

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

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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**

PART 3: COLLECTIVE BARGAINING SECTION OF THE IRRA 2015

- **DISPUTE MUST EXIST BETWEEN 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 NUMBER OF WORKERS INVOLVED IN 'NOT INSIGNIFICANT'**
- **LABOUR COURT WILL NOT PROCEED WITH INVESTIGATION WHERE 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**