⁵⁶ Just think of the possibility of expressing votes online or even via *WhatsApp*.

⁵⁷ On the point see D. A. GRITZALIS, *Principles and requirements for a secure e-voting system*, in *Computers & Security*, 2002, no. 6, p. 539; G. BUONANOMI, *Testo unico sulla rappresentanza e votazioni digitali. Questioni aperte e prospettive*, in *Federalismi*, 9 agosto 2023, p. 172.

⁵⁸ According to some studies on the matter, the use of blockchain technology could ensure adequate protection for the circulation of data: S. CASSAR, *Lavoro 2.0*, cit., p. 437; S. DONÀ, M. MAROCCO, *Diritto di assemblea ex art. 20 St. Lav. e nuove tecnologie digitali*, in *Labour & Law Issues*, 2019, no. 2, p. 25.

Additionally, particular care is required when the employer provides the technological equipment, both hardware and, especially, software. In such cases, technical measures should be implemented to prevent the employer from gaining access to confidential information, thereby safeguarding the privacy of the workers.

4.3. Union Permits

Union permits⁵⁹ refer to the number of days or hours allocated for union leaders and company union representatives to engage in activities related to their mandate or to attend trade union conferences. The digitalisation of their use may present challenges from two different perspectives.

The first concern pertains to technology workers, such as teleworkers or, more complexly, employees who carry out their work in an agile manner, at least on days when they are required to work remotely rather than on company premises. If they are company union representatives, can they utilise these permits? If so, how can the actual duration of the permit hours be verified?

Collective bargaining could play a strategic role in addressing these critical issues by confirming that staff who are teleworking or working in an agile manner can use union permits and subsequently identifying the most effective system for detecting and recording the hours used. Currently, only a few collective agreements explicitly regulate this matter⁶⁰, and this uncertainty of management serves as a disincentive for the use of such permits.

Another aspect to consider is that, even when employees conduct their activities in a traditional manner on company premises, union meetings may still be organised online or in hybrid formats. Consequently, despite being physically present at work, union representatives might still use their union permits to participate in union activities remotely. This is another facet that should be addressed in collective agreements to prevent a simple regression to pre-pandemic practices, effectively sidelining the use of online formats and their potential to enhance participation and improve the circulation of ideas and information.

⁵⁹ Regulated by art. 23 and 24 of Workers' Statute, depending on the fact they are paid or not.

⁶⁰ See the collective agreement signed by Sky Italia Srl with trade unions on 22.11.2022.

4.4. Right to Post

Article 25 of the Workers' Statute protects trade union freedom by guaranteeing the right to post communications from the RSA (or RSU). These are communications from a trade union organisation directed at all workers employed within a company. The right to post differs from the right to proselytise⁶¹, which involves communications exchanged among workers, some of whom may hold trade union positions.

Communication is essential for the survival of trade union organisations, as it enables them to maintain contact with registered workers and keep them informed about matters of trade union and workplace interest, realigning the motivations of their membership while also fostering outreach to non-member workers to expand support for the ideas and demands being promoted.

In light of this, communication is fundamental⁶² for trade unions. Simultaneously, it is one of the sectors most affected by technological transformation, with the advent of increasingly sophisticated and pervasive mass media. Trade union communication is not immune to such innovations, as evidenced by the emergence of virtual noticeboards alongside physical ones and the prevalence of mass emails containing union-related content directed at workers.

Since the mid-1990s, an evolving interpretation of Article 25 of the Workers' Statute has accepted the inclusion of an online noticeboard within a company's electronic system as a suitable means to enable wide dissemination of union information, particularly in companies characterised by high levels of digitalisation⁶³. Initially, the opportunity for virtual posting via the internet was regarded as a "mere addition of a new communication channel,"⁶⁴ but over time, the immediacy and diffusion capacity of the internet has effectively transformed the traditional notions of posting and union proselytism. Recent case law confirms that the

⁶¹ Regulated by art. 26 of Workers' Statute.

⁶² The importance of trade union communications is also underlined in case-law: see Court of cassation 27.03.1994, no. 2808, in *Giustizia Civile*, 1994, no. 1, p. 225.

⁶³ On the point see Milan Court 3.04.1995, in *Mass. giur. lav.*, 1995, p. 337, commented by E. GRAGNOLI, *La comunicazione con strumenti elettronici nell'azienda e le prerogative dei sindacati*, and by A. BELLAVISTA, *Il diritto di affissione ex art. 25 St. Lav. e i sistemi aziendali di comunicazione elettronica con i dipendenti*, in *Rivista italiana di diritto del lavoro*, 1994, no. 4, p. 760 ff. See also Milano Court 2.07.1997, in *Orientamenti di giurisprudenza del lavoro*, 1997, p. 948; Modena Court 15.03.2005, in *DeJure*.

