

Ministry for Social Policy



DEPARTMENT OF INDUSTRIAL AND EMPLOYMENT RELATIONS

Introduction

MISSION STATEMENT

The mission statement of the Department of Industrial and Employment Relations is “to protect the interests of workers holding employment contracts while, in a spirit of social partnership, actively promoting a healthy relationship, and to contribute towards stable industrial relations”.

FUNCTIONS

The principal functions of the Department of Industrial and Employment Relations are:-

- Providing effective machinery for the establishment of standard conditions of employment, in consultation with the social partners, and their eventual promulgation as legal instruments;
- Providing the necessary monitoring and enforcement of employment conditions as established by law;
- Regulating employment contracts in an equitable manner so as to ensure that rights and obligations pertaining to each party in the contract are observed;
- Protecting workers whose employment relationship has been terminated by an employer;
- Eliminating discriminatory practices;
- Providing support services to the Industrial Tribunal, Wages Council, National Employment Authority, Guarantee Fund Administration Board, and Employment Relations Board;
- Providing effective mediation and conciliation in order to reduce industrial actions and trade disputes;
- Promoting good relationship between employers’ and workers’ representatives.

DEPARTMENT STRUCTURE

In December 2002, Parliament approved the Employment and Industrial Relations Act, Cap 452 of the Laws of Malta, which set out the framework for the adoption of the EU Labour Acquis and the responsibilities of the Director responsible for the implementation and enforcement of the Act and subsidiary legislation. The Director has overall responsibility for the operations carried out by the Department.

These activities are carried out by the following Units: -

- a) **Director's Office**, with a complement of one officer, responsible for the:-
- strategic overview of the Department's operations;
 - proper functioning of the three divisions of the Department;
 - registration of trade unions;
 - provision of the machinery for the voluntary settlement of trade disputes in terms of the Act and promoting such settlement;
 - preparation of draft employment legislation.
- b) **International Affairs and Research Branch**, falling under the responsibility of an Assistant Director with a complement of five officers, allowing the Department to fulfil its role as the National Focal Point on issues relating to Industrial and Employment Relations. This Branch is divided into two sections:
- i) International Relations Section whose tasks are mainly to:
- coordinate closely with local associations or organisations which have a role to fulfil in protecting the interests of parties engaged under an employment contract;
 - maintain contacts at the technical level with Governments and other international bodies including the EU and I.L.O.
- ii) Research Section having responsibility for Library and Archives, Labour Research, Registration of Trade Unions and Employment Agencies. During 2009, this Section implemented the Department's initiative of drawing up and publishing nine different informational leaflets dealing with aspects of employment conditions. Such leaflets will hence be disseminated and distributed to the general public in 2010.
- c) **Enforcement Branch**, falling under the responsibility of an Assistant Director and two Managers, carrying out the core inspection functions of the Department. This Branch is staffed by Inspectors working in two sections: the Terminations and Inspectorate Sections. The Terminations Section processes queries and investigates complaints of clients, primarily related to employees whose employment has been terminated, whether of their own accord or by the employer. The Terminations Section is also responsible for referral of cases to the Law Courts. The Inspectorate Section is responsible for monitoring conditions of employment and processing complaints of workers who are still in employment. This involves an ongoing programme of inspections to target particular sectors or to investigate specific complaints. Complaints can be received directly from the person concerned, through correspondence, email or even anonymously. Besides the managerial staff there are presently three officers in the Terminations Section, ten officers in the Inspectorate and Customer Care Sections and three Registry officers, two of which are on reduced hours and two Junior / Legal Officers serving both sections.
- d) **Administrative Branch**, falling under the responsibility of an Assistant Director with a total complement of thirteen personnel including seven minor staff, four officers overseeing all

operating and/or administrative functions of the Industrial Tribunal and two officers providing administrative support services to the Department including the administration of the department's budget, revenue and expenditure, issuance and adjustment of salaries, issuance of honoraria payments to ERB members and Tribunal Chairpersons, administration of PMPs, progressions, allowances, Engine Driver licenses, the departmental inventory, supplies' stores etc. During 2009, this Branch through its Green Leader also oversaw environmental issues and promoted eco-friendly measures within the DIER. Amongst others, such measures include the further use of energy-saving lighting, separation within offices of waste material, recycling of paper etc. Other tasks taken up by this Branch include the implementation of the Freedom of Information Act and a Better Regulation project to be implemented in 2010 aimed at reducing administrative burdens on businesses and the general public.

