The Industrial Relations (Amendment) Act of 2001: - its effects and the implications for workers and trade unions in Ireland

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Abstract

This thesis concerns the Industrial Relations (Amendment) Act of 2001, its effects on workers and implications for trade unions in Ireland. The legislation provides a means of resolving the substantive issues in dispute between workers and employers when employers refuse to recognise the trade union articulating those issues. It may also deal with procedural issues but may not provide for collective bargaining. In abeyance since 2007 due to legal challenges, and amid Government commitments to return the Act to its original intent, this thesis seeks to provide an evidence based response to the various calls for the Act's amendment or replacement.

A mixed methods approach contributed to an extensive examination of the cases taken under the Act: -

- Documentary analysis of all Labour Court Recommendations issued
- A tracing of each workplace back to the union which referred the case
- A survey of union officials currently or potentially responsible for the members at workplaces where cases had previously been taken
- Interviews with union members, activists and staff in ten selected cases

The Labour Court Recommendations, in complying with the terms of the Act, must and do accept non-union fora for the resolution of collective issues and effectively corral trade unions into individual representation, managing misbehaviour and exit. Focussing also on the aftermath of the Labour Court Recommendations afforded a unique understanding of the effects on workers and their trade unions; the effects of the process in addition to the effects of the written outcome.

The research found that the majority of workplaces no longer have union members. Those still in membership display low levels of density and of activism and a distinct link is demonstrated between the union organising approach and such outcomes in each case. Those campaigns conducted with a greater emphasis on mobilisation or organising model techniques, where the referral under the 2001 Act was just one element in a broad campaign were more successful in achieving collective bargaining and better membership density and activism levels. The study recommends caution regarding sole reliance on the procedures provided by the Act.

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Abbreviations / Translations

		Union or Employer	Location
1946 Act	Industrial Relations Act 1946		RoI
1969 Act	Industrial Relations Act 1969		RoI
1990 Act	Industrial Relations Act 1990		RoI
2001 Act	Industrial Relations (Amendment) Act, 2001		RoI
2004 Act	Industrial Relations (Miscellaneous Provisions) Act, 2004		RoI
ACAS	Advisory, Conciliation and Arbitration Service		UK
AGEMOU	Automobile, General Engineering and Mechanical Operatives Union – now SIPTU	Union	RoI
AMICUS	AMICUS now UNITE the Union	Union	UK/RoI
BATU	Building and Allied Trades Union	Union	RoI
Bunreacht	Bunreacht na hEireann - Irish Constitution		RoI
CAC	Central Arbitration Committee		UK
CIF	Construction Industry Federation	Employer	RoI
CPSU	Community and Public Sector Union	Union	Aus
CWU	Communications Workers Union	Union	UK/RoI
Dáil Éireann	The Irish Parliament		RoI
DEC	Labour Court Decision		RoI
DIR	Labour Court Determination		RoI
ERO	Employment Regulation Order		RoI
FDI	Foreign Direct Investment		
FTO	Full Time Trade Union Official		
HSE	Health Service Executive		RoI
IALPA	Irish Airline Pilots Association	Union	RoI
IBEC	Irish Business and Employers' Confederation	Employer	RoI
IBOA	Irish Bank Officials Association	Union	RoI
ICTU	Irish Congress of Trade Unions	Union	RoI
IDA	Industrial Development Authority		RoI
IHF	Irish Hotels Federation	Employer	RoI
ILO	International Labour Organization		
IMPACT	IMPACT Trade Union	Union	RoI
INO/INMO	Irish Nurses and Midwives Organisation	Union	RoI
IWU	Independent Workers' Union	Union	RoI
JLC	Joint Labour Committee		RoI
LC	Labour Court		RoI
LCR	Labour Court Recommendation		RoI
LHMU	Liquor Hospitality and Miscellaneous Union	Union	Australia
LRC	Labour Relations Commission		RoI

MANDATE	MANDATE Trade Union	Union	RoI
MNC	Multi-national Corporation		
MSF	Manufacturing, Science, Finance	Union	UK/RoI
Oireachtas	Irish Legislature *Dáil, Seanad* and President of Ireland		RoI
RoI	Republic of Ireland		
Seanad	Irish Senate		RoI
SEIU	Service Employees International Union	Union	US
SFWU	Service and Food Workers Union	Union	NZ
SI145	Statutory Instrument 145 of 2000 - Code of Practice on Voluntary Dispute Resolution		RoI
SI76	Statutory Instrument 76 of 2004 - Enhanced Code of Practice on Voluntary Dispute Resolution		RoI
SIPTU	Services Industrial Professional Technical Union	Union	RoI
Taoiseach	Prime Minister		RoI
Tánaiste	Deputy Prime Minister		RoI
TD	*Teachta Dála* – Member of Irish Parliament		RoI
TEEU	Technical Electrical Engineering Union	Union	RoI
UNITE	UNITE the Union	Union	UK/RoI

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Chapter 1

Centenary Commemorations 1913 - 2013

This thesis is the culmination of a four year period of study, reflection and data collection with the bulk of the writing taking place during 2013, a year of multiple events in Ireland arranged to: -

> …remember, commemorate and reaffirm the ideals of the men and women who fought for the rights of ordinary people as workers, as parents and as citizens of a modern Irish state committed to upholding the highest standards of democracy and social justice
>
> (1913 Committee)

The event being commemorated is the Dublin Lockout of 1913, a long and bloody chapter in Irish labour history "when perhaps a third of … [Dublin] city's population starved in a fight over trade union recognition" (Yeates, 2001, p. *ix*). A key element in the commemorative events was Irish trade union reiteration that there is still some "unfinished business" in relation to 1913 which "includes the legal recognition of trade unions in all employments and negotiating rights for all members" (ICTU, 2013a). That "unfinished business" has a particular resonance for me. I have worked in the trade union movement for almost 30 years, starting in a clerical capacity before moving on to work as a union official and latterly as a union researcher. Trade union recognition, or the fight for it, has been a daily concern in this career and has become an academic focus also. The struggle for union recognition which is "still a struggle" is likened to the 100 Years War between England and France (Turner *et al*, 2013), though, as in the original 100 Years War the conflict over union recognition is "not a single war that lasted for a hundred years, but a sporadic succession of wars on the same theme" (Cavendish, 2003). The most recent skirmish in the union recognition war surrounds the Industrial Relations (Amendment) Act 2001, (the 2001 Act); a piece of legislation which provides for third party arbitration at the Irish Labour Court on terms and conditions of employment for workers whose employer refuses to negotiate with their union. It is important to stress at this point that the legislation does not provide for union recognition; there is no statutory union recognition procedure in Ireland. Unions may nonetheless refer to the Labour Court

the issues in dispute between them and the employer, and have the Labour Court recommend a solution, ultimately legally enforceable. This thesis is concerned with the aftermath of those Recommendations and with just how the 2001 Act impacts on the trade union movement and in particular on the workers who must live with its consequences. Of concern is the possibility that having the substantive issues in dispute such as pay and conditions of employment resolved by the Labour Court would reduce workers' inclination to mobilise, to be active in their union. The hypothesis to be tested is that participation in the procedures provided for under the 2001 Act militates against worker activism.

Chapter 2 expands on this brief introduction and sets the scene by describing industrial relations in Ireland from its roots in UK traditions to post-independence neo-corporatism and includes detail on another of this war's skirmishes, one involving the anti-union airline, Ryanair. Chapter 3 explains the institutions: - the legislation and the Irish State's industrial dispute resolution mechanisms, that is the Labour Relations Commission (LRC) and the Labour Court, and how cases proceed through these institutions. A concern with both dimension and agency is the focus of Chapter 4; dimension includes an exploration of the literature regarding freedom of association, industrial relations perspectives and where the Irish experience locates, while agency refers to how trade unions function in this dimension, forms of renewal both institutional and mobilising in nature. Here too the main research question is defined: – *What effect does participation in the procedures provided under the 2001 Act have on workers and their trade unions in Ireland*? The ancillary questions concern potential conflicts between participation in such procedures and current union renewal themes, the 2001 Act's propensity to facilitate employer hostility, and whether or not it can ever lead to union recognition.

Chapter 5 debates the possible methodological approaches and explains the decisions taken: - to conduct documentary analysis of the Recommendations issued by the Labour Court at the end of the procedures in each case; a tracing of all the workplaces involved to determine if they are still in membership of the trade union which originally took the cases; a survey of union officials with current or potential responsibility for each case and finally a series of interviews with the main players, the union

officials, activists and members involved in ten diverse workplaces previously the subject of cases under the 2001 Act.

Chapters 6, 7 and 8 outline and analyse the data collected. Chapter 6 pays particular attention to the workplaces where cases were taken; economic sector, socio-economic groups, employer type as well as the nature of issues dealt with at the Labour Court, and discusses their impact. Chapter 7 traces those workplaces back to the trade unions which took the cases and finds low levels of membership before detailing the results of the survey of union officials which also finds low levels, in this instance low levels of collective bargaining and of activism. Reasons for such low levels are put forward and discussed. Chapter 8 focuses on interviews conducted with union officials and members, on their experiences of the union campaign and its aftermath in each of ten cases. It finds patterns common to successful organising campaigns and other patterns common to unsuccessful campaigns and discusses the implications of these for future use of the 2001 Act procedures. Chapter 9 discusses the findings in the context of the original research questions posed. Chapter 10 concludes by reflecting on the lessons learnt during the undertaking of the thesis; by discussing both its limitations and its contributions to the literature; its contribution to current debates on the future of the legislation and to professional practice.

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Chapter 2

An Irish Solution To An Irish Problem

The above expression has often been used by Irish Government spokespersons when describing or justifying perhaps unique decisions on a range of issues from unemployment in the 1930s to contraception in the 1970s and just as frequently by opponents of the same, sometimes politically expedient pieces of legislation.[1] An Irish solution to an Irish problem might well also describe the Industrial Relations (Amendment) Act, 2001. That piece of legislation marks a distinct divergence from the British system of industrial relations which was generally practised in Ireland post-independence, albeit with some quasi-corporatist twists and some concessions towards different economic needs along the way.

This chapter seeks to place the forthcoming research in context by outlining:-

- the tradition of industrial relations in Ireland including an explanation of the 'social partnership' system;
- a section providing background on Ryanair explaining its relevance to the topic of trade union recognition in Ireland;
- the Industrial Relations (Amendment) Act 2001 (hereafter referred to as the 2001 Act, see copy in Appendix A), its introduction and usage;
- the effect of the 'Ryanair judgments' on the provisions of the 2001 Act, and finally,
- reflections on the position of the main players, where they now stand on the question of trade union recognition against the background of the demise of social partnership and a change in Government.

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[1] See Dáil Éireann Reports on for example the Unemployment Relief Bill, 1931 or the Family Planning Act, 1979 at:- http://www.oireachtas-debates.gov.ie/plweb-cgi/fastweb?query=%27Irish%20solution%20to%20an%20irish%20problem%27&TemplateName=prehit.tmpl&view=oho-view&dbname=Debates&numresults=100 last viewed 29/09/2012

There is a separate explanation in the next Chapter of all the relevant legislation and the procedures arising there from.

2.1

"I regard law as a secondary force … in labour relations"

(Kahn-Freund, 1977, p.2)

Traditionally a 'hands-off' approach in terms of statutory regulation was a fundamental feature of the 'voluntarist' nature of industrial relations as practised in these islands. Certainly until the latter decades of the 20th century, the 'two sides of industry', employers and unions, were allowed, indeed expected to bargain and to reach "voluntary agreements honourably observed" (Phelps Brown, 1959, p.183). The state's role was something akin to umpire, merely "holding the ring in order that bargaining should take place" (Wedderburn, 1986, p.8) and only intervening "to address the pathological situation, i.e., when the employer – employee relationship goes drastically wrong" (Fennell & Lynch, 1993, p.30). While the legacy of British rule in Ireland is an important contributor to this voluntarist approach, there are some essential differences in the Irish system partly attributable to the influence of Catholic social teaching on the Irish Constitution and on successive Governments (Dundon & Collings, 2011), but also the requirements of a very open economy with exceptional reliance on, mostly US, foreign direct investment (FDI) (Collings *et al*, 2005). The extent to which the Irish system may still be described as voluntarist is debatable and is explored later in this work (See Chapter 4, Section 4.5).

Thus the industrial relations institutions such as the Labour Court and Labour Relations Commission (LRC) in Ireland closely mirror (although some pre-date) the UK's Employment Tribunals; the Advisory, Conciliation and Arbitration Service (ACAS) and Central Arbitration Committee (CAC). While the neo-liberal turn in the UK during the Thatcher years was not evident in Ireland, at least until much later (McDonough & Dundon, 2010), Irish legislation often mimicked that of the UK – the effect on strike ballots for example in the Trade Union Act 1984 in the UK was followed shortly thereafter by some similarities in the Industrial Relations Act, 1990 in Ireland. Both jurisdictions delayed and minimally transposed the EU

Information & Consultation of Employees Directive (Directive 2002/14/EC) and have had similar levels of compliance subsequently (Dobbins, 2008). Trade union structures are similar in both jurisdictions, such that British unions organise in the Republic of Ireland and Irish unions work effectively cross-border.

As the focus of this thesis is trade union recognition, it is apt here to digress a little in order to define recognition and also to note the exceptional nature, at least in European terms, of the UK and Irish situations. Trade union recognition is defined by Salamon as "the process by which *management* formally accepts one or more trade unions as the representative(s) of all, or a group, of its *employees* for the purpose of jointly determining terms and conditions of employment on a collective basis" (1987, p.408). The emphasis is added, deliberately so, for it is this workplace level which is the distinguishing feature of the UK and Irish systems. By comparison, in many continental European systems, it is a works council which is the representative body at workplace level (Germany, Austria) and the concept of recognition is replaced by that of representativeness, which trade unions mostly attain at national level often by means of elections (Belgium, France). Even in Denmark where the system can be described as voluntarist in nature, collective agreements are legally binding on those employers in membership of the body negotiating the agreements (and employers tend to be in such membership), regardless of union membership.

2.2
"Common origins, different paths"

(Daly & Yeates, 2003, p.85)

Despite the similarities however, even before the Thatcher years, trade unions in Ireland had an easier existence than those in the UK; their role and strength accepted by Government and employer alike as "immutable features of the fabric of industrial relations practice" (Roche, 1997, p.67). In the early years of attracting foreign direct investment, development agencies were seen as "progressively helpful" (*ibid.*) and openly encouraged investors to "recognise the industrial relations of this country and the

inevitability of union recognition" even to the extent of encouraging pre-production agreements with trade unions (McGovern, 1989, p.63). Although such 'sweetheart deals' as they came to be known, applied only to blue collar workers at these establishments, the effects of which will be discussed later (See Chapter 4, 4.6), they did ensure a trouble-free 'foot in the door' for some trade unions. Trade unions were an integral part of Irish society "actively encouraged by successive governments" (Horgan, 1989, p.193) with representatives on a wide range of boards and committees involved in economic and social issues such that historically their wider, national role was seen as part of their "responsibilities" (Boyd, 1972, p.111). Union density grew through much of the 20th century culminating in a high of 62% by 1980 (McDonough & Dundon, 2010). By comparison rates at the same time in the UK were 50.7% with an EU average of 39.7% (Visser, 2006).

None of the above is to suggest that Ireland was without its share of industrial strife. While labour historians point to the three successive stages of Irish trade union history in the 18th, 19th and 20th centuries as, "oppression, toleration and privilege" (Lynch, 1994, p.159) such privilege at national level did not necessarily translate into industrial peace at workplace level. Sapsford's 1979 examination of strike statistics post-war illustrate the point. The average number of strikes per annum between 1950 and 1977 was 107 involving over 24,000 workers losing a third of a million work days each year (Sapsford, 1979, p.30). Although figures are not directly comparable and only refer to manufacturing industries, a comparison of Ireland's strike statistics with those of the then EEC countries from 1968 to 1977 shows Ireland in second place only to Italy in terms of average working days lost per 1,000 employees; Italy at 1,914; Ireland at 919 and the UK at 850 (Sapsford, 1979, p.39). If all industries and services are counted, Ireland again surpasses the UK with 703 to the latter's 452 working days lost per 1,000 employees for the same period (Sapsford, 1979, p.40). Strikes being but a "part of a continuum of practices and relationships" (Hyman, 1989, p.184) it is interesting to note the results of one 1984 survey, also only in manufacturing, which found that "the incidence of non-strike forms of industrial action was triple the incidence of strikes" (Roche, 1997). In addition there has been heavy usage of the dispute resolution mechanisms in place:- the Labour Court, the

Equality Tribunal and the Rights Commissioners, the latter used initially to resolve disputes regarding individual cases but displaying in more recent years "a more encompassing quasi-judicial role in respect of employment rights" (Hann & Teague, 2012).

One other striking difference between Ireland and the UK is the durability (at least until recently) of Ireland's tendency to take a more centralised approach to wage bargaining, in particular its so-called social partnership system. Although a far cry from the corporatist models of Scandinavia or mainland Europe and without any *erga omnes*[2] arrangements, nonetheless between 1946 and 1979 the Labour Court facilitated 20 consecutive National Pay Rounds or National Wage Agreements negotiated by employers and trade unions and with the State represented at negotiations in later years, at least as employer. Since 1987 these wage rounds have expanded into tri-partite social pacts covering a broad range of economic and social issues including taxation, welfare and housing. Those at the negotiating table have also changed, expanded to include civil society groups such as those representing farmers, the unemployed, the aged and several agencies from the community and voluntary sectors. Lengthy negotiations culminated generally in three-year programmes which were then put to trade union members to accept or reject by ballot. While some unions from time to time rejected the proposals, the over-all result was always in favour albeit with varying levels of enthusiasm.

Coverage of the wage element of pacts, referred to colloquially as the national wage agreement, was estimated to be quite high; Kerr (2004, p.27) cites a European Commission figure of 66% (European Commission, 2002) though the terms in their entirety, were generally confined to union members or at least to workplaces where unions had bargaining rights ensuring universal coverage in the public sector and consequently lower in the private sector. Employers in non-union workplaces also often ensured to match or better at least the pay terms, possibly as part of a union avoidance strategy (Collings *et al*, 2005). In addition the Labour Court also

[2] Any legal arrangements for the extension of the agreements to other workers or workplaces not directly involved in the negotiations.

oversaw some sector agreements in traditionally low-paid non-union sectors such as contract cleaning and catering, negotiated between employer and union representatives on Joint Labour Committees (JLC).[3]

2.3
"Entering the ice-age"

(Wallace, 2003)

Whether because of or in spite of such cooperation, trade union fortunes declined towards the end of the 20th century, sufficiently so as to be described as "entering the ice-age" (Wallace, 2003). Trade union density started to decline in the 1980s for the first time since World War II, reaching 57% in 1990 and down to 44.5% by the millennium (Dobbins, 2001) despite ever increasing numbers actually in membership of unions; unions were failing to keep up with an expanding workforce. There was an increasing dichotomy between union influence at the workplace and "the rhetoric of partnership and involvement" at national level (Kelly, 2001, p.*iv*); employers were less inclined to deal with unions and there were some bitter strikes regarding trade union recognition. Traditional unionised industries closed while new/replacement industries, often US owned multi-nationals, became even more hostile to trade unions a trend that spread to indigenous employers who also developed "a quite different robust anti-union position" (Sheehan, 2008, p.107). Development agencies started to signal to incoming investors that "unionisation was no longer an essential requirement" (*ibid.*) thus the locus of trade union recognition disputes expanded from small, local, often family owned enterprises (Pat the Baker, etc.) to include larger, well-resourced organisations (O2, Ryanair) and with that move came political change too in the shape of a "strong anti-union agenda" hitherto hidden if not absent (Collings *et al*, 2008, p.244).

The public brawl became a means of resolving a recognition row: - mutual slanging matches; dismissals; disruptions to productivity and sometimes, a

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[3] See (http://www.labourcourt.ie/labour/labour.nsf/LookupPageLink/HomeRatesOfPay for a full list of sectors covered and links to the agreements.

strike. Although recognition strikes accounted for only 5% of an already low strike level and just 2% of days lost (Roche, 2001), public opinion and media attention focussed on them, particularly three of those in the 1990s:- Pat-the-Baker; Nolan Transport and Ryanair baggage handlers.[4] In the Pat-the-Baker dispute, the employer closed a facility in Dublin and kept open a non-union plant in Longford, rather than recognise the union that the workers in the former had joined. In Nolan Transport, a transport company in County Wexford, the employer accused the union of 'rigging' the strike ballot[5]. Both disputes were also the subject of court cases; employer recourse to the law a relatively new phenomenon at the time. "All of these concentrated peoples' minds. They illustrated the inadequacy of the existing legal arrangements" (Wall, 2003). While commentators frequently point to the "propensity of US firms to remain union-free" (Gunnigle *et al.*, 1994, p.18), disputes, or at least those which made the headlines such as the three mentioned above, all concerned Irish-owned enterprises.

2.4

"a non-conventional row … a non-conventional company"

(Sheehan, 1998b, p.3)

There will be numerous references in this dissertation to Ryanair, a low cost airline with Irish headquarters, and although it is not the focus of this work, it has had sufficient influence on trade union recognition in Ireland to warrant a separate section. Ryanair was founded in Ireland in 1985 and after a poor start remodelled itself in the 1990s on the no-frills model of the US Southwest Airlines. The company is now a major player in the aviation industry thanks to a combination of its corporate culture; use of secondary airports; reduced services; high staff productivity and outsourcing (Barrett, 2004). Said corporate culture is characterised by an outspoken criticism of airport managements; other airlines; the European Commission; customer complaints and trade unions alike, with "casual abuse" delivered in a

[4] There are two separate Ryanair disputes; this one involving SIPTU members working as baggage handlers in the 1990s and also a dispute involving Ryanair pilots represented by IALPA/IMPACT involved in more recent conflict.

[5] Technically the strike ballot was due to the dismissal of union members allegedly for union activity but the underlying difficulty was trade union recognition.

"hectoring style" mostly by its Chief Executive, Michael O'Leary (Clark, 2005). Public apologies have sometimes also been necessary (Milmo, 2010). On the subject of trade unions, the company is quite direct; "hell will freeze over before we recognise a union" according to the Chief Executive (Oireachtas Debates[6], 2010).

Employees working as baggage handlers were the first to challenge the company when 39 of them sought to be represented by the trade union SIPTU[7] in 1997. When the company refused, the union held a number of work stoppages which Ryanair countered by removing the air-side security clearances of the members effectively preventing them from working after the stoppages. Even in the face of *An Taoiseach*[8] Bertie Ahern's request to Ryanair to recognise the union (Sheehan, 1998b) the dispute continued "and escalated into a major national crisis over the weekend of 7-8 March 1998" (Sheehan & Geary, 1998b) when other airport staff refused to pass the baggage handlers' picket and they and other trade unionists, thousands in all, congregated at the airport shutting down many services and flights, but not ironically those of Ryanair. An enquiry team formed by the Government brokered a deal to re-open the airport next day and also went on to compile a report on the situation. The report was based on interviews with employees selected by Ryanair and held mostly in the presence of the company's legal advisor or other management figure. Its conclusion that the majority of Ryanair workers "have a negative attitude to trade union recognition" and are proud and supportive of the company's culture and management, needs to be seen in that context (Flynn & McAuley, 1998, p.4). The report also disproved Ryanair's contention that its baggage handlers were paid better than their counterparts in other airlines; agreed with SIPTU that participation in the strike was likely a consideration in the subsequent failure of three probationary workers to be made permanent, though criticised SIPTU's handling of the dispute while nonetheless encouraging the company to negotiate. The company never conceded recognition and in some circles it is considered that SIPTU "picked the

[6] Record of parliamentary proceedings similar to Hansard in the UK
[7] Services Industrial Professional Technical Union – Ireland's largest trade union
[8] The Irish Prime Minister

wrong company to do battle with" (Sheehan, 1998b, n.p.) and subsequently disengaged (O'Sullivan & Gunnigle, 2009).

