

NECESSARY CHANGES IN INDUSTRIAL RELATIONS

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1. INTRODUCTION

Industrial relations in Ireland may be characterised as a multiplicity of practices, some good and some bad, but all integrated in so far as they are founded on a set of fundamental principles which are themselves the product of an historical process going back over 100 years. Foremost among these principles is free or voluntary collective bargaining which continues to be the primary means of negotiations on pay and conditions between unionised employees and employers.

2. COLLECTIVE BARGAINING

The voluntary institution of collective bargaining is central to industrial relations in Ireland and any discussion on the reform of our industrial relations must take account of it.

Negotiable issues are constantly increasing both in number and complexity. Although there is no legal obligation on the parties to engage in collective bargaining, successive governments have pursued a policy of fostering free negotiations between voluntary organisations of employees and employers. Thus, the underlying principle of our system of collective bargaining is that of *voluntarism*. This in effect means that the parties freely negotiate agreements, with little or no State intervention except where the parties come in conflict with agreed policy and the public interest. Responsibility therefore is normally understood to rest on the shoulders of the parties themselves for the outcome of their deliberations. Ireland is a democratic society and collective bargaining in industry is in accord with and in fact the counterpart of democracy in our political system.¹ The right to freedom of association and to form trade unions is enshrined in our Constitution.

Voluntarism also implies that collective agreements, while creating rights and obligations, are not enforceable at law. The voluntary character of collective agreements means that they are free from the rigidity of law and the agreed rules governing the agreements can be adjusted by the parties themselves to meet changing circumstances in individual instances.²

In the collective bargaining process, therefore, government provides relatively little by way of ground rules for the parties to follow. Instead it relies on the parties themselves to conclude agreements and settle their differences through negotiations with a minimum of disruption. Government takes this line because it believes that neither employers or workers want intervention by the government in collective bargaining. In the recent past, the role of government, on a cooperative basis, has increased by placing bargaining on pay in the context of budgetary action on issues like income tax and other non-pay issues. The "National Understanding" of 1979 formally established tripartism. Despite these developments, however, bargaining on pay continues to be the preserve of the Employer/Labour Conference where the government is represented in its capacity as an employer only.

Most disputes are in fact resolved by the parties themselves under the system of free collective bargaining, where they properly should be resolved through negotiation at the workplace, removed from the glare of publicity. In the final analysis, it is the people themselves, who must work together each day that are most suited to developing agreements and human relationships and to resolving disputes which may arise. The greater the professionalism in industrial relations and negotiating skills among managers and

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trade union representatives in the workplace, the less need there will be to send the problems elsewhere for resolution. Collective bargaining, however, has not proved adequate to resolve all conflict between trade unions and employers. Thus, disputes can and do occur which cannot be resolved within the boundaries of collective bargaining itself.

This situation has given rise to the need for institutional arrangements with the objective of helping to facilitate the deeply rooted system of voluntary collective bargaining and to avoid conflict. The government has played a major role in meeting this institutional need by the establishment of independent structures which have been set up to help solve industrial disputes; for example, the Labour Court, the Rights Commissioner service, Joint Industrial Councils and Joint Labour Committees. The government, too, through legislative measures protects the rights of employees and their unions and employers in respect of certain actions. For example, employees have the freedom to join a union, to withdraw their labour and to picket. Employers are free to use the lockout. Additionally, the government exercises the role of worker protector by defining certain minimum conditions of employment in areas such as redundancy, unfair dismissal, minimum notice and equality in employment. This employment legislation is aimed at improving the industrial relations climate.

As indicated earlier, the government intervenes to the least possible extent in the area of industrial relations. This almost neutral role adopted by the State is coming under increasing criticism. The notion that employers and employees should not any longer be free "to conduct their quarrels with little or no regard to the effects of what they do on other workplaces" has appeal in some quarters. What is sometimes contemplated as the solution is a wide range of regulations, for example the making of collective agreements legally binding, prohibiting certain strikes, cooling-off periods or other such legislative controls. Unions and workers are on the other hand fiercely possessive of their existing rights under law having secured them through long and hard endeavour and seek to extend them even more widely to sections of their memberships currently excluded.

