SIPTU

SIPTU Submission: The 'Good Jobs' Employment Rights Bill

September 2024

SIPTU - Organising for Fairness at Work and Justice in Society

1. **SIPTU fully endorses the comprehensive submission made by NIC-ICTU who have consulted and sought input from all affiliated unions regarding the 'The 'Good Jobs' Employment Rights Bill.' This document should be read in conjunction with the NIC-ICTU submission.**

2. **Therefore SIPTU will confine itself to additional comment on the following themes within the consultation process:**

   Theme C: Voice & Representation

   Collective Bargaining: Recognition (C10 & C11)

   Collective Bargaining: Introduction of Collective Sectoral Bargaining (C15, C16 & C17)

3. Collective Bargaining: Recognition (C10 & C11)

The importance of collective bargaining to workers and a healthy democracy is undisputed. However, despite Northern Ireland (NI) having legislation in place to facilitate statutory recognition of trade unions, the process itself is particularly daunting and skewed against workers and their unions.

Fundamental reform of the statutory recognition process in NI is long overdue. There is no doubt the presence of legislation has provided a foundation for voluntary agreements to be made, which would not have otherwise occurred in its absence, due to employer hostility.

It is nevertheless the case that the legal ambiguities and imbalance against workers and their unions, when an application is made, need to be addressed. This is not a fault of the Industrial Court per se but due to how the law itself is constructed. Employers have too much latitude, in the present system, to impede, frustrate and indeed intimidate workers from attaining their right to a voice in the workplace.

Key reforms of the current system that could be made are:

i) Removal of the 21-worker threshold before an application can be lodged.

The small firm's threshold discriminates disproportionately against woman and ethnic minority workers, who are present in greater numbers in microbusiness and SME's. In Northern Ireland approximately 90% of firms fall into this category.

The ability to collectively bargain would also encourage the resolution of disputes through dialogue rather than litigation via the Tribunal system.

ii) Early Access Rights

Access for trade unions should occur early in the process to ascertain the level of potential support for collective bargaining. Access arrangements should be set at this early stage and a timeline for access for the duration of the process agreed.

Access for the union should not be at the end of the process where workers have often experienced a sustained period of employer pressure to prevent recognition.

Access should mean real access and not just written communication between the union and workers. This would allow for a true assessment of their views on collective bargaining.

Access arrangements should have prescribed time periods for agreement i.e., 10 days or the Court can enforce arrangements. This could serve to prevent the widespread practice of stalling and prevarication on the part of employers.

iii) Balloting Arrangements

Where it is established that over 50% of the bargaining unit is in trade union membership, automatic recognition should be granted. There is no evidence to suggest that members of trade unions would be hostile to collective bargaining. To hold ballots for recognition in these circumstances is divisive and unnecessary.

The 40% requirement to vote for recognition of the overall bargaining unit should be removed. Very few of our elected representatives at Council or Assembly elections would survive this hurdle for Office.

This clause has the effect of encouraging employers to intimidate or discourage workers from voting at all in order to suppress the vote. A simple majority of workers voting in the recognition ballot should suffice.

Ballots should have the facility to be held electronically, by post or at the workplace.

iv) Unfair Practices

Consistent attempts by bad employers to intimidate workers during the process have included sham redundancy processes and unfair dismissals in order to create a hostile environment. The only recourse, at present, open to workers is to take Industrial Tribunal claims.

There should be punitive sanctions on employers found to engage in unfair practices in addition to Tribunal claims.

The Industrial Court should be given the power to grant automatic recognition if such practices occur.

v) Effective Management & Small Fragmented Bargaining Units Criteria

The effective management criteria should be removed, employers consistently try to argue that in effect collective bargaining is incompatible with effective management.

The litmus test should be 'is effective bargaining possible' and not whether collective bargaining is compatible with effective management.

The desirability of avoiding small-fragmented bargaining units within an employment has previously led to challenges from employers as to the appropriateness of the bargaining unit i.e., "small islands of union recognition in a sea of non-recognition."

No consideration should be given to supposed bargaining units outside of the one specified by the union in its application. This criterion gives credence to supposed bargaining units of workers who may never seek recognition.

In large, multi-site organisations, unions that have recognition within a bargaining unit should have the ability to organise and ballot in other potential bargaining units across the organisation without reaching the 10% threshold within the additional unit or workforce group.

vi) Declaration of Recognition

Where the Industrial Court issues a declaration of recognition to a union with an employer, recognition should not be rescinded other than buy mutual consent. Currently an employer can seek to de-recognise a trade union after three years from the granting of recognition.