Not surprisingly, such "a non-conventional row to begin with, involving a non-conventional company with a non-conventional sequence of semi-anarchic events" (Sheehan, 1998b, n.p.) had effect beyond the individuals or employment concerned and coloured trade union views at a later stage.

2.5
"...preserving the voluntarist tradition..."

(O'Sullivan & Gunnigle, 2009, p.255)

Prior to this Ryanair dispute, the social partners had agreed in a social pact – *Partnership 2000* - to deal with the issue of trade union recognition by means of "a High-Level Group" involving Government departments and the social partners specifically set up "to consider detailed proposals submitted by ICTU[9] on the Recognition of Unions and the Right to Bargain" (*Partnership 2000*, 1996, p.65). As the peak federation of Irish trade unions, ICTU's position at the time was that "neither mandatory recognition nor mechanisms for binding arbitration were being sought as objectives in themselves" (ICTU, 1996). Rather ICTU sought to encourage employers to bargain by advocating a system whereby the Labour Court could decide on terms and conditions in situations where conditions were "out of line with industry norms" and where a certain threshold of membership levels had been met. In this way it was hoped employers would rather negotiate with a union than have conditions imposed on it by a third party (Sheehan, & Geary, 1998c). Employers for their part, and Government too, were resistant to the idea of mandatory recognition or any restrictions that would drive outside investors away, an opinion that has become something of a mantra in the intervening years.

The High Level Group first reported in December of 1997 insisting on continuing the voluntarist approach to industrial relations; proposing that the state's dispute resolution machinery, the LRC and Labour Court would

[9] Irish Congress of Trade Unions – the peak federation of Irish trade unions equivalent to the UK's TUC

have expanded arbitration roles in the matter; that employers would be invited to participate voluntarily; that there would be a "cooling-off" period for intractable disputes and that at the end of the process the Labour Court would issue a recommendation, non-binding as was the norm (*High Level Group on Trade Union Recognition*, 1997). Though they were part of the High Level Group, nonetheless the trade unions subsequently rejected the report because of the Ryanair dispute believing its proposals would have done nothing to avoid or resolve that situation (Dobbins & Sheehan, 1998). There was still no obligation on an employer to participate and quite clearly Ryanair would never have done so voluntarily.

In February 1998, the Labour Party introduced to Dáil Éireann[10] the Trade Union Recognition Bill, 1998, which encompassed the ICTU position and was similar to that being discussed in the UK at the time and later introduced. The Bill provided that the Labour Court could summon employers to appear before it; could recommend that an employer recognise a trade union so long as that union was representative of the workers; could order a ballot to determine such representativeness; and could make an employment regulation order if such Recommendation was not implemented. Apart from the Labour Party itself, there was little support for the bill. The main Government party, Fianna Fáil responded that:-

> A strong legislative remedy, which this Bill represents, is really not the answer to the union recognition problem. It flies in the face of our voluntarist approach to industrial relations and could have untoward consequences for the whole of our industrial relations and social partnership system
>
> (Jacob, 1998, p.18)

A member of the then main opposition party, Fine Gael, opined that "Mandatory recognition will not help and could drive away possible investment, lose jobs and bring resentment to the fore. Suspicion would replace partnership" (Burke, 1998, p.16) "Modest and balanced" (Rabbitte, 1998, p.18) it may have been in the eyes of the Labour Party but the bill was in any event defeated by 63 votes to 23 and the subsequent social pact

[10] The Irish Parliament

(*Programme for Prosperity and Fairness*, 2000) merely provides that a code of good practice be introduced.

By the turn of the century, the issue had become even more contentious with the unions threatening not to enter into any social partnership agreement unless the matter was resolved (Sheehan, 1999). The High Level Group re-considered the situation and issued a second report (High Level Group on Trade Union Recognition, 1999). This time the original proposal regarding a 'voluntary' process was re-stated: – the involvement of the Labour Relations Commission (LRC); invitations to employers to participate; a 'cooling-off' period in really contentious cases and a non-binding Labour Court Recommendation. The Report also however included a special 'fall-back' provision where if the above voluntary process failed, then the Labour Court could "summon the parties to attend before it, examine witnesses and seek any documents considered relevant to the dispute in question", provided any appropriate internal procedures and mechanisms had failed to resolve the matter, and that trade unions had no recourse to industrial action during the process (Sheehan, 1999). It also provided a means of having the Recommendation legally enforced should the employer fail to implement it. Crucially however, the Labour Court could not "provide for arrangements for collective bargaining" (Section 5(2)) meaning it could not recommend, much less oblige an employer to recognise a trade union. The 'voluntary' element of the provisions was included in a Code of Practice drawn up by the Labour Court (S.I. 145 of 2000) while the 'fall-back' provisions necessitated legislative changes later provided for in the Industrial Relations (Amendment) Act of 2001.

While sometimes described as such, these provisions do not constitute a statutory union recognition procedure as understood in the UK (Gall, 2010a), but a dispute resolution mechanism for those substantive issues in dispute in situations where the employer refuses to negotiate with the union articulating the workers' position on those issues. Its introduction however satisfied many initially on the basis of according "with the aim of preserving the voluntarist tradition" (O'Sullivan & Gunnigle, 2009, p.255). Cross-party support for the Act during the Oireachtas debates which preceded its promulgation persistently remarked on the Bill having the support of both employers and unions. The more conservative senators believed it was

"unlikely any employer will ignore the voluntary code of conduct" (Mooney, 2000) and did not expect that it would be "invoked with great frequency" (Naughten, 2000). Those from trade union backgrounds were more likely to question some aspects: - why for instance the Act did not "force employers to sit down with trade unions" (O'Toole, 2000, p.7) and whether those working for multi-nationals would be able to access the procedures (Costello, 2000, p.5). In the Dáil, Tommy Broughan, the Labour TD, who had proposed the defeated Trade Union Recognition Bill in 1998 described it as "flimsy" (Brougham, 2000, p.19), a "watered down mish-mash" according to Joe Higgins of the Socialist Party who also predicted that it would "sink ignominiously" (Higgins, 2001, p.17). Another Labour TD, now *Tánaiste*[11] described internal dispute procedures as likely to be populated by "a crowd of licks who are in the employer's pocket" (Gilmore, 2001, p.6) while Pat Rabbitte, now also a Labour Party Government Minister, unwittingly offered another hostage to fortune with the opinion that the 2001 Act was "unlikely to leave any perceptible mark on the industrial relations landscape" (Rabbitte, 2000, 19).

2.6

"12 months of a frustrating process"

(Industrial Relations News, 2001)

Trade union reactions were muted partly because the operation of the 'voluntary' leg for some 18 months prior to the 2001 Act was not encouraging. By October 2001 for example, 28 cases had been referred to the LRC under the 'voluntary' process. Almost half of these were "stillborn, with no engagement taking place, let alone successful engagement" (Higgins, 2001, n.p.) as employers simply turned down the 'invitation' to participate. By October of the following year, 2002, when trade unions had referred a total of 65 cases, in 21 of those cases the employer refused to participate or simply did not respond to the invitation. In only four of the original 65 cases referred had the process been completed and the issues in dispute resolved at LRC. The LRC acknowledged in their own review of the

[11] Deputy Prime Minister

'voluntary leg' that "the experience of the trade unions involved in the process has been generally unsatisfactory" (Morrin, 2002, p.5).

Although the 2001 Act and its 'fall-back provisions' together go some way towards addressing union concerns about the voluntary process by allowing for some enforcement of the Labour Court's recommendations, they still gave it but a cautious welcome. Right from the start SIPTU, the largest union and most likely to become the heaviest user of the process, conceded that there were "undoubtedly reservations on the union side" and only welcomed it from the point of view that using the procedures provided meant "the Union can offer more to its members than a long and unsuccessful dispute" (SIPTU, 2001, p.1). By the time of SIPTU's Biennial Delegate Conference the following October, the then Vice-President described it as a "minimalist measure" while union officials were already concerned at taking members through "12 months of a frustrating process" (*Industrial Relations News*, 2001, n.p.). An internal SIPTU report the following year confirmed their fears (Devine & Halpenny, 2002). It examined 23 cases referred under the 'voluntary leg' by SIPTU officials; two reached agreement at LRC stage; six were at the Labour Court or were so subsequently. Two-thirds they reported were "going nowhere"; they were in abeyance or officials were frustrated and had withdrawn altogether. They concluded bluntly that: - "the whole experience has been an entirely negative one for our officials and their members"; "a 'time-wasting' or 'delaying' tactic by the employer/IBEC[12]" described by officials with "universal negativity on a continuum from 'difficult' to 'disaster'" (Devine & Halpenny, 2002, p.1). They report high density levels of between 70% and 100% but in a few cases the membership collapsed during the process. Officials sought at least "some teeth" in the process if not "full recognition" (p.3).

It is not therefore surprising given their cautious welcome for the 2001 Act that trade unions initially made little use of the procedures provided. Within a year an ICTU Working Group concluded that the 'voluntary leg' had "completely failed to achieve its aim of voluntarily resolving disputes about union recognition" and called for the procedures to be "streamlined to

[12] Irish Business & Employers' Confederation – the main Irish employer body

ensure expeditious processing of referrals" (ICTU, 2002, p.2) and to guard against "pretence co-operation" by employers (*ibid*. p.3). They successfully lobbied for an amendment and the Industrial Relations (Miscellaneous Provisions) Act 2004 does shorten the timescale involved in resolving disputes to 26 weeks from referral to the issuing of a binding determination by the Labour Court (34 weeks in exception). This resulted in "a major growth in the referrals" (Labour Relations Commission, 2006, p.8) as "the key difference … is the introduction … of a specific time-frame for the processing of disputes (six weeks)" (Labour Relations Commission, 2004a, p.4). The increased usage can be seen in Table 2.1 below.

Table 2.1 – Labour Relations Commission – 'Voluntary leg' Referrals 2001 - 2012

Year	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Referrals	30	41	26	79	78	82	25	8	10	7	7	

Source: www.lrc.ie

After a slow start in 2001/2002, 30 and 41 referrals under the 'voluntary leg' respectively, referrals more than doubled by 2004 (n=79) and remained at that level for the following two years before plummeting from 2007 onwards. Such referrals represent a small proportion of the total numbers of cases referred to the LRC on industrial relations matters such as pay and conditions in unionised employments, estimated at between 1,000 and 1,500 every year since inception.

Table 2.2 - Labour Court Recommendations under the 2001 Act 2002 - 2011

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
No. of LCRs	2	9	21	31	31	9	0	2	2	2

Source: www.labourcourt.ie

On average, Labour Court Recommendations constitute 30-40% of the 'voluntary leg' referrals so a similar pattern is evident in Table 2.2 above; a slow start in 2002 with just two cases, increasing ten-fold by 2004 to 21 cases; 31 in the two subsequent years before reducing drastically, to no Recommendations in 2008.

2.7

"… the lesson is clear … diplomacy does not work"

(O'Connor, 2007, n.p.)

The dramatic reductions in the number of cases being processed from 2007 was according to the LRC: -

> … a reflection of the fall-out arising from the judgment of the Supreme Court in the Ryanair/Labour Court / IMPACT case. Essentially there is a perception from trade unions that the judgment has diluted and rendered void the effectiveness of the process
>
> (Labour Relations Commission, 2007, p.26).

For the second time in recent industrial relations history, Ryanair, an openly anti-union employer, has had direct effect on the course of trade union recognition in Ireland. This time it involved those employed by Ryanair as pilots and represented by the Irish Air Line Pilots' Association (IALPA) affiliated to the public sector union IMPACT. That union referred a case to the Labour Court under the provisions of the 2001 Act involving the pilots, the issues in dispute centring on training; contracts of employment and redundancies. Ryanair argued there was no trade dispute within the meaning of the Act because they *did* engage in collective bargaining and there *did* exist internal dispute resolution procedures which had not (yet) failed to resolve the dispute (*Industrial Relations News*, 2005). The Labour Court did not agree and at its preliminary hearing on the 14th November 2004 found that it was not Ryanair's practice "to engage in collective bargaining negotiations as the Court understands that expression" (Labour Court Recommendation No. DECP051); that there was a trade dispute; that there were no dispute resolution procedures at the company, and therefore found in favour of the applicants, IMPACT.

Ryanair sought and was granted permission by the High Court to challenge the Labour Court findings. The High Court rejected Ryanair's arguments (*Ryanair vs. the Labour Court* [2005] IEHC 330 15th October 2005) and upheld the Labour Court Recommendation. Ryanair appealed to the Supreme Court, which overturned the High Court decision and quashed the Labour Court Recommendation (in *Ryanair Ltd v Labour Court* [2007] IESC 6 1st February 2007). Crucially however, for the 2001/2004 Acts, the Supreme Court was also "sharply critical of the approach and procedures of the Labour Court" (Gilvarry & Hunt, 2008, p.174). The Labour Court subsequently identified seven legal issues arising from the judgment which impinged on how future cases would proceed, including disclosing the identity of union members and relying on legal rules of evidence and witness testimony (Sheehan, 2007a). As a result, new guidelines were issued on how cases should now proceed (Labour Court, 2007, n.p.).

The effects were far-reaching with a drastic reduction in the number of cases referred under the 'voluntary leg' and in the numbers being referred and recommended upon by the Labour Court. While many expressed concern at this "forcing the Labour Court to assume many of the characteristics of a more formalised court setting" (Gilvarry & Hunt, 2008, p.168) unions have in any event voted with their feet and have almost entirely ceased to use the process they now say was "annulled" by the Supreme Court decision; "it is now redundant … the lesson is clear – diplomacy does not work" (O'Connor, 2007).

2.8

"…to enable the mechanisms…to operate as they had been intended"

(*Towards 2016: Review*, 2008, p.28)

Nonetheless when all this outrage had died down, the social partners, in what was almost their last partnership approach, agreed:-

> …to the establishment of a review process which will consider the legal and other steps which are required to enable the mechanisms which were established under previous agreements to operate as they had been intended

(*Towards 2016: Review*, 2008, p. 28)

In other words, to get the 2001 Act back on track. Before any of this could happen, however, both the partnership arrangements and the populist Fianna Fáil Government which upheld them had collapsed. The social partners had concluded an agreement in 2006, *Towards 2016*, which as its name implies was a 10 year agreement though its pay terms ran only to 2008 (*Towards 2016*, 2006). In September of 2008 negotiations on renewing those pay terms were under way while at the same time the property bubble had burst and the extent of the forthcoming financial collapse was beginning to reveal itself. Pay terms were agreed but without the support of one of the employer organisations, the Construction Industry Federation (CIF), who withdrew citing the decline in the construction industry, while another employer body, the Irish Hotels Federation (IHF) lodged a constitutional challenge to the Joint Labour Committee (JLC) wage setting mechanism in the hotels sector (Dobbins, 2010a). By 2009 the financial crisis had worsened and the Government sought to re-negotiate the pay terms, at least for its own employees, the public sector. The negotiations failed in March and the Government unilaterally cut public sector pay and increased personal taxation for all.

Trade unions fought back with their "Get up, Stand up" campaign and proposed "A Better, Fairer Way" (ICTU, 2009). A one-day strike with upwards of 300,000 trade unionists on the streets of the capital promising more disruption prompted the Government to re-convene talks. For a while it looked like agreement might be reached with unpaid leave being used in lieu of pay cuts, but in mid-December the Government announced its withdrawal from the talks leaving "shell-shocked" trade unions in its wake (O'Kelly, 2010, p.427). Further pay cuts were announced by the Government in its 2010 budget and although some patching up was achieved in the Croke Park Agreement on public sector pay (*Public Service Agreement 2010 - 2014,* 2010) and in a separate private sector 'protocol', (IBEC-ICTU, 2010) effectively social partnership was finished. The Government fell the same year and was replaced by a coalition of right-of-centre Fine Gael with the Labour Party as junior partner.

The new Fine Gael/Labour Coalition's Programme for National Government 2011 states:-

> We will reform the current law on employees' right to engage in collective bargaining
>
> (*Government for National Recovery*, 2011, p.24)

Significantly it is 'employees' and not trade unions which are mentioned and the current Minister for Jobs, Enterprise and Innovation believes that the procedures

> can be improved and secured without introducing a mandatory requirement upon employers to recognise trade unions for collective bargaining purposes
>
> (Sheehan, 2011, n.p.)

or anything else which might "upset potential investors" (Sheehan, 2011). If trade unions had hoped for any support for their agenda from the Labour Party it seems it may not now be forthcoming. One Labour Minister, Pat Rabbitte, TD, a former trade union official has already stated that: - "trade union recognition is a different issue to the right to collective bargaining" and believes that "the right to collective bargaining is well established in this country" (Millar, 2012). The employer position is quite clear. Brendan McGinty, Director of the main employer body IBEC considers that:-

> …a legal right to collective bargaining would not create a single job in this economy and would instead threaten many thousands of jobs by damaging our capacity to attract and retain inward investment…
>
> (McGinty, 2010, n.p.)

While continuing to lobby the incoming Government, the ICTU also meanwhile lodged a complaint with the International Labour Organization (ILO) citing Ryanair and the Irish Government, stating that Ryanair's "capacity to operate in this way is enhanced by the failings of Irish labour law" (Irish Congress of Trade Unions, 2010, p.10), by the Industrial Relations (Amendment) Act, 2001. The ILO response to the complaint, in addition to calling for an enquiry into the events at Ryanair, calls on the Irish Government to:-

> review the existing framework and consider any appropriate measures, including legislative measures, so as to ensure respect for the freedom of association and collective bargaining principles set out in its conclusions, including through the review of the mechanisms available with a view to promoting machinery for voluntary negotiation between employers' and workers' organizations for the determination of terms and conditions of employment.
>
> (International Labour Organization, 2012, p.815)

Essentially, the ILO now also calls for a review of the legislation. The ILO recommendations were welcomed by both unions and employers -though Ryanair itself seems unaccountably silent on the question - and are essentially "in tune" with the Government's commitment in the Programme for Government (Sheehan, 2012a, n.p.) though the Government, as expected, has confirmed it will not hold any enquiry into Ryanair (Sheehan, 2012b) and in any event such recommendations are non-binding. Trade unions can hardly have expected any support for mandatory collective bargaining from any of these quarters and seem content also to push an agenda based on repairing or restoring the 2001 Act. There appears to be no assessment of whether or not a legislative approach such as that provided for in the 2001 Act is the only or best approach for them. That is one of the aims of this dissertation.

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Chapter 3
Understanding The Institutions

This thesis is concerned with the effect on workers and their unions of their participation in the procedures provided for under the Industrial Relations (Amendment) Act 2001, the 2001 Act. As these procedures are available at the Labour Court and at the Labour Relations Commission (LRC) this chapter will explain the workings of both of those institutions[13]. The previous chapter described the events surrounding the promulgation of the 2001 Act and here is detailed its main elements; its amendment by the Industrial Relations (Miscellaneous Provisions) Act 2004 (the 2004 Act) plus three related Statutory Instruments, SI145 of 2000; SI146 of 2000 and SI76 of 2004. The chapter concludes with an explanation of the only previously existing institutional means of resolving recognition disputes, Section 20 of the Industrial Relations Act 1969, and also of the strike ballot arrangements provided for under the Industrial Relations Act, 1990.

3.1
The Labour Court and Labour Relations Commission

The Labour Court (hereinafter the Court) was established under the Industrial Relations Act 1946, initially for the investigation of industrial disputes although it later acquired some determinant functions regarding statutory rights. Its purpose, "having investigated a trade dispute" was to "make a recommendation setting forth its opinion on the merits of the dispute and the terms on which it should be settled" (Section 68). The Court operates by Division each of which comprises an independent chairperson and one nominee each from "an organisation representative of trade unions of workers" and from "a trade union of employers" (Section 10(4). In practice the Irish Congress of Trade Unions (ICTU) and the Irish Business and Employers' Confederation (IBEC) now submit nominees. The 1946 Act intended that the Labour Court would be a court of last resort

[13]In 2013 these procedures changed somewhat by the establishment of the Workplace Relations Service. However as that body was not *in situ* during the processing of the cases in this study, it is not proposed to take any account of it and to deal with the original process as it stood until 2013.

providing that "no appeal shall lie from the decision of the Court on any matter within its jurisdiction to a court of law" (Section 17). Otherwise recommendations were non-binding as befitted a voluntarist system and having made its recommendation the Court had no further responsibility "settlement rests with the parties themselves" (Fennell & Lynch, 1993, p.10). The 1946 Act also provided that the Court would appoint Conciliation Officers which it did until that function was taken over by the newly founded Labour Relations Commission in 1990.

The Industrial Relations Act 1990 (the 1990 Act) provided that the "Court shall not investigate a dispute" until it had first been referred to the LRC. The responsibilities of the LRC are *inter alia* to provide both a conciliation service and an "industrial relations advisory service" and to "prepare codes of practice relevant to industrial relations after consultation with unions and employer organisations" (Section 25). The LRC having mediated between the parties, if no settlement could be reached the Court could investigate provided the LRC reports to it "that no further efforts on its part will advance the resolution of the dispute" (Section 26) and both parties had to agree to attend the Court.

In practice, where trade unions and employers fail to agree on issues at local level, either side, usually the union refers the matter to the LRC seeking its intervention. One or more Conciliation Conferences are arranged and by joint opening and closing sessions and separate side sessions, the Industrial Relations Officer of the LRC mediates, seeking to reach agreement by consensus. There have been between 1,000 and 1,500 such referrals each year since the Commission was established. Observers are often surprised that "such a seemingly benign form of intervention should be so successful" with settlement rates believed to be in the order of three out of four cases (Murphy, 1997, pp. 327-328) and often over 80% from its early years to date (LRC, 1997).

Those cases not settled are referred by the LRC to the Labour Court and as the Court cannot compel attendance under Industrial Relations

legislation[14], both parties must consent to attend at this forum also. Each side must prepare a written submission for the Court setting out their claim, its history and what solution they propose. At the hearing each side must read their submission into the record of the Court and the Court must investigate the dispute by questioning the parties only using the information contained in those submissions and as advised on the day of the hearing. A written recommendation setting out the cases made by each side, the Court's view and a brief recommendation is usually issued within weeks. Murphy (1997) estimates that 75% of all recommendations are accepted by the parties, by the employer side more consistently than the union side, who must in any event ballot their members on the Recommendation.

> Despite its name, the Labour Court is generally not concerned with the determination of legal questions, except when it is exercising its appellate functions under employment rights legislation such as those on the organisation of working time and employment equality. Nor is it acting as an arbitrator, unless the parties so request. It is concerned rather with the responsibility of promoting good industrial relations and is thus best described as a court of reasonableness and fair dealing. It is enhanced with the spirit of co-operation not compulsion and, as such, its decisions are not binding on the parties. They are merely recommendations which may be accepted or rejected by either party.
>
> (Kerr, 2005, p.3)

This is the normal course of events for disputes not resolved directly at local level and has proved itself a popular, free and useful means of dispute resolution in unionised employments.

[14] The Court has a more legalistic function under some legislation in terms of compelling attendance and binding determinations i.e., equality,, pensions, minimum wage, etc.

3.2
Statutory Instrument No. 145 of 2000 – the 'voluntary leg'

According to its remit, the LRC may prepare codes of practice relevant to industrial relations. Such codes detail best practice in a particular area and although breaching a code does not result in civil or criminal proceedings, the industrial relations institutions of the State will all take cognisance of any Code in their deliberations. Taking on board the report of the High Level Group on union recognition and having consulted with the relevant Government Department, ICTU, IBEC and the Labour Court, the LRC drafted a *Code of Practice on Voluntary Dispute Resolution* (see Appendix B). This code was introduced in May 2000 under Statutory Instrument No. 145 of 2000. It provides that matters in dispute "should be referred to the LRC who will appoint an officer from its Advisory Service", not the Conciliation Service as is the norm in industrial relations as described above. This officer will "assess the issues in dispute" (Section 2.1) and "will work with the parties in an attempt to resolve the issues" and, in another new departure, if "not capable of early resolution … an agreed cooling-off period should be put in place" (Section 2.2). In the event that issues remained unresolved "the LRC shall make a written report to the Labour Court" who after consideration "shall issue recommendations on outstanding matters" (Section 2.5).

