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September 15th 2016

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COMMENT: Calling time on wage cartels

Although long past its heyday, collective bargaining remains a potent symbol for trade unions of a fading socialist ethic and an expression of their fundamental rights. It is encapsulated in the ILO Declaration on Fundamental Principles and Rights at Work and in Article 28 of the EU Charter of Fundamental Rights it states that "Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels.."

Yet what is collective bargaining and why does it really exist? Why do employers freely enter into such a process when it would appear to only strengthen the hand of a power base that undermines their own workplace authority? For some employers it is one way to "keep the peace" amongst otherwise alienated employees that could, if they wished,

hold the company to ransom. Of course, withdrawing labour is one thing that can hardly be challenged in a democratic society, but using the threat of a strike should be – like any threat to do damage, an unlawful act. Yet curiously classifying an act as one concerned with 'labour relations' sets it sometimes outside the law.

This is curiously the case with collective bargaining itself. If two rival firms conspire to fix the price of their goods they would fall foul of anti-trust/competition laws and could face severe penalties. But if two rivals conspire to fix the price of their labour inputs (which often make up over 50% of their operating costs) then it is perfectly legal. In fact governments in France, the Netherlands and South Africa even reinforce the wage cartel by making sectoral collective agreements apply to companies in the sector that are not party to it. In the USA the National Labour Relations Act 1935 even exempts unions from the anti-trust law so that they can fix the price of labour in

this way. This exemption is, of course, not just to cover their role in collective bargaining, but also to further their aims of creating labour market monopolies - by excluding non-union labour.

Wage cartels are now so much part of the labour relations scene few people regard sectoral agreements as morally or economically questionable. Yet they come with a cost. Not only do they raise wages higher than they would otherwise be, but they inflict disadvantages onto smaller and poor performing enterprises. They also encourage particularly new employers to search for investments that will replace labour – thus destroying potential jobs. Because their essential objective is to drive out competitors by forcing up the price of labour they also create the unusual phenomenon (usually denied) of employers talking up the value of individual groups to the pleasure and astonishment of union negotiators across the table.

GLOBAL: Forbidding moonlighting

One of the consequences of the decision to raise the white collar overtime exemption threshold under the US Fair Labor Standards Act on December 1st 2016 will undoubtedly be that employers will seek to reduce hours rather than have to pay overtime premia. However, many middle income employees used to working extended workweeks for no extra reward will probably look around for opportunities to raise their incomes through second jobs. This will therefore intensify the debate about the legality of banning moonlighting.

Generally in the USA an employer may prevent the holding of second jobs if they have a clear and comprehensive moonlighting policy in place. But there are exceptions. In

California, for instance, Labour Code 96k allows the Labor Commissioner to support “claims for loss of wages as the result of demotion, suspension, or discharge from employment for lawful conduct occurring during nonworking hours away from the employer’s premises”. Employers may challenge the holding of a second job only if it is with a clear competitor or it affects work performance in the employee’s main job, but not ban second jobs per se.

Many public sector workers have long had restrictions on second jobs applied to them and the trend is towards greater limitations. For instance, the state of Pennsylvania now applies a sweeping ban on second jobs held by the judiciary, whilst many local police forces in the USA prohibit police officers from moonlighting as security guards. By contrast, in the Dominican Republic a new law forbids police officers from holding jobs not related to their duties, except as teachers. Looking further afield, “dual practice” – which means doctors working in both state and private healthcare sectors - is common in SE Asia, but restricted in China and banned entirely in Canada.

In Europe, countries differ significantly both in respect to the law and “custom and practice”. In Germany an employee may have a second job only with the permission of their principal employer and providing that statutory working time limits are not exceeded. But moonlighting is actually encouraged by the tax system as if an individual earns up to 450 euros a month for their second job it is classified as a “mini-job” and they are not taxed on it (although their employer does pay social security contributions). However, in Lithuania employers may operate a moonlighting policy, but they are constrained by several Supreme Court decisions because of the constitutional

right of everyone to choose their job. This is especially the case when restrictions are imposed of a non-compete nature during employment. In such a case, it is necessary for an employer to time-limit any restriction and pay appropriate compensation to the employee concerned.

