



L-Università ta' Malta
Centre for Labour Studies

Episodes in Maltese Industrial Relations in 2018

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Published in January 2019

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ISBN: 978-99957-1-455-0

Printing: Outlook Coop

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The ideas expressed in these articles represent the views of the authors and they do not necessarily reflect the views of the Centre for Labour Studies or its board.

The articles written by Saviour Rizzo, have been submitted, in an abridged form, as quarterly reports to the European Foundation for the Improvement of Living and Working Conditions located in Dublin and downloaded on its web site: Eurofound.europa.eu/observatories/eurowork

Foreword

I am proud and delighted to write this Foreword to this handy and timely publication. **Episodes in Maltese Industrial Relations in 2018** captures some of the highlights of the Maltese industrial Relations scene during that particular year. The text is sourced from regular contributions that the Centre for Labour Studies (CLS) at the University of Malta (UM) makes to the European Observatory of Working Life (EurWork) which is one of the main features of the web site of the European Foundation for the Improvement of Living and Working Conditions (Eurofound), an EU outfit based in Ireland. The CLS has been the national agency responsible for such submissions to this Foundation for almost two decades.

Since this 'information service' is being delivered by the CLS, it made sense for the CLS Board to discuss and approve that such service be extended to amore domestic audience. This would include the students who attend, and the alumni who have graduated from, the suite of CLS courses in Gender, Work & Society, Work and Human Resources, Occupational Health & Safety, and Lifelong Career Guidance & Development over the years.

A long period of industrial peace in Malta is not to be mistaken for a quiet and calm industrial relations landscape. Government, employers and trade unions continue to jockey and leverage their interests, sometimes peddling new initiatives; sometimes reacting to the dynamic evolution of the Maltese labour market, or to events and directives cascading from Brussels. The current IR scenario must come to grips with the influx of foreign workers: up to sixth of the national labour force. The stubborn existence of a gender pay gap – in spite of 'equal pay of equal value' since the mid-1970's- has thrust 'gender' issues back onto the agenda. Industrial action, actual or threatened, by highly unionised professional groups – including airline pilots, teachers, doctors and nurses – has bolstered 'white collar militancy' in Malta. New rules on vacation leave have been proposed, but then suspended. Police officers have joined the ranks of unionised workers and their two trade unions are now legitimate bargaining agents. The provisions of the *Persons with Disability Employment Act* (1969), subsequently amended, are being better enforced. And, perhaps most surprising of all, Prime Minister Muscat welcomed suggestions about both employees and employers in Malta being legally obliged to be registered members of trade unions and employer associations respectively. Never a dull moment.

My special thanks to Saviour Rizzo, a seasoned observer and commentator of Industrial Relations in Malta and former Director of the CLS who came up with the idea for this publication and provided most of its contents. The exception is a contribution of my own.

Professor Godfrey Baldacchino

Pro-Rector & Chair (Rector's Delegate) of the Board of the Centre for Labour Studies

Introduction

The industrial and employment relations scenario tends to be in a continuous state of flux. The hyper flexibility of the labour market, being induced by the digitalised economy, is adding new layers to this flux. This is very problematic to the trade union movement which has always invested its ideology and values in certainty and security. Job security means a safe and congenial work place, good career prospects and a reliable safety net. The intricacies of this flexibility have opened new challenges to these widely held assumptions. The lack of a sense of security is testing the nerves of the social partners. This however does not mean that there is total acquiescence to the nuances of this hyper-flexible labour market. Indeed the events that occurred and the issues raised in 2018, or carried over from 2017, amply show that industrial peace is far from being total. These eventful experiences which occurred in 2018 or carried over from the previous year are being listed below.

- One of the dynamics of this industrial and employment scenario has lately been the influx of foreign workers in the Maltese labour market. While this phenomenon is perceived by the government as a sign of the vibrancy of the Maltese economy there seems to be a lurking fear that it might have a negative effect on the demographic trends and cultural aspects of Maltese society.
- While the issue of the foreign workers marks a new phenomenon in the Maltese labour market the gender wage gap tends to persist. Indeed, in the year 2018, a widening in this pay gap was registered.
- The industrial action taken by the Medical Association of Malta (MAM) in furtherance of its trade dispute with government following the transfer of the management of state hospitals to a foreign company affirms the trend of the militant mood visible towards the last quarter of 2017 among professional workers such as pilots, teachers, nurses and other associate professionals. The militancy which has been the hallmark of the blue collar worker in the manufacturing industry has become more manifest among the white collar workers.
- The Malta Union of Teachers (MUT) which represents the members of the teaching profession, after a long drawn-out bargaining process that ultimately led to the signing of a collective agreement had to face a break-away action by some of its members. These dissenters, three of whom were former members of the MUT council, set up another trade union under the wings of the Union *Ħaddiema Magħqudin*.
- A Legal Notice laying down new rules about vacation leave became a bone of contention between the government and the employers' associations. The latter while claiming that they were not consulted about these changes stated that the new rules are skewed against the employer as they lack any balancing measure to protect them.

- The Government stepped up its measures to compel the employers to conform to the provisions of the law related to the employment of persons with disability. JobsPlus, the national employment agency, kept a very high profile in this issue.
- Precarious employment has consistently been a topical issue in the industrial and employment relations scenario. Being aware of the nuances of this issue the Prime Minister tried to adopt a holistic approach by suggesting that all employees should be legally obliged to join a trade union of their choice. Such a measure, if it were to be implemented, would guarantee that every worker would be covered by a collective agreement that would ensure that the minimum legal standards are being applied and practised at the place of work.
- A historic collective agreement was signed between the government and two unions representing the police officers. What makes it historic is that it is the first collective agreement covering the police officers. The signing of this collective agreement was possible after the enactment of amendments in the Malta Police Act which granted the police officers the right to join a trade union.

