SIPTU

Consultation on Ireland's Action Plan on the Promotion of Collective Bargaining

May 2025

Fairness at Work and Justice in Society

Index

Introduction

SIPTU (the Services Industrial Professional and Technical Union) is Ireland's largest trade union with members employed in the public, private and community sectors across a wide range of industries including services, manufacturing, transport, energy, aviation, construction, public administration, community and health.

SIPTU organises and represents workers in both the Republic of Ireland and Northern Ireland. Therefore, our Union is expert in the employment law and industrial relations institutions and practices of both jurisdictions. We are the single most frequent user of the State's industrial relations third party institutions in the Republic and frequently represent members at third party institutions in Northern Ireland.

We engage in collective bargaining on behalf of members in both jurisdictions. In the Republic we are frequently blocked or vetoed by employers from engaging in collective bargaining on behalf of members. This is because the so-called voluntarist system of industrial relations in the Republic allows employers to refuse to participate in collective bargaining and provides workers with no avenue to vindicate their right to collective bargaining. Effectively workers are prevented from voluntarily engaging in collective bargaining by employers who hold a veto over their employees' choice of agency.

SIPTU welcomes the opportunity to make this submission to the Department of Enterprise, Trade and Employment's public consultation on Ireland's action plan on the promotion of collective bargaining. We further welcome the stated objective of the consultation being to gather views on the content of Ireland's national action plan and how Ireland can progressively increase and promote collective bargaining. This is the correct approach given that the EU Directive on Adequate Minimum Wages (AMW), transposed by Ireland in November 2024, commits the State to both promoting collective bargaining between employer representatives and trade unions and to increasing collective bargaining coverage across the labour market. In addition, in the Programme for Government, the Government committed to finalise Ireland's national action plan by the end of 2025. In other words, the consultation, the framework of enabling conditions and the national action plan are about how Ireland now goes about promoting collective bargaining and increasing collective bargaining rates and not about whether workers should have a right to engage in collective bargaining as some employer spokespersons may argue.

SIPTU welcomes the statement by Minister for Enterprise, Tourism and Employment, Peter Burke, that he is committed to working with the social partners to finalise the plan to promote collective bargaining and increase collective bargaining coverage. When announcing the public consultation, the Minister stated that,

"A strong and well-functioning collective bargaining system is an important element in the economy to support and promote fair wages, particularly in low paid sectors. Collectively bargained agreements also play a positive role in increasing productivity for businesses and promote the protection of industrial harmony, which is critical to our economy. I hope that Ireland's action plan will be instrumental in promoting collective bargaining and raising Ireland's collective bargaining rates."

Minister Burke's comments reflect the view of the majority of TDs in the current Dáil. There is cross-party consensus among TDs on the need for legislation to promote collective bargaining, protect workers and ensure the right of workers access to a union. Both Minister Burke and the Minister of State for Small Business and Retail, Alan Dillon, signed the Respect at Work general election pledge on the need for such legislation. The pledge stated,

"I pledge to support legislation which promotes collective bargaining, protects workplace representatives and ensures the right to access a trade union at work."[1]

There has been increasing acknowledgement across Irish society of the positive role of trade unions and collective bargaining. This has also been an increasing recognition of the need for legislative support for collective bargaining. For example, in addition to the pledged position of the majority of TDs in the current Dáil, over 96% of the citizens who made up the 2021 Citizens Assembly on Gender Equality recommended,

"Establishing a legal right to collective bargaining to improve wages, working conditions and rights in all sectors."[2]

A 2023 Irish Human Rights and Equality Commission (IHREC) report on collective bargaining and the Irish Constitution, written by employment law experts, concluded that there would be no constitutional impediment to introducing a statutory right to collective bargaining.[3]

The Supreme Court, in a significant ruling by Judge Hogan in 2024, issued a positive interpretation of the trade union activities of organising, campaigning and industrial action. Judge Hogan stated that the constitutional right to form trade unions likely implies,

"at least some—perhaps as yet undefined—zone of freedom for those unions to organise and campaign. The effet utile of this constitutional provision would otherwise be compromised."[4]

SIPTU stands ready to play our part in promoting collective bargaining among non-union workers and engaging in

[1]Respect at Work website https://respectatwork.ie/
[2]Recommendations of the Citizens' Assembly on Gender Equality 24th April, 2021. Press release.
[3]Eustace A. Kenny D. Collective Bargaining and the Irish Constitution – Barrier or Facilitator. Irish Human Rights and Equality Commission Research Report. 2023
[4]H.A. O'Neil Ltd v Unite 2024

constructive, meaningful and informed negotiations on behalf of workers who are members of this Union at both enterprise level and cross-industry or sectoral level.

Ireland's current low level of collective bargaining coverage (relative to other EU Member States) and the continuing failure to provide workers with a statutory right or mechanism to vindicate their right to bargain collectively with their employer are major deficits in Ireland's employment law and industrial relations framework.

Ireland's system of industrial relations has been described by a leading expert in employment law as providing one of the weakest legal protections for collective bargaining rights in the Western industrialised world. This system supports employers' capacity to refuse to deal with trade unions and engage in collective bargaining with their employees.[5]

SIPTU has pursued numerous cases on behalf of members wishing to establish collective bargaining in their workplace in order to participate in negotiations on wage setting. Cases have been pursued under the appropriate legislation to the Workplace Relations Commission and the Labour Court. In the following cases, but not limited to these cases, the Labour Court has recommended that the employer recognise SIPTU for the purpose of collective bargaining:

LCR22112
LCR22113
LCR22732
LCR21501
LCR22263

In all of the above cases, the employers have refused to implement the recommendations of the State's industrial relations machinery and have continued to veto their employees' right to collective bargaining with absolute impunity. In the face of such intransigence, the only option for these employees to vindicate their right to collective bargaining is by taking industrial action. Strike action should not be the cost of a basic human right. Progress cannot be made on promoting collective bargaining and increasing collective bargaining coverage if this fundamental barrier in Irish employment law and industrial relations practice is not addressed.

In a case referred by SIPTU, the National Contact Point (within the Department of Enterprise, Trade and Employment), recommended that a significant employer in the medical devices sector should recognise SIPTU for collective bargaining purposes. The employer refused to implement the recommendation of the National Contact Point. It is worth noting that the employer in question does in fact successfully engage in collective bargaining with SIPTU in two other plants in the Republic of Ireland but refuses to do so in the plant in question. This employer continues to veto their employees' right to collective bargaining with absolute impunity.

One of the mechanisms available to the State to promote collective bargaining and increase bargaining rates is to incentivise employers to engage in collective bargaining by means of access to lucrative public contracts and public funds. State Agency assistance being afforded to any enterprise should be contingent upon such enterprises engaging in collective bargaining in employments where employees wish to do so.

In all of the above cases, the employers have refused to implement the recommendations of the State's industrial relations machinery and have continued to veto their employees' right to collective bargaining with absolute impunity. Progress cannot be made on promoting collective bargaining and increasing collective bargaining coverage if this fundamental barrier in Irish employment law and industrial relations practice is not addressed.

In addition to the lack of a statutory right to engage in collective bargaining, workers in Ireland face profound obstacles when attempting to organise a trade union in their workplace so as to participate in collective bargaining. Both academic research and our experience on the ground shows that there is a representation gap in Ireland whereby there are employees who wish to join a union but are unable to do so. Recent research conducted by industrial relations academics at University College Dublin showed that 44% of non-union workers and over two thirds of non-union workers aged 16-24 would vote to establish a union in their workplace.[6] However, these workers have limited access to trade union representation and unions face considerable challenges in accessing workplaces. Therefore, workers who wish to be represented by a union and engage in collective bargaining do not always realise this goal thus the representation gap. Some commentators representing employers have claimed that workers are not interested in joining unions but the data shows this not to be the case. The representation gap can be effectively addressed by the framework of enabling conditions and national action plan. This is an opportunity to ensure that the current obstacles to workers achieving their aspiration are lifted.

