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STRONGER TOGETHER



**Unionising and collective bargaining
hold key to a fairer economy
and more equal society**

Discussion document prepared by the Financial Services Union

A right to collective bargaining for all workers will allow for a fair post COVID 19 transformation of our economy.

This document aims to provoke discussion on what we mean by trade union recognition, the right to organise and collective bargaining and what changes might be needed. Numerous motions have been passed at the last two ICTU delegate conferences which have called for:

1. The right to union recognition and access to organise workers in their workplace
2. The right of unions to bargain for and represent members
3. The right to take meaningful industrial action quickly and effectively if it is required to pursue the interests of members
4. Mandatory union recognition for companies which receive state support and state contracts

In this discussion document we renew the call for these institutional supports for workers unionising and argue the case that this will transform Ireland in a positive way for all. It is also timely as the Tánaiste has recently established a review body to examine collective bargaining and industrial relations in Ireland. It is our belief that these key elements Congress Policy should form the basis of the outcomes of this review body.

Ireland and the world have become more unequal. There is a significant imbalance of power between large corporations and ordinary people and citizens. This is having a significant detrimental impact on the environment and creating divisions within society.

We also see little sign of gender inequality, in jobs, pay or pensions being addressed. The technological dividend appears all one way with workers losing their jobs as a result of technological innovation rather than it making work and life easier.

These are complex issues. We know one area that is evidentially proven to positively address many of these issues and that is collective bargaining with trade unions. Organisations as diverse as the ILO, World Bank and the IMF have all said so in recent years.

We need collective bargaining across the economy, and we need it now. There can be no going back to the greed and inequality of the Celtic Tiger era but equally no going back to the unjustness of the austerity years. We need a new fair way forward to assist the economy recover from COVID 19 and rebuild many businesses and jobs.

Workers need the means by which to unionise free from victimisation and harassment and the State should institutionally support trade unions and workers seeking to organise. We need a level playing field between workers and employers and the State.

And for our part we commit to supporting private sector workers organise. We have already started this with finance, fintech, tech and game workers, animators and agency workers across large tech firms and we will continue and expand this work.

Ireland can be transformed positively by this clear and simple policy approach ensuring a fairer distribution of wealth, a just society that ensures no one gets left behind.

John O'Connell
FSU General Secretary

1. What is trade union recognition?

Trade Unions are organisations of working people formed by themselves to advance their interests in work. Trade Unions have to be registered with the State to have a negotiating license so they can negotiate and represent their members. Experience informs us that the more members a union has the better an agreement they can secure and that might be on pay, pensions, working hours, redundancy terms, maternity pay and much more. Organising workers into trade unions is key to fair work and a fair society.

Vital to representing members is being 'recognised' by employers as the representative voice of employees and workers. Therefore, employers recognising their union is vital to staff in that workplace in order to have a collective professional voice at work.

Trade union recognition is when an employer agrees to negotiate with the union on behalf of its members and staff at that workplace. In effect, this means the employer agrees to meet, discuss, inform and negotiate with that union. In the Republic of Ireland, currently, there is no law that provides for this or makes it mandatory on employers to do this. This makes work unfair for many hundreds of thousands of workers who want or need a voice at work but are denied this by their employer.

2. What is collective bargaining?

"all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for...determining working conditions and terms of employment; regulating relations between employers and workers...regulating relations between employers or their organisations and a workers' organisation or workers' organisations."

ILO Convention No. 154

Collective bargaining is when employers and unions conclude agreements on working terms and conditions and ensure that those agreements provide the basis for regulating their subsequent relations with each other. It is about both sides talking, listening, and compromising. The objective is to reach mutually acceptable agreements on wage and conditions like working time, leave, training, the introduction of new technology, employment, and productivity. Over time countries have evolved diverse ways to organise bargaining, from plant to company, to industry to national level arrangements.

For collective bargaining to have meaningful effects, it needs to involve and cover a large share of workers and companies. Well-organised trade unions and employer organisations with a broad support base are the conditions in many countries for attaining high coverage. The beneficial effects of collective bargaining are likely where company and sector- or higher-level bargaining coexist and complement each other. Where higher bargaining levels coexist with firm-level agreements, the prospect of balancing inclusivity in the labour market with better productivity and employment outcomes is more likely. National, or sectoral, bargaining without workplace representation can weaken and hollow out trade unions over time ultimately damaging their ability to negotiate good outcomes.

