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Considering the Impact of the 'Right to Bargain' Legislation in Ireland:

A Review

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Abstract

Ireland is rare among advanced economies in not having statutory trade union recognition legislation for collective bargaining purposes. The matter has been a source of policy contention over the years with attempts to resolve it encapsulated in the so-called 'Right to Bargain' legislation, introduced in 2001. This legislation has sought to circumvent statutory recognition in Ireland by putting in place an alternative mechanism for unions to represent members in non-union firms where collective bargaining is not practiced. This review, based on a mixture of empirical and documentary evidence, demonstrates that IRAA 2001-4 was moderately successful for a short period in generating pay rises, improved employment conditions and better access to procedures for union members in non-unionised firms. Indeed, in some respects, it was a superior institutional mechanism to a statutory recognition regime.

1. Introduction

In liberal-market economies (LMEs), formal recognition of unions by employers is widely seen as a central building block of trade unionism[1]. Yet Ireland remains an exception among developed economies, including other LMEs like the UK, in not having statutory union recognition legislation for collective bargaining purposes. The common assumption is that while Article 40 of the 1937 Constitution of Ireland guarantees the right of citizens to form associations and unions, this constitutional guarantee of freedom of association does not mean that employers can be compelled to recognise unions. To circumvent the Constitutional conundrum, and for other contextual reasons discussed below, Irish policy-makers crafted a particularist solution in the form of the so-called 'Right to Bargain' legislation known as the Industrial Relations (Amendment) Act 2001 (with a subsequent 'Miscellaneous Provisions' amendment in 2004)(henceforth known as IRAA 2001-4). This law does not provide for statutory trade union recognition for collective bargaining purposes as in other jurisdictions like the US, Canada or UK. Rather it provides a dispute resolution procedure for unionised employees to access union representation on claims for improvements in pay, conditions of employment or procedures in non-union firms where collective bargaining does not exist.

More than ten years on from the introduction of IRAA 2001-4, a full review and assessment is timely. Through preliminary analysis of 56 cases involving the Labour Court, followed by a more detailed case study analysis of 15 specific disputes arising under the legislation, the efficacy of these provisions are assessed. Contrary to previous sceptical evaluations[2], this article argues that, prior to a 2007 Supreme Court judgment (on a legal challenge to IRAA 2001-4 brought by the non-union airline Ryanair), the legislation

[1] G.Gall,'The first ten years of the third statutory union recognition procedure in the Britain', [2010] 39 Industrial Law Journal, 444

[2] D'Art, D. and T. Turner, 'Union recognition in Ireland: one step forward or two steps back?', [2003] 34 Industrial Relations Journal, 226; D'Art and T. Turner, 'Union recognition and partnership at work: a new legitimacy for Irish trade unions?', [2005] 36 Industrial Relations Journal, 121

delivered partial benefits for unions and their members. However, the Supreme Court judgment exposed significant loopholes in the existing legislation which employers have exploited to their advantage. Since 2007 IRAA 2001-4 and the problem of collective bargaining rights in non-union firms has remained in limbo. The current coalition government that came to power in 2011 has promised to resolve the present deadlock. At time of writing it is yet to do so, although it is expected that the cabinet will table an initiative in 2014 to address this matter[3].

In examining these issues, the article is arranged as follows: Section 2 outlines the antecedents, content and principles of IRAA 2001-4, in particular demonstrating how the legislation dovetailed with the institutional peculiarities of Irish industrial relations. Subsequently, Section 3 describes the research methods. Section 4 and 5 detail the procedures in operation, with emphasis on the particular benefits and constraints faced by Irish unions in pursuing their goals under the legislation. Section 6 discusses the findings, offering concluding observations on the matter of union representation and recognition in non-union firms in Ireland.

2. IRAA 2001-4: antecedents, content and principles

Collective bargaining rights and trade union recognition have been a contentious issue in Irish industrial relations for some time[4]. Historically union recognition was addressed through the milieu of pluralist liberal-collectivism, with recognition a purely voluntarist matter. Where an employer rejected union recognition, union members would either mobilise power and resort to strikes or refer disputes to the Labour Court under Section 20 of the

[3] B.Sheehan,'Collective bargaining legislation to breathe new life into 2001 Act?', *Industrial Relations News* (Dublin, 2013, 44)
[4] C. McCarthy, *Trade Unions in Ireland 1894-1960* (Institute of Public Administration 1977)

Industrial Relations Act 1969 (IRA 1969) and, much less frequently, the Industrial Relations Act 1990 (IRA 1990). However if the Court found in favour of recognition, which it routinely did, the employer was under no legal obligation to consent. Studies suggest that from the 1980s onwards, there was a growing tendency for employers to simply flout Court recommendations on this matter[5]. This proved progressively challenging for unions, especially as their power resources at local-level waned over time and the decline in unions' industrial strength dispossessed them of sufficient bargaining power to put recognition claims into effect. The 1980s and 1990s saw the organisational base of private sector unions steadily corrode, first through the impact of high unemployment, but more substantively, through structural changes in the economy. New fields of employment proved inhospitable for union growth[6]. Since the 1980s, non-union multinational companies, particularly of US ownership, have been relatively successful in instigating union-free industrial relations. The policy stance of government and its industrial development agencies also shifted from encouraging firms to recognise unions to one of being accommodative to non-union multinationals[7]. Concurrently unions faced mounting opposition to unionisation among indigenous employers[8]. The important Nolan Transport case of 1994, resulting in a High Court order for one union to pay £1.3 million in damages for irregularities in industrial action for recognition, stands as a tribute to a section of Irish employers' determination to remain union free (the decision was, however, later overturned by the Supreme Court). This emerging trajectory towards union

[5] P. Gunnigle, M. O'Sullivan and M. Kinsella, 'Organised labour in the new economy: trade unions and public policy in the Republic of Ireland' in D. D'Art and T. Turner (eds), *Irish Employment Relations in the New Economy* (Blackhall Publishing 2002)

[6] W.K. Roche,'The trend of unionisation in Ireland since the mid-1990s' in T. Hastings (ed), *The State of the Unions*, (Liffey Press, 2008).

[7] D.G. Collings, P. Gunnigle and M.J. Morley, 'Between Boston and Berlin, American MNCs and the shifting contours of industrial relations in Ireland', [2008] 19 International Journal of Human Resource Management, 242

[8] M. O'Sullivan and P. Gunnigle, 'Bearing all the hallmarks of oppression: Union avoidance in Europe's largest low-cost airline', [2009] 34 Labor Studies Journal, 251

avoidance was of course not confined to Ireland and broadly mirrored trends of a growing anti-unionism elsewhere[9].