In this submission SIPTU will describe, based on first-hand experience and academic research, the kind of penalties and victimisation that workers encounter when engaging in or attempting to engage in union activity in the workplace in the Republic of Ireland. Union hostile employers who wish to prevent collective bargaining taking place deploy considerable resources to suppress any trade union presence in the workplace and actively block access to trade union representation and support through union-busting strategies.

[5]Doherty, M. When You Ain't Got Nothin', You Got Nothin' to Lose. Union Recognition Laws, Voluntarism and the Anglo Model. Industrial Law Journal, 42(4) 2013.
[6]Geary, J. & Belizon, M. Union voice in Ireland first findings from the UCD working in Ireland survey 2021. 2022.

The EU Directive on Adequate Minimum Wages refers to the causal link between union busting and declining collective bargaining coverage in Europe. Recent academic research demonstrates how prevalent and pernicious union busting is in Ireland and the chilling effect it has on the establishment of collective bargaining let alone its promotion.

Workers in Ireland do not have the protections from victimisation, discrimination and union busting that workers in other EU Member States enjoy. Workers in Ireland urgently need legislation which would protect them while exercising the wish to participate or participating in collective bargaining on wage-setting and that would protect workers and trade union representatives from acts that discriminate against them in respect of their employment on the grounds that they participate or wish to participate in collective bargaining. In the absence of legal protections, workers will continue to be exposed to union-busting and discrimination effectively rendering the Government's obligation to increase collective bargaining rates unachievable.

The failure to vindicate collective bargaining rights combined with union-busting activities is a denial of a fundamental human right. It is also a suppression of industrial democracy. Furthermore, it undermines employees' living standards and life-quality. The failure to vindicate collective bargaining rights and to protect workers from union busting activities also depresses productivity, enterprise efficiency and competitiveness.

SIPTU's submission addresses three crucial matters that will have to be legislated for if the State is to achieve its goal of promoting collective bargaining and increasing collective bargaining coverage, these are:

1) workers' right to participate in collective bargaining;

2) workers' right of access to information and support from unions;

3) protections for workers and trade union representatives from discrimination and victimisation for participating in or wishing to participate in collective bargaining.

The national action plan to promote collective bargaining coupled with the implementation of the framework of enabling conditions is a critical juncture in Irish industrial relations. It provides the State with an opportunity to reform legislation and our system of industrial relations in order to promote collective bargaining. It is an opportunity to address the current lacunas in the system and bring Irish industrial relations into the 21st century. In this submission we outline specific measures that if adopted will result in more democratic, efficient and productive industrial practices in Ireland.

In addition to fulfilling its legal obligations in accordance with the AMW Directive, strengthening collective bargaining rights and protections for workers who wish to unionise will bring Ireland into line with provisions of other transnational charters and international guidelines including the Universal Declaration on Human Rights; Charter of Fundamental Rights of the European Union; European Convention on Human Rights and OECD Guidelines for Multinational Enterprises on Responsible Business Conduct.

Summary of Recommendations

1. Legislate for the right of workers to engage in collective bargaining at enterprise level. This engagement shall commence upon a union(s) being substantially representative of the employees.

2. A statutory good faith bargaining process shall immediately commence once the substantially representative benchmark has been met. This non-exhaustive list shall include recognising and bargaining with the other bargaining representatives; attending, and participating in meetings; disclosing relevant information; responding to proposals made by other bargaining representatives' giving genuine consideration to the proposals of other bargaining representatives; refraining from capricious or unfair conduct.

3. Failure to comply with any proviso of the good faith bargaining process at enterprise level shall result in fines and penalties.

4. Legislate for the right of workers to engage in collective bargaining at sectoral level. This engagement shall commence upon a union(s) being substantially representative of the employees. Similar to the enterprise level, a statutory good faith bargaining process shall commence once the substantially representative benchmark has been met and its provisos will be similar to that listed above in enterprise bargaining, including appropriate fines and penalties.

5. Legislate to remove the employer veto on sectoral collective bargaining by charging the Labour Court with drawing up an Employment Regulation Order.

6. Promote collective bargaining by incentives, limiting access to public procurement contracts; public funds and state agency assistance to employers engaging in collective bargaining where employees wish to do so.

7. Establish a dedicated fund for trade unions and employer organisations to conduct research on pay and conditions, economic trends and productivity. Support advanced negotiation and mediation skills training for trade union and employer representatives.

8. Legislate for workers' right to access a trade union in the workplace (including digital access).

9. Ban union-busting practices by (a) legislating to afford protections to trade union members against detrimental acts short of dismissal on the grounds of their trade union membership or trade union activity; (b) legislating to ensure that trade union members cannot be required to enter non-disclosure agreements in relation to claims of dismissal or penalisation based on their trade union membership or activity.

1. Vindicating the Right to Collective Bargaining

1. Collective Bargaining, Human Rights and Economic Efficiency

The following surveys the issues of human rights; the so-called voluntarist industrial relations system; and the social and economic benefits of collective bargaining.

(a) Collective Bargaining and Human Rights

". . . if one views employment as a purely economic transaction, with labour as a commodity being sold as a sack of flour, then (human rights) make no sense. However, if one understands employment as a relationship among human beings in an organisation that constitutes a type of society, ideas such as human rights . . . potentially applicable. . . That collective bargaining is included among the human rights of employees can be grounded on (the) documents of international bodies such as the International Labour Organisation and the United Nations".

Collective Bargaining Is a Fundamental Human Right, Friedrich-Ebert-Stiftung[7]

"Both freedom of association and effective recognition of the right to collective bargaining are fundamental human rights at work, enshrined in the International Labour Organisation Constitution since 1919."

Work in Freedom, International Labour Organisation[8]

"Exercising the right to collective bargaining provides an essential basis to the realisation of other fundamental human rights, particularly in relation to the protection of structurally vulnerable groups in the workplace."

Irish Human Rights and Equality Commission[9]

The Irish State, through its international treaty commitments, implicitly accepts that collective bargaining is a human right. The United Nations (UN) and the International Labour Organisation (ILO) have defined collective bargaining in terms of a human right.

'The right to bargain freely with employers with respect to conditions of work constitutes an essential element in freedom of association, and trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom the trade unions represent.'[10]

It goes further to state that employer recognition of trade unions for the purposes of collective bargaining is 'the very basis for any procedure for collective bargaining on conditions of employment'

In other treaties, the ILO states that *'collective bargaining should be made possible for all employers and all groups of workers in the branches of activity covered by this Convention.'*[11]

In the fundamental restatement of ILO objectives, the Declaration of Philadelphia, stated that 'labour is not a commodity' and to vindicate this involved the *'effective recognition of the right of collective bargaining'.*[12] This *'effective recognition'* is again stated in a more recent ILO declaration:

'. . . all ILO Members . . . have an obligation to promote and to realise, . . . the principles concerning the fundamental rights which are the subject of those Conventions, namely. . . freedom of association and the effective recognition of the right to collective bargaining.'[13]

At the European level, the EU's Charter of Fundamental Rights states that workers and employers, have the right to *'negotiate and conclude collective agreements at the appropriate levels'.*

In addition, the European Social Charter provides that *'all workers and employers have the right to bargain collectively'.*

