

# The Role of Trade Unions in a Dynamic Modern Industrial Environment by Dorian Sciberras

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In the aftermath of the French Revolution of 1789, the workers' movement developed different strategies ranging from Anarchism, Marxism and Reformism. Without doubt, the trade unions have become the most powerful and widespread self-managed organizations. Gregory<sup>[1]</sup> points out that the basic ideology of the trade union movement lies in the seeking of widening the social ownership of production. For many years industrial relations were seen in the light of an eternal struggle between the bourgeoisie, owning the means of production, and the working class. In this context, workers had to advance their interests by means of strikes, go-slows and sabotages. In response to this, the bourgeoisie would resort to repression and counter-strikes. While this employer-employee struggle still persists nowadays, various factors have led to a considerable shift in the way industrial relations are conducted. It is possible to discern a growing tendency to focus on a broader nature of economic activity, influenced by the wider society, developing in this way an interdisciplinary approach using concepts and ideas deriving from sociology, economics, and political science. As a result, trade unions have had to adapt their approaches to the new circumstances.

A very important factor which brought about this change in employer-employee relations is the so-called "De-industrialization". This can be defined as a process of relative job loss in industrial employment; a rise in structural unemployment due to the slowing down of the economy;

and significant import penetration of the domestic market. This phenomenon can be mostly attributed to the existence of multi-national corporations. Indeed, a very large percentage of plant closures in Western countries occur simply because the operation of the branch enterprise does not fit into the corporate strategy of the parent company. This has created a very important pressure point on trade unions and governments to always preserve the balance between the workers' rights and productive efficiency. Additionally, the growing role of technology and science has created a high percentage of highly qualified personnel inside and outside companies, decreasing in this way the role of workers in the control of production management and distribution processes. This does not however mean that this expert and specialized class control the decisions taken in industrial relations. From the late 1970s there seems to have been an effort from the bourgeois class to ripen the dichotomy existing between employer and employees, from the traditional owners versus workers scenario to one where all the classes are portrayed as co-partners, if not in the actual management of the means of production, in the sharing of powers at different levels of the productive process. Paul Blyton<sup>[2]</sup> refers to such efforts as Quality of Working Life programs (QWLs). Such programs aim at improving job satisfaction, while at the same time reducing unit costs by increasing productivity. Some examples of such schemes may be the painting and designing of the employee's staff rooms according to their wishes, changes in the design of work, and/ or new forms of pay and benefit programs. Barber and Towers<sup>[3]</sup> contend that the traditional relationship between manager and managed does not fundamentally change with these programs. Despite the fact that they appear to lead workers and managers sharing information, in reality the information flows from workers to management, thus re-enforcing management's control.

The attitude of trade unions towards such programs has been varied depending on a number of factors. In the USA for example, QWLs led to a general feeling that trade unions are no longer indispensable for the safeguard of their work. For this reason, several major US unions have taken an active role in encouraging local participation in QWL programs. Opposing such programs would lead to a perception that the union is opposed to the increased participation of workers and that the management is more concerned than their union with the welfare of the workers. Also, the decision to ignore QWL means that unions would give up any ability to affect the structure and operations of such programs. Programs similar to QWLs are present in the Maltese system and have become a norm with employees expecting the existence of these programs in their place of work. Indeed, the existence or otherwise and the form or type of these programs have become

determining factors for prospective workers to choose their place of employment. Many such programs, or mention to them are found in the collective agreements, thus in the Maltese case, being incorporated in the contractual relationship between the employer and the employed.

In considering the scenario of employer-employee relations "modern" industrial relations sees the important role played by the manager as the "middle-man". Such a role is very often ambiguous as it belongs neither to the ruling class nor to the working class. The manager is taking the position of the employer in the eyes of the workers, but in turn s/he is an employed person with specific duties, This very important role may serve as a bridge to ripen the divide between employers and workers, or it may complicate matters more in that it creates a further hurdle on trade-unions to press the real owners of production.

