



L-Università ta' Malta  
Centre for Labour Studies

# Episodes in Maltese industrial relations in 2019

Saviour Rizzo





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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 first five 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](http://Eurofound.europa.eu/observatories/eurowork)

The author of the article ‘The Length of Stay of Foreign Workers’ is Ian Borg while the author of ‘Union and Migrant Workforce’ is Godfrey Baldacchino.

Episodes of Industrial Relations in 2019 - At a Glance

<b>Issue</b>	<b>Actors involved</b>	<b>Outcome</b>
<b>Work Life Balance Directive: Extension of Paternity Leave</b>	Government, Employers and Trade Unions	Dead line set by EU for the transposition of the Directive is 2022
<b>Nurses demand to be informed about time frame of a structural project at the state mental hospital</b>	Ministry of Health and Malta Union of Midwives and Nurses (MUMN)	A meeting was held during which information about time frame was given to the MUMN
<b>Changes in Industrial Tribunal</b>	Government, Employers and Trade Unions	The amendments stipulate that appointments of chairpersons have to be approved by the Employment Relations Board.
<b>Dispute between Government and Malta Union of Teachers over teaching load.</b>	Minister of Education and Malta Union of Teachers (MUT)	A short term solution by the engagement of retired teachers.
<b>The Right to strike questioned</b>	Air Malta and Air Malta Pilots Association (ALPA)	Towards the end of the year Air Malta withdrew the court case which it had filed for compensation of damages caused by the industrial action
<b>Social Dialogue</b>	Social Partners	Some proposals implemented in the budget
<b>The Length of Stay of Foreign Workers</b>	JobsPlus, the political class and the trade unions	The transitory nature of foreign works sheds new light on the issue of migrant workers.
<b>Unions and Migrant Workforce</b>	Director of Industrial and Employment Relations in her role as Registrar of Trade Unions	Initiative by trade unions offering services to migrant workers.

## **1. Work-Life Balance: Extension of Paternity Leave**

*Saviour Rizzo*

During the first quarter of 2019 the Work-life balance issue was re-awakened following the announcement of a Directive by the European Commission that would increase paternity leave to ten days and introduce new rights to employees about flexible working arrangements. The dead line set by the EU Commission for member states to transpose this directive into law is the middle of 2022.

This EU Work-Life Balance Directive, adopted by the EU Commission, originates from the EU Commission's unsuccessful attempt to improve maternity rights across EU member states. Currently the EU law provides for 14 weeks of maternity leave. Once this new directive is transposed into law fathers or equivalent second parents will be able to take at least ten working days of paternity leave, paid at least at the level of sick leave entitlement payment. Maltese law does not cater specifically for paternity leave. However, in terms of Parental Leave Regulations and the Minimum, Special Leave Entitlement Regulations fathers are entitled to one paid day leave of birth and parental unpaid leave of up to four months. The new directive states that this four month parental leave should be paid leave. The rationale of this new move by the EU Commission is to help married couples enhance their work life balance. The proposed introductory text to the Directive states that 'work life balance policies should contribute to the achievement of gender equality'.<sup>1</sup>

Work life balance, based on the notion of the multiplicity of needs inherent in the life of a human being, acknowledges that workers have other needs to satisfy beside the economic ones. To many people, especially those who are in gainful employment, work tends to be the central activity around which all other activities revolve. In other words, the work schedule determines in one way or another how individuals fulfill their commitments in the non-work domain which includes family life, one's recreational and leisure activities together with other aspects related to religion and one's personal needs.

Work-Life balance has become a more topical issue since many institutions are demanding from their employees a time commitment which in the past was only expected from a smaller number of core workers. Round the clock work which entails night work, evening work and work on a shift basis has been with us for quite a long time. The labour force has always included workers who have to adjust to irregular social hours such as police officers, hospital and airport staff, maintenance workers in water and electricity service. In today's labour market there are other categories of workers who have to contend with irregular hours of work. This is due to the

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<sup>1</sup> European Union, (2019). *The European Parliament and the Council of the European Union*. (Directive 2019/1158) Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1158&from=EN>

exigencies of today's labour market which are forcing certain categories of companies to adopt a controlled flexible work schedule aimed at maintaining competitiveness. Indeed digitalization in the labour market is being utilized to enforce a 24 hour service in economic sectors such as that of the on-line gaming and call centres.

While regulations may define how long we can work the designation of the work schedule by and large remains the prerogative of the employers. The exigencies of the firm tend to take prominence in the rationale upon which the work schedule is designed. The institutional arrangements of the world of work have not completely kept pace with the changing realities surrounding the modern family. Does this mean that the ideal work life balance to a number of workers will continue to be just a pipe dream? Has the digitalized economy made this ideal more elusive?

