PEOPLE'S MOVEMENT
GLUAISEACHT AN PHOBAIL

The High Court clarifies the position re *Laval* Case – judgment accords with PM referendum position

A body which is representative of the interests of employers, may register an agreement with the Labour Court stipulating certain employment conditions, guidelines and wages in agreement with a body representing the interests of employees; generally a union. Such a Registered Employment Agreement (REA) is then legally binding and may be amended from time to time to fall in line with inflation or prevailing economic conditions. An REA, once registered, is binding on all bodies in the industry and breach of its provisions is a criminal offence.

The REA in question relates to the electrical contracting industry and is negotiated by the TEEU with organisations representing electrical contractors. The applicants in the case were all electrical contractors who employ electricians. Some of the contractors sought to derogate from the REA and, as a result, several are awaiting criminal prosecutions for failure to adhere to the terms.

Several of these contractors took a case to the Labour Court seeking to cancel the agreement claiming, among other things, that the rates of pay under the REA were highly punitive in the current economic climate and that observance of the terms would lead to further job losses and uncompetitive conditions. The Labour Court refused to cancel the REA. This application continued over eleven days and was the longest ever sitting by the Labour Court.

In arriving at its decision to refuse cancellation of the agreement, the Labour Court considered the effect on the electrical contracting industry of the decision in the *Laval* case. The Labour Court concluded that the cancellation of the REA would allow contractors, including contractors from low wage economies, to provide services in Ireland without having to pay the minimum terms and conditions required under the REA. Conversely, in the absence of an REA which is 'a universally applicable agreement', contractors from low wage EU economies could legally provide services in Ireland without having to pay the minimum terms and conditions required under the REA.

The High Court finding of 30 June 2010 removes this ambiguity in Irish law and confirms the interpretation of the People's Movement prior to the Lisbon referendums. In fact, contractors from low wage EU economies may provide services in Ireland at the minimum terms and conditions pertaining in their home country unless they are engaged in an area where an REA applies.

In *Laval* the EU Court of Justice (ECJ) was dealing with a labour dispute on a building site in Sweden where Latvian workers were working on terms and conditions below those demanded by the Swedish union. In its judgment the E.C.J. considered the Posting of Workers Directive which provided as follows: 'Member States shall ensure that whatever the law applicable to the employment relationship, the undertakings (companies) referred guarantee workers posted to their territory the terms and conditions of employment covering the following matters which, in the Member State where the work is carried out, are laid down' among other measures 'by collective agreements or arbitration awards which have been declared universally applicable' insofar as they concern such matters as 'the minimum rates of pay, including overtime rates' or 'health, safety and hygiene at work'. For the purposes of this Directive the concept of minimum rates of pay referred to is defined by the national law and/or practice of the Member State to whose territory the worker is posted.

The Directive states that: '"Collective agreements or arbitration awards which have been declared universally applicable" means collective agreements or arbitration awards which must be observed by all undertakings in the geographical area and in the profession or industry concerned.'

In summary, this Directive provides that employers from one jurisdiction may be lawfully required to accord their employees the same minimum terms and conditions enjoyed by workers in another jurisdiction to which they are posted provided those terms and conditions are 'universally applicable'.

Explaining its decision the E.C.J. found that 'Article 3 of the Posting Directive seeks ... to prevent a situation arising in which, by applying to their workers the terms and conditions of employment in force in the Member State of origin as regards those matters, undertakings established in other Member States would compete unfairly against undertakings of the host Member State if the level of social protection in the host Member State is higher'.

Secondly, that provision seeks to ensure that posted workers will have the rules of the Member States for minimum protection as regards the terms and conditions of employment relating to those matters applied to them while they work on a temporary basis in the territory of that Member State.

Sweden, unlike Ireland did not have a system under which collective agreements could be declared universally applicable.

In light of the existence in Ireland of universally applicable collective agreements, such as the REA, posted workers in Ireland in the electrical industry must enjoy the same terms and conditions as those to which domestic workers are entitled under the REA

which is universally applicable. Thus, under the REA foreign contractors from low wage economies cannot undercut Irish workers or contractors.

The High Court found that the effect of the Laval decision and the Posting of Workers Directive is that posted workers in Ireland must enjoy the same terms and conditions as those to which domestic workers are entitled under universally applicable collective agreements. The REA is such an agreement, and as such the finding of the Labour Court was correct that the cancellation of the REA would allow contractors from low wage economies to provide service in Ireland without having to adhere to the terms of the REA.