The overwhelming majority of disputes are resolved through collective bargaining. To those who advocate extensive and radical change in the role of law in Irish industrial relations, I suggest that such change would be unnecessarily extensive and, at the present time, would not be a practical proposition. The success of any effort to introduce extensive and radical legislative control of industrial relations ultimately depends on some if not all of the following conditions:

- (a) the cooperation of the trade union movement and its capacity to control its members;
- (b) the preparedness of employers to institute proceedings under law;
- (c) the capacity of the courts to enforce their decisions.³

These conditions are extremely difficult to achieve and the lessons of the British experiment with their Industrial Relations Act between 1971 and 1974 should not be lost.

The choice however, is not solely between compulsory legislative arrangements, on the one hand, or motivation through a totally free system of collective bargaining, on the other. Rather is it a matter of finding the appropriate balance. In view of our long tradition of free collective bargaining it seems less than realistic to suggest that the problems can be solved by legislation alone, which in a sense would shift responsibility from the shoulders of the main participants.

In the interest of order, ground rules apply to all areas of human activity. There must be ground rules which will be followed in the conduct of industrial relations and the government and the public have the right to expect that both sides will conduct their affairs in a responsible way. The only workable solutions however would seem to lie in a framework of rules and accepted standards of behaviour, fashioned out of the interaction

of all three parties in our industrial relations system, viz., employers, employees and their unions and government.

3. STRIKES

In any debate on the need for industrial relations reform most attention focuses on strikes and the need for their control. The strike is part of the conflict-prone, pressure group democracy in which we live. A quote from the *1977 Annual Report* of the Labour Court is pertinent here:

It is unrealistic to think that all strikes or even all serious or damaging strikes can be avoided or outlawed in a democratic society. From time to time employers and groups of workers will test their relative strengths, resulting in a strike situation.

What is usually contemplated by way of reform is not a denial of the right to strike, but action to control and prohibit the more unsavoury aspects of strike behaviour, such as:

- (i) the often undue haste in the exercising of power, whether in the form of strikes and pickets, overtime bans, work to rules or other pressure tactics;
- (ii) the irresponsible escalation of disruption through picketing outside immediate areas of conflict;
- (iii) the frequent undertaking of actions despite the absence of official union backing. (In the past three years unofficial strikes, according to the Department of Labour, have accounted for 66 per cent of all strikes. In terms of days lost the proportion is 24 per cent.)

To many these might seem obvious areas for control by the law. One should not over-estimate, however, the capacity of the law to effectively control industrial action. Nobody in a democratic society can force a person to work if he does not wish to do so. However, with the prevalence of unofficial strikes in recent years, there would seem to be a strong case for making secret ballots a requirement before strikes are authorised by unions. This is an issue deserving of immediate attention.

4. AVOIDANCE OF STRIKES

On the broader front a more progressive approach to the problem of industrial relations reform may well be achieved by focusing on the underlying causes of disputes. It is in this context that the practices of management and workers and their representatives have a particular relevance.

Many disputes can be attributed to the inadequate use of the collective bargaining process and faulty or poorly designed grievance and dispute settlement procedures at the level of the workplace. It could also be said that disputes increasingly reflect, on the one hand, resistance by employers in the face of threatened managerial discretion in decision making and, on the other hand, resistance by workers to a denial by management of their right to a "say" in the various rules (their making, application, interpretation and enforcement), which make up the complex and mainly unwritten contract of the employment relationship.

I would suggest that there is an increasingly critical and more active and involved workforce at the level of the workplace, in possession of increasing power and presenting a serious challenge to managements and unions alike. It is a challenge from below not unlike that being experienced in other developed countries. The uniqueness of each country's situation lies, however, in the shape of its managements' and unions' response. In Ireland's case one senses an inadequate capacity to respond in a positive manner on the part of employers and their associations and worker organisations.