In answering these questions we have to bear in mind that workers in measuring time allocated to the non-work domain may have a different perspective from that implied by the 'balance' metaphor. Workers tend to be aware that there is no mechanical device to regulate and adjust the distribution between work and non-work domains in equitable way. Indeed there tends to be a range of possible relationships between work and non-work domains which can shape and influence one's perspective of time.

To the spouses of a two-earner family the task of house holding and the obligations of the family make a considerable demand on time. The management of time in this type of family demands developing strategies in order to keep the household operating successfully on a day-to-day basis. In trying to manage these demands of their working life these spouses find themselves involved in the struggle to create quality time for their children or each other. In this attempt to reconcile work commitments with family obligations these spouses may feel time squeezed between the two, leaving them little if any time to devote to their personal and social needs. Time squeeze implies giving up time for friends, sleep or leisure activities.<sup>2</sup>

The time and effort spent travelling between home and work may contribute to this time-squeeze feeling. What may however exacerbate this feeling is the long hour culture which has become a characteristic of the workers occupying the higher scales of the hierarchy in the set up of the organization in which they are employed. The input of long hours of work does not form part of their contract of work. It is not written in the contract of work and neither explicitly stated. However, the work schedule of these employees is tacitly accepted to be in addition to the formal contract of work. The number of this category of workers has been increasing as the post

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<sup>2</sup> Hein, C. (2005). *Reconciling Work and Family Responsibilities: Practical Ideas from Global Experience*, Geneva: Retrieved from: [https://www.ilo.org/public/libdoc/ilo/2005/105B09\\_142\\_engl.pdf](https://www.ilo.org/public/libdoc/ilo/2005/105B09_142_engl.pdf)

industrial society, heavily reliant on the service industry, has brought about an extension of the financial and insurance service sector complemented by heavy investment in on-line gaming.

The perception of time may therefore play an important part in the individual relationship between work and non-work. It can depend on the leeway their working time arrangements give them and how it can be utilized to satisfy the multiplicity of their needs. The family friendly measures being proposed in the European Commission Directive about the extension of paternity leave and the introduction of new rights related to flexible work arrangements may go a long way in providing a part of that leeway when and where it is mostly needed.

As is customary with the EU Commission in its legislation the directive adopts the general policy of subsidiarity as regards the cost which the implementation of this directive entails. In their reaction to this directive the Maltese employers' associations were unanimous in their statements that the government should finance the cost which these new measures entail. The CEO of the Chamber for Small and Medium Size Enterprises (GRTU), Abigail Mamo, stated that this measure will be very burdensome to SMEs. She maintained that in this case of pay arrangements the competence and views of the social partners should be taken into account

Likewise, the Malta Employers' Association (MEA) insisted that, in line with many other countries, the government should finance the payment of this extra cost. Government was urged by other employers' associations, such as the Malta Hotels and Restaurant Association and the Malta Chamber of Commerce and Enterprise to consult the employers about the additional cost which the implementation of this measure would incur. They maintain that these extra costs might jeopardise the viability and competitiveness of the firms operating in the labour market.<sup>3</sup> A spokesperson for the Ministry of Equality stated that government would engage with the social partners and interested parties to identify the best way to implement this directive.

## **Commentary**

This new directive is making arrangements that are targeted at the dual-worker family which in this post-industrial society is becoming the norm. It reflects the increasing calls for fathers to take up their share of parenting responsibilities. Child care is one of the main factors that impinge on the work-life balance of the two-earner family. Work-Life balance entails measures allowing men to play a greater role in childcare. As has already been stated Maltese law grants the rights to both female and male workers to be granted unpaid parental leave in case of birth, adoption, fostering or legal custody of a child to enable to take care of the child for a period of four months until the child has attained the age of eight years. An employee must have at least 12 months of

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<sup>3</sup> Carabott, S. (2019, January 26). New 10-day paternity leave plan shot down. *Time of Malta*. Retrieved from <https://timesofmalta.com/articles/view/new-10-day-paternity-leave-plan-shot-down.700243>



continuous service with his/her employer to be eligible to this grant of parental leave. To comply with this directive the service requirement for paternity leave would have to be scrapped.

As regards the financing of the payments which the implementation of the directive would entail, as is customary with EU law, the decision is passed on to the government of the member state. This flexibility inherent in the EU general policy of subsidiarity gives the social partners the room to manoeuvre in the consultative and bargaining process which is likely to take place in order to decide how this payment is going to be effected.

A tangible solution might be to make use of the trust fund for maternity leave in the private sector which was set up by law in 2015. This central fund is financed by contributions from employers in the private sector at a rate of 0.3 per cent of the basic wage of every employee. According to the provisions of the law this fund is to be used to cover the payment of 14 weeks of maternity leave. An amendment in the law which would make it possible to utilize this fund to pay for the paternity leave might be a satisfactory solution to the social partners.