Episodes of Industrial Relations in Malta in 2018 – At a Glance

Issue	Actors involved	Outcome
Influx of foreign workers	Government. The party in Opposition. Employers.	Debate is ongoing.
Gender pay gap	The President of Malta	Debate is ongoing.
Industrial action by doctors	Medical Association of Malta (MAM) and Minister for Health	Amicable settlement.
Split in Malta Union of Teachers (MUT)	Minister of Education and Employment. MUT and UHM, Voice of the Workers	A break-away union formed and registered as Union of Professional Educators under the wing of UHM
New Rules on Vacation Leave	The Employers' Associations. The Trade Unions and the Minister for Social Dialogue	The new rules were suspended but eventually enacted again.
Employment of Persons with Disability	JobsPLus. Minister of Education and Employment	Higher level of compliance to the provisions of the law by employers.
Mandatory Union Membership	Prime Minister. Employers Associations. GWU and UHM, Voice of the Workers	Debate is still ongoing.
Collective Agreement for Police officers	The Malta Police Association and Police Officers Union	Police officers exercise trade union rights for the first time.
Trade Union Membership	Director of Industrial and Employment Relations in her role as Registrar of Trade Unions	A lower union density

1. The influx of foreign workers

According to the JobPlus at the end of 2017 there were 44,564 foreign nationals employed in the Maltese labour market. This figure marks a tenfold increase since 2002 (two years prior to Malta's accession to EU membership). The vast majority of these foreign workers, about 70%, come from EU member states and EFTA countries while the other 30% are Third Country Nationals (TCNs). Workers coming EU and EFTA countries are being employed as professionals (17%), technical and associate professional groups (14%) and managerial grades (13%)¹. This suggests that about half of these workers are being employed in highly paid jobs.

These foreign workers in Malta are being employed in highly paid jobs. The sectors which tend to offer most of these lucrative jobs are online gaming, financial services and pharmaceuticals. These relatively new industries in the Maltese labour market are contributing substantially to the robustness of the Maltese economy.

It looks as if the Maltese educational system has, so far, not been able to produce the personnel with the sophisticated skills which these sectors demand. Irena Busic, the Communication Director of LeoVegas, an I-Gaming firm operating in the Maltese labour market, stated that in spite of the pool of talent in Malta, special talent from abroad has to be sought to fill in these lucrative jobs.² It has however to be noted that while a substantial number of foreigners in taking these jobs may be creaming the highest paid jobs in Malta there are also foreigners who are being employed in sectors such as the catering, waste collection and processing services and construction which are no longer attractive to Maltese workers.

The chairperson of JobsPlus, the Maltese Public Employment Service provider which connects job seekers with employers, in an interview with The Malta Independent³ stated that the residual gap in the labour market, in quantitative and qualitative terms, is not likely to be solved in the short term. Indeed JobsPlus is turning to the third country nationals to attract employees from abroad in order to fill in the gaps in the Maltese labour market caused by the imbalance between demand and supply. Demographic data in Malta show that that Malta has been consistently registering birth rates below the replacement level. This demographic deficit might be depriving Maltese society of the quality and quantity of the ideal human capital to cater for the human resources needs of the evolving the Maltese economy.

¹ <https://jobsplus.gov.mt/resources/publication-statistics-mt-en-gb/labour-market-information/foreigners-data#title1.1>

² "Malta's Lucrative iGaming industry gears up for Malta Gaming Week" The Malta Observer 22/11/18 p. 13.

³ <http://www.independent.com.mt/articles/2018-02-12/local-news/Number-of-foreign-workers-could-increase-by-30-000-in-next-four-years-6736184713>

There is another factor, besides the demographic, which can prolong this dependence on foreign workers to sustain the viability of the Maltese economy. The shortage of high skills in demand in the newly set up industries such as I Gaming, which generates 11% of the value added of the Maltese economy, is likely to persist in the near future. This is due to the long term of the gestation period of an educational programme aimed at addressing such an issue. Moreover due to ongoing changes of the digitalised technology such an educational programme has to cope with the problem of escalation whenever a deeper level of actual need is discovered leading to a higher level of demand.

The prime minister, as if to add a new weight to this debate, brought in a new dimension to the issue. He argued that this influx of foreigners is mainly due to the cosmopolitan nature of a post-industrial society, in which the number of itinerant workers is increasing. Cosmopolitanism is based on a perception of a society more open to different ideas and ways of doing things. It may, of course, as the party in opposition implied, have a negative impact on the qualitatively strong roots that create the ideal environment for the flourishing of a community. This stance being adopted by the party in opposition and the way this issue is being addressed by the prime minister has brought into vogue another binary scale in the political debate between the party in government and the opposition: cosmopolitanism and communitarism.

So far, there seems little to suggest that people are fully immersed in the argument about these seemingly new poles in the Maltese political scenario. Perhaps the people feel that this issue calls for a more sober debate characterized by a less partisan approach. Even the trade unions have adopted a cautious stance on this issue. Their voice has been notably absent. Maybe this is because they are finding it difficult to recruit members from the sectors wherein the foreign workers are finding employment. Indeed the substantial increase of workers in the Maltese labour market is not being matched by an equal increase in trade union membership. The Malta Employers Association looking at the practical side of this issue, in a press release to the debate about the 2019 budget, stated that foreign workers are needed since the demand for labour is higher than the supply. It however added that the increase in population, partly caused by these foreign workers, requires a comprehensive strategy to cater for the socio-economic impact of such a phenomenon.

