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ITALIAN LABOR LAW AND THE POLITICAL STRUGGLE OVER ARTICLE 18

Brian Quigley



Introduction

The Italian labor market is one of the most tightly regulated in the EU. Italian labor laws place strict regulations on the hiring, performance and dismissal of employees. Many employers, economists and center-right officials blame the rigidity in the labor market caused by these regulations for limiting the growth of firms and thus the prosperity of the entire Italian economy.

Italy's Prime Minister, Silvio Berlusconi, supported by center-right politicians and most business leaders, has made it his goal to reform Italy's most restrictive labor law, Article 18. This relatively simple reform has become a controversial issue in Italian politics.

Labor unions, Berlusconi's principal political opponents, have used this issue to stir up opposition to the prime minister and pull together a stronger, more united center-left coalition. Using the proposed reform of Article

18 as a rallying point, union leaders are attempting to gather laborers and those on the center-left to break the stability that Berlusconi has enjoyed during his brief term. This effort is now threatening to erode much of the support Berlusconi needs to pass other reforms he considers vital to Italian economic success.

In this article, I discuss Berlusconi's attempt to reform Italian labor law. After a brief explanation of Italian labor restrictions and a description of the specific law in question, Article 18, I examine the effects Article 18 has had on the Italian economy. I finish by exploring the political struggle that has erupted over this issue.

Italian Employment Contracts and Labor Restrictions

According to Italian law, firms must sign workers to contracts governed by collective labor agreements between national trade

unions and employers' organizations. Wage rates are set by these collective contracts or, in their absence, by the court. These collective contracts also set standards for trial periods, during which time employers can terminate a worker without incurring additional charges. ("Labor Relations and Social Security")

Contracts limited to a stipulated amount of time are permitted only in certain cases established by law. These cases include "seasonal jobbing, intensification of operations, extraordinary or occasional works and services, and stand-ins for absentee workers whose jobs are protected." ("Labor Relations and Social Security") In all other cases, limited contracts must be established by collective agreements between labor unions and employers' associations.

Temporary employment, in which firms hire workers through temporary employment agencies, just recently has become legal in Italy. Under this type of arrangement, the firm pays the employment agency for the use of its employees and the employees are then paid by the agency. ("Labor Relations and Social Security") This system enables employers to circumvent laws that restrict the hiring of workers for limited periods of time. These arrangements have been permitted in an attempt to meet some of the demands for short-term employees without subjecting workers to the insecurity associated with short-term employment. Although these contracts have added some flexibility to the labor market, their use has been limited. In 1998, only 21,000 workers had made themselves available through limited contracts. (Roma)

Article 18

Of all of the labor regulations, those pertaining to the dismissal of employees are of greatest concern. Italian law divides dismissals into two categories: individual and collective. In both cases, the laws make it very difficult for Italian firms to alter the size of their workforce.

A collective dismissal, or layoff, is defined as the release of five or more employees from a workforce of 15 or more within a period of 120 days. The law establishes that the conditions and form of notice issued to the unions be at

least 22.5 days in advance in layoffs of fewer than ten employees and at least 45 days in all other cases. ("Labor Relations and Social Security") The law does not permit firms to lay off workers for the sake of increased productivity. It allows that type of dismissal only if firms can prove a reduction in production levels, operational transformation or termination of business. These terms can be difficult to prove. Thus, layoffs can require much litigation and cost companies a great deal of time and money.

The regulation of individual dismissals is more complex and has become controversial. These dismissals fall under the jurisdiction of Article 18 of the 1970 Workers' Statute, which "rules on the protection of the freedom and dignity of workers and of trade union freedom and union activity in the workplace, and rules on the public employment service." ("Italy: Workers' Statute") This statute is considered by Italian workers to be their "Bill of Rights," ensuring them fair treatment by their employers and defending them against discrimination and unfair treatment by their employers.

Article 18, which applies to all firms with more than 15 employees, stipulates that a worker under contract may be fired only for "just cause." Just cause is legally defined by three situations: non-performance, frustration or excessive burden. ("Italy: Termination...") Because the three cases that constitute a legal dismissal are extremely difficult to prove, courts almost always rule in favor of the terminated employee, making it nearly impossible for a firm to fire a worker under contract.

