

Tipping the scales for labour in Ireland? Collective bargaining and the Industrial Relations (Amendment) Act 2015

Caroline Murphy and Tom Turner
Department of Work and Employment Studies
Kemmy Business School
University of Limerick

COLLECTIVE BARGAINING AND THE INDUSTRIAL RELATIONS (AMENDMENT) ACT, 2015

- **UNIONS ON THE DEFENSIVE SINCE THE 1980S**
- **TRADITIONALLY IN ANGLO-SAXON COUNTRIES CORE PRINCIPLE IN INDUSTRIAL RELATIONS OF 'VOLUNTARISM'**
- **2 PATHS TAKEN IN THESE COUNTRIES:**
 - 1. STATUTORY RIGHT TO RECOGNITION – US, CANADA, UK**
 - 2. RIGHT TO BARGAIN MECHANISMS – AUSTRALIA, IRELAND**

UNION RECOGNITION AND COLLECTIVE BARGAINING IN IRELAND

- **IN THE PAST UNIONS PURSUED RECOGNITION RIGHTS THROUGH INDUSTRIAL ACTION AND UNDER SECTION 20(1) OF THE 1969 INDUSTRIAL RELATIONS ACT**
- **WITH THE INDUSTRIAL RELATIONS (AMENDMENT) ACT 2001 UNIONS COULD INSTIGATE CASES IN DISPUTES AGAINST EMPLOYERS WHO REFUSED TO ENGAGE IN COLLECTIVE BARGAINING**
- **2001 ACT RENDERED REDUNDANT BY THE SUPREME COURT DECISION IN RYANAIR V LABOUR COURT**
- **ON FOOT OF ILO RECOMMENDATIONS ICTU LOBBIED GOVERNMENT FOR CHANGES THAT RESULTED IN THE INDUSTRIAL RELATIONS (AMENDMENT) ACT 2015**

PART 3: COLLECTIVE BARGAINING SECTION OF THE IRRA **2015**

- **DISPUTE MUST EXIST BETWEEN THE UNION AND EMPLOYER REGARDING PAY AND CONDITIONS OF EMPLOYMENT**
- **UNION MUST SHOW THAT CONDITIONS OF EMPLOYMENT OF ITS MEMBERS IN A NON-UNION COMPANY ARE WORSE THAN SIMILAR WORKERS IN SIMILAR EMPLOYMENTS**
- **APPLIES ONLY TO FIRMS NOT ENGAGING IN COLLECTIVE BARGAINING**
- **UNION MUST SHOW THAT NUMBER OF WORKERS INVOLVED IN 'NOT INSIGNIFICANT'**
- **LC WILL NOT PROCEED WITH AN INVESTIGATION WHERE A RECOMMENDATION HAS BEEN MADE FOR THE GROUP OF WORKERS IN PAST 18 MONTHS**
- **WHERE CONDITIONS ARE MET THE LC HAS JURISDICTION TO MAKE RECOMMENDATIONS THAT CAN BE GIVEN THE STATUS OF LEGALLY BINDING DETERMINATIONS**

WHAT DO WE MEAN BY COLLECTIVE BARGAINING?

- **ILO DEFINES COLLECTIVE BARGAINING AS:**

“ALL NEGOTIATIONS WHICH TAKE PLACE BETWEEN AN EMPLOYER(S) AND ONE OR MORE WORKERS' ORGANISATIONS DETERMINING WORKING CONDITIONS AND TERMS OF EMPLOYMENT AND/OR REGULATING RELATIONS BETWEEN EMPLOYERS AND WORKERS”

ELEMENTS OF COLLECTIVE BARGAINING

- 1. UNION/BARGAINING REPRESENTATIVES AND EMPLOYER ENGAGING DIRECTLY TO AGREE THE TERMS AND CONDITIONS OF EMPLOYMENT**
- 2. INVOLVES A RIGHT OF ACCESS FOR UNION OFFICIALS TO REPRESENT UNION MEMBERS IN THE WORKPLACE**
- 3. UNION REPRESENTATIVES ALLOWED PROVIDE PROTECTION AND VOICE FOR MEMBERS ON A CONTINUOUS EVERYDAY BASIS IN THE WORKPLACE**
- 4. COLLECTIVE BARGAINING VARIES ACCORDING TO THE EXTENT OF UNION INFLUENCE AND THE SCOPE OF ISSUES COVERED BY COLLECTIVE AGREEMENTS**

WILL THE ACT FACILITATE THE EXTENSION OF COLLECTIVE BARGAINING?