How did Irish unions respond to such trends? During the late 1990s pressure arose from Irish unions for government action on the recognition problem. Although unions had raised the recognition matter under the Irish 'social partnership' framework as early as 1990, it was in 1997 that a tri-partite working group was constituted to examine the issue: the 'High-Level Group on Trade Union Recognition'. The Group's report, issued in 1997, called for the safeguarding of voluntarism, albeit with a procedural 'long march' through the state dispute resolution institutions, namely the Labour Relations Commission (LRC) and the Labour Court. Unions were critical of the report; a mood further aggravated by a high-profile recognition dispute in the airline Ryanair in 1998. This dispute, which shut down Dublin Airport, captured the limitations of voluntarism in the face of unyielding employer resistance. Consequently the issue was re-visited by the working group, although in the interim period, the union's thinking evolved into a willingness to reconsider demands for full-blooded recognition and instead pursue a form of professional representation. This new position also echoed Supreme Court sentiments, arising from the Nolan Transport case, that "employers have an obligation to accord trade unions a measure of respect; representing as they do the rights of the workers"[10]. Influenced by the Irish Labour Party, the Irish Congress of Trade Unions (ICTU) conceived a procedure for dispute resolution that would permit unions to provide a representative service to members in non-unionised firms where collective bargaining was not practiced. The ICTU proposed that mandatory arbitration by the Labour

[9] J. Murray, 'Work choices and the radical revision of the public realm of Australian statutory labour law', [2006] 35 Industrial Law Journal, 343; E. Heery and M. Simms, M. 'Seizing an opportunity? Union organising campaigns in Britain. 1998-2004', [2011] 37 Labor History, 23; K. Moody, 'Beating the union: union avoidance in the US' in G. Gall and T. Dundon (eds) *Global Anti-Unionism* (Palgrave Macmillan 2013)
[10] Nolan Transport v Halligan Ltd and Others, [1998] ELR 177

Court would only arise in disputes where terms and conditions were out of line with industry norms and where employers refused to engage with union representatives. In effect, a replication of the sectoral Joint Labour Committee system was proposed. It was predicted that an incentive for employers to bargain would arise from the potential for arbitration decisions by the Labour Court to have the same status as employment regulation orders. The intention was that the very presence of a statutory procedure for unilateral arbitration by the Labour Court would facilitate a legislatively prompted, but voluntarist, settlement of disputes.

The above formula underpinned the final 'Report of the High Level Group on Trade Union Recognition' in 1999, which proposed a two-stage approach to settling union representation disputes over improvements in pay, conditions of employment or procedures where collective bargaining was absent. The resultant 2001 legislation, eventually agreed by a centre-right government, ICTU and the Irish Business and Employers' Confederation (IBEC), was IRAA 2001-4. The first stage was a 'voluntary procedure', covered under a Code of Practice on Voluntary Dispute Resolution, that is, Statutory Instrument (SI) No 145 of 2000. The purpose of this procedure, under which both employers and unions could avail of the LRC's advisory service, was to secure consensual agreement on disputed issues. The second, compulsory or 'fall-back' component, was triggered if employers refused to engage with the voluntary procedure. This measure provided for a full Labour Court hearing, resulting at first in a non-binding recommendation. If this initial recommendation failed to resolve the dispute, unions could apply to the Labour Court for a binding 'determination'. If the employer refused to accept a determination, the union could have it legally enforced by the Circuit Court. Crucially the Act and the associated Code of Practice did not provide for union recognition. Rather it was a mechanism designed to address collective disputes in workplaces without collective bargaining. The Act did not preclude the fact that parties might

voluntarily reach a union recognition agreement, but its remit did not encompass recommendations on recognition per se.

The IRAA 2001 was later amended in 2004 due to union dissatisfaction with timescales across the voluntary and compulsory stages. The main change in the Industrial Relations (Amendment) Act (Miscellaneous Provisions) 2004 was a tweaked Code of Practice on Voluntary Dispute Resolution, SI No 176 of 2004, which substantially shortened timescales to 26 weeks, up to a maximum of 34 weeks where necessary, from time of referral to point of issuance of a binding determination by the Labour Court. The 2004 amendment allowed unions to refer cases to the Labour Court after six weeks at the voluntary stage involving the LRC. The first Court hearing could then be held between four to six weeks after this, with a voluntary recommendation issued within three weeks. A union then had four weeks to seek a binding determination, ultimately enforceable in the Circuit Court. Under the 2004 amendment, a union could also process cases directly to the Labour Court if LRC timelines were breached or the LRC saw no realistic prospect of progress.

Of note is that public policy attempts to tackle the recognition problem in Ireland coincided with a comparable effort in the UK at broadly the same time. The comparative aspects are worth briefly considering. To short-circuit their growing industrial weakness, UK unions successfully campaigned in the political arena for state supported provisions to prompt employers to negotiate with them[11]. Yet, in contrast to Ireland, the UK opted for an explicit union recognition procedure, a system it had previously experimented with in the 1970s[12].

[11] W. Wedderburn, 'Collective bargaining or legal enactment: the 1999 Act and union recognition', [2000] 29 Industrial Law Journal, 1; W. Brown, S. Deakin, M. Hudson and C. Pratten, 'The limits of statutory trade union recognition', [2001] 32 Industrial Relations Journal, 180

[12] S.Wood and J. Godard, 'The statutory union recognition procedure in the employment relations bill: a comparative analysis', [1999] 37 British Journal of Industrial Relations, 203

The two policy approaches are thus distinct, insofar as one sought to resolve collective disputes in the absence of collective bargaining (Ireland), the other to enable union recognition where there was sufficient demand for it (UK). However both sought to encourage what Gall[13] terms 'legally induced voluntarism' at local-level with statutory imposed solutions as a last resort. Beyond this, the UK approach was quite different. It ruled out a stratum of non-union firms by excluding those with less than 21 employees (nearly a third of the UK workforce). Where no voluntary agreement was forthcoming, unions could apply to the Central Arbitration Committee (CAC) for statutory support provided they held 10 per cent membership in a designated 'bargaining unit' and proved that a majority favoured recognition. Automatic recognition could be awarded based on majority membership, although the CAC could order a ballot in the interest of 'good industrial relations' for example. Not only would a majority vote for recognition be required, but at least 40 per cent of those entitled to vote would need to participate. Under the statutory route, UK unions could be recognised only for collective bargaining over pay, hours and holidays. In contrast, Irish unions, in pursuing claims, faced no specified thresholds in terms of number of employees needed[14]. There were no restrictions on firm size and unions were enabled to secure statutory support on claims over a broad palette of collective issues aside from union recognition.

In eschewing the UK route, the policy approach adopted in Ireland must be understood within the context of the country's broader institutional environment. First, there was (and is) a widely held consensus that attempts to introduce UK-style recognition legislation would encounter a constitutional obstacle. In Article 40.6.1.iii of the Constitution, the State

[13] G. Gall,'Union recognition in Britain: the end of legally-induced voluntarism', [2012] 41 Industrial Law Journal, 47

[14] The original bill set a threshold for unions to show they were adequately representative of the workforce in a particular employment. This was in line with the judgement in Federation of Irish Rail and Road Workers v. Great Southern Railway (1942) which set a criterion that a union with more than one-third of the workforce was representative for statutory purposes. The final version of the Act had no requirement for membership thresholds however due to union pressure.

guarantees liberty for the exercise of the right of citizens to form associations or unions. This amounts to an effective constitutional guarantee of freedom of association. However, the Courts do not appear to accept that the constitutional guarantee of free association includes a right to have one's trade union recognised by one's employer for collective bargaining and have held that there is no duty placed on an employer to negotiate with any particular body of citizens. Thus the Irish Constitution appears to prohibit the possibility for statutory recognition insofar as it involves the conflict of two constitutional rights related to freedom of association: the right of workers to be in a trade union and the right of employers not to recognise a union[15]. In an important High Court judgment from 1982, it was concluded:

> "…the suggestion in the pleading that there is a constitutional right to be represented by a union in the conduct of negotiations with employers…could not be sustained. There is no constitutional duty placed on any employer to negotiate with any particular citizen or body of citizens." [16]

Secondly, all Irish industrial relations actors had their own reasons to be wary of statutory recognition. Elements of the union leadership were divided on the merits of a statutory regime. Irish unions, like their British counterparts, have historically displayed some antipathy to judiciary involvement in industrial relations[17], and have remained cautious about moving to greater legalism. In part, the spectre of potential de-recognition has been prominent in their thinking. There was a pragmatic acceptance that IRAA 2001-4, whilst not providing for recognition, potentially compelled firms to implement Labour Court decisions on pay and conditions, making joining a union in such circumstances meaningful for workers.