If a court rules that the reason is unjust, the employer must guarantee reinstatement. In the event that the firm refuses reinstatement, it must pay the employee remuneration owed from the time of the judge's reinstatement order until reinstatement or until the end of the employment period stipulated in the original contract. The law also stipulates that if the terminated employee is a member of a plant-level trade union, the employer not only must pay the remuneration but also must pay a fee equal to the remuneration to the National Institute of Social Insurance (INPS), making the dismissal of an employee economically unfeasible. ("Italy: Reinstatement")

Knowing that it is difficult to legally sub-

stantiate a just cause for dismissal, firms subject to Article 18 rarely attempt to fire workers. It is easier for them to keep an incompetent worker on staff than to spend the time and resources to prove non-performance in litigation. Thus, the law generates only a small number of cases each year, essentially guaranteeing that no company with more than 15 employees is able to fire any worker under contract. In Italy this is known as the “job-for-life” guarantee, considered by most Italians a national birthright. They believe it is the government’s job to ensure that they will have a job for life and they see Article 18 as the only way to guarantee this. Thus the statute receives a majority of popular support among the working class. (Israely and Wallace)

Although there are similar laws in other European countries, Italy’s Article 18 is the most stringent. Within the EU, Austria and Portugal are the only other nations that enforce reinstatement. There is a movement by the EU to loosen labor laws in several member countries, including Italy, in order to lower production costs. The hope is that by reducing labor costs, companies in the EU will be more competitive in international markets.

Effects of Article 18 on Italian Firms and the Macroeconomy

As discussed previously, proponents of the law (laborers, unions and center-left politicians) maintain that Article 18 simply protects the right to fair treatment by employers and that it guarantees long-term employment to Italian workers. Those fighting for the eradication of the law (employers, economists and center-right politicians) argue that Article 18 creates inefficiencies in the labor market and that these inefficiencies have caused a major drag on individual firm performance and on the growth of the macroeconomy.

One reason Article 18 may be harmful to the Italian economy is that it limits companies’ growth. According to the Organisation for Economic Co-operation and Development (OECD), the higher costs of adjusting workforce size associated with highly regulated labor markets significantly hinder the growth of small firms. (Scarpetta et al) Because the law applies

only to firms with 15 or more employees, firms often decide to remain small rather than subject themselves to the requirements of the law. With a limited workforce, they are not able to increase production beyond a particular point, thus limiting their potential for growth. Because small firms dominate the Italian economy (see article by Cunningham in this issue), enough firms taking this approach would in turn collectively hinder macroeconomic growth.

In addition, as the EU countries become more integrated, the smaller Italian firms may have trouble competing with larger firms in other European countries. According to Eurostat, the average firm size in Italy is only 57% as large as the EU average of 336.33 employees. These larger firms have more capital at their disposal and can use this capital to penetrate the Italian market and outperform Italian companies. This, according to economists, is a threat to Italian economic growth and has been a basis for much of the recent anti-globalization rhetoric in Italian politics.

Article 18 also hinders economic prosperity because it discourages firms from signing employees to long-term contracts. Because it is almost impossible for firms to fire workers who are under contract, it makes more sense for them to hire workers on a short-term basis so that they are not committed to any employee for a long time. As evidence of this, the center-right cites cases such as that of Francesco Bruno, a 30-year-old college graduate who, after years of working several short-term jobs, has given up on ever finding a long-term occupation. “I see myself as a permanent temporary worker,” says Bruno, who is waiting for a return call from Alitalia, a major Italian airline, for another short-term stint as a flight attendant. (Israely and Wallace)

According to those hoping to reform Article 18, cases of job uncertainty such as Bruno’s are becoming more common in Italy. The number of limited contracts permitted by regulators has increased dramatically in recent years. According to Eurostat the number of workers hired on a short-term basis rose by 14% from 1996 to 2001. The reformers attribute this growth in short-term contracts to an increase in the need for a job market with

U.S.-style flexibility and contend that the elimination of Article 18 would provide this flexibility without subjecting workers to the type of job instability they now face under limited contracts.

According to an article in the May 6, 2002, issue of *Time International*, “Berlusconi says Italy can’t compete — and good new jobs will never be created for people like Bruno — if companies feel they can never fire workers.” (Israely and Wallace) The same sentiment is expressed by Antonio D’Amanto, head of Confindustria, the largest employers’ association in Italy, which is fighting to eliminate Article 18. When responding to criticism that the group was interested in the reform to make it easier for them to lay off workers, he stated that they “have never asked for the freedom to fire, but instead for the freedom to hire.” (Israely and Wallace)

Not only does Article 18 give incentive to firms to hire workers under short-term contracts, but it also encourages them to hire workers in the black market. This is considered a negative effect because black market labor is unregulated by the government, which means that those hired in the black market do not receive any government protection and can be forced to work in substandard conditions. As proof that Article 18 encourages companies to hire black market workers, the center-right reports that according to EU statistics only 54.5% of working-age people officially are at work (lowest proportion in the EU) and that the International Monetary Fund (IMF) estimates that 27% of the country’s GDP is produced by black market labor. (“Berlusconi 2, Cofferati 1”)

