

21st January 2015

Article

The Law and Union Membership Verifications

Two weeks ago the Assistant Director, Employment and Industrial Relations, wrote to the MEA to communicate a surprise, unilateral decision. The Assistant Director informed the MEA that with immediate effect a fundamental task of the Department was being outsourced to a committee external to the department. The task given to this committee being that of conducting verification exercises whenever unions request to be granted recognition by companies in which they claim to have a majority of employees members of their union. This verifications committee, it was stated, had two chairpersons and three members, all, unilaterally selected and appointed by the Minister. For MEA this constituted a worrying departure from the norm.

The responsibility of this task of verifications, in line with the Employment and Industrial Relations Act, and in line with years of uncontested custom and practice, has always fallen squarely on the shoulders of the Registrar or Trade Unions, (for which read, the Director of Labour), a task which the Registrar sees to with the help of selected confidentiality bound officers who work within the Department. Ignoring, for the moment, that no consultation whatsoever occurred on this issue, as should have been due, the MEA instantly assessed this intervention as a grave interference in, and departure from, the prevailing custom and practice and the law. This departure is bound to have serious consequences on the proper and correct conduction of industrial relations. The MEA could not comprehend why Government was passing such a negative judgement on the work performance of the Registrar, and the Department's staff, to the extent of summarily relieving them of the responsibilities assigned to them by law. In the absence of any official communication to explain the motivation behind this move the MEA had to rely on hearsay to decipher what precipitated this development.

It appears that a request for union recognition, within the Department of Employment and Industrial Relations, was submitted by UHM. This request was granted since a majority of the Department's employees had become members of this Union. However, not only was UHM granted recognition but, on its insistence, it was also allowed, against what the law stipulates, to hold on to a number of members that the Director of the Department, through the Minister, had the right to preclude from being union members. This since through a legal provision, Article 67 (1) of the Employment and Industrial Relations Act, the law empowers the Minister, because of conflict of interest, to prohibit union membership to particular employees who "...may be

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required to represent or advise the government in industrial relations with the union ...”

It is worrying to see a ministerial statement issued and published on Sunday 18th January that questions the legal validity of EIRA Article 67 (1) for which there is an equivalent Article 67 (2) that applies to the Private Sector.

MEA categorically here declares that these common sense provisions in no way contradict freedom of association but responsibly address the issue of conflict of interest.

It seems that the Government authorities forgot about this legal provision and allowed all employees, without exception, to assume or retain union membership. The Minister, it seems, then proceeded to declare that the Registrar, assisted by now unionised officers, was unable to impartially and objectively carry on with the responsibility of effecting a service of union membership verifications. The minister it seems then proceeded to create and appoint a committee, external to the Department, to see to this task of verifications instead of the Registrar.

Now it is pretty evident that this does not make sense. It is not acceptable that a Minister, and a Director of Labour gratuitously renounce to exercise a legal right on union membership prohibition and so create a work environment where duties and tasks cannot be responsibly assumed. One becomes perturbed to see that after creating this gratuitous “forza maggiore”, these government officials proceed to use it as an excuse to come up with their solution, the outsourced “verifications committee”!

It is not reassuring that a Minister, and a Director of Labour ignore the law and try to make us believe that, without exception, all employees, all the time, in all situations, have a right to union affiliation. The UHM too is not professional and credible when it contends that Article 67 (1) and (2) of the EIRA is illegal and infringes on freedom of association.

Law and custom and practice laboriously established in the industrial field and accepted by all players, must not be capriciously discarded. Side stepping the law constitutes an ugly precedent with widespread ramifications. Industrial Relations require a defined and steady framework of laws and regulations which must be respected, applied and not changed or ignored at will. Without delay the Registrar of Trade Unions must be placed once more in a position to fulfil all his verification duties in an autonomous manner, with the help and assistance of officers of his Department. The recourse to external arbitrarily improvised committees must stop as it is an ugly and unacceptable precedent.