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## Editorial: Trade unions go strategic

After years of decline, trade unions are beginning to achieve pockets of growth across the globe. Some of this is due to workers in many emergent economies such as China and Bangladesh becoming less tolerant of poor working conditions and treatment which is not in line with legal rights. However, in the more advanced economies it is largely the outcome of greater strategic thinking on the part of several younger leaders in unions such as UAW and IG Metall (see news story below).

The Art of War by Sun Tzu is an ancient military text that has long been on the syllabus of MBA programmes. It was only a matter of time before its still highly relevant lessons would be adopted by adversaries in the labour union movement. Unionised populations have also changed substantially over the last two decades. They are no longer dominated by blue-collar male workers, but by white-collar workers with a broadly equal gender mix. Unions have also made a concerted effort to recruit younger workers into their ranks. As trade unions have declined in numbers they have merged and looked towards solidarity deals across national borders.

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Major international Unions have also emerged, such as Geneva-based Union Network International (UNI). One of UNI's greatest successes has been the conclusion of an 'Accord' in the garment industry which now covers over 20 countries. This lays down minimum labour standards in the industry with oversight by a committee chaired by the International Labour Organisation. The standards have legal effect and a recent example of this is in Bangladesh where all signatories have been ordered to stop trading with a company called Sadaf Fashions Ltd that refused to comply with an order issued by Accord inspectors.

If your company is non-union do not assume that it will always be the case. One of the most important lessons of Sun Tzu is to exploit complacency and assumptions about where the enemy will attack. Unions are leaving their old values behind and exchanging their militant oratory for the language of reason and law. They are also avoiding an all-out frontal attack in favour of picking off weak spots in multinational operations.

## **Australia: Final version of Fair Work Amendment Bill passed**

A Bill amending the Fair Work Act has finally been passed by both of Australia's Houses of Parliament — nearly two years after first being introduced into parliament.

The Fair Work Amendment Bill 2014 introduces a new requirement for employers to give employees a 'reasonable opportunity' to discuss their request to extend parental leave before the employer may refuse the request.

The Bill also introduces provisions to deal with deadlocks in negotiations for Greenfields Agreements (agreements between unions and new employers). Under the Bill an employer may give the relevant union bargaining representative written notice that the

'notified negotiation period' has begun. If agreement is not reached within six months of commencement of this period then the employer will be able to submit the proposed Greenfields Agreement to the Fair Work Commission (FWC) for approval. Previously, such agreements could only be submitted to the FWC with the approval of the union bargaining representative. Furthermore, in deciding whether or not to approve a proposed agreement the FWC will now be required to consider whether it provides pay and conditions consistent with the general industry standards for equivalent work, in addition to other statutory requirements.

Finally, the Bill provides that unions may not apply for a protected ballot order before bargaining has begun over a proposed enterprise agreement — thus unions are prevented from putting considerable pressure on employers to agree to their terms at an early stage of negotiations.

One provision that did not make it into the final version of the Bill is that which would have given the FWC the power to dismiss an unfair dismissal claim without a hearing where it had no reasonable prospects of success or where the former employee failed to comply with instructions. Proposed changes to the rules on annual leave loading and to the rules on Individual Flexibility Agreements also did not survive the legislative process.

## **Austria: Employment law changes for 2016**

A number of changes to Austrian employment law are due to come into force at the beginning of 2016. These were agreed to by employers, trade unions and the government at the recent Employment Market Summit 2015.

The most significant change concerns all-in clauses in employment contracts. These are clauses which state that the agreed salary covers all work undertaken by the employee, including overtime. It has been observed that in practice employees can end up working more overtime than initially anticipated, without additional pay, causing their hourly rate to fall below the minimum wage required under the relevant collective agreement. In future, therefore, the law will require greater transparency — the base salary (that is the salary for the normal working time, e.g. 40 hours per week) should be expressly stated in the employment contract. If it is not, then a reasonable 'actual salary' will be deemed agreed. Employment contracts in future should also state the minimum wage stipulated in the applicable collective agreement and employees should be informed of any changes to this minimum wage.