3.3
The Industrial Relations (Amendment) Act 2001

While a statutory instrument could deal with the 'voluntary leg' element of the proposals contained in the High Level Group Report, the 'fall-back' provisions regarding attendance at the Labour Court required legislative changes. The necessary legislative changes were achieved via the Industrial Relations (Amendment) Act 2001. The 2001 Act (see Appendix A) expands on the procedures laid down in the Code above, firstly by providing that trade unions could directly request the Labour Court to investigate a dispute without first going through the 'voluntary' procedures in the LRC as

outlined above. In order to investigate a dispute the Labour Court must first be satisfied that:-

> (a) it is not the practice of the employer to engage in collective bargaining negotiations and the internal dispute resolution procedures (if any) normally used by the parties concerned have failed to resolve the dispute
>
> (b) the employer has failed to observe a provision of the Code of Practice on Voluntary Dispute Resolution [SI145]
>
> (c) the trade union … [has] not acted in a manner which … has frustrated the employer in observing a provision of such code of practice
>
> (d) the trade union … [has] not had recourse to industrial action after the dispute in question was referred to the Commission
>
> (Section 2(1)).

Section 3 provides that the Court "may hold a preliminary hearing to determine whether or not the requirements specified [above]… have been met". Recommendations shall "have regard to terms and conditions of employment, and to dispute resolution and disciplinary procedures in the employment concerned" (Section 5(1)) and "shall not provide for arrangements for collective bargaining" (Section 5(2)). Where the dispute is still unresolved "the Court may, at the request of a trade union … make a determination" (Section 6(1)) and where that determination is not implemented by the employer within one year "on the application of a trade union … the Circuit Court shall, without hearing the employer or any evidence … make an order directing the employer to carry out the determination …" (Section 10). Either party "may appeal to the High Court on a point of law" (Section 11). There is also the option of seeking a review of the determination within three months though such review is in effect a re-affirmation of its terms, the main benefit being that it can fast track the route to the Circuit Court for implementation.

3.4
The Industrial Relations (Miscellaneous Provisions) Act 2004

As discussed in the previous chapter, trade unions had some misgivings about the 2001 Act, in particular the length of time it took to process a case. The 2004 Act goes some way towards addressing the trade union concerns by shortening the timescale involved in resolving disputes to 26 weeks (34 weeks in exception) from referral to the issuing of a binding determination by the Labour Court. "The key difference … is the introduction … of a specific time-frame for the processing of disputes (six weeks)" (LRC, 2004a, p.24). In addition, the 2004 Act allows that the Court in determining if all necessary pre-conditions have been satisfied, that this "may … be determined by the Court either by way of a hearing preliminary to the Court's investigation … or as part of that investigation" (Section 3), meaning the preliminary hearing regarding jurisdiction did not need to be separately held.

There were also some changes regarding eligibility:- where the 2001 Act refers to workers or their union or excepted body, the 2004 Act now refers to any "grade, group or category of workers" (Section 2.1(a)). There is also a lengthy amendment on victimisation which "swing[s] both ways" (Dobbins, 2004) in that in addition to a prohibition on victimisation of union members it also provides that no victimisation of non-union members could occur (Section 8(2)) though there is no evidence that any such victimisation had ever occurred.

3.5
Statutory Instrument No. 76 of 2004

SI 76, the *Enhanced Code of Practice on Voluntary Dispute Resolution,* gives effect to the changes introduced in the 2004 Act and replaces SI 145 of 2000. It sets out the relevant time frames as follows:-

> The new code … imposes a 6 week timeframe for completion of the LRC stage of the process. On receipt of an invitation to participate in the process, respondents have 2 weeks to accept. If the invitation is

> accepted, [by the employer] there are then a further 4 weeks for substantial engagement on the issues in dispute. This timeframe can only be extended by agreement and where progress is being made.
> (Labour Relations Commission, 2004b, p.2)

If agreement is not reached the LRC may then advise the Labour Court that no further efforts on its part will resolve the dispute. A full Labour Court hearing will then be set for four to six weeks after the referral has been received, from either the LRC or directly from the trade union. A guide to the processing of cases is contained in the LRC's own guide to SI76 and contained in Appendix C.

3.6
SI146 of 2000 – the Code on Grievance & Disciplinary Procedures

The Report of the High Level Group on Trade Union Recognition made a number of recommendations regarding the representation of individuals at the workplace. As is part of its remit the LRC consulted with those bodies and drafted a code on grievance and disciplinary procedures, SI 146 of 2000. The Code's main purpose "is to provide guidance to employers, employees and their representatives on the general principles which apply in the operation of grievance and disciplinary procedures". Such general principles focussed on the importance of procedures, which should be fair and consistent; that the procedures should be in writing, easy to understand and should be given to all employees; that they should provide a mechanism where grievances can be raised by an employee or discipline taken by a manager and with a right of appeal. For the purposes of this thesis an important point is that employees using the procedures should have the right to be accompanied by an "employee representative" who may be "a colleague of the employee's choice" or "a registered trade union but not any other person or body unconnected with the enterprise".

3.7
Labour Court Recommendations

Labour Court Recommendations issued after each investigation, regardless of which Act, are numbered sequentially after the pre-fix "LCR" meaning Labour Court Recommendation, and will describe the legislation under which the case is taken; employer names; workers involved; date of hearing; the members of the Division in attendance; the trade union and employer representatives; the background to and nature of the dispute and the Court's Recommendations on the matter. The "Subject", apart from referrals under the 2001 Act, describes the issue in contention, pay or annual leave or shift arrangements, etc. For example in LCR16575[15] the subject is "Rate of Pay – Interpretation of Agreement". Recommendations issued under the 2001 Act differ slightly and the subject will be described as either:-

Referral from the Labour Relations Commission – where a trade union sought to engage via the voluntary procedure provided for in SI 145 of 2000 or its replacement SI 76 of 2004; where some engagement has taken place and the LRC having satisfied itself that it could do no more, sent a written report to the Labour Court, which then investigates the disputes and issues a recommendation.

Preliminary hearing – Under the 2001 Act eligibility to be before the Labour Court was determined by a preliminary hearing. Subsequent to the 2004 Act, the Court could satisfy itself that all pre-conditions had been met concurrent with the investigation into the dispute itself though the earlier Recommendations are still listed as Preliminary hearings.

Union application – where the employer has refused to engage or failed to respond a trade union can refer a case directly to the Court.

Under Section 6 of the 2001 Act, where a dispute remains unresolved after the Labour Court Recommendation, the Court may issue a determination which, if not implemented by the employer may be referred by the union to

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[15] http://www.employmentrights.ie/en/Cases/2000/July/LCR16575.html - last viewed 6th November 2013

the Circuit Court who will make an order directing the employer to implement the determination. Determinations are numbered differently, the pre-fix being DIR.

There are key differences between a Labour Court Decision, Recommendation or Determination. A Decision is usually just that, a decision by the Court often on a procedural matter and in this case simply involves a decision by the Court on whether or not to proceed under the 2001 Act. Labour Court Recommendations are the grist to the mill of Irish industrial relations. All Court hearings and not just those heard under the 2001 Act result in the issuing of a Recommendation by the Court. In keeping with the Labour Court's voluntary status these are non-binding except in some exceptional circumstances and may be accepted or rejected by the parties involved. This contrasts with Determinations which the Court will issue if the Recommendation (under the 2001 Act) is not implemented and it is binding to the extent that if not implemented the Circuit Court will make an order directing the employer to implement.

The dispute at Ashford Castle is a good example of one which involved all three of Decisions, Recommendations and Determinations. *DECP032* was issued by the Court on the 19th of November 2003 where it held that the requirements of Section 2(1) of the Act were met and the Court had jurisdiction to investigate the substantive dispute. The following March 2004 the Court ruled on the disciplinary & grievance procedure in its recommendation, *LCR17760*. At that hearing the Court ruled that further information was required on the other issues in dispute and these were dealt with in July of 2004 in a hearing "arising from DECP032" and the Court's recommendations on pay, sick pay, pensions and service charge contained in *LCR17914*. In 2005 *DIR051* was issued on foot of a union request for a determination to enforce *LCR17914*. A full list of all Recommendations, Decisions and Determinations issued under the 2001 Act is attached in Appendix D.

There are some key differences between Irish Labour Court Recommendations and the Decisions and Outcomes arrived at by the UK's Central Arbitration Committee (CAC). A UK reader may be surprised that the Irish Labour Court's written outcomes have far less detail regarding the

parties and the dispute than would be the case in those of the CAC. This may be explained by reference to each body's *raison d'être* and main functions. The Central Arbitration Committee's main function is to "adjudicate on applications relating to the statutory recognition and de-recognition of trade unions for collective bargaining purposes" and while it may also provide "voluntary arbitration in collective disputes" it seldom does so now (Central Arbitration Committee, n.d.,). By contrast the Labour Court was established to provide

> a free, comprehensive service for the resolution of disputes about industrial relations, equality, organisation of working time, national minimum wage, part-time work, fixed-term work, safety, health and welfare at work, information and consultation matters
>
> (Labour Court, n.d.)

It is an industrial relations tribunal heavily involved in the day-to-day interactions between employers and unions. Its recommendations are usually not legally enforceable but for use by the parties involved to resolve a dispute which has reached an impasse and as such have "necessarily involved pursuing a less ritualistic and formalistic path" (Hanna J in Ryanair v Labour Court [2006] ELR 1 p.17). Very detailed information about the employer or the workers is seldom included in the recommendations even if the parties may have included it in their written submissions or declared it at the hearing.

3.8
"Section 20"

Prior to the introduction of the foregoing legislation, the 2001/2004 Acts, trade unions had one other institutional route at their disposal in situations where employers refused to negotiate, Section 20 of the Industrial Relations Act 1969. This Act provides that the Labour Court can accept a direct referral and investigate a dispute so long as the referring party agreed "before the investigation to accept the recommendation of the Court". This was in contrast to the usual referrals to the Labour Court which are effectively joint referrals subsequent to a failed attempt at conciliation at the LRC and the recommendations from which are non-binding. The referral under Section 20 was thus binding but as the Labour Court almost

invariably recommended in favour of recognition in situations where no union was recognised, this was hardly a huge risk for trade unions (D'Art & Turner, 2005). Equally it was no great coup either as despite a 93% success rate in recommending union recognition, Gunnigle *et al* (2002) found subsequent rates of compliance with the recommendations to be as low as 30% or in other research 27% (Gunnigle, 2000). This was in contrast to compliance rates of over 75% for other Labour Court Recommendations (Gunnigle *et al*, 2002). As a means of gaining recognition it was not exceptionally fruitful but trade unions used it particularly to attain the high moral ground in advance of a ballot on industrial action. While not the focus of this thesis there may be sufficient mention of "Section 20" cases to warrant an explanation at this point.

3.9
Strike Ballots

While Martin (1992, p.67) notes the 1970s "expansion in the practice of referring agreements back to the membership" in the UK it has been practised more consistently in Ireland, though here also the practice has been "reinforced by legislation on ballots" (*ibid.*). The Industrial Relations Act 1990 regulates the procedures to be followed prior to the taking of any industrial action which can include "overtime ban, work-to-rule, go-slow, blacking of machinery" as well as strike (Irish Trade Union Federation, 2003, p.203). The 1990 Act stipulates that such action may only be "in contemplation or furtherance of a trade dispute" and a union "shall not organise, participate in, sanction or support" such action "without a secret ballot, entitlement to vote on which shall be accorded equally to all members whom it is reasonable to believe will be called upon to engage in the strike or other industrial action". A vote in favour of industrial action "still requires sanction from a trade union's" governing authority or executive and the employer must be given a minimum of seven days' notice of the taking of action (Irish Trade Union Federation, 2003, p.205). Unlike the UK there are no rules about the wording on the ballot paper; the secret ballot is held at a general meeting of the members convened with a minimum of a week's notice and there is no time limit to the ballot's effectiveness. While the 1990 Act does not actually outlaw unofficial strikes

or action, doing so leaves the workers and their unions open to legal injunction (Kerr, 1997, p.372).

3.10
Clarification of terms

Given the topic of this thesis there will be constant references to all of those statutory instruments, acts of legislation and the various procedures provided under each. In order to avoid confusion:-

'voluntary leg' will refer to the referral of the dispute to the LRC under the 2001 Act and/or as amended under the 2004 Act (SI 145 of 2000 and/or SI 76 of 2004);

'fall-back procedure' refers to situations where the issues in dispute are not resolved and are now the subject of a Labour Court hearing under any of the sections of either the 2001 or 2004 Acts (which can result in a Recommendation, a Decision or a Determination) as detailed above.

Where there is reference to **'sanction'** for industrial action, it means the union's ruling executive have sanctioned the action subsequent to a secret ballot of the members as provided for under the 1990 Act.

A **'Section 20'** refers to the procedure for direct referral to the Labour Court and subsequent recommendation binding on the referrer as provided under Section 20 of the Industrial Relations Act 1969.

The **'grievance and disciplinary code'** is that provided for under SI146 of 2000, the Code on Grievance & Disciplinary Procedures.

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Chapter 4

"...the complex interactions of agency and dimension..."

(Willman & Kelly, 2004, p.5)

This thesis is concerned with trade union organisation and activity in certain workplaces after the issuing of Labour Court Recommendations under the Industrial Relations Acts 2001/2004. The very mention of legislation and third party procedures confirms that any such examination of trade union activity must also take note of other agents, the State and employers at least, and must also understand the role of what Willman and Kelly describe as the "dimensions" of these agents, their "resources", "processes" and "outcomes" and how these all interact (2004, p.4). At a minimum then, resources common to all three agents must include the constitution and the law while a common process is the allegedly 'voluntarist' tradition in which industrial relations is conducted in Ireland as well as the now doubtful social partnership system; thus these concepts need to be explored here. While reviewing the literature on these topics this chapter also explores the connections between: - interpretations of freedom of association and ideology, and the nature of collective bargaining before dealing with trade union responses, both institutional and mobilising in character. A final section deals with prior research and a statement of the gap which this work seeks to address and proceeds to develop the research questions.

4.1

"Freedom of association now looks like a frozen waif"

(Christian & Ewing, 1988, p.73)

Ireland's "unique constitutional environment" (Howlin & Fitzpatrick, 2007, p.178) is, depending on one's viewpoint, either blamed or credited with underpinning the development of the story of trade union recognition in Ireland albeit that the constitution dates only from 1937 and there was *de facto* if voluntary trade union recognition in Ireland prior to independence. Article 40.6.iii of *Bunreacht na hÉireann* provides *inter alia* that "The State

guarantees liberty for the exercise of … the right of the citizens to form associations and unions". While Whyte and others have suggested that this should provide "the potential to enhance the protection ... available for trade union rights and freedoms" in Ireland (1995, p.208), jurisprudence would suggest otherwise as demonstrated by the following opinions:-

> … that there is a constitutional right to be represented by a union in the conduct of negotiations with employers … could not be sustained
>
> (McWilliam, J in Abbott and Whelan v ITGWU and the Southern Health Board [1982] 1 JISLL

and

> … the Constitution does not confirm on trade unionists any right to have their union recognised
>
> (Barron, J., in Nolan Transport (Oaklands) Ltd v Halligan & Ors, High Court, 22nd March 1994

Notwithstanding the right to *form* an association, there is

> … no corresponding obligation … to recognise that association for the purpose of negotiating the terms and conditions of employment of its members or for any other purpose …
>
> (Hamilton, J. in Dublin Colleges ASA v City of Dublin VEC [1982] 1 JISLL 73)

None of these cases were direct challenges instigated by trade unions seeking to affirm rights, rather they "concerned the protection of individuals in their relations with trade unions" (Hogan & Whyte, 2003, p.1793) and in the latter case, protection of an employer. Nonetheless it seems clear that "the traditional antipathy of trade unions to the courts" (Whyte, 1995, p.212) is well founded and that any direct challenge seeking to interpret freedom of association as meaning anything more that freedom to join a union would be risky.

In addition to confirming that a right to associate is not necessarily a right to do anything in association the Courts have also issued other pertinent rulings. The Constitution itself makes no mention of any right of disassociation, yet in the Courts "it has been readily implied" (Christian and

Ewing, 1988, p.75) for example *Education Institute v Kennedy [1968] IR 69* and in *Meskell v CIE [1973] IR 121* notwithstanding arguments by Kerr & Whyte (1985) that while the right to *form* a trade union is a collective right, "it is difficult to see how its corollary can be a right not to *join* a union, which is an individual right" (Daly & Doherty, 2010, p.318) (my emphasis). A further corollary advanced is that the right not to associate extends to employers who have the right not to associate with a trade union formed or joined by its employees. Any comfort to be gleaned from the proviso in the Constitution that "laws may be enacted for the regulation and control" of such right to association (Article 40.6.1iii) is soon dissipated by the contention of Geoghegan J in *Ryanair v Labour Court [2007] 4 IR 199* that it is "not in dispute that as a matter of law Ryanair is perfectly entitled not to deal with trade unions" and furthermore that "neither could a law be passed compelling it to do so". It seems now inevitable that despite a constitutional right to freedom of association "employers have a right not to recognise" (Ewing & Hendy, 2010, p.31); a frozen waif indeed.

Opportunities to amend the Constitution were presented in two separate reviews (*Committee on the Constitution*, 1967 and *Constitution Review Group*, 1996). The earlier concluded that drafting an amendment to deal with the issue would involve an "inappropriate" level of detail about trade union activities and that legislation was the best approach (*Committee on the Constitution,* 1967, p.43). The later review considered "whether the right of freedom of association should be reformulated in order to ensure that an employer is bound to negotiate with a union" (*Constitution Review Group* 1996, p.316). Again it was felt that this should be dealt with *via* legislation and also that any such right should not have "horizontal effect" on others (Howlin & Fitzpatrick, 2007, p.181), in particular on employers as this would be contrary to the voluntary nature of industrial relations and might put off foreign investors.

4.2
"Choosing an interpretation of the right to freedom of association"

(Leader, 2002, p.128)

Much depends on the manner in which the right to freedom of association is interpreted. Consider Leader's (2002) typology: - two contrasting views, static versus dynamic interpretations of the right to freedom of association. A static interpretation of the right to freedom of association, Leader defines "simply as a right to join a group such as a trade union" (p.128); being "satisfied with laws that remove obstacles to joining a union" (p.129) while being ever mindful of the property rights of the employer. A dynamic interpretation on the other hand involves "enlarging the right so that the employee enjoys more than a bare right to join a union" and such that that same union "must be given some space for trying to achieve its objectives" (p.129). In other words union membership "is about more than just carrying a union card"; "it also includes getting help from the union in dealing with your employer" (Davies, 2009, p.199). Leader then distinguishes between two variants of a dynamic interpretation, institutional and prerogative, which "differ in the way they connect the right to take collective action with the will of the actors involved" (2002, p.130.) So, the *institutional* dynamic version of the right to freedom of association is satisfied if the workers "pass through a prior institutional requirement, such as holding a ballot", while a *prerogative* version would support the action of a group regardless of its size once those involved "converge[d] to pursue a common purpose" (p.130).

In the Irish case, a static interpretation seems clear. Article 40 of the Constitution "guarantees liberty for the exercise of ... the right of the citizens to form associations and unions". All of the fundamental rights enshrined in the Constitution are "subject to public order and morality" (Article 40.6.1) but the subsection on the right to form associations and unions goes further and specifically provides that legislation "may be enacted for the regulation and control *in the public interest*" of such right (Article 40.6.1.iii). There is here more than a hint of unwilling tolerance of

trade unions, that their formation might not always be in the public interest and thus much of the legislation enacted while not dealing with the direct question of trade union recognition are nonetheless "of a negative character" removing "some rule of the common law" (Kahn-Freund, 1944, p.193). Contrast this with the property rights enshrined in the Constitution where such rights are as important as the life, the person and the good name of a citizen which the State "shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate" all of these, including property rights (Article 40.3). This is interpreted to mean that the employer is entitled "to proscribe or restrict in whatever manner he chooses organisation and related activities at the workplace or during working hours" (Forde & Byrne, 2010, p.59). Lord Wedderburn contends however that "all these attitudes to freedom of association involve not legal interpretations but ideological assertions" (1989, p.17). What ideological assertions might inform the foregoing?

4.3

"… not legal interpretations but ideological assertions"

(Lord Wedderburn, 1989, p.17)

Leader describes the static interpretation as one of a choice of three distinct and equally valid legal ideas, without any ideological underpinning, merely seeking to establish "which conception satisfies human rights standards" (2002, p.132). It is necessary here however to think beyond that point and to explore how such interpretations arise, what informs them, what ideological assertions. In industrial relations such ideologies are referred to as the perspectives, Alan Fox being credited with the original depiction of two of these, unitary and pluralist (Fox, 1973, 1974).

4.3.1 A unitary frame of reference

Arising from pre-industrial master-servant relationships, a unitary approach to the workplace insists on "one source of authority and one focus of loyalty" (Fox, 1966, p. 3) embedded in the owner of the enterprise who may "do what he will with his own" (Thomason, 1984, p.113). By extension, the owner's representative or agent, the manager, is also entitled to this loyalty and thereby entitled to exert his 'managerial prerogative'. There are

"common objectives and … common values which unite and bind together all participants" in the workplace (Fox, 1973, p.186) and any conflict is the result of misfits and troublemakers. A team analogy is often used, exhorting loyalty to the Captain in order to ensure the best result for all concerned. While Fox opined that "those brave slogans about team spirit embody as forlorn a quest as the search for the Holy Grail" (1966, p.372), nonetheless the ideology has sustained its vitality in managerial and indeed academic thought through the decades. It is expressed in different ways but always the chief concern of management is how to manage labour, this contrary element, whose "irrational behaviour is contrary to … [its] … own interests" (Fox, 1973, p.186). Various means have been devised from scientific management to human relations approaches; human resource management; pay systems and reward schemes right thorough to modern day emphasis on employee voice and involvement, though critically in all of them, no trade union involvement.

F.W. Taylor's method of managing labour relies on his four "principles of scientific management" (1947, p.40) essentially being the acquisition by management of the "great mass of traditional knowledge" held by workers; the selection and training of suitable workers; the bringing together of both and the equal division of work between workers and management. Thus a "one best way" of doing each task would be devised to encourage workers to work harder. Their reward would be a "fair day's pay" meaning

> wages which are high only with relation to the average of the class to which the man belongs and which are paid only to those who do much more or better work than the average of their class
>
> (Taylor, 1947, p.27)

The class structure is fair; it should not be undermined.

Sometimes this sense of fairness needs to be spelt out for workers, so that they can see for themselves how this rate of 'fair pay' is calculated. Pay structures and systems are designed then on a "fair and consistent basis for motivating and rewarding employees" (Armstrong & Murlis, 1998, p.157). From their proponents' point of view such systems are useful in "achieving consistency and facilitating control" (*ibid*, p.161). For this reason Flanders

considers that many such systems end up "in a state of decay" for "progressively failing to achieve … *management* objectives" (Flanders, 1973, p.373) (my emphasis). The underlying belief is that "there is something sacrosanct about management goals and norms" (Lupton, 1963, p.8), but only management believes this to be so, labour has to be motivated. It is just so with human resource management, the "new orthodoxy", set to replace the pluralist or joint regulation approach (Guest, 1991, p.149). Apart from the various debates as to its 'soft' and 'hard' forms, its efficacy and legacy, its main concern is always "with nurturing a high level of psychological and social commitment towards the employing organisation on the behalf of the workforce" (Watson, 2008, p.155). Why? It appears that workers do not always share this sense of fairness and they can, and do combine and join unions and become "industry's opposition" (Clegg, 1951, p.22) seeking to have their separate interests represented. How then can managers and others of a unitary bent deal with the emergence of trade unions in the workplace? According to Fox (1973) "suppression is impracticable" so they "have to be tolerated" (p.190) in some way.

