

Trade unions seeking more focus on 'right of access'

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Trade union access to workplaces is a central demand of Congress trade unions, as part of the transposition of the Adequate Minimum Wages Directive (AMWD), obliging Ireland to promote collective bargaining. It is a topic that generates tension – and outright hostility in some sectors – but nevertheless will come into more focus in the coming year.

Several ICTU private sector unions are seeking trade union access to workplaces and more legal protections for trade union members, as part of the 'Respect at Work' campaign. Access has been a central part of ICTU's thinking on how to transpose the AMWD, which obliges Ireland to promote collective bargaining (See [News Feature in IRN 14/2023](#)).

Next week, ICTU is to release new research, by Michelle O'Sullivan and Caroline Murphy of the University of Limerick, in conjunction with the German think tank, Friedrich-Ebert-Stiftung, which finds that employer resistance to trade union access is increasing across EU Member States, "in the form of obstructing workplace access and targeting union activists."

Access for trade unions is charged with constitutional dimensions

Alongside other proposals to reform industrial relations in Ireland, such as 'good faith engagement' and removing the "employer veto" from joint labour committees, trade union access to non-union workplaces is perhaps the most contentious – short of mandatory trade union recognition.

Regardless of any will of a government to provide access rights for trade unions, the matter is charged with constitutional dimensions, such as a corollary right to "disassociate" with a trade union and the arguably more powerful matter of private property rights. This is something the non-union FDI sector would be very energised about.

Union access is mentioned in Recital 16 of the AMWD but it does not feature in Article 4 (collective bargaining); it is not a binding measure on a Member State, and the likelihood of Ireland's government going beyond the minimum that is required to transpose a directive in this space is remote.

Therefore the argument that a Directive's requirement having primacy over Ireland's constitution would not be in play.

UK EXAMPLE

Yet, the prospect of enhanced trade union rights may not be so gloomy on the home front, when seen in the context of the Supreme Court's ruling in the *HA O'Neil v Unite* case. This case fostered a new approach to trade union activity, taking a more expansive view of what a right to form and join a trade union means.

The Supreme Court did not mention access in this regard but it did take a significant step in finding that the right to join a trade union does not stop at the point of membership but may also extend to union activity, such as taking industrial action.

In the UK, the new Labour government have promised to "introduce rights for trade unions to access workplaces in a regulated and responsible manner, for recruitment and organising purposes" which would "bring the UK in line with many other modern advanced economies".

This would involve “introducing a transparent framework and clear rules, designed in consultation with unions and business, that allow unions officials to meet, represent, recruit and organise members, provided they give appropriate notice and comply with reasonable requests of the employer”.

However, such a proposal does not have to navigate the same legal impediments in Ireland due to the absence of a written constitution in the UK.

SECTOR SPECIFIC MATTERS

The debate on union access to workplaces would also have to take account of sector/industry-specific matters. For example, in the construction industry, people cannot access construction sites without Safe Pass (safety training and certification for construction workers).

Construction is a ‘safety critical’ industry, as explained by Jean Winters, Director of IR and Employment Services at the Construction industry Federation (CIF).

The CIF deals with all five Congress unions in the construction industry through the joint industrial council, to manage IR issues. In companies that have existing relationships with trade unions, there are working relationships between trade union officials and managers on how to address issues that arise. In some cases, contractors may allow union organisers to an area on site (in a canteen, for example) when there is no work activity going on at that time.

The IR characteristics of the construction industry demonstrate that a general right of access would not be a realistic proposal. Employers in other sectors may argue that an unrestrictive access right could amount to interference with their own right to run their business.

DIGITAL ACCESS

How the ICTU ‘Respect at Work’ unions pitch the right of access is as “a right to access a trade union” so that workers can “access information about their rights at work through a trade union”.

What the Trades Union Congress (TUC) in the UK has advocated for is a ‘digital right of access’, whereby an employer would have to circulate electronic communications of a trade union to their employees.

Not without difficulties for some employers, this could nevertheless be an exploration that captures the ‘promotion of collective bargaining’ requirement under AMWD, whilst not running into the ‘property rights’ impediment in the same way as a physical access right does. It also deals with remote workers who are not ‘on site’ some or most of the time.

TRAINING

It remains to be seen how the issue of trade union access in Ireland develops, but a key measure that would have to tie in with any access right is the ‘training’ recommendation of the 2022 High Level Group, where funding, under the National Training Fund Act 2000, can be accessed by trade unions and employers.

This is for training “in the practice of collective bargaining” that could “increase the efficiency and effectiveness of the process but may [also] encourage greater take-up of collective bargaining opportunities.”

Enhanced training of officials on both sides can aid a more orderly system of industrial relations, based on best practice.

It might also go some way to allay concerns amongst non-union employers as to how unions operate, particularly given how some recent high profile industrial disputes may not have inspired non-union employers to re-evaluate their views towards trade unions.