

# OUR SEAT AT THE TABLE

FIGHTING FOR UNION RECOGNITION &  
COLLECTIVE BARGAINING **UNITE TOOLKIT #2**

NOVEMBER 2024



# CONTENTS

- Introduction
- What is collective bargaining?
- Why does collective bargaining matter?
- Do Irish workers want the right to bargain collectively?
- What is the EU Directive?
- A new package of workers' rights!
- Ireland - out of step?
- Seagate: organising to win!
- Is sectoral bargaining enough?
- It's always about organising
- Organising to bargain
- What we want and what we can do



*Stronger together: union members protesting outside the Dáil in 2023 following the temporary closure of Tara Mines*



## Introduction

*Our Seat at the Table* is the second in a series of short policy briefs, or 'Unite Toolkits'. If you want to obtain a copy of the first Toolkit in this series, *Bringing Housing Home*, or comment on this document, please email [toolkit.ireland@unitetheunion.org](mailto:toolkit.ireland@unitetheunion.org).

As matters stand, workers in the Republic have no statutory path to union recognition and collective bargaining. Our so-called 'voluntarist' system means that, regardless of the number of members one or more unions may have in any given workplace, the employer does not have to engage collectively with workers through those unions.

The lack of proper collective bargaining legislation means that Ireland is out of step not only with the rest of the European Union, but even with Britain and Northern Ireland – jurisdictions which are scarcely beacons of workers' rights. Earlier this year, Unite members in Seagate outside Derry were able to vote for their union to be recognised and secure a recognition agreement – yet our members 100 miles down the road in Dundalk do not have that right.

In 2022 the EU adopted the Adequate Minimum Wage Directive obliging member states, where collective bargaining coverage is below 80% of employed workers, to provide a framework for collective bargaining and establish an action plan to promote union recognition and collective bargaining. The outgoing government failed to meet the November implementation deadline by enacting full collective bargaining legislation. Instead, it is clear that they are listening to business rather than workers and, if returned to office, will adopt a minimalist approach which would fall far short of what Irish workers need.

As we go to press, political parties are seeking workers' votes. We need to send a clear message: 150 years after the birth of Jim Larkin, Irish workers cannot accept anything less than full collective bargaining rights, statutory union recognition and the right of unions to access workers in the workplace.

There's an old saying that if you're not at the table, you're on the menu - time to make our voices heard!

**Susan Fitzgerald**

Irish Regional Secretary,  
Unite the Union

**Jeff Robinson**

Chair, Irish Executive Committee  
Unite the Union

# What is Collective Bargaining?

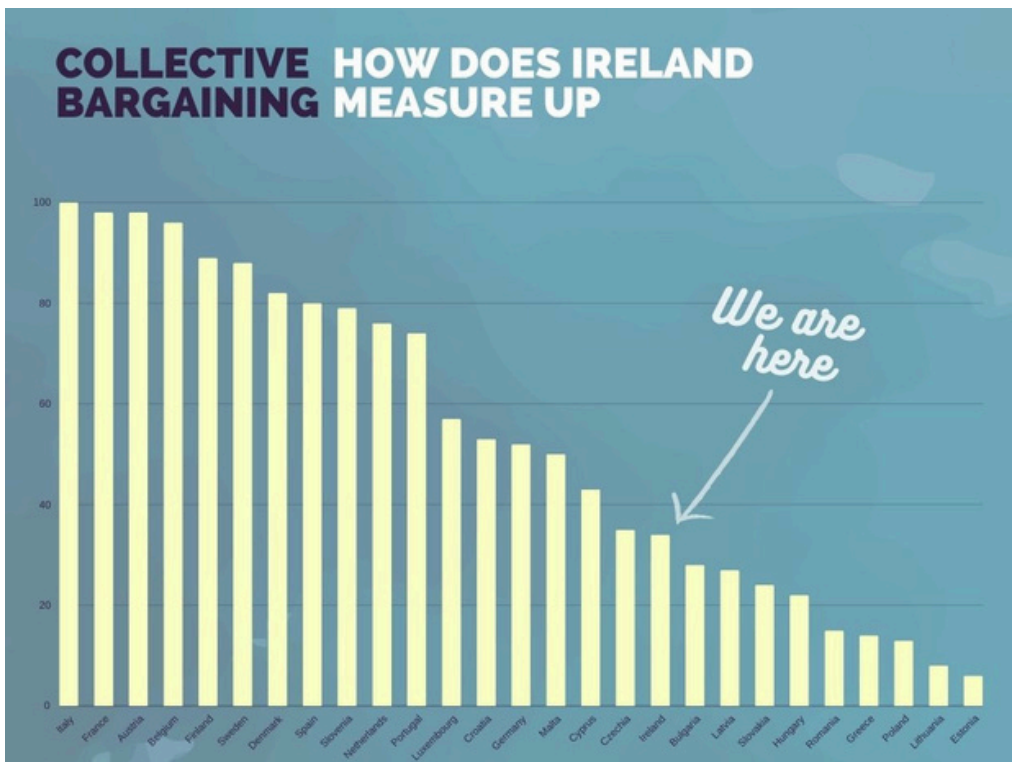
Trade unions go back to the nineteenth century when workers came together to balance the scales – because our unity is our strength. And employers listen to strength.