Yet in Ireland, unlike many other comparable industrial relations systems internationally, there is no way to force an employer to engage in collective bargaining. Irish workers have the right to be union members but there is no corresponding duty on employers to engage with that union. This dilutes the value of the right to associate in unions and has been criticised by the ILO as such.

3. Why collective bargaining is essential for workers

“Unsurprisingly, there were many similarities in issues facing workers in the industry. But even a cursory reading of the results showed that there were significant differences also – and that these differences reflected the effect of the presence, or the absence, of a recognised trade union on pay and pay setting, employment conditions, and management behaviour”.

Colin Whitston, former Vice Dean for Undergraduate Studies at the National College of Ireland in the report ‘The Union Difference’

Research frequently shows that unionised workers are better off than comparable non-union workers regarding many terms and employment conditions. FSU research on the finance and technology sector in 2019 showed that 77% of workers reported getting a pay rise in the previous 12 months in union workplaces. However, only 51% did so in non-union settings. While 98% of union members reported being members of pensions schemes, this fell to 77% in non-union workplaces.

Ireland has a significantly higher presence of low-paid jobs than the EU average, 19.8% compared to 12.8%. Countries like Sweden, Finland and Denmark, with the highest levels of collective bargaining coverage also have the lowest prevalence of low pay.

Collective bargaining can:

- Provide workers with a voice at work
- Improve working conditions
- Negotiate on behalf of workers with their employer
- Represent worker individually should they need it
- Ensure dignity, respect and fairness at work

However, all reliable estimates indicate that collective bargaining coverage has declined in Ireland, and union density, particularly in the private sector, now covers less than 20% of the workforce. Campaigning for collective bargaining rights can help address that, improving the pay, pension, and other conditions of hundreds of thousands of private-sector workers. Strengthening unions and collective bargaining can make society more equal and the quality of employment better.

4. How collective bargaining can benefit society and the economy

“Our key findings are that the decline in unionisation is related to the rise of top income shares and less redistribution, while the erosion of minimum wages is correlated with considerable increases in overall inequality”.

IMF, 2015

As the above quotation from the IMF demonstrates, there is evidence rising income inequality in many economies is associated with declining union membership and collective bargaining. Many commentators believe collective bargaining can facilitate inclusive labour markets and improved economic performance. Ultimately, collective bargaining matters for many of the issues people and policymakers care about: employment, wages, inequality, and productivity.

Collective bargaining can:

- Enable social and economic inclusivity by seeking to ensure workers gain a fair share of economic growth.
- Collective bargaining assists individuals who may not have the power to negotiate individually, helping to compress income inequality within firms.
- When practised at a sectoral level, collective bargaining, by co-ordinating negotiations across many firms, further reduces inequalities across a larger pool of workers.
- Collective bargaining also helps to prevent and regulate workplace conflicts, thereby maintaining industrial peace.
- Where practised at the company level, collective bargaining can help improve workers' labour market security. It can provide support, guidance, and access to up-and reskilling for workers who lose their jobs in the event of restructuring and redundancies.
- Where practised at the workplace level, collective bargaining upholds sectoral agreements and ensures employment rights are protected.

- Collective bargaining can also support business performance. It reduces inefficient transactions costs for firms that arise from replicating exchanges across multiple employees. Through sectoral or national collective bargaining wage competition can be restrained across firms, while the incentives for innovation become enhanced by preventing the potential of increasing profits through low pay. By taking wages out of competition, managers increase margins elsewhere by improving workplace efficiencies. In so doing, collective bargaining can push the economy towards a high wage and high productivity equilibrium.
- By helping secure better conditions of work can stimulate workforce engagement, effort, and productivity. By enabling worker voice to be heard, collective bargaining reduces the costs associated with labour turnover, providing more incentives for more investments in the firm's human capital. As such, collective bargaining corrects inbuilt failures and inefficiencies that can regularly occur in market economies.
- Collective bargaining provides a platform for social dialogue between governments, workers and employers. It helps to manage reforms at the national, industry, and workplace levels, thereby enabling fully considered and agreed solutions to new economic challenges.

5. Collective Bargaining and Business: Doing the Right Thing

Aside from the potential economic gains to business, there are powerful moral reasons why employers in Ireland should support trade union recognition and collective bargaining. Collective bargaining is called for and encouraged by the following international treaties and charters, amongst others:

- The ILO's Freedom of Association Convention No. 87 and 98;
- The European Social Charter Article 6;
- The European Convention of Human Rights Article 11; and
- Principle 3 of the UN's Global Compact.