Strict labor laws, such as Article 18, also may have a negative impact on firms’ productivity. Employment protection laws, such as Article 18, reduce workers’ incentives to work hard and allow them to fail to meet their employers’ expectations. Joe Klein, writing in *The New Yorker* about the battle over Article 18, included a hypothetical example to illustrate how the law creates an inefficient workplace: [Suppose that] “Giovanni the welder has taken up the unfortunate habit of napping on the job, you probably have to go to court to get rid of him. Consequently, there is a fair amount of napping — or the moral equivalent of the same — going on in Italy.” (Klein)

To reiterate, the high costs of attempting to fire an employee act as a deterrent. As a result, many incompetent, lazy or otherwise unproductive workers remain employed, lowering many firms’ productivity. As expected, the productivity of Italian firms lags well behind their European competitors. From 1996 to 1999, unit labor costs in Italy were 17.1% above those in Germany and 16.5% above those in France. During the same period, Italian labor productivity was 12.9% lower than the productivity of German labor and 9.9% behind that of French labor.

According to the OECD, strict labor regulations also have greatly reduced firms’ productivity by reducing their incentives to adopt new technology. This is especially true during times of rapid technologic innovation. The implementation of new technologies usually requires a shift in the optimal mix between physical capital and labor. Because Italian labor regulations raise the cost of adjusting workforce size, any benefit that could be gained by implementing new technologies is offset by the expense of changing the optimal mix.¹ (Scarpetta et al)

This effect contributes to the lack of research and development (R&D) spending among Italian firms. Statistics published by the OECD show that R&D spending by Italian firms is far below that of other major industrialized countries. Whereas R&D expenditures totaled 2.20% of the GDP in France and 2.32% in Germany, Italy spent only 1.03% of its GDP.

Another criticism of Article 18 is that the rigidity in the labor market it creates prohibits firms from shedding excess workers during times of economic contraction and prevents firms from hiring more workers during periods of economic growth. “Article 18 discourages firms from hiring, deters foreign firms from investing in Italy and is a deadweight on business, especially in the country’s poor southern regions, argues the Confindustria...” (“The Trade Unions Hit Back...”) With firms unable

¹This helps explain why U.S. firms, which operate in a relatively flexible labor market, held such a large lead over their European counterparts, who have rigid labor markets, in the implementation of communication technologies in the 1990s. This well documented lead was one of the main reasons that the U.S. economy enjoyed much more rapid growth during this time.

to fire workers during economic recessions, they cannot cut down on excess expenses and make improvements in productivity, which would otherwise spark economic recovery. Likewise, during periods of prosperity, firms' reluctance to hire more than 14 employees hinders their ability to expand production, thus impeding the growth of the entire economy.

In the same way that the law prevents existing firms from growing during economic expansions, Article 18 also may hinder economic growth by discouraging the entry of new firms. According to the OECD, "empirical analysis of entry reveals that market regulations and employment protection legislation (EPL) have a strong effect on market access of small- and medium-sized firms." (Scarpetta et al) The report continues, "there appears to be relatively straightforward evidence that strict regulations on entrepreneurial activity, and high costs of adjusting the workforce, negatively affect the entry of new (small) firms." The report adds an explanation of how a strictly regulated labor market can produce slower economic growth:

Low administrative costs of start-ups and not unduly strict regulations on labor adjustment in the United States are likely to stimulate potential entrepreneurs to start on a small scale, test the market and, if successful with their business plan, expand rapidly to reach the minimum efficient scale. In contrast, higher entry and adjustment costs in Europe may stimulate a pre-market selection of business plans with less market experimentation... In a period (like the present) of rapid diffusion of a new technology (information and communication technology), greater experimentation may allow new ideas and forms of production to emerge more rapidly, thereby leading to a faster process of innovation and technology adoption.

By limiting the entry and growth of small firms, Article 18 limits the creation of employment opportunities. Furthermore, by impeding the entry and expansion of small firms, which could be a major source of economic growth, this law is eliminating a force that could lead Italy out of its current recession.

Political Struggle over Labor Law Reform

The Italian political system has suffered from instability since its reconstruction following World War II. In this country, where the governments seem to change with the seasons, prime ministers and their cabinets rarely are in power long enough and usually do not hold enough of a majority to pass any meaningful reforms. This, however, has not been the case during the past few years. Prime Minister Silvio Berlusconi, who in his first two years in office (2001–2003) has enjoyed unprecedented support, is making a serious attempt to push through several economic reforms that he and others in the center-right believe would help Italy become more competitive in the global economy.