What is being implied by such generic statements or lack of them is that the main thrust of the argument should be on whether the flourishing of a community and secure support for a person's identity can still prevail in this cosmopolitan nature of a post industrial society. Looking beyond our shores we are confronted with a number of European states that have become part of the changing structure of the labour market and its rescaling at a wider global level. In spite of the efforts made to control and limit the number of immigrants on the European mainland the economies of most of the European states have come to look more like the multi-cultural set up of USA in the structure of their labour market. Malta is not immune to this global trend. With its vibrant and resilient economy and a common

language that can be used interchangeably at the place of work, Malta adds its allure to foreigners in search of a job on the continent of Europe.

2. Rise in gender pay gap

The figures published by the National Office of Statistics in April 2018 based on the data of the Structure of Earnings Savings revealed that over a four year period (2014 -2108), the gender pay gap in Malta rose from 4.5% to 11%. This data was presented during a conference organised by the President's Foundation for the Wellbeing of Society, on 29th April 2018.⁴

The Malta National Office of Statistics pointed out that this gap varies from one sector to the other. The highest gaps are to be found in activities that are considered to be the mainstays of the Maltese economy namely: the Professional and Scientific (23%), IT and Communication (20%), Arts and Entertainment (20%), Wholesale/Retail (19%) and the Manufacturing (18%). Education, often implicitly or explicitly recognized and proclaimed to be the great equalizer, does not from a statistical point of view emerge as being a significant variable that can attenuate this widening gender wage gap. Indeed, among the work force with a tertiary level of education the wage gap stands at 18.7% whereas among those with secondary education it registers 12%.

The main factor contributing to this gap is the high number of women who are employed in the lower paid jobs. The lucrative jobs in the financial and I Gaming sectors are attracting more men than women. Another factor identified as a cause to this widening gap is the increase in job mobility. Women fearing that a change in work schedule might negatively affect family life tend to be more cautious in moving to higher demanding jobs. They may therefore be less inclined to take or rather dream about a high status job demanding a high level of commitment and responsibility often entailing long hours of work.

This may be one of the factors that contributes to a wider pay gap among the old age employees. Among the 55-64 age cohort the gap stood at 32.6% in 2014; whereas among the 15-24 age cohort, it stood at 7.5%. The former age cohort is likely to comprise a high number of employees who managed to reach the higher or highest level of the career path or of the hierarchy within the organizational set up of the company. This long hour culture is imperceptibly leading to the exclusion of women from these high status jobs, thereby reinforcing gender segregation in the labour market. This phenomenon may make them less mobile in the pursuance of their career path as they tend to be more wary, or rather less daring, than men to change jobs.

This lack of job mobility is reinforced by the prevalence of the culture of the motherhood mandate which makes working mothers more concerned than men about their work life balance. The lack of flexibility at the place of work makes this balance elusive. Moreover, in their head hunting to attract the ideal workers to perform these high status jobs which often require long hours of presence at the place of work, employers may target males

⁴ "Time to tackle pay gap, says president" Times of Malta 21/04/18 p.7

rather than females. This prevalent attitude is likely to perpetuate the gender wage gap. What may attenuate this gap is the high rate of female employment in the government sector where pay scales are gender neutral.

When addressing the conference, the President of Malta urged the participants to find innovative ways to come to terms with this issue. The traditional patterns of work have to be seriously challenged in order to make them compatible with the family and social life of the employees. The fostering of a corporate culture that supports and nurtures the values of the ideal work-life balance should be the clarion call of industrialists and policy makers.

3. White collar militants

The Medical Association of Malta (MAM) registered a trade dispute with government as it alleged that government had breached a clause in the collective agreement when it failed to consult the Association about the transfer of the management of three state hospitals to a private firm.

A collective agreement is signed by two parties representing employers and employees following a process of bargaining, very often a lengthened one, about the substantive and procedural norms that regulate the employment relationship at the workplace. The substantive norms or rules relate to aspects of the substance of employment relationship, such as wage rate, the length of the working day or week, holiday entitlement, sick pay, dismissals, discipline and the handling of redundancies. On the other hand, procedural rules establish the procedures by which substantive issues are to be handled. They lay down rules about how negotiation about disputes is to be conducted and set norms about behaviour and actions by employees that are congruent with the interest of the organisation. Some of these norms and rules are imposed by the law aimed at setting standardised forms of employment relations. Thus there is political tone in this process in the sense that it is a rule making activity that involves power relations between the parties by defining rights, duties and obligations.

Although the process of collective bargaining leading to a collective agreement has not caused a total elimination of industrial conflict the mere existence of this negotiation machinery tends to temper the conflict and reduce its incidence. A scrutiny of the Maltese industrial relations scenario reveals that the magnitude of industrial unrest, measured in terms of number of workers involved in industrial actions and number of work days lost, was much lower in degree during the new millennium than during the last three decades of the twentieth century. Strike activity might have been dampened by the competitiveness of the economic market. However, this lower incidence of strike action in the new century may also be due to a much more solid foundation of social dialogue between employers and trade unions which has elevated collective bargaining to a mature level. The actors involved in the industrial relations scenario do not only accept each other's existence but support each other's objectives. This higher level of consensual ethic emanating from this maturity has given a twist to power relations by creating a culture of a healthy social dialogue at company and national level and delineating issues which are subjected to joint control and decision making.

