

# Review of collective bargaining and the “IR landscape” set to commence

## BRIAN SHEEHAN

**As expected, the Tánaiste and Minister for Enterprise, Trade and Employment Leo Varadkar has announced the setting up of a High-level Working Group under the auspices of the Labour Employer Economic Forum (LEEF) to review collective bargaining and the industrial relations landscape in Ireland.**

To be chaired by Michael Doherty of Maynooth University, this will be the first detailed examination by the social partners, through the LEEF, of this often fraught area of industrial relations since the late 1990s.

At the beginning of March, IRN reported that Ibec had agreed to be part of an exercise, which its CEO Danny McCoy, said would examine how collective bargaining “might be developed in a way that is consistent with Irish business competitiveness”.

The involvement of Ibec, ICTU and government in such a forum, IRN observed, is “a significant development, one that will be watched with considerable interest by both sides of industry, and by various state agencies and government departments”. (*See ‘Ibec ready to engage in social partner forum on collective bargaining’ in IRN 09 - 04/03/2021*)

The ICTU contingent of three will be Congress General Secretary, Patricia King, and the general secretaries of both SIPTU and Fórsa, Joe Cunningham and Kevin Callinan. Danny McCoy, the CEO of Ibec, will be accompanied by the employer body’s Director of Employer Relations, Maeve McElwee, with the CIF represented by its DG, Tom Parlon.

For the government side, there are also three nominees: Professor Bill Roche of UCD, Clare Dunne, Assistant Secretary, Jobs, Enterprise & Innovation and one from the Department of An Taoiseach (name to be confirmed).

## A ‘TIMELY’ EXERCISE

Formally announcing the initiative, the Tánaiste Leo Varadkar said: “The approach to industrial relations in Ireland is one of voluntarism, whereby the State does not seek to impose a solution on the parties to a dispute but will, where appropriate, assist them in arriving at a solution. This approach has served us well for many years.

“However, whilst there is an extensive range of statutory provisions designed to back up the voluntary bargaining process, some of these are currently subject to legal challenge. In the light of this and international moves to look more closely at how employers and trade unions engage on matters of mutual interest, I now consider it timely to review collective bargaining and the industrial relations landscape in Ireland.”

The statement accompanying the announcement said the Group will:

- Examine the issue of trade union recognition and the implication of same on the collective bargaining processes.
- Examine the adequacy of the workplace relations framework supporting the conduct and determination of pay and conditions of employment, having regard to the legal, economic, and social conditions in which it operates.
- Consider the legal and constitutional impediments that may exist in the reform of the current systems. In doing so, the group will need to be cognisant of the individual employment rights frameworks and the EU context. It may wish to consider other models of employee relations and pay determination established in other Member States.
- Review the current statutory wage setting mechanisms and, where appropriate, make recommendations for reform. This aspect will commence following the Supreme Court ruling in the National Electrical Contractors Ireland case that is currently before the Labour Court - expected in Q2.

The group is to report quarterly to the Tánaiste and Minister for Enterprise, Trade and Employment, who will in turn update the LEEF. It will convene in mid-April with the aim of producing an interim report by the end of July 2021 and completing its work as soon as possible thereafter.

## **NEVER RESOLVED**

It is an open question as to whether this ambitious initiative will prove to be any more successful than the previous effort in this area in the late 1990s, which resulted in the Industrial Relations Act, 2001, whose right to representation provisions were, ultimately, emasculated by the Supreme Court's 'Ryanair' ruling in 2007.

Meanwhile, long cherished statutory wage-setting mechanisms, such as Sectoral Employment Orders, which deliver legally binding pay and conditions for workers in employment sectors, have been under increasing pressure.

The constitutional status of these mechanisms is under appeal to the Supreme Court following their striking down by the High Court almost a year ago.

## **IRISH SOLUTION, IRISH PROBLEM**

The original 2001 Act was never about trade union recognition, rather it was devised to get around what are regarded as competing constitutional rights. Employees have the constitutional right to join a union, but employers can refuse to negotiate with them.

When the special review meets later this month, it will face familiar conundrums and knows that this won't be the first attempt to resolve what has always been a vexed issue for trade unions.

Employers, by and large, have been content with the status quo, especially those multinational investors from the United States. But ironically, unlike in the US, where workers can secure recognition through workplace ballots – this is also the case in the UK – in Ireland, there are no such mechanisms, nor seemingly can there be, given the constitutional “impediment”.

Yet, despite this, trade union density remains higher here than in either of these other jurisdictions. So a referendum, followed by legislation, might do very little to widen collective bargaining coverage or increase levels of trade union membership.

## **PRAGMATISM**

Ibec has been no backer of radical change in this area, but as explained by its CEO Danny McCoy recently, employers know that at a time when collectivism is making a comeback, opposition parties here have promised change in this area. This could mean a referendum on an issue that is sure to cause division.

They know that a pragmatic solution achieved by consensus, which fits with Ireland's voluntarist system, may be the wiser option for members.

For trade unions, trade union recognition rights per se don't mean rising density, but what could help are effective and practical collective bargaining mechanisms, which trade unions can have a tangible input into.

The parties to this LEEF process also know that in the background is the proposed EU Directive which proposes the Government ensure "adequate" minimum wages and an action plan on collective bargaining, where coverage is below 70%. Rather than wait for the EU, the feeling is growing that a 'home-grown' solution may be better than a 'hand me down' template from Brussels, especially in an EU where voluntarism is very much in the minority, particularly with the departure of the UK.

## **SEEKING A FORUM**

Ibec CEO Danny McCoy put to his own "business leaders" in March that the issue of how to determine the terms and conditions of employment, be that wages, entitlements, pensions or leave arrangements, is "increasingly seeking a forum that can be best described as one to deliver collective agreements".

But they want this to develop in a way that is "consistent with Irish business competitiveness, fairness and dynamism in our labour market".

The employers body is acutely conscious of the fact that in the 2020 General Election, the manifestos of "most of the now opposition parties" included a constitutional referendum proposal to make collective bargaining a constitutional right in Ireland.

IRN understands that this option isn't viewed favourably by most industrial relations experts; there is a widely held view that neither 'side' would gain from such a solution.

## **COVERAGE**

For the likes of Ibec and the state's job creation agencies, a referendum-led outcome could make attracting inward investors harder, while for trade unions it would likely make no inroads into declining trade union density and the attendant issue of collective bargaining coverage.

What would extend collective bargaining coverage are effective mechanisms of representation that led to negotiated and mediated terms and conditions that applied to a majority of workers. (See also, [COLLECTIVE BARGAINING section in this issue](#))