HUNGARY: Safeguarding employee photos

It is all too easy sometimes to forget that a person's photograph is as much personal data for data protection purposes as any written record about their performance, health or even background details. Of course, to come under the ambit of the legislation they must be identifiable individuals – but then employees are just that.

In many countries it is not the taking of photos of people that infringes the law, but their publication. But since 2014 in Hungary this has been extended through regulations written under the Civil Code to the taking of all photographs where individuals are identifiable, except those of family and close friends – and a possible exception for crowd shots. To make things worse an amendment to the Hungarian General Data Protection Act on July 11th 2015 allows the regulator to establish an infringement even where the data controller became compliant before the completion of investigations. And to cap it all, the penalty for non-compliance was also doubled to HUF 20 million (\$US 72,000).

So where does this leave the HR manager who needs a photo for employee records or for their security system? A few months back the NAIH issued guidance for employers on the processing of employee photos. This rather confusing document states the obvious that employers must have a clear purpose for requiring photos and storing them, but the

remaining guidance is unclear and – in any case - only available in Hungarian

Of course, there is also the case of video recordings being made about visitors to company premises where the individuals concerned are not readily identifiable. Here a recent decision of the NAIH is pertinent. The authority found that Budapest City Archives unlawfully handed out details of past offences to a journalist. Although anonymised, it was easy for a journalist to match identifiers from elsewhere to discover that a past criminal case involved a famous swimming champion. In a similar way a delivery driver may not be known personally by a company, but it would be possible to trace and identify them by contacting their company. For this reason they too would need to provide informed consent for images taken of them.

IRELAND: Liberal disclosure protection

Almost two years after enactment of the Protected Disclosures Act (2014), the first injunction against an employer has been issued by a Circuit Court.

The Act states that employees are entitled to protection for any disclosure they make, which is regarded as protected until proven otherwise. This is the case even if no hard evidence exists – a reasonable belief is sufficient.

In the recent case two employees of Lifeline Ambulance Service Ltd who “blew the whistle” obtained a court order for reinstatement of their salaries.

Although the case is not closed, it would appear from a preliminary judgment that the favourable position of the Act towards employees holds. For this reason employers must be very careful when proceeding with dismissals of individuals who have made a

disclosure, since it is highly likely for their action to be considered as unfair. Moreover, employers must be able to prove that selection for redundancy has no relation whatsoever to any disclosures made.

NEW ZEALAND: The year ahead

As the autumn approaches employers in New Zealand can look forwards to another year in which pay rises may well outstrip productivity and prices.

The Ministry of Business, Innovation and Employment (MBIE) just released the Labour Market Scorecard for the second quarter of 2016. This reveals a significant increase in the quality of the labour force over the past year, largely due to record immigration levels - with the proportion of 25-34 year olds possessing level 4 or higher qualifications from 53.5% to 56.5%. Although productivity gains have been modest, real pay levels are rising - with the average weekly wage up by 2% over the year, compared to only a 0.4% increase in consumer prices.

Looking forwards to next year. A new two-year deal in the metal and manufacturing sector has now been concluded and ratified by the Metals union and the majority of its signatories. The pace-setting deal improves health and safety provisions and increases basic rates by 2% this year and 2% in 2017. Meanwhile, a parliamentary Bill is now at the third reading stage that would extend minimum wage legislation to contractors. Momentum too is gathering in the living wage movement. Last year, there were 27 declared living wage employers and now there are approaching 60.

ROMANIA: Pay surges in spite of deflation

According to a recent study by accountants PWC, since the beginning of this year wages and salaries in the Romanian private sector grew on average by 3.7%. The biggest increase was in FMCG (5.8%) whilst the lowest increase was in the banking sector (2.6%). PWC predict that remuneration will rise, on average, by 3.8% in 2017, with lower than average growth continuing in the banking sector – where entry level rates average only 404 euros a month. These figures are widely at variance from figures published by the Romanian National Institute of Statistics which report that gross remuneration grew by 11.9% over the year to Q2 2016 and by 6.29% over the three months from Q1 to Q2 2016.