[15] A. Kerr, 'Collective labour law' in T.V. Murphy and W.K. Roche (eds), *Irish Industrial Relations in Practice* (Oak Tree Press 1997); G. Hogan and G. Whyte, *Kelly: The Irish Constitution* (Butterworth 2003)

[16] Abbott & Whelan v ITGWU & Southern Health Board [1982] 1 JISLL 56. Not all Irish labour law experts accept this assumption. It has been claimed that the conventional view that there is constitutional barrier to union recognition is a misunderstanding of the Abbott & Whelan High Court judgment. This judgment, it has been argued, implies that there is no constitutional right to compel employers to recognise unions. This, however, does nothing to stop the State introducing future legislation for union recognition. Indeed statutory rights to negotiate have been implemented in relation to collective redundancies and transfer of undertakings as required by European Directives. See C. Higgins, '2001/2004 Acts clash throws up unlikely bedfellows' *Industrial Relations News* (Dublin 2006, 11)

[17] McCarthy, above n.4.; O. Kahn-Freund, *Labour Relations: Heritage and Adjustment* (Oxford University Press 1979)

It was also hoped that the procedures might indirectly encourage recognition under the shadow of the IRAA 2001-4, perhaps in the form of pre-emptive voluntary recognition agreements[18]. Although neither government nor employers had any desire to alter the status quo, this concession was offered to unions in the then context of securing a new national wage agreement under the tri-partite social partnership model. Standard thinking among employers, politicians and the general commentariat was that for the government to have conceded statutory recognition would have risked the danger of foreign multinationals viewing Ireland less positively as an investment site[19]. For the government, there was basic satisfaction that voluntarism had been preserved, but also that multinationals, especially of American origin, were essentially cushioned from the remit of the legislation. For IBEC, primarily representative of large employers, the compromise appeared something that it could live with. Many of its principal members, including those in the foreign-owned non-union sector, were unlikely to become embroiled in union recognition disputes in the first place, because they often paid above sectoral norms and had elements of 'sophisticated human resource management'[20].

Despite apparent consensus amongst government, IBEC and ICTU, academic commentary on IRAA 2001-4 was circumspect. In a critical commentary, D'Art and Turner[21] (2003) argued that the legislation was ineffective because it excluded provisions for statutory recognition for collective bargaining purposes and by virtue of this, excluded unions from the workplace, and legitimised companies' non-union status. Their empirical support for the legislation's ineffectiveness was drawn from 39 cases processed under the voluntary leg of IRAA 2001, as of December 2001. The conclusion of this work, stemming from the

[18] Roche, above n.6
[19] P. Teague and J. Donaghey, J. 'Why has Irish social partnership survived?', (2009) 47 British Journal of Industrial Relations, 55
[20] W.K. Roche and J. Geary, J. 'Collaborative production and the Irish boom: work organisation, partnership and direct involvement in Irish workplaces', (2000) 31 Economic and Social Review, 1
[21] D. D'Art and Turner, above n.2

observation that only one case out of 39 had resulted in union recognition in the first year of the legislation, seems premature in stating that "these initial outcomes would appear to characterise the Act as a dismal failure"[22]. Furthermore, these authors largely benchmarked IRAA 2001-4 on its capacity to deliver union recognition. Given that recognition was not part of the remit of IRAA 2001-4, it seems incongruous to describe it as failing on a standard it was not meant to deliver. A later study, based on a survey of union officials, found that the majority (54 per cent of officials surveyed) regarded IRAA 2001 as "not effective", citing rising employer hostility to union recognition[23]. Yet here respondents were asked the extent to which IRAA 2001 was a "route to recognition". Nor is it addressed that even in this context, nearly 40 per cent of officials found the legal provisions of IRAA 2001 "sometimes effective". Notably the evidence in both articles dates from before the 2004 amendments to the original IRAA 2001 were made, were therefore early in the life-time of IRAA 2001-4 and at a point when there were recognised teething problems relating to employer delaying tactics. Notably a less hostile, but briefer, commentary is offered by Roche[24]. Reviewing the broader trajectory of unionisation and membership since the mid-1990s, Roche submitted that the contribution of the IRAA 2001-4 in this context was probably conducive to union organising. However, in the midst of a broader array of structural, institutional and cyclical influences uncongenial to union growth, the overall impact of IRAA 2001-4 in raising membership density was considered to be, at best, modest.

It remains the case however that a more comprehensive, up-to-date assessment of the IRAA 2001-4 is warranted, albeit marked by the caveat that in 2007 the procedures were thrown into disarray after a successful legal challenge by the non-union airline Ryanair (discussed below). Since 2007, the legislation has remained in limbo, although the present

[22] D'Art, and Turner, above n.2 at 234
[23] D'Art and Turner, above n.2 at 121
[24] Roche, above n.6

coalition government has promised to make appropriate amendments to restore it. Below, the next two sections are concerned with the efficacy of IRAA 2001-2004 in assisting the representation of union members in firms where collective bargaining was absent. In section 4, the results of empirical investigation of cases under the IRAA 2001-4 are detailed to provide a more complete picture of how the provisions operated in practice. Before doing this, Section 3 outlines the data collection methods.

3. Research methods

The data is based on empirical evidence gathered between 2005 and 2007. The data presented here is based on the known disputes under IRAA 2001-4 as registered by the Labour Court. Data collection was conducted in two ways: First, in 2005, an initial analysis of all existing IRAA 2001-4 disputes up to the end of 2005 was completed by one of the authors[25] (Dobbins, 2005). This involved collating, on an on-going basis, a database of every recommendation and determination relating to disputes under the legislation. It also entailed making telephone calls to company human resource managers and union officials representative of each organisation involved in these disputes for further information/interview. Second, a series of more detailed fieldwork cases were then conducted between 2006 and 2007 of 15 disputes under IRAA 2001-4. These disputes were drawn from the known population of cases to have gone through the procedures and were selected on grounds of access to key informants. The disputes were typically registered at the Labour Court between 2004 and 2007 (see Table 8 below).