## **2. Nurses demand to be informed about the time frame of the project**

*Saviour Rizzo*

The refurbishment project involving infrastructural work at the Mount Carmel Hospital, which is the state mental hospital in Malta, was the cause of a dispute between the Malta Union of Midwives and Nurses (MUMN) and the Minister of Health. The refurbishment work being undertaken in this hospital was being undertaken in response to various consistent reports about the bad state of repairs and the lack of the necessary infrastructure to help the nurses perform their duties in the professional manner which the care of these patients demands. The MUMN, representing the professional workers in this hospital, expressed its concerns about the grave inconveniences and disruptions which the staff had to contend with while this infrastructural work was in progress. The MUMN president, Paul Pace, stated that due to the exigencies of the ongoing project some wards have become overcrowded with patients making it difficult for nurses to provide proper professional care to their patients. The union claimed that as a consequence of this state of affairs the nurses were being forced to cope with pressures which have become unbearable. In response to this claim the Minister stated that in order to mitigate this crowding problem 104 patients have been relocated to another institution.

Expressing its serious doubts about meeting the deadlines set for the completion of the refurbishment project the union put pressure on government to provide it with details about the timeframe of the work related to this refurbishment project. It threatened that it would take industrial action if the government failed to provide it with this time frame.<sup>4</sup> The minister acceded to the union's request and a meeting was held between the officials of the ministry of health and the union. During this meeting the union was provided with the time frame of the refurbishment project which the ministry claimed was proceeding according to the set objectives. The Ministry of Health stated that the project will take a total of five years to be completed and work was proceeding according to plan. Although the union expressed its scepticism about the proceeding of this project and the objectives set it withdrew its threat of industrial action.

### **Commentary**

This case highlights the mental demands that can be triggered by the physical conditions at the workplace. What stands out in this dispute is the demand being made by the trade union to be consulted by opening up the process of communication with the Ministry. It resulted in the establishment of a formal discussion of questions of mutual interest between the government minister and its employees at the hospital. Consultation assumed the form of a communication

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<sup>4</sup> Caruana, C. (2019, April 24). Mt Carmel nurses ask for renovation timelines. *Times of Malta*. Retrieved from <https://timesofmalta.com/articles/view/mt-carmel-nurses-ask-for-renovation-timelines.708095>

process aimed at keeping the actors involved about intentions, results or decisions on matters that directly affect the working conditions of the employees at the hospital.

### **3. Changes in the Industrial Tribunal**

*Saviour Rizzo*

The Employment and Industrial Relations Act (EIRA: Chapter 452) which regulates employment and industrial relations in Malta makes provisions for the setting up of an industrial tribunal. The parties involved in a trade dispute have the right to request the government minister to refer the dispute to this tribunal for settlement. The Minister is obliged to refer any dispute to the tribunal within 21 days of the date of notification or request. The tribunal decision is legally binding to both parties. During the proceedings the tribunal has the same judicial powers of civil court which means that it has the right to summon witnesses and ask those involved to take the oath. In 2016 the procedure of the appointment of chairpersons which was in practice became a highly contentious issue. What triggered this contention was a ruling by the constitutional court, in the form of civil law, about the constitutionality of this tribunal. The court ruled that the appointment of the chairpersons of this tribunal is unconstitutional as it noted that the high degree of discretionary power exercised by the minister in these appointments did not guarantee independence and impartiality of the tribunal. The Constitution of Malta (Article 39) unequivocally states that:

Any court or other adjudicating authority prescribed by law for the determination of the existence of the extent of civil rights or obligations shall be independent and impartial.

In order to address this issue the Minister for Social Dialogue, Dr Helena Dalli, published a set of amendments which included the following:

Appointment of chairs to the tribunal is for five years instead of three

The chairperson can be removed by the Prime Minister while the simple member can be removed by the minister. In both cases of dismissal, the Employment Relation Board may be consulted.

Both decisions or removal can be appealed on a point of law by being referred to the Court of Appeal.

The re-appointment of a chairperson shall not be made if two thirds of the members of the Employment Relations Board (ERB) are against such appointment.

The persons appointed by the trade unions and those appointed by the Employers' Associations need the approval of fifty per cent of the members of the ERB in order to be reappointed.<sup>5</sup>

The social partners were not completely satisfied with these amendments. The *Unjon Haddiema Magħqudin* (UHM), Voice of the Workers, through its CEO, Josef Vella, stated that the amendments did not give the chairperson security of tenure. It reconfirmed its stand that the chairperson should be a magistrate. The General Workers Union (GWU) Secretary General, Josef Bugeja, stated that there was room for further changes which ought to be discussed at the ERB.

Following these reactions, the issue seemed to lay dormant. It was however reawakened by the Malta Employers' Association (MEA) which held a conference in January 2019 to discuss the changes that have to be made to this institution based on the analysis of the dynamics and in the light of the developmental changes that the Maltese labour market has been undergoing. During this conference MEA presented the following set of proposals:

The chairperson should be a lawyer with seven years of experience.

Setting up an Employment Appeals Tribunal so as to avoid referring appeals to court.