The law is another fundamental factor which is determining the nature of employment relations. There has been an increasingly interventionist stance from the governments all over Europe to regulate as much as possible industrial relations without hindering productivity and efficiency and safeguarding the rights of workers at the same time. Thus a balance is created based on a tripod consensus between the employers, employees (represented by trade-unions) and the government. In the Maltese context, these relations are regulated by the Employment and Industrial Relations Act.<sup>[4]</sup> Also, with Malta's membership in the European Union, the regulations, directives and decisions emanating from the Union are directly affecting the local position. In this way local relations nowadays will be modified more in line with the European perspective. An important modification in this regard happened by Legal Notice 10 of 2006. It is the transposition of the EU directive concerning employee rights to information and consultation. Employers are obliged to make practical arrangements and organize meetings with workers' representatives to inform them about the situation in the company, its objectives and employment prospects.

Article 155 of the Treaty on the Functioning of the European Union (TFEU)<sup>[5]</sup> provides the procedure in regards to how agreements at Union level are concluded. They must be in conformity to Union provisions or to the particular management and labour practices. In article 156 TFEU,<sup>[6]</sup> we find a strong statement as to how much the EU takes a pro-active role in regulating matters concerning employment. This is because the Commission not only encourages "co-operation between the Member States" but it also "acts in close contact with Member States by making studies, delivering opinions and arranging consultations". There can be no doubt, therefore, of the fundamental importance played by the law as a fountain of change and at the same time a regulator in employment relations.

The primary aim for a trade-union, as defined by Article 2 of Chapter 452 is that of regulating the relations between the workers and employers' association. The Maltese legislator also specifies that a trade union must be wholly or mainly made up of workers, being not less than seven members.<sup>[7]</sup> For this reason, the main role for a trade union remains that of collective bargaining. It is important to note here is that a collective representation is not a right of the union but a right of the industrial worker. Ewing<sup>[8]</sup> prefers using the term "accompaniment" instead of "representation" as the union is helping the worker stand up for his rights. All this can also be inferred from the idea that it is the worker who must choose his representation. In fact a worker may choose not to become a member of any union at all. Despite this, Maltese law awards much importance to the efforts of trade-unions. In the UK, for example, a collective agreement is not enforceable in the law courts. The Maltese position is different as it is considered as a legally binding contract. In fact, it is binding also on those workers who are not union members. Thus, under the Maltese perspective, Ewing's idea of trade unions being solely companions does not subsist. Under the local context, one may say that unions are truly representatives of the workers, with direct legal consequences flowing from the negotiations between the union and the employer. This discrepancy between Maltese and UK law can be attributed to the fact that over the last two decades, British union membership has declined considerably. Whereas in 1979, 53% of workers were union members, by the year 2000 this proportion stood at 27%. As a result, the standing of the trade-union in the UK as the collective representative is weaker than in Maltese scenario, with unions bargaining not only for their members but for all the workers in the given sector or company. Keith Ewing divides collective bargaining into three different aspects being:-

- 1 the right of the union to represent members in grievance and disciplinary procedures;
- 2 the right to be consulted on a range of issues on behalf of members;
- 3 and the right to negotiate on behalf of members (in the Maltese context we can substitute the word "members" with "workers").

Trade disputes offer us an opportunity to analyze the functions of trade unions in action. A trade dispute can be defined as a situation where the fine balance of consensus between employers and the employees is disrupted. Also as defined in Article 2 of Chapter 452, it encompasses disputes between the workers themselves. The roles of trade unions came up in the case **Freeport Terminal (Malta) plc vs Union Haddiema Maghqudin**.<sup>[9]</sup> As a starting point, the Court of Appeal compared the Maltese position with the English one. It concluded that Maltese law is very peculiar as it did not evolve in the same manner as most westernized systems. This in no way means that Maltese law is