Ironically, this issue of joint control proved to be the source of conflict between the Medical Association of Malta (MAM) and the Maltese government. MAM claimed that the Maltese government breached a clause in the collective agreement when it failed to consult it about the contract signed with a foreign firm to run three of the main state hospitals in Malta. According to MAM the collective agreement states that the union has to be notified six weeks in advance about such a deal involving transfer of power to a private firm. To assert

its right to be consulted it demanded that it should be privy to the contract signed between the government and the private firm. In the meantime, it ordered industrial action targeted at the Outpatients department and primary health centres. It warned government of an escalation of actions if government fails to accede to its request.⁵

This industrial action may be a symptom of the change in the industrial relations scenario. By insisting on a voice in the regulation governing the workplace, in this instance the state hospitals, MAM is changing the procedures of conflict regulations and decision making and thereby the whole nature of industrial system. Strike action in most cases used to be about substantive issues such as a pay rise. On the day of the strike picket lines would congregate outside the place of work to dissuade, and sometimes even impede strike breakers (often called black legs or scabs), to report to work. MAM without resorting to such picketing reported almost full compliance by doctors to its directives. The act of solidarity traditionally prevailing among blue collar workers at the Drydocks and employees in the manufacturing sector was also manifest among the doctors. The proletarian workers who make up the picket lines in front of the gates of the workplace has become an image of the past. The generators of different patterns or shapes of industrial action have transformed industrial relations in the sense that the procedural aspects of collective bargaining and agreement are being given the same weight as the substantive.

This trend was visible during the last quarter of 2017. During this period, the government was engaged in a long drawn out process of collective bargaining with trade unions representing the different categories of Air Malta employees. During this saga at Air Malta, collective bargaining proved to be much tougher with the pilots than with the other categories of employees. The union made use of on-line contact to monitor the mood of its members. In an on line questionnaire the pilots overwhelmingly gave a mandate to their union to order strike action. The Prime Minister warned the pilots that government had a contingency plan that would be put in place to combat the industrial action which the pilots were envisaging to take. Following the mediation of a former president of Malta, the Airline Pilots Association (ALPA) was persuaded to approve the terms offered by government. The agreement was signed on 26th January 2018. Air Malta stated that the agreement meets the requirements of the restructuring plan approved by the European Commission and is in line with the constraints of the Airline.⁶

Besides this conflict with pilots during the last quarter of 2017, the Maltese government had to face a number of challenges from unions representing associate professionals. The Malta Union of Midwives and Nurses (MUMN) threatened industrial action to force the government to sign a new collective agreement. MUMN insisted that the agreement should not only revise salaries, but should also address working conditions and the pressure

⁵ <https://www.timesofmalta.com/articles/view/20180206/local/doctors-strike.669813>

⁶ [www.independent.com.mt/articles/2018-01-22/local-news/Air-Malta-pilots-back-agreement-deal-with-airline-governmen....](http://www.independent.com.mt/articles/2018-01-22/local-news/Air-Malta-pilots-back-agreement-deal-with-airline-governmen...)

created by a national shortage of nurses and midwives. The union stated that these problems were contributing to feeling of burn-out among the nursing profession. Conciliatory meetings were held between the union and Deputy Prime Minister. As this dispute was solved an industrial conflict surfaced with the teaching profession which culminated into strike action by teachers. Besides a pay rise the union demanded better working conditions. A collective agreement was subsequently signed.

These two agreements triggered a chain reaction as other unions representing associate professionals such as social workers, speech therapists, psychotherapists, podiatrists and therapists asked for similar improvements to pay and working conditions. The Malta Association of Social Workers urged the government to commit itself to the same policy adopted in its dealings with the nursing and teaching profession to the social work profession who work with the vulnerable members of society. These events happening towards the end of 2017 may be viewed as being the prelude of the surge in white collar militancy that culminated in the strike action by medical doctors in 2018.

4. A breakaway teachers' union is set up

On 21st December 2017 after an intense and prolonged process, of bargaining, during which threats of strike actions were made, the Malta Union of Teachers (MUT) and the Ministry of Education and Employment managed to reach an agreement. The new collective agreement covering the period 2018 to 2022 was duly signed by the two parties. All teachers in state schools are covered by this agreement, while to the teachers employed in Church schools, only the financial aspects of the agreement apply. Apart from the increase in salary, this new agreement stressed the need to take measures aimed at changing the syllabi and moving away from the traditional and regimental education paradigm.

This new collective agreement proved to be a source of an open and bitter conflict among the MUT Council members. This discord resulted in the setting up of a breakaway teachers' union, under the name of Union of Professional Educators. This new union was set up under the wings of UHM, Voice of the Workers, which in terms of membership, is the second largest Maltese trade union. The teachers forming this new union complained about the manner in which the negotiations were conducted. They contended that as members of the Council they were completely left in the dark during the whole bargaining process. To stress this lack of consultancy and transparency they claimed that the MUT Council was never presented with a complete version of the agreement and it was through the media that they learned about the contents of this agreement. They further stated that no vote was taken in the MUT to endorse the agreement and that in the printed version of the agreement which they were given there were six pages missing.⁷

The MUT president accused these dissenters of having ulterior motives. He explained that the six pages missing in the collective agreement report contained information about the financial aspect of the agreement which the Ministry has insisted that they should not be divulged to the public. The union acceded to this request because the Ministry was in the negotiation process with other unions representing different categories of employees. He further stated that in agreement with the Ministry he could not give information about the increase in salary in numerical figures. That is the reason why he had to announce the salary increases in percentage terms. He explained that all teachers would be getting a 14 per cent increase - some would get it in the first year while to others it would be staggered over a number of years.