In an Irish context this bare tolerance is reflected in the Constitution and in the Industrial Relations Act 2001. Under the terms of that Act, where "it is not the practice of the employer to engage in collective bargaining negotiations" (Section 2(1)(a)) the matter can be referred to the Labour Court which may investigate only the issues in dispute. The Court "shall not provide for arrangements for collective bargaining" (Section 4(2)) but may "have regard to terms and conditions of employment" (Section 6(2)). In effect only issues around 'fair pay' can be addressed, and freedom of association becomes "no more than a right to associate together, not a right to do anything in association" (Lord Wedderburn, 1989, p.16) or "simply as a right to join a group such as a trade union" (Leader, 2002, p.129), a truly static interpretation. In addition, as the procedure is designed to address material issues, if employers can prove they are paying the 'going rate' for a particular job, then the case goes no further (D'Art & Turner, 2005; *Labour Relations Commission*, 2006). Paying workers beyond "the average of their class" cannot be countenanced (Taylor, 1947, p.27). Fox notes "a surviving attachment to master-servant relations" (1973, p.191) but implies that a unitary perspective might appeal only in some select enterprises. However its "deep roots in the historical texture of class, status and power" (Fox,

1973, p. 191) has ensured its survival, not to say supremacy in modern neo-liberal thought. It is, after all "part of a class ideology which comes readily to those who rule" (Fox, 1973, p.191) all the more so during a period of restoration of power to that class (Harvey, 2005).

4.3.2 The Pluralist Perspective

By contrast, "class is not a crucial analytical concept in pluralist industrial relations" (Budd, Gomez & Meltz, 2004, p.200) despite pluralism's general roots in "criticism of the political doctrine of sovereignty" (Clegg, 1975, p.309). The idea of a separate 'system' of industrial relations was first coined by John Dunlop, who described industrial relations systems as comprising "certain actors, certain contexts, an ideology which binds … and a body of rules created to govern …" (Dunlop, 1958, p.7). The ideologies of the actors, i.e., workers, employers and State, must be "sufficiently compatible and consistent so as to permit a common set of ideas which recognize an acceptable role for each actor" (Dunlop, 1958, p.17). These ideas influenced early pluralist writers in the UK and underpinned the system of "collective laissez faire" (Kahn-Freund, 1954) often used to describe what pertained in the UK post World War II. Hugh Clegg (albeit retrospectively) best describes those ideals:-

> We were pluralists, believing that a free society consists of a large number of overlapping groups, each with its own interests and objectives which its members are entitled to pursue so long as they do so with reasonable regard to the rights and interests of others. … We were also egalitarians, wishing to see a shift in the distribution of wealth towards those with lower incomes, and a shift of power over the conduct of their working lives and environment towards working men and women; and, for both those reasons, emphasising the importance of trade unions in industry, in the economy, and in society. We therefore attached special importance to collective bargaining as the means whereby trade unions pursue their objectives.
>
> (cited in Brown, 1997, p.139).

So far, so fair and the 'two sides of industry' are deemed 'free' to organise and to bargain and to reach "voluntary agreements honourably observed" (Phelps Brown, 1959, p.183) all in "the absence of statutory regulation" (Hyman, 1995, p.30). The state adopts a 'hands off' approach except to

"address the pathological situation, i.e., where the employer-employee relationship goes drastically wrong" (Fennell & Lynch, 1993, p.30).

Hugh Clegg's version of the "mechanism at work which binds the competing groups together" is "the continuous process of concession and compromise" (Clegg, 1975, p.309). It is this process *via* the "various instruments of regulation" (Flanders, 1965, p.86) which becomes the focus of pluralist industrial relations. There is then an endless round of rule-making in:-

> … legislation and in statutory orders; in trade union regulations; in collective agreements and in arbitration awards; in social conventions; in managerial decisions; and in accepted custom and practice
>
> (Flanders, 1965, p.86)

A parity of status between the two sides is presumed which contributes to a sense of fairness about the outcome, about the rules agreed, both normative and substantive. If either side views the outcome as unfair they have recourse to dispute resolution mechanisms. These also must be seen to be fair, which is often interpreted to mean that numerically they ought not to be weighted in favour of any one side. So, for example, the Board of ACAS will have nominees from 'the two sides of industry', employers and unions, and the supposedly independent State. It should then follow that a truly pluralist society would "recognize an acceptable role for each actor" (Dunlop, 1958, p.17) including an acceptable role for trade unions. Employers would surely recognise a trade union right to exist and to function, to bargain. "The harsh reality is that few employers in fact do so voluntarily" (Friedman, 2003, p. *xvii*) thus necessitating the introduction of other provisions such as for example in the UK, a statutory union recognition procedure. A concern with the process, with fair *play*, extends also to these provisions. In the UK, "unions that can demonstrate majority support for collective bargaining within a specified bargaining unit" can achieve recognition under the terms of the Employment Relations Act, 1999 (Moore, 2011, p. 50 – 51). Where they cannot, the CAC is "required to order a ballot if the union does not have over 50 per cent of the bargaining unit in membership" (*ibid*). In true institutional dynamic style, "those who are in favour have no right to go ahead" (Leader, 2002, p.130) should the majority disagree. There has been a ballot and any necessary adjudication has been

conducted by non-partisan bodies, so once again, 'fair play' is satisfied. Yet despite such ideas of 'fair play' the extent of employer anti-unionism evident in several jurisdictions (Gall, 2010a) suggests that pluralism sometimes does not equate to the "enlightened managerialism" Fox describes (1973, p.213). While hardly agreeing with Dunlop, it would seem that the ideologies of the actors are blatantly not "sufficiently compatible" (1958, p.17).

4.3.3 Radical Alternatives

Radical is rather a generic term used to cover a plethora of ideas sometimes with little enough in common other than an acknowledgement of the "crucial limitations" of pluralism (Brown, 1997, p.19). Thus Abbott (2006) includes feminism and the post moderns under the heading 'Marxism' while Muller-Jentsch (2004) includes the French *regulationistes* and then goes on to explore institutionalism. Marxism and radical pluralism agree in their depiction of pluralism as constrained in the workplace without regard to wider societal influences; overly concerned with order and a disingenuous belief that a truly voluntary model exists. Frequent references are made to the ever increasing bulk of legislation promulgated to regulate the employment relationship in recent years and also the increasing individualisation which "alters the balance between legal regulation and collective bargaining" and undermines collectivism and solidarity in the UK (Colling, 2006, p.140) and in Ireland (Gunnigle *et al*, 2001). The gradual reform acceptable to pluralists is replaced by a demand for transformation. There is a return to a focus on class, not on the managerial class as in a unitary approach, but with workers and their needs and aspirations. To continue the word play, the unitary 'fair pay' and pluralism's 'fair play' are replaced by a demand for a 'fair share' for working people.

Leader demonstrates a prerogative interpretation of the right to freedom of association in France where "a union has a right to bargain as soon as it is deemed 'representative'" (2002, p.131). The remainder of Leader's article consists of a debate on the relative rights of majority or minority unions and on the right to strike. Here is a missed opportunity to explore other versions of freedom of association where the prerogative, not to say radical, version pertains. Returning then to a prerogative view of freedom of

association, one which is satisfied "as soon as a number … of people converge to pursue a common purpose" (Leader, 2002, p.130). Leader makes no mention of either the locus or the focus of such convergence but in Ireland and the UK the locus is mainly the workplace and the focus is pay and conditions. What if the locus is not the workplace but the sector or industry? Take for example Germany, where the concept of trade union recognition at the workplace is not mentioned in law and nowhere is written a duty to bargain? There is however a right to conclude collective agreements (The Collective Agreement Act or TVG 1949 and as amended in 1969) which on the workers' side is granted solely to trade unions and such agreements are normally reached at industry level. Could this arrangement be said to represent a prerogative view of freedom of association? It certainly exceeds a static one as it includes the right to "do anything in association", the right to conclude collective agreements. It also exceeds the institutional view as workers do not need to demonstrate majority support in a workplace by ballot or otherwise in order to be represented by a union.

Dual representation channels are not always necessary to achieve what to Irish and British eyes are radical approaches to freedom of association. Take the example of Denmark, as truly a 'voluntary' model as either of those, where even EU Directives are transposed *via* collective agreements. Again, collective agreements are legally binding and, in addition, Danish unions can strike for recognition and can call sympathy strikes, both long since outlawed in the UK and Ireland. Ewing (2002) explores some of these essential differences between the Irish and UK experience and that of jurisdictions in continental Europe. Freedom of association in the context of industrial relations is often understood as "the right to engage in some kind of collective bargaining arrangement" (Ewing, 2002, p.145). The difficulty in Ireland (and the UK), is the failure to "mandate any particular form of collective bargaining, much less prescribe the most effective level at which bargaining may be conducted" (*ibid.*). We turn therefore to an examination of Ireland's national level collective bargaining.

4.4

Social Partnership a "paradox in policy and practice"?

(Gunnigle, 2000, p.39)

Much as Leader (2002) presented the choice of interpretations of freedom of association as distinct, the frames of reference or industrial relations perspectives are often also presented as "self-contained approaches from which the reader can apparently choose at will" (Edwards, 1995, p.10). The implication here then might be that freedom of association is interpreted in a static way in Ireland and that its industrial relations are mediated by a unitary frame of reference and rigidly reflected in simple notions of 'fair pay'. There are however pluralist elements to Ireland's industrial relations system, not least the much maligned system of negotiation of national pacts known as the social partnership system.

Ireland's social partnership system has consistently been a vexed question and the focus of much Irish industrial relations literature, though with polar opposite points of view. Most of the commentary concerns arrangements in place since 1987; a tri-partite system of wage bargaining which also includes agreements on other economic and social issues such as taxation, housing and social welfare. Using that limited time span, advocates of social partnership point to Ireland's phenomenal economic success during those years (Sweeney, 2008); spectacular growth in employment (Teague & Donaghey, 2009) and real improvements in working conditions (Donaghey & Teague, 2007). Detractors taking the same approximate 20 year time-span point to rising income inequality (Allen, 2000); declining trade union density (D'Art & Turner, 2010) and a growing dichotomy between approaches, pluralist at the top and unitarist at the bottom, specifically pointing to the workplace where "micro-cooperation is rare" (Dobbins, 2010b, p.497). While, perversely, all of these claims are correct, they ignore the reality that Irish Governments have generally favoured some form of national and at least nominally tri-partite arrangements regarding pay and economic and social policy, particularly in times of stress. In addition these quasi-corporatist arrangements have co-existed with extremes of economic fortune (depression in the 1950s, revival

in the early 1970s) and all the while both trade union membership and density trebled (Nevin, 1980).

Irish government commitment to corporatist arrangements had waned and it was only in an effort to deal with a looming economic crisis in 1987 that then Taoiseach, Charles Haughey personally insisted on commencing the talks which resulted in the more modern form of social partnership. It was in the throes of another crisis that the Irish Government reneged on an almost signed agreement on public sector pay (O'Kelly, 2010). In other words more recent Irish Governments have shown no ideological commitment to partnership or corporatist/pluralist arrangements but have been content to use them when the political or economic need arose.

The term social partnership is then something of a misnomer which "greatly exaggerates the influence of the trade unions" and particularly where employers demonstrate "sustained resistance" to union recognition with the "active connivance" of the State (O'Connor, 2004, n.p.). While this represents a trade union viewpoint, quite clearly what passes for social partnership in Ireland does not entail any "parity of status" or "notion of 'equality'" usually implied (Hyman, 2001, p.49). Nor does the Irish system demonstrate much of the voluntarist tradition of a State "reluctant to intervene directly in labour relations" (Hyman, 2001, p.69) however much it is invoked in the debate on union recognition.

4.5

"Nothing seems able to produce such a united front of resistance … than an affront to … [the] … tradition of voluntarism"

(Flanders, 1974, p.352)

Kahn-Freund's description of voluntarism or "collective laissez-faire" centres on the lack of a significant role for the law in "shaping … labour relations" in Britain (1954, p.44). These relations instead evolved "by way of industrial autonomy" (*ibid.*); both sides were free to bargain with state support rather than state intervention. Though often described as trade union "total distrust of state intervention" Flanders suggests that voluntarism implies

"not so much a distrust of legislation … as … a distrust of courts of law" well founded on more than just a "suspicion of class bias" (Flanders, 1974, p.352). "This British abstentionist consensus" (von Prondzynski, 1989, p.1) is part of the Irish industrial relations tradition sometimes described as a "preference for joint trade union and employer regulation" (Daly and Doherty, 2010, p.315). It is this idea of preference which seems to have changed, alongside a confusion of state support with state intervention. Voluntarism now seems to refer not so much to the outcome of the deliberations between union and employers, but to the process itself, whether or not such deliberations have to exist at all, implying that employers have a choice in whether or not to recognise a trade union. It is this version of voluntarism which is held up as the reason not to introduce 'mandatory' recognition or to in any way force employers to recognise a union. Yet the "exponential expansion in individual law" during the 20th century in Ireland and in the UK alongside a growing emphasis on issues of right with binding outcomes at third party (Dobbins, 2005a, n.p.) suggests there is little of the original voluntarist tendency remaining. Employers may 'volunteer' to negotiate about issues of interest while the State adjudicates on issues of right. Nonetheless time and again the concept of voluntarism and the necessity to uphold it is cited in the debate on union recognition. Meenan for example also describes voluntarism as a misnomer (1999, p.51) yet goes on to later claim, "somewhat confusingly" (D'Art *et al*, 2013, p.13) that had the Industrial Relations Bill of 1998 been passed "it would have undermined the voluntarism of Irish industrial relations" (Meenan, 1999, p. 160). Perhaps the real issue is that interpretations of voluntarism are akin to interpretations of freedom of association and involve once more Lord Wedderburn's "ideological assertions" (Wedderburn, 1989, p.171).

Despite such "threadbare" (Dobbins, 2005a, n.p.) voluntarism even in the final decades of the 20th century, the Irish trade union movement was viewed, by some at least, as "stronger and more coherent than at any time in its past" (MacPartlin, 1997, p.78). Conventional wisdom held that Irish trade union legitimacy remained strong and unchallenged (Roche and Turner, 1994) and that unions' role in society, particularly in the social partnership system was a major contributor to the Celtic Tiger phenomenon (Sweeney, 2008). That same social partnership system, masked, some say

caused, several difficulties. Wage setting at national level restricted to some extent the scope of issues to bargain over at workplace level and in some cases obviated the need for it altogether. Irish trade unions also were falling foul of the problems faced by unions all over the western world, i.e., competition from 'low-wage' economies; the changing nature of the workforce; and 'rootless' not to say ruthless, capital typical of growing neo-liberalism, but also they faced some considerable difficulties of their own.

4.6
"Strangled by Americanisation"

(Murray, 2008, p.9)

A weak constitutional support for trade unions plus a social partnership system predicated on immediate (party) political or economic needs rather than any ideological commitment left Irish trade unions quite vulnerable. In particular Irish reliance on foreign, largely US, direct investment, caused several problems. In the early years of inward investment, Irish trade unions were facilitated by the Industrial Development Authority (IDA) in a practice of pre-production agreements with incoming investors, often referred to in derogatory fashion as 'sweetheart' deals, whereby investors agreed in advance to negotiate with one trade union representing, usually, production workers only. Such deals were not dissimilar to single union agreements in the UK (Gall, 1993) though without their focus on Japanese firms. They shared with the UK a tendency to restrict the scope of bargaining but in Ireland they also restricted the grade of worker involved tending only to refer to production or hourly-paid workers (Murray, 2008). They caused problems at the time as smaller unions complained that they were the victims of "an orchestrated exclusion" by the IDA as most were signed by one union, the largest general union at the time (Murray, 2008, p.10). There were also occasional rank-and-file revolts against the arrangements by workers whose choice of union was constrained (*ibid.*).

The legacy of such pre-production deals is far more serious. As a result there arose a pattern in Irish manufacturing of a unionised blue collar and a non-union white collar sector. While factory floor workers were the majority of those employed at the time, unions had no problem. However

over the later years of the 20th century the nature of Irish manufacturing changed in terms of firm ownership; of the product produced and of the type of workers needed to produce it. There was a move into what is now described as the "modern sector" as opposed to the "traditional sector", a move towards chemicals and pharmaceuticals; medical, computer and electronic goods (Central Statistics Office, 2012b). Sectors also changed direction. For example, employment in computers changed from hardware assembly to higher value software and services; pharmaceuticals from basic manufacturing to the higher value active ingredients sector (Barry & Bergin, 2012). These changes have necessitated a different type of workforce, more highly skilled and better educated. Not surprisingly then, 40% of those aged between 25 and 64 have a third level qualification (, 2012a) and are no longer employed solely in the public sector; in education, health and the civil service as was the norm. Now graduates are to be found in the private sector, in industry where the norm has been for only blue collar unionisation and in the tradable services sector where there is no tradition at all of unionisation. The male manufacturing heartland of the trade unions has been displaced.

In addition, FDI increased five-fold between 1987 and 2007 and now accounts for nearly half of all manufacturing employment and twice the EU average in services (Barry and Bergin, 2012) raising questions as to how the influence of multi-national corporations' (MNC) cultures in host countries is translated in an Irish context (Almond & Ferner, 2006). The nature of such influences is not universally agreed. Some see the Irish case as confirmation of the 'MNC dominance thesis' (Roche & Geary, 1996; Geary & Roche, 2001) that multinationals bring with them and enforce their own "country of origin" values and systems regarding industrial relations (Ferner, 1997, p.19). Turner *et al* (1997) however find a significant difference between European and US MNCs and virtually no difference between US MNCs and the indigenous sectors in manufacturing. Their later work (Turner *et al*, 2001) suggests that timing is important, finding that "companies set up after 1984 were less likely to recognize a union than companies established prior to that date" (p.131). Lavelle *et al* (2008) give further support to this indicating that of those MNCs which do recognize unions, a third do so only in some or most of their sites, a practice of "double-breasting" union and non-union sites (Gunnigle *et al*, 2007, p.1).

Concurrently, emerging indigenous business seems to have acquired permission to declare itself non-union if not anti-union, Ryanair and Esat for example (*Industrial Relations News*, 1998). According to Sheehan (2008), between 2004 and 2007 several other large well-established Irish companies "effectively snubbed the state's dispute resolution agencies" (p. 103) in rows with unions with which they had previously long bargained collectively and successfully. Turner *et al* (1997) demonstrate that the argument is not therefore about individual companies but that cognisance must be taken of a "changed political and economic climate" (p.837). It is not so much a feature of globalization and FDI *per se*, but of "a distinctive form of globalization", i.e., neo-liberalization or the restoration of "class power to ruling elites" (Harvey, 2005, p.156). The "choir effect" of development agencies; Government Ministers (even Labour ones); employer bodies and captains of industry all insisting that any moves to rectify the situation regarding union recognition would damage incoming investment and jeopardise jobs, has had tremendous effect (Dobbins, 2008). Even the trade unions seem to have accepted this, never seeking mandatory union recognition, even as a bargaining position from which to climb down (Irish Congress of Trade Unions, 2002; Irish Congress of Trade Unions, 1998).

4.7
An "urgent need for labour movement revitalization"

(Turner, 2004, p.2)

Thus, there is in Ireland as elsewhere, an "urgent need for labour movement revitalization" expressed in the form of a focus on either institutions or mobilization (Turner, 2004, p.2). Heery & Adler (2004) explain the choice as depending on the status of labour such that the strong institutions provided by the dual channel representation system in Germany for example means "there is less incentive to organize" (p. 64) and a focus on mobilizing arises in the US and UK, "by no coincidence where the institutional position is weakest" (Turner, 2004, p.7). The problem for Ireland is that its form of partnership is neither the workplace based "isolated projects" (Fichter & Greer, 2004, p. 75) of the US and UK nor the "overarching phenomenon" of mainland Europe (*ibid.*, p. 80). The Irish trade union response therefore tends to focus on *both* institutions and mobilization.

4.7.1 - Institutions

Irish trade unions take a dual approach to institutional means of renewal or even survival: - on the one hand lobbying on the question of trade union recognition while also campaigning for legislative protections for workers on an individual basis. Such lobbying during the 20th century seldom took the form of a demand for a union recognition procedure or any means of forcing employers to bargain. It seemed to unions and others to be unnecessary as "despite the obvious dearth of effective procedures … few employers, in fact, refuse to recognise trade unions" (Commission of Inquiry on Industrial Relations, 1981, p.102). It was "probable that high existing levels of unionisation predispose[d] employers to regard union representation as normal or inevitable" and strikes or the mere threat of one were "frequently instrumental in securing" recognition (*ibid.*). Unions were therefore justified in their submission to that Commission wherein they

> … stressed their belief in the principle that disputes should be settled through the collective bargaining process and that direct intervention by the law in the bargaining system should be avoided. The law was not seen as the appropriate instrument in this area.
> (*Commission of Inquiry on Industrial Relations*, 1981, p.200)

The ICTU's position had changed by 1998 and their proposals to the reconvened High Level Group made an important distinction between trade union recognition and what they termed "representational rights" (ICTU, 1998). They sought legislative changes to enable "*collective* disputes to be resolved using the LRC and Labour Court" but also, separately "to allow workers to be represented on specified *individual* issues", (ICTU, 1998, p.1) (my emphasis). ICTU further emphasises this "distinction between collective representation for the purpose of addressing group grievances as against collective bargaining" (ICTU, 2002, p.6) which distinction contributes to a shifting understanding of what exactly collective bargaining entails. ICTU's most recent submission (ICTU, 2013b) relies on ILO Convention 98 to confirm its definition of collective bargaining and also to define what it deems <u>not</u> to be collective bargaining: -

> The definition of 'collective bargaining' used for the IR Acts must clarify that collective bargaining <u>cannot</u> be considered to have taken

> place in a context where the employer has refused to negotiate with the trade union – even where a non-union body is in existence.
>
> (ICTU, 2013b, p.19)

Yet the submission continues on to include proposed "criteria for establishing 'genuinely independent' non-union 'collective bargaining' for the purpose of the 2001-2004 Acts" (p.35) though not it states in any way to "undermine the position of a trade union" and emphasises the difference between collective representation at non-union employments and collective bargaining at unionised workplaces (p.21).

In a classic definition collective bargaining is described as occurring when the employer

> meets with a collective will, and settles, in a single agreement, the principles on which, for the time being, all workmen of a particular group, or class, or grade, will be engaged"
>
> (Webb & Webb, 1902, p.173).

According to that definition, collective bargaining is not necessarily "co-extensive with, nor limited to, Trade Union organisation" (Webb & Webb, 1897, p.177) but it is the "Trade Union alone which can provide the machinery for any but its most casual application"; the trade union which brings to the process "both continuity and elasticity" (*ibid*. p.179). That the role of trade unions in collective bargaining became more definite is confirmed by the ILO: "it is now a well-established principle that the independence of trade unions is a prerequisite to effective collective bargaining" (ILO, 1960). A more modern definition is: -

> …any formal dialogue that takes place between employers and representatives of independent trade unions, that has an influence on the employment relationship, can be taken to constitute collective bargaining
>
> (Brown, *et al*, 2008, p.3)

The ICTU has however continued to distinguish between trade union recognition and collective bargaining, fearful that "political opposition" in the shape of "outright hostility from IBEC and the American Chamber, [of Commerce] make formal recognition a non-runner" (Sheehan, 2013, n.p.).

Described as "pragmatism" both SIPTU and ICTU declare themselves content that their objectives on union recognition "now tie into the approach likely to be adopted by Minister Bruton", the right-of-centre Fine Gael Minister for Jobs, Enterprise and Innovation (*ibid.*). To these unlikely bed-fellows can be added the Labour Party's Government Minister and former union official, Pat Rabbitte who also believes that "trade union recognition is a different issue to the right to collective bargaining" (Millar, 2012).

As though to compound this "retreat from collective bargaining" (Brown *et al*, 2008, p. 1), trade unions in Ireland have been to the fore in campaigns for the introduction of individual legislative protections on issues once deemed their preserve (*Commission of Inquiry on Industrial Relations*, 1981). The more recent of these include the introduction of a national minimum wage (Sheehan & Geary, 1998a); for an increase in staff at the Labour Inspectorate (Dobbins, 2005b) and for the establishment of the National Employment Rights Authority (NERA) a statutory body with responsibility for the monitoring and enforcement of compliance with employment law established in 2007 on foot of a social partnership agreement. This emphasis on the individual was also evident in the ICTU complaint regarding Ryanair to the ILO specifically pointing to the victimisation of individuals employed by the airline (ICTU, 2010). Again, this allowed some relief to the Minister for Enterprise, Jobs and Innovation who noted that the complaint concerned "a very narrow set of circumstances which involved victimisation of workers. It is not reversing the entire edifice of existing Irish law" (Bruton, 2011, p.15). By contrast, when looking at collective issues, despite agreeing in principle, unions have seldom forced the issue of European Works Councils (Dobbins, 2003) and were virtually silent on the transposition of the Information & Consultation Directive and inactive in terms of its implementation (Dundon *et al*, 2014).