In addition, it was agreed that the minimum amount an employee must earn before they may legally enter into a post-termination non-compete clause should be raised from 17 times the daily maximum assessment basis for social security purposes to 20 times this amount. In 2016, therefore, the minimum earnings requirement will be 3,240 euros per month. The earnings taken into account will not include special payments. The penalty that may be agreed for breach of a non-compete provision will also be limited to six net monthly salaries.

The changes also give all employees a right to receive salary documentation each month and to receive a copy of social security registration from their employer. The daily maximum working time will be increased to 12 hours (10 hours for apprentices over the age of 16 years) where business travel is required and part-time employees will have a right to receive information about full-time and increased-hour positions.

## European Union: ECJ broadens the scope of the Collective Redundancies Directive

According to a recent ruling of the European Court of Justice (ECJ), an employee resignation could fall under the scope of the Collective Redundancies Directive (the Directive) if the employee resigned as a result of significant changes being unilaterally imposed on them by their employer, to the detriment of the employee.

The question of whether such a resignation could be considered a redundancy was referred to the ECJ in the context of an employee in Spain who had entered into a termination agreement (with compensation) after her pay was reduced by 25% for economic and production reasons. These same economic and production reasons also caused a number of other employees in the company to be made redundant.

The Court noted that the Directive does not give an express definition of the concept of redundancy and that it must be interpreted as including any termination not sought by the worker. Although the employee in question had resigned voluntarily, the fact that she chose to terminate her employment shows that she did not accept the pay reduction. The Court also noted that the objective of the Directive is to give greater protection to workers and therefore a narrow definition of redundancy could not be given.

In light of this judgment, employers in the EU should take such resignations into account when assessing whether or not a series of redundancies reaches the threshold for a collective redundancy. [Case C-422/14]

## Germany: Ministry of Labour proposes changes to temporary employment laws

On November 16<sup>th</sup> 2015, Germany's Ministry of Labour submitted to the chancellery a draft law amending the Temporary Employment Act and other Acts.

Currently, German law gives no clear upper limit on the duration of a temporary agency work assignment and the Ministry wants to see this changed. Under the proposed draft law it would be clearly stated that a temporary agency worker could not work for the same user company for more than 18 consecutive months without giving rise to an employment relationship between the worker and the user company. Extension of this maximum period would be possible only through collective agreement.

In addition, the draft law seeks to alter the rules on equal pay of temporary agency workers. Although statute currently provides that such workers must be paid the same as equivalent regular employees of the user company, it is possible for collective agreements to allow temporary agency workers to receive lower pay than their regular-employee counterparts. Under the draft law this exception would only apply to the first nine months in a job — after this point the temporary worker would be entitled to equal pay. According to the draft law employers would also be prohibited from replacing regular employees with temporary workers during a strike.

Although this proposal must still pass through the full legislative process, it is expected to come into force on January 1<sup>st</sup> 2017.

## Global: Update on state aid for job creation

More than half of all countries in the world provide incentives aimed at job creation, although in recent years the focus of state aid has been on creating 'quality jobs', jobs in ailing sectors or regions, or more general assistance aimed at research and development investments — which have an indirect impact on job creation.

Not all incentives are aimed at foreign investors. In the USA, for instance, the state of Oklahoma has recently given Boeing 91.8 million US dollars in incentives over the next decade for bringing nearly 1,000 jobs to Oklahoma City under their 21<sup>st</sup> Century Quality Jobs Program. In South Korea tax credits are available for local companies, even if they only maintain their job levels. In South Africa there is an emphasis on skills development as well as job creation and there has been a strong sectoral focus on automotive, clothing and textiles and environmental services.