Similarly trade unions should not face the current three-year prohibition on submitting a new application to the Court in the event of an unsuccessful application.

vii) Scope of Collective Bargaining

The current legislation on collective bargaining is contained within very narrow parameters which restrictively allows trade unions to only bargain on 'pay, hours and holidays'. If we are truly to encourage a new industrial relations framework that benefits workers, employers, and the wider economy in driving key areas of economic growth and well being then the scope of collective bargaining must be expanded to include 'all terms and conditions of employment and work organisation.'

The Industrial Courts remit should be reformed to not simple 'have regard to the object of encouraging and promoting fair and efficient practices and arrangements in the workplace' but should be reformed to require it 'to promote collective bargaining in the workplace, while having regard to the object of encouraging and promoting fair and efficient practices and arrangements in the workplace', as per the ILO Committee on Freedom of Association.

Central to any progress in this area is the right to have a voice at work through a recognised trade union. The current legislation needs to be reformed in order to give effect to that right.

The NI Executive have sole responsibility for devolved powers governing employment rights in NI. The New Decade New Approach (NDNA) Program, signed up to by the five parties, called for improvements in workers' rights with specific commitments around workers voice,

"...where workers have a voice that provides a level of autonomy..." P.44 NDNA

Worker's voice, if it is to have any genuine meaning, must mean workers and their trade unions.

4. Collective Bargaining: Introduction of Collective Sectoral Bargaining (C15, C16 & C17)

The purpose of sectoral collective bargaining is to ensure that workers in small firms and fragmented sectors have access to workplace representation and negotiation over issues of pay and working conditions. This is particularly necessary in sectors where enterprise-based collective bargaining is, of necessity, limited given the small, fragmented composition of particular sectors. There are two ways of approaching the matter, which are not mutually exclusive.

First, the Department of the Economy (DfE) could launch a consultation process among stakeholders to identify those sectors where sectoral collective bargaining would have an immediate and positive impact. Following this consultation process the DfE would be tasked with proposing to the relevant Minister the sectors in which such sectoral collective bargaining institutions should be established. This is the process that was undertaken in the Republic of Ireland with the Labour Court, following the High Court ruling striking down Joint Labour Committees. As part of this process, the issues which would be negotiated could be drawn up.

As an example:

- **Base wage rates and how wage rates will be adjusted during the term of the negotiated agreement (e.g. inflation, profitability, etc.).**
- **Whether employer pension contributions are included in base wage rates**
- **Ordinary hours, overtime, penalty rates (rates that apply when working overtime or shifts etc.)**
- **Coverage and duration of the negotiated sectoral agreement**
- **Holidays and leave**
- **Skills and Training**
- **Health and Safety**
- **Flexible Working**

This would not preclude enterprise-based collective bargaining. However, any agreement arising from a collective agreement at the enterprise level could not contain clauses that undermine agreed clauses in the sectoral agreement.

Second, as part of this same proposed consultation process conducted by DfE, provisions for workers to activate a statutory sectoral collective bargaining procedure. This could occur through a process described as a 'representation' benchmark:

A representation benchmark, or threshold, would require the union(s) to have a density of at least 10% of the covered workforce or 1,000 members (whichever is lower) in the workforce proposed to be covered by a new sectoral collective body. This representation would be on

the basis of a sector or an occupation.

The DfE, based on the consultation, would propose to the relevant Minister the mechanisms of this activation process.

5. Access at Sectoral Level

The negotiating employers' group should provide the negotiating union(s) a list of all employers and workplace locations within the sector and the count of all employees by employer, workplace location, grade, group, and category.

In advance of sectoral bargaining the negotiating union(s) would be facilitated by individual employers to have access to all workers as part of pre-talks consultation in their workplace.

This would be paid time off for 1 hour. This process would be repeated post the conclusion of the sectoral talks. The notice for such meetings above to be drafted by the union(s) and circulated by the employer.

An agreed number of key workplace union representatives would be facilitated to attend sectoral talks and consultation meetings, and this would be paid time.

Union representatives would have the right to meet new employees in their workplace at induction meetings. Meetings to be held in the workplace and where workers work remote/have no access to a workplace they would get paid time off to attend that meeting organised by the union(s).

Employers will distribute information about the pay talks agreed by the union(s) digitally and physically.

The state shall support and encourage both employers and trade unions to engage in collective bargaining and an institutional training fund should be established as a vehicle utilised to assist joint training programmes.

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