The whole thrust of international treaties and declarations is moving towards greater participation rights by workers and their representatives, of which the right to collective bargaining is fundamental. Based on the European Convention of Human Rights, the European Court of Justice held, in Demir and Baykara v Turkey:

'…having regard to the developments in labour law, both

[7]Collective Bargaining Is a Fundamental Human Right, Hoyt Wheeler, Friedrich-Ebert-Stiftung
[8]Freedom of Association and Collective Bargaining, Work in Freedom, International Labour Organisation
[9]Collective Bargaining and The Irish Constitution—Barrier or Facilitator? Dr Alan Eustace and Professor David Kenny, Irish Human Rights and Equality Commission
[10]Compilation of decisions of the ILO's Committee on Freedom of Association (ILO 2018) [1232].
[11]C154 - Collective Bargaining Convention, 1981 (No. 154)
[12]LO Declaration of Philadelphia: Declaration concerning the aims and purposes of the International Labour Organisation
[13]ILO Declaration on Fundamental Principles and Rights at Work (1998) (as amended in 2022)

international and national, and to the practice of Contracting States in such matters, the right to bargain collectively with the employer has, in principle, become one of the essential elements of the 'right to form and to join trade unions for the protection of [one's] interests' set forth in Article 11 of the Convention.'[14]

Given this, the establishment of collective bargaining mechanisms which neither party -employee or employer- have the right to veto becomes an imperative in order to fulfil our international obligations and vindicate what is a fundamental right of workers.

(b) Ireland's "Voluntarist" System of Industrial Relations

It is often stated that Ireland's "voluntarist" system precludes a requirement that parties engage in collective bargaining. However, this argument is based on a false premise. Ireland does not operate a voluntarist system. It is a one-sided voluntarist system, or an employer-veto system.

Employers have the right to bargain collectively, usually through the process of owners appointing an agent (usually management) to bargain on their behalf. Individual owners do not bargain with employees. This is done through their agent; that is, through their agent-management owners bargaining collectively with employees.

Employees, however, have no such right. They may appoint their agent – a representative trade union – but the employers are not compelled to either recognise the employees' agent or enter into collective bargaining with them.

In effect, employers have a right to bargain collectively. They can 'voluntarily' opt to do so. However, employees do not have this right. They cannot 'voluntarily' opt to bargain collectively. Employers essentially have a veto over employees' attempt to bargaining collectively.

It can hardly be described as voluntary if only one side can voluntarily participate in collective bargaining while another is disbarred from the process.

In the north of Ireland, trade unions can request to be 'recognised' by an employer, either voluntarily or formally through the Industrial Court, where certain criteria are met. Currently there is a requirement for the workplace to have at least 21 employees before that request to be recognised can be made. However, the Good Jobs Bill which will be legislated for in that jurisdiction intends to lower the recognition threshold for trade unions from 21 to 10 employees *"so that a greater number of workers here can access a trade union."*[15]

SIPTU's proposals are premised on providing both employers and employees with the same rights in the negotiation process and providing employees with the voluntary option of engaging that process collectively. Implementation of our proposals would effectively introduce a truly voluntarist system.

(c) Economic and Enterprise Benefits of Collective Bargaining

Whether at enterprise or sectoral level, it has long been established that collective bargaining results in higher productivity, increased innovation and improved enterprise performance. The OECD found that collective bargaining delivers higher productivity, improving,

'. . . the quality of the employment relationship between workers and firms. It can be a useful tool for self-regulation between workers and employers and bring more stable labour relations and industrial peace, leading to a more efficient allocation of resources, greater motivation and ultimately productivity.'[16]

The EU Commission came to similar conclusions:

'. . . collective bargaining leads to better wage conditions, which may induce employees to work more productively and companies to adapt faster and more smoothly to changed market conditions, thus fostering productivity growth.[17]

A number of studies have found that collective bargaining leads to product innovation[18] and the smooth adoption of technology.[19] McDonnell summarises[20] a number of studies and their positive impact on firm-level productivity:

- Workplaces with a trade union are more likely to demonstrate higher productivity work practices.[21]
- Countries with stronger participation rights, such as collective bargaining, tend to perform better on a number of productivity related measures.[22]
- A positive relationship between collective bargaining and productivity[23]
- Increases in union density lead to increases in firm productivity[24]

Finally, the National Centre for Partnership and Performance found substantial productivity increases in firms with union representation and high-performance work practices.[25]

[14]European Court of Human Rights, Case of Demir and Baykara v. Turkey (Application no. 34503/97)
[15]Department of the Economy, Northern Ireland, 'The 'Good Jobs' Employment Rights Bill. The Way Forward.' April 2025 p. 23
[16]OECD, 'Negotiating Our Way Up: Collective Bargaining in a Changing World of Work', 18th November 2019
[17]EU Commission Staff Working Document Impact Assessment, Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union, October 2020
[18]A. Brysona and H. Dale-Olsenb, 'Union Effects on Product and Technological Innovation', Workplace Productivity and Management Practices, 7 December 2021
[19]Julimar da Silva Bichara, et al, 'Collective bargaining and technological innovation in the EU15: An analysis at establishment level, The World Economy, 2023
[20]T. McDonnell, 'Collective Bargaining - Trade unions, economic performance & inequality', Long Read, Nevin Economic Research Institute, 29th April 2021
[21]High-Performance Work Practices and Sustainable Economic Growth Eileen Appelbaum, Rutgers University Jody Hoffer Gittell, Brandeis University1 Carrie Leana, University of Pittsburgh 20th March, 2011
[22]Building productivity in the UK – policy paper, Acas, 2015
[23]Power to the People: How stronger unions can deliver economic justice, Joe Dromey, IPPR. 2018
[24]Union Density, Productivity and Wages, Erling Barth, Alex Bryson & Harald Dale-Olsen, IZA Institute for Labor Economics, 2017
[25]National Centre for Partnership and Performance, Achieving High Performance: Partnership Works - The International Evidence, Forum on the Workplace of the Future, Research Series | Number 1, 2003

It has long been established that employees benefit from a collective bargaining wage premium.[26] Walsh found, on average, that employees in the Republic of Ireland benefit from a 12% wage increase over those without trade union representation on a like-for-like basis. The biggest beneficiaries are likely to be the lower-paid, through rising wage floors. Higher wage floors achieved through collective bargaining have a number of economic and fiscal benefits:

- Increased sustainable private consumption which benefits enterprises reliant on domestic demand.
- Increased tax revenue and lower expenditure on subsidies to low-paid employers (e.g. Working Family Payment).
- Reduced turnover costs which boost enterprise value-added.

There are a number of other benefits. For instance, the International Labour Organisation found that collective bargaining compresses wage structures and reduces the gender pay gap.[27] This is particularly important given that the gender pay gap in the private sector is a significant 17.6%.[28]

Collective bargaining makes a contribution to environmental sustainability. One Canadian study found that on average, a 1% increase in unionisation tends to reduce emissions by a quarter of a percent in the long run.[29] Furthermore, a study of OECD countries over a period of 45 years shows that unionisation is positively associated with reductions in CO2 emissions.[30] These findings suggest that union membership and collective bargaining promote environmental protection at the national level.

In conclusion, the economic, social, enterprise and environmental benefits of collective bargaining and employee participation have been identified on numerous occasions. It is clear that employers who deny employee wishes to bargain collectively are actively depressing productivity, undermining enterprise performance and suppressing wages. The Government should not be defending or promoting this industrial relations regime.

(d) Provisions in the EU Directive on Adequate Minimum Wages for Member States with Low Bargaining Coverage

Ireland's current overall rate of collective bargaining coverage is approximately 34%. However, less than 1 in 5 workers in the private sector are covered by collective bargaining arrangements.