Appeals to be allowed only for unfair dismissals.

Set a three-month limit for case to be concluded.

Cap the compensation amount to 18 month salary.

Security of tenure for chairpersons and members for set periods.<sup>6</sup>

One of the proposals about which there was disagreement among the social partners was about the capping amount of compensation due to plaintiff. The trade unions expressed their disagreement about this proposal.

Apart from this disagreement there were convergences of opinion among the social partners. There was a unanimous agreement about the need to speed up the processes of the tribunal. It was noted by Josef Bugeja that some reinstatement cases sometimes take years to be settled. Josef Vella proposed that one way to speed the process was to make the tribunal chairpersons full time employees. The representative of the Confederation of Trade Unions (FORUM) stated

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<sup>5</sup> Government Gazette (2016). Act No. XXXIII - A 1028-1034. Retrieved July 28, 2016 from <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=27786&l=1>

<sup>6</sup> McDonald, V. (2019, March 1). More consistent awards required from industrial tribunals. *Times of Malta*. Retrieved from <https://timesofmalta.com/articles/view/more-consistent-awards-required-from-industrial-tribunals.703266>

that good practice of mediation can reduce the caseload of the tribunal. The executive of the Malta Employers' Association (MEA) remarked that in 2016 and 2017 the cases that were settled amicably outnumbered those referred to or settled by the industrial tribunal.

### **Commentary**

The rude awakening caused by ruling of the civil court in 2016 about the unconstitutionality of the industrial tribunal was carried over to 2019. The amendments made in 2016 to address the issue of impartiality and independence of the tribunal might not have gone far enough to conform to the high standards of probity which the functioning of this institution demands. The measures proposed by MEA in the conference held in January 2019 have to be evaluated in the context of the sequel of this sudden realization of the serious shortcomings of this tribunal. Overall there were points of convergences in the opinions expressed by the social partners. The bone of contention was the proposal about the capping of the amount to the plaintiff following an award of the tribunal in favour of the plaintiff. According to Andrew Borg Cardona, a seasoned lawyer practicing in the field of industrial and employment relations, the tribunal has used different parameters in calculating compensation. He contends that the lack of a capped amount of compensation in the law grants the tribunal wide discretionary powers in its calculations of the compensation due to the plaintiff. Discretionary. power must be used reasonably and impartially.

A convergence is noticeable in the proposals made by the MEA and UHM as both of them feel that the chair must be a person with practical experience in the administration of the law. The MEA suggested a lawyer with seven years of legal practice whereas the UHM proposed a magistrate. Perhaps both feel that the discretionary powers of the chairperson would be used in a more rational and impartial manner by players who are seasoned in the practice of the law. On this issue it is perhaps worthwhile taking note of a comment made by a correspondent on the Times of Malta who stated that 'pushing the issues and problems upwards does not necessarily provide assurance of better decisions, improved efficiency, more practical handling of issues at their core level. Moreover, the overburdened courts in Malta may not guarantee swift action to remedy matters'<sup>7</sup>.

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<sup>7</sup>Consiglio. J (2016, March 1). Oh no, not another court! *Times of Malta*. Retrieved from <https://timesofmalta.com/articles/view/Oh-no-not-another-court.604283>

#### **4. Dispute between Government and Malta Union of Teachers about teaching load.**

*Saviour Rizzo*

A dispute between the government and the Malta Union of Teachers (MUT) escalated into a partial industrial action by teachers at a time when schools were about to hold the annual exams before closing for the summer holidays. The MUT claimed that some teachers were being assigned a load above that stipulated in the collective agreement. According to this agreement teachers were expected to have a weekly load of 24 lessons and the maximum teaching load of 25 lessons was to apply in exceptional circumstances. The MUT claimed that this maximum load of 25 lessons has become the norm especially among those teaching Mathematics and Maltese where there is a shortage of teachers. In view of this the MUT ordered the Mathematics and Maltese teachers not to set and correct the annual examination papers.

The Minister of Education, Evarist Bartolo, defined this industrial action as disproportionate. He stated that only 3.5% of the teachers had been assigned a maximum load of 25 lessons. According to the Minister there were 11 teachers of Maltese out of a total of 156 and 25 per cent of Maths teachers who had a heavier workload than that prescribed in the collective agreement. He further stated that steps were being taken to address the problem of this shortage of teachers. On the other hand the MUT insisted that since that this problem has been dragging on for months it had been forced to take action.<sup>8</sup>

The Maltese Association of Parents of State Schools while appealing to government to implement measures to solve the issue made a plea to the MUT to reconsider its industrial action. The conciliatory meetings held between the MUT and the Ministry of Education did not lead to an amicable solution to the dispute. Consequently, the MUT reaffirmed its directive of the partial industrial action it had ordered to the teachers teaching Maltese and Mathematics. In response to this industrial action the Ministry of Education assigned a group of professional teachers to set and correct the examination papers of Mathematics and Maltese. The examinations in both papers were held in accordance with the timetable set.