By supporting collective bargaining, employers are supporting these socially responsible milestones in human rights. They are actively leading in corporate social responsibility on workers and human rights. By implementing and encouraging collective bargaining within the business community, employers will contribute to a fairer and more equal society. Collective bargaining then is in the long-term interest of employers, investors, and shareholders. Employers must do the right thing and lead by example on workers' rights. The recent report by Forasa trade union, 'Harnessing the power of representation for economic and social progress', highlights that collective bargaining can enhance productivity and innovation as well as contribute significantly to social equality.

6. Government must act to uphold, support and spread collective bargaining coverage

The role of the Government should be to facilitate a just and fair society for all. Collective bargaining can be a fundamental part of that effort. However, relying on wholly voluntary solutions for employers and unions have failed, frequently confounded by legal challenges and court decisions. The voluntarist system has become, in effect, a veto system for employers. Individual employers often have short term incentives to avoid trade unions and collective bargaining or remained wedded to outdated anti-union ideologies. However, with coordinated action initiated by the State, the economy and society can reap the long-term benefits of collective bargaining. Short term individual profiteering should not trump long term growth, stability, and equality.

The Government can enable this alternative by legislating for union recognition and by creating the institutional and legislative framework within which unions can grow and prosper. If constitutional blockages to such action exist, the Government should introduce a referendum on an amendment to the constitution to provide for new legislation and institutional changes.

The Government, and State institutions, should support fairer workplaces and make meaningful the rights of employees to unionise and bargain. This discussion document will now suggest practical measures that a Government can take to do this.

7. What institutional changes would make work fairer and support workers seeking to unionise and collectively bargain?

We propose 4 key areas of positive change and positive State support:

- Right to Join
- Right to Representation
- Right to Act
- Right to Fair Work

Right to Join

All workers in Ireland have the constitutional right to join a trade union, but this is often frustrated, discouraged, or even penalised by some employers. It is time to change this and make it easier and safer for all workers to join a trade union. The greatest obstacles to joining a union from workers is fear of employer hostility and not being encouraged to join.

- **Right to access and organise**

Provide trade unions (staff and elected officers) with the right to access all workplaces to educate workers on their basic entitlements, including joining the trade union and discussions on workplace issues and collective bargaining. Union Representatives must also be provided statutory facilities time and support, including digital means, to carry out union duties including the recruitment of new members into the union. These facilities should extend to workplaces where unions are not recognised. Union Representatives must be allowed discuss all workplaces matters including pay and conditions and must be provide meetings rooms and email access to arrange both physical and digital workplace meetings. These meetings can be held on paid working time. Union Representatives must be provided induction time with all new employees.

- **Trade union deductions at source**

Legislate so workers who so wish can have trade union subscriptions deducted by their employer with the relevant details and the correct subscription passed to the designated trade union. Any employer refusing to give the right subscription should be liable to pay any arrears to the trade union and be in breach of the law and so fined. The threat or practice of removal of at source deduction needs to be removed from the bargaining table and legally protected.

- **Anti-victimisation & unfair dismissals**

Reduce the qualifying period for all unfair dismissals protections from 12 months service to Day 1 protection. Strong anti-victimisation measures, akin to the whistle-blowing protections, should be enforced, including immediate reinstatement, pending case, and significant financial penalties if proven. Union Representatives must have the strongest protections to be able to carry out their role free from fear of employer retaliation and employers must be disincentivised from doing so.

Right to Representation

Provide mandatory union recognition and collective bargaining rights for trade unions where substantial numbers of workers want it. The introduction of these rights will bring Ireland up to speed with our neighbours in Britain and other major economies like Canada and the United States as well as our European neighbours.

- **Individual representational rights**

Ensure workers have a legal right to representation for individual purposes, in the workplace and with the employer, with strong sanctions on employers who refuse to allow this. A Union Rep must be allowed attend individual case meetings (for example absence management, grievance, fact find/disciplinary, rating appeal) with members in their physical workplace.

- **Union recognition and collective bargaining rights**

Employers should be required, on request from a substantially representative trade union in the business, to engage within ten days of receiving the union's request to agree to union recognition and a written collective bargaining procedure. Should the employer refuse to grant this within 30 days, the recognition and collective bargaining request is referred to the Labour Court. The Labour Court will assess the claim of 'substantially representative'; where it deems necessary, the employer will have a further 30 days to agree to recognition and collective bargaining procedure. Should the parties reach no agreement with that timeframe, the Court can impose a recognition and template procedure.