Data collection in the 15 cases relied on face-to-face interviews, usually of one hour duration. The first data source was the company chief executive who either owned or headed

[25] T. Dobbins 'The impact of the 2001-2004 Industrial Relations Acts', *Industrial Relations News* (Dublin 2005, 47)

the firms participating in the case studies. Interviews were also conducted with full-time trade union organisers responsible for the individual dispute, and documentary analysis was collated of specific employer responses to the recognition request. Whilst the enquiry sought to interview the relevant union officials for all fifteen firms, this proved impossible and union officials were found to be frequently either un-contactable and/or unwilling to participate. Eight union organisers, representing workers involved in twelve disputes, were interviewed. Interviews covered the origins, practice and outcomes of disputes. Background interviews were also conducted with representatives from the ICTU, IBEC, LRC and Labour Court. A limitation of the case studies is lack of information about union members within each firm, a problem resulting from issues of access and confidentiality. While confinement of case selection to availability of access is less than ideal, the reliance on access for selection is reasonable where an enquiry seeks to study what can often be difficult to reach or contentious types of cases[26]. Our own analysis, and interviews with union officials, tends to indicate that the actions of included case firms were broadly typical of employer behaviour in disputes processed under the procedures.

4. Background on IRAA 2001-4 disputes

First it is appropriate to outline the IRAA 2001-4 dispute population through each distinct stage of the procedures. Failure to resolve disputes at local-level in the first instance resulted in matters being referred to the LRC. Such cases, until mid-2004, were advanced under SI 145. The 2004 reforms, resulting in the aforementioned shortening of timescales, led to a switchover to SI 76. Table 1 and 2 detail the number of cases referred to the LRC under these codes from 2001 until 2012.

[26] W.L. Neuman, *Social Research Methods*, (Allyn and Bacon 1997)

TABLE 1

TABLE 2

The 'switchover' to SI 76 was reported by unions to be faster in processing of dispute claims. Subsequently under SI 76 there is much higher utilisation between 2004 and 2006, before a sharp decline due to the 2007 Supreme Court judgement (discussed below). Aside from 2005, where the LRC[27] collated and disseminated detailed figures, there are no known records of the number of cases fully resolved at this level. In 2005 the LRC reported that 146 cases had been advanced under SI 76, only 75 had been 'completed' at LRC level: 'completed' being inclusive of cases where all issues were resolved at the LRC, where issues were referred to the Labour Court or where collective bargaining was negotiated. Only 25 of these had all issues resolved at LRC level with 60 cases being referred to the Labour Court. In just six cases was collective bargaining negotiated. Further interviews with the LRC suggest that patterns reported in this period are representative of year on year trends.

However despite the high number of cases referred by the LRC, the number of cases addressed by the Labour Court remains smaller. Table 3 details the number of Labour Court recommendations and Table 4 the number of subsequent determinations:

TABLE 3

TABLE 4

There were 109 recommendations and 28 determinations by the Labour Court. There was a considerable increase in cases from 2004 to 2006 due to the 2004 amendment, which speeded up the process of referring cases to the Court. From 2007 onwards, the sharp downward trend (evident with SI 76) is also evident. Determinations in the early life of the

[27] Labour Relations Commission, *Annual Report* (2005)

procedures remained low, with a relative surge in 2005 before tailing off again. Various reasons exist for the disjuncture between the number of LRC cases, the numbers referred to the Labour Court and those actually heard by the Court. Disputes registered at the LRC were often withdrawn by unions on the grounds that support for pursuing issues at local-level had withered away or employers had indicated willingness to discuss disputed issues (the former scenario was claimed by unions to be more typical). Particularly with SI 145, unions would subsequently withdraw from procedures because of dissatisfaction with the length of the process or because support for the campaign at local-level had ebbed away. Some unions, post-LRC stage, opted to take cases under the aforementioned IRA 1969 on the perception that it was less convoluted or union's claims on individual terms and conditions might not hold under IRAA 2001-4. Furthermore, the smaller number of determinations should not be taken as evidence that recommendations were fully complied with. Unions reported that in many cases, employers did not necessarily follow the initial recommendation, but could frequently 'cut a deal' to satisfy employees at local-level that was influenced by, but not directly mapped to, the Labour Court ruling.

In terms of deployment (see Table 5), IRAA 2001-4 was used mostly in the indigenous services sector (close to two-thirds of cases). Retail, security, hoteliers, transport, crèches, nursing homes and waste-management firms were typical targets. These were characterised by one union official as "low hanging fruit". In manufacturing, the pharmaceutical/medical devices sector, packaging, and industries supplying to the then booming Irish construction industry were targeted. In terms of ownership, close to 80 percent of firms subject to IRAA 2001-4 were Irish-owned, with a minority from the US, Europe and UK respectively. An even spread of small- to medium-sized enterprises (measured by number of employees) were subject to IRAA 2001-4, with large firms in the minority. There are a lower number of

employers relative to the overall number of recommendations and determinations as some employers could be subject to more than one recommendation and/or a recommendation and determination.

TABLE 5

As Table 6 demonstrates, the number of private sector employees subject to Court recommendations/determinations was low vis-à-vis the overall private sector labour force, which at the first quarter of 2008, was recorded at 1,350,300[28]. This would tend to support Roche's[29] claim that the direct effects of the procedures on union recruitment and density were likely to have been quite modest.

TABLE 6

5. IRAA 2001-4 in practice

A. Preliminary overview of cases

At the end of 2005, an analysis of Labour Court decisions on cases taken under IRAA 2001-4 was completed. Between March 2002 and December 2005, the Labour Court was found to have issued 56 full recommendations and 17 binding determinations on disputes over union representation under the Act, a total of 73 decisions as of the end of 2005. Recommendations are reviewed here, as determinations simply reinforced or clarified existing recommendations in particular cases. Table 7 summarises the outcomes of the 56 Labour Court recommendations under IRAA 2001-4, as to whether union claims were fully supported, partially supported or rejected.

[28] <www.cso.ie>
[29] Roche, above n.6

TABLE 7

The evidence suggests that unions were generally successful in using the Act to secure pay and conditions improvements in non-union companies; albeit with limits to achievements. Our review of union claims and Court recommendations indicates that 24 out of 56 (43%) received full support from the Labour Court. Fifteen (27%) received partial support insofar as some elements of the union claim were rejected, whilst 17 (30%) were rejected in their entirety. The vast majority of the 56 Labour Court recommendations affected relatively small non-union indigenous firms with less than 50 workers. Only a handful of cases involved large firms and multinationals. Moreover, in cases involving large firms, unions found it difficult to secure Court support. For instance, in the cases of two US firms, a software manufacturer[30]and pharmaceutical manufacturer[31], the Court rejected the unions' pay claims, concluding that pay rates were not out of line with norms elsewhere. Where pay and employment conditions were deemed to measure up to industry norms, it seemed difficult to subject multinationals to claims under the legislation. One notable exception involved a large US multinational[32], where the Court awarded enhanced redundancy pay to 100 staff set to lose their jobs due to outsourcing of a call centre.

In the other cases involving small- and medium-sized firms, the Court mostly backed union claims, often instructing employers to concede substantial pay rises, albeit frequently from a low base. In this regard, unions were able to secure some concrete gains for members, especially after the 'fast tracking' of cases that took effect in 2004. Although the Court was precluded from directly instructing non-union employers to engage in collective bargaining, in many cases it 'shadowed' collective bargaining by imposing similar outcomes in non-union firms to those found in comparator employments in the unionised sector. That is, the

[30] LCR18137 Analog Devices/SIPTU
[31] LCR18013 Amershan Health/SIPTU
[32] LCR18344 United Airlines/CWU

Court benchmarked pay levels in private sector non-union firms (where there was a pay claim by union members) with pay norms applying in unionised firms with collective bargaining, usually in the same/similar industries, and subsequently bringing pay levels into some kind of comparative equilibrium. In some cases[33], the Court imposed a standard 39 hour working week, the collective norm in many unionised workplaces. Also, the Court instructed some non-union firms to facilitate representation, grievance and dispute resolution rights for union members. For example, in one decision[34], the Court declared that an internal grievance procedure was not appropriate for dealing with collective disputes. It was noted that internal procedures were not suitable because they expressly provided for individual grievances only and were not normally used by the parties. In short, a form of 'shadow collective bargaining' was occurring, whereby the Court had powers to regulate minimum pay norms, employment conditions and dispute procedures in non-union firms that were standard in unionised firms. In a number of cases[35], the Court went even further by making payment of national wage deals compulsory for union members, by not only instructing non-union firms to pay existing national wage agreements, but also instructing some employers to pay national wage terms into the future when they fell due.