This conflictual issue was not laid to rest. As predicted it was re-awakened in September when the schools reopened after the summer holidays. The problem of the shortage of teachers which was considered to be the main cause for assigning some teachers a heavier work load in excess of that stipulated in the agreement was still facing the Minister of Education. To tackle this problem he announced his intention of recruiting foreign teachers and reinstating Maltese

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<sup>8</sup> Pace, Y. (2019, June 3). The union said it would continue to put pressure on the Education Ministry to take measures to address the 'serious shortage of teachers'. *Malta Today*. Retrieved from [https://www.maltatoday.com.mt/news/national/95452/maths\\_and\\_maltese\\_exams\\_in\\_secondary\\_schools\\_will\\_not\\_be\\_held\\_this\\_year\\_mut\\_says#.XdasTJNKiUK](https://www.maltatoday.com.mt/news/national/95452/maths_and_maltese_exams_in_secondary_schools_will_not_be_held_this_year_mut_says#.XdasTJNKiUK)

retired teachers. Subsequently in the Government Gazette of 13<sup>th</sup> September 2019 there was a call for applications open to public figures from various education grades to teach in state schools. The MUT expressed its disapproval of these measures being taken by the Ministry of Education as it insisted they offer a short term rather than a long term solution. It dismissed the decision by the Ministry. as being the 'easy option'. Since the problem needed an immediate solution the Education Commissioner, Charles Caruana Carabez, expressed his agreement with the measures taken by the government as long as the teachers being employed in this emergency situation are qualified. While pointing out that the problem stemmed from poor working conditions and low pay the Education Commissioner endorsed the view of the MUT as he believes that the measures adopted by the ministry were meant to 'stop the gaps'.<sup>9</sup> In his reaction the Minister of Education stated that the policy of recruiting foreign teachers, which he pointed out was practiced in non-state schools, was one of a last resort.

### **Commentary.**

A teaching load is specified by the number of lessons per week. This load is based on the principle that as far as practicable the work among teachers should be equally distributed and the work of the individual teacher should not be unreasonably excessive. A heavy teaching load is not conducive to effective classroom performance. The collective agreement signed between the Ministry of Education and the MUT fixed a maximum of 24 lessons per week (one less than in the previous agreement). However, it included a clause which stipulated that this maximum could be stretched in cases of exceptional circumstances. This seemingly force majeure created a situation which made it difficult to distribute the work load among the teaching staff in the best possible equal manner. In such a scenario grievance were likely to arise and complaints were voiced to the Ministry of Education to address them. No explicit denial was forthcoming from the Minister of Education about these complaints. The figures he gave, in numbers or percentages, of the teachers who had to contend with a work load slightly heavier than that of their fellow workers were perhaps meant to imply that the issue was not one of epidemic proportions.

What is to be noted is that an issue which could have been settled at a school level escalated to a point where a third party, the Malta Association of Parents of State Schools, intervened by calling both parties to reach an amicable solution. The highly centralised Maltese state educational system allows little, if any, room to solve such grievances at school level. When an issue which seems to be peripheral has to be dealt with at the centre it is likely to escalate.

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<sup>9</sup> Caruana, C. (2019, September 20). Teachers' union says 'not acceptable' to rely on foreign teachers. *Times of Malta*. Retrieved from <https://timesofmalta.com/articles/view/teachers-union-says-not-acceptable-to-rely-on-foreign-teachers.736307>



## 5. The Right to take industrial action disputed

*Saviour Rizzo*

At the end of June 2019 the Air Malta Pilots Association (ALPA) following a vote taken on line by its members ordered the Air Malta pilots to report half an hour late for duty. In its statements ALPA alleged that Air Malta was breaching clauses in the collective agreement and was taking unjustified disciplinary measures against some of its officials. However, according to Tourism Minister, Conrad Mizzi, the cause of this partial industrial action ordered by the trade union was about a guarantee of €700,000 which ALPA claimed government had agreed to pay to the pilots in case Air Malta became insolvent and ceases its operations. This agreement, signed in 2018, included a scheme stipulating that pilots opting to retire early are entitled to two thirds of the salary until reaching statutory pensionable age. There seems to be a lurking fear gripping ALPA that Air Malta might close down and a registered new entity under another name will take over its operations. Shortly before ALPA issued the directive to its members an announcement was made by Ryanair that it has set up a subsidiary in Malta. This announcement stoked the fears of ALPA that Air Malta could be taken over by another company.

