




SUEPO

Staff Union of the
European Patent Office

Associations' strategies

for defending staff
against attacks on



their rights
and
working conditions

CSIAO 11
28 October 2010
Geneva

The situation at the EPO



Preparation for most attacks...

... was the introduction of IFRS

IFRS (International Financial Reporting Standards) obliges the Office to declare all defined benefit obligations (DBOs). As a result, the Office was transformed almost overnight from a financially healthy and balanced organisation to one with **negative equity (deficit) of around 2 billion Euro.**

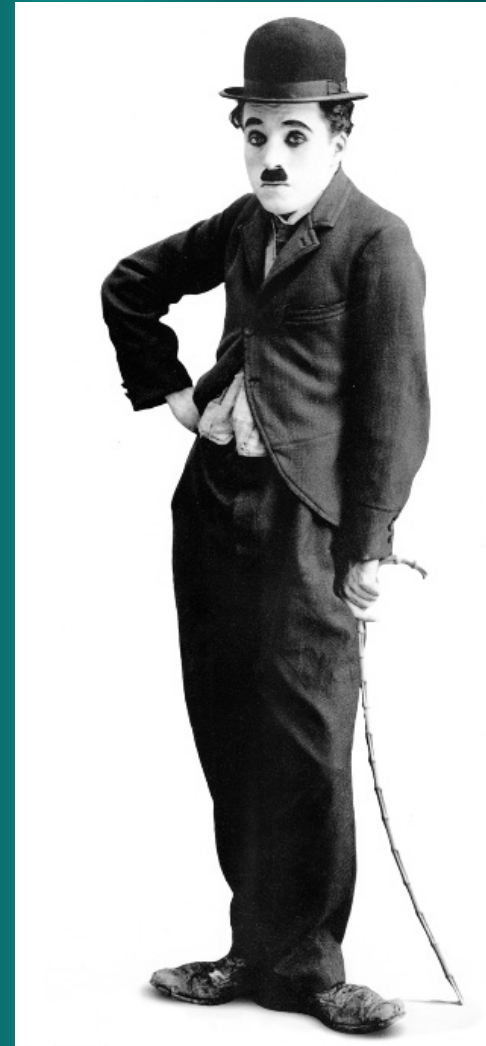
Consequences

- the 2 billion Euro deficit is exclusively caused by future liabilities which may not be balanced by future income under IFRS because of the incompatibility of the accounting standard with the nature of the EPO's fee and income system;
- with the introduction of IFRS the AC created a basis for the EPO Administration to justify a deterioration of working conditions and staff benefits

Resulting in attacks on the...

- ... **Pension system** -> from DB to mixed DB/DC
- ... **Health care system** -> move from PAYGO to fully funded system and abolition of the 2.4 % ceiling for staff contribution
- ... **Employment Policy**
->forced outsourcing and use of different non permanent contract types (without involvement of SR and denial of applicability of EU and national labour and occupational health/safety law)
- ... **Protection of the dignity of staff**
-> suspension of circular in 2006 and no replacement since then
- ... **New working time system** -> unilateral abolishment of contractual agreed compensation hours (so called Kober-hours)

**The defence
strategy of the EPO
Staff Union &
Association...**



...on the financial situation

- Public Press release on "financial crisis"
- Information to staff with dedicated road show
- Mass demonstrations and strikes at EPO
- Preparation of Council document CA/159/09 **"From IFRS to IPSAS"** together with financial study "Differential Accounting" by the "zhaw" (Zurich school of Management and law) and in cooperation with an IPSAS board member
- Intervention in the AC and lobbying of member state delegations

- 1-day warning strike and demo in Brussels before the European Commission
- Meeting with staff of Commissioner C. McCreevy (Internal Market) ...
- Lobbying of German and British representations



...followed by strikes in The Hague and Berlin

...on pensions

- Negotiation with Administration about i.e. the underlying necessity (financial situation), the design of the system, the distribution of the DB and DC component (70/30 vs. 50/50) and guarantees for the DC part (SSP-salary savings plan) -> **unsuccessful**;
- Commissioning of an actuarial study and legal opinion;
- Information to staff with dedicated road show;
- filing of 3700 appeals challenging changes to the Service Regulations
 - by Staff Representation on behalf of current and future colleagues
 - mass appeal by individual staff members