B. Case studies of 15 disputes

Whilst this preceding overview of disputes under IRAA 2001-4 indicates broadly favourable outcomes for unions and their members, a more nuanced picture emerges when 15 selected cases were examined in more qualitative detail during 2006 and 2007. Table 8 summarises the 15 employers who comprised the fieldwork cases by the year the dispute was first registered at the Labour Court, firm size, sector and national ownership.

[33] LCR18184 Ormonde Waste/SIPTU
[34] LCR17919 Radio Kerry/Mandate
[35] LCR17908 Cooley Distillery/SIPTU

TABLE 8

In terms of outcomes across the 15 cases, the opening employer response to union requests to enter negotiations was typically met by a refusal to engage at workplace level. Union requests to discuss issues at local-level were either ignored by employers or met with responses that direct relations with individual employees were favoured (see Table 9). In eight cases, employers called, what union officials termed, "captured audience meetings" outlining their disappointment and hostility that unions were attempting to organise the workplace. Just one employer met with the union, but notwithstanding this, no agreement could be secured. The lack of progress at workplace level led to cases being brought by unions to the LRC. Yet efforts by the LRC to encourage voluntary resolution were largely fruitless. In some instances, employers did not appear at the LRC, responding to invites by claiming union unrepresentativeness or that disputed issues were being, or had been, addressed internally. One employer, for instance, refused to entertain an LRC meeting on the grounds that it would provide "de facto recognition" of the union's legitimacy and dent the company's "principled position of non-unionism" (Employer, WasteCo). However some employers were more receptive to LRC invitations, attending on the grounds that "it was worth exploring the substance of the union's claim, but in an environment where we wouldn't directly enter negotiations with them, but explore it through the [LRC] Advisory people" (Employer, DrinksCo). In these cases, employers declared inability to pay union requests for wage increases, but nonetheless indicated some readiness to resolve disputed issues. In only three cases was substantial progress made on resolving issues in dispute.

TABLE 9

Of the 15 disputes, no full resolutions of disputes were secured at the voluntarist LRC stage, resulting in cases being advanced to the Labour Court. In general, employers attended

the Labour Court hearing given the potential for a recommendation (and subsequent determination) being issued against them (see Table 10). As one employer put it:

> The advice we received was that Court intervention might have legal implications for the company down the line and affect our ability to match terms and conditions with the market. So naturally, we felt compelled to attend and defend our position.
>
> (Employer, GlassCo)

However a characteristic approach was to undermine the legitimacy of the union claim or create obstacles to Labour Court intervention. For example, one employer argued that the Court hearing was "illegitimate", claiming the union had none of the company's employees in membership (Employer, CementCo). The union offered the Court a list of members on a confidential basis, suggesting that employees feared hostility from the company if membership was known. The union cited separate instances of union victimisation. CementCo solicitors objected to this, arguing that their client was entitled, on the grounds of natural justice and fair procedure, to comment on material placed before the Court. On this basis, the solicitors argued, the case should be dropped. The Court refused to receive such information from the union, but, crucially, observed that the IRAA 2001-4 did not require a minimum number of members to process a case and accepted union assurances that it was representative of employees.

Other employers were less hostile and partial compromise was offered. In the PlasticsCo case, the employer stated that whilst it would not recognise the union for collective bargaining purposes, it would meet some union requests (in this case, improved sick pay). At GlassCo, agreement was reached with the union on fixed pay scales and a sick pay scheme, along with assurances on a pension scheme. Nonetheless unions did suffer occasional defeat. In the PetrolCo case, the Court found that the employer paid workers the going rate for the

sector and that the union pay claim was invalid (the union could not prove pay rates were out of line). In the WasteCo dispute, the employer successfully argued that pay exceeded sectoral norms, citing Central Statistics Office (CSO) earnings surveys in support. Similar outcomes were replicated at EngineeringCo and TelecomCo, although in the former the employer was advised to establish procedures allowing union representation on individual matters.

TABLE 10

Table 11 outlines Labour Court recommendations in the 15 cases. Consistent with our preliminary analysis of 56 recommendations, it finds that unions were often successful in securing Labour Court recommendation in pursuit of claims, despite some defeats or partial defeats. In a number of the disputes, notably CementCo, DrinksCo, GlassCo, MedicalCo, PackagingCo, PharmaCo, PrintCo, SupplyCo and TabletCo increases in basic pay and adherence to national wage agreements were recommended. The Court typically recommended that employees be granted rights to union representation for individual grievance and disciplinary matters.

TABLE 11

Unsurprisingly, some employers displayed hostility towards the Labour Court in light of their experience under IRAA 2001-4. Court influence was an "infringement on the rights of business" (DrinksCo), diluted with "anti-business sentiment" (PackagingCo), "biased towards union style industrial relations" (SupplyCo) or even "totalitarian" in its provisions (PlasticsCo). Of particular concern amongst those employers subject to IRAA 2001-4 was the lack of criteria for union representativeness and subsequent 'ease' at which the union could secure a Court hearing. Many saw this as providing "a blank cheque for the unions" (CementCo), allowing unions to bring changes in the firm's employment conditions without having to demonstrate the extent of their support:

> When they were asked how many production operatives they have (in membership), they said 'we have eighty'. Now that can't be true because we don't even have that many operatives in the first place.
>
> (Employer, PharmaCo)

In the aftermath of Labour Court recommendations, different outcomes emerged (Table 12), indicating that transposition of recommendations could be problematic. Only 3 out of 15 firms fully implemented initial recommendations – DrinksCo, GlassCo and PlasticsCo. None opted to formally recognise unions for collective bargaining purposes. Unions had to secure further binding Labour Court determinations to compel company compliance in eight disputes. In EngineeringCo, a determination was sought to enable the union to represent individual employees in grievance and disciplinary cases. At CementCo, refusal to implement the Court recommendation and a subsequent determination resulted in the union advancing a case to the Circuit Court for prosecution. However CementCo subsequently initiated High Court proceedings against the Labour Court determination on the grounds that it was invalid. In MedicalCo, TabletCo and WasteCo, the union had to bring at least two other claims on dispute issues for further recommendations under IRAA 2001-4. Such repeat campaigns however tended to undermine support amongst employees as it signalled that the employer would be unlikely to concede union recognition:

> Management, from the first to the last, they said they would never deal with a union. And they're a company who deal with unions all over the world, but they said 'we will never deal with a union in Ireland'. For a lot of people, if they had the chance to vote us in, they would have voted us in 9 to 1, but for a lot of people it was 'why join, it's going nowhere, they'll never deal with us'.
>
> (Union Organiser, TabletCo)

Problematically for unions, officials often reported difficulties in retaining members in cases where no Labour Court support for claims was forthcoming as it generated perceptions that union membership was of little efficacy.