It is uncertain how much remuneration will grow over the coming year, but the economy is still experiencing a modest amount of deflation in spite of the massive upward pay spiral over the past year. The biggest loser appears to be the government, with VAT receipts down 28.7% over the year to April - after near record levels of consumer spending that saw sales over the year to March 2016 rise by 18.5%. This was partially intended following a cut in the VAT rate, but not to the extent that ultimately took place. Where did all the higher real wages and salaries go? Obviously straight back into company payrolls by-passing official takings – with the consequent reduced fiscal revenues cushioning the economy from a sudden jump in price inflation.

Pay, Tax and Benefit Trends

CZECH REPUBLIC: Over the year to Q2 2016 median gross monthly employment earnings in the Czech Republic rose by 4.5% to CZK 23 047 (\$US 951). Because of negligible consumer price inflation real earnings grew by 4.3%. FTE women continued to earn only 81.7% of male earnings and 80% of employees earned between CZK 11 238 to CZK 43 752 (\$US 464 to \$US 1805).

GREECE: An analysis of records by the social security organization IKA for January 2016 reveals the true state of the Greek pay market. Each month employees worked for 21.38 days, although this fell to 12.22 days for those in the construction sector. In return, the average full-time employee received 1,219.69 euros gross a month, although this amounted to 500 euros in the construction sector and 400.84 euros for part-time workers. The average part-time worker earned 45% of the daily rate received by full-time employees. Finally, no surprises here concerning the gender wage gap - which revealed its usual pattern with full-time women employees receiving, on average, well below (84.5%) male monthly pay.

ISLE OF MAN: The latest government statistical agency to get their statistics seriously wrong is the UK crown dependency of the Isle of Man. The error could cost companies operating on the island a considerable amount as it involves the Retail Price Index. The latest figure for August 2016 gives the annual rate as 4.0%, or 4.6% excluding housing. This compares to a consumer price index that is much lower at -0.5% for the same period. However, when calculated using the official weights for each

item in the constituent 'shopping basket' the annual rate should be +0.33% whilst the rate without housing would be even lower, not higher. The difference between the correct figure and the published "official" figure is 3.67%. If translated into a cost of living payroll adjustment for a typical 100-person company it would amount to a needless additional cost of over £130,000 (\$US 173,000).

TAIWAN: The labor department in Taiwan recently announced that it plans to increase the monthly minimum wage from 20,008 TWD (\$US 638) to 21,009 TWD (\$US 670) from Jan. 1, 2017. Starting October 1, 2016, the hourly minimum wage will be adjusted up from 120 TWD (\$US 3.83) to 126 TWD (\$US 4.02). If approved, around 1.62 million workers and 390,000 part-time employees will benefit from the latest wage adjustments.

Other Global HR News in Brief

BAHAMAS: Consultations are being hurriedly undertaken with the National Tripartite Council over emergency legislation that the government wishes to push through parliament. This would make it a criminal offence for an employer not to give 60-day notice to the government and employee representatives of any redundancy exercise involving ten or more employees. It would also remove the current 12-year cap that exists on redundancy compensation. This move follows the recent closure of a Sandals resort that resulted in over 600 job losses.

BRAZIL: Leading trades unions in Brazil are threatening to strike against a government proposal to extend the working day for temporary workers from 8 hours to 12 hours. This is in spite of guarantees that the existing weekly maximum 44-hour week would remain.

CHINA: In order to attract more talent from overseas, the Chinese immigration authorities intend to pilot a programme from April 1st 2017 that unifies two existing types of work permit - an employment licence for foreign employees and a foreign expert work permit. These will be subject to just one, simplified approval process without even the need to provide a detailed resume. Foreign workers will be classified into categories A, B and C — with A being top talent; B professional talent and C for unskilled workers or those working in the service sector.

DENMARK: The Danish government has announced an immigration plan, involving 44 initiatives to be rolled out over the next nine years. The main purpose of these reforms will be to make it far more difficult for newcomers to obtain permanent residential status. For instance, Non-EEA foreigners living in

Denmark will only be able to apply for permanent residency after 8 years, instead of the current 6 years – although it may be achieved sooner if they display 'active citizenship,' have an annual salary of 270,000 DKK (\$US 40,800) and complete Danish language courses. The previous rules introduced in January also called for employment for 2.5 of the past 3 years, but in future it will be 3.5 of the past 4 years.