1. DIRECT ENGAGEMENT:

- **A CASE UNDER THE IRRA 2015 UNIONS DOES NOT INVOLVE ANY DIRECT NEGOTIATIONS BETWEEN UNION AND EMPLOYER AS THE MATTER IS PROCESSED THROUGH A THIRD PARTY AGENCY - THE LABOUR COURT**
- **IN CONTRAST THE AUSTRALIAN FAIR WORK ACT ENCOURAGES 'BARGAINING REPRESENTATIVES' TO DIRECTLY ENGAGE IN BARGAINING**
- **FAIR WORK COMMISSION HAS THE POWER TO MAKE A MAJORITY SUPPORT DETERMINATION (MSD) IN SITUATIONS WHERE AN EMPLOYER REFUSES TO BARGAIN AND A MAJORITY WANT TO BARGAIN COLLECTIVELY**
- **AN MSD HAS THE EFFECT OF COMPELLING AN EMPLOYER TO BARGAIN COLLECTIVELY THROUGH THE 'BARGAINING REPRESENTATIVES' WHERE IT HAS PREVIOUSLY REFUSED TO DO SO**

2. UNION ACCESS

- **IRRA 2015 PROVIDES NO RIGHT OF ACCESS FOR UNIONS TO THEIR MEMBERS IN THE FIRM EXCEPT IN LIMITED CIRCUMSTANCES**
- **FWA (PART 3-4) PROVIDES UNION OFFICIALS WITH RIGHTS OF ACCESS TO EMPLOYER'S PREMISES FOR PURPOSES OF ORGANISING EMPLOYEES AND TO SEEK AN ENTERPRISE AGREEMENT**

3. PROVIDING VOICE TO MEMBERS

- **IRRA PROVIDES UNION MEMBERS WITH A FORM OF THIRD PARTY INTERVENTION**
- **DEGREE OF INTERACTION BETWEEN THE UNION AND MANAGEMENT UNDER THE ACT IS EXTREMELY TRANSITORY – ONCE EVERY 18 MONTHS**
- **ALTERNATIVELY ROLE OF FWC IS NOT TO INTERVENE BUT TO OVERSEE THE BARGAINING PROCESS AND ASSIST THE NEGOTIATING PARTIES TO INITIATE AND PROGRESS BARGAINING AND ENTERPRISE AGREEMENTS**

4. SCOPE OF ISSUES COVERED

- **ACT IS STRONG ON THE SCOPE OF ISSUES TO BE CONSIDERED FOR COMPARATIVE PURPOSES**
- **ACT REFERS TO ‘TOTALITY OF REMUNERATION AND CONDITIONS OF EMPLOYMENT’**
- **CAN COVER ALL WORKING CONDITIONS SUCH AS BASIC PAY, BONUSES, OVERTIME, SICK PAY, PENSION SCHEMES AND PENSION PAYMENTS AND CONDITIONS LIKE EMPLOYMENT CONTRACTS, HOLIDAY ENTITLEMENTS, STANDARD HOURS OF WORK**

CONCLUSION

- **ACT FAILS TO FACILITATE GENUINE COLLECTIVE BARGAINING BETWEEN UNION AND EMPLOYER**
- **DOES NOT CONFORM TO ACCEPTED ILO DEFINITIONS OF COLLECTIVE BARGAINING WHERE UNION RECOGNITION IS VIEWED AS INTEGRAL TO COLLECTIVE BARGAINING**
- **FORM OF INTERVENTION FACILITATED BY THE ACT IS RELATIVELY WEAK COMPARED TO THE RIGHT TO BARGAIN OFFERED IN THE AUSTRALIAN FAIR WORK ACT**
- **ACT POTENTIALLY USEFUL TO THE UNIONS – IT EMPOWERS THE LABOUR COURT TO CONSIDER THE TOTALITY OF REMUNERATION AND CONDITIONS OF EMPLOYMENT**
- **COULD PROVIDE LEVERAGE TO UNIONS TO EXPAND COLLECTIVE BARGAINING ACROSS ENTIRE INDUSTRIES AND NOT JUST LOW-SKILL SECTORS OF THE ECONOMY**
- **SECTOR LEVEL BARGAINING A MORE COST EFFECTIVE MECHANISM FOR UNIONS TO EXTEND COLLECTIVE BARGAINING THAN INDIVIDUAL FIRM LEVEL BARGAINING**
- **IRAA 2015 ACT DOES NOT PROVIDE AN EXPLICIT PATHWAY TO SECURING COLLECTIVE BARGAINING RIGHTS FOR WORKERS**