

Strengthening Collective Bargaining through Policy Initiatives

Concrete policy initiatives that could strengthen (multi-employer) collective bargaining in Malta

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1. Context

Malta's tradition of industrial relations has been inspired by enterprise level collective bargaining in limited parts of the private sector (mainly manufacturing, commercial banks, large hotels) and national level bargaining in the public sector. This leaves a sprawling private sector – composed mainly of large corporate entities with hardly any trade union representation (such as e-gaming and insurance); small and family-owned business; and a considerable 'gig economy' with large pools of migrant and female labour – that remains almost totally non-unionised and not covered by collective bargaining. The percentage of collective bargaining coverage in the private sector has decreased from around 33% in 1995 to 27% in 2008 (Baldacchino & Gatt, 2009).

Multi-Employer Bargaining in Malta is not popular or widely known; nor is it part of the policy agenda of either local employers or trade unions. We know of only one collective bargaining agreement that involved multiple employers, namely car import companies. The agreement, signed by the General Workers' Union and ten companies, expired in 2004 and appears not to have been renewed (Debono, 2016; Debono & Farrugia, 2008). We also know of two sectoral trade unions (out of around 40 currently registered unions) with a significant presence in the private sector, and which operate on an industry wide basis: The Malta Union of Teachers (for staff in the education sector, both public and private) and the Malta Union of Bank Employees (for staff in the banking sector, both public and private) Other unions, like the Medical Association of Malta and the Malta Chamber of Pharmacists may have members in both private and public sector, but these membership details are not public and hard to quantify. The two largest trade unions – the General Workers' Union or GWU and the *Unjon Haddiema Magħqudin* [Union of United Workers] or UHM – both have 'sections' that operate as sectoral trade unions in the non-public sector on their own right with a considerable degree of autonomy: (GWU has 7; UHM has 5). Their insider knowledge of and oversight over specific industrial sectors allows them to benchmark bargaining for pay and other working conditions. As the only two general (catch all) unions in Malta, the GWU and UHM sign over 90% of all collective agreements, and "their pressure for extensions and precedents, from one catchment group or industry to another, leads to both 'pattern bargaining' and 'bargaining coordination'

across industries” (Debono & Baldacchino, 2019, p.432). Such experience could be beneficial for future multi-employer collective bargaining.

From the employers’ side, most of the large corporate sector is affiliated to the Malta Employers Association (MEA) which provides professional support to employer bargaining on a needs basis. The Malta Hotels and Restaurants Association (MHRA) comes in second. Here too, it is easy for the MEA or the MHRA to offer advice that is grounded in national or sectoral developments and trends. The Malta Chamber of Commerce, Enterprise and Industry (MCCEI) is another prominent organisation promoting and protecting business interests at a national level in Malta. But, unlike the MEA and MHRA, the MCCEI is not registered as an employers’ association in accordance with the provisions of the Employment and Industrial Relations Act (EIRA, 2002), and therefore not legally empowered to enter into collective bargaining.

We do not exclude the fact that some multi-employer representation exists, under the aegis of a few sectoral employer associations or the MCCEI. We however do not know of any collective bargaining undertaken, or collective agreements secured, by any such employer association.

2. Existing initiatives that might facilitate multi-employer collective bargaining

Trade unions in Malta, as in other countries across the globe, face the challenge of maintaining and increasing membership levels. The basis for working out trade union membership – and therefore the right towards official recognition and representation for the purposes of collective bargaining – is fraught with controversy, and some creative practices. Some trade unions make it hard for members to resign; others continue to consider workers to have remained their members even after they have stopped paying their membership dues over many years: they would be asked to pay their ‘arrears’ should they wish to ‘re-join’ their union again or solicit its support on their behalf. Some unions also include retired workers as their members, thereby augmenting their membership figures.

A few years ago, the GWU proposed an additional initiative to promote collective bargaining and trade union representation in Malta. This proposal involves enrolling all workers as trade union members by default; while also providing them with an opt-out option. In the event of opting out, their trade union membership dues would be directed towards a worker education and training fund (Micallef, 2019). This proposal has been endorsed by the Labour Government that listed it in the current Electoral Manifesto (Borg, 2022), and by the UHM which supports mandatory membership for low-income workers who are particularly vulnerable to exploitation (Micallef, 2022). The measure would be an effective foil to the considerable ‘free riding’ that is rife in the workplace: why bother to join a trade union when one benefits from the outcomes of collective bargaining anyway? However, employers’ organisations - including the MEA, MCCEI and MHRA - have been vehemently against it, arguing mainly that it would clash with the freedom of affiliation and representation as a basic right (Agius, 2018, November 1). Notwithstanding the negative sentiment expressed by employers towards what they consider to be compulsory trade union membership, the fact that the government and the two largest unions are in favour of such an initiative provides some credibility to its eventual introduction. The focus on trade union membership by default also aligns with the goals of multi-employer collective bargaining to ensure fair and equitable treatment for all workers.