There is evidence that trade unions are failing to exercise adequate influence over their members and they would seem to be facing a considerable redistribution of power to shop floor representatives. This is aggravated by a fragmented trade union movement unable to adequately service the growing needs for service and leadership among a more actively concerned membership at the level of the workplace.

In the case of employers, I believe that only those who respond to this "challenge from below" constructively, recognising as legitimate the interest among workers in exercising some influence on the day-to-day decisions affecting their lives, can reasonably expect to experience "good" industrial relations. It would seem, and this is an area which deserves investigation, that bargaining and negotiation at workplace level are conducted increasingly between shop stewards and the various levels of management from first line supervisor upwards without the presence of full-time trade union officials or representatives of employer organisations. This has implications for trade unions because it can endanger their influence on their membership and employer bodies also could not be unaffected by such a development.

There is evidence of widespread activity at the level of the workplace. The problem of a lack of data about this activity and other facets of our industrial relations is serious and inhibits the analysis necessary before policy makers among trade unionists, employers and government map out the most desirable future course. The devolution of power to the workplace is by no means a new phenomenon in other industrialised countries. The power and status of the shop steward movement in Britain represents a shift in power from the trades unions headquarters to the workplace. Similar development have taken place elsewhere in Europe.

While there are probably several factors contributing to this phenomenon in Ireland, it can be said that the structure of the trade union movement hinders control of events at the workplace. Competition for membership between trade unions is widespread which tends to prescribe that unions should respond to every grievance. When trade unions find that they are unable to respond adequately at local level because of the restrictions placed on them through, for example, insufficient full-time officials as well as the inter-union competition mentioned above, there is the danger that their membership units will proceed with their grievances independently. This can enhance the power base of the local, part-time union leadership. This same leadership, in some instances, chooses to ignore the broader responsibilities which most trade unions rightly accept in a democratic society.

Managements, too, can cause conflict in the workplace. Where managements refuse to accept that there is a joint responsibility between themselves and unions in certain areas, arbitrary managerial decisions are likely to be met with quick and perhaps unofficial action by employees. In such instances, management must also be seen as the source of independent action.

Workplace industrial relations developments include an increase in the incidence of unofficial disputes, the widening scope of collective bargaining, i.e., an increasing range of negotiable issues and the emergence of the shop steward as an influential workplace negotiator. In the context of these developments, industrial relations practices at local level are of prime importance.

5. TOWARDS A CODE OF INDUSTRIAL RELATIONS PRACTICE

What then could be done to improve workplace industrial relations? The conciliation service of the Labour Court is staffed by Industrial Relations Officers acting as impartial third parties who get the disputants together to try and settle their differences at that level. More than one-half of the disputes which come to the Labour Court are settled through the conciliation service. Given the variety of problems with which the conciliation service deals, there is a considerable pool of experience among its Industrial Relations Officers. The Industrial Relations Act 1969 envisages a role for these officers "in the establishment and maintenance of means for conducting voluntary negotiations". This advisory role should be actively encouraged and developed with the objective of helping

to establish good industrial relations practices at the level of the workplace. This advisory service could be developed side by side with conciliation and should be based on a comprehensive Code of Industrial Relations Practice.

Such a Code duly agreed between employers and employees and their representative organisations would seem to have much to commend it. The Code would include sets of rules which would establish the rights and obligations of each party and the procedures to be followed in their dealings with one another. It would cover such matters as collective bargaining (including the subject matter open to negotiation by shop stewards in the workplace), disciplinary, grievance and dispute procedures, communication and consultation.

The Code would serve as a practical guide to both sides by setting standards which reflect good industrial relations practice. Clearly, any such Code would depend for its success on the level of commitment to it. It would need the support of employers and unions at national level as well as at the critical level of the workplace. The Code could be developed through existing machinery, viz., by the Labour Court (through the Industrial Relations Officers of its conciliation service) in consultation with the Employer-Labour Conference.