The average across the EU is 56%.

Article 4(2) of the Directive includes measures specifically for those Member States where collective bargaining coverage is less than 80%.

These Member States are obliged to:

1. "Provide for a framework of enabling conditions for collective bargaining, either by law after consulting the social partners or by agreement with them."

2. "Establish an action plan to promote collective bargaining."

The action plan shall include a clear timeline, and concrete measures, aimed at progressively increasing collective bargaining coverage. The Member State is required to regularly review and update the action plan, with the provision that it must be reviewed at least every five years. Moreover, any updates to the action plan should only be made after consultation with the social partners. Additionally, the action plan and any updates must be made public and notified to the Commission. The Directive empowers the European Commission to monitor the implementation of these obligations. If a Member State fails to fulfil the requirements of Article 4, the Commission can initiate infringement proceedings under Articles 258 and 260 of the Treaty of the Functioning of the European Union. These proceedings could result in the imposition of penalties by the Court of Justice of the European Union (CJEU). Accordingly, the State should work diligently to fulfil its legal obligation to promote collective bargaining and increase bargaining rates in Ireland thereby avoiding the potential implementation of penalties by the CJEU.

In the following sections SIPTU will outline the framework of enabling conditions by law that we believe will best address the current deficiencies in Ireland's employment law and industrial relations mechanisms and will promote collective bargaining and increase bargaining rates.

2. Collective Bargaining at the Enterprise Level

(a) Commencing the Collective Bargaining Process[31]

Where an employer refuses to engage in collective bargaining, the representative union(s) may apply to the Labour Court for a Collective Bargaining Order. A Collective Bargaining Order (Order) shall be granted if the following conditions are met:

1) That the union(s) applying for an Order are 'substantially representative' of the employees in the enterprise, or the bargaining unit within the enterprise;

2) A union(s) shall be considered substantially representative if 30% of the employees in the enterprise or the proposed bargaining unit within the enterprise are members of the union(s) applying for the Order;

[26] 'The Trade Union wage premium in Ireland'. Frank Walsh, School of economics UCD Preliminary Results, NERI Labour Market Conference
[27] Social Dialogue Report 2022 Collective bargaining for an inclusive, sustainable and resilient recovery, International Labour Organisation
[28] Eurostat: https://doi.org/10.2908/EARN_GR_GPGR2CT
[29] Das, A. Does unionisation reduce CO2 emissions in Canada? Environ Sci Pollut Res 30
[30] Alvarez CH, McGee JA, York R (2019) Is Labor Green? A cross-national panel analysis of unionisation and carbon dioxide emissions. Nature and Culture
[31] This responds to Q: 'What are your views on a proposal to have a Good Faith Engagement process at enterprise level which would involve a single mandatory meeting between an employer and a trade union?' and contain SIPTU's proposals to promote collective bargaining.

3) A statutory declaration from the relevant trade union official shall be sufficient to determine if 30% of the employees are members of the union(s).

Once these conditions are met and following a hearing involving the representatives of the employer and the employees, the Labour Court shall issue a Collective Bargaining Order to commence the "good faith" collective bargaining process.

(b) Good Faith Bargaining

Parties to the collective bargaining process shall be required to engage in good faith bargaining. This does not require a bargaining party to make concessions during bargaining for the collective agreement; or to reach agreement on the terms that are to be included in the agreement. However, they will be required to comply with good-faith procedures. The following is a non-exhaustive list of good-faith procedures:

- Recognising and bargaining with the other bargaining representatives for the agreement;
- Attending, and participating in, meetings at reasonable times;
- Disclosing relevant information (other than confidential or commercially sensitive information);
- Responding to proposals made by other bargaining representatives for the agreement;
- Giving genuine consideration to the proposals of other bargaining representatives for the agreement, and giving reasons for the bargaining representative's responses to those proposals;
- refraining from capricious or unfair conduct that undermines freedom of association or collective bargaining (e.g. failure to recognise a bargaining representative; not permitting an employee who is a bargaining representative to attend meetings; dismisses or engages in detrimental conduct towards an employee because the employee is a bargaining representative, deliberately misleading the other party (e.g. not disclosing intentions to restructure if asked may be misleading, etc.)

To ensure that all parties to the bargaining process abide by the good-faith procedures:

- The good-faith procedures shall be based in statute.
- There shall be time limits placed on compliance with specific good-faith procedures.

Proposed time limits: once a Collective Bargaining Order has been issued, the parties to the bargaining process shall hold their first meeting within 30 days; parties shall respond to proposals made by other bargaining representatives within 15 days; parties shall, upon request, disclose relevant financial information within 15 days.

Time limits are necessary to ensure that parties do not deny workplace rights through unwarranted delays. Where delays are unavoidable, parties to the bargaining process may agree a new timeframe.

(c) Fines and Sanctions

Failure to comply with good-faith bargaining, including the time-limits, shall result in fines and sanctions to be applied by the Circuit Court. These fines should be 'effective, proportionate and dissuasive'.

Fines shall be relative to turnover. For example, as per the Commission on Data Protection, fines can be 1% of turnover up to €1 million.

Sanctions shall include exclusion from tendering for public sector contracts and exclusion from receipt of state grants.

(d) Public Database

A public database[32] of enterprise-based collective bargaining processes should be established and maintained by the Labour Court (or similarly relevant agency). This database could include:

- Application for collective bargaining rights in a particular enterprise.
- The awarding of a Collective Bargaining mandate by the Labour Court.
- Status of negotiations (ongoing, suspended, court finding that a statutory protocol has been broken with the penalty or sanction applied, etc.).
- Conclusion of a collective bargaining process stemming from a Collective Bargaining Order.

This public database would include both enterprise-based collective bargaining and sectoral collective bargaining.

3. Sectoral Collective Bargaining

Ireland is at the lower end of the scale across the EU in terms of collective bargaining coverage with a bargaining rate of approximately 34%. All the countries exempt from Article 4 of the AMW Directive (i.e. with collective bargaining coverage of 80% or more) have a comprehensive sectoral bargaining system. Decentralised bargaining systems in which collective bargaining takes place primarily at enterprise level have significantly lower collective bargaining coverage rates.

The strengthening of cross-industry collective bargaining coverage envisaged in the AMW Directive is aimed at introducing or strengthening a comprehensive sectoral collective bargaining system. The latter in the case of Ireland as we already have sectoral bargaining systems

[32]This responds to Q: 'Do you have other views in relation to how negotiation between social partner on wages could be promoted and facilitated?'

albeit they are in need of legislative reform in order to meet Ireland's legal obligations.

SIPTU engages in sectoral collective bargaining in a range of industries and sectors. Public sector wages are set through a well-established centralised bargaining system involving multiple trade unions representing various grades and categories of workers. SIPTU engages in sectoral bargaining in a range of private industries including construction, cleaning and security. SIPTU is vetoed by employer representatives from engaging in sectoral bargaining (though the sectoral mechanisms are legislated for and already established) in industries including hospitality, catering, retail and agriculture.

Over the last decade SIPTU has committed very significant financial and personnel resources to organising workers in the Early Years (childcare) sector so that wages and quality could be raised by participating in sectoral collective bargaining.

The Early Years Joint Labour Committee was established in 2021 and there have been two collectively bargained industry-wide statutory collective agreements setting wages and various working conditions to date. Over 30,000 workers are covered by this sectoral collective bargaining. The workers are represented by SIPTU and the employers by IBEC/Childhood Services Ireland and the Federation of Early Childhood Providers which is affiliated to ISME.