- **State support**

All companies in receipt of any State funding/support/grants/contracts/ tax incentives must recognise their workers' designated trade union as part of a fair work provision in the award or contract. State bodies, like the IDA or Enterprise Ireland should be mandated to encourage and introduce trade unions to companies starting up or setting up here in Ireland.

Right to Act

While industrial action is a last resort for unions, it is also workers final line of defence against bad employers. Although unions always look to avoid the costs and disruption associated with industrial action, the ability to withdraw work from employers is ultimately the leverage that makes collective bargaining meaningfully work.

However, the legislation on industrial action in Ireland is excessively legalistic.

A review of existing legislative provisions for industrial action is required with a view to abolishing or amending those requirements that debilitate against conducting meaningful collective bargaining.

- **The right to act**

In the interest of better industrial relations, legislation should enable alternative e-balloting provisions to support higher turnouts in ballots for industrial action. Notice periods to employers should be significantly reduced.

- **Penalties for employment law breaches**

While most employers respect individual employment rights, many vulnerable workers in some sectors remain exposed to bad employer behaviour. However, inspectors for both the National Employment Rights Authority and the Health and Safety Executive have insufficient resources to police all suspected or actual violations. The Government should empower trade unions to perform an essential and complementary adjunct role to monitor and report breaches in workplaces. Providing unions access to workplaces to talk to workers will assist clamping down on employers who breach the law.

Right to Fair Work

Workers deserve decent employment and fair workplaces where their voice is allowed, heard and listened to.

- **Ability to seek more hours**

Employers must consider requests for existing staff to avail of more hours at work before hiring new workers if presently on contracts of less than 35 hours a week. This will assist in addressing low pay in the economy and reduce the gender pay gap.

- **Right to disconnect**

Workers can be expected or pressured into working longer hours outside of those contracted with no additional pay. Modern technologies increasingly lengthen the working day and blur the lines between work and social/home life. The WRC Code of Practice on a 'right to disconnect' is progress but needs to be put on a statutory basis whereby employees have a legal right to turn off technology and stop working outside contracted hours. If a business requires outside of hours' availability, then this on-call will be paid, and workers protected from victimisation. Workers should also have a legal entitlement to premium rate overtime payment over the 'normal' working week.

- **Gender Pay Gap**

Employers should be mandated to not only publicise their gender pay gap (GPG) but also to agree a plan of action and targets with trade unions to reduce the gap and make workplaces more equal. FSU has published a document on reducing the GPG with practical measures.

- **Domestic Violence Workplace Policies**

Domestic violence is an issue that effects an increasing number of our population, the figures in relation to how many people experience Domestic Violence has risen dramatically during the current pandemic, and Unions have been aware for some time of how Domestic Violence can affect the working lives of people. All employers should protect and support those affected by this issue through a mandatory workplace policy that provides for special paid leave, access to confidential counselling services, flexible working arrangements, information and subject matter training for all staff.

- **Menopause Workplace Policy**

Managing the impact of the menopause at work is important for both workers and employers. Employers have been slow to recognise that women of menopausal age may need special consideration and for too long it has simply been seen as a private matter. We believe that employers have a duty of care to staff affected by this and that health and safety legislation should be amended to reflect this.

- **Homeworking Legislation**

There is now no doubt that home, or for many a mix of office and home, working is likely to be a big part of the future of work. The flexibility to work at home holds many advantages for employees, business and society generally but it is important that the potential negatives of overwork and blurred lines between home and office are guarded against. The right to disconnect is vital to protecting against overwork. Employee's must have a right to set both location and pattern of work hours, subject to business applicability. Importantly employers are going to save money on office space and may transfer costs of production like heat, electricity, broadband, insurance onto workers shoulders. Therefore we believe comprehensive legislation is required to provided for employee-led flexibility, home working allowances and health, safety and privacy to make home working truly work for all.

- **Establish a Ministry of Labour**

It is vital that workers have a specific and dedicated voice at the Government cabinet to ensure that future legislation is in favour of workers and that the State provides support to workers organising. This Ministry should be mandated to promote union growth, collective bargaining and improve the quality and decency of work. This Ministry should audit all legislation on the potential impact on jobs and work to ensure only positive developments.

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