Collective bargaining is the process by which workers negotiate collectively with their employer through the union of their choice. It is the best way for workers to secure higher wages – a bigger slice of the profit pie.

Effective collective bargaining pre-supposes union recognition – in other words, an employer recognises one or more trade unions for the purpose of collective bargaining.

In order for a trade union to organise within a workplace and represent members, they must have a right of union access. Unlike workers elsewhere in the European Union, Irish workers do not have the right to collectively bargain with their employer through the union of their choice.

Since the late 1990s, unions have pointed out that – by not providing a statutory right to collective bargaining – Ireland is potentially in breach of its international obligations including International Labour Organisation instruments, the European Social Charter and the European Convention on Human Rights.



## Why does Collective Bargaining matter?

The union wage premium for private sector workers is approximately 10%. Put another way, for every €100 earned by a non-union worker, a union worker earns €110.[1]

- When workers join together to negotiate with their employer – to bargain collectively for better terms and conditions – it changes the balance of power in the workplace.
- Workers in unionised workplaces have better pay, better equality practices, better sick pay, more leave, more family-friendly measures, less long-hours working and better health and safety
- The EU Directive notes that countries with higher levels of collective bargaining have higher wages across the economy and lower levels of income inequality

## Collective bargaining: the equality dividend

International evidence shows that collective bargaining not only benefits workers in general – it also helps address gender inequality:

- Unionised enterprises and sectors, and countries with high levels of collective bargaining, tend to have shorter working hours for both women and men
- They are more likely to offer flexible working arrangements
- They offer better protections for atypical workers
- They have a smaller gender pay gap[2]



[1] Walsh, F. (2024) *Trade Union Membership in Ireland and the implications for Centralised Bargaining*.

Presentation to 12 Annual NERI Labour Market Conference. May 2024

[2] European Trade Union Confederation. Collective bargaining and gender equality. Available at: <https://w.etuc.org/en/collective-bargaining-and-gender-equality> (Accessed July 2024)

# Do Irish workers want the right to bargain collectively?

Yes. In 2021, the Report of the Citizens' Assembly on Gender Equality – comprising members randomly selected to represent Irish society in terms of age, gender, social class and regional spread – voted by 96.7% in favour of:

*"Establishing a legal right to collective bargaining to improve wages, working conditions and rights in all sectors[3]".*

**An FSU/Ireland Thinks poll found that 74% of respondents believed employers should be legally required to negotiate with their trade unions if employees wish them to do so. That figure rose to 79% among women[4]**

**A survey conducted by UCD[5] found that:**

- **44% of non-union members would vote to establish a union in their workplace**
- **Around two-thirds of young workers aged between 16 and 24 would vote to establish a union**
- **Half of women workers would vote to establish a union.**
- **Almost four out of five workers in unionised workplaces would vote to keep the union**

## What is the EU Directive?

In October 2022, the European Commission issued the Directive on Adequate Minimum Wages in the EU – also known as the 'collective bargaining directive' – mandating member states to develop measures to increase collective bargaining and bring the percentage of workers covered by collective bargaining up to a target level of 80%. Member states must have implemented the Directive by 15 November 2024. The relevant Directive text is reproduced on the inside back page of this pamphlet.