The establishment of sectoral collective bargaining in Early Years in recent years is pertinent to the national action plan and the framework of enabling conditions because it provides an example of the following:

1) Successful promotion of collective bargaining among low paid non-union workers by a trade union

2) A large number of workers (30,000) successfully newly covered by collective bargaining

3) A functioning sectoral bargaining system

4) An overall expansion of collective bargaining coverage in the State.

(a) Triggering the Sectoral Collective Bargaining Process

Where should the threshold of membership be set, whereby the process of sectoral collective bargaining is initiated?

- Where 10% of employees in the proposed bargaining unit in the sector are in trade union membership; or
- Where 1,000 employees in the sector or proposed bargaining unit in the sector are in trade union membership;
- Whichever of the two thresholds is lower

The threshold shall be considered met by a statutory declaration from the relevant trade union official.

(b) Participants in the Bargaining Process

- Employees will be represented by the union that initiated the process, along with other unions significantly representative of employees in the sector, or proposed bargaining unit, and choose to participate in the process.

- Employers will be represented by the employer organisations that are representative of employers in the sector, or proposed bargaining unit, and choose to participate in the process.

(c) Good Faith Bargaining

All parties to the bargaining process shall comply with Good Faith Bargaining protocols. These protocols shall be similar to the protocols listed above under enterprise-based collective bargaining. This includes time-limits as per above under enterprise-based collective bargaining.

Protocols shall be statutorily based and time limited.

(d) Removing the Employer Veto[33]

The Final Report of the LEEF High Level Working Group on Collective Bargaining addressed the employer veto on sectoral collective bargaining,

'One key incentive to participation is to establish a process for proceeding with an ERO in the event employers, in accordance with fair procedures, are given all reasonable opportunity to engage, but decline to do so.'

In such a circumstance,

- Where employers fail to make nominations to the sectoral bargaining process ('fail to show up'), the Labour Court shall be charged with drafting a collective agreement (an Employment Regulation Order (ERO), based on the employees' submission), for consideration by the Minister.

- Where employers engage in a Joint Labour Committee (JLC), and the JLC fails to adopt or formulate proposals, and no further progress can be made . . .the Labour Court, where it deems it in the best interests of the sector, can finalise the process by drafting an ERO for consideration by the Minister.

(e) Fines and Penalties

Unlike enterprise-based collective bargaining, sectoral bargaining is undertaken by representative organisations. Therefore, the fines and penalties listed above may not be appropriate.

- A schedule of flat-rate fines to be established and levied against bargaining organisations in the event of a finding of non-compliance with protocols.

[33]This responds to Q: 'Do you have views in relation to the operation of Joint Labour Committees and how social partners can be incentivised to participate in them?'

(f) SEO Inspectors

Replicate the provisions of section 52 of the Industrial Relations Act 1946 "Powers of Inspectors" in Chapter 3 of the Industrial Relations (Amendment) Act 2015 to give the Labour Inspectorate the same powers with respect to SEOs as they have with EROs.

(g) Public Database[34]

A public database of sectoral-based collective bargaining processes should be established and maintained by the Labour Court (or similar relevant agency). This database could include:

- Application for collective bargaining rights in a particular sector or bargaining unit
- The awarding of a Sectoral Collective Bargaining mandate by the Labour Court
- Status of negotiations (ongoing, suspended, court finding that a statutory protocol has been broken with the penalty or sanction applied, etc.).
- Conclusion of the collective bargaining process stemming from a Collective Bargaining Order.

(h) Accessing Information[35]

Information required for enterprise collective bargaining should include full financial transparency; at least as transparent as a full financial filing with the Companies Registration Office, including contemporary financial developments in the enterprise.

Information required for sectoral collective bargaining, in addition to the above where relevant (exempting micro enterprises), the Central Statistics Office to publish data on profits (gross operating surplus, capital compensation) at detailed NACE level, at the same frequency as data on earnings.

4. Union Access and Promotion

(a) Training and Capacity Building[36]

To ensure the effectiveness of collective bargaining, particularly at the sector or cross-industry level, the State should invest in training and capacity-building activities for social partners, such as:

- Establish a dedicated fund for trade unions and employer organisations to conduct research on pay and conditions, economic trends and productivity.
- Support advanced negotiation and mediation skills training for trade union and employer representatives. A funding grant to the main employer and employee representative federations to build their capacity to support sectoral bargaining of (e.g. €250,000) per year for three years.
- Support membership engagement training for trade union and employer representatives.
- Support trade union and employer representatives' organisational capacity to engage with those covered by a collective bargaining process.
- Support trade union and employer representatives' organisational capacity to engage marginalised and low paid workers, including but not limited to, women workers, migrant workers, members of the travelling community, young workers and workers with disabilities to ensure their equal access to collective bargaining
- Encourage cross-industry knowledge sharing to strengthen the capacity of social partners to engage in informed negotiations

The Government shall further support employer and employee organisations to develop their capacity to engage in sectoral collective bargaining.

- A state subsidy of (e.g. €25,000) to each bargaining side (union and employer association) for each sectoral bargaining process.
- For each sectoral bargaining process, a government funded neutral expert facilitator (a 'bargaining support person') to be available to help both bargaining sides to navigate the process and content requirements of the sectoral bargaining process; and support constructive and efficient bargaining.

(b) Trade Union Access to the Workplace and Employees

The European Union Directive on Adequate Minimum Wages requires Member States to promote collective bargaining and ensure that social partners can engage in "constructive, meaningful and informed negotiations".

A fundamental prerequisite for this is to ensure all workers can meaningfully discuss their issues and priorities with the union[37] negotiating on their behalf and give an informed mandate to the union for negotiations to proceed. In particular, migrant workers can face obstacles to participating in pay negotiations due a lack of access to information, local social networks or language barriers.

The state must take proactive steps to facilitate trade union access to workers at both company and sectoral levels. This is necessary to ensure to:

- Accurately identified workers' issues and priorities.
- Establish a strong and democratic mandate for negotiations.

[34] This responds to Q: 'Do you have views in relation to the operation of Joint Labour Committees and how social partners can be incentivised to participate in them' and Q: 'Do you have other views in relation to how negotiation between social partner on wages could be promoted and facilitated?'

[35] This responds to Q: 'Do you have views on how the social partners could better access the information required to engage in negotiations'.

[36] This responds to Q1: 'Do you have views in relation to training or other capacity building activities which would assist the social partners to engage in collective bargaining?'

[37] This responds to Q2: 'Do you have views as to whether a statutory entitlement should be introduced to allow for trade union access to the workplace, or activities within the workplace, for the purposes of the promotion of collective bargaining even in the case that an employer has not given permission for such activities in the workplace?

- Encourage transparency and informed dialogue between social partners.
- Inform workers of any pay proposals and ballot for acceptance or rejection.

In the absence of trade union access to workers, a wage-setting process risks being one-sided, lacking legitimacy and fail to secure a democratic mandate from workers.

In Northern Ireland, workers have well established statutory rights in relation to the right to access information and support. In fact, as part of the Good Jobs agenda and legislation, it is intended to enhance existing rights. Trade union officials have a statutory right to access workplaces in limited circumstances, such as during a collective redundancy process. There are currently no specific rights to permit access for purposes such as the operation of a trade union in a workplace, or to discuss trade union recruitment and membership with non-union members. However, this obstacle is about to be removed. The Good Jobs legislation will provide trade unions with the right to request access to workplaces, including digital access. While it is intended that employers would not be able to unreasonably withhold access to workplaces from trade union officials, such access will not be automatic and will require adherence to certain provisions such as only entering during reasonable times and in compliance with health and safety and security arrangements on site.

