

## Collective Bargaining is a Human Right

Collective bargaining and fair conditions of employment are synonymous.

The right to join a union and bargain collectively for fair pay and fair conditions of employment is critical to a fair workplace. It is the only way to ensure employees enjoy bargaining power on a par with the employer.

Collective bargaining is the process by which working people come together and through their trade unions, negotiate contracts with their employers to determine fair conditions of employment.

Union members choose who will speak for them in bargaining sessions with the employer, and they vote to accept or reject any collective agreement that subsequently emerges. The collective agreement then becomes the employment contract which can legally bind the employer, to the contract terms.

The right to collectively bargain is essential to ensuring that working people have the capacity to improve their living standards, provide for their families and build a strong foundation for our economy.

Workers are not commodities to be bought and sold and disposed of at will.

That is why the right to collective bargaining through a trade union is a human right recognised in international treaties, conventions and declarations.

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Every human rights instrument recognises workers' right to unionise and take action to protect their interests.

- The **Universal Declaration on Human Rights** sets out fundamental human rights and recognises *'The right to join trade unions and the right to collective bargaining'* (Article 23.4).
- The **European Convention on Human Rights** specifies trade union membership as an important political right essential to democracy: *"Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and join trade unions for the protection of his interests."* (Article 11)
- The **Charter of Fundamental Rights of the European Union** recognises the right to fair and just working conditions (article 31) protection from unjustified dismissal (article 30) a guarantee of timely information and consultation (article 27) and to the right of collective bargaining and collective action including the right to strike (article 28).

Ireland has signed up to recognise and protect these human rights standards: however the reality is that the law is inadequate to protect employees and instead is stacked in favour of the employer refusing their employees the exercise of their trade union/human rights.

### **International Labour Organisation**

Ireland is a member of the International Labour Organisation (ILO) and has ratified the Fundamental Conventions concerning Freedom of Association and Protection of the Right to Organise Convention, (No 87) and Right to Organise and Collective Bargaining Convention, 1949 (No. 98). For more information on **ILO Principles of Collective Bargaining** visit:

<http://www.ilo.org/public/english/revue/download/pdf/gernigon.pdf>

### **Ireland in the Dock**

Trade unions in Ireland have reported their concerns about the unacceptable anti-union situation that has arisen in Ireland and how it is contrary to the proper observance of ILO Conventions. In May 2012 the ILO Committee on Freedom of Association expressed serious concern that Ireland's laws and practice are inadequate and in violation of Conventions 87 and 98, relating to the right to freedom of association, the right to organise and the right to participate in collective bargaining. They recommended (among other things) that Ireland amend the law to bring it in line with the requirements of the Conventions.

### **How does Ireland Compare with other Countries?**

Ireland lags behind other industrialised and European nations in respect of providing workers with collective bargaining rights. There are many different ways to achieve the right to collective bargaining but regardless of the method, recognition of the union and acceptance of negotiation on a collective agreement are both needed. Ensuring that employees are able to organise in a union *without fear of employer reprisal* is crucial.

As the International Labour Organisation (1960: 28) points out: "*Employers will give such recognition only if they believe it to be in their interests or if they are legally required to do so.*"

The right to collective bargaining is explicitly recognised in the constitution of a number of European member states. In others the statutory law clearly states that both parties to collective bargaining have an obligation to bargain when this is demanded by one of the parties. Furthermore, the law will usually prohibit, as an unfair labour practice, the refusal to bargain with the representative or recognised union.

The **Programme for Government** of the current coalition government gives the following commitment:

*We will reform the current law on employees' right to engage in collective bargaining (the Industrial Relations (Amendment) Act 2001), so as to ensure compliance by the State with recent judgments of the European Court of Human Rights.*

## What would this mean in Practice?

It would mean amending the law to provide:

- 1) Robust legal protection for employees from all forms of employer penalisation or reprisals, including a prohibition on the use of inducements and other unfair labour practices that aim to pressure or threaten the worker not to seek to collectively bargain through their trade union;
- 2) A legal duty on employers to have in place 'adequate arrangements' for collective bargaining that would include respecting their employees' choice to collectively bargain through their trade union, along with a definition of collective bargaining;
- 3) Where an employer refuses or fails to negotiate the union can refer the pay, terms and conditions to the Labour Court for determination.

Employer tactics aimed at undermining the exercise of the right to collective bargaining through a trade union must be prohibited.

The European Court of Human Rights in *Wilson* ruled that governments need to ensure that the right to unionise is respected by employers, including by prohibiting coercive practices such as offering 'inducements' or more favourable treatment if workers do not exercise their union rights or using other means to attempt to interfere with, restrain, or coerce employees at any stage in the exercise of their trade union right.

In another case the European Court of Human Rights – *Demir & Baykara* - determined that disciplinary action against an employee for posting a union notice in the workplace was contrary to the proper respect for the right to freedom of association.

To comply with human rights standards, penalisation and other forms of less favourable treatment must be prohibited including:

- Refusing to hire someone because they exercised their human right to join a union and to seek to collectively bargain;
- Keeping a 'blacklist' of workers who support the union;
- Refusing to allow the union representative to meet with the workforce to discuss and prepare a collective bargaining request is an unfair practice, as is refusing to provide the workers with any information;
- Management holding meetings with workers to caution against joining the union or seeking to collectively bargain to protect or improve pay and conditions;
- Threatening to move or moving operations if the workers exercise their human right to collective bargaining through a trade union;
- Establishing employee associations that are under the control of the employer to represent employees for collective bargaining purposes;
- Disciplining, penalising, harassing, transferring, or making the worker subject to any less favourable treatment because they support the union;

- Favouring employees who don't support the union over those that do in promotions, hours, enforcement of rules or any other conditions;
- Penalising workers for taking action in support of securing a collective agreement.
- Taking away benefits or privileges in order to discourage people from seeking to collectively bargain through a trade union;
- Promising employees a pay increase, promotion, benefit or special favour if they oppose the union.

These practices are against the principle of 'good faith' and should be prohibited as being contrary to human rights standards and ILO Conventions.