Another initiative, never formally endorsed but nevertheless practised in Malta, has been to enter into collective bargaining arrangements even when the trade union representing most of the employees in a particular place of work lacks ‘majority representation’ (50%+1 of the

workers in the company, or distinct occupational category, as specified at law). Employers are not obliged by law to enter into discussion or negotiation with any trade union that does not meet the '50%+1' threshold – except to deal with individual cases. However, this has been a practice for some time, especially in the manufacturing sector in the late 1970s-early 1980s in Malta and where German management and investment is concerned (Baldacchino, 2009). It appears that, in some situations, employers prefer the familiar territory of collective bargaining even though the main trade union at the place of work could only command say 40-45% of employees as its members. The willingness of at least some employers to engage in collective bargaining even if the membership threshold is not met reflects a desire for inclusivity and stability in labour relations. This aligns with the goals of multi-employer collective bargaining, which aims to bring together multiple employers and trade unions to create a more comprehensive and stable bargaining framework.

Another practice, copied from the British tradition, is to have Wage Regulation Orders governing the basic conditions of employment of workers in non-unionised sectors (e.g. cinema workers, sextons, cleaning staff, woodwork and so on). Almost all of these Orders are nearly 50 years old and were the outcome of tripartite negotiations and discussions at national level, held by so-called Wages Councils (Grech, 2020). The Digital Platform Delivery Wages Council Wage Regulation Order (2022) is a rare recent addition to these orders. It was discussed within the Employment Relations Board, a tripartite body coordinated by the Department of Industrial and Employment Relations (DIER, 2022). The use of Wage Regulation Orders to govern basic employment conditions in non-unionised sectors demonstrates a commitment by major social partners to ensuring fair working conditions even in industries with lower union presence. This inclusivity aligns with the goals of multi-employer collective bargaining, which seeks to bring together various employers and workers in sectors that might not necessarily have high levels of union representation.

3. Suggestion for a pilot project introducing multi-employer collective bargaining in Malta

As stated above, there is nearly no experience of multi-employer collective bargaining in Malta. In order to introduce the system, one can consider implementing a pilot program to demonstrate its benefits and feasibility. A successful implementation of the pilot project could serve as the first step in a gradual implementation of the system across various industries. The first task would be to choose the best sector for such an experiment. In which sector would such a system most likely be successful and in which would it be particularly beneficial? The ultimate choice of sector would need to be discussed and agreed between stakeholders, including employers' associations, trade unions, government and industrial relations experts. Having said that, we are here suggesting the hotels and restaurants sector as a possible choice for the pilot. The following subsections delineate the rationale for such choice and potential government support that would facilitate the project.

Rationale for the choice of sector

The chosen sector should ideally have a strong presence of social partners that already unite the interests of employers and employees. The MHRA fulfils the role of such an employers' association very well as its members cover a wider proportion of the sector. On the other hand, the largest two trade unions in Malta, namely the GWU and the UHM, are also present in the sector. Out of all unions, these two have the best human, financial and material resources to carry out multi-employer collective bargaining.

Most of the sector is currently not covered by collective bargaining. Thus, a multi-employer agreement may drastically increase the coverage of collective agreements. Hotels and restaurants experience considerable seasonal fluctuations and tend to employ many foreign workers with low working conditions. Indeed, the sector has high levels of precarity, and its workers would particularly benefit from the stability and job security that may be offered by collective agreements. These would particularly benefit from more stability and continuity in employment during the tourism industry's shoulder months.

The chosen sector should have a good level of organisation and standards in order to facilitate collective agreements. Hotels and restaurants in Malta already have some industry-wide standards and regulations, such as food (HACCP) and occupational health and safety guidelines. Multi-employer bargaining could help formalise and enforce these standards. Similarly, the chosen sector would ideally have already-existing common occupational categories that would facilitate the transition towards the establishment of common terms and conditions of employment. The hotels and restaurants sector in Malta draws from a common pool of workers, such as chefs, waiters, and housekeeping staff. A multi-employer collective agreement could help establish standardised wages and working conditions, thus reducing competition between employers for the same human resources. A multi-employer bargaining approach could establish uniform standards for job responsibilities and career progression.

Government support

The Maltese government needs to appraise the existing legal framework to determine how it can be improved to facilitate multi-employer bargaining. The concept of multi-employer bargaining and relevant parameters regulating it should be added to the EIRA (2002). These parameters could include among others clarifying: the procedures for unions to gain recognition as representatives of employees across multiple employers; the duties of unions and employers involved in such bargaining; and the scope of bargaining and agreements (by for example, limiting the agreement to those employers who voluntarily agree to be part of it).

The Maltese government can provide incentives for companies to take part in the pilot project, and subsequently in more widespread multi-employer collective bargaining initiatives. There could be special incentives to join the multi-employer bargaining process and to finalise collective agreements such as: 1. Tax incentives (such as tax breaks or credits) can be given to employers who actively engage in multi-employer bargaining. These incentives can offset some of the costs associated with negotiations and help employers appreciate the financial benefits of collective bargaining; 2. Training and development funds can be established to support training and skill development programs for employees in sectors that engage in multi-employer bargaining. This may enhance the skills and productivity of the workforce and may benefit both employers and employees; 3. The government can also strengthen the existing support and resources offered by the Department for Industrial and Employment Relations (DIER) for dispute resolution processes, assisting parties to navigate conflicts that may arise during multi-employer bargaining; 4. There needs to be monitoring and evaluation mechanisms to monitor the implementation of a multi-employer bargaining pilot project and evaluate its impact. The generated data should be used to make adjustments and improvements to the system as needed; 5. If the pilot is successful and a decision is taken to implement multi-employer bargaining more widely, there would need to be public relations support to promote the benefits of such a system to a wider range of stakeholders and the broader public, and foster a positive perception of the approach.

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