[3] The Citizens' Assembly (2021), *Report of the Citizens' Assembly on Gender Equality*. Available at: <https://citizensassembly.ie/wp-content/uploads/2023/02/report-of-the-citizens-assembly-on-gender-equality.pdf> (Accessed July 2024)

[4] Poll conducted by Ireland Thinks on behalf of the Financial Services Union, published 15 November 2023. Available at: [https://www.fsunion.org/assets/files/pdf/ireland\\_thinks\\_poll.pdf](https://www.fsunion.org/assets/files/pdf/ireland_thinks_poll.pdf) (Accessed July 2024)

[5] Geary, J and Belizon, M, *Union Voice in Ireland: First Findings from UCD Working in Ireland Survey*. University College Dublin, 2021. Available at: [https://www.smurfitschool.ie/t4media/Geary,%20J.%20and%20Belizon,%20M.%20\(2022\)%20Union%20Voice%20in%20Ireland%20.pdf](https://www.smurfitschool.ie/t4media/Geary,%20J.%20and%20Belizon,%20M.%20(2022)%20Union%20Voice%20in%20Ireland%20.pdf) (Accessed July 2024)

## How does Ireland measure up?

Collective bargaining coverage in Ireland is just 34%, and only between 22% and 25% of workers are in trade unions ('trade union density'). By contrast, companies employing 70% of Irish workers are represented by IBEC – and are able to engage collectively in pursuit of their interests.

## What happens now?

In 2022, the social partners engaged through the LEEF (Labour Employer Economic Forum) mechanism to develop proposals to increase collective bargaining in accordance with the EU Directive. The proposals which emerged concentrated heavily on sectoral bargaining measures – for example, removing the employers' 'veto' blocking the establishment of Joint Labour Committees.

While such measures, as well as provisions mandating 'good faith' engagement, would be welcome, unless underpinned by robust legislation they would simply add to Ireland's piecemeal industrial relations architecture without actually achieving the EU Directive's objectives and closing the gap between Ireland's current collective bargaining levels and the 80% target in the Directive.

Unless workers and their trade unions put political parties under pressure, there is a real risk that the incoming government will adopt a minimalist approach to implementing the directive by simply issuing an aspirational 'Action Plan' to promote collective bargaining without any legislative teeth.

## A new package of workers' rights

In addition to legislation providing for union recognition, a statutory right to collective bargaining and a union-right of access, we need measures to ensure that workers exercising their rights do not suffer a detriment.

Such 'anti union-busting measures' would be in line with the Directive, which specifically references the role played by union-busting practices in decline union membership.

Unite believes that a new workers' rights package must include the following:





## Union recognition, statutory right to collective bargaining and right-of-access

- A statutory path for workers to have their union/unions recognised for collective bargaining purposes by demonstrating that they are representative of workers in a given employment, or in a category/grade in that employment
- Provision for the Labour Court to impose a 'bargaining order' if an employer refuses to bargain collectively through a union/unions notwithstanding the union/unions having demonstrated that they are representative of workers
- Provision for unions to have a right of access to workplaces to tell workers about the benefits of union membership and collective bargaining, and to advise and represent workers

## Anti-union-busting measures

- Strong anti-penalisation provisions including dissuasive sanctions should a worker be dismissed or suffer a detriment due – even in part – to trade union activity.
- Effective legal protection for shop stewards and workplace representatives.
- Legal prohibition on employers pressurising, coercing or otherwise inducing workers to refrain from taking collective action.

***“They want to deal with their workers individually [...] because we workers have tried to get some measure of justice, some measure of betterment, they deny the right of the human being to associate with their fellow”***

Jim Larkin (1874 - 1947)

## Wouldn't collective bargaining legislation be unconstitutional?

No – that's a false argument made by employers and others who want to stop workers bargaining together. There are no conflicting rights in the Constitution that would make statutory provision for collective bargaining unconstitutional.

Although the Constitution does not explicitly protect the right to collective bargaining, it does protect the right to freedom of association – and the right to collective bargaining is fundamental to that.





### **Article 40.6.1.iii, Bunreacht na hÉireann**

*The State guarantees liberty for the exercise of the following rights, subject to public order and morality:(...) iii. The right of the citizens to form associations and unions.*

In December 2023, a paper commissioned by the Irish Human Rights and Equality Commission indicated that there is no Constitutional barrier to legislation for the right to collective bargaining, concluding that:

*[...] the plenary constitutional power of the Oireachtas to legislate on any matter not otherwise constitutionally proscribed means that a statutory protection is presumptively possible, and such a law would enjoy a presumption of constitutionality.*

*- This is further bolstered by the express constitutional authorisation to regulate freedom of association, which might be thought to envisage legislation of this sort, and the fact that this legislation would uphold and vindicate an EU Charter right and otherwise implement EU law.*

*- We do not think that there are any conflicting rights recognised by the Irish Constitution that would frustrate such a statutory protection, or we think their limitation by the Oireachtas would be found constitutional by the courts [6].*