HUMAN RESOURCES ISSUES

During 2009, the DIER experienced a mixed change-over in its workforce in that a total of eight officers left the DIER whereas another eight were transferred to, engaged or otherwise re-joined the Department after a career break. In this regard, only three of these new officers served as direct replacements for another three who left the Department. The eight outgoing officers include a Senior Principal, a Disablement Resettlement Officer, a Principal, an Employment Relations Officer, an Executive Officer and three minor staff. The incoming staff, on the other hand consist of an Assistant Director, whose post had been vacant since 2007, a Legal Officer, a Junior Legal Officer, two Principals, an Executive Officer coming back after a career break, a Casual Substitute Clerk and one minor staff. Notwithstanding these changes, this change-over certainly does not compensate to the sharp shortfall in personnel experienced during 2008. The DIER thus still has pending requests to replace two Employment Relations Officers, a Principal, an Executive Officer and another officer in clerical grade to replace a Disablement Resettlement Officer who performed enforcement-related duties. All such requests for replacements were included in the Capacity Building exercise for 2009.

During the period under review, staff from within the Department attended various courses organised by the Staff Development Organisation. These included Information Technology, Employment & Social Policy and Training for Messengers courses.

Achievements

EMPLOYMENT RELATIONS

Inspectorate Section

The Inspectorate Section carried out 1,566 inspections throughout the year covering 33,986 employees out of whom 3,082 were interviewed. During such inspections a total of 2,387 irregularities were observed.

Officials within this section dealt with an average of 18,561 enquiries regarding conditions of employment – both on the phone and through personal visits at the Office. Another 540 e-mails requesting information were received and answered with immediate effect. In most cases concerning outstanding dues and other irregularities in connection with contract of employment, rectification was effected through the Section Officers' direct efforts. Other cases were followed up through court action. In this regard a total of 39 monetary claims, amounting to €215,326.74 were issued whilst 65 cases each possibly including a number of irregularities were settled and another 55 unresolved cases were referred for legal action consideration.

The Inspectorate Section also processes Posted Workers Notifications; during 2009 a total of 299 notifications were received.

Terminations Section

Throughout the year, officials in the Terminations Section served a total of 307 claims against employers in Malta. The total amount for such claims amounted to €714,424.20. Of these, 59 cases amounting to €55,867.09 were amicably settled out of Court, as a result of the direct efforts of officers within this Section. A positive outcome in court action during 2009 resulted in the collection of €50,013.09, however these monies do not necessarily represent claims that originated in 2009.

Other twenty cases were closed on request of the claimant which amount to €19,492.77.

One hundred and eighty-four (184) requests were made to the police for prosecution. Court hearings in Malta totalled 457 cases.

Nine appeals against Court judgements were made throughout the year 2009.

Employment Agencies

The number of Licensed Employment Agencies at the end of December 2009 was 59.

During the period under review, 46 Employment Agencies renewed their licence. Nine new Employment Agencies were granted a licence to operate as such while only one Employment Agency had its licence withdrawn.

The total amount received as License fees amounted to €16,072.86.

The section also co-ordinated closely with local newspapers who publish advertisements of Employment Agencies not least by forwarding lists of Licensed Employment Agencies who are permitted to place advertisements on the local press.

Employment Relations Board

The Employment and Industrial Relations Act provides for the setting up of the Employment Relations Board. During 2009, the Board held five meetings and discussed various issues relating to employment and labour conditions and updates on Maternity Leave, Parental Leave, the Working Time Directive, Temporary Agency work, Fixed-Term work, Part-Time work and European Works Councils.

During these Board Meetings various draft Legal Notices prepared by the Department's officers and forwarded to the Board by the Minister responsible for industrial and employment relations, were also discussed and forwarded to the Honourable Minister for his consideration.