out-dated. In the very words of the court, "wiehed jista' jqis dan bhala fatt pozittiv jew negattiv skond l-orjentament u konvinzjoni tieghu". Article 2 of Chapter 452 in the part relating with trade disputes requires that such a dispute must be "connected with" a number of grounds listed in paragraphs (a) to (g).<sup>[10]</sup> The current UK position requires that the dispute must be "related wholly or mainly" with such grounds. Thus under Maltese law, trade-unions are more free to act in negotiating the matters predominating the dispute. Despite this, the Maltese courts give a restrictive interpretation to this link not to jeopardize unnecessarily the rights of third parties who may be affected by the dispute.<sup>[11]</sup> It seems that the Maltese legislator wanted to give the trade union a power to enforce its decisions in the interest of workers; "Ried li ma jkunux inermi u impotenti kontra l-qawwa ekonomika tal-principal".<sup>[12]</sup>

The grounds giving rise to trade disputes are varied and give us an idea of the various services offered by the trade union. In fact these grounds may be divided into two types. The first type relates to the workers themselves being the terms and conditions of employment; the engagement, termination or suspension of employment; allocation of work and duties; and matters of discipline. The second type relates more with the trade unions themselves and their need to have facilities; machinery for negotiations and consultation; and matters of membership. Referring back to Ewing's three steps for collective representation, these are all reflected extensively in these grounds.

New legislative arrangements in the USA guaranteeing the rights of workers to self-organize, self-direct and self-finance labour organizations has materially affected the nature and character of employee representation plans. The assertiveness of trade-unions led to a general public sentiment that workers should have a right to organize collective bargaining has accentuated this tendency. This was coupled with the desire of certain employers to provide a more cohesive and representative agency through which they can deal with their workers. David J. Saposs<sup>[13]</sup> sees this as the emergence of a new type of company union, designed to give distinct organizational machinery and a considerable degree of financial status. The old paternalistic plans made no distinction between the constitution of the "company union", being concerned with the employees, and the trade agreement which is the arrangement between management and worker. The trade agreement merely provided a mode of procedure whereby management was to consider the views and requests of the workers. The conclusions were not therefore collective bargaining per se, which presupposes negotiation and joint concurrence, but decisions handed down by the management. The old system takes it for granted that employers would provide and initiate the plan, or at least be responsible for drawing

attention to it. Now, with the changing circumstances, the source emanates more from union associations. This scenario can be seen in the Maltese situation as well, leading in a number of changes in the way things are conducted. Undoubtedly the most important change in procedure is the tendency to introduce conciliation and arbitration as a means of settling issues.

Conciliation is the procedure whereby a third party brings the disputing parties together and encourages discussion over their differences. The conciliator puts the disputing parties in a situation of dialogue and assists them in developing their own solutions. Under Article 68<sup>[14]</sup> it is the Minister who appoints a Conciliation Panel composed of not less than five persons to serve as conciliators, for a period of two years. This appointment must be made after consultation with the Malta Council for Economic and Social Development (MCESD). Article 69(1) is clear in that it is the parties to the dispute, by agreement who must refer the dispute to conciliation, and so it is not an imposed mechanism. The minister comes into the picture in certain specific circumstances as regulated by sub-articles 3 and 4.

Sometimes, especially when disputes relate to a "rights issue", arbitration would be the better course. Arbitration is designed to provide the parties with a ruling where one party prevails, and one party loses as determined by the arbitrator. For this aim, The Employment and Industrial Relations Act sets up an Industrial Tribunal in Article 73. The major powers of the tribunal with regards to its decision making powers is found in Article 77(1). A dispute taken before the Industrial Tribunal must be decided in a period of one month unless the chairperson deems it fit that a longer period is necessary. An award given by the Tribunal is executable in the same manner as judgments as requires by Article 253 of the Code of Organisation and Civil Procedure. In cases of unfair dismissal and in cases falling under Article 75 (1)(a) and (b), there is a right of appeal on a point of law.