This event makes quite glaring the absence of an all-encompassing trade union organisation, similar to the Trade Union Congress (TUC) operating in UK. This Congress, whose aim is to provide solidarity in the structure of inter-relationships among trade unions, embraces a number of trade unions as its affiliates. One of the TUC propositions in the code of practice incorporating the principles governing inter-relationships between unions, binds

⁷ <http://www.independent.com.mt/articles/2018-01-17/local-news/MUT-says-government-did-not-allow-them-to-publish-actual-wage-rise-figures-only-per...>

all affiliates not to accept or take 'existing' or 'recent' members of another trade union without the agreement of that organization. The term 'recent' normally refers to applicants who have contributed to an affiliated union during the preceding 52 weeks. However, unions are urged to notify the relevant present or former union in all cases where previous trade union membership is known. Under such circumstances it might not have been possible for the teachers who lambasted the collective agreement to form a break-away union under the wings of an established union.

5. Social partners clash over holiday rules

On 10th August 2018, the Maltese government issued a Legal Notice (L.N. 271 of 2018 Employment and Industrial Relations Act) that introduced new rules relating to holiday leave for employees. These new rules, which were due to come into force on 1st January 2019, restrict the discretionary power and arbitrary decision making of the employer in terms of holiday leave procedures and how this leave can be availed of by the worker. They also give employees more leeway on how they can utilise their holiday leave entitlement. The changes listed in the Legal Notice included the following:

- Annual leave entitlement will continue to accrue during the period in which the employee is on maternity leave, sickness or injury leave and leave without pay which are used by employees during maternity, sick or injury.
- Any balance of annual leave which has not been availed of by the end of the calendar year shall be automatically transferred to the next calendar year when it has not been possible for the employee to avail herself of such leave during the same year when the maternity leave commenced.
- Once granted, leave cannot be cancelled unilaterally by the employer. It can only be cancelled if both the employer and employee are in agreement.
- Employers can only utilise up to 12 working days from the annual leave entitlement for shut down purposes or any temporary closure of premises. This shut down has to be communicated to all employees by the end of January of each calendar year.

The employers' organisations stated that these regulations were introduced 'by stealth' as they contended that the enactment of these new regulations had never been included in the agenda of the Employment Relations Board (ERB) meetings. The ERB is a tripartite institution set up in accordance with the provisions laid down in the Employment and Industrial Relations Act to discuss and propose new labour laws and/or make recommendations to proposed legislations.

The main four employers' organisations, namely the Malta Employers Association (MEA), the Malta Chamber of Commerce, Enterprise and Industry (MCCEI), the Malta Hotels and Restaurants Association (MHRA) and the Chamber for Small and Medium Sized Enterprises (GRTU), accused the government of hijacking the principles of social dialogue by failing to consult them about these new rules. As a protest against this unilateral decision taken by government they stated that they would not be attending any future ERB meetings. The Ministry for European Affairs and Equality in its reaction stated that these changes had been on the agenda of a national public conference and were meant to ensure that Maltese labour laws were in line with decisions taken by the European Court of Justice.

However, Joseph Farrugia, Director General of the MEA and its representative in the ERB, contended that the new rules are too skewed in favour of employees and do not consider that management may sometimes be forced to take an arbitrary decision to ensure

continuity of service and production. The MHRA stated that in the catering and hospitality sectors, due to their seasonal nature, the replacement of workers that are on leave can potentially be a complex task to management. The new rules could make this replacement exercise more complex. Cases often arise when the leave which has been granted to certain employees has to be revoked in order to meet the emergency demands and exigencies of the firm.

Following these vocal protests by the employers the government on 21st August 2018 suspended these regulations in order to allow further discussion. The General Workers Union (GWU) expressed its disapproval of this government decision and argued that the new rules implement measures that many unionised workers benefit from through collective agreements. Thus the union sustains that the measures in the new legislation ensure that all workers, irrespective of whether they are unionised or not, would enjoy the same rights and conditions of work.

The Union *Ħaddiema Magħqudin, Voice of the Workers (UHM)* stated that the issues being raised are more about the timing and lack of consultation. It further stated that no draft of the rules was received by the social partners in advance of their enactment. The Malta Chamber of Commerce, adopting a placatory tone, expressed its hope that a fair resolution would be found that would be beneficial to all stakeholders within the context of a competitive economic scenario.⁸

The government was criticised by left-leaning radicals for backing down too easily over the new holiday rules and sacrificing the plight of the workers in order to avoid confrontation and reach consensus. In a local weekly television programme, Sammy Meilaq, a former trade union activist and worker director at Malta Drydocks, argued that the new rules grant inalienable rights to the workers which should never be compromised. After consultative sessions between the social partners held at the ERB the Legal Notice 271 was enacted again and came into force on 1st January 2019.