Following this consultation process, the following three Legal notices were published:-

LN 376 of 2009 - Contracts of Service for a Fixed term (Amendment) Regulations, 2009

LN 377 of 2009 - Wage Increase (Employees) National Standard Order, 2009

LN 378 of 2009 - National Minimum Wage National Standard Order, 2009

INDUSTRIAL RELATIONS

Conciliations and the Settlement of Trade Disputes

The Department always strives to take an increasingly more proactive approach towards the settlement of trade disputes to the mutual satisfaction of both the Enterprise and the Union involved. This mediation in the field of industrial unrest has largely contributed towards an increasingly stable industrial climate, avoiding strikes and other costly forms of litigation. The Department intervened on 62 occasions throughout the year. Agreement was successfully reached in 55 cases while such agreement failed to be reached in only seven cases.

Industrial Tribunal

The Industrial Tribunal is an independent tribunal, set up in terms of the Employment and Industrial Relations Act and has a variable composition established by the law, depending on the nature of the case. This is either of a Chairperson [who is selected by rotation from a panel of Chairpersons] alone, or a Chairperson and two members, one selected from a panel of persons representing employers' interests, and the other from a panel of persons representing the trade unions. The Industrial Tribunal hears and decides trade disputes referred to it by the Minister responsible for employment and industrial relations, at the request of either one, or both of the parties involved in a dispute. It also hears cases of alleged unfair dismissal, discrimination, harassment and different remuneration for work of equal value. Sessions of the Industrial Tribunal are held at the Courts of Law.

The Department provides administrative support services for the Industrial Tribunal, to ensure its proper functioning.

Throughout 2009, 87 new cases of alleged unfair dismissals and two other cases of alleged discrimination/harassment/victimisation were received. Seven cases of trade disputes were also introduced.

The Industrial Tribunal disposed of 101 cases of alleged unfair dismissals, four cases of alleged discrimination/harassment/victimisation and seven cases referring to a Trade Dispute. The Industrial Tribunal also disposed of three cases introduced in terms of other provisions of the Employment and Industrial Relations Act.

There were 497 pending cases on 31st December 2009 of which 453 refer to alleged unfair dismissal.

Industrial Actions

During 2009 three strikes were recorded involving around 12,439 workers. These strike actions resulted in around 7,595 man days lost.

Collective Agreements

Article 5(2) of the Employment and Industrial Relations Act states that where conditions of employment are prescribed in a collective agreement, the employer is obliged to send to the Director of Industrial and

Employment Relations an authenticated copy of said agreement, within fifteen days of signing. In accordance with this article, the following agreements between industrial establishments and trade unions were registered at the Department during 2009: -

New Collective Agreements	7
Renewals/Extensions	25
Side Agreements/Addendums	2
Amendments	1

Registrar of Trade Unions

On 1st January 2009, there were 30 registered trade unions and 18 employers' associations.

During this period no Trade Unions and Employers' Associations were registered or cancelled.

Thus, on 31st December 2009 the Register of Trade Unions was still composed of 30 trade unions and 18 employers' associations.

Seven verification exercises for union recognition were carried out, all of which were conducted by interview.

Other Activities

Participation in Seminars, Conferences & Working Party Meetings Abroad

Between 3rd and 19th June 2009, the Director, Industrial & Employment Relations led a tripartite delegation at the 98th Session of the I.L.O. Conference in Geneva. The Minister for Social Policy attended and addressed this Conference. The Maltese delegation included a number of high-ranking officials from Trade Unions and Employers' Associations. As required by the I.L.O. Constitution, the Department paid the travel and accommodation expenses for two workers' representatives and two employers' representatives to attend the Conference. The issues considered at this Conference included discussions on the elaboration of an autonomous Recommendation on HIV/AIDS in the world of work and gender equality at the heart of decent work. This year, special arrangements were made to include, as part of the Plenary Session, a "Global Summit on Dealing with the Job Crisis". This Summit was addressed by several Heads of State and dealt with the employment and social policy consequences of the economic and financial crisis.

Prior to the I.L.O. Conference cited above, an official of the Department attended an EU Member States expert meeting in Brussels dedicated to prepare for the International Labour Conference as regards EU coordination meetings, EU member states common positions on issues being discussed at the Conference etc.

Between 9th and 13th February 2009, an official of the Department, together with a worker's and employer's representative attended the 8th Session of the ILO European Regional Meeting held in Lisbon. During this meeting participants discussed two reports, prepared by the Director General of the I.L.O.

regarding decent work and conditions of employment in Europe in the light of the financial crisis and regarding initiatives and activities undertaken by the I.L.O. in Europe.