In Westernized countries, the earliest arbitration provisions were intended merely to ensure the interdependence of the employee representatives. Discrimination for or against an employee representative because of his position and the fearless exercise of his duties has always been safeguarded in the laws relating to industrial matters. However, these guarantees were not sufficient and therefore it became a practice to introduce provisions for arbitration in these cases where there was the possibility of abuse from the management. In Malta, the Industrial Tribunal has exclusive jurisdiction to consider and decide all cases of alleged unfair dismissal and all cases falling under Title I of the Act, that is the matters relating to Employment relations.

In the last 40 years employment relations have changed considerably due to a variety of reasons, most of them discussed above. As a result,

the players of this relationship has had to adapt to these new circumstances. The present situation envisages a multi polar scenario with various players all having a stake in the balance between productivity and workers' rights. Consequently both management and trade union practices changed considerably to reflect the new needs of the society in question. Malta surely was not isolated from this phenomenon and as shown above, it too has developed its own peculiar way of dealing with the situation always keeping the common good of society as the ultimate aim.

[1] Gyorgy Szell, Paul Blyton, and Chris Cornforth, *The State, Trade Unions and Self-Management*, (De Gruyter publishers, New York 1989).

[2] *Ibid.*

[3] *Ibid.*

[4] Chapter 452 of the Laws of Malta.

[5] Article 155 1. Should management and labour so desire, the dialogue between them at Union level may lead to contractual relations, including agreements.

2. Agreements concluded at Union level shall be implemented either in accordance with the procedures and practices specific to management and labour and the member states or, in matters covered by article 153, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission. The European Parliament shall be informed.

The Council shall act unanimously where the agreement in question contains one or more provisions relating to one of the areas for which unanimity is required pursuant to article 153(2).

[6] Article 156 With a view to achieving the objectives of article 151 and without prejudice to the other provisions of the Treaties, the Commission shall encourage cooperation between the member states and facilitate the coordination of their action in all social policy fields under this Chapter, particularly in matters relating to:

- employment
- labour law and working conditions
- basic and advanced vocational training
- social security
- prevention of occupational accidents and diseases
- occupational hygiene
- the right of association and collective bargaining between employers and workers

To this end, the commission shall act in close contact with member states by making studies, delivering opinions and arranging consultations both on problems arising at national level and on those of concern to international organizations, in particular initiatives aiming at the establishment of guidelines and indicators, the organization of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.

Before delivering the opinions provided for in this article, the Commission shall consult the Economic and Social Committee.

[7] *Supra* 4, Article 53.

[8] Quoted by Tonia Novitz in "A Revised Role for Trade Unions as Designed by New Labour: The Representation Pyramid and 'Partnership'", *Journal of Law and Society*, Volume 29, Number 3, September 2002.

[9] *Freeport Terminal (Malta) plc vs Union Haddiema Maghqudin*, Court of Appeal, 30<sup>th</sup> May 2001.

[10] "trade dispute" means a dispute between employers and workers, or between workers and workers, which is connected with any one or more of the following matters:

- (a) terms and conditions of employment, or the physical conditions in which any workers are required to work;
- (b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;
- (c) allocation of work or the duties of employment as between workers or groups of workers;
- (d) matters of discipline;
- (e) facilities for officials of trade unions;
- (f) machinery for negotiation or consultation, and other procedures, relating to any of the foregoing matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in any such negotiation or consultation or in the carrying out of such procedures;
- (g) the membership or non-membership of a worker in a particular trade union.

[11] " It-terminu "connected with" jimplika rabta rejali u sostanzjali u mhux immaginarju jew incidental bejn l-oggett tat-tilwima u f'dan il-kaz il-partijiet u kundizzjonijiet ta' l-impjeg".

[12] Supra 9.

[13] David J. Saposs, "Organizational and Procedural Changes in Employee Representation Plans", Chicago Journals.

[14] Supra 4.