The management of Air Malta insisted that it had not taken any measures which are in breach of the collective government. It therefore submitted a plea to the civil court for a temporary injunction to halt the industrial action as it insisted that the claims made by ALPA did not constitute a trade dispute. In its ruling during the sitting held on 1<sup>st</sup> July 2019 the civil court acceded to the request made by the company and ordered ALPA to stop its actions and refrain from taking any further industrial actions.<sup>10</sup>

Air Malta insisted that the ruling of the civil court implies that the industrial action taken by ALPA was illegal and abusive as the claims made by the union do not fall within the parameters of a trade dispute as defined in the provisions of the Employment and Industrial Relations Act. On the basis of this argument Air Malta asked the court to declare the industrial action of ALPA an illegal act and therefore not covered by the legal protection of immunity granted to a trade union for an industrial action in furtherance of a trade dispute as stipulated in the law. Air Malta therefore demanded that the union should pay for the damages caused by the industrial action.<sup>11</sup>

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<sup>10</sup> Times of Malta, (2019). Court upholds Air Malta request to stop pilots' industrial action. (June 30). *Times of Malta*. Retrieved from <https://timesofmalta.com/articles/view/court-upholds-air-malta-request-to-stop-pilots-industrial-action.718333>

<sup>11</sup> Calleja, L. (2019, August 29). ALPA must also be accountable for its actions – Air Malta. *MaltaToday*. Retrieved from [https://www.maltatoday.com.mt/news/national/97151/alpa\\_must\\_also\\_be\\_accountable\\_for\\_its\\_actions\\_\\_air\\_malta#.XdayLZNKiUk](https://www.maltatoday.com.mt/news/national/97151/alpa_must_also_be_accountable_for_its_actions__air_malta#.XdayLZNKiUk)

These judicial proceedings were defined by ALPA as attempts to undermine the freedom of association and to dissuade the union from insisting on the observance of the right deriving from the collective agreement currently in force. Air Malta retorted that ALPA should be accountable for its actions and this judicial action was initiated to protect the rights and interest of the company for the benefit of the country and its economy. It further stated that the shareholders of the company were not in a position to provide the guarantee of a €700,00 payment which the union was demanding.

This episode seems to be a carbon copy of a similar dispute between the same actors in 2016. The dispute was about the renewal of the collective agreement at a time when Air Malta was undertaking a restructuring exercise as prescribed by the EU Commission in order to make the company viable and no longer dependent on state subsidy. As no agreement could be reached ALPA stated its intention of taking industrial action. The Minister of Tourism, who at that time was Edward Zammit Lewis, stated that an industrial action by the union at such a crucial time for the company was an irresponsible and insensitive act. Given these exceptional circumstances a plea was made to the civil court to stop ALPA from taking industrial action. The court provisionally upheld the warrant of injunction filed by the Ministry of Tourism. This ruling was however contested by the union and subsequently it filed an appeal. The court of Appeal upheld the plea made by the union and revoked the prohibition of injunction. Mr. Justice Meli sitting on the board of appeal stated that the airline had no right to stop a union from taking legitimate action in the best interest of its members, noting that this right was guaranteed by the Constitution. The judge said that union's right to order industrial action, as guaranteed by the European Convention, could not depend on the company's financial situations. He agreed with the argument brought forward by ALPA that the fundamental right to take industrial action could never be suspended pending talks.

The re-enactment of the 2016 three years later in 2019 seemed destined to have a different ending as Air Malta filed a court case asking the court to liquidate the damages which the company claims to have suffered as a cause of the industrial action. This court case posed a serious threat to the hard-won legal right which gives trade unions immunity from torts for actions taken in contemplation of a trade dispute. At the end of the year 2019 Air Malta announced that as a gesture of good will it had withdrawn the case.

### **Commentary**

The ruling in 2016 of the court of appeal tends to give unfettered rights to the union to order industrial action whereas that of 2019 tends to restrict these rights. The trade union insisted that by voicing the concerns of its members it was acting according to the principles of its foundation. The company claimed that it was seeking protection from what it alleged to be abusive action and was seeking protection in particular circumstances. It accused the union of being a

destructive element in the restructuring programme which the company was forced to implement by the EU Commission. The lack of convergence in the two court rulings of 2016 and 2019 imply that the parameters of what constitute a trade dispute and the legitimization of industrial action by the trade union are open to different interpretations of the law. Perhaps amendments to the law should be made aimed at spelling out in clearer terms the definition and parameters of a trade dispute.

## 6. Social Dialogue

*Saviour Rizzo*

During the year 2019 there have been no major changes to labour laws. There were neither any major changes among actors or institutions involved in the labour market. The social dialogue process at national level however followed its usual rigour. During the pre-budget consultative process, the social partners represented at the Malta Council for Economic and Social Development (MCESD), the national tripartite institution for social dialogue, kept a very high profile. In the pre-budget consultation meeting with the Minister of Finance, which have now become customary, each of the social partners represented at the MCESD proposed to the minister a set of measures.

