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EUROPEAN SOCIAL CHARTER

Comments from the
Netherlands Trade Union Confederation FNV
on the
5th National Report on the implementation of
the European Social Charter

submitted by

THE GOVERNMENT OF THE NETHERLANDS

(Articles 1, 9, 10, 15, 18, 20, 24 and 25
for the period 01/01/2007 – 31/12/2010)

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CYCLE 2012

Comments of the Netherlands Trade Union Confederation FNV on the 24th report of the Netherlands

Recently the minister of Social Affairs has changed the instructional framework according to which the CWI /UWV Werkbedrijf, a semi-governmental agency, decides whether or not a permit shall be granted to the employer to dismiss a worker on an open-end contract for whom no indemnities are valid. The government of the Netherlands refers to this procedure in its comments on article 24 the right of workers to protection in cases of termination of employment, par. 3. An employment agreement can only be terminated by giving notice after having received a dismissal approval from the CWI. The CWI will grant a dismissal approval only if there is a valid reason for dismissal, such as improper performance, reorganization or business economic reasons. If the employer asks for a dismissal approval because of improper performance, the employer must show that it did the utmost to help the employee improve his or her functioning. The employer also must prove improper performance by the employee. In case of a recession or reorganization, the employer must prove to the CWI that a reduction in the workforce is necessary in relation to the decrease of business. To do so, the employer is usually required to provide specific documentation supporting the claim, such as consecutive balance sheets showing a clear decrease, a comparison with similar businesses incurring losses, efforts taken to avoid dismissals and a forecast that the situation will not change. The selection of employees to be dismissed also must be made, in principle, based on the "proportionality principle," which means that, in the category of exchangeable positions, per age category, the employee hired first is to be dismissed last. The proportionality principle can be deviated from under a collective labor agreement in order to meet with specific circumstances in a company or industry. The termination conditions in such a collective labor agreement have to be objectively verifiable and can include other related issues such as employability and outplacement.

This whole balanced set of rules that protect the worker from losing his job is overruled by the recent changes of the government. Policy has been changed concerning the cause that a reduction of the workforce is necessary for economic reasons. Formerly, as we see above, the employer held the burden of prove that one or more actual jobs would have to be cut for economic reasons. Now all the employer has to prove is that he has an economical reason to replace an employee with a permanent contract for one with an a-typical contract. In other words , the government supports the substitution of solid jobs by flexible jobs on a-typical labour contracts by issuing the permits with much more leniency. What happens very often is that the same worker who held the solid job previously, is dismissed and subsequently offered his own job, but now on a flexible basis with little labour protection. FNV considers this practice as very undermining for the general legal, social and societal position of all workers, both in solid jobs, and in flexible jobs. The risk of the entrepreneur is traded off to the workers, who are paying the price for bad performance of the employer.