Officials from the DIER also attended the following meetings:

- Two meetings for Directors General responsible for Industrial Relations organised by DG for Employment, Social Affairs and Equal Opportunities of the European Union Commission. During these meetings held in Stockholm and Madrid participants shared information on recent developments regarding industrial relations in Member States. Discussions were also held on the Commission's Communication on common principles for sustainable recovery towards more and better jobs; the Working Time Directive and Maritime Labour Law issues.
- The 80th Meeting held in Dublin of the Governing Board of the European Foundation for the Improvement of Living and Working Conditions and another meeting "Global recession: Europe's way out".
- The 2nd Annual Legal Seminar of the European Labour Law Network entitled "Towards a new European Employment Relationship- Problems, Differences and Challenges across the European Union". This European network of legal experts in the field of labour law was established by the Directorate General for Employment, Social Affairs and Equal Opportunities and deals with both individual and collective rights and aspects. During this seminar, participants discussed a thematic report on the different aspects with reference to the employment relationship in the different Member States.
- An Informal Meeting in Prague for Ministers and Director-Generals for labour to discuss developments on the Working Time Directive.
- Three Conciliation Committees on the Working Time Directive.
- Three Expert Meetings of the Committee of experts on Posting of Workers. In these meetings there were exchanges between delegates on information and good practices on existing bilateral agreements and implementation and application issues of the Posting of Workers Directive were discussed.
- Two meetings of the Expert Group on Transnational Company Agreements. During these meetings, the latest developments and the implementation and dispute settlement in transnational company agreements were discussed. Presentations of research activities on the subject carried out by the I.L.O. and the European Foundation for the Improvement of Living and Working Conditions were also presented.
- An Expert Meeting concerning the Implementation of Directive 94/2008/EC on Protection of Employees in case of Insolvency. During this meeting delegates gave their feedback on the questionnaire prepared by the Commission on transnational situations and on the types of national insolvency proceedings falling within the scope of this Directive.
- A Meeting of the Expert Group on the Transposition of Directive 2008/104/EC on Temporary Agency Work. During this meeting, a general presentation of the Directive was given by the Commission and delegates gave feedback on the state of transposition of the Directive in their respective Member States.
- The 1st Meeting of the Expert Group on Employee Involvement dedicated to the Implementation of Recast Directive 2009/38/EC on European Works Councils. During this meeting delegates discussed the principles and structures of the Directive and the main changes introduced by the

recast Directive when compared to the Directive 94/45/EC. Each delegate also gave a presentation of the situation in each Member State.

During 2009, officials of the Department also attended various other conferences\seminars both locally and abroad.

Guarantee Fund Administration Board

The Employment and Industrial Relations Act (Cap. 452) and the Guarantee Fund Regulations (L.N. 432 of 2002 as amended by L.N. 444 of 2004 and 413 of 2005) provides for the setting up of the Guarantee Fund Administration Board. This Board is composed of the Director of Industrial and Employment Relations who acts as Chairperson, four representatives of employees and four representatives of employers who are appointed on the Employment Relations Board, a member nominated by the Minister of Finance, the Chairperson of the Employment and Training Corporation and a person appointed by the Minister who shall be a member of the legal profession. The Guarantee Fund is endowed with a fund to be utilized, at the Administration Board's discretion, to guarantee payment of valid claims for employees' outstanding wages when the Administration Board is satisfied that the employer has become insolvent.

During 2009, the Administration Board held one sitting where 18 claims were processed and the sum of €23,966.61 was paid out of the Fund. In accordance to Regulation 6 (7) of the Guarantee Fund Regulations, an audit exercise by a qualified auditor was undertaken to review the Board's financial statements. To date the balance of this fund stands at € 522,560.76.

Self-Employed (Loan) Scheme

The process of recouping funds from persons who had applied for, and benefited from, the Self-Employed Loan Scheme was continued. For the year under review €5,664.29 were recovered. At the start of 2009 warning letters were issued to all defaulters who fell back on their payment of instalments of said loan scheme.

DR. N. VELLA

Director of Industrial and Employment Relations