The Industrial Relations Act 1969 also provides for the drawing up of Fair Employment Rules by the Labour Court. No such rules have to date been made. Once approved by organisations representing substantial numbers of the workers and employers concerned, these rules would have legal status. The following parts of the suggested Code of Industrial Relations Practice might eventually become the subject of Fair Employment Rules – full use of agreed procedures, provision of company information to employees, provision of facilities and training for shop stewards.

6. THE LABOUR COURT

The Labour Court, established under the Industrial Relations Act 1946 is a prime example of action by government in the industrial relations field. The Court and its conciliation service provide a place where the disputing parties can get together to settle their differences with the help of an impartial third party. On the whole the Court has an impressive record in dispute settlement when one considers that it has moral authority only and that its recommendations, which are not legally enforceable, can be accepted or rejected by either or both parties. The combined efforts of the conciliation service and the Court proper have succeeded in settling more than four out of every five disputes dealt with by the Court since its was founded.

The Court was intended by the Oireachtas to be a Court of last resort and not merely as one more step in the process of dispute settlement. Its authority can be affected through premature reference by one or both parties to the Court before the full negotiating process has been used. Employers, for their part, may reserve further concessions until they go through the Court's machinery, in the belief that the Court will improve on their last offer, while trade unions may well expect the offer to be improved and consider that there is nothing to lose by going to the Court. Even if a union official in a given case believes that reference to the Court will not mean a better deal, he may still use the Court in order to avoid an adverse or even hostile reaction from his members. This again means using the Court as part of the collective bargaining process which was not the intention when the Industrial Relations Act 1946 was passed. It is only when negotiations are meaningful and fully used with the necessary flexibility present on both sides that the conciliation service can be successful.

The disputes where the Court's recommendations have been rejected, though amounting to less than 20 per cent of the total number of cases dealt with, have attracted much attention especially where the public have been inconvenienced. Rejection of recommendations however, is not necessarily an indicator that the Court machinery as such is defective. At various times since the Court was founded there has been intervention by outsiders after a Court Recommendation has been rejected. The ultimate settlement, after such outside intervention, has sometimes been higher than the recommendations of

the Court. Intervention of this kind means running the risk of undermining the authority of the Court and in addition, may tempt other groups to try their luck by rejecting Court recommendations in the hope that outside intervention will ultimately result in higher settlements.⁴

On the question of ministerial intervention in industrial disputes affecting the public, the Minister for Labour of the day can find himself in a difficult position. In the early stages of a dispute which affects the public, attitudes may favour holding out and an employer may be urged to stand up to a strike situation. However, when the inconvenience caused is more keenly felt a different kind of pressure can build up. The emphasis can then shift to pressure for settlement and restoration of the relevant service as quickly as possible. While recognising the considerable public pressure that can be placed upon the Minister when essential services are affected by industrial disputes, it seems certain that ministerial intervention should be used very sparingly indeed.

The Minister for Labour might consider it necessary to intervene in major disputes where they cause serious hardship to the community or where they have serious implications for the national economy. Even in such exceptional cases, the Minister would need to have regard to the effect of his intervention on third parties outside the particular dispute, the effect his intervention might have on the machinery available for settling disputes and, naturally, the possibility of securing a settlement. There is no statutory role for the Minister for Labour in the negotiation process. If a Minister for Labour were to intervene frequently in the disputes, there is the obvious danger that he would become one further stage in the negotiating process. Such frequent intervention would likely lead to a situation where local settlement procedures and the Labour Court and its services would be seriously undermined or ignored.

Since 1971, the Labour Court has been given and has accepted responsibility for adjudication on certain issues connected with the succession of National Pay Agreements. Such an adjudicative role was not envisaged for it under the Industrial Relations Acts. Under the Acts, the main function of the Court is that of a mediating agency in helping the disputing parties to reach a settlement. Thus, National Pay Agreements have added a new dimension to the work of the Court and the Agreements by their nature have limited the flexibility of the Court in its deliberations.