Outcome of appeals

Recommendation of Appeals Committee recognising

- Admissibility
- Loss of acquired rights
- Absence of guarantee for the SSP, cost of the DC system and "applicability" of Directive 2003/41/EG
- Breach of consultation rights
- Financial stability and integrity of assets in the DB part (de-mixing effect)
- Violation of Noblemaire principle (in part)

but not recognising

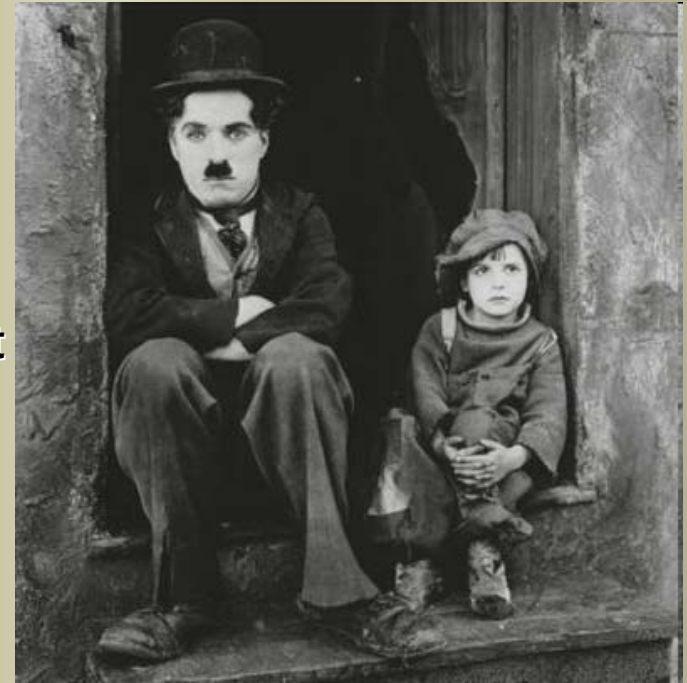
- Breach of equal treatment
- Misuse of authority

...on the health care system

- Negotiation with Administration about i.e. the underlying necessity, maintenance of staff contribution ceiling, ring-fencing of fund, correctness of actuarial assumptions, calculation of future contribution, health cost containment, etc.
- Commissioning of an actuarial study and legal opinion
- Intervention in the AC with CA/192/09 "Actuarially fully funded health insurance"
- Information to staff with dedicated road show
- Filing of appeals challenging changes to the Service Regulations
 - by Staff Representation on behalf of current and future colleagues
 - mass appeal by individual staff members

Progress until now

- **Opinion of Appeals Committee to be discussed in AC meeting of October**
- **Safe option for SSP still "under discussion"**
- **Establishment of health cost containment working group**
 - > a white list of doctors was introduced, no further action or progress
 - > group has made only limited progress to date due to lack of will on administration side (AC decision already taken)



...on employment policy

- Negotiation with administration about consultation of staff representation, announcing of contracts, information about number, nature and range of tasks of posts (permanent posts for permanent tasks), equal pay and equal treatment, applicability of national labour law and representation of external staff -> **unsuccessful**
- Filing of various appeals by staff representatives
- Commissioning of two legal opinions about applicability of national/EU law and intervention in the AC with [CA/174/09](#) (also appeal)
- Legal assistance to external staff by SUEPO lawyers
- Financial support of fired temporary staff through collection among staff members
- External staff publicised their situation ([Spiegel](#) and [SZ](#))
- External staff filed complaints at national labour courts



Progress until now...

- Unanimously positive recommendation of IAC (Internal Appeal Committee) regarding refusal of the president to consult the GAC (General Advisory Committee)
- Complaint before ILOAT which lead to judgement 2919 in August 2010 in which the tribunal decided:
"The President of the Office shall, within 60 days of the date of the publication of the present judgment, consult the General Advisory Committee on the practice of "outsourcing" in accordance with the recommendations of the Internal Appeals Committee"
- Set up of a project board and a Working Group with participation of Staff Representation to formulate an Outsourcing Policy
- No outcome of the labour court complaints yet -> obviously the judges are not sure how they should deal with the immunity (see also [An Essay on the Accountability of International Organizations](#) by Matthew Parish)

Conclusion

- Under the last two presidents it was not possible to establish genuine social dialogue
- Staff were faced with continuous and unjustified erosion of working conditions and Service Regulation changes
- Human Resources proactively developed justification for the attacks and played a vital role in preparation thereof

therefore

we are challenging the situation with all possible means:

- **Publicity**
- **Networking (Delegations, SR of other IO's, politics)**
- **Oral and written interventions in the EPO and before AC**
- **Commissioning of legal and financial studies**
- **Legal instruments (appeals, complaints, financial support)**
- **Industrial actions**

Thank you for your attention!



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