4.7.2 - Mobilization

Forms of trade union renewal with a focus on mobilizing and organising owe much to Charles Tilly's framework of "interest, organization, mobilization, opportunity and collective action" (1978, p.7). Group interests are defined by the perceived gains and losses arising from the group's interaction with

other groups. Organization and mobilization have to do with the group's structure, how best to organise themselves and how to control their resources, votes etc. By opportunity, Tilly meant the group's relative position in the world and the opportunities that it presented for them to act "together in pursuit of common interests" (*ibid.*). Kelly draws on Tilly's mobilization theory or "theory of collective action" with the same five components: - interest definition, organisation, mobilisation, opportunity and action (Kelly, 1998, p.25). Interest definition starts from a sense of "injustice and grievance" (*ibid.* p.27) for which the employer can be blamed and which contributes to a sense of 'us and them'. Organisation "refers to the structure of a group" (*ibid.* p.25) both internally and externally in the workplace and so would deal with such issues as union density. By mobilisation is meant that process whereby individuals calculate "the costs and benefits of collective action" (*ibid.* p.34), social interaction in the group and the role of leaders. Opportunity would include "the policies and actions of employers and the state" (*ibid.* p.37) not forgetting the role of repression and the essential concept of the balance of power. Finally all of this leading to action, to whatever form of collective action is taken.

Martin, (1999, p.1208) while confessing to being a pluralist at heart takes issue with the "conventional Marxist trajectory" of mobilization theory and in particular the "serious gaps" Kelly (1998) has left in explaining workers' collectivism and the exact conditions under which it arises. Most other critiques focus on the earlier components of the trajectory, on interests, organization and mobilization but principally on the role of leaders. Atzeni (2010) expresses reservations about Kelly's use of ideas about injustice claiming it "is theoretically flawed and reinforces the idea that collective action in the workplace is all about contesting rights instead of power and class relations" (p.18). Using the example of spontaneous factory occupations in Argentina, Atzeni also questions whether collective action is necessarily achieved *via* the process of mobilization and in particular questions whether or not leaders are needed. Much depends on the extent to which any such occupations are truly spontaneous and in any event it is a weak comparison between workers seeking union recognition and those seeking to overthrow the management structure if not the state. Johnson and Jarley's (2004) "test of mobilization theory" (p. 543) calls for an emphasis on the difference between "workplace injustice and union justice",

that it is insufficient to "assume that such themes as global fairness … can mobilize people to join unions and engage in collective action" (p.557). Unions must also have "capacity" to convert that sense of injustice.

Such capacity must derive in the main from union leaders. While Kelly (1998) does not define leaders as such, the implication is that such leaders are within the group, meaning activists and shop stewards. Their role in the process of getting from interest definition to collective action is well explored in industrial relations if not contested (Darlington, 2001; 2002; Fairbrother, 1996; 2000; Batstone *et al*, 1977; Beynon, 1973). Beynon focussed on the importance of the relationship between the shop steward and the members, "the lads at Halewood" (1973) while Batstone *et al* (1977) described very sophisticated shop steward committees and the importance of their educational role. Darlington (2001) emphasises the need for left-wing militants, as does Kelly (1998). Throughout many of these studies there is an explicit or implicit belief in the "bureaucratic inertia of entrenched union officials" (Hickey *et al*, 2010, p.56) often relying on Michels' (1959) iron law of oligarchy. This ignores an important distinction, namely that the type of leaders required in order to *maintain collective bargaining* in large male-dominated manufacturing plants or public transport with long histories of union activism and collective bargaining must perforce be different from that required to *instigate union organisation* in smaller, private sector workplaces staffed by those with little or no realisation of the possession of power. The presumption by Tilly that "the rank-and-file's interest is social revolution" (1978, p.104) seems little in evidence, certainly in the Irish sometimes rural context of this study, a context which some left-wing union officials describe as being "devoid of ideology" (Gibbons, 2003).

The weakness with mobilization theory for this study is at the other end of the putative process, around opportunity and collective action. Opportunity is crucial encompassing as it does issues around "the balance of power between the parties" (Kelly, 1998, p.25); the nature of repression by employers; the role and agency of the state for example in union recognition procedures and the effect of anti-union or non-union workers. There is a sense that opportunity is created by others; that it is immovable. The definition of collective action is also problematic. Tilly's version is probably

best explained by the title of his book "From mobilization to *revolution*" (my emphasis) and he acknowledges that due to his Marxian roots he deals "mainly with discontinuous, contentious collective action: strikes, demonstrations, and tax rebellions" for which his theory is more than apt (Tilly, 1978, p.50). Kelly contends that his "focus on strikes is defensible" (1998, p.38) but Tilly had already wondered about the "everyday, continized [*sic*], peaceful collective action" (1978, p.50). In an industrial relations context, this collective action needs to be distinguished from industrial action, it has to mean more (or sometimes less) than strikes; it must include the everyday sustenance and activity of a "continuous association of wage earners" (Webb & Webb, 1920, p. 1).

4.8
A "tool box of practices"

(Simms & Holgate, 2010, p.157)

The Organising model of trade unionism addresses some of the unsuitability of mobilization theory for understanding everyday union activity, though without a single reference by its US proponents to mobilization theory much less its Marxian roots (Bronfenbrenner *et al*, 1998; Milkman & Voss, 2004). According to Bronfenbrenner *et al* (1998) organising theory emerged in the US in 1988 in a manual published by the AFL-CIO and has since been expanded upon to become something of a panacea across the English speaking world for falling union density and increasing employer hostility. There is no one theoretical definition but in essence it is a "label used to describe an extensive range of union practices ranging from direct recruitment methods to political and community activism" leading to increased membership and worker collectivism (Turner *et al*, 2009, p.3). It stipulates that union officers should "never do for workers what they should and can do for themselves" and seeks to empower union members to set their own agenda "by themselves and for themselves" (Gall, 2010b, p.8) thereby creating "the 'self-organised' organised (*sic*) workplace" (Gall, 2006, p.3).

The proponents of the organising model see a clear distinction between it and what is now referred to as the servicing model of trade unionism. The

latter is typified by staff led recruitment drives to get members into the union and service grievances for them in a "reactive, ad hoc and unsystematic manner" (Heery *et al*, 2003b, p.81). This results in the "membership passivity and non-participation in the structures of the union" that proponents of organising cite as part of the difficulties with an emphasis on servicing (Gall, 2010b, p.7). Organising theory meanwhile makes a distinction between recruiting and organising such that "recruitment is part of organising and not the other way round" (Gall, 2010b, p.17). Organising the 'organised' *via* in-fill recruitment and improved structures is as much a feature of the model as organising the 'unorganised', the principles are the same for both.

Organising theory also starts from the premise that interests are the "fulcrum" (Kelly, 1998, p.25) but takes it beyond a fostering of collective interests and inculcation of a 'them-and-us' attitude. Firstly there is a distinction between interests and issues such that interests are often implicit and "must sometimes be inferred" (Simms, 2007(a) p.444) while issues are explicit and are easily recognizable as the wish-list around which workers and their unions campaign. Issues tend to be of the justice-and-dignity variety at the initial stages; partly because those kinds of issues have more resonance in the public eye and also because the bread-and-butter issues like pay are more difficult to make progress on prior to the establishment of collective bargaining (Simms, 2007(b)). Thus an Organising manual for unions insists that they should "express campaign goals and issues as a fight for social justice" and "translate union problems in such a way that the public understands the social justice aspect" (Banks & Conrow (a), n.d., n.p.). Pick issues which are "widely felt; deeply felt; winnable in part" (*ibid*) the latter criterion necessary to demonstrate "union instrumentality" (Frege & Kelly, 2004, p.34) a major predictor of the likelihood of workers to opt for unionisation (Badigannavar & Kelly, 2005). After all, that is why they join; for "support if I had a problem at work" and to get "improved pay and conditions" (Waddington & Whitston, 1997, p.521).

The organising model supports the view that "bureaucracies are not necessarily conservative" (Carter & Cooper, 2002, p.735) and that the role of the union official is as essential as, although different to, that of the

activist. The role of the Organiser is well defined in the manuals of the organising model (Banks & Conrow (b), n.d.). S/he will help to frame issues particularly those which might not be "spontaneously identified" (Simms, 2007(b), p.125); "identify and construct common interests among a diversity of interest groups" (Simms, 2007(a) p.439) and "build the confidence of activists" (Simms, 2007(b), p.127). In addition, both Lerner (2003) and Erickson *et al* (2002) take the matter of organisation further and focus on union "architecture" (Lerner, 2003, p.9), i.e., the need to have both an industrial/sector strategy and a matching union structure, such that unions campaign across an entire industry or sector and organise their structures accordingly.

The model encourages little mini mobilizations or "tactics" (Banks & Conrow (a), n.d., n.p.) such as the wearing of union badges or particular colours by the workforce on particular days. Part of such tactics is also to involve the workers in regular tasks such as signing petitions; taking up surveys; 'mapping' the workplace. But it is at opportunity where the organising model makes its mark in a way that mobilization theory does not, where it suggests that opportunity can be created by means of a strategic approach: campaigns are planned and researched to include the "identification of 'levers' which can be used to pressure resistant employers" (Heery *et al*, 2000b, p.39). An "opportunity structure" is located, by which is meant "channels through which demands can be placed" (Badigannavar & Kelly, 2005, p.520) be that *via* consumer boycotts; direct appeals to suppliers, shareholders, landowners (Heery *et al*, 2000b; Heery, 2005; Banks & Conrow, n.d., (a) and (b)).

4.8.1 - A "credible union renewal strategy?"

(De Turberville, 2004, p.775)

As a theory, 'organising' leaves itself open to and receives much criticism, from both left and right. De Turberville points to its "conceptual porosity" and disputes the "golden-age-of-organizing hypothesis that legitimizes the model as being historically effective" (2004, p.778). Certainly its US proponents devote many pages to the latter with little mention of concepts (Milkman & Voss, 2004; Bronfenbrenner *et al*, 1998). Its conflation by

some with social movement unionism (Voos, 1997; Milkman & Voss, 2004, p.2) is confusing there being a considerable series of steps between the various versions described in for example, Banks & Metzgar (1989) and Kelly (2005). Neither has it been helped by events in the US involving some of those to the forefront in adopting the model and in canvassing support for it in Europe.[16]

Despite the "questionable" history, the "shaky financial rationale" and "dubious assumptions" of organising theory, does the model itself work? (De Turberville, 2004, p.788). Part of the difficulty in assessing is the extent to which unions actually comply with the model. A campaign run according to the organising model ought to have several distinguishing features: - an organising committee of workplace activists who run the campaign and 'map' the enterprise in order to categorise workers according to how supportive they are of the campaign; one-on-one recruitment techniques sometimes *via* house-calls; the use of actions like wearing similar coloured T-shirts on a particular day to demonstrate unity or collectivism and the publicising of successes. Heery *et al* (2000b) found fairly close compliance with best practice in a green-field campaign run by the Communications Workers' Union (CWU) at TypeCo. An organising committee was formed; issues were identified and expressed *via* the necessary "moral discourse" surrounding fairness, respect and justice and a mapping exercise was undertaken (*ibid*. p.39). Nonetheless there were difficulties reaching some workers due to awkward shift patterns and short working hours.

The 'in-fill' campaigns by UK trade unions UNISON and Prospect's fore-runner STE in the National Health Service and British Telecom respectively, emphasise a similar approach in brown-field campaigns: - updating membership lists; researching the needs of particular types of members; developing recruitment materials appropriate to target and increasing the numbers and levels of activity of workplace representatives (Heery *et al*, 2000b, pp. 46 – 48). Each of these campaigns demonstrate the use of only some elements of good organising campaigns supporting Heery *et al*'s earlier

[16] See Fletcher & Gapasin (2008) for an explanation of the formation of *Change to Win* a break-away labor federation from AFL-CIO and also Shaw (2011) regarding turf wars between one of the main proponents of the organising model, SEIU, and other US trade unions.

findings from a large survey that unions' use of organising methods are "patchy and uneven" (2000b, p.42). Simms' exploration of organising campaigns in two not-for-profit organisations again demonstrates similar use of selected elements of best practice (2007b). Qualitative issues were emphasised; winnable targets set and 'actions' used.

What of the "entrenched union officials" (Hickey *et al*, 2010, p.56)? Changing to an 'organising' model means major changes for union staff. There are often new grades employed, researchers and strategists, and new if not additional functions required to be filled by existing staff. The experience is not always a happy one as Carter and Cooper (2002) found in MSF in the UK and in CPSU in Australia during their respective unions' attempts to change to organising methods. In the case of MSF there were no additional resources and structures were not changed. There were however staff redundancies leaving those remaining with extra duties. For a "policy predicated on enthusiasm and involvement" (Carter & Cooper, 2002, p.720), it singularly failed to inspire such enthusiasm or involvement in staff. An important element of the model is the role of staff in framing issues, training activists and designing campaigns. This role is often advanced as further evidence of a top-down approach and feeds into the debate about whether organising is or ought to be a top-down or bottom-up approach, a rather unnecessary dichotomy. Workplace activism has been interpreted rather narrowly in some cases to mean "bottom-up grassroots militancy" (de Turberville, 2004, p.780) a "romantic" notion according to others (Milkman & Voss, 2004, p.7) particularly in light of the already mentioned passivity and lack of activism purported to arise when unions function as a service. Indeed it is difficult to imagine how "unorganised atomised individuals" could motivate and renew activism without some form of external guidance and leadership (Gall, 2010b, p.20). Crosby excuses the top-down approach in LHMU's CleanStart campaign in Australia on the basis that it is only necessary when workers are particularly weak or vulnerable (2009) though that is generally a feature of the unorganised. Yet, "an over-enthusiastic leadership is not a guarantee of success" either (Turner *et al*, 2009, p.4). Heery demonstrates effectively that "change is most likely where there are multiple sources of influence" (2005, p.102). Simms goes further. Her comparison of a top-down AMICUS campaign and a bottom-up CWU campaign demonstrates that *both* "workplace participatory democracy" *and*

"central strategic leadership" are needed though not necessarily in "harmonious balance", rather a "managed activism" (2007b, p.132).

One of the difficulties with the organising model, similar to mobilising theory, is the question of what happens at the end of the process. Markowitz points to the sense of exclusion felt by the workers after the organising campaign ended in both of the cases she studied (2000). Rose (2006) and Connolly *et al* (2011) identify similar issues in Canada and the Netherlands respectively. Simms' examination of a CWU campaign found membership and activism both dwindling after recognition was achieved (2006) and a later GMB study concluded unions were paying "insufficient attention to the link between organising and bargaining" (Simms and Holgate, 2010, p.) Oddly enough the more popular organising manuals make no mention of this transition problem (Banks & Conrow; International Transport Workers' Federation (ITF, undated); Trades Union Congress, 2007). One exception is that produced by the International Brotherhood of Teamsters which has an appendix entitled "The First Contract – transition between organizing and bargaining". In it they recommend the establishment of a bargaining committee in advance of winning the campaign and to involve the local union. Moore's (2011) study of union activists realises that activists need to learn how to engage in three different types of activity 'facing' different others (Darlington, 1994) and emphasises the need for members and activists to "behave like a union in the workplace" from early in the campaign (Moore, 2011, p.63). There seems a contradiction here. If campaigns are run in accordance with the organising model and create the "'self-organised' organised (*sic*) workplace" (Gall, 2006, p.3) surely transition should take care of itself?

If adherence to organising principles is "patchy and uneven" (Heery *et al*, 2000b, p.42) then outcomes may also be described thus and not just in the UK. Even in the US "there is not much to hang one's hat on" with general trends in membership and activism still downward (Fiorito & Jarley, 2010, p.88) apart from some individual unions, particularly SEIU. Indeed there has been much trumpeting of the successes of the 'Justice for Janitors'

campaign in the US[17] and the LHMU's and SFWU's imitative 'CleanStart'[18] campaign in Australia (Crosby, 2009). Without doubt they have both been successful if rather lengthy campaigns; twenty years plus in the case of 'Justice for Janitors' and five in the Australian case. Campaigns in Britain have tended to be shorter and whether as a consequence or not, with more mixed results. Outcomes were "unspectacular" (Heery *et al*, 2000b, p.50), "modest" (Heery *et al*, 2003, p.93) and even more recently "generally disappointing" (Gall, 2010b, p.47). There is here a tendency to measure organising theory effectiveness by reference to numbers of new union members. Whither the distinction between recruiting and organising?

Of course the distinction is unnecessary as trade unions have always organised workers and will always need to recruit and to service, to represent their members' interests. The heralding of organising as something new, "a 'toolbox of practices'" (Simms & Holgate, 2010, p.157) disregards the fundamental, back-to-basics approach which underpins it. A hundred years before Bronfenbrenner, Beatrice and Sydney Webb wrote that trade unionism was not inspired "by any single doctrine...but more or less by three divergent and even contradictory views as to social expediency" (1897, p.595) in "a perpetually shifting compromise" (p.559) which they described in society as "the ultimate cleavage between Conservatives, Individualists and Collectivists" (p.597). Cole (1939) also saw "rival conceptions" of the purpose of trade unionism, class consciousness versus trade consciousness with the trade union movement operating a compromise between them. Hoxie (1923) called them business unionism and revolutionary unionism. Later pluralist writers saw the purpose of trade unions as "participation in job regulation" (Flanders, 1975, p.42) or the protection of its members from the employer (Clegg, 1951, p.22). This sounds very much like Cole's (1939) trade consciousness or what Hyman describes as a "fairly narrow service agency" (1975, p.86) – servicing indeed. The "perpetually shifting compromise" is, for now at least in terms of union preferences for mobilisation and organising, leaning towards the collectivists (Webb & Webb, 1897, p.559).

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[17] http://www.seiu.org/division/property-services/justice-for-janitors/index.php
[18] http://lhmu.org.au/campaigns/clean-start

Much depends on the *purpose* of organising (Simms & Holgate, 2010) which surely must be the same as the purpose of trade unionism. Yes it must aim to "deliver sustainable increases in workplace power" (Simms & Holgate, 2010, p.165) which may be measured by union density, thus making recruitment important. But it should not be "the sacrosanct indicator of labour's success" (Sullivan, 2010) else how to judge labour success in for example, France, with single figure density? There are other, more qualitative changes which ought to result from organising theory. Changes noted include that campaigns "were involving and sought to draw workers into the process" (Heery *et al*, 2000b, p.50) and that "the *form* of representation is beginning to change" (Gonzalez-Perez *et al*, 2009, p.171; Heery *et al*, 2000a). Crosby (2009) points to the increase in union and worker confidence and the lessons learnt by employers. If organising theory is more than just recruitment, there ought to be such qualitative changes. That this is not always reflected in the research may, as Turner *et al* suggest, be a result of a reliance on survey based research and its consequent "inability to capture the rich texture of everyday social processes" (2009, p.10).

4.9
Organising Unionism comes to Ireland

The concept of the organising model is still in its infancy in Ireland though already most of the private sector unions have declared themselves adherents of the model and are making resources available, SIPTU, MANDATE and CWU in particular (Gonzalez-Perez *et al*, 2009). SIPTU, the largest, made an early start in 2001 with the establishment of an Organising Unit staffed with organisers and researchers and which "has already brought some progress in recruiting new members" (Allen, 2009, p.55). A 2008 report from a special commission on the future of the union (Higgins, 2008) was implemented during 2010, which in addition to increasing the size of the Organising Department also took to heart Lerner's advice on union "architecture" (2003) and re-modelled from a geographically based branch system to industrial divisions[19]. The organising budget is

[19] http://www.siptu.ie/divisions/

being increased to 25% and all staff members have been re-assigned to either green-field organising; to local brown-field organising and collective representation or to individual grievance handling. This provides a good example of the "differentiated approach" necessary for full implementation of the model (Gall, 2010*b*, p.16). Although written in advance of the entirety of changes in SIPTU, Allen describes that union's wholehearted embracing of the SEIU model and sees the greatest threat to organising coming from engagement in social partnership, now defunct as far as the private sector is concerned (2009). Arqueros-Fernandez's (2009) account of one (probably untypical) organising campaign in the mushroom industry in Ireland is too specific to shed much light on the general question of organising in Ireland and again was conducted in advance of the complete implementation of the model.

Turner *et al* (2009) include other unions in their postal survey of eight private sector unions in Ireland. They found "relatively scant support to the advocates of the organising approach" (p.10) but attribute this, not so much to the model itself, but to "low uptake and poor adoption of the organising approach" and "insufficient resources" (p.4). It is far too early to judge the effectiveness or otherwise of organising in Ireland. Perhaps with greater adherence to the model at least in SIPTU over the coming years the real impact will become clear. In any event engagement with the model has focussed Irish unions' attention on mobilization and on the means of doing it successfully. With the collapse of institutions such as the social partnership system, this focus on mobilization and organising as a way of functioning is likely to continue with or without close adherence to the organising model. It is against this backdrop of a general trade union focus on mobilising and organising that Irish trade unions' concurrent support for an institutional means of resolving recognition disputes comes into question. This is particularly so in light of some UK research regarding the effects of the recognition legislation in that jurisdiction, bearing in mind as ever that what exists in Ireland is not a recognition procedure.

Gall (2010a) examines trends in employer hostility during recognition campaigns in Ireland, the UK and US and seeks to demonstrate that it is the use of statutory recognition procedures which stimulates the hostility. Its usefulness in answering the questions posed in this study is diminished

on a number of fronts. The research is conducted at a macro level, so to speak, *via* newspaper coverage. Establishing levels of collective bargaining post procedure requires work at a micro level, at the level of the workplace. There are also some difficulties with Gall's interpretation of the legislation wherein he states that the 2001 Act allows the Labour Court "to issue legally binding recommendations compelling employers to bargain with their unionized employees" (p.16) and that the 2004 Act "exhibits a greater propensity to force them to recognize and bargain with unions" (p.17). As already enunciated in an earlier chapter, this is quite clearly not the case. Nonetheless if statutory procedures of either description can be described "as facilitators of employers' anti-unionism" (*ibid*. p.12) then this is an important consideration when assessing subsequent collective bargaining outcomes, if any.

It hardly seems revelatory to find that "employer opposition raises the costs and difficulties of recruiting new members" (Turner *et al*, 2009, p.5) but Kelly warns that we ignore employer repression at our peril (1998). "Perceptions of union effectiveness" are crucial for successful organising and "well publicized defeats...may radically alter employee perceptions of general union instrumentality" (*ibid*. p.59). Findings of higher levels of employer hostility in green-field organising campaigns raise similar concerns (Heery & Simms, 2010). Cognisance must also be taken of the results of a study of 64 recognition ballots in the UK between 2000 and 2003 (Moore, 2004). Unexpectedly it found that higher numbers of members in a bargaining unit "is not related to ballot success" because "...once a case is in procedure, a number of contending forces come into play..." specifically employer counter-mobilization (Moore, 2004, p.13). This is a crucial point.

Furthermore, Hyman contends that the central issues in interest representation are "autonomy, legitimacy and efficacy" (1997, p.310):- autonomy of the workplace representative or wider union from the employer; legitimacy sustained by a "record of 'delivering the goods'" (*ibid*) and efficacy in terms of union effectiveness. In a situation where the 'goods' are delivered *via* a third party and where 'independence' is compromised by a hostile employer there are logical questions raised regarding interest representation in such workplaces. Taking the issue further, Simms

concludes that the "sustainability of union organising campaigns rests on ... [a] ... combination of interest formation and representation both *within* and *beyond* the workplace" (Simms, 2007a p. 450). This requires a belief that the union "may provide an effective voice" and also access for activists to the resources and leadership of the wider union (Simms, 2007b, p.132). There must be difficulties with the latter in situations where there is no collective bargaining, no engagement with the union by the employer, no provisions in Irish legislation for access or training and where employer hostility amounts to counter-mobilisation.