EGYPT: The Egyptian parliament has just approved an increase in the statutory fees for granting Egyptians permission to work abroad. For those with a higher-educational background, fees will be increased from LE100 to LE200 (\$US22.78) and for those with a lower level of education from LE60 to LE100 (\$US11.39). Egyptian expatriates must pay for a new work-abroad permit each year. According to the national statistics agency, the total number of permits for working abroad issued in 2015 by Egypt's Interior Ministry was 1.33 m – up from 1.32 m in 2014. 54.3% of emigrants headed for Saudi Arabia, whilst about a third went to Kuwait

EUROPEAN UNION: As employers struggle with later retirement ages the underlying trend towards greater longevity moves on at a remarkably fast pace. Yet the differences between countries remains very significant, especially for men - with Mediterranean and Nordic peoples tending to outlive their EU neighbors. At birth it is best to be born a male in Cyprus (80.9) or female in Spain (86.2). The short straw for males is Latvia (69.1 years) and for females Bulgaria (78.0). But this all changes over time. Once a man has reached the age of 65 he can, on average, expect to live another 13.8 years in Latvia - but 19.7 years in France. The life expectancy of women at age 65 is even higher – from 17.6 years in Bulgaria to 24.0 years in France.

GREECE: The assessment made by the EU's statistical agency Eurostat prior to acceptance of Greece into the eurozone still makes interesting reading, as it was clear that statisticians at the Hellenic Statistical Authority Elstat had massaged figures for years to make them support applications for EU funding. Now the former head of the Elstat, Andreas Georgiou, faces trial following a ruling by the Athens Supreme Court that he undermined "national interests" by overstating government debt figures. Curiously, the most vocal voices in his defence are coming from within Eurostat, largely perhaps because they had failed to openly challenge the decision to let Greece join the eurozone. As the penalty for the alleged deception is 10 years in prison a great deal is likely to come out from the trial that will expose the shortcomings of both Greek and EU statistics.

JERSEY: With effect from September 1st, 2016 discrimination on grounds of age in the Channel island state of Jersey has become unlawful. Age discrimination was an element in the Discrimination (Jersey) Law (2013). However, grounds for discrimination were progressively rolled out from 'race' in 2014 to 'pregnancy and maternity, gender and sexual orientation' in 2015. Employers should note, in particular, that under the latest provisions a company may not request an employee to retire at any earlier age than the formal pensionable age.

RUSSIAN FEDERATION: Several amendments to Russia's Religion Law and Administrative Code have come into force that restrict the sharing of religious beliefs on behalf of an association in public. The consequence of infringement is – by local standards - a substantial fine. Employers would be wise to avoid even vicarious liability for contravention by their staff. For this reason

a policy of non-proslatisation in the workplace could usefully be drawn up and widely communicated. Even a casual conversation could amount to "missionary activity" – as such an expression can be widely interpreted by the *anti-extremism police* and be merely an excuse to arrest someone because of their non-conformist ideas or the Islamic nature of their beliefs in this increasingly intolerant country.

SAUDI ARABIA: It was interesting to read in an email supplement to People Management Magazine recently that Saudi Arabia is going to need a further 250,000 HR professionals by 2030. Before you start packing your case, pause for a moment to consider whether this is at all likely. It is true that the Saudi government has ambitious plans to prepare its economy for the day when oil production will fall. It wants to build up its non-oil service sector and encourage many nationals working in the civil service to move into the private sector. But this will involve, at most, around 2-2.5 million Saudi nationals. If it took 250,000 HR people to help make this transition it would virtually be a personal service - as the ratio of HR to new employee would be 1:8 to 1:10. Moreover, in the post-oil world the number of foreign workers in the country will almost certainly decline.

TAIWAN: Travelers from Taiwan from Laos, Cambodia and Myanmar have now been given visa privileges that were previously available just to nationals of India, Indonesia, the Philippines and Vietnam. Applications can be made online for a 'Travel Authorization Certificate (TAC)' which entitles holders to stay in Taiwan for up to 30 days and allows for multiple re-entries over a period of 90 days. Taiwan's government is also looking to extend the visa-free arrangement -- currently given to travellers from Singapore, Thailand,

Brunei and Malaysia - to more Asean-member countries.

