



Collective Bargaining or Collective Begging?

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Context of the Paper

- The paper is written within the context of the application of the EU Directive on adequate minimum wages in the European Union (EU 2022/2041)
- Pending ECJ ruling on C-19/23 Kingdom of Denmark v European Parliament/Council of the EU
- In light of the transposition of the Directive and the current political climate in the Republic of Ireland
- Paper has 2 parts:
 1. Collective Bargaining or Collective Begging brings Dr. Carty's experience of 33 years of working as a full-time trade union official and applies it to the debate on collective bargaining
 2. The second part focuses on the EU context, and brings Eoin's experience from the European trade union movement into the Irish context

Aim of the Paper

- Leverage
 - “Without the right to strike, a union is a... barren and useless thing” (Canadian Supreme Court, 1983)
 - Unions negotiators need power to bargain effectively
- Democracy
 - Trade Unions are built upon the democratic rights of workers and can only exist with continued democratic support
 - Workplace democracy also presents opportunities for unions’ access and greater engagement of workers

Collective Bargaining or Collective Begging?

- The ILO considers the right to strike as an essential principle (OECD, 1996).
- The German Federal Labour Court in 1980 decided that *“collective bargaining without the possibility of a resort to the instrument of the strike would be no more than collective begging”* (Blank, 2002, p, 166).
- A South African Constitutional Court stated that:
Workers therefore need to act in concert to provide them collectively with sufficient power to bargain effectively with employers. Workers exercise collective power primarily through the mechanism of strike action (Certification of the Constitution of South Africa, 1996, p. 9).
- A Canadian Chief Justice stated that without the right to strike *“... the right to organize and bargain collectively [are] virtually meaningless”* and the court went on to state that without the right to strike, a union is a *“... barren and useless thing”* (Canadian Supreme Court, 1983).

Collective Bargaining or Collective Begging?

- John Hendy, a leading international expert on labour law concurs and states the right to strike [is] an essential element of the right to bargain collectively. (Hendy, 2015, p. 66).
- In 2012, Hendy (mentioned above) and Professor Keith Ewing expanded on the term 'collective begging' and stated that *"Without rights, trade unions are no more than pressure groups ..."*. He went on to state:

Without an effective right to strike collective bargaining is not possible. In the absence of a right to strike collective bargaining is no more than collective begging. No employer will make concessions if the union cannot realistically threaten to withdraw labour if its demand is not met (Ewing and Hendy, 2012, p.3).

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- Bob Hepple, in his address to the 2010 Countess Markievicz lecture in UCD cited a co-authored work regarding these rights. It is noteworthy, in 2015 the Canadian Supreme Court found in favour of workers regarding the right to strike and relied on numerous academic articles including Hepple and Kahn-Freund's 1972 analysis:

The power to withdraw their labour is for the workers what for management is its power to shut down production, to switch it to different purposes, to transfer it to different places (Saskatchewan v Attorney-General of Canada, 2015).

Ken Gill (former Secretary of the union Manufacturing, Science and Finance (MSF) now Unite) summarizes:

The difference between a slave and a worker is the right to withdraw his [or her] labour ([1987] quoted in Wilkinson et al, 1993, p.281).

Slaves may never bargain, but they can always beg.

EU Context - Introduction

- EU labour legislation is designed for the majority of Member States
- The majority of EU Member States apply civil law principles as opposed to common law principles on labour rights
- Due to the Republic of Ireland's voluntarist and individualist system, it is somewhat of an outlier in a lack of legislative protection
- History of train unions in Europe is much deeper rooted than in Ireland, e.g. overthrowing fascism, historical links to regime in former USSR, or overthrowing of dictators
- The introduction of the 'Troika' in PIIGS countries had significant impact on trade union coverage and was a turning point in these countries

EU Context – Workplace Democracy

- We sought to understand how, in the context of a sectoral collective bargaining agreement, unions can maintain workplace democracy:

1. Direct Democracy – Italy

Workers across all of sector have a direct vote on a proposal

2. Indirect Democracy – Spain

Workers in Spain vote in a Works Council who then vote on behalf of their members

EU Context - Learnings

What can we apply to the Republic of Ireland?

- Spain and Italy show alternative ways of applying democratic processes to sectoral collective bargaining
- Unions in Italy and Spain have used their leverage through membership and industrial action to preserve their place at the table, which in turn protects their legislative rights
- Should we 'continental' style of trade unionism?
 - We compare ourselves to countries with similar GDPs, but we should also compare ourselves with those who have a similar economic history.
- There are aspects that can be used from all countries in the EU, not just Scandinavia

Conclusions

- Leverage

- International legal and academic opinion
- Without Right to Strike unions are 'a barren thing'
- Without the leverage of the Right to Strike union negotiators aren't engaged in collective bargaining but collective begging

- Democracy

- People should have democratic mechanism to determine their terms and conditions of employment, as is the spirit of the directive
- This can be achieved through direct or indirect democracy
- Democratising the collective bargaining process presents opportunities to engage with workers at a deeper level