The operation of the Anti-Discrimination (Pay) Act, 1974 and the Employment Equality Act, 1977 have also added to the work of the Court. Again, this is a new dimension to the Court's main role of mediation in that under these two Acts the Court has a monitoring role in regard to workers' rights and also has the responsibility for hearing appeals and thus making determinations which have legally binding effect. In addition, therefore, to its main function under the Industrial Relations Acts of helping the parties to settle their disputes, the Court is now virtually making determinations on points of law in accordance with what is stated in these two Acts rather than adopting its traditionally pragmatic approach of recommending settlement terms to the disputants. This additional, complex work has implications for the character of the Court and for the principle of voluntarism which has been fundamental to the Court's make-up since its establishment as underlined by the following extract from the *1978 Annual Report* of the Labour Court:

A feature of these appeals is the extent to which the Court finds itself involved with legal aspects of its actions and its decisions thus depriving it of the flexibility which it enjoys when dealing with cases referred to it under the Industrial Relations Acts.

I consider that its functions under these two Acts should be transferred to a larger Employment Appeals Tribunal or, as a second preference, should be accommodated separately within the Court.

The Labour Court is obviously a very important national institution concerned with the critical area of industrial relations. It needs more resources as a matter of urgency to provide inter alia an adequate career structure for its Industrial Relations Officers. An effective conciliation and advisory service will only be achieved if the staff strength in

terms of both numbers and overall competence is constantly maintained. The nature of the subject and the particular function to be performed together add up to a strong case for the appointment of Industrial Relations Officers independently of civil service structures. A good case could be made for recruiting at least some Industrial Relations Officers from the ranks of industrial relations practitioners outside the civil service.

There is also a case for improving the staffing and back-up facilities of the Court proper where the huge increase in workload continues to cause delays in recommendations. In this connection it should be said that the Minister for Labour recently established a fourth division of the Court to expedite business. I feel the Court should have a research staff of its own to handle, for example, complex issues like job evaluation and productivity agreements. These increased resources should extend the professional skills of the Court while enabling it to retain the informality and sense of humanity and understanding of human relations which have contributed so much to its success.

7. AN INDUSTRIAL RELATIONS AGENCY

I wish to conclude by suggesting the establishment of a new, independent body. Although there are at present several well-established industrial relations institutions in Ireland, there is no specific permanent body to monitor changes taking place in the most fundamental policy areas of our industrial relations system or to initiate reform in the various institutions. An Industrial Relations Agency, the title is not particularly important, as an independent body could play an important role in improving the quality of industrial relations by acting as an agent of change.

While it is primarily the responsibility of the people who work together to shape their relationships, a third party like the proposed Agency could help from a position of detachment and independence by providing assistance. The Agency, as I envisage it, would have the resources to establish factual information and to make recommendations on a range of issues. It would not be a "fire-fighting" body preoccupied with finding immediate solutions to industrial relations problems.

Among the Agency's tasks might be the following:

- (i) the investigation of industrial relations problems throughout a whole industry;
- (ii) the impact of changing technology on industrial relations;
- (iii) the identification of areas within our industrial relations system where government might allocate more funds;
- (iv) an analysis of appropriate training needs for management and union representatives.

FOOTNOTES

1. Allan Flanders, "Collective Bargaining: Prescription for Change", *Management and Unions*, Faber & Faber, 1975, pp. 174-5.
2. Allan Flanders, *op. cit.*, p. 176.
3. All three conditions, for example, were not present during the British attempt to translate its industrial relations system into one which would rely heavily on the law, as clearly emerged in various analyses of the failure of the Industrial Relations Act, 1971.
4. See, for example, David O'Mahony, *Industrial Relations in Ireland: The Background*, Economic Research Institute, Paper No. 19, 1964, p. 6.