At the top of Berlusconi's list is the proposed reform of Article 18. This proposal, which would effectively abolish Article 18, has become an intensely debated topic in Italian politics. The issue has inflamed Berlusconi's opposition and threatened to erode much of his support.

The main forces behind the proposed reforms to Article 18 have been the Confindustria and the center-right government under the leadership of the Prime Minister. These groups are attempting to completely eliminate Article 18 — the first step in a series of economic and political reforms that Berlusconi's government claims it will put in place to promote sustained economic growth.

Those hoping to reform Article 18 have been staunchly opposed by labor unionists and political officials on the center-left, who have come together under the leadership of Sergio Cofferati, the former head of the CGIL, Italy's largest and most militant labor union. This group is determined to stop Berlusconi from succeeding in his attempt to abolish what they feel is their only protection against employers who wish to take advantage of their workers. They are using this issue as a means of strengthening support for their coalition, which fell apart before the national election in the spring of 2001 and allowed Berlusconi's center-right government to grab control of the Parliament.

There has been a wave of escalating tension surrounding this issue since the spring of 2001. On March 19, 2002, Marco Biagi, a prominent labor economist and consultant to Berlusconi's center-right government, was shot in what is believed to be a politically motivated assassination. Biagi was notorious for supporting welfare and labor law reform. The Red Brigade, an ultra-left-wing terrorist group, claimed responsibility for the slaying. In an attempt to harm the image of the union many center-right government officials proclaimed that the group, responsible for various terrorist attacks in Italy during the 1970s and 1980s on behalf of the communist movement, is working in connection with union leaders. This accusation was denied fervently by Cofferati and the CGIL.

To show its defiance, the CGIL went on with a previously planned protest on March 23, 2002. Between one and two million people assembled in Rome's Circus Maximus to protest Berlusconi and his proposed reform. Then on April 16, Cofferati succeeded in convincing Italy's two smaller national trade unions, the CISL and the UIL, to join his CGIL in a nationwide strike, the first such strike since 1982. These events were planned not only to protest the planned reforms to Article 18 but also to demonstrate their disapproval of both the center-right government and Berlusconi himself.

Finally in June 2002, the two smaller unions, the CISL and the UIL, reached a controversial agreement with Berlusconi's government on an alteration of Article 18. In this agreement both sides made compromises. Instead of the complete eradication of Article 18, Berlusconi agreed to suspend the law only for a three-year trial period for small firms planning to expand above 15 employees. The agreement does not fully meet Berlusconi's original goal to eliminate the article but is seen by the center-right as an important step in the right direction.

Cofferati, as expected, was enraged by the accord. On July 8, 2002, he resigned from his position as leader of the CGIL to pursue ambitions in politics. He has vowed to fight this agreement and promises to take his case to Italy's Constitutional Court to have the reform overruled.

Most observers believe this reform is necessary to promote economic growth and that it is not a drastic change for most Italian workers. In reality less than one-third of the Italian workforce is covered by Article 18,² yet several million laborers not covered by the law support the unions' stance. And even though most left-wing economists agree that the proposed reform is beneficial to the Italian economy, many unionists are starkly opposed to any alteration of the law. It appears as though Cofferati is using this issue as a rallying call to pull together a left-wing coalition that can stand up to and compete with the center-right coalition that won election in 2001.

On the other side of the struggle, Berlusconi apparently is determined to force this reform through before moving on to tackle more important issues that he has promised to address such as pension, healthcare and education reform. With his comfortable majority in Parliament, it may be possible for Berlusconi to push the reform through even without union support. However, the Prime Minister, who was ousted from office in 1994 after just seven months because of a series of general strikes, must be careful that he does not give the opposition a point around which it can unite.

Gaining the support of the UIL and CISL was an important step in Berlusconi's quest to abolish this law, but the battle is not yet won. The formation of a sizeable left-wing coalition under Cofferati's leadership could be disastrous for Berlusconi's government, which has gained most of its success because of the many divisions and lack of central leadership among the left-wing parties. If Berlusconi hopes to remain in power long enough to pass all of his reforms, he must find a way to eliminate Article 18 without greatly upsetting laborers and union leaders. If unable to do this, he may have to hold off on this reform until economic conditions improve and he is able to gain more support.

²This is because most workers are either employed by companies that have fewer than 15 workers and therefore are not subject to Article 18's restrictions or they are employed in black market operations.

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