⁶⁴ O. LA TEGOLA, *Social media e conflitto: i nuovi strumenti dell'attività sindacale*, in *Labour & Law Issues*, 2019, no. 2, p. 150.

ability to publish trade union press releases online constitutes a fundamental expression of trade union rights and “must be protected.”⁶⁵ This judgment also delineates the distinction between sending emails to all employees and posting communications on the company's electronic noticeboard. These obligations are not interchangeable, as they serve two distinct purposes. The former involves “individual transmission, albeit cumulative,” rather than actual publication, which entails access and consultation by all interested parties without requiring prior identification. The judge⁶⁶ concluded that sending emails does not fulfil all the employer's obligations under Article 25 of the Workers' Statute and, thus, cannot replace the establishment of an online noticeboard for publishing union communications.

In the case reviewed, reference is made to the applicable collective agreement, which explicitly provides for an online noticeboard. However, what occurs if this matter is not addressed? Many collective agreements do not regulate this aspect, which consequently leaves the technological exercise of the union's right to post unaddressed.

Further, the increasing utilisation of social networks represents a powerful means of disseminating trade union propaganda. These platforms can raise awareness about trade union matters even outside the workplace, addressing not only employees but also public opinion.

The Italian Court of Cassation has clarified that if communications via social networks do not contain abusive, offensive, or defamatory content directed at the employer or company managers, such posts are deserving of protection⁶⁷. The Court ruled that “union activity need not necessarily be exercised within the company nor must it be exclusively directed at workers.”⁶⁸ Therefore, propaganda conducted via social media and the multiple opportunities to “exploit the capacity of the web to amplify the echo of the claim”⁶⁹ are legitimate and permissible⁷⁰.

⁶⁵ Cuneo Court 27.06.2019, in <https://m.flcgil.it/files/pdf/20190628/decreto-tribunale-ordinario-di-cuneo-402-del-27-giugno-2019-comportamento-antisindacale-dirigente-scolastico.pdf>.

⁶⁶ Cuneo Court 27.06.2019, *cit.*

⁶⁷ Court of cassation 18.01.2019, no. 1379, in *Rivista italiana di diritto del lavoro*, 2019, no. 2, p. 229, commented by P. TOSI, E. PUCETTI, *Il diritto di critica nella rinnovata rilevanza del limite di pertinenza*.

⁶⁸ Turin Court 6.02.2023, in <https://www.wikilabour.it>.

⁶⁹ O. LA TEGOLA, *Social media e conflitto*, *cit.*, p. 153.

⁷⁰ In recent years there have been numerous rulings on the right to criticize trade unions: Bari Court 4.03.2017, in *Rivista giuridica del lavoro*, 2018, no. 4, p. 477, commented by S. BINI, *Offese reali in contesti virtuali: social network e limiti al diritto di critica*; Court of cassation 27.04.2018, no. 10280; Court of cassation 10.09.2018, no. 21965; Parma Court 7.01.2019;

However, when carried out outside of physical company premises and away from the IT channels provided by the employer, and made accessible to all without distinction, these activities exceed the scope of Article 26 of the Workers' Statute and fall under the right to union criticism, safeguarded by Article 39 of the Italian Constitution.

5. Critical Issues, Challenges, and Prospects

Amidst this transition, it is challenging to draw fully formed conclusions; however, it is important to offer some points for reflection.

This overview clearly indicates that numerous and diverse interests are at stake and that striking a balance in the technologisation of trade union rights is not straightforward. As noted, initial resistance originated from the trade unions themselves, as they were not adequately prepared to confront the technological challenges. Nevertheless, the ongoing change is irreversible, and thus, there is an urgent need to embrace the variety of possibilities offered by technological advancements, particularly regarding the exercise of trade union rights. Trade unions should proactively anticipate technological innovations, for instance, by engaging with a new frontier of digitalisation: the metaverse⁷¹.

Taranto Court 26.07.2021, in *Rivista italiana di diritto del lavoro*, 2021, no., 4, p. 699, commented by A. INGRAO, *Licenziamento disciplinare, libertà di espressione e social network: quando un post fa perdere ingiustamente il posto*. See also F. D'AVERSA, *Il diritto di critica (anche sindacale) nell'epoca dei Social Media*, in *Labour & Law Issues*, 2019, no. 2, p. 58; G. BANDELLONI, *Il diritto di critica alla prova dei social network*, in *Labour & Law Issues*, 2022, no. 2, p. 3.