UAE: It has been announced by the UAE Cabinet meeting in Abu Dhabi that Chinese nationals would soon be able to obtain a visa on arrival. Currently 3.3% of UAE residents are Chinese nationals and last year there were 450,000 short-term visitors from China, up 29% from the previous year.

UKRAINE: A tripartite agreement was signed on August 23rd between Ukraine's Cabinet of Ministers and both sides of industry. It is claimed in some reports that it is the country's first ever general agreement regulating social and labour relations. In fact, it is its 11th such agreement since independence – only this deal took 4 years to negotiate. Although it comes immediately into effect and applies to all companies operating in Ukraine the text has yet to be published. All that has so far been revealed is that it will preserve and create jobs, raise salaries and improve working conditions – which could mean anything. Thus the jury is still out on whether it will have any real relevance to HR practice.

UNITED KINGDOM: It has become a standard element in most employment contracts that only written variations will be valid. However, a recent UK Court of Appeal ruling has reiterated the principle that “whenever two men contract, no limitation self-imposed can destroy their power to contract again”. The contract in question was not for employment, but that should have no relevance as the circumstances of the case were in no way unusual – two parties with a “written-only variation” clause in the contract between them and a subsequent oral variation. What remains, of course. Is the need for clear proof that an oral variation was, in fact, agreed upon. As an old, variously attributed, quote declares... “these oral agreements are not

worth the paper they are written on”. [MWB Business Exchange Centres Ltd v Rock Advertising Ltd [2016] EWCA Civ 553].

UNITED KINGDOM: Sectoral pay differentials tend to remain very stable over time. This is illustrated by the latest data published by the UK's Office for National Statistics showing gross average weekly earnings (AWE) between 1995 and 2016. In the Spring of 1995 AWE in the private sector stood at £303 and by the Spring of 2016 this had grown to £593. This year manufacturing and construction remain close to the private sector average and all but three sectors vary by only a few percentage points from their relative position 21 years ago. The biggest changes have arisen in the hospitality sector (0.71 down to 0.60), transport and storage (1.04 to 0.95) and financial and real estate services (1.36 to 1.31). The first two sectors have probably had their earnings constrained by the influx of eastern European workers since 2004, whilst the spotlight on pay in the banking sector together with fall-out from the last recession will be important factors in reducing relative pay levels.

USA: The introduction of speed-limiting technology may soon become a reality for trucks and buses on America's roads. Proposals from the National Highway Traffic Safety Administration and Federal Motor Carrier Safety Administration are now out for public consultation. If they go ahead then vehicles weighing more than 26,000 pounds would have their maximum speeds capped by a device in the engine. The precise upper limit has not yet been determined, but is likely to be between 60 and 68 miles per hour.

USA: Companies that are federal contractors or subcontractors will have to comply with new Executive Order 13673 rules and guidance with effect from October 26th 2016, provided

they are above certain contract value thresholds. This will require them to report on significant labor law violations and allow employees to choose whether they wish to bring their claims via arbitration or through a formal court action. From January 1st 2017 such companies will also have to apply a new paycheck transparency rule.

USA: As of January 1st 2017, employers in the State of Illinois will be prevented by the Freedom to Work Act to enter into non-compete agreements with low-wage employees. This development stems from recent case law around the country which

disputed the appropriateness of such agreements. The Act defines which employees are to be considered as “low-wage”, and essentially the definition covers employees who receive anything less than \$US 13,00 per hour. It should be noted that, the Act does not apply to existing contracts.

Dates for your diary:

September 29th 2016: **Canada** to introduce mandatory Electronic Travel Authorization (eTA) for all visa-free eligible nationals (excluding US citizens) arriving by air.

October 1st 2016: **Brazil** CRS international tax transparency rules take effect.

November 8th 2016: **US** Presidential Election

December 1st 2016: FLSA new overtime rules become effective in the **USA**.

April 6th 2017 Introduction of apprenticeship levy for large **UK** employers.

April 23rd and May 7th 2017: **French** Presidential Election.