⁸ <https://www.timesofmalta.com/articles/view/20180821/local/new-vacation-leave-regulations.687264>

6. Employment of persons with disability

According to the provisions of the *Persons with Disability Employment Act* (Chapter 210 of Maltese laws), at least two per cent of the workforce of a company with 20 or more employees on its payroll must be persons registered as workers with a disability by JobsPlus, the Corporation acting as an agency for Public Employment Service. In accordance with Article 5 of the above-mentioned Act a register of Persons with Disability is set up and maintained by the Corporation. Every person whose name is entered in this register shall be provided with a certificate of registration that makes them eligible to be employed in the terms of this Act.

The enforcement of this legal provision proved to be very elusive as it was being widely ignored by employers. Since 2014, those employers who do not abide with this rule were legally forced to pay an annual contribution of €1,600 for each disabled person they fail to employ in accordance with the provisions of the law. In 2015, this contribution was raised to €2,400 per person below the quota, capped at €10,000 per employer. Since the enactment of this Legal Notice about 24 persons with disability have been finding a job every month. This figure stands in contrast with the 100 vacancies which used to be filled by disabled persons every year. In order to increase the employment of disabled persons the carrot was used in conjunction with the stick, in the sense that employers are given an exemption from the social security contribution of the disabled employees on their payroll. Moreover, they can reclaim 25% of the salary, together with the €125 weekly subsidy for three years. Notwithstanding these incentives, there were still some employers who opted to pay the contribution rather than employing a disabled person.

These contributions are transferred to the Lino Spiteri Foundation which is an integration fund used for the employment, training and support of persons with a disability. Most of the employers, following pressure made by JobsPlus, have paid this contribution. In reply to a parliamentary question, the Minister for Education and Employment, Evarist Bartolo, said that the fines paid by employers between 2015 and 2017 amounted to €2.5 million. The Commissioner for the Rights of Persons with Disability acknowledged that, due to this enforcement, the system has improved. In January 2018, there were 288 persons with a disability registering for work, down from more than 400 a year earlier. In spite of these improvements, there are still some employers who are not complying with the provisions of the law. These employers are liable to the legal sanctions as provided in article 29 (1) of the Act which states:

Where any person commits an offence against any of the provisions of this Act or any regulation made thereunder he shall, on conviction, be liable to a fine (*multa*) not exceeding two hundred and thirty euro and ninety four cents (€232.94) or to an imprisonment not exceeding three months or both such fine and imprisonment - Article 29(1))

Such punitive measures have never been enforced. There has never been a case of an employer facing court action for failing to comply with the provisions laid down in the *Persons with Disability (Employment) Act*. However, due to the persistence of some employers in ignoring the rules, JobsPlus hinted at the possibility of implementing this measure in order to ensure total conformity to the law.⁹

⁹ <https://www.timesofmalta.com/article/view/20180626/local/employers-will-face-court-for-missing-disability-contributions.682824>

7. First Collective Agreement for police officers

On 9th October 2018, a collective agreement was signed between the government and the two trade unions representing the police officers namely: the Malta Police Association and Police Officers Union. This agreement may be defined as historic because it is the first collective agreement signed by trade union officials representing the police officers.

Up to March 2015 the Employment and Industrial Relations Act (EIRA 2002), which regulates industrial and employment relations in Malta, prohibited the police officers from joining a trade union. It defined 'employment' in relation to a trade dispute as any relationship whereby one person does work or performs services for another, 'other than a service as a member of the disciplined force'. This proviso, which was repeated in the definition of 'worker' and 'contract of service' denied members of the police force and armed forces the right to join a trade union or to participate in sympathy with the actions of a trade union.

Similarly, the Maltese law relating to operations of the police force prohibited police officers from joining trade unions or any similar organization other than the Malta Police Association (MPA). The aim of this association, whose chairperson is the Police Commissioner, is to promote the welfare and professional efficiency of its members by representing their views on such matters as hours of duty, leave, pay and allowances, pensions and other conditions of service and rules of discipline in general. Although in its operations MPA appears to incorporate many activities performed by a trade union, it was still treated as a corporate body whereas a trade union is an association of persons capable of making contracts and of suing and be sued. The interests of employees tend to be better safeguarded through that type of social dialogue which generally forms an integral part of the operations of a trade union.

It was on the basis of this principle that, in February 2015, amendments were made to the *Police Act* (Chapter 164 of the Maltese Laws) aimed at giving the police officers the freedom to join the association of their choice. These amendments state quite clearly that "Members of the Force shall be entitled to join a trade union" and that these regulations "prevail over what is provided in or under any other law with regard to any matter concerning industrial and employment relations". The amendments deny the police officer the right to strike as it is stated that the trade union representing members of the disciplined force "shall not be entitled to take any other action in a disciplined force in contemplation or furtherance of a trade dispute".

It took more than three years for the trade unions set up to look after their vested interest to sign up the first collective agreement for the police officers. This agreement includes improved disturbance allowances and overtime rates and a rise of one step for constables and inspectors in the 20 salary scale governing pay in the civil service. The 46 hour week, which had been a bone of contention for a very long time, was reduced to forty hours. The

Principal Permanent Secretary said that this agreement was based on decisions which had been negotiated by the trade unions, government and the top brass of the police corps¹⁰.

Police officers have consistently been claiming that their duties often entail tasks that would qualify them to be defined as normal workers even though their duties have to be performed within the parameters of a disciplined force. There should therefore be no qualms about their right to join a trade union. They may still be feeling crippled by the fact that they cannot take any industrial action in furtherance of a trade dispute. The rationale or logic enforcing this prohibition that their work is considered an 'essential service' can be rebutted by the argument that there are other workers such as doctors and nurses who are deemed to be providing an essential service under EIRA. These workers are still allowed to join a trade union and take industrial action, on condition that minimum services continue to be provided.