ILO Conventions and Recommendations and decisions of the ILO Committee on Freedom of Association have established the following to support the principles of freedom of association and the right to collective bargaining:

- Workers' representatives should be granted without undue delay access to the management of the undertaking and to management representatives empowered to take decisions, as may be necessary for the proper exercise of their functions.
- Workers' representatives should enjoy such facilities as may be necessary for the proper exercise of their functions, including access to workplaces.
- Workers' representatives should be granted access to all workplaces in the undertaking where such access is necessary to enable them to carry out their representation function.

In regard to non-unionised workers, negotiations between employers and organisations of workers should be encouraged and promoted.

No person should be dismissed or prejudiced in employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment.[38]

Specifically, the State should:

- Introduce a statutory right guaranteeing designated trade union representatives access to workers and workplaces, both in-person and digitally, to engage with workers on union matters, including (1) worker issues, (2) pay negotiations, and (3) pay proposals.
- Introduce a statutory right guaranteeing workers' access to a designated trade union representative in their workplace to discuss union matters, including (1) wages, and (2) pay negotiations.
- Provide mechanisms to ensure that designated trade union representatives and/or Shop Stewards can meet with workers in a manner that does not interfere with business operations but remains effective for worker engagement.
- Require companies to provide reasonable facilities for designated trade union representatives and Shop Stewards to engage with employees, including access to break rooms or online communication platforms.
- Public relations campaign across all state agencies to promote collective bargaining, in literature, promotional material (including WRC, Citizens Information, Enterprise Ireland).
- Schools' awareness campaign on collective bargaining and trade unions.
- Designated Minister to oversee and report on the implementation of the AMW Action Plan and efforts to achieve 80% collective bargaining coverage and an annual audit of collective bargaining coverage.

5. Protections for Workers and Trade Union Representatives

Union Busting

Recital 16 of the EU Directive on Adequate Minimum Wages cites a causal link between a decline in collective bargaining structures and trade union membership and the practice of union-busting,

"While strong collective bargaining, in particular at sector or cross-industry level, contributes to ensuring adequate minimum wage protection, traditional collective bargaining structures have been eroding during recent decades, due, inter alia, to structural shifts in the economy towards less unionised sectors and to the decline in trade union membership, in particular as a consequence of union-busting practices"

[38] ILO Freedom of Association. Compilation of Decisions of the Committee of Freedom of Association, sixth edition. 2018

Additionally, provisions to protect the right to collective bargaining and safeguard workers and trade union representatives from retaliation form part of the EU Directive on AMW. These provisions transpose Articles 1 and 2(1) of the International Labour Organisation (ILO) Convention No. 98 (1949) on the Right to Organise and Collective Bargaining, making them legally binding for Member States.[39]

These provisions require Member States to:

c) "take measures, as appropriate, to protect the exercise of the right to collective bargaining on wage-setting and to protect workers and trade union representatives from acts that discriminate against them in respect of their employment on the grounds that they participate or wish to participate in collective bargaining on wage-setting".

d) "for the purpose of promoting collective bargaining on wage-setting, take measures, as appropriate, to protect trade unions and employers' organisations participating or wishing to participate in collective bargaining against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration."

Additionally, Recital 28 suggests that Member States should adopt measures to promote collective bargaining, including, among other things, "easing the access of trade union representatives to workers."

Research conducted by academics at Queens University Belfast in 2024 demonstrated that union representatives (Shop Stewards), particularly working in the private sector, had widescale experience of employers using union busting practices to discourage trade union activity in their workplace or to prevent their employees from engaging in collective bargaining.

The research is based on a survey of 159 workplace representatives from four unions, one of which was SIPTU. According to the research report, 69% of respondents said they have observed at least one form of anti-union behaviour by employers, with the most common being victimisation of union activists (42%) and discouraging workers from joining a union (40%). 29% of respondents said their employer set up alternatives to the union, such as a non-union staff forum, while 25% said their employer denied union organisers access to the workplace. The survey also asked union representatives if, when the union was organising in their workplace, they experienced mental and physical symptoms related to their well-being. It found that 43% of respondents said their well-being was impacted, with burnout, low mood and difficulty relaxing reported as the most common negative well-being outcomes.[40]

Research was published in 2024 by academics at the University of Limerick on trade union officials' views on the current challenges pertaining to increasing collective bargaining coverage.

The research highlights widespread employer tactics to obstruct union access and suppress union membership. It showed that employers routinely engage in a range of anti-union strategies from stonewalling union requests or denying union access to workplaces, to victimising activists or threatening closures.

Over 90% of union officials report victimisation of members, while 82% cite employer use of union-busting consultants. Critically, 81% of employees prevent union organisers/officials from entering the workplace, and 62% restricted opportunities for interactions between union staff and workers in public spaces. These practices, compounded by weak legal protections, have made securing union recognition "more difficult" or "much more difficult" according to 60% of union officials since they began working for the union. The findings underscore the need for robust legislative measures, including statutory recognition rights, penalties for union-busting, and guaranteed workplace access, to align Ireland with EU norms and fulfil the Adequate Minimum Wages Directive's objectives.[41]

(a) Unfair Dismissals

The legislation in Ireland to protect members and representatives of trade unions against unfair dismissal is inadequate to protect the exercise of the right to collective bargaining. Section 6 (2) (a) of the Unfair Dismissals Acts 1977 – 2015 (UDA) sets out that an employee cannot be dismissed for being a member of a trade union, proposing to become a member of a trade union, engaging in union activity outside of working time and engaging in union activity within working time where permission to do so is contained in the employee's contract.

The fact that an employee must have the permission of the employer to engage in union activity within working time means that the protections afforded by the Act are at the gift of the employer and they can be denied to them at any time. If an employer does not wish to afford these protections to the employee, then the employee does not have them. The fact that a trade union member is afforded protection for their status as a member only but with no protection to partake in union activity without an employer's permission fails to recognise that '[t]he right to freedom of association is a pre-existing natural right, inhering in human kind by virtue of its rational and social being and is essential to the exercise of various other rights such as the right to engage effectively in political speech, to organise for industrial purposes or otherwise, to take part in elections, to participate in sporting or cultural events, and many more.'[42]

[39] TASC The EU Minimum Wage Directive and the Battle for Social Europe. Why Denmark's Case at the ECJ Matters for the Future of Ireland and the EU 2025
European Commission. Proposal for a Directive of the European Parliament and of the Council on Adequate Minimum Wages in the European Union. COM(2020) 682 final. 28th October, 2020.
[40] Cullinane N., Hassard, J., Murphy G. Union Busting in Ireland. 2024
[41] O'Sullivan, M. & Murphy, C. (2024) Trade Union Access to Workers: Barriers Faced By Representatives in Ireland Within a Comparative European Context
[42] Equality Authority v Portmarnock Golf Club [2019] IESC 18

Should an employer dismiss an employee for engaging in union activity within working time, then the law currently explicitly provides that they are entirely free to do so. In contrast, in 16 member States[43][2] prior authorisation is required before worker representatives can be dismissed, at least in certain prescribed circumstances.

Union activity takes many forms; organising workers, representing workers and collectively bargaining on behalf of workers are amongst just some examples, none of which can be seen in isolation from each other or from trade union membership. The Act assumes that being a member of a trade union means one of two things; the first is that the trade union member will be a member in isolation from the rest of their co-workers and their employer and/or secondly that being a member of a trade union means all trade union activities are conducted outside of working time. In reality, collective bargaining requires individual workers to come together to "collectively bargain" with their employer while at work.

However, the Act is insufficient to act as a deterrent to employers who want to dismiss employees to stop them organising other employees who want to join and be active in their union and to ultimately come together to collectively bargain.