Moore's 2005 work also establishes a "relationship between legislation and industrial practice" (p.363) *via* a survey of employers. She finds that where the scope of bargaining was limited to core issues in the recognition agreement, then it seldom expanded beyond that. This is important as it is evidence of the procedure having influence beyond the immediate question it sought to settle. In an Irish context, where the procedure already limits outcome by not providing for collective bargaining, are there also even further limiting possibilities?

4.10
Research Questions

Research questions evolve from both the theory and the prior research outlined above. They suggest the possibility of a two-fold effect on workers subsequent to participation in the statutory procedures laid down in the Industrial Relations (Amendment) Act, 2001. There is the effect, possibly a constraint, of the written outcome of the procedure, the Labour Court Recommendation. There exists also the possibility of the process itself having an effect, such that it impacts on workers' perceptions of unions and trade unionism; that it fails to encourage belief in collective agency and that it implicitly accepts if not encourages employer counter-mobilisation and hostility. If

> … the statutory procedure [in the UK] cannot guarantee meaningful bargaining in the face of employer opposition: ultimately this has to come from union organisation in the workplace
>
> (McKay *et al*, 2006, p.99)

Then, what can be said of Ireland? Thus the purpose of my thesis is to explore this two-fold effect in an Irish context. My main research question is therefore: -

What effect does participation in the procedures provided under the 2001 Act have on workers and their trade unions in Ireland?

Ancillary questions include: -

- What kind of trade unionism or collective bargaining results for those who have come through the procedures?
- Do workers remain in membership and remain active in trade unions after going through this procedure?
- In what way might the 2001 Act conflict with mobilisation theory, the organising model of trade unionism, ideas explored above regarding interest representation and collective agency?
- The 2001 Act provides that the Labour Court may determine the material issues in dispute; around what issues will workers subsequently organise?
- Is this procedure a facilitator of employer hostility?
- Does the 2001 Act provide trade union recognition 'by the back door' or otherwise?
- Is a legislative approach the best or only means of dealing with trade union recognition rows?

Despite the relatively short time span between the promulgation of the Act in 2001 and the effective abandonment of its procedures in 2007, there exists nonetheless a compact body of literature on the subject. D'Art & Turner (2006) use two case studies to examine the effectiveness of the 2001 Act "in creating conditions for union recognition" (p.165). While acknowledging the small sample size they conclude that the Act is "inadequate" in "facilitating members seeking union representation and recognition" (p.178). Their earlier work (D'Art & Turner, 2005) surveyed full time union officials from eight trade unions and also concluded that the Act was inadequate. Otherwise the focus of prior research is on documentary

analysis of some of the Labour Court Recommendations (Doherty, 2009; Doherty, 2013; Higgins, C., 2001; Sheehan, 2004) and the effect of the Ryanair judgments (Doherty, 2007; Dobbins, 2007a; Sheehan, 2007a and 2012b). Viewing the 2001 Act in conjunction with or as part of union renewal approaches such as the organising model seldom features, Turner *et al*, (2013) and Jackson (2007) are two rare examples. Only the latter goes beyond the Labour Court Recommendations to look at the workers involved, albeit in just one case. This thesis seeks to broaden this knowledge of the effects of the 2001 Act by examining all of the Labour Court Recommendations but also by uniquely seeing beyond the Recommendations, to look at the long term effects and to also look right into the workplace to those who must live with the consequences of the 2001 Act.

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Chapter 5
"The best-laid schemes o' mice an' men"

The best-laid schemes o' mice an' men
Gang aft agley, (Go often awry)
An' lea'e us nought but grief an' pain,
For promis'd joy!

(Robert Burns, 1785)

This chapter is in three parts. The "best-laid schemes" section in 5.1 outlines and justifies the research questions and methodology decisions taken and while "nought but grief an' pain" might be an exaggeration, 5.2 will deal with what did go awry including any adjustments made along the way and finally in 5.3 a full account of the data collection.

5.1
"The Best-laid Schemes"

5.1.1 -The Research Questions

Research questions evolved from both the theory and the prior research outlined in the previous chapter, in particular ideas generated from a study of mobilisation theory (Tilly, 1978; Kelly, 1998); of the organising model of trade unionism (Simms, 2007a, 2007b; Heery *et al*, 2000b) and of the effects of the statutory union recognition procedure in the UK (McKay *et al*, 2006; Moore, 2004; Moore, 2005). In addition, Markowitz demonstrates that "successful organizing campaigns do more than add members"; they are "also integral for shaping workers' perceptions and actions within unions" (2000, p.163). Start as one means to continue perhaps, so if workers' initial encounter with trade unionism involves a lengthy formal Labour Court procedure, is this the kind of unionism they will come to expect? How will they mobilise or learn to be organised as per the organising model? After all "how unions define their role during the early stages of establishing their presence in a workplace can have fundamental consequences for future effectiveness in interest representation (Markowitz, 2000)" (Simms, 2007a, p.442). The main research question thus defined was a concern with the

effect of the Industrial Relations (Amendment) Act 2001 on workers and their trade unions specifically seeking to answer the hypothesis that participation in the Act's procedures militated against worker activism.

5.1.2 - Major Signposts

There were thus three main areas on which to focus: - a) a broad, general knowledge of all of the cases taken; the nature of the actors involved; the nature of the recommendations issued by the Labour Court; b) an understanding of the nature of collective bargaining and of worker activism which arose in workplaces subsequent to taking cases and finally c) getting to grips with why this was so. At a very basic level and taking a positivist approach to both ontology and epistemology, it was decided that the answer to the first of these would be observable and could be gathered systematically and objectively. It would be possible to take Dunlop's (1958) system of industrial relations for example and count the actors – the number and type of employments involved and the numbers of unionised workers before and after the processing of cases including any improvements in conditions and by means of induction generalise about the effect of the 2001 Act on workers and unions.

Notwithstanding the fact that this type of analysis had to be done and would be useful information, it still could not answer the main research question in its entirety. Two problems arose. Firstly, counting the numbers of members before and after engagement with a procedure does not prove causality, does not guarantee that it is the procedure which is responsible for the change in levels, if any, and, as with any social process it would not be possible to remove or 'control' for extraneous issues which might have had an effect, redundancy for example. In addition, in terms of trade union renewal and moves towards formal mobilising strategies, mere counting of members would not suffice given the current distinction between recruitment and organising nor would it contribute to an understanding of what exactly caused any changes. Such counting however does serve a purpose, that of providing "major signposts" (Plowman, 1999, p.37) and of situating cases for further more qualitative examination suitable to an evolving social process.

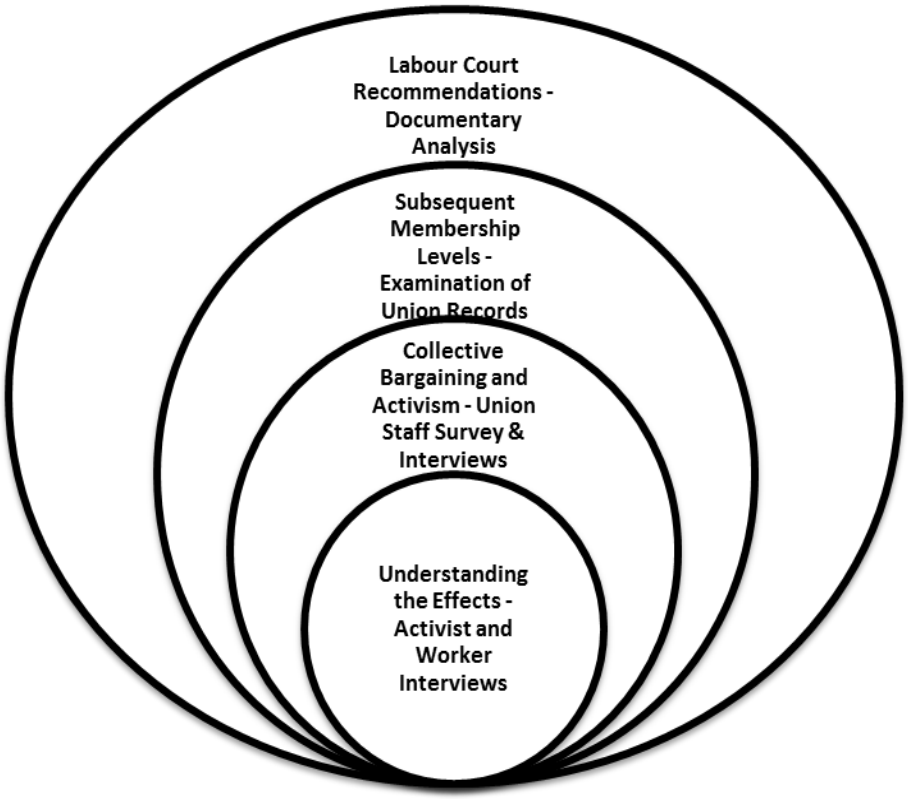
5.1.3 - Complex Social Phenomena

To reach an understanding of the nature of collective bargaining and of worker activism required something more than an examination of the Labour Court Recommendations and subsequent levels of membership. Thus an ethnographic approach was chosen with case study seeming the ideal choice because of the need "to understand complex social phenomena" the 'how' and 'why' worker activism was affected by participation in this statutory procedure (Yin, 2009, p.4). It was hoped a case study would also provide the means "to deal with a full variety of evidence – documents, artifacts, interviews, and observations" (Yin, 2009, p.12). The availability of such a variety of evidence has made case study a popular research strategy in industrial relations; voluminous paper work and a plethora of actors at all levels meant data could be collected in different ways. Flanders' and later Ahlstrand's work at Fawley, and Lane & Roberts' study of the strike at Pilkington's are some classic examples (Ahlstrand, 1990; Flanders, 1964; Lane & Roberts, 1971). The data in many of these studies were collected via long term observation, which, although ideal, was not an option here. Being a part-time student with a full-time job provided its own constraints but in addition understanding how the process affected the workers required a look back at events past as well as an understanding of the current position. A strategy rich in opportunity for other methods was therefore required.

5.1.4 - Mixed Methods

As both quantitative and qualitative data were required, a mixed methods approach was adopted. The figure on the next page depicts the main decisions on methods.

Figure 5.1 – Depiction of mixed methods employed



Starting at the outer level, it was decided data collection must start with assembly of a list of all of those workplaces who had availed of the full procedures laid down in the 2001 Act up to and including Labour Court hearings.[20] These had to be examined to determine the date and type of each hearing; the contents of the recommendation; the trade union referring and the substantive issues in the case. In addition the nature of each workplace, its main economic activity, country of origin and a description of the workers were considered important factors to be examined. Determining levels of union membership, whether or not workers stayed in unions after taking cases could only be determined by examination of union membership records. Determining whether or not collective bargaining was conducted at such workplaces and/or the extent of worker activism could not be determined by such counting. It was felt some of this could be achieved by means of a survey of the union staff currently responsible for those workplaces which had come through the procedure asking them to

[20] Data collection cannot start at the level of the 'voluntary leg' as for reasons of confidentiality the LRC may not divulge the employments involved at that level. There is no such stricture at the level of Labour Court hearings.

account for the collective bargaining arrangements at each workplace and levels of activism of the members thereat. Self-administered questionnaires were deemed suitable as the respondents' ability to "*see* the questions" and their order was not a problem here (De Leeuw, 2008, p.314). This then was the data collection activity at the next level; the population for the survey being all of those workplaces where the relevant workers were still in membership of the trade union that originally referred the case.

Measuring "mere frequencies or incidence" however, would not be enough when there were "operational links needing to be traced over time" (Yin, 2009, p.9). The procedures under examination were in place since 2001 (though the bulk of activity occurred between 2004 and 2008 – see next Chapter) and the data for this thesis needed to be gathered during 2012 and 2013. Knowing the numbers of shop stewards for example and the extent of collective bargaining some years after the event of itself was insufficient. What about 'how' and 'why' the procedure had whatever impact it had? In addition to the 'what is the effect' question posed in the survey, there was also a need to understand "the dynamics present within single settings" (Eisenhardt, 2002, p.8) which it was felt could only be achieved by engaging with those involved. The next level of data collection thus involved assembly where possible of the files relating to the various cases and the identification and interviewing of the union staff, activists and members involved in a sample of such cases.

Sampling should be purposive with cases chosen for definite reasons. Remembering that Section 5(2) of the Act stipulates that the Labour Court "shall not provide for arrangements for collective bargaining", and also employers' contention that the Act would introduce collective bargaining 'by the back door', at a minimum there should have been one case where no collective bargaining took place and one where collective bargaining did take place despite the prohibition on recommending it. Benyon & Blackburn (1972, p.6) stipulate that "if the research aims at developing valid generalizations it must be based upon a comparative analysis" then some 'matching' cases should be included where newly organised workplaces that did *not* use the procedure in their struggle for union recognition, win or lose, or rather, win and lose. In other words, it was decided to select one or two cases from each quadrant below: -

Figure 5.2 – Case Selection by Purposive Sampling

Case taken under the 2001 Act Collective Bargaining – **NO**	Case taken under the 2001 Act Collective Bargaining – **YES**
Case <u>not</u> taken under the 2001 Act Collective Bargaining – **NO**	Case <u>not</u> taken under the 2001 Act Collective Bargaining - **YES**

Ideally cases should have come from the same industrial sectors with due regard for a balance between workplace size and type, ownership, economic activity and so forth but it was decided that precise decisions on this would be taken after the assembling of the population, the full list of cases taken under the 2001 Act.

5.1.5 - 'Organisedness'

Thus far it was determined that the main research question concerned the impact of the 2001 Act on trade union organising and that it would be approached from both a quantitative and qualitative perspective: - the assembly of information on all cases; the use of a self-administered questionnaire to determine levels of collective bargaining and union activism in each case, and finally, case studies including those referred and those not referred to get to 'why' this was so. How exactly to go about measuring trade union organising or activism? I could have used either mobilising theory or the organising model but problematic elements in each for this particular study have been identified mostly to do with their usefulness in understanding continuous and everyday union activity. In the absence of one word which described what needed to be measured and thinking of Blackburn and Prandy's "unionateness" i.e., "a measure of the commitment of a body to the general principles and ideology of trade unionism" (1965, p.112) the word 'organisedness' was coined meaning the extent of the commitment of a unionised workplace to being a "'self-organised' organised (*sic*) workplace" (Gall, 2006, p.3).

'Organisedness' had to have a number of distinguishing features; a set of attributes which defined the 'organised' workplace from one where the trade

union model might more resemble a service (Heery *et al*, 2000b). There should be an emphasis on justice-and-dignity type issues with a collective focus as opposed to bread-and-butter issues and/or individual grievances. There should be less of a reliance on third party referrals and more of an inclination to resolve matters in-house. There should be a degree of autonomy evident within the group and at shop steward level and yet some sense of belonging to the wider trade union, if not some involvement therein. Thus the questionnaire (See Appendix J) was designed to include questions about the most recent issue raised in the workplace, post referral, such as:-

- What was the nature of the issue – could it be described as 'bread-and-butter' (i.e., pay) or 'justice-and-dignity?
- Did it affect an individual, a minority, the majority or the entire bargaining unit?
- How was the matter resolved – by the workers in-house; negotiated by the shop steward; negotiated by the FTO or resolved by third party intervention?
- Is there currently a representative structure at this workplace and/or any involvement with the wider union movement?

5.1.6 - Participants

As this student is also a trade union organiser, personal experience in that role informed some of the decisions taken regarding the style of questionnaire to be issued. For example, it would have been ideal to have also included questions regarding union density before and after the taking of the case. This was ruled out however on the basis that to ensure the high levels of participation which were eventually achieved, the questionnaire had to be one which could be completed quickly by the union official with current responsibility for the workplace without reference to files, membership lists or the detailed history of the case. The decision to exclude questions on membership levels was fortuitous as it emerged that, particularly in SIPTU, few if any of the current union officials had had responsibility for those members during the processing of the cases under the 2001 Act. They would have been unaware of previous membership or density levels.

For reasons of speed and cost, it was also decided to use an on-line questionnaire (Survey Monkey) and where possible to identify and contact individual organisers directly through personal contacts rather than writing to the various trade unions' head-quarters asking to have the survey directed to the relevant personnel. However in the case of three unions I had no personal contact and they were invited to participate by letter to their General Secretary. A copy of the e-mail inviting my own colleagues in SIPTU individually to participate is to be found in Appendix E; the letter to other unions in Appendix F and a hard copy of the questionnaire for SIPTU staff in Appendix J. The questionnaire for other unions was amended slightly to allow for their differing nomenclature and structures.

To not interview employers was a deliberate decision. The cases under investigation were all cases where employers had vehemently opposed the representation of workers by their trade union. I could not seek interviews without revealing that I was a union official of long-standing and I felt this would have coloured how employers responded or, more likely, did not respond. It might also have been more difficult to deal with my own biases in such interviews. In addition it would signal to employers that I was also likely to be interviewing the union members involved, their staff, which might cause trouble for the members, something I was keen to avoid. In any event, this thesis concerns the effect of the 2001 Act on workers and their trade unions and that remained the focus.

5.1.7 - Some Distinctions

Industrial relations literature refers to full-time staff in trade unions variously as organisers, officers and officials sometimes with little enough by way of distinction, at least until recent years when the term 'organiser' has come to indicate a specialist role in green-field union organising campaigns. For purposes of clarity then, the remainder of this thesis will retain that definition of 'organiser'. In addition the term union 'official' will mean a more general on-going representational role often described as FTO in the literature while a union senior 'officer' will refer to one with senior or national responsibilities, usually without direct involvement in campaigns.

I distinguish between 'referring' and 'servicing' officials where 'referring' means the official who referred the original case to the Labour Court and where 'servicing' means the official who had or has current responsibility for that workplace. It was expected that in some cases these would be the same personnel and also that the servicing official might also mean the official who would potentially have responsibility if those workers were still in membership.

The term shop steward implies an elected representative of union members. In the early stages of union recognition or organising campaigns however, leaders emerge who have not been elected and to distinguish between the two roles these latter leaders will be referred to in this thesis as activists.

5.1.8 - Interviews

The interviews were designed to build on the information provided in the Labour Court Recommendations and in the survey of union officials, and to focus more qualitatively on the personal experiences of the members, shop stewards and officials involved in recognition campaigns; if they felt in control of events; how employers reacted; how decisions were reached; how they interacted with each other and how they felt with the benefit of hindsight. It was decided that the following individuals should all be interviewed, where possible:-

- The union official who referred the case and the union official with current responsibility for the members at that workplace
- The shop steward or activist involved at the time of the referral or initial recruitment plus the current shop steward.
- At least two rank-and-file members one of which in membership at the time of the referral and one newer member

The interview schedule for each group of interviewees is included in the appendices – Appendix G for union officials; Appendix H for union members, activists, shop stewards.

5.1.9 - Analysis

Bell (1987) advises that the means of analysis of data should be considered at the same time as the methods of collection of the data. Analysis of the Labour Court Recommendations and of the survey was expected to be straight forward. Simple counting would produce the "quasi statistics" required (Maxwell, 2005, p.112) such as the number of cases in each sector; which unions took cases and when; levels of union membership before and after referral or over time; issues raised and where and how resolved; whether or not there is a shop steward and/or representative structure at each workplace.

The interviews required a different approach but it was expected that it would be possible to see patterns in the data around which to build a framework, a framework constructed from what Barbour describes as the "researchers' *a priori* codes" (2007, p.115), in this case this student's own ideas about 'organisedness'. There should also emerge the "in-vivo codes" (*ibid.*) or ideas or explanations that emerge from the data, from the people involved. Patterns might be discerned concerning individual leadership styles of FTOs (Kelly & Heery, 1994) or shop stewards (Batstone *et al*, 1977); the type or intensity of employer hostility encountered. Less substantive and more "theoretical categories" (Maxwell, 2005, p.97) around mobilization theory (Kelly, 1998) or power in the workplace (Martin, 2003) were also anticipated. Maxwell's warning regarding the need to "rule out *specific* plausible alternatives" (2005, p.107) was heeded by anticipating that the roles played by FTOs and shop stewards might be key. Care was taken to also watch for other factors and for "discrepant evidence and negative cases" that might contradict the original hypothesis but which could not be ignored (Maxwell, 2005, p.112).

5.1.10 - Was I the right person to undertake this project?

I have worked in the trade union movement for almost 30 years and so I had to consider whether or not I was the right person to undertake this thesis, whether my insider status and possible biases could be problematic in terms of ethics, reliability and validity. Taking insider status first, it had many positives. Access to union files and the levels of personal honesty required from colleagues was unlikely to be given to a researcher from

outside the organisation. From an ethical point of view, it was important that I protected members in situations where employers were still hostile to their union involvement and ensure that nothing in the way I conducted my research could result in adverse consequences for them. Experience helped in that regard along with knowledge of how unions work. Of course it increased the possibility of bias in a number of ways, in particular that I might have favoured the views of union officials such as myself, where they conflicted with those of either senior officers or members of the union. I hoped to eliminate this threat to validity by including as broad as possible a range of other respondents and by being unequivocal about any possible biases I might have had. While I was and still am certainly biased in favour of workers' right to collectivise or unionise, this was not seen as a problem as it is only workers seeking to do this who were the focus of the study. Where real issues of bias might have arisen was in regard to the procedures provided under the legislation. I cannot claim to be entirely neutral about the Industrial Relations (Amendment) Act 2001, but I hope I have been "objective and critical in the best sense" (Thompson & Bannen, 1985, p.5). Such an approach was critical to achieving a genuine understanding of the effects of the Act and to making sound recommendations regarding its retention, amendment or dissolution; the reason for my conducting the study in the first place.

5.2
"Gang aft agley"

I was beset by all the usual difficulties encountered by students, some I expected and some unanticipated.

5.2.1 - Anticipated Problems

It was anticipated that some difficulties might arise in getting information from the LRC regarding who took cases under the 'voluntary leg' and when. At an early stage the LRC confirmed that for reasons of confidentiality it would not be possible to provide a list of all workplaces subject to a referral. Writing to all unions asking for those who had referred cases to take part in a survey was considered and rejected as such self-selection was likely to give a low return. It was decided instead to start the data collection at the

second or 'fall-back' part of the process, at the Labour Court, examining those cases where the LRC had been unable to resolve the issues in dispute and/or where trade unions referred the matter directly to the Court usually because the employer had refused to participate in the 'voluntary leg'. This also had the effect of reducing the population to a more manageable 137 Labour Court hearings as opposed to the 400+ referrals to the LRC. It also afforded the opportunity of a written document from which to start, the Labour Court Recommendations. It was then necessary to source all of the Recommendations achieved by means of searching the Labour Court website (www.labourcourt.ie). A full list of all Labour Court Recommendations issued under the 2001 Act is compiled and included in Appendix D. The recommendations name the employer and the trade union involved, but no more, and therefore necessitated some considerable searching to identify the union official who might have had current responsibility in each case.

It was anticipated that some of the workplaces might involve small numbers of workers and combined with rural locations and the passage of time that the numbers available to interview in each case might be few. This proved to be a more severe problem than anticipated particularly as the numbers remaining in membership of unions was lower than expected.

5.2.2 - A change of heart

I had to change my mind about trying to compare those workplaces which had taken cases under the 2001 Act with those that had not because suitable comparators were not easily found when trying to control for economic activity, worker occupations and gender, union strategy, timing. I had started the process in one trade union where there were two workplaces which were very similar and where one had used the procedures under the 2001 Act and one had not. However on closer examination there were so many other variables that did not match that I felt it could not safely be construed that it was the use of the 2001 Act procedures which defined the differences between them. I also began to realise that to really understand the effects of the 2001 Act I should rather concentrate on those workplaces which had used the procedures. In addition, once the data regarding membership and activism levels were assembled, a comparison of

those workplaces where there were high levels of membership, activism and/or collective bargaining with those where there was not began to look exciting.