⁷¹ On the metaverse, see M. BALL, *Metaverso*, Garzanti, 2022; H. NARULA, *Virtual Society. The Metaverse and the new frontiers of human experience*, Crown Publishing, 2022; V. DE STEFANO, A. ALOISI, N. COUNTOURIS, *Il Metaverso è una questione di diritto*, 2022, in www.socialeurope.eu; A. DONINI, M. NOVELLA, M.L. VALLAURI, *Prime riflessioni sul lavoro nel metaverso*, in *Labour & Law Issues*, 2022; L. LAZZERONI, *Metaverso*, in AA.VV., *Lavoro e tecnologie. Dizionario del diritto del lavoro che cambia*, Giappichelli, Torino, 2022, p. 162; M. LOMBARDI, *Il lavoro nel metaverso: uno spazio indefinito del possibile*, in *Labour & Law Issues*, 2022, p. 28; M. MARTONE, *Prime riflessioni su lavoro e metaverso*, in *Argomenti di Diritto del Lavoro*, 2022, p. 1131; M. PERUZZI, *"Almeno tu nel metaverso". Il diritto del lavoro e la sfida dei nuovi spazi digitali*, in *Labour & Law Issues*, 2022, p. 64; N. ROSA, *Understanding the Metaverse: a business and ethical guide*, Wiley, 2022; M. BIASI, *Il decent work e la dimensione virtuale: spunti di riflessione sulla regolazione del lavoro nel Metaverso*, in *Lavoro Diritti Europa*, 2023; M. BIASI, *Guest Editorial. The labour side of the Metaverse*, in *Italian Labour Law e-Journal*, 2023, no. 1, p. VII; M. BIASI, M. MURGO, *The virtual space of the Metaverse and the fiddly identification of the applicable labor law*, in *Italian Labour Law e-Journal*, 2023, no. 1; F. COSTANTINO, *Il lavoro nel metaverso*, in G. CASSANO, G. SFORZA (edited by), *Metaverso*, Pacini, 2023, p. 381; H. R. Ekbja, *Parallel universes: the future of remote work and the remoteness of future work*, in AA.VV.,

The metaverse comprises interconnected and interoperable virtual worlds, wherein the fluidity between the real and the virtual creates a form of “on-life”.⁷² The relevance and urgency of this issue are underscored by the keen interest of the European Commission, which is closely monitoring the phenomenon⁷³, particularly in light of its significant economic implications⁷⁴. Owing to its increased interactivity compared to mere video meetings, the metaverse could facilitate and enhance worker participation in union activities—from assemblies to proselytism—as well as in managing collective bargaining⁷⁵. Furthermore, it may serve as an effective tool for training workers and introducing them to the proper and informed use of new technologies. The EU Framework Agreement on Digitalisation, articulated in 2020, emphasises that union involvement in training is one of the most pressing challenges to address during this technological transition.

Since “the very existence of the social partners and the subsequent role they are called to play is invariably correlated to their ability to address collective interests”⁷⁶ the digital challenge is a risk they cannot afford to overlook, both as users of digital technologies and as regulators thereof through collective bargaining.

Although existing regulations permit interpretations of various tools in line with contemporary requirements, it remains crucial to address the

The future of remote work, ETUI, 2023, p. 221; C. GHITTI, *Il lavoro nel metaverso*, in M. PICCINALI, A. PUCCIO, S. VASTA (edited by), *Il metaverso. Profili giuridici e operativi*, Giuffrè, Milano, 2023, p. 209; M. NOGUEIRA GUASTAVINO, D. MANGAN, *The metaverse matrix of labour law*, in *Italian Labour Law e-Journal*, 2023, no. 1, p. 13; I. RÁCZ-ANTAL, *Labour law and Metaverse - can they fit together?*, in *Italian Labour Law e-Journal*, 2023, no. 1, p. 29; C. ROMEO, *L'avatar, il metaverso e le nuove frontiere del lavoro: traguardo o recessione*, in *Il Lavoro nella giurisprudenza*, 2023, no. 5, p. 471; M. RUSSO, *Le sfide nella regolamentazione del lavoro tecnologico: dal lavoro agile al metaverso*, in A. FUCCILLO, V. NUZZO, M. RUBINO DE RITIS (edited by), *Diritto e universi paralleli. I diritti costituzionali nel metaverso*, ESI, Naples, 2023, p. 71; P. SIPKA, *Potential challenges of working in a virtual space*, in *Italian Labour Law e-Journal*, 2023, no. 1, p. 53.

⁷² L. FLORIDI, *The Onlife Manifesto. Being human in a hyperconnected era*, Springer, 2015.

⁷³ See https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13757-Virtual-worlds-metaverses-a-vision-for-openness-safety-and-respect_en.

⁷⁴ It is calculated between 259 and 489 billion euros per year, by 2035, within the European Union. On the point see https://www.ansa.it/sito/notizie/tecnologia/bitech/2023/05/09/metaverso-in-italia-impatto-economico-fino-a-52-miliardi_d2ccfcea-8956-443b-935f-72a9f4cb6f97.html.

⁷⁵ F. PISANI, *Collective labour relations in the Metaverse*, in *Italian Labour Law e-Journal*, 2023, no. 1, p. 41.

⁷⁶ U. GARGIULO, P. SARACINI, *Riflettendo su parti sociali e innovazione tecnologica: contenuti, ratio e metodo*, in *Quaderni di Diritti Lavori Mercati*, 2023, no. 15, p. 10.

more technical aspects and resolve management issues through collective agreements; for instance, the provision of an electronic noticeboard on the company website, the online retention periods of trade union communications, the methods of convening and conducting tele-assemblies, the organisation of electronic voting operations in referendums, and the use of blockchain technology.

Although the role of jurisprudence has been significant, intervening during periods of heightened collective conflict and providing clear analyses of the signals and impacts of technological phenomena on the exercise of union rights while proposing case-specific solutions, the mission of collective bargaining is even more vital, as it can effectively facilitate a comprehensive integration of the practical exercise of trade union rights and the appropriate use of new technologies.

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