¹⁰<https://www.timesofmalta.com/articles/view/20181015/local/police-get-first-ever-collective-agreement-shorter-week-and-a-pay-rise.691662>

8. The right to choose

The differentiations in the wage packet of the workers suggest that collective bargaining which ultimately leads to a collective agreement is very effective in the adjustment of wages that can ensure the dual objective of maintaining the relativity of wages while at same time reducing or eliminating precarious work. On the strength of this argument an all unionised workforce is the ideal scenario for a wage policy that would adequately address the issue of precarious employment and in the process bring about a higher degree of equity in wage policy. This would be complemented by a state apparatus that oversees the macro consequences of collective bargaining in order to restrain the potential spiral trend of negotiated wage increases. In such a scenario, the union would be bound to act in a socially responsible way by taking into account the external (third party) effect of negotiated wage. In taking such a stance, the trade union would try to mitigate the impact on the prices of goods and services provided by the company which results from the wage increases agreed by the employers and union.

Perhaps it was the rationale of such a utopian vision of an industrial relations system that spurred the prime minister to suggest that employees and employers should be legally obliged to be registered members of the organisation or institution which has been legally set up to look after their vested interests. What this implies is that an employee would be legally bound to join a trade union while an employer would be obliged to register as a member of an employers' association.

The implementation of compulsory trade union membership would be a boost to the trade unions. It would naturally increase their membership and at same time widen their constituency by the recruitment of members from areas or sectors which, either because of the nature of their work or the inter-relationship at the place of work, have traditionally been overwhelmingly non-unionised. A sizeable number of these non-unionised workers, employed in sectors comprising catering and construction industries, have to contend with low wages as their bargaining power tends to be rather weak. One way to alleviate this lack of bargaining power is to give them a voice, through trade union membership, to influence their working conditions and increase their pay. On the other hand, compulsory trade union membership is also seen by the trade union as a solution to the problem of the free riders who, being non-members, enjoy the benefits earned through union's struggle without contributing to the relevant burdens.

The proposal was warmly welcomed by the General Workers' Union. During its last extraordinary national congress, held prior to the statement made by the Prime Minister, it had made this proposal. Its Secretary General, Josef Bugeja, stated that obliging workers to join a trade union of their choice would ultimately lead to the eradication of precarious

work¹¹. The other general trade union, Union Haddiema Magħqudin (UHM) Voice of the Workers, was not in total agreement with this proposal, as there is a lurking fear that it might be in breach to the right of free association. The CEO of UHM, Josef Vella, proposed a mechanism which would oblige non-union members to pay a fee whenever they benefit from a collective agreement negotiated by a trade union.¹²

The three main employers' associations in Malta, namely the Malta Employers Association, the Malta Chamber of Commerce, Enterprise and Industry and the Malta Hotels and Restaurants Association were very vocal in their criticism of such a measure. The MEA Director General, Joseph Farrugia, compared this policy of mandatory membership to a force-feed exercise. Compelling persons to join an association which is deemed to be incompatible with their beliefs is like forcing them to consume food they are refusing to eat. Such force feeding sounds to the MEA director general as a "paternalistic approach that dictates to rational people and organizations that membership is good for them whether they agree to it or not".¹³ Compulsory membership, according to a joint statement by the employers' associations, diminishes individual freedom by removing the right not to form part of any organization. This statement by the employers brings to the fore the issue of human rights.

The treaties dealing with human rights generally protect interest groups associations such as trade unions. Associations are usually formed by individuals who by and large share the same ideas or beliefs and who come together in order to promote these ideas and beliefs. People should be free to choose to join an association or not. Compelling individuals to relate with others with whom they disagree, in order to achieve a collective purpose – however valuable and highly principled that purpose may appear to be – is considered as unacceptable. At first glance compulsion to join an organization sounds as being anathema to human rights law.

However cogent and sound this line of argument appears to be, there are still nuances which raise some questions. Should the right to dissociate carry more weight when it conflicts with the right to associate? The right to associate is an individual right, like all other human rights. But it is a right that can only be exercised collectively, in association with others. On the basis of this argument, when the two aspects of this right collide, which one should prevail?

These questions and the dilemmas they raise should be seriously addressed in the debate about this issue. Unfortunately, there may not be any case law to act as a guide to our legislators. Case laws about the closed shop practices, in vogue in UK and USA, which upon an agreement between union and employer stipulated that all employees should be trade

¹¹https://www.maltatoday.com.mt/news/national/90698/general_workers_union_asks_social_partners_to_discuss_proposal_for_obligatory_union_membership

¹² "Collective Bargaining Services should not be free – UHM" Times of Malta 7/12/18 page 5.

¹³Farrugia, J. "Force-fed membership" Times of Malta 12/11/18 page 40.

union members, may provide some useful guidelines to the contestations about individual rights and how these impinge on the collective interest of employees at their place of work.

9. Trade unions in Malta: highs and lows

Godfrey Baldacchino

For the first time ever, membership in trade unions in Malta has gone over the 100,000 mark in 2018. The latest report by the Director of Industrial and Employment Relations, in her role as Registrar of Trade Unions, appeared in the Government gazette of November 27th. Thirty one (31) trade unions reported 100,629 members as at June 2018. That is 1,600 higher than in June 2017. Almost two out of every five trade union members (38%) is female.