5.2.3 - Unanticipated Problems

There were three problems I had not anticipated. Firstly the tracing of cases from the information provided in the Labour Court Recommendations back to the referring union and from there to the union officials who had or ought to have current responsibility was more difficult and took a much longer period of time than anticipated. Companies closed, changed or recorded incomplete names, merged or were forgotten, or membership records staff in the various unions never heard of them. Some workplaces comprised just one or two members and had not a servicing official assigned to them or they had not contacted the union for a long time. On my original timetable I had blithely ticked "Assemble population and contact details for survey" as a task I would complete in the first month along with several other setting up tasks. It actually took three full months' work just in my own union SIPTU and delayed the thesis considerably.

A problem arose with one of the survey questions which is explored further in Chapter 8 but briefly mentioned here. Question 3 asked respondents to categorise the workplace according to whether: -

A. I have had no contact with and/or was unaware of this workplace
B. This union has some individual/confidential members who seldom contact the union
C. This union represents members there on an individual basis only
D. This union has an active core of members here but no bargaining rights
E. This union has full bargaining rights at this workplace

Once the case studies commenced I found a problem with options B) and C) in relation to D). Where union officials selected option B) or C) and correctly reported that they represented members there on an individual basis only or had little contact with them, this could mask the presence of an active core of members at that location. I should have kept questions regarding

representation separate from questions regarding activism. It caused difficulties later categorising workplaces.

The third difficulty is somewhat related to the second. I had hoped to select cases for further study from amongst each of the categories above so when they proved unreliable I had to have a re-think. In addition the lack of members and/or contact with them in category A) cases meant there was sometimes nobody to interview. A failure or refusal to participate on the part of a very few union officials compounded this difficulty. I had intended doing no more than six or seven case studies, hoping to cover all of the categories above and within specific economic sectors to allow for comparison. In the end there were ten cases where the union official was willing and able to participate, in a timely way, and to encourage members to do likewise, so I worked with what I could get and all ten were included.

I had hoped to have a wide range of sources in each case: - the Labour Court Recommendation; the union's file; media coverage; interviews with both the referring and servicing officials, shop stewards, activists and rank and file members. Such a variety of sources in each case would, I thought, contribute well to the "development of converging lines of inquiry, a process of triangulation and corroboration" (Yin, 2009, p.116). Once more however, category A) and even B) cases could not have such a range of sources by their very definition and there was a reduced range at small workplaces and no files or media coverage in other situations. I hoped however that the large number of cases would help to compensate for these problems.

5.3
The "promis'd joy"

The "promis'd joy" comes no doubt with the completion of the data collection and the writing of the thesis itself. To summarise, the data collection eventually consisted of:-

1. Assembly of a database of 137 Labour Court Recommendations and identification of the workplaces, trade unions and servicing and referring officials in each case, conducted from April to June 2012

and from January to June 2013. A full list of the Recommendations is contained in Appendix D.

2. Analysis of the Labour Court Recommendations, company websites, union files and newspapers to determine the nature of each enterprise, employer and group of claimants involved.

3. A survey of the servicing officials identified above. Each union was surveyed in turn once all their cases were identified. The final response was received and the survey closed for each union as follows: -

   16th May 2012 – SIPTU
   9th January 2013 – MANDATE
   7th March 2013 – CWU
   22nd July 2013 – IBOA
   13th August 2013 – UNITE
   16th August 2013 – TEEU

4. Response rates for each union are dealt with in Chapter 7. See Appendix E for the e-mail requesting SIPTU staff to participate; Appendix F for the letter of invitation to other unions and Appendix J for the questionnaire itself.

5. Ten case studies to include examination of union files and 36 semi-structured interviews with union officials, shop stewards, activists and rank-and-file members. Interviews took place between January to September 2013. The interview schedules are attached in Appendix G for union officials and in Appendix H for shop stewards and members. A background note on each of the case study workplaces is contained in Appendix I. Appendix K lists the interviewees and dates of interview while Appendix L is the consent form used.

5.3.1 - Confidentiality and Anonymity

In order to ensure discretion for trade unions regarding membership levels in various workplaces and to protect both union members and union staff, all identities have been obscured in writing about the survey and the case studies. Thus for the chapter on the publicly available Labour Court Recommendations there is no issue about confidentiality, so each case is referred to by its Labour Court Recommendation number, employer and trade union. Later chapters that report on membership levels, the survey and interviews, only refer to workplaces by names assigned by myself; and to participants as member, activist, shop steward, referring or servicing official as appropriate, and with no mention of which trade union was involved.

5.4 – The data and analysis chapters

This work turns now to reporting on and analysis of said data and is organised as follows: -

Chapter 6 examines all of the Labour Court Recommendations issued under the 2001 Act from a macro point of view, assessing the overall coverage and effects of the Recommendations. Chapter 7 starts on the micro examination, detailing the results of tracing each workplace from the Labour Court Recommendations back to the union that referred the case and the results of the survey of union officials regarding the nature of union activity and collective bargaining at those workplaces. Chapter 8 deals with the processes – the recruitment/organising campaigns; the referral to and the attendance at the Court; the views and concerns of the members, activists and staff who were involved in the process, as expressed at a series of interviews. While each chapter also analyses the data it details, Chapter 9 blends these three strands of data collection by returning to the research questions to assess how these were addressed.

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Chapter 6
Return to an Irish Solution to an Irish Problem

6.1 – Introduction

This thesis seeks to explore the effects on trade unions and their members subsequent to their participation in procedures provided for in the Industrial Relations (Amendment) Act 2001, the 2001 Act. These procedures are utilised in situations where employers refuse to engage in collective bargaining with the trade union representing the workers. The literature review and prior research explored in Chapter 4 already define the need to see the outcomes of such statutory procedures in terms of both *process* and *outcome*. The written outcome can have a constraining effect, perhaps limiting the range of issues around which workers organise or about which they can bargain (Moore, 2005). The process itself can also have an effect, teaching workers early lessons about employer hostility (Gall, 2010), about the law (McKay *et al*, 2006) about collective action and about unions (Simms, 2007a, 2007b; Moore, 2004). That such lessons have lasting effect is demonstrated by Markowitz's study (2000). For the purposes of this thesis then, outcomes need to be examined in three ways: the written outcome provided by the Labour Court in its Recommendations, Decisions or Determinations issued after each hearing (and explained in Chapter 3); secondly, the outcome in terms of membership, do these workers stay in unions afterwards? Finally there must be an examination of the outcome in terms of the nature of worker activism and collective bargaining which is subsequently to be found in each workplace and how the process impacts on these.

The outcomes and process referred to above are essentially micro issues, examining the effects of the 2001 Act within unions and workplaces and explored in the later chapters. It is also necessary however to view the effects of the legislation in a macro sense, to explore the contribution the Act makes to the aggravation or the amelioration of the 'Irish problem' outlined in Chapter 2. This chapter deals with the macro question by examining the written outcome, the Labour Court Recommendations, and

establishing *who* is affected by the 2001 Act before establishing *what* that effect might be.

Section 6.2 below explains how the data for this chapter was assembled and then tabulates the main results. Section 6.3 looks more closely at elements of the data chiefly discussing the implications for Irish industrial relations against the background of its peculiarities as set out in Chapter 2 – An Irish solution to an Irish problem.

6.2 – Labour Court Recommendations, Decisions and Determinations

The Labour Court Recommendations, Decisions and Determinations were sourced on the Labour Court's website – www.labourcourt.ie – then analysed and used to assemble a database, stored on Excel, detailing the subject; employer; union; issues raised and outcome in each case. To this was added additional information regarding employer, country of origin, economic sector, worker occupation and social class. Little of this latter set of information was directly available in the Recommendations themselves and was instead assembled via examination of companies' documents filed at the Companies Registration Office (CRO), companies' websites and union files. Once collated the information was then analysed, firstly according to the main elements of each Recommendation: - subject; preliminary issues; employer; claimants and their unions. The data was then further analysed in 6.3 below to understand their contribution to Irish industrial relations.

6.2.1 – Subject

As outlined in detail in Chapter 3, each Recommendation, Decision or Determination, under the heading "Subject", will define whether it is:-

- a preliminary hearing
- a referral from the Labour Relations Commission (LRC)
- a union application
- a recommendation or decision arising from a previous hearing,
- a request for a determination

Table 6.1 below outlines the number and type of hearings for each year between 2002 and 2011. The Court website lists no hearings for 2012 or 2013.

Table 6.1 – No. of hearings under IR Act 2001 by Subject and by Year

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	Total
Preliminary Hearing (S.2)	**0**	**2**	**1**	**2**	**2**	**-**	**-**	**-**	**-**	**-**	**7**
Referral from LRC (S.2)	**0**	**2**	**11**	**23**	**21**	**8**	**2**	**0**	**1**	**1**	**69**
Union Application (S.2)	**2**	**4**	**7**	**4**	**9**	**1**	**0**	**0**	**1**	**1**	**29**
Arising from previous hearing	**0**	**1**	**2**	**1**	**0**	**0**	**0**	**0**	**0**	**0**	**4**
Request for Determination (S.6)	**0**	**2**	**2**	**13**	**5**	**4**	**2**	**0**	**0**	**0**	**28**
TOTALS	**2**	**11**	**23**	**43**	**37**	**13**	**4**	**0**	**2**	**2**	**137**

Source: Labour Court – www.labourcourt.ie

Although there were 137 hearings in total under the 2001 Act, just 97 separate workplaces were involved as some attended on more than one occasion, see the example of Ashford Castle in Chapter 3. Of the 137 hearings, just seven were listed as preliminary hearings (though others were in effect the same but were not coded as such). The majority, 69, were Referrals from the Labour Relations Commission (LRC) with only 29 being direct applications from trade unions. Four were hearings which arose from previous hearings and 28 were requests for a determination. Comparing referrals from the LRC with direct union applications, unions tended to use the former. Of the 29 direct applications, 24 were as a result of employers refusing or failing to engage with the 'voluntary leg' at the LRC. While there was some engagement in the other five cases this was inadequate according to the unions involved. There were no LRC referrals in 2002; the tardiness

of the process under the 2001 Act and prior to its amendment in 2004 would have meant few enough cases could have come through the procedure in time for a hearing in that year. Between 2004 and 2008 however, the majority of all Recommendations, excluding preliminary hearings and determinations, arose from referrals from the LRC where unions had opted to try the voluntary process in the first instance and where there was some engagement but ultimately a failure to resolve some or all of the issues in dispute. The number of hearings increases substantially in 2004 often attributed to the improvements in the 2004 Act though there were also increases between 2002 and 2003. The numbers after 2008 are miniscule by comparison with only one union application and one LRC referral each in 2010 and 2011 reflecting the aforementioned "fall-out" from the Ryanair case.

6.2.2 – Preliminary Issues

The first task of the Court is to determine if all necessary pre-conditions have been satisfied as per Section 2(1) of the 2001 Act detailed in Chapter 3. In addition, as a result of the Ryanair High Court case (*Ryanair v The Labour Court and IMPACT* [2006] 1 ELR challenging *DECP051 Ryanair and IMPACT*), the Court must also first establish if there is a trade dispute in existence. Although only seven hearings were listed with preliminary issues as 'Subject' and reported on in a Decision, in a further 30 hearings, the Court had cause to decide on preliminary issues where the employer disputed the Court's jurisdiction to hear the case. If the parties agreed, or if neither side raised a preliminary issue then the Court may make mention of this as for example: - "both sides agreed the matter was properly before the Court" (*LCR20080 Global Tele Sales and CWU*). As cases are referred by trade unions, implying their belief that all pre-conditions are met, objections will be raised by employers. Table 6.2 below details the frequency with which Section 2(1) pre-conditions were used by employers to challenge the Labour Court's jurisdiction and the extent to which the Court upheld these challenges.

Most employer objections to the Labour Court's jurisdiction were made under Section 2(1)(a); effectively employers sought to prove that they did engage in collective bargaining and/or that there were dispute resolution

procedures in place which had not failed. The first leg of this section was easier for employers, easier that is to demonstrate that they did engage in collective bargaining. Six of the nine cases where the Labour Court upheld the employers' objections involved 'poaching', a union seeking to represent workers at a workplace where the employer already recognised another union. The second leg regarding internal dispute resolution procedures was more difficult and employers were far less likely to prove their case. This is explored further on in this chapter.

Table 6.2 - Preliminary Issues Raised and Upheld under Section 2(1) – 2001 Act

	No. of Cases	**Upheld**	**Not Upheld**
It is not the practice of the employer to engage in collective bargaining and … (S.2(1)a)	11	9	2
… the internal disputes resolution procedure normally used has failed (S.2(1)a)	16	2	14
The employer failed to obey a provision of the Code – S.2(1)b	4	0	4
The union frustrated the employer in observance – S.2(1)c	2	0	2
The union has not had recourse to industrial action – S.2(1)d	3	0	3
There is a trade dispute (after DECP051)	9	2	7
Union is not representative	2	0	2
Other	2	0	2

6.2.3 - Employer Main Economic Activity

The Labour Court Recommendations are not consistent in providing the nature of a firm's economic activity. Twenty cases give no information though several concern household names whose economic activity is well known (Dunnes Stores, Ryanair, etc.). Examination of company records registered at the CRO and company websites were used to supplement the information provided in the Recommendations as a means of determining

the firm's main economic activity. These were then categorised according to NACE Rev2.2 as per Table 6.3 below.

Table 6.3 – Employer by Main Economic Activity, NACE Rev2.2

NACE Rev.2	Industrial Group	No. Cases
A	Agriculture, forestry and fishing	1
B	Mining and quarrying	0
C	Manufacturing	34
D	Electricity, gas, steam and air conditioning supply	1
E	Water supply, sewerage, waste management	4
F	Construction	1
G	Wholesale and retail trade, repair of vehicles	14
H	Transportation and storage	16
I	Accommodation and food service activities	2
J	Information and communication activities	4
K	Financial and insurance activities	2
L	Real estate activities	1
M	Professional, scientific and technical activities	1
N	Administrative and support service activities	3
O	Public administration and defence, social security	0
P	Education	0
Q	Human health and social work activities	11
R	Arts, entertainment and recreation	0
S	Other service activities	1
	Total + 1 unknown	**97**

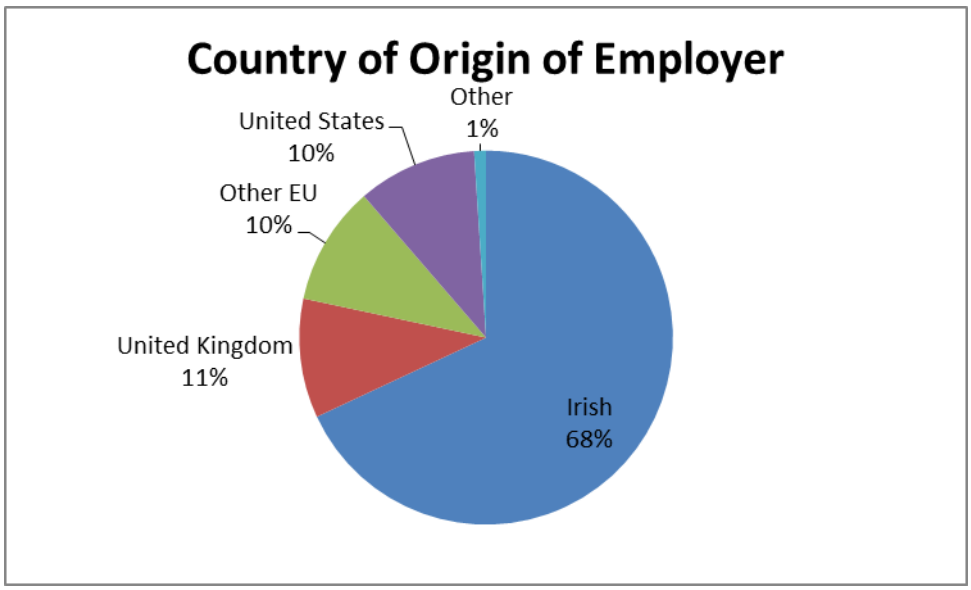
In one case the main economic activity could not be determined. Of the 96 firms whose main economic activity could be determined, the largest single grouping was in *Manufacturing*, 34 cases in total amounting to 35%. The other main categories were *Transportation & Storage* (17%); *Wholesale & Retail* (15%) and *Human Health & Social Work* (11%).

6.2.4 – Employer Country of Origin

The Labour Court Recommendations seldom made reference to the country of origin of an employer, in just 13 cases was there any reference. An examination of company records and websites was therefore necessary to determine the location of the head office in each case. Of the 137 hearings,

97 individual firms were involved. As in Figure 6.1 below, the majority were Irish owned (n=66) while the UK, other EU and US firms accounted for 10% each.

Figure 6.1 – Country of Origin of All Employers



Cross-tabulating employer country of origin and/or employer main economic activity with substantive issues or with claimants' occupations failed to demonstrate any correlations.

6.2.5 – Numbers Employed

Unlike the UK, in Ireland the 2001 Act does not prescribe any membership threshold which needs to be taken into consideration, so the numbers employed in a firm and/or the number of claimants is not always recorded. Of the 97 relevant firms, just less than half of Labour Court Recommendations (n=45) make no mention of the numbers employed; even fewer, (n=33) give details of the number of claimants. In only four cases full information was provided and a distinction made between the numbers employed; the numbers in the grade affected and the number of claimants or union members. So for example in the case of Sanirish (*LCR18455 Sanirish Ltd and SIPTU*) there were 50 employees, 43 of whom worked in production where the union had 25 members. Nonetheless the information is paltry in most cases and insufficient to determine whether large or small firms were more likely to attend at hearings nor prove or disprove the contention that unions "often" took cases on behalf of non-members

(Doherty, 2009). The matter is further complicated by the possibility of members being 'lost' during the process, explored further in the next chapter.

6.2.6 – Referring Trade Unions

Almost 60% of all union members are in the public sector which does not usually experience recognition problems so cases taken under the 2001 Act are almost exclusively taken in the private sector. The only exceptions to this are the Independent Workers' Union (IWU) case against the Western Health Board (one regional health board in what is now the Health Services Executive (HSE), the state health system) albeit a case of 'poaching' (*LCR18117 Western Health Board and IWU*), and the TEEU case in *An Bord Gáis*, a dispute about contracts *of* service as distinct from contracts *for* service (*LCR19750 Bord Gais and TEEU*). *Bord Gais* does recognise and negotiate with trade unions. Unions taking cases under the 2001 Act therefore tend to be those representing private sector workers (see Table 6.4 below) and to an extent, a certain class of worker, as explored in 6.3.6 below.

SIPTU is the Union named in 99 of the hearings representing 72% of the total. The nearest in terms of usage is MANDATE with about a tenth of SIPTU's involvement. SIPTU's lead position in terms of usage of the procedures can be explained only partly in terms of its relative size, the largest union in Ireland, representing one third of all trade union members in unions registered in Ireland. MANDATE's relatively lower usage of the procedures compared to SIPTU (a tenth of the usage with a third to a quarter as many private sector members as SIPTU) can be explained by the make-up of its membership – although all private sector and generally in retail, roughly 50% are in the larger multiples such as Tesco, Penneys' and Dunnes' Stores, where they have union recognition and collective agreements of long standing. Their recognition cases tended to arise in smaller shops and new areas such as Radio Kerry (*LCR17919 Radio Kerry and Mandate*).

Table 6.4 – No. of hearings under IR ACT 2001 by Trade Union

Trade Union	Hearings	Workplaces
Services, Industrial, Professional, Technical Union (SIPTU)	**99**	**66**
MANDATE Trade Union (MANDATE)	**10**	**8**
Independent Workers' Union (IWU)	**6**	**6**
Communications Workers' Union (CWU)	**6**	**5**
AMICUS now UNITE the Union	**6**	**4**
Technical, Electrical & Engineering Union (TEEU)	**5**	**4**
Automobile, General Engineering and Mechanical Operatives Union (AGEMOU) (now SIPTU)	**2**	**1**
Building & Allied Trades' Union (BATU)	**1**	**1**
Irish Bank Officials' Association (IBOA)	**1**	**1**
IMPACT Trade Union (IMPACT)	**1**	**1**
TOTAL	**137**	**97**

Source: Labour Court – www.labourcourt.ie

The Irish Bank Officials' Association (IBOA) is in a similar position to MANDATE, its membership comes mostly from the large banks, Bank of Ireland, Allied Irish Banks, with which they have long bargained. Its only case under the 2001 Act "differs from the generality of cases investigated" according to the Court (*Bank of Ireland and IBOA,* LCR17745). It concerned the bank's branch managers who wished to change from a system where the Union was "recognised by the Bank as the representative of its members in management grades in all matters other than in relation to collective bargaining" on *pay* issues which had heretofore been settled by individual assessment (*LCR17745 Bank of Ireland and IBOA*). Recognition issues tended not to otherwise arise for that union.

Other unions which also represent middle management and/or professionals seldom refer such cases. IMPACT, although the second largest union in Ireland has only a tiny private sector membership which

includes Ryanair via the affiliation to IMPACT of the Irish Airline Pilots' Association (IALPA) where it took its only case under the 2001 Act. The Irish Nurses and Midwives Organisation (INMO formerly INO) is not listed as having taken any case under the legislation although it does represent workers in the private sector. That union is however mentioned in *LCR18440 Hillview Nursing Home and SIPTU* where both SIPTU and the INO initially submitted a claim jointly under the Act. At the hearing however,

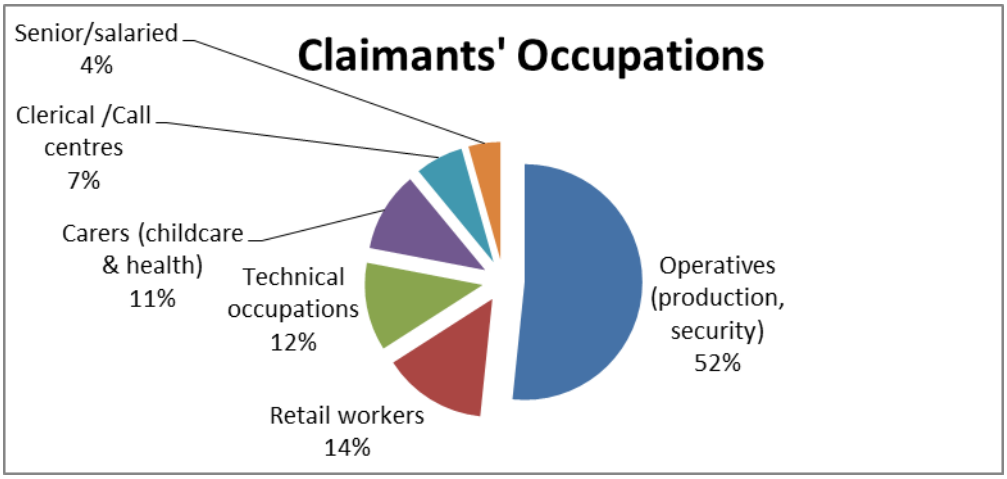
> The Home agreed to recognise INO for the purposes of collective bargaining on behalf of nursing staff … [but] … was not prepared to extend the same recognition to SIPTU on behalf of Carers, Domestic Staff, Kitchen Staff and Cooks
>
> (LRC18440)

Union staff interviewed report that this is a "frequent occurrence" particularly in private nursing homes such as this (Frank). Conversely the new Independent Workers' Union with a tiny membership of a few thousand has a relatively high usage of the procedures. An examination of its six cases however shows five of them could be described as territorial or 'poaching' that is, seeking to represent workers in workplaces where other unions already have bargaining rights, perhaps reflecting its own start-up status (*LCR18621; LCR18845; LCR18206; LCR18589; LCR18117*).

6.2.7 – Claimants' Occupations

The Labour Court Recommendations did not always state the occupation of the claimants though it was implied in many instances. In six cases there was no indication of claimants' occupations. Of the remaining 91 over half (47) could be described as operatives; they were food and production operatives, drivers, security operatives. Thirteen cases concerned retail workers; 11 described skilled or technical occupations such as service engineers and electricians while ten came from the childcare and health sectors. Six cases involved clerical administrative and call centre workers while senior salaried workers were claimants in only four cases. See Figure 6.2 on the next page.