TABLE 12

Employer legal challenges against IRAA 2001-4 procedures

As previously noted, early 2007 saw a challenge against a Labour Court determination brought by the airline Ryanair to the national Supreme Court[36]. This derived from a long-running dispute in the airline where, amongst other disputed issues, claims of anti-union discrimination and inducements to remain union-free were alleged. The Supreme Court appeal case emanated from the High Court refusing to reverse a Labour Court determination against the company[37]. At the Supreme Court, Ryanair advanced that there was no trade dispute, that internal dispute resolution procedures had not been exhausted in the first instance and that the company already provided for internal collective bargaining. Ryanair maintained the existence of collective bargaining because it held it negotiated with representatives of employees in concluding collective agreements on terms and conditions of employment. Ryanair further maintained to have an Employee Representative Committee whereby elected employee representatives negotiated with the employer (a fact contested by the union, IMPACT, which claimed the body was a consultative forum with no independence). In light of the available evidence however, the Supreme Court struck out the Labour Court determination. The Supreme Court found that, in the absence of sufficient evidence, the Labour Court could not conclude that the Employee Representative Committee was not a collective bargaining body; that a collective bargaining unit need not be a trade union or excepted body with a negotiating license, but could be a body established by an

[36] Ryanair v The Labour Court, [2007] 377/05
[37] DECP051 Ryanair/IMPACT/IAPA

employer provided it exhibited an element of ‘independence’, had a system of elections and operated in a ‘fair and reasonable’ manner. The Court further stipulated that employees could not simply leave a ‘functioning’ internal bargaining body, not exhaust its procedures for dispute resolution and then say they had no collective bargaining in place, thereby triggering the IRAA 2001-4 provisions; adding that if the Labour Court did have jurisdiction to investigate the case, it should consider the dispute through gathered evidence, referring to lack of sufficient union membership evidence.

Subsequent to the Supreme Court judgement, two of the case study employers attempted to exploit the ruling. As the employer PharmaCo acknowledged:

> The Supreme Court ruling crystallised all of our concerns about the Act. It opened the space for us to challenge the legality of what the Labour Court was imposing.

At the Supreme Court, PharmaCo registered an appeal against the Labour Court determination, claiming that the Labour Court was ‘misdirected’ in determining the existence of a dispute by accepting “unsubstantiated assertions” from the union. In retort, the union balloted for industrial action, but refrained from strike action when the employer evinced a desire to resolve matters at workplace level. An agreement on pay and conditions was drawn up, made without reference to the Labour Court determination, but providing for a similar outcome. At the same time, the employer instituted an internal employee forum to act as a ‘collective bargaining’ body. In the PackagingCo case, when the union sought a Labour Court determination in early 2007 the employer claimed the hearing was invalid as it already engaged in collective bargaining through a ‘Employee Representative Council’, and raised several issues relating to verification of union members, use of internal procedures and existence of a ‘trade dispute’. However, the Court noted that at the original recommendation

hearing, the employer had raised no qualms on the existence of a dispute nor claimed to engage in collective bargaining. The Court subsequently issued a determination, which the employer later complied with.

As evident from Table 1, within months of the 2007 Supreme Court judgment, the number of cases taken by unions dissipated significantly. Between 2008 and 2012, there were just 4 cases under IRAA 2001-4. Two factors explain this outcome: first, the consequence of the Supreme Court judgment was to impose arduous standards on unions for securing a Labour Court hearing and second, with the legitimacy afforded to employer sponsored internal bargaining units it was now easier for employers to evade IRAA 2001-4 applications. From 2007, ensuing cases often lacked the perceived requirements for a legitimate Labour Court adjudication and were thereby rejected. Consequently, Irish unions refrained from further use of the legislation, hoping for a resolution of the impasse through national social partnership. Whilst the national partnership agreement of September 2008 affirmed that a review body would investigate the problem, subsequent breakdown of social partnership in 2009, over disagreements in fiscal policy and public sector wage reductions, put a halt to such considerations.

6. Discussion and conclusion

The article has provided an up-to-date assessment in the usage and impact of the IRAA 2001-4 procedures. Prior to the Supreme Court ruling, utilisation of the procedures across both 'voluntary' and statutory 'fall back' stages evidenced, for the most part, progressive growth, although its incursion into the non-union sector remained modest. Dispute settlement at LRC stage was low. Labour Court recommendations, targeted primarily at small- to medium-sized indigenous employers, were predominately supportive of union claims. However, the Court

rejected a significant minority of claims. Where Court support was forthcoming, significant gains in terms and conditions could accrue for union members. Aside from one year (2005), issuing of determinations relative to the number of recommendations, remained low. Beyond these trends, a series of empirical cases detailing employer behaviour across the gamut of IRAA 2001-4 processes, both before and after the Supreme Court ruling, were examined in more depth. This revealed a strong employer aversion to initially settling disputes locally and voluntary resolution at LRC stage was also limited. Where union claims were supported at the Labour Court, employer compliance was subsequently, although often partially, forthcoming. Yet even highly obstinate employers often perceived little choice but to yield to binding determinations in some form. Transposition of Court rulings were conducive to some settling of Labour Court terms at local-level between the employer and union, but there was no evidence in the specific cases that an on-going bargaining relationship was embedded or formal recognition conceded. In aggregate, the evidence suggests that IRAA 2001-4, prior to the Supreme Court ruling, was broadly successful in generating pay rises, improvements in employment conditions and better access to procedures for a relatively modest number of workers in non-unionised firms. The 'good employer' benchmark, as set out in successive Court decisions under IRAA 2001-4, provided new sick pay schemes and grievance procedures where previously absent. Undoubtedly, employers had to be pulled, to different degrees, with great reluctance through this system and securing procedural and substantive gains for members was not unproblematic for unions in terms of time and resources.

However, unlike a statutory recognition system, such as in the UK, the Irish policy approach was perhaps superior in some respects for addressing union member interests in firms where collective bargaining was not practiced. In contrast, statutory recognition procedures do not compel employers to make material concessions on employee pay and

conditions, which have to be subsequently determined through the free play of collective bargaining. In a context of obstinate employers, general union weakness at local-level and a requirement that employees be willing to act collectively to induce such concessions, securing gains for members through statutory recognition might have proved more challenging. As Brown et al. have observed "the mere fact that an employer has granted union recognition tells one little about the practical value of that to the trade union in terms of effective collective bargaining"[38]. Indeed reviews of the UK recognition procedures indicate the limited scope of bargaining and that the procedures have tended to produce more consultative relationships than meaningful joint regulation[39].

