



18th September 2014

Talking Point

In the “Talking Point” of Friday 12th September, David Curmi, President Chamber of Commerce, gave a positively supportive review of the Malta Employers’ Association, (MEA), proposals to amend the Employment and Industrial Relations Act (EIRA). It turned out that the MEA document obtained relatively unbalanced media coverage with one particular proposal (no payment for self-inflicted sickness), overshadowing so many other valid proposals to improve the EIRA. As the dust continues to settle it is appropriate to discuss and give prominence to issues, other than “sick leave”, that have been raised, among which feature prominently an Industrial Tribunal reform and an amendment to the law to allow the Registrar of Trade Unions to effectively resolve Union Recognition disputes.

The MEA is in favour of an Industrial Tribunal set up in a manner to guarantee rectification of injustices, and resolution of trade disputes, in an impartial, timely and professional manner. As such the panel of the Tribunal, whether dealing with an unfair dismissal, or a Trade Dispute, is proposed to be always composed of a Lawyer, being the Chairperson and two lay members, one chosen from an Employers’ list and one from a Trade Unions’ list. Such a set-up will promote a strict and correct observance of legal procedures but will also favour deliberations and decisions that will have an input from two lay members who would have valid practical experience of the industrial and employment environment.

In disagreement with the President of the Chamber of Commerce, the MEA is insisting that a current legal provision, empowering Parliament to nullify a decision of an Industrial Tribunal, must go. This provision must go since a Tribunal or Court of Law has to guarantee justice that is implemented without interference. This is what separation of powers is all about. It is unheard of that currently, for example, an unjustly sacked employee who obtains, from an Industrial Tribunal, a re-instatement to his/her job, can see this decision nullified by Parliament.

Equally adamant is MEA in its stand that, once nominated for a defined period, (a number of years), a Chairperson of an Industrial Tribunal should not see his/her nomination terminated at any time at the whim of a Minister. The current law allows this termination and does not guarantee that fundamental security of tenure that is essential for a Chairperson of a Tribunal to fulfil his/her role and duties independently, serenely, with no pressure.

Everybody is familiar with the frequent disruptive disputes that arise when two Unions confront each other for recognition at places of work. On occasions such contestations are fought out with conflicting claims of rather high but unverified Union memberships. Such clashes create havoc at places of work and can cause serious disruptions, similar to what

happened when Malta's airport was once shut down while UHM and GWU fought out a recognition claim.

To solve this messy issue the MEA is putting forward an elementary minimal intervention. It is universally accepted that the right for, and grant of, recognition to a Union (which recognition allows it to negotiate a Collective Agreement) should be based on the strength of the number of real members such a Union has enrolled, which members have to logically be counted to validate the claim for recognition. It is therefore very logical to propose to give a legal definition, currently missing in the law, to what constitutes a "Union Member". This is being said since it is hard to count an entity that as yet has no definition, hence this proposal "..... a member means a member who has an up-to-date payment of his/her union fees, which payment is evidenced by a receipt".

The MEA is further proposing that the Registrar of Trade Unions, who has a key role to play to settle such disputes, be given clear and practical authority to demand relevant data and documentation so as to be able to establish the validity and veracity of a recognition claim. MEA firmly believes that recognition should only be granted on the strength of real evidenced Union memberships and not on the strength of ballots and surveys where employees are simply asked about who they wish to represent them. Employers are entitled to clarity on this recognition issue. Industrial harmony and economic welfare require this clarity

These are just some of the issues contained in the document that the MEA has elaborated. In undertaking this task it must here be emphasized that the objective of the Association is not the creation of controversy but a genuine attempt at up-dating a law, the EIRA, to enable employment and industrial relations to occur smoothly and sensibly. Definitely the MEA will be amenable and ready to participate in further discussions on all the issues raised, which discussions should occur within the Malta Council for Economic and Social Development (MCESD).

As is well known within this council, employers and all trade unions are represented, as well as so many NGO's. This should give rise to a valid debate that will result in eventual sensible recommendations to be made to government to renovate the EIRA.

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