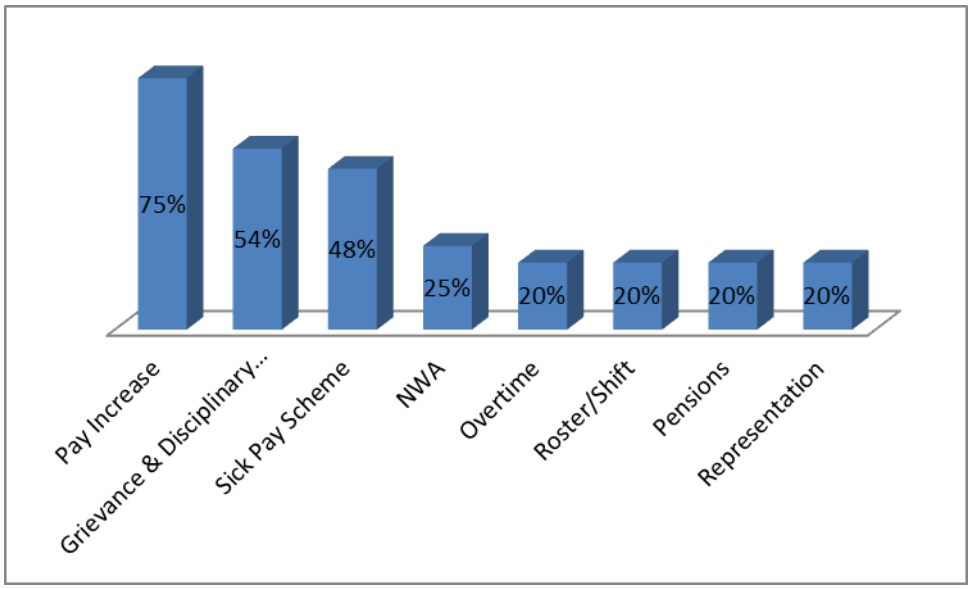
Figure 6.2 – Claimants' Occupations



6.2.8 – Substantive Issues

It is not possible to glean from Recommendations the full range of issues involved in referrals at the 'voluntary leg' or the extent to which issues were resolved at Labour Relations Commission prior to Labour Court hearings. It can only be demonstrated whether or not Recommendations dealt with substantive issues and the nature of those issues. By their very nature, substantive issues were not dealt with in either the eight Preliminary hearings or in the 28 Determinations. Of the remaining 101 hearings, 17 did not result in recommendations on substantive issues either because the Labour Court deemed it had no jurisdiction or it found the conditions of the workers were not out of line with comparators. As explained in Chapter 3, this latter point would be determined by reference to the evidence supplied by each side in their submissions. Because of the time frame and notwithstanding the changes in 2004, unions were inclined to submit a lengthy list of issues, up to a dozen, as in *LCR18151 Quinn Cement and SIPTU* and in *LCR17919 Radio Kerry and Mandate* (LCR17919). Unions preferred "Throwing in the kitchen sink" rather than making several trips (Higgins, 2006) despite improvements in timing provided under the 2004 Act. The Court made recommendations on substantive issues in 84 separate Recommendations, each usually referring to four or five issues. See Table 6.5 on the next page.

Table 6.5 –Most frequently mentioned issues in Labour Court Recommendations



The largest single issue dealt with was *Pay* followed by *Grievance & Disciplinary Procedures* and *Sick Pay Schemes*. 75% (*n*=63) of the Recommendations mention *Pay Increase* with a further 25% (*n*=21) also separately mentioning the *Application of a National Wage Agreement*. Just over half (54%) mentioned *Grievance & Disciplinary Procedures* (n=45) and just under half (48%) (n=40) mentioned *Sick Pay Schemes*. Other issues raised included *Overtime, Roster/Shift Issues; Pensions; Representation*, each of which featured separately in 20% of the substantive Recommendations issued (n= 17, 18). Less than a quarter of Recommendations dealt with just one issue (n=20) and *Pay* tended to be the issue in such single issue cases. Most cases featured several issues the average being between four and five invariably including *Pay Increase* and/or *Application of National Wage Agreement*. Where *Grievance & Disciplinary Procedures* were mentioned, in 31 of 46 cases the Court directed the employer to put in place procedures in compliance with the grievance and disciplinary code (S.I. 146 of 2000) while in a further 15 cases the Court noted that the employer indicated they would or had recently done so.

Where *National Wage Agreements*, *Pay Slips/Contracts* or *Bullying & Harassment* were mentioned, the Court ruled in favour of the Union's claim in every case. As National Wage Agreements are (were) reached by means of national level collective bargaining under the Social Partnership system,

some employers argued that the Court could not recommend that such agreements be implemented as the agreements "provide mechanisms for collective bargaining … [which] the Court is precluded … from recommending …" (*LCR17933 Creagh Transport Ltd and SIPTU*). The Court has not ever accepted such arguments on the basis that the terms of the National Wage Agreements "can be implemented without the necessity for collective bargaining at the level of the enterprise" (*ibid.*). The Court was also more inclined to rule in the Union's favour on: - *Working Hours,* including a 39 hour week (89%); *Sunday or Anti-Social Premia* (86%); *Overtime* (82%); *Rosters/Shift Patterns/Pay for same* (77%); *Sick Pay Schemes* (73%); *Pay Increase* (73%); *Pensions* (70%).

Successful outcomes on the substantive issues were virtually guaranteed by reference to three certain criteria: - by reference to existing labour law (the provision of pay slips, anti-bullying and –harassment procedures); by reference to pay rates and conditions in analogous employments and by reference to pay rates and improved conditions achieved by social partnership agreements (sick pay and pension schemes). Claims for improvements outside of these categories were less likely to be successful for example those involving *Service Pay*; *Performance Related Pay*; *Deduction of Union Dues* or *Employee Share Options*. A claim for additional annual leave also failed (*LCR18692 Irish Guide Dogs and SIPTU*).

6.3 – Implications for an Irish solution to an Irish problem

The Irish 'problem' described in earlier chapters consists of an industrial relations system originating in the voluntarist traditions of the UK and having evolved by the late 20th century to demonstrate a unitary frame of reference in its interpretation of freedom of association. The UK tradition is again evident in some tri-partite structures though Ireland had in any event consistently taken a more corporatist approach to wage bargaining until the demise of its social partnership system early in the 21st century. Trade unions' fortunes seriously declined from the 1980s in terms of union density (Dobbins, 2001) and their ability to achieve recognition in an economy moving from unions' traditional manufacturing base to non-union, high tech and service industries and becoming increasingly dependent on foreign, mostly US, direct investment (Sheehan, 2008; Collings et al, 2008).

In addition to the loss of density, trade unions have also faced a loss in status, particularly since the demise of the social partnership system and often also evident in contentious views as to what constitutes collective bargaining and their role therein.

Against this background this thesis seeks to assess the impact of the 2001 Act; in this chapter particularly seeking to understand how it impinges on, or to what extent it is a solution to, these Irish 'problems'. This chapter concludes that the 2001 Act cannot be seen as a 'solution' at least in so far as the problems are trade union problems; indeed this piece of legislation may very well also aggravate the situation in coming years.

6.3.1 - "...preserving the voluntarist tradition..."

(O'Sullivan & Gunnigle, 2009, p.255)

The voluntarist ethos in Irish industrial relations became less evident during the 20th century; the term voluntarist gradually re-interpreted to mean employers' voluntary recognition or non-recognition of trade unions, as opposed to an unfettered negotiation between them. The 2001 Act compounds this by providing that the Court "shall not provide for arrangements for collective bargaining" (Section 5(2)). Labour Court Recommendations refer to this frequently, adding "subject only to that restriction" before moving on to the substantive recommendation, see for example *LCR18582 Fournier Laboratories and SIPTU*. Thus employers can, and do, state with impunity their opposition to recognition. Labour Court Recommendations when dealing with the background to cases often state without elaboration "The Company does not recognise the Union for the purpose of collective bargaining" (*LCR 18442 West Wood Club Ltd and SIPTU*; *LCR18468 Tara Service Station* and MANDATE;) or, "…the Company … does not negotiate with unions" (LCR18532 *Rochford Brady Legal Services and SIPTU; LCR18535 Brackernagh Ltd and SIPTU*). This has the effect of legitimising the employer position, further emphasising that a voluntarist approach now means employers may voluntarily choose to ignore unions joined by their employees. As a direct result of the 2001 Act and Ryanair's High Court case, this has been given even further legitimacy. Geoghegan J in *Ryanair v Labour Court [2007] 4 IR 199* held that "Ryanair is perfectly entitled not to deal with trade unions" and furthermore that

"neither could a law be passed compelling it to do so". This legitimisation of employer resistance to union recognition is further evident in the Labour Court deliberations with regard to preliminary issues explored next.

6.3.2 – Providing "both continuity and elasticity" in collective bargaining

(Webb & Webb, 1897, p.179)

As the first part of Section 2(1)(a) of the 2001 Act requires confirmation that the employer does not engage in collective bargaining negotiations, where employers demonstrate that they do so engage, then the Court is precluded from hearing the substantive issues as in for example (*DECP041 Banta and SIPTU*). In eleven separate instances, see Table 6.2, employers argued that they *did* engage in collective bargaining and as such the Court did not have jurisdiction. In five of those cases this involved 'poaching'; a union seeking to represent members where another union already had bargaining rights and where the Court deemed that the necessary pre-conditions were not therefore met (*LCR18845 Fernley Airport Services and IWU*; *LCR18621 Federal Security and IWU*; *LCR18589 O'Donovan Off Licences and IWU*; *DECP062 Finlay Breton and BATU*; *LCR18206 MCM Security and IWU*). In other instances employers argued variously that "there was no requirement for trade union involvement for there to be a collective agreement" (*DECP052 Quinn Cement and SIPTU*) or that it conducted negotiations with an excepted body and that this constituted collective bargaining (*DECP051 Ryanair and IMPACT*). In such cases the Court emphasised the word 'practice' and the word 'normally', and declared "both words connote something which regularly or routinely occurs" (*LCR18344 United Airlines and CWU*) and must not have discontinued (*DECP051 Ryanair and IMPACT*) thereby allowing the Court to decide that it (collective bargaining) did not exist and to hear the substantive case. Conversely if collective bargaining has emerged during the process or the employer confirms at the hearing that it will now negotiate then the Court "must hold that it is the practice of the Company to engage in collective bargaining negotiations" (*LCR19154 Colso Enterprises and SIPTU*) and deem it has no jurisdiction.

Those Labour Court rulings above refer to the existence of collective bargaining, undefined. However the definition of collective bargaining had

begun to evolve in Ireland since the late 20th century even more so as a result of the 2001 Act. Apart from an unstated acceptance that trade unions and collective bargaining were not necessarily "co-extensive with, nor limited to" to one another (Webb & Webb, 1897, p.177), in practice, as in the UK, it was accepted that

> …any formal dialogue that takes place between employers and representatives of independent trade unions, that has an influence on the employment relationship, can be taken to constitute collective bargaining
>
> (Brown *et al*, 2008, p.3).

The Labour Court view of collective bargaining up to the Ryanair challenge was similar but more expansive as follows: -

> Collective bargaining … connotes a process by which employers or their representatives negotiate with representatives of a group or body of workers for the purpose of concluding a collective agreement fixing the pay and other conditions of employment applicable to the group of workers on whose behalf the negotiations are conducted. Normally the process is characterised by the involvement of a trade union representing workers but it may also be conducted by a staff association, which is an excepted body within the meaning of the Trade Union Act, 1941, as amended. However an essential characteristic of collective bargaining, properly so called, is that it is conducted between parties of equal standing who are independent in the sense that one is not controlled by the other.
>
> (LCR17675 Ashford Castle and SIPTU)

This was challenged by Ryanair and the High Court ruled: -

> If there is a machinery in Ryanair whereby the pilots may have their own independent representatives who sit around the table with representatives of Ryanair with a view to reaching agreement if possible, that would seem to be 'collective bargaining' within an ordinary dictionary meaning. It would seem strange if definitions peculiar to trade union negotiations were to be imposed on non-unionised companies…
>
> (*Ryanair Ltd v Labour Court* [2007] IESC 6 1st February 2007)

The Supreme Court also disputed whether

> … collective bargaining in a non-unionised company must take the same form and adopt the same procedures as would apply in collective bargaining with a trade union
>
> (*ibid.*)

Any amendments aimed at restoring the workings of the 2001 Act must take account of this judgment and define collective bargaining. The difficulty is that said definition will clearly distinguish between workplaces where unions are recognised and those where they are not with consequent implications for what constitutes collective bargaining and the role of trade unions in each case. A foretelling of how such amendments to the 2001 Act might work is provided by an exploration of the Labour Court Recommendations under the second leg of Section 2(1) (a) below.

The second leg of Section 2(1) (a) of the 2001 Act, that "the internal dispute resolution procedures (if any) normally used by the parties concerned have failed to resolve the dispute" was relied on in almost half of all preliminary issues raised, employers arguing that the Court did not have jurisdiction as the internal dispute resolution (IDR) procedures normally used by the parties had not failed (See Table 6.2). For example, in *LCR17919 Radio Kerry and MANDATE*, the employer claimed that as they provided an IDR procedure which the claimants failed to use, that the Court was precluded from hearing the substantive issues. In this case the Court ruled that the procedure is not *normally* used by the parties to resolve disputes and that this would usually "be sufficient to dispose of the preliminary objection". The Court further ruled however that as the employer's internal procedure "expressly provides that issues must be processed individually" and that the issues in dispute were collective and the Act is "primarily concerned with resolving group or category disputes" that any such procedure could not be described as a dispute resolution procedure under the terms of the Act. In only two cases did the Court find that the pre-conditions had not been met because the IDR had not failed, in *LCR18446 Banta (1) and SIPTU*) and in *DECP041 Banta (2) and SIPTU*, where the Court ruled that the procedure had not failed as the workers had chosen not to use it. Otherwise the Court ruled that a grievance procedure would not suffice under the Act particularly if it was not normally used (*LCR18274 Exel and SIPTU*) or where it was merely "available to them" (*LCR18454 Johnston, Mooney & O'Brien*

and SIPTU); if there was "no way for employees to formulate their position on issues or to make claims" (*LCR18648 Little Rascal Crèche and SIPTU*); if it was "a creature of the employer" (*LCR18307 M1 North Link and SIPTU* and *DECP061 Green Isle and SIPTU*); merely consultative (*DECP051 Ryanair and IMPACT*) or where there was a lack of a clear structure (*LCR19188 Bell Security and TEEU*) or "a degree of independence" (*DECP061 Green Isle and SIPTU*). The Court also found such IDR procedures problematic because "it is not clear in the context of a non-union employment, when procedures can be regarded as exhausted" (*LCR19188 Bell Security and TEEU*).

Notwithstanding some of the Court's rulings on how an IDR might operate, the implication is that trade unions are not necessary to collective bargaining. Any forum which articulates the views of a group or category of workers which has a clear structure and a degree of independence and with which an employer *chooses* to engage will suffice, whether or not the workers choose to be represented in this way. What now for the definition of collective bargaining as discussed in Chapter 4? Again, as a direct consequence of the 2001 Act, the Irish Congress of Trade Unions (ICTU) has added a convoluted process to their most recent submission wherein it is included "criteria for establishing 'genuinely independent' non-union 'collective bargaining' for the purpose of the 2001-2004 Acts" (ICTU, 2013b, p.35). If, as the Webbs contend it is the "Trade Union alone which can provide the machinery for any but its most casual application" and which contributes "both continuity and elasticity" (Webb & Webb, 1897, p.179) to collective bargaining, then the procedures acceptable according to the Labour Court Recommendations or those which might be created under ICTU's suggestions above would be fragile entities indeed.

If trade unions are not therefore necessary for collective bargaining, what then might be "an acceptable role for each actor", for trade unions in particular? (Dunlop, 1958, p.17) As in the UK, there is evidence of increasing individualisation of the employment relationship in Ireland (Roche, 2001), and a rise in alternative dispute resolution mechanisms (Teague and Doherty, 2011) with consequent challenges for the building of collectivism (Gunnigle, 1995). The 2001 Act encourages this further. Section 2.1(a) provides that the Labour Court cannot hear a case in the event of there being internal dispute resolution procedures … normally used

by the parties which have not (yet) failed to resolve the dispute. The workings of such a forum if normally practised would, for the purposes of the Act, constitute collective bargaining and leave unions without recourse to the 2001 Act, such as it is. While only two cases were found where the Labour Court ruled against the union on this very point (LRC18446 and DECP041), nonetheless there remains cause for concern for trade unions as the existence of an independent employee forum in regular use could easily have answered the Court's objections in 14 other cases (Table 6.2). In stark contrast, employers accept or offer in advance of the hearing to comply with S.I. 146 of 2000, the Code of practice on grievance and disciplinary procedures. As detailed in Chapter 3 (3.6) that Code provides that a firm's grievance and disciplinary procedures should allow for individuals to be represented by a trade union. The implication is that the acceptable role for a trade union is in its representation of individuals in trouble but not in the representation of collective issues, not collective bargaining.

6.3.3 – Implications for the "court of reasonableness and fair dealing"

(Kerr, 2005, p.3)

Ireland's "static" interpretation of freedom of association (Leader, 2002, p. 128) is softened somewhat by long years of custom and practice whereby trade unions were one of the "immutable features of the fabric of industrial relations practice" (Roche, 1997, p.67). The Labour Court is a good example of Ireland's tendency towards tri-partite structures where unions hold equal status with employers on its Divisions, the personnel having been nominated by ICTU and IBEC respectively. This has allowed neutral if not union-friendly Labour Court personnel, while unable to either recommend union recognition or make any judgement regarding collective bargaining, at least to take issue with the lack of any engagement between some of the parties. In *LCR18037 Goode Concrete and AGEMOU* the Court found it "particularly regrettable that the parties did not have the advantage of some level of engagement" while "there seems to be no real effort by the parties to resolve their differences in a harmonious manner as intended by the Act" in *LCR18271 Clearstream Technologies and SIPTU*. On another occasion the Court notes the LRC report that the employer "never had any intention of participating" (*DECP032 Ashford Castle and SIPTU*). Similarly on two occasions where employers have argued that the union has

frustrated them in their intention to observe the Code, for example "by making entirely unreasonable demands" (*LCR18344 United Airlines and CWU*), the Court has not upheld the objections. Union organisers involved in the processing of cases have frequently referred to the importance of the attitudes of individual Labour Court personnel with one or two in particular being held in high regard for their seeming willingness to make the process work (See Chapter 8).

A willingness on the part of some individual members of the Court to take a broader view of issues is again demonstrated on the issue of the existence of a trade dispute. That the Court must first find that there exists a trade dispute was first argued in *DECP051 Ryanair and IMPACT* and as a result in eight subsequent cases. In finding that it could hear a case involving a 'difference' as well as a 'dispute' the Court relied on the Industrial Relations Act 1946 as the 2001 Act did not provide the necessary definition. Section 3 of the 1946 Act provides that:-

> The expression "trade dispute" means any dispute or difference between employers and workers or between workers and workers connected with the employment or non-employment, or the terms of employment, or with the conditions of employment, of any person.

This was then relied upon in *LCR18307 M1 North Link and SIPTU* where the employer alleged the union was merely trying to "force recognition" on the basis of "illusory issues". Such union "ambitions" were deemed reasonable by the Labour Court in that case and again in *LCR18454 Johnston, Mooney & O'Brien and SIPTU* and in *LCR18692 Irish Guide Dogs and SIPTU*. In keeping with this 1946 definition, Galway Clinic's contention that employees made redundant the previous year could not now be a party to a trade dispute, was overruled (*LCR18815 Galway Clinic and SIPTU*). Such trade union reliance on the perspectives of individuals at the level of the Labour Court's divisions is however a weak prop and has in any event proved ineffectual once legal challenges are taken.

The original description by Flanders (1974) of a voluntarist system wary of Court intervention, as opposed to being wary of legislative support, is well forgotten if not contradicted entirely. The 2001 Act provides that either party "may appeal to the High Court on a point of law" (Section 11) and

Ryanair's decision to do this has already been explored. The subsequent appeal to the Supreme Court resulted in a judgment that has "diluted and rendered void the effectiveness of the process" (LRC Annual Report, 2007, p.26) and forced the Labour Court to issue new guidelines taking into account seven separate legal points arising. A serious consequence is the current requirement for the Labour Court to take oral evidence as in a Court of law rather than rely on the evidence of a trade union, thereby overturning "years of practice in Irish industrial relations" (Mulvey, 2009, p.8). This became a feature of the few hearings held after the judgment (*LCR20079 Dell Direct and CWU*; *LCR19750 Bord* Gáis *and TEEU*; *LCR19721 Cribbin Family Butchers and IWU* and *LCR19188 Bell Security and TEEU*) and is a serious inhibitor to any future use of the procedures. Notwithstanding protections against victimisation of workers for their trade union activity few would be comfortable giving evidence in such fashion.

Subsequent to the Ryanair judgments, several other employers threatened to take and some took legal action against the Labour Court; Galway Clinic, Fournier Laboratories and Swords Packaging for example (Higgins, 2007a). Solicitors for one employer, Swords Packaging, called on the Labour Court "to set aside recommendation LCR18807 as an invalid decision" failing which they would seek a judicial review (Higgins, 2007b) while Galway Clinic issued a press release advising they would seek legal advice on the terms of the Labour Court Recommendation (Dobbins, 2007a). The Ryanair judgments have prompted trade unions also to seek legal advice before engaging in the industrial relations machinery of the LRC and the Labour Court and more than one Determination had not been sought for fear of a legal challenge or in anticipation of the outcome of other legal cases (see the Canalcon and Led-Pack cases in Chapter 8).

The Labour Relations Commission also felt obliged to obtain legal advice as the Supreme Court judgment encouraged employers to seek verification of the extent of union membership at workplaces before proceeding under the voluntary leg of the procedure. The LRC practice had been to achieve this by "obtaining a list of members from the trade union and cross checking this against the employers own data such as payroll" (Sheehan, 2007b). The legal advice confirms that the LRC's "present practice is fair and reasonable" (*ibid.*) thus protecting the LRC from having to make any

adjustments similar to those imposed on the Labour Court as a result of the same judgment. Nonetheless the problem remains; employers became quick to threaten legal action if they were unhappy with Recommendations issued under the 2001 Act; trade unions and the LRC have been forced into seeking and acting upon legal advice before carrying out long-standing procedures while the Labour Court has been forced to make radical changes to its operations. The Labour Court changes refer only to the 2001 Act. However some commentators on foot of the same Supreme Court judgment immediately predicted "a complete change in procedure in the various employment rights forums" [sic] whose modus operandi and "cosiness is misplaced" (Fitzgerald, 2007), a worrying possibility for trade unions.

6.3.4 – "Strangled by Americanisation"

(Murray, 2008, p.9)

In Ireland FDI accounts for nearly half of all manufacturing employment and twice the EU average in services (Barry & Bergin, 2012) yet the cases taken under the 2001 Act concern predominantly Irish firms (see Figure 6.1). Turner *et al* (1997) demonstrate that there is little difference between multi-national corporations (MNCs) and indigenous companies in terms of attitudes to union recognition but recognition disputes in MNCs (if they arise?) are seldom processed under the 2001 Act. There is a school of thought which suggests that MNCs have little to fear from the 2001 Act, citing the Labour Court ruling (*LCR18013 GE Healthcare and SIPTU*) that GE Healthcare rates of pay were not out of line and awarding no pay increase in that case (*Labour Relations Commission*, 2006). Why then would Government argue against 'mandatory' recognition for fear of upsetting this sector? (Chapter 2) After all it is Irish employers who have been to the forefront in dismantling collective bargaining; the Construction Industry Federation (CIF) were first to pull out of social partnership negotiations in 2008; the Irish Hotels Federation the first to challenge the Joint Labour Committee (JLC) system and set up a fighting fund to support Ashford Castle, followed by electrical companies challenging the Employment Regulation Order for that industry and not forgetting the infamous