## **Supreme Court ruling vindicates workers' rights**

In 2023, Unite took an appeal to the Supreme Court after the High Court granted an injunction effectively preventing Unite mechanical members from taking strike action. Not only did Unite win the appeal in early 2024 – the Supreme Court decision in our case is regarded as a significant landmark judgement advancing workers' right to take collective action. Supreme Court Justice Gerard Hogan noted that:

*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 [7].*

[6] Eustace, A. and Kenny, D., *Collective Bargaining and the Irish Constitution – Barrier or Facilitator?* Irish Human Rights and Equality Commission. Dublin, 2023

[7] H.A. O'Neill Ltd – v – Unite the union and ors, [2024] IESC 6

By giving full statutory effect to the EU Directive on Adequate Minimum Wages – legislating for union recognition, a right of union access and collective bargaining – the Government has the opportunity to define in statute the ‘right of freedom of unions to organise and campaign’ referred to by Justice Hogan.

Welcoming the ruling, Unite general secretary Sharon Graham said:

*“This victory for Unite sends a powerful message to all employers that they can’t trample on a worker’s right to strike. I am proud of our reps who faced enormous pressure by being named in the High and Supreme Court proceedings. This win vindicates them and underlines Unite’s commitment to do whatever it takes to defend our members”.*

## **Ireland - out of step with the European rights framework?**

Ireland is bound by the European Social Charter which states that: ***“All workers and employers have the right to bargain collectively”***

In its 2018 decision on a case brought against Ireland by the ICTU, The European Committee on Social Rights – which monitors adherence to the Charter – reiterated its position that ‘domestic law must recognise that employers’ and workers’ organisations may regulate their relations by collective agreement. If necessary and useful, and in particular if the spontaneous development of collective bargaining is not sufficient, positive measures should be taken to facilitate and encourage the conclusion of collective agreements’. Ireland is also bound by the European Convention of Fundamental Rights, which states that:

*“Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels”.*

While the European Court of Human Rights has not found a requirement that an employer enter into or maintain a collective bargaining arrangement, it has found (Demir and Baykara v Turkey) that

*“[...] 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”.*

## Seagate: Organising to win collective bargaining

Although Northern Ireland provides a statutory route to union recognition, it still takes deep organising to secure recognition and collective bargaining.

Seagate is a US multinational which manufactures external hard drives in Springtown, Northern Ireland. In January 2024, after years of work by Unite activists supported by the union's organising department, workers voted overwhelmingly for the company to recognise Unite for collective bargaining purposes.

The ballot followed a protracted battle with the statutory process taking over a year. In the run up to the ballot, the employer brought in professional union busters – but the hard work of organising paid off and workers voted to bargain collectively.

Following the result, the employer had 30 days to negotiate a voluntary collective bargaining agreement with the union or else have a statutory one imposed by Northern Ireland's Industrial Court

Seagate concluded a recognition agreement with Unite, and as we go to press Unite is engaged in negotiations with management to secure a pay increase.

Organising coupled with a statutory path to union recognition means that Seagate workers in Northern Ireland have a seat at the table.



ABOVE: Unite general secretary Sharon Graham with Seagate reps. RIGHT: members of Derry Trades Union Council showing their support for the recognition campaign.



RIGHT: Regional Secretary, Susan Fitzgerald, campaigning for a 'YES' vote at Seagate.



## Is sectoral bargaining enough?

The LEEF group established to examine transposition of the EU Directive proposed expanding sectoral collective bargaining by developing existing mechanisms such as Joint Labour Committees / Employment Regulation Orders and Sectoral Employment Orders. While this would, in particular, benefit some unorganised private sector workers, they would still have little if any influence on developments in their individual workplaces – the factors affecting their daily working lives.

A case in point is the construction sector – a sector which is supposed to be regulated by SEOs and collective agreements with some employers. Unite's Construction Branch reports widespread flouting by rogue contractors of national law and SEO terms on pay, pension, health and safety provisions – a situation tolerated on many sites.

Although sectoral agreements may be beneficial to some groups of workers, they should not be viewed as a substitute for statutory union recognition and enterprise-level collective bargaining.



*Members of Unite's Construction Branch on the picket line during MEBSCA dispute, autumn 2024*

In fact, the evidence is that high levels of sectoral collective bargaining can go hand-in-hand with low levels of union density – and that means low levels of workplace organisation. That, in turn, means that workers are less likely to have the workplace power needed to drive change and improve working conditions.