It might be maintained that ensuring effective representation of member interests necessitates that other levers of industrial and economic power of unions come in to play like high density levels and robust financial resources[40]. IRAA 2001-4 partly circumvented these kinds of problems in local-level representation. Where employers fell below general prevailing sectoral norms, unions could use the weight of the Labour Court to raise standards. This is not to suggest that benefits all fell towards unions, employers also benefitted from this approach. The design of the procedures was such that it largely freed employers from direct union involvement so long as terms and conditions of employment were not out of line with sectoral norms. The Irish procedures could be regarded as providing more certain outcomes for employers, which might not necessarily be so under a statutory recognition regime. Of course, there were evident disadvantages in the procedures for both parties too. That IRAA 2001-4 was confined to resolving particular defined issues in dispute, reduced unions in some

[38] Brown, above, n.11 at 186
[39] W. Brown and D. Nash, 'What has been happening to collective bargaining under New Labour? Interpreting WES 2004', [2008] 39 Industrial Relations Journal, 91
[40] E. Batstone,'The frontier of control' in D. Gallie (ed.), *Employment in Britain* (Blackwell 1998)

cases, to repeated reliance on the Labour Court where other contested matters arose. In the case studies, enduring employer opposition at MedicalCo, TabletCo and WasteCo resulted in additional dispute cases being put through the system. Where Court support for the union was not forthcoming, it was difficult for the union to demonstrate its value to (potential) members, resulting in subsequent worker disengagement. Such dynamics are evidently an encumbrance on union time and resources (and, indeed, on those of the LRC and Court). Union aspirations that use of the procedures might indirectly prompt employers towards formal recognition did not materialise, confirming D'Art and Turner's early prognosis[41]. On the other hand, amongst non-union employers participating in this study, perceptions existed that the legislation was manipulated by 'outside' trade unions with the aid of state employment bodies. Perceived incursions on jealously guarded prerogatives may have served to heighten the employer sense of injustice and doggedness to remain non-union as well as explain subsequent failures to bed down meaningful bargaining relationships[42].

Post the Supreme Court judgment, IRAA 2001-4 remains in limbo, despite the present coalition government, in power since 2011, promising to resolve the matter. In 2010, the ICTU advanced a complaint to the Committee on Freedom of Association (CFA) at the International Labour Organization (ILO) on the Ryanair dispute-Supreme Court ruling in a bid to gain support for stronger bargaining rights and prompt reform at national level. With reference to ILO Convention No. 98, the ICTU alleged that: Ryanair's act of anti-union discrimination breached Article 1; that interference by the employer in workers' organisations breached Article 2; that subsequently Article 3 was breached because Ireland had failed to take steps to establish machinery for the purpose of protecting the right to

[41] D'Art and Turner, above n.2
[42] R. Adams,'Why statutory union recognition is bad policy: the North American experience', [1999] 30 Industrial Relations Journal, 96

organise; that there had been a failure to promote the principle of voluntary collective bargaining as required by Article 4 and that Ireland was in breach of Article 4 because Ryanair's ERCs could not conclude a collective agreement. In its response, the CFA noted that, whilst the alleged actions of Ryanair would contravene Article 2 if true, "insufficient evidence" existed as to whether the company offered conditional benefits to avoid a collective bargaining relationship with the union[43]. However the ICTU complaint was not withheld. Rather the CFA broadly recommended that, (a) the Irish Government in reviewing existing measures, ensure that, if required, protection be made available against anti-union discrimination and employer interference (as per Article 2); (b) the Government should carry out an independent inquiry into the Ryanair dispute to determine the veracity of the allegations and, if required, take required measures to ensure respect for freedom of association as per Article 3; and (c) the Government, in consultation with unions and employers, should review the existing mechanisms available with a view to promoting voluntary negotiation of collective agreements between employers' and workers' organisations as per Article 4. Notably, the Irish government welcomed the ILO report, observing that it:

> "did not find Ireland to be in breach of its obligations under ILO Conventions in respect of collective bargaining rights. Neither did the ILO find that a resolution of the difficulties arising over the Ryanair judgement would require the introduction of a legal regime of mandatory trade union recognition"[44].

Subsequently the government indicated that whilst recommendations (a) and (c) were accepted and indeed being addressed as a commitment in the Programme for Government, recommendation, (b) was rejected on the grounds that it would be constitutionally inappropriate to reopen the Ryanair dispute and that it was a decision for the relevant parties

[43] International Labour Organisation, *363rd Report of the Committee on Freedom of Association* (International Labour Office 2012) 1, 228
[44] Dail Reports 603 (37814/12), 2012 September 18th.

to resume issues before the Labour Court. While the ILO report may have provided some momentum in assisting the reform process, progress has been slow as other industrial relations priorities in an environment of fiscal rectitude hold sway and uncertainty persists as to the precise details of any reforms[45] (Roche et al. 2013). At time of writing, the government is considering legislative changes to restore IRAA 2001-4. This is likely to entail the tightening of a definition for collective bargaining in the legislation. That the Supreme Court also referred to a lack of evidence of union membership in the Ryanair dispute might suggest that matters of verification and evidence, at least where claims on levels of support are contested, will receive attention. Notwithstanding continued uncertainty over the direction of reform, it remains the case that IRAA 2001-4 and the contested matter of collective bargaining and union representation rights will continue to cast a shadow on Irish industrial relations for the foreseeable future.

[45] W.K. Roche, P. Teague, A. Coughlan and M. Fahy, *Recession at Work* (Routledge 2013)

Tables

Table 1: *Case Disputes advanced to LRC under original SI 145 (2001-2004)*

	2001	**2002**	**2003**	**2004**
SI. 145	30	41	26	6

Table 2: *Case Disputes advanced to LRC under 'fast-track' SI 76 (2004 onwards)*

	2004	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**
SI. 76	73	78	82	25	8	10	7	7

Table 3: *All recommendations issued by Labour Court under IRAA 2001-4*

	2002	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**Total**
Recommendations	2	10	20	30	32	9	2	-	2	2	-	109

Table 4: *All determinations issues by Labour Court under IRAA 2001-4*

	2002	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**Total**
Determinations	-	2	2	13	5	4	2	-	-	-	-	28

Table 5: *Characteristics of firms involved in IRAA 2001-4 cases*

		2002	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**
Sector:												
	Manufacturing	1	2	8	10	10	3	-	-	-	1	-
	Services	1	7	9	15	19	4	2	-	2	1	-
Size:												
	Small (10-49)	2	3	7	16	13	4	2	0	1	-	-
	Medium (50-249)	-	4	8	4	13	3	-	-		1	-
	Large (250 +)	-	2	2	5	4	-	-	-	1	1	-
Nationality												
	Irish	2	9	12	16	25	5	2	-	2	-	-
	UK	-	-	1	1	-	-	-	-		-	-
	European	-	-	2	2	1	2	-	-		1	-
	US	-	-	2	5	2	-	-	-		1	-
	Other	-	-	-	1	-	-	-	-		-	-

Table 6: *Number of employees subject to Labour Court recommendations and/or determinations*

	2001	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**Total**
No. employees	-	140	1354	2983	2636	3163	467	130	-	52	242	-	11,167

Table 7: *Union success in obtaining supporting Labour Court recommendations under IRAA 2001-4 between 2002-2005*

