

## Trade Unions

Advocate General Paolo Mengozzi delivered his Opinion to the European Court of Justice recently in the much-disputed case of Laval and Partneri (Case C-341/05 Laval and Partneri Ltd v Svenska Byggnadsarbetareförbundet and Others).

The case concerned a strike by a Swedish trade union against a Latvian company that refused to sign a collective agreement in 2004. The strike was brought about after a dispute flared when Laval, the Latvian company, posted several dozen construction workers from Latvia to refurbish a Swedish school. The Swedish trade union objected to Laval's refusal to sign a collective agreement with the trade union on salary and working conditions and to Laval's undercutting of the price of local labour. Swedish union workers, in turn, took to the streets and blockaded the school construction site in the Swedish town of Vaxholm. Eventually Laval withdrew its workforce and began legal action in Sweden's Labour courts.

The Swedish Labour Court referred the matter to the European Court of Justice for a preliminary ruling on the main issue in dispute: whether one member state's trade union is entitled to take collective action against a service provider based in a different member state. In this case, the Swedish trade union's collective action was designed primarily to compel Laval to sign a collective agreement for the benefit of workers that it posted temporarily in Sweden.

Seemingly straightforward the matter is riddled with numerous legal issues, the foremost amongst which is the apparent conflict between two fundamental rights. The case at issue called for a reconciliation between the freedom to provide cross-border services and the need for the protection of workers. In his Opinion, the Advocate General had to weigh the trade union's right to resort to collective action to defend workers' interests, which is a fundamental right, against the fundamental freedom of an undertaking established in the Community to provide services anywhere in the EU, a freedom guaranteed by the EC Treaty.

In reconciling the two, the Advocate General considered that trade union action was permitted when it was carried out in line with legitimate public interest objectives, such as the prevention of social dumping and the protection of workers' rights. Acknowledging that the right to collective action could restrict the free movement of services within the EU, Mengozzi stated that trade union action had to be proportionate to the objectives intended to be achieved by it and ought not go further than necessary to protect conditions of employment.

It is clear therefore that collective sanctions imposed by trade unions can only be justified under EU law if they are proportional to a public interest objective and promote considerably employment conditions. It is only in these circumstances that the protection of workers can outweigh the fundamental right to provide cross-border services.

Trade unions could still use collective action as a pretext to dissuade a company from relocating in the EU, thereby restricting its right of establishment. In a bid to protect

national industry, trade unions may well impose illegal sanctions on firms to oust them from a particular market.

It is this adverse situation that has prompted opposition to this Opinion from various quarters that maintain that this Opinion gives trade unions leeway to dictate the terms of the EU single market. The better view however considers this Opinion as a milestone for trade unions and for European workers.

Now, it rests in the hands of the European Court of Justice whether to confirm or overturn Mengozzi's Opinion.

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