

**WRITTEN QUESTIONS TO THE PRESIDENT OF THE EMPLOYMENT AND SOCIAL SECURITY  
COMMITTEE BY DEPUTY G.P. SOUTHERN OF ST. HELIER**

**ANSWERS TO BE TABLED ON TUESDAY 1st MARCH 2005**

**Question 1**

In answer to a question on 12th October 2004, concerning the circumstances in which the action of a union to ballot for strike action could be deemed 'unreasonable' under the terms of the proposed Employment Relations (Jersey) Law 200-, the Attorney General commented that –

“it appears to me to be impossible, as a matter of law, to say at this stage .... The answer will be significantly influenced by the codes of practice...”

Would the President confirm whether the Committee would, as a consequence of this uncertainty, defer debate of the draft Employment Relations Law in the absence of the associated codes of practice, and, if not, would the President provide an assurance of the following codes –

- (a) Recognition. That the limitations will not be drawn so as to deny employees of small businesses the right to representation by a Trades Union;
- (b) Resolving Disputes. That the 'right to ballot for action' will be so constrained by the conditions attached to the use of the term "unreasonable" above as to make the said 'right' impossible to enact;
- (c) Limitations on Industrial Action. That restrictions on secondary action will not contravene ILO Convention 87 and that picketing restrictions will not in any way threaten to breach Articles 10 and 11 of the European Convention of Human Rights.

**Answer**

The Committee does not believe that there is a need to defer the debate on the draft Employment Relations Law. As is the case with other important pieces of legislation, detail is often included in subordinate legislation and sometimes in codes of practice.

The Employment Forum's report, appended to the Report accompanying the draft Law, (P.19/2005), points out that, 'codes of practice by their very nature have to reflect the legislation they are supporting,' and, therefore, any amendments to the draft Law could potentially affect the content or applicability of the code of practice, particularly where dispute resolution procedures are being proposed to match the framework provided in the Law.

As soon as there is certainty about the main Law, more detailed discussion and public debate will be required on the content of the Code of Practice. The draft Law, provides for a full consultative process at article 25.

I am unable to give any assurances until that consultation takes place, and would comment as follows –

- (a) there is nothing in the Employment Forum's report to suggest that limitations on recognition will deny employees of small businesses the right to representation. The Forum's report on the code of practice for Recognition simply outlines a reasonable method of conducting negotiations and points out that no recommendation is made by the Forum on the matter of whether there should be such a limitation. The Forum recognises that the majority of Jersey's employers employ less than 10 employees and that any such restriction would significantly reduce the application of their proposed recognition procedure;
- (b) the Forum's report sets out a minimal framework for 'balloting' and states that, as most unions already specify balloting requirements in their rule books, the code should not be overly prescriptive and should provide only basic principles with the expectation that both parties will co-operate and behave reasonably in

connection with the ballot. Only 7 requirements are suggested by the Forum to be considered 'reasonable', including the requirement for secret ballots;

'unreasonableness' only applies in two circumstances within the framework of the Law; the first allows the Tribunal to make a decision as to whether it may hear a case based on a unilateral reference; the second is to determine whether the union has immunity from liability. The matter of 'unreasonableness' is procedural for the Tribunal, rather than being a matter on which the Tribunal may make a declaration or award;

- (c) the Committee would always ensure that all aspects of the legislation and code of practice do not contravene any applicable Conventions or international obligations and the requirements of the Human Rights (Jersey) Law 2000.

## **Question 2**

Is the Committee aware whether the reservations expressed in the response of 17th February 2005, from the Regional Secretary of the Transport and General Workers Union (TGWU) to the publication of the final draft of the draft Employment Relations (Jersey) Law 200-, are shared by many Trade Unions on the Island, and, if so, what steps will the Committee take to address these reservations before debate of the draft Law, and will these steps include a public debate? If not, will he provide the reasons why?

### **Answer**

No concerns or reservations have been expressed to the Committee on the Law as currently drafted by any employers, members of the public, or unions, other than the TGWU. The Employment Forum also has not received any comments on the latest draft of the Law or their report on the codes of practice. The latest draft has, in fact, been generally well received.

At present, the Committee is in the process of addressing the concerns raised by the TGWU Regional Secretary in a recent letter. As this letter follows their news statement, distributed to TGWU members, which was, unfortunately, largely based on the previous draft of the Law, the Committee is also trying to address this misinformation. The Committee has agreed to meet the TGWU again should more information be necessary.

This legislation has already been the subject of wide-ranging consultation and debate over many years. The outcome, on which the current draft Law is based, was clearly presented to the States in 2002 (R.C.28/2002). The Committee now believes that it is time for the States to decide the legal framework.

As mentioned in the reply to the first question, further public debate and consultation will be incorporated into the development of the code of practice but key to this process is certainty as to the legal framework in which the code must be developed.

As codes of practice under the Employment Relations Law are to be made by Order, and come into affect 28 days later, this also gives the States the opportunity to have a final say in the content.