Should an employee be dismissed for union activity outside of working time or simply because they are a trade union member, the only remedies possible under the Act are compensation, reinstatement or reengagement. However, the latest figures from the Workplace Relations Commission (WRC) on average awards across employment rights cases in 2021 (including awards of compensation for unfair dismissal) stood at just €5,117.42[44]. This amount of compensation does not act as a deterrent to employers wanting to dismiss trade union members whether they are organising other workers in their employment, or not. The requirement under the Act that an employee must mitigate their loss to get any compensation above the four weeks minimum award, regardless of the reason for their dismissal further serves the interests of employers who want to dismiss trade union members and representatives. Given that employees will need to seek and obtain work to have an income, should they find employment within a short period of time post their dismissal, any award made will likely be very low and is no deterrent for an employer to dismiss on these grounds.

Furthermore, in what is described as a "landmark case" in 2024 the Supreme Court has ruled that reengagement, and reinstatement should be reserved for the most exceptional circumstances only.[45] Where an employer has dismissed an employee for trade union activity it is demonstrably arguable that this remedy will be unavailable to them.

Unlike the rest of the unfair grounds in the Act which are automatically unfair, the employee bears the burden of proof that their dismissal was due to their trade union membership or activity. This is yet another onerous measure illustrating that the legislation is inadequate to protect the exercise of the right to collective bargaining.

Much has been made by organisations representing employers that the figures from the Workplace Relations Commission do not indicate a high-volume of unfair dismissal cases based on trade union membership or activity. It is this Union's experience that that these cases are settled by employers either prior to, or after the case being lodged with the WRC, and that these settlements are to disguise there being an issue.

The "protections" afforded by the Act are not a deterrent to prevent the dismissal of a worker for their trade union membership and activity and as such they need to be strengthened as currently, they do not support collective bargaining. Legislation is needed in Ireland to protect trade union members and their designated representatives (such as, but not limited to, Shop Stewards) against dismissal because of their status or reasonable activities as trade union representatives, or on grounds that they participate or wish to participate in collective bargaining.

Recommendation:

Legislate to protect trade union members and their designated representatives (such as, but not limited to, Shop Stewards) against dismissal because of their status or reasonable activities as trade union representatives, or on grounds that they participate or wish to participate in collective bargaining at enterprise level.

(b) Discrimination

There is no legislation in Ireland to protect members and representatives of trade unions from discrimination due to their membership or activities on behalf of a trade union.

"Discrimination" is defined under the Employment Equality Acts 1998 (EEA) as "treating a person less favourably than another person" based on one of the nine grounds set out in the EEA. None of these grounds include trade union membership or trade union activity.

Therefore, an employer may treat an employee less favourably by imposing on them a detriment short of dismissal to prevent them joining a trade union membership and/or participating in trade union activities. This consultation asks about the adequacy of protections from discrimination for workers due to their membership or activities on behalf of a trade union in the context where it simply does not exist. Perhaps this is an issue which is misunderstood by our parliament, when statements are made by government that "Under Irish legislation, an employee cannot be discriminated against or dismissed because they are a member of a trade union".[46] However, there is no such misunderstanding by this Union or its members, as there are no legislative protections for members and trade union representatives against acts of discrimination in Ireland due to their membership or activities on behalf, of a trade union.

[43]"Protection against dismissal for employee representatives", European Trade Union Institute publication. The 16 member states are, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Finland, France, Germany, Hungary, Lithuania, Luxembourg, Netherlands, Poland, Slovakia, Slovenia.
[44]https://www.workplacerelations.ie/en/complaints_disputes/adjudication/review-of-wrc-adjudication-decisions-recommendations/
[45]An Bord Banistíochta, Gaelscoil Moshíológ v the Labour Court [2024] IESC 38
[46]https://www.oireachtas.ie/en/debates/question/2024-07-11/30/

Recommendation:
Legislate to afford protections to trade union members against detrimental acts short of dismissal on the grounds of their trade union membership or trade union activity, or on grounds that they participate or wish to participate in collective bargaining at enterprise level.

(c) Victimisation

The myth on there being protection for members and trade union representatives against acts of discrimination if they wish to organise or join a trade union is debunked above.

There are protections for employees against "victimisation" in Irish legislation. The very limited circumstances in which these protections are afforded to employees are set out in the Code of Practice on Victimisation (SI No. 463 of 2015) and Section 8 of the Industrial Relations Industrial Miscellaneous Provisions Act 2004. These protections can only be invoked once three of four conditions are satisfied.

To invoke these protections against victimisation an employee must prove that their employer does not engage in collective bargaining and, the internal dispute resolution procedures (if any) normally used by the employee and their employer has failed to resolve the dispute, and either steps have been taken to invoke the procedures set out under a further code of practice[47] or the procedure was invoked, or a member requests a trade union to make a request under Section 2 of the Industrial Relations (Amendment) Act 2001 to take a collective bargaining case to the Labour Court.

There is no protection from victimisation for employees wishing to engage in collective bargaining unless they intend to, or already have, invoked the Code of Practice on Voluntary Dispute Resolution or the 2001 Act.

The 2001 Act prohibits a case being taken if the number of employees involved in the case, when compared with the number of employees in the employment, is insignificant. An employee who has sought to organise other employees or who has sought to represent their colleagues on issues with their employer will not be protected from victimisation if the number of employees involved does not meet the threshold number to take such a case. In these circumstances trade union members can suffer detrimental acts by employers to keep their numbers from increasing to prevent a collective bargaining case being taken under the 2001 Act, to prevent the resolution of a collective dispute, and ultimately to prevent them from accessing the protections against victimisation under this code.

The number of collective bargaining cases taken under the 2001 Act by this Union has dramatically fallen over the last five years. The criteria that must be met to win such a case (which was examined by the LEEF Group) is one reason why the cases are not being pursued but the lack of protections afforded to employees and their representatives is a much bigger factor. While the 2001 Act on collective bargaining was amended in 2015 and the Code of Practice on Victimisation was (SI No. 463 of 2015) was introduced with good intention, they have proved to be ineffective as they offer employees no protections where employees seek to organise and bargain locally with their employers.

As can be seen, one of the necessary conditions that must be satisfied is the involvement or intended involvement of the State's industrial relations machinery i.e. once the Workplace Relations Commission or Labour Court are involved or are intended to be involved in a dispute or in a collective bargaining case. The legislation therefore does not support collective bargaining at enterprise level within employee's employments as it offers no protection if employee's wish to organise or join a trade.

A breach of the code for victimisation short of dismissal can be taken under Section 9 of the Industrial Relations Miscellaneous Provisions Act 2004. The maximum award is two years pay however, there is no minimum award, and a zero sum is possible.

The Industrial Relations Act 1990, Code of Practice (COP) on Employee Representatives (Declaration) Order 1993 sets out the protections that should be afforded to employee representatives (including in case of dismissal, unfair treatment or any action prejudicial to their employment) however, this code is not binding on employers. And, in accordance with section 42 (5) of the 1990 Act, "a failure on the part of any person to observe any provision of a code of practice shall not of itself render him liable to any proceedings". An employee cannot therefore rely on this code to ground a claim against their employer for any detrimental acts against them if they wish to organise or join a trade union.

It is this Union's contention that there is a lacuna in Irish legislation around statutory protections for trade union members and their representatives which is compromising the Freedom of Association and in turn the right to collective bargaining.

On examining the provisions of Article 40.6.1.iii° of the Irish Constitution (Freedom of Association) in 2024 Hogan J[48] held "It is arguably implicit in these provisions that the right to form trade unions implies in turn at least some – perhaps as yet undefined – zone of freedom for those unions to organise and campaign. The effet utile of this constitutional provision would otherwise be compromised".