The trade unions stressed the importance of improving the working conditions especially for those who are in vulnerable positions. The two major trade unions, the General Workers Union (GWU) and the *Unjon Haddiema Magħqudin* (UHM), expressed their satisfaction about the measure, announced in the budget, about the implementation of the principle of equal pay for equal work. This measure compels the contractors who provide a service for private companions to pay their employees who are engaged in this contractual work the same pay equivalent to that paid to the regular workers of the company which is contracting this work. Another measure appreciated by the union was the 15% flat rate on first 100 hours of overtime for workers earning less than 20,00 EURO annually. On the other hand, the Malta Union of Teachers (MUT) was disappointed that none of its proposals were implemented. One of these proposals was about incentives to attract more students to move into the teaching profession. It further proposed investment in school infrastructure in terms of ventilation, insulation and air conditioning.

One of the measures proposed by the trade unions which was not implemented in the budget was about mandatory trade union membership. In January 2019 the GWU in a letter sent to MCESD urged the Council to discuss a proposal on compulsory trade union membership. This discussion did not take place. This issue was raised once more in the proposals made by UHM during this pre-budget consultative process. The UHM proposed that mandatory trade union membership should apply to low income workers earning less than 25,000 EURO annually. The workers earning more than 25,000 EURO who opt not to join a trade union would be obliged to contribute to a Development and Human Resources Fund.

The reaction of Employers to these measures was tepid. Their main target was the additional day of annual leave to compensate for public holidays falling on weekends. The Malta Employers Association remarked that the implementation of this measure reduces the working time by approximately 1.25%. The Malta Chamber of Commerce expressed the same concern about the adverse effect which the measures announced in the budget might have on the operative cost of the firms.

### **Commentary**

Social dialogue was therefore active during the year 2019. The trade unions are using the mechanism of this dialogue to serve as a solid platform to improve the working conditions. They insist that the proposal about the mandatory trade union membership is aimed at providing an effective solution to the perennial problem of precarious work rather than to swell their coffers with the increase in membership fee.

Through this platform the players are the playing game according to a set of rules tacitly and legally accepted by the social partners. This has contributed to a more mature social dialogue.

## **7. The Length of Stay of Foreign Workers in Malta.**

*Borg Ian (2019). Central Bank of Malta.*

The influx of foreign workers active in the Maltese labour market has been a topical issue in the public debate. An empirical study conducted by Ian Borg sheds new light on this issue as it shows that overall the stay of the majority of these foreign workers tends to be transitory.

What follows is the executive summary of the report on this study which is being reproduced with the kind permission of the author. The whole report is available on the Central Bank of Malta website<sup>12</sup>.

### **Executive Summary**

The influx of foreign workers in Malta has been extraordinary in the last few years. It has been instrumental in mitigating labour market shortages thereby enabling strong expansion in firms' activities. In this light, understanding the characteristics of this growing segment of the Maltese labour market is vital. This note looks at one aspect of this: the length of stay of these workers and attempts to shed light on the following questions.

### **What is the length of stay of foreigners in the Maltese labour market?**

The re-migration rate can be defined as the emigration of non-citizens as per 1000 of the population. When comparing Malta's migration flows to those experienced by other European countries we find that Malta has a dual phenomenon of large migrants' inflows and outflows. In particular, Malta had the second largest migration rate in 2015, but in the same year, Malta experienced the third highest re-emigration rate. Since migration to Malta in the last few years was mostly related to work opportunities, these large flows suggest that while Malta has managed to attract a large number of foreign workers, their length of stay is rather short.

Using anonymized longitudinal administrative data, we compute the length of stay of foreign workers in Malta. Specifically, we compute the exit rate, which expresses the number of those who exit the labour market as a percentage of the number of entrants in a particular year. Over the period 2002 to 2017, on average, 25% of those that were engaged exited the labour market within the same year, whereas 45% of foreign workers exited after a period between one and two years. Moreover only 30 % remained engaged in the Maltese labour market more than 6

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<sup>12</sup> The Length of Stay of Foreign Workers in Malta, Ian Borg, January 2019, Policy Note, Ian Borg

years after their first engagement. The average length of stay of foreign workers is 3.5 years, relatively unchanged since 2012.

Exit rates had limited evolution over time, and have indeed remained quite high throughout the period 2002-2017. As Malta went through a cyclical upswing in the period 2004 and 2007, exit rates also rose slightly, and then remained flat until 2010. These were followed by some decline until 2015 which coincided with the extraordinary increase in the share of foreign workers in the Maltese labour market.

### **What are the characteristics that determine the length of stay?**

Individuals that originate from countries in the European Union (EU) tend to have a shorter length of stay when compared with non-EU nationals. The exit rate of EU nationals is 6 percentage points higher than that of third world nationals (TCNs) for those who exit the labour market within the first year of engagement and 3 percentage points higher for those that exit between one or two years after first engagement. At longer durations, exit rates converge. In addition, individuals that originate from peripheral European countries tend to have marginally higher exit rates than those coming from eastern and core European countries.