May 25th 2018: Final effective date for **EU** General Data Protection Regulations.

Travel Warnings

AUSTRALIA: A rolling series of strikes by border guards will affect most airports in Australia between September 26th and October 2nd 2016

FRANCE: Fuel shortages are affecting some parts of France due to panic buying in response to strikes by the CGT union at several ports.

INDIA: At least two people have been killed and over 300 have been arrested for arson and rioting over the last few days in the Indian city of Bangalore. This is an important centre for the high tech industry in the country.

ISRAEL: Completion of the Tel Aviv-Jerusalem high speed line is leading to closure of three central stations in Tel Aviv for 8 days at the end of September. Alternative travel arrangements should be made

ITALY: Political instability and unpopular reforms are giving rise to rioting in several Italian cities, especially Naples in the south of the country and Catania in Sicily.

LESOTHO: Snow is a potential hazard across much of the country this weekend. This African nation of Lesotho is similar in size to Belgium. It is the only independent state in the world that lies entirely above 1,000 metres.

MAINLAND CHINA/TAIWAN: With speeds of up to 230 miles per hour (370 kph), Super typhoon Meranti is sweeping past the southern tip of Taiwan, and is forecast to make landfall in the southern Chinese provinces of Guangdong and Fujian with torrential rains and dangerous winds. The storm is the strongest since Super typhoon Haiyan devastated the Philippines in 2013, and it is the biggest to near Taiwan since 1959.

MALDIVES: Although often pictured as a tourist paradise the reality is that this country is teetering on the edge of a political coup and its population is the biggest foreign source for ISIS fighters in the middle east. Not a wise country to visit or do business with right now.

MALI: The inner Niger delta is expected to have widespread and serious flooding during coming weeks. Water levels could be at their highest point for 50 years.

NORWAY: A dispute involving border control guards is causing long delays for passengers at Oslo's Gardermoen airport.

PHILIPPINES: Following a bombing in Davao city visitors are advised to keep away from the eastern half of Mindanao in the Philippines as a state of lawlessness still prevails there. Strong winds and rain are also affecting communications in the far north of the country. The head of the national police service has warned that criminal gangs all over the country are shifting their attention from narcotics to kidnapping-for-ransom.

UNITED KINGDOM: Strike action by the pilot's union Balpa could affect all Easyjet flights out of the UK in October. Disruptions continue on southern region rail services around London due to periodic strike activity. Areas of London around White City are still cleaning up after flooding on Tuesday due to a burst water main. Long delays can be expected due to road works at Seven Dials roundabout near Brighton during the next three weeks. Major delays can also be

expected for the next two months on the M8, M73 and M74 motorways in Scotland for the next two months.

FedEE News

FEDEE CYPRUS: We have now successfully established a Legal Research Centre in the capital of Cyprus, Nicosia. Although we maintain our presence in London, this move will help us preserve our strong links with the European Union following Brexit. Cyprus is, of course, the only British Commonwealth state in Europe, apart from the UK itself. It also allows us to benefit from the fact that Cyprus has the highest concentration of law graduates per head of population in Europe. In addition, we have recently launched a payment centre there, with consequent net savings that can be reinvested in our membership services. Please ensure that the payee for future membership renewals is changed to reflect this new arrangement. Finally, to mark the new association with Cyprus we are establishing an academic prize for students studying law at the European University in Nicosia.

FEDEE EVENT: FedEE is currently finalizing the date for the next **Data Protection Forum** meeting to be held in Nicosia, Cyprus. The preferred date is Friday, November 18th 2016. Direct return flights for Thursday - and returning Friday evening - are currently available from London for just £115 (\$US 152), or make it a long weekend and be shown around the city by our staff. The attendance fee will include one night at a local hotel. Details and a booking form will be sent out during the course of the next week.

FIVE EVERYDAY REASONS: A brief reminder about how FedEE services can provide valuable support on an everyday basis is now available [here](#).

FEDEE PUBLICATIONS: This year our **Pay in Europe Reports** have been discontinued as all the data is now available in our **JEAPS** service. **JEAPS** itself will be updated on October 1st 2016 and each Autumn thereafter, but with a difference. The figures in it will contain projections through to the following June.

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