**Therefore, measures to increase collective bargaining coverage must be accompanied by measures to facilitate union workplace organisation, from a right of union access to strong protections for union reps against victimisation – including penal and dissuasive sanctions for employers.**

## It's always about organising

Where sectoral agreements are accompanied by strong workplace organisation, high levels of collective bargaining coverage may be matched by high levels of union density. For example, in Finland – a small open economy comparable to Ireland – union density is 74% while collective bargaining coverage is around 90% when the public sector is included.



*A protest of English Language Teachers in 2017*

Strong levels of organisation in a sector are needed to drive sectoral agreements which really deliver for workers.

This is the case in construction, where Unite has been a driving force behind SEOs in the construction sector, and in sectors such as English Language Teaching where years of organising and campaigning by Unite have forced employers into a Joint Labour Committee which is currently (November 2024) negotiating an Employment Regulation Order.

## Collective bargaining backed by industrial muscle

- Many mechanical employers in the construction sector recognise trade unions. But in 2023, it took strong organisation and the **threat of industrial action to secure a nearly 10 per cent pay rise for Unite mechanical members.**
- Haleon – formerly GlaxoSmithKline – has long recognised trade unions. But it was only thanks to high levels of density and committed union activists that **Unite members in Dungarvan won a 9.5% pay increase in 2023 after threatening industrial action.**



*"The more strike-ready workers are.  
the more talk-ready employers are"*

- Susan Fitzgerald, Ireland Secretary, Unite



## Organising to bargain

We need fit-for-purpose legislation to ensure that workers have a statutory right to bargain collectively. But legislation alone cannot build workplace power – only workers acting together can do that.

And that means organising. Because it will take strong workplace organisation to make full use of the right to collective bargaining and trade union recognition. Employers will only come to the table and engage meaningfully when they know that we are organised and prepared to take industrial action if necessary.

Progress must be fought for at every turn – and that is why Unite has a dedicated organising department as well as a strike fund worth tens of million of Euro. Industrial action is usually a last resort – but when our members are forced onto the picket line, they know their union will back them every step of the way!



***Unite members outside the Supreme Court in March 2024 following our successful appeal and the landmark judgement advancing workers' right to take collective action***

# EU Directive on Adequate Minimum Wages

## Article 4 - Promotion of collective bargaining on wage-setting

1. With the aim of increasing the collective bargaining coverage and of facilitating the exercise of the right to collective bargaining on wage-setting, Member States, with the involvement of the social partners, in accordance with national law and practice, shall:

(a) promote **the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage-setting**, in particular at sector or cross-industry level;

(b) encourage **constructive, meaningful and informed negotiations on wages between the social partners, on an equal footing**, where both parties have access to appropriate information in order to carry out their functions in respect of **collective bargaining on wage-setting**;

(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**.

**Recital 24:** [...] Member States should take, as appropriate and in accordance with national law and practice, measures promoting collective bargaining on wage-setting. Such measures might include, among others, measures easing the access of trade union representatives to workers.

**Recital 25:** [...] Each Member State with a collective bargaining coverage below a threshold of 80 % should provide a framework of enabling conditions for collective bargaining, and establish an action plan to promote collective bargaining to progressively increase the collective bargaining coverage rate. In order to respect the autonomy of the social partners, which includes their right to collective bargaining and excludes any obligation to conclude collective agreements, the threshold of 80 % of collective bargaining coverage should only be construed as an indicator triggering the obligation to establish an action plan.



# A new package of workers' rights

## **UNION RECOGNITION, STATUTORY RIGHT TO COLLECTIVE BARGAINING AND RIGHT-OF-ACCESS**

**1**

A statutory path for workers to have their union/unions recognised for collective bargaining purposes by demonstrating that they are representative of workers in a given employment, or in a category/grade in that employment.

**2**

Provision for the Labour Court to impose a 'bargaining order' if an employer refuses to bargain collectively through a union/unions notwithstanding the union/unions having demonstrated that they are representative of workers.