Case	Labour Court support union claim	Labour Court partially support union claim	Labour Court reject union claim
LCR17098		*	
LCR17236	*		
LCR17398		*	
LCR17469		*	
LCR17472	*		
LCR17607	*		
LCR17679	*		
LCR17685			*
LCR17699			*
LCR17745			*
LCR17760		*	
LCR17797	*		
LCR17891		*	
LCR17897	*		
LCR17906		*	
LCR17908	*		
LCR17914	*		
LCR17919		*	
LCR17925			*
LCR17932	*		
LCR17933	*		
LCR17939	*		
LCR17968			*
LCR17972		*	
LCR18013			*
LCR18016			*
LCR18019		*	
LCR18037	*		
LCR18040	*		
LCR18072	*		
LCR18087	*		
LCR18109	*		
LCR18111	*		
LCR18117			*
LCR18136	*		
LCR18137			*
LCR18151			*
LCR18184	*		
LCR18188			*
LCR18190		*	
LCR18206			*
LCR18207	*		
LCR18226			*
LCR18234			*
LCR18242			*
LCR18265	*		
LCR18269		*	
LCR18271			*
LCR18274		*	
LCR18280	*		
LCR18303		*	
LCR18344	*		
LCR18346		*	
LCR18387			*
LCR18404		*	
LCR18438	*		
	24	15	17

Table 8: *Case study disputes by year dispute registered, sector, size and ownership*

Firm	*Year Dispute First Registered at Labour Court*	*Sector*	*Size*	*Ownership-Nationality*
CementCo	2004	Manufacturing	Medium	Irish
DrinksCo	2005	Manufacturing	Medium	Irish
EngineeringCo	2004	Manufacturing	Medium	US
PharmaCo	2006	Manufacturing	Medium	France
FurnitureCo	2007	Manufacturing	Small	Irish
GlassCo	2006	Manufacturing	Medium	Irish
MedicalCo	2004	Manufacturing	Medium	Irish
PackagingCo	2006	Manufacturing	Medium	Irish
PetrolCo	2006	Services	Small	US
PlasticsCo	2006	Manufacturing	Medium	Irish
PrintCo	2003	Manufacturing	Small	Irish
SupplyCo	2006	Services	Large	Irish
TabletCo	2005	Manufacturing	Large	German
TelecomCo	2005	Service	Small	Irish
WasteCo	2005	Services	Small	Irish

Table 9: *Case study employer responses at workplace and LRC level*

Firm	**Response to Union at Local-Level**	**Response to LRC Conciliation Services**
CementCo	Failed to engage, alleged victimization of union activists	Failed to engage
DrinksCo	Failed to engage	Engaged, no agreement reached
EngineeringCo	Failed to engage	Failed to engage on first request, engaged on second request
PharmaCo	Failed to engage	Engaged, no agreement reached
FurnitureCo	Failed to engage	Engaged, agreement reached initially but employer later failed to act on the terms negotiated
GlassCo	Failed to engage	Engaged, agreed to put in place new time scales, other issues not resolved
MedicalCo	Failed to engage	Failed to engage
PackagingCo	Failed to engage	Engaged, no agreement reached
PetrolCo	Engaged	Engaged, agreement on individual union representation in disciplinary and grievance cases
PlasticsCo	Failed to engage	Engaged, no agreement reached
PrintCo	Failed to engage	Failed to engage
SupplyCo	Failed to engage	Engaged, no agreement reached
TabletCo	Failed to engage	Engaged, no agreement reached
TelecomCo	Failed to engage	Failed to engage
WasteCo	Failed to engage	Failed to engage

Table 10: *Case study employer responses at Labour Court level*

Firm	**Employer response to Labour Court Hearing**
CementCo	Engaged, claimed hearing was illegitimate as no employees in union membership
DrinksCo	Engaged, argued against union pay claim and claimed union unrepresentative of employees
EngineeringCo	Engaged, claimed hearing invalid as union raised issues already resolved internally
PharmaCo	Engaged, claimed hearing invalid as union pay claims were not in line with industry norms and union unrepresentative of employees
FurnitureCo	Failed to engage
GlassCo	Engaged, acknowledged agreement reached with union on sick pay and future review of pensions scheme
MedicalCo	Engaged, claimed union unrepresentative of employees
PackagingCo	Engaged, acknowledged willingness to raise basic pay, shift premiums and overtime rates in response to union request, although no agreement on precise increase.
PetrolCo	Engaged, claimed union claims on pay were not in line with industry norms
PlasticsCo	Engaged, acknowledged to Court agreement to changes on sick pay
PrintCo	Engaged, claim Court hearing illegitimate as based on evidence stolen from company by the union and union unrepresentative
SupplyCo	Engaged, claimed union claims on pay were not in line with industry norms
TabletCo	Engaged, claimed union claims on pay were not in line with industry norms
TelecomCo	Engaged, claimed union unrepresentative of employees
WasteCo	Engaged, claimed hearing was illegitimate as union claims on pay were not in line with industry norms

Table 11: *Case study Labour Court recommendations*

Firm	**Labour Court Recommendation**
CementCo	Improve pay to €13 euro per hour, plus other improvements
DrinksCo	Pay increases sought by union should be conceded; company told to follow national wage increases going forward
EngineeringCo	Union claims on pay rejected as rates not out of line, but company told to provide for union representation in individual disciplinary and grievance cases
PharmaCo	Increase pay in line with industry norms; introduce basic rate for job
FurnitureCo	Company should increase pay in line with national wage agreements
GlassCo	Union claims on pay accepted; pay rates to be increased in line with national wage agreements; claim for formal recognition of union rejected
MedicalCo	Increase pay based on industry norms; pay increases thereafter should follow national wage agreements
PackagingCo	Company told to grant national pay increases; overtime should be paid at the rate of time plus one half for all weekday hours; double time for Saturday and Sunday
PetrolCo	Union claims on pay rejected as rates not out of line
PlasticsCo	Introduce sick pay scheme providing for 4 weeks full pay – with no payment for first three days
PrintCo	Firm told to grant national pay increases, but claim for formal recognition of union rejected
SupplyCo	Pay out of line with industry norms and to be increased in line with national wage agreements
TabletCo	Union claims for increased pay supported and major increase in sick pay backed; claims over shift patterns rejected, but individual hardship cases on shift patterns to be looked at case by case
TelecomCo	Claims should instead be referred to new company grievance procedure
WasteCo	Company should introduce sick pay scheme; shorter working week; rejects union pay claims as pay not out of line

Table 12: *Case study outcomes of disputes*

Firm	**Outcomes of Dispute**
CementCo	Failed to comply with recommendation and determination, initiated legal challenge against Labour Court determination, later dropped in light of Supreme Court Ruling in 2007.
DrinksCo	Complied with recommendation
EngineeringCo	Failed to comply with recommendation, complied with subsequent determination
PharmaCo	Failed to comply with recommendation and determination, initiated legal challenge against Labour Court determination, later dropped in favour of once-off agreement on disputed issues with union at local-level
FurnitureCo	Complied with some elements of original recommendation but disputed pointed of back pay, later resolved at local-level
GlassCo	Complied with recommendation
MedicalCo	Failed to comply with recommendation, alleged victimization of union activists, further determination complied with
PackagingCo	Failed to comply with recommendation and determination, initiated legal proceedings against Labour Court determination, although later dropped by Company
PetrolCo	Entered once off agreement with union through further LRC intervention
PlasticsCo	Complied with recommendation
PrintCo	Failed to comply with recommendation, further determination complied with
SupplyCo	Failed to comply with recommendation, emergence of company redundancies negated organizing campaign
TabletCo	Failed to comply with recommendation, but complied with later determination
TelecomCo	Local-level resolution between union and employer on union rights to represent individuals in individual cases
WasteCo	Failed to comply with recommendation, complied with later determination