Small to medium enterprises (SMEs) are the principal beneficiaries of government aid programmes in many countries and certain sectors such as retailing frequently do not qualify under mainstream programmes. One often neglected area of potential support is the development aid programmes offered by the economically advanced nations. These are all too often 'lost' as they are absorbed into third world exchequers, the pockets of political middlemen or NGO projects, but for substantial business development projects it may be possible to tap into such funds at source.

The European Union's Social Fund, which takes up 10% of the EU's total budget, has traditionally been regarded as a major source of funding for new jobs. However, this support is channelled through individual government agencies which absorb much of the

funding through administrative costs and much of the funding goes into the provision of modest grants for small businesses and projects aimed at unemployed workers.

Foreign Direct Investment into countries around the world currently amounts to around 1.7 trillion US dollars. It is the mainstay of many less developed countries and smaller 'tiger' economies. For this reason employers should never contemplate setting up operations in any other country without first exploring the state incentives that may be available. The *bureaucracy* involved may appear formidable, but in most cases the sums involved would justify the hiring of specialist staff to handle the applications.

## **Global: Cabin crews threaten major airlines**

The first round of negotiations with the flight attendants' union has begun at Cathay Pacific for the 2016 pay round. The union is seeking a 6% pay rise next year, improved insurance benefits for those based outside Hong Kong and an automatic option to retire at age 65. This compares with a 4.5% pay rise this year, capped at 3.9% to 4.4% for senior staff. The union has warned that if no progress is made in the next few weeks they may begin strike action at Christmas.

Meanwhile industrial unrest continues in the German carrier Lufthansa. Pilots already have a long-running dispute over early retirement, but the principal threat comes from the German cabin staff union UFO. This dispute is now two years old and focuses on the implications for pay and defined benefit pension arrangements brought about by company cost-cutting exercises. A strike that had been scheduled for the end of November was called off after UFO and Lufthansa agreed on an approach to achieving an agreement. However, until this agreement is reached future unrest remains a possibility.

Although a tentative pay deal has been struck between United Airlines and the Airline Pilots Association (ALPA) a year ahead of schedule, no progress has been made to resolve a five-year dispute with flight attendants. This centres on the inability to agree a joint employment contract for pre-merger staff from United and Continental Airlines. As a result there is frequent friction between the better remunerated ex-Continental staff and their poorer colleagues in the company that took over their airline.

It is better news over at Air Canada where a ten-year deal between the airline and flight attendants union CUPE has been accepted by a narrow majority of employees. No details have so far been released, but a ten-year deal by Air Canada Pilots included a signing bonus, profit sharing bonus and guarantee of a 20% rise in base salary over the life of the pact.

## **USA: The emergence of micro-bargaining units**

The National Labour Relations Board (NLRB) has granted a group of skilled workers in VW's Tennessee manufacturing facility the right to vote on representation by the United Automobile Workers (UAW) labour union for collective bargaining purposes. If successful, this would be the first time union recognition had been achieved in a foreign-owned car plant within the southern states of the USA.

This move is part of a new strategy on the part of trade unions to achieve a resurgence in the USA, particularly in the auto industry. Recently, the German trade union IG Metall opened up a joint office with the UAW in Nashville, Tennessee. The two unions will focus not only on VW but also BMW operations in South Carolina and the Mercedes plant in Alabama. Once recognised it will push for German-style works councils to represent both hourly and salaried plant employees.

Although employers have argued strongly against creating collective bargaining units for sections of a total workforce, the NLRB is beginning to grant such petitions. Recent positive decisions have involved certified nursing assistants in care homes across Alabama and beauty counter staff at a Macy's department store in Massachusetts.

## Pay, Tax and Benefit Trends

**AUSTRIA:** Employers in Austria are to have their non-wage labour costs reduced gradually over the coming years. In 2017 employers' contributions to the Family Burden Equalisation Fund will be reduced from 4.5% to 4.1%. This will be further reduced to 3.9% from 2018. In addition, employers employing a minimum proportion of older workers will benefit from a further 0.1% reduction in their contributions.