**3**

Provision for unions to have a right of access to workplaces to tell workers about the benefits of union membership and collective bargaining, and to advise and represent workers

## **ANTI-UNION-BUSTING MEASURES**

**4**

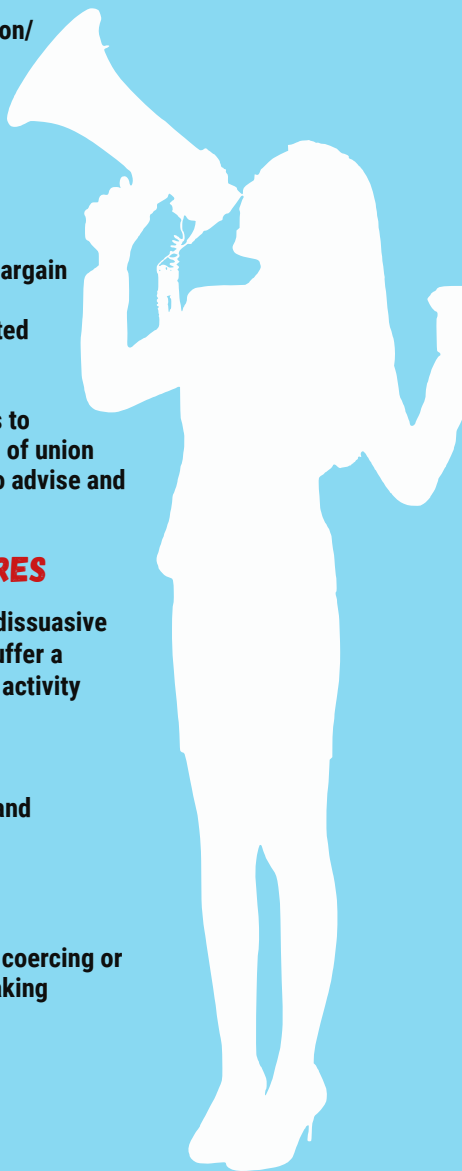
Strong anti-penalisation provision including dissuasive sanctions should a worker be dismissed or suffer a detriment due – even in part – to trade union activity

**5**

Effective legal protection for shop stewards and workplace representatives.

**6**

Legal prohibition on employers pressurising, coercing or otherwise inducing workers to refrain from taking collective action.



# What we can do

If we want the right to bargain together,  
we must come together to campaign for it:

1

Contact your local TD or election candidate. Ask them to press for meaningful transposition of the EU Directive to provide for full collective bargaining rights, statutory union recognition and a right of workplace access for trade unions - and, if their party forms part of the next government, ask them to ensure meaningful transposition is included in the Programme for Government.

2

Pass a motion at your branch or trades council  
- and make sure local media know about it!

3

Write to your local paper or contact  
your local radio station - tell them why  
it matters to you that worker should have  
the right to collective bargaining.

4

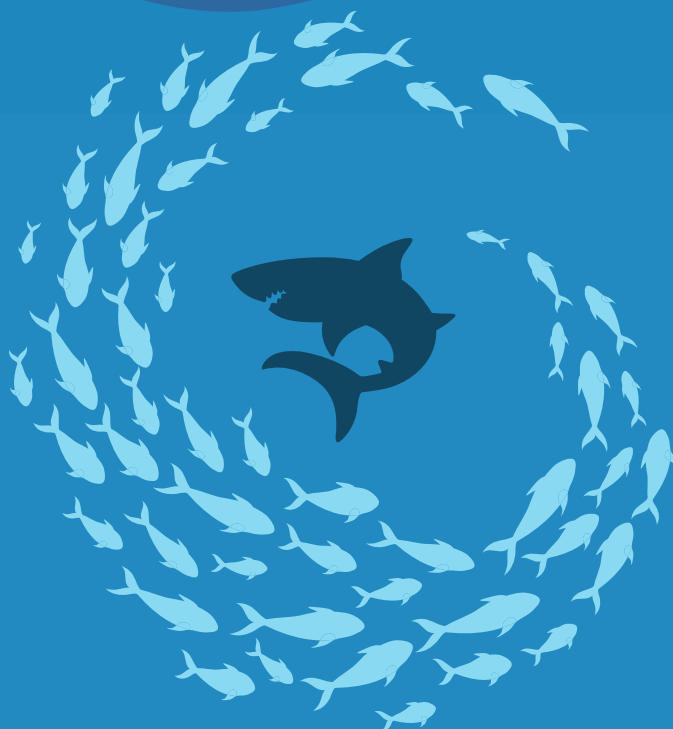
Share the web version of this document on your  
social media and any social media platforms  
(local community platforms, interest  
platforms) you have access to.

5

**JOIN  
UNITE  
TODAY**



# agitate educate organise



Unite is Ireland's leading fightback union. Where we can win for our members through negotiation, we will. Where we can't, we are not afraid to flex our industrial muscle to win for our members and workers generally. Join us today

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