Trade union figures in Malta continue to increase; this trend is contrary to the dynamic in most of the rest of Europe, where the definitive trend is down. The exodus of large manufacturing firms to Asia, the rise of individual contracts ‘for service’ and the expansion of the gig economy in a burgeoning services sector has not hit Malta that hard. The public sector remains practically fully unionised. And a local economy that continues to recruit workers at an astonishing rate makes the situation ripe for trade union affiliation and organisation.

The rate of growth in trade union membership is, however, definitely not keeping up with the increase in domestic labour supply. The NSO labour force survey for the 2nd quarter of 2018 reports 231,152 employees, 13,000 more than the previous year. We must also take note that local trade union figures also include a number of pensioners – including 7,843 affiliated to the General Workers’ Union (GWU), and 3,205 to the *Unjon Haddiema Magħqudin: Voice of the Workers* (UHM). This suggests that the national unionisation rate – worked out as the percentage of those gainfully employed who are members of a trade union – has dipped to 38%. This is the 7th highest in the EU, and puts Malta on a par with Luxembourg. Still, it is the lowest unionisation rate in Malta in many decades; and down almost ten percentage points from 2013, when it was 47%.

The recent suggestion, spearheaded by the GWU and touted by Prime Minister Muscat in his most recent budget speech, to have every worker in Malta join a trade union, needs to be evaluated in this context. Non-members benefit from the outcomes of collective bargaining in equal measure to their unionised colleagues. And so, the incentive to stay away, sit on the proverbial fence and ‘free ride’ on any improved conditions of work is tempting and, let’s face it, makes economic common sense. But: *common* sense is not necessarily *good* sense. Otherwise, the irony is that trade unions are respected and valued social partners at national level since 1990; while their rank and file membership is compromised at company level. If anything is to be done, the trade unions know that the time to act is now: before the situation worsens, and while the local labour market is tight and worker negotiation power is extensive.

Unlike other countries, it is professional employees who are the most likely to be unionised in Malta: teachers, pharmacists, doctors, pilots, professional officers, midwives and nurses,

air traffic controllers, university lecturers, engineers, family therapists, police officers, psychologists and counsellors are all well represented in trade union organisations.

The GWU maintains its pole position as the largest trade union in Malta: half of Malta's trade union members – 50,903 – are organised in and by the GWU, within its nine sections.

The UHM is the second largest, with 25,739 members, organised in its six sections.

However, to be noted is the existence of two trade unions, set up since 2016, which are affiliates of the UHM: the Independent Bankers Union (IBU) and the Union of Professional Educators (UPE). Both can be considered as offshoots of the traditional unions in their respective field: the Malta Union of Bank Employees and the Malta Union of Teachers respectively. Together, the IBU and UPE have over 1,000 members. Following a decision in its General Conference of 2015, so-called 'in house unions', like IBU and UPE, are part of the UHM's strategy for building membership strength without subsuming new members within the main union body.

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Commentary

The pattern of the experiences related to the events that occurred and the issues raised throughout 2018, or carried forward from 2017, in the industrial relations and employment scenario manifests in a meaningful way the reality of the people's working lives. These experiences clearly show that, among the actors involved in this field, there is no noticeable fatalistic acceptance of the sequence of the events that shape and influence this scenario. These events bear witness to the struggles through which the social partners strive to come to terms with the internal dynamics of the labour market and the consequential changes in the industrial relations system.

Of course, the nature of the events and the outcome of the issues raised have to be interpreted from the socio-economic context of a particular time and place. Nevertheless, in their totality these nine articles encapsulate some aspects of the wider developments. By providing a more tangible feel for the different issues in the industrial and employment relations scenario, they illustrate and in many aspects exemplify the way the broader issues operate in practice.

One of these broader issues has been the higher heterogeneity of the Maltese workforce caused mainly by the influx of foreign workers. As this issue has become overshadowed by highly political overtones, the trade unions opted to be mute about it while the employers played a low key. Another glaring aspect of the wider view encapsulated in these narratives is the endemic nature of conflict. However, intricate the mechanism set up to foster a consensual ethic among the social partners, the tensions and conflict that are implicit in industrial relations cannot be eradicated. Industrial relations are traditionally perceived by the euphemism for permanent conflict, acute or subdued, between employers and employees. The industrial actions during 2018, taken or threatened, may reinforce this perception. Moreover the discourse of "us" and "them" every now and then tends to prevail. A tone of this discourse was visible in the divergences between the employers' associations and the General Workers' Union about the issue related to the new rules about vacation leave and the proposal of the Prime Minister about workers being legally obliged to become members of a trade union.

The prevalence of such a dichotomous view of inter-relationship in one form or another should not however be equated with any presence or resuscitation of the proletarian worker. Indeed, as has been already asserted in the text, the proletarian stereotype, the typical image of a muscular man or a port worker unloading heavy cargo, is notably absent in the narratives.

Paradoxically while the dominance of male in the industrial and employment scenario is being attenuated the gender pay gap tends to persist. The persistence of this traditional gender differentiation in the Maltese labour market does not however mean that there

have been no discontinuities with the past. The assertive actions being taken against employers to enforce the law related to the employment of persons with disability may be an indicator of new attitudes in the employment relations field. On the other hand, the first collective agreement for police officers signed by the trade unions representing their vested interest can also be defined as a break from the past.

The events and issues related to the industrial and employment scenario of 2018 can be viewed as case studies that try to strike a balance between the general and the specific. The inherent continuities and discontinuities in this balance reflect the changing patterns in the kaleidoscope and dynamics of this scenario.