Foreign workers in Malta are quite young. Indeed, 27% of all foreign workers that were engaged in the period 2002-2017 were below 25 years of age, while 43% of them fall within the 25-34 cohort. In general, the youngest cohort tends to have the lowest length of stay. The relationship between skill and length of stay is largely positive. In general the highest skilled foreign workers tend to have a longer length of stay, but the results are mixed when comparing low and medium-sized employees.

Small firms tend to have a better retention rate than larger firms. Moreover, there is significant sectoral heterogeneity. The public administration, health, and education sector and the wholesale and retail sectors have the lowest exit rates while the manufacturing, water and electricity sector has the highest exit rates. Moreover, we find some evidence that average sectoral wages are positively related to the length of stay, but it cannot fully account for sectoral heterogeneities. In addition, it is difficult to explain sectoral heterogeneities with age and regional differences.

### **What are the economic and policy implications of the estimated length of stay?**

Due to the relatively short stay of foreign workers in Malta, it is likely that economic assimilation is low. Indeed, very few foreign workers in Malta ever change their job or improve their

employment occupation while in Malta. The lack of labour mobility within the Maltese labour market in turn poses challenges to labour productivity growth as firms have to consistently hire new workers with limited gains from 'learning by doing'. This could be creating disincentives for employers to train staff. Additionally, the increasing flows of foreign workers can add cyclicity to Malta's potential output. The presence of a large transient workforce also has implications for demand for public transport, private education and the rental market. Policymakers need to provide incentives to favour training and upskilling while trying to sustain incentives for the retention of workers, such as the provision of retirement income schemes and private health insurance. Particular attention also needs to be given to sustain those sectors where demand is rising quickly.



## 8. Trade Unions and the Migrant Workforce

*Godfrey Baldacchino*

The annual report by the Registrar of Trade Unions was published in the Government Gazette of November 1<sup>st</sup>. As usual, the report includes the latest membership figures of Malta's 32 trade unions and 8 employer associations, split in terms of male and female (as applicable) and based on self-reporting, as obliged by law. These detailed statistics make for some sober reflections.

The general trend is up: almost all 40 organisations have registered modest increases in their membership figures. The most notable increase comes from the Union of Professional Educators (UPE), which has more than doubled its membership, from 564 members reported in 2017/8 to 1,866 in 2018/9. Nevertheless, the Malta Union of Teachers, Malta's oldest and first registered trade union, from which the UPE members split, still increased its members, from 9,697 to 9,903.

Malta's two general unions, the General Workers' Union (GWU) and the *Unjon Haddiema Magħqudin* (UHM), both registered minimal membership gains of less than 1,000 members each. Some three-fourths of Malta's unionised members are organised in these two unions. Their membership tally – 51,878 for the GWU; 25,821 for the UHM – includes almost 11,500 pensioner members.

The Malta Employers Association (MEA), the Malta Hotels and Restaurants Association (MHRA) and the Association of General Retailers and Traders (still known as the GRTU), have consolidated as Malta's pre-eminent employer bodies.

This report and its data need to be seen in the context of the rapidly internationalising local workforce. In the 2<sup>nd</sup> quarter of 2018, so around the same time to which these trade union membership figures refer, the Labour Force Survey suggests a workforce of over 231,000, with tens of thousands of foreign workers included. Excluding pensioners, the worker-members of trade unions in Malta amount to around 90,000: a rough trade union density of 39%. This would be one of the lowest trade union densities ever recorded in Malta.

The trend suggests that *some* migrant workers are becoming unionised; but *most* are obviously not. They operate in industries – well paying (as in gaming or fin-tech) or less well paying (as in construction and quarrying) where union membership is neither normal nor encouraged. They may operate in shady areas of the economy at the behest of employers who would prefer to operate 'under the radar'. More significantly, as we are reminded by Clyde Caruana, Executive Chair of JobsPlus, many of these workers are in Malta for a fixed period of time: typically, three years. They have no intention of settling down and settling in. Such 'birds of passage' are less likely to affiliate themselves to unions, just as they are less likely to seek to integrate in our communities. They are here with single-minded purpose: for the money that they can make and save.

Trade unions are reading the signs of the times. They can respond to this new reality by offering services to foreign workers while they are in Malta. A commendable initiative by the GWU is the operation of services for Italian workers and pensioners, members of the CGIL (the largest Italian Confederation of Trade Unions) who are working and residing in Malta. The number of Italians working in Malta has tripled in the last four years; and this GWU-CGIL service initiative – to be inaugurated at the end of November – builds trade union relevance and a presence to an otherwise neglected group. What can be tailor-made to Italian workers could be replicated with workers of other nationalities. With migrant workers becoming the ‘new normal’ in Malta, the future of local trade unions may increasingly depend on their ability to appeal to such an occupational category.

Baldacchino, G. (2019, November 18). Unions and Migrant workforce. *The Times of Malta*, Retrieved from: <https://timesofmalta.com/articles/view/unions-and-migrant-workforce-godfrey-baldacchino.750712>

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