Legislation is needed to afford protections to trade union members against unfair dismissal and detrimental acts

[47]SI 145/2000 Code of Practice on Voluntary Dispute Resolution
[48]H.A. O'Neil Limited -v- Unite the Union & ors [2024] IESC 8

short of dismissal on the grounds of their trade union membership or trade union activity. The protections necessary are against, penalisation or threatened penalisation on the grounds of their trade union membership or trade union activity. Legislation is needed as trade union members and their representatives are not sufficiently protected by law, if they wish to organise or join a trade union.

As referred to above in answer to question 1 on Article 4 (1) (c), employers will seek to settle cases where trade union membership or activity has formed a basis of the complaint brought against it in unfair dismissal cases. Therefore, in addition to strengthening the core legislative protections an anti-avoidance measure for employers should also be legislated for. Where an employee has been dismissed or penalised and their trade union membership or activity forms the basis of their claim, non-disclosure agreements should not be permissible unless so requested by the employee. Such a measure was recently introduced under the Employment Equality Acts for cases of discrimination or victimisation based on the nine grounds in that Act.

Recommendation:
Legislate on anti-avoidance measures for employers so that trade union members cannot be required to enter non-disclosure agreements in relation to claims of dismissal or penalisation based on their trade union membership or activity, or on grounds that they participate or wish to participate in collective bargaining at enterprise level. Such a measure was recently introduced under the Employment Equality Acts for cases of discrimination or victimisation based on the nine grounds in that Act.

(d) Protection for Employers

Employers are sufficiently protected in Irish legislation against acts of interference where they wish to participate in collective bargaining.

Where employers wish to participate in collective bargaining they are protected by legislation in the following ways:

(i) Inability to pay:

- Section 48A of the Industrial Relations Act 1946 allows the Labour Court to exempt an employer from the obligation to pay the statutory minimum remuneration contained in an Employment Regulation Order for a specified duration under the circumstances prescribed therein.
- Section 21 of the Industrial Relations (Amendment) Act 2015 allows the Labour Court to exempt an employer from the obligation to pay the statutory minimum remuneration contained in a Sectoral Employment Order for a specified duration under the circumstances prescribed therein.

(ii) The promotion of harmonious relations between workers and employers and avoidance of industrial unrest:

- Section 42B (7) of the Industrial Relations Act 1946 requires the Labour Court to be satisfied when considering recommending an Employment Regulation Order, that the order will satisfy the promotion of harmonious industrial relations between workers and employers and avoidance of industrial unrest.
- Section 15 of the Industrial Relations (Amendment) Act 2015 provides that there can be examination by the Labour Court of an application for a Sectoral Employment Order (SEO) unless the Court is satisfied an SEO promotes harmonious relations between the workers and their employer.
- Section 16 of the Industrial Relations (Amendment) Act 2015 provides that the Labour Court shall not make a recommendation of an SEO unless satisfied it will promote harmonious relations and assist in the avoidance of industrial unrest.
- Section 8 of the Industrial Relations (Amendment) Act 2015 requires that an application to the Labour Court to register an employment agreement must contain a disputes procedure, promote harmonious relations and assist in the avoidance of industrial unrest.
- The Industrial Relations Act 1990 in its preamble sets out that this is an "Act to make further and better provision for promoting harmonious relations between workers and employers". Trade Unions are required to comply with the provisions of this Act ahead of strike action and/or industrial action. Notwithstanding this, employers engaging in collective bargaining will often seek to negotiate longer notice periods for strike action and/or industrial action than those contained in the Act and will also seek a dispute resolution mechanism before such types of action can take place. In this regard, much like workers, employers view these statutory rights as a floor and not a ceiling.

(iii) Maintaining competitiveness

- Section 42A (6) of the Industrial Relations Act 1946 requires a Joint Labour Committee when formulating a proposal to the Labour Court for an Employment Regulation Order, to have regard to the legitimate interests of employers in the sector (financial, and commercial interests, desirability of agreeing and maintaining efficient and sustainable work practices, desirability of maintaining harmonious relations and maintaining competitiveness, levels of employment and unemployment).
- Section 16 of the Industrial Relations (Amendment) Act 2015 provides that the Labour Court must, when making a recommendation for an SEO, have regard to any potential impact on competitiveness in the economic sector.

Recommendation:

No recommendations.Based on the numerous existing protections for employers who wish to participate in collective bargaining, no recommendations are being made.

Conclusion

Heretofore the State has approached the issues of union recognition and collective bargaining rights as constitutional rather than legislative where Article 40.6.1.iii of the Constitution allows workers the right of association but not the right to representation. On occasion the Constitution has been interpreted as supporting an employer's right not to recognise a union. However, the recent decision of Hogan J in the Supreme Court in O'Neil (referenced and above) represents a marked change.

Already, in advance of the O'Neil judgement, employment law experts in a report on collective bargaining for the Irish Human Rights and Equality Commission concluded that,

"A statutory protection for collective bargaining is in any event essential"

and

"that [the Irish] Constitution is not a barrier to a statutory right to collective bargaining, and that no constitutional change would be necessary to facilitate a statutory right of this sort. The legislature is free to pursue such a course, having careful regard to safeguards that would ensure all other relevant constitutional rights and principles are respected."[49]

It is claimed that the State received legal opinion that proposals that require good faith engagement, as per the Final Report of the LEEF High Level Group Report on Collective Bargaining, and recognition of employees' bargaining agent (i.e. a trade union) could be found unconstitutional.[50]

Leaving aside the issue that the contents of the legal opinion and the questions put to the Attorney General's Office by the Department have not been published, this claim is unsatisfactory and potentially even contradictory to the advice received by the LEEF High Level Group. The final report of the High-Level Group on Collective Bargaining states,

'The Group proceeded in its work on the basis that it was not possible to describe precisely the constitutional position in terms of collective bargaining rights, or trade union recognition. The Group heard, in the course of its deliberations, from Labour Law and Constitutional Law experts. During the course of its work, the Group also received some significant legal guidance from the Supreme Court . . . The Group considered carefully the principal legislation relating to collective bargaining (the Industrial Relations (Amendment) Acts 2001-2004 as amended by the Industrial Relations (Amendment) Act 2015), and throughout its work the Group had access to expert legal views from the Department of Enterprise, Trade and Employment.'[51]

The LEEF High Level Working Group had access to expert legal views from the State in addition to labour law and constitutional law experts. This was not a deterrence to proposals that would compel or impose legal obligations:

'The view of the Group is that there is nothing inconsistent about encouraging parties to engage with one another, in good faith – and imposing an obligation upon them to try to do so . . . '

Reasonable questions arise: how does the legal advice from Government change; in particular, when addressing the same issues? What changed between 2024 and the LEEF process between 2021 and 2022? Was the Government advice to the LEEF deliberations addressing the same issues as the Attorney General? These questions could be resolved if the expert advice to LEEF and the Attorney General were published. Otherwise, the issue of the constitutionality is obfuscated and unnecessarily confusing to the point of appearing contradictory.

[49]Eustace A. Kenny D. Collective Bargaining and the Irish Constitution – Barrier or Facilitator? Irish Human Rights and Equality Commission Research Report. P. 31 and 32
[50]Correspondence from the Irish Congress of Trade Unions to Minister Higgins, Department of Enterprise Trade and Employment, 23rd September 2024
[51]Final Report of the LEEF High Level Working Group on Collective Bargaining, p. 5

Fairness at Work and Justice in Society

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