**DENMARK:** A Bill which would increase the pension age in Denmark from 67 to 68 years has been submitted for its first reading in parliament. According to national regulatory principles, the state pension age should be raised by one year every five years so that it evolves in line with life expectancy. The Bill is expected to enter into force on December 29th 2015.

**EUROPE:** Labour productivity across Europe can be measured in a number of ways. According to the latest Eurostat figures (for 2013), value added per employee in manufacturing ranged from 12,000 euros (12,730 US dollars) in Romania to 129,800 euros (137,710 US dollars) in Switzerland, with Germany having lower productivity than Belgium, Denmark, Luxembourg, the Netherlands, Austria, Sweden, the UK and Norway. When adjusted for wage costs, however, the differences are considerably less — with Hungary producing the best return, followed closely by Poland, the UK, Bulgaria and Latvia. The least productive manufacturing country in Europe when personnel costs are taken into account is France — with Sweden,

Luxembourg, Italy and Germany having only slightly better productivity.

**INDIA:** The Indian government is planning to increase minimum wages across the country in an attempt to boost the economy. According to Labour Secretary, Shankar Aggarwal, a law will be created allowing the central government to set a mandatory minimum wage applicable to all categories of workers throughout the country (instead of in relation to only certain specified job roles as is currently the case). Although the central government currently sets a national floor level minimum wage, this wage is not mandatory. The plan is also to increase the minimum wage under the Minimum Wage Act and align this rate to inflation.

**IRISH REPUBLIC:** The maximum value of a single non-cash benefit (or voucher) that may be paid to employees in Ireland each year free from tax has been doubled from 250 euros (265 US dollars) to 500 euros (530 US dollars). The measure, which otherwise would have taken effect from January 1st 2016, has been backdated to apply from October 22nd 2015 (the date of the publication of the Finance Bill) so that employees may benefit from the change this Christmas.

**IRISH REPUBLIC:** In its October 2015 Budget, the government of Ireland confirmed that the national minimum wage would increase on January 1st 2016 to 9.15 euros (9.71 US dollars) per hour. Ireland's national minimum wage was last increased on July 1st 2011 to the current rate of 8.65 euros (9.18 US dollars) per hour.

**JAPAN:** Japan's Prime Minister, Shinzo Abe, has announced that he intends to increase the average minimum wage across the country from the current 798 yen (6.50 US dollars) per hour to 1,000 yen (8.15 US dollars) per hour by means of annual increases of approximately 3%. This year the average minimum wage increased by 18 yen per hour. This was the

largest minimum wage increase in the country since 2002.

**JAPAN/PHILIPPINES:** A social security agreement has been entered into by Japan and the Philippines. Under the agreement the pensions systems of the two countries will be co-ordinated by the end of the year. This will mean that soon employees from one country working in the other country will no longer have to pay pension premiums in both countries. Individuals from these countries will also be able to receive their earned benefits whether they are living in the Philippines, Japan or another country.

**MEXICO:** Petróleos Mexicanos (Pemex), the Principal Oil Company in Mexico, has reached agreement with the oil workers union over pension rights. Under the deal the retirement age has been increased from 55 to 60 for those with less than 15 years' service and a full pension (equal to 100% of final salary) will now require 30 years of contributions instead of 25. The parties have also agreed to review pension terms in 2021 — when the retirement age and contribution period could well rise once more.

**SINGAPORE:** During public consultations over Singapore's Tax Act, some important changes were made which will benefit international companies. These include a facility to claim double taxation relief if manpower expenses from a foreign entity are charged directly to the Singapore head office or if the foreign entity is subsequently reimbursed for manpower costs. Companies set up and operated in Singapore to provide services to entities outside Singapore can now also qualify under the Singapore Growth Company incentive scheme.

**UK:** Guidelines on top executive remuneration are issued each year by the UK Investment Association (formerly called the ABI Guidelines). This year the Association is underlining the necessity of executives to hold shares issued to them for a minimum of five

years. They have also notified listed companies that a revision to their guidelines can be expected next Spring.

## Other Global HR News in Brief

**EUROPEAN UNION:** Some years ago the European Union established its 2020 strategy which included the headline target of 40% of the population of 30-34 year olds achieving tertiary educational attainment. Latest figures from the EU statistical office indicate that 16 of the 28 EU member states, plus Iceland, Norway and Switzerland had already achieved that goal by 2014. Curiously, women alone had reached the 2020 target by 2012 across the EU as a whole. However, even by 2014 the EU average for men stood at just 33.6%.

**KAZAKHSTAN:** A new Labour Code has been signed off by Kazakhstan's President, Nursultan Nazarbayev, to become law in January 2016. This sweeps away soviet-era employment protection rights and allows employers to lay off workers when 'reduced volumes of production, labour and services provided are damaging the economic well-being of the company.' It also allows employers to dismiss an employee where 'misconduct or inaction gives rise to the loss of confidence of the employer towards such employee'. Ailing companies will be free to redeploy workers between operations and there will be greater constraints on workplace democracy — with employers entitled to pre-certify the timing and agenda of worker meetings. Moreover, voting on industrial action will require a two-thirds majority for it to be approved.

**POLAND:** According to Poland's Ministry of Labour, 135,600 individuals benefitted from parental leave in September 2015 — 8,000 more than in September 2014. In addition, in September 2015 1,500 more fathers took paternity leave than did in September 2014. Changes to the rules on parental leave are due to come into force at the beginning of 2016. These will extend parental leave from 26 weeks to 32 weeks and

abolish additional maternity leave. The periods during which parental leave, unpaid childcare leave and paternity leave may be taken will also be extended — to the child's sixth birthday in the case of parental and childcare leave, and to 24 months after the birth of the child in the case of paternity leave.

**ROMANIA:** Fines totalling 2,783,500 leu (664,559 US dollars) have been imposed on numerous employers in Romania after a number of spot checks were carried out by the country's Labour Inspectorate between November 9<sup>th</sup> and 13<sup>th</sup> 2015. Most of the fines were imposed for breaches of labour relations laws (1,928,500 leu/460,400 US dollars) whilst the remainder were for health and safety breaches (855,000 leu/204,119 US dollars).

**SOUTH EAST ASIA:** Companies operating in Cambodia and surrounding countries have been reporting problems caused by crop spraying around industrial zones. The types of spray used are different and concentrations much greater than in western countries, and the combination of high winds and hot temperatures carry their effect over considerable distances. In one zone within the Khsach Kandal district of Cambodia alone over 1,000 workers in eight factories were overcome with fumes to the point of losing consciousness in a two-day period in November.

**SWEDEN:** The government of Sweden has commissioned the University and College Council (UHR) to consider how a pilot project could be established to facilitate the recognition of (non-EU) foreign qualifications. The pilot programme would be

available to anyone needing to get their training or skills recognised and it is hoped that the trial can begin in 2016.

**UK:** Guidance for employers on the recruitment and retention of transgender staff has been published by the UK government's Equalities Office. The guide offers advice on creating a transgender-friendly workplace, addresses retention issues and gives information on the relevant legal framework. It also provides links to useful sources of information and advice. The guide may be accessed [here](#).

**USA:** Any company doing business with the US government should take heed of the False Claims Act and the powers it gives to employees who are whistleblowers. In particular, a 'qui tam' provision that allows any interested party to initiate litigation on the government's behalf and claim a significant proportion (often 20%) of any damages recovered. Within this context the US Justice Department has just announced that it will be joining a civil law suit initiated by three former senior employees of Inchcape Shipping Services. This is to reclaim tens of millions of dollars the US Navy claims it was overcharged by the ship-supply contractor for services provided around the world.

**USA/MEXICO:** According to the US Pew Research Center, more Mexicans left the USA to return home than entered the USA over the period from 2009 to 2014. Only 14% of the one million returners were deported, with most of the remaining returners doing so for family re-unification reasons.

## Dates for your diary:

**December 31<sup>st</sup> 2015:** By this date all individual contracts in [Denmark](#) should be amended to remove any clause stating that the agreement will automatically terminate when the employee reaches the age of 70. Members should seek appropriate legal advice.

**January 1<sup>st</sup> 2016:** Mandatory paternity leave extended from 10 days to 15 days in [Portugal](#).

**January 1<sup>st</sup> 2016:** Stricter rules on the payment of wages come into force in the [Netherlands](#).



**January 1<sup>st</sup> 2016:** The national monthly minimum wage in the [Czech Republic](#) increases to 9,900 koruna.

**January 1<sup>st</sup> 2016:** [Poland](#)'s national minimum wage increases to 1,850 zloty per month.

**January 1<sup>st</sup> 2016:** Stricter rules on equal pay come into force in California, [USA](#).

**January 1<sup>st</sup> 2016:** Labour reforms giving greater protection to foreign workers come into force in the [UAE](#).

## Latest news for business travellers:

There remains significant disruption to rail and road transport around the borders of a number of countries in [Europe](#) as a result of an influx of asylum seekers seeking transit to other European countries. Travellers should monitor local media and check with transport service providers for updates.

Many countries around the [world](#) have increased security following the terrorist attacks in Paris, France on November 13<sup>th</sup> 2015. Some measures may increase the time required to pass through security at airports.

Disruption to rail services is expected in and around London, [UK](#) over the Christmas period. Paddington station will be closed for four days from December 25<sup>th</sup> until December 28<sup>th</sup> (inclusive). There will be no Heathrow Express service from the evening of December 24<sup>th</sup> until December 29<sup>th</sup> and from December 29<sup>th</sup> to January 3<sup>rd</sup> there will be changes to Great Western services.

Flights into and out of Chennai in the state of Tamil Nadu in [India](#) have been cancelled and the airport closed until December 6<sup>th</sup> due to serious flooding. Train services to Chennai have also been affected.

## FedEE news:

**ONE-DAY CONFERENCE ON EMPLOYMENT CONTRACTS AND HR POLICIES:** On January 28<sup>th</sup> 2016 FedEE will be holding a one-day conference in London, UK, during which an impressive group of experts from around the world will be sharing their vast knowledge and expertise in the field of employment contracts and HR policies. More information on the agenda and speakers is available in our [conference brochure](#). We have kept conference fees as low as possible for FedEE Members and Fellows and places are limited, so [sign up](#) today to avoid disappointment!

**WEBSITE IMPROVEMENTS:** Please note that we will be updating our website over the coming months to introduce a number of exciting new features. Members will be kept informed of the changes as they progress, through email communications and notices in our newswire.

**CHRISTMAS OFFICE CLOSURE AND NEWSWIRE SCHEDULE:** FedEE will be closed over the Christmas period from December 24<sup>th</sup> 2015 to January 3<sup>rd</sup> 2016. The last 2015 edition of the newswire will be published on December 17<sup>th</sup> and the first edition of 2016 will be issued on January 21<sup>st</sup>.

**2016 ROADSHOW EVENT:** Next year the Federation is planning a series of half-day expert briefings for multinational employers and enterprises considering international expansion for the first time. These will bring together the know-how of FedEE, local law firms and accountancy firms around the world. In conjunction with these events we are preparing a comprehensive guidance note on the relative merits of different locations for head offices and operations in each continent, together with the grants available for job creation through inward investment in each locality. Venues planned for these events include Valetta (Malta), Lisbon, Milan, Madrid, Budapest, Hong Kong, Beijing, Jakarta, New Delhi and Singapore.

**NETWORK WITH OTHER FEDEE PROFESSIONALS:** Don't forget to sign up to FedEE's face-to-face networking community, butN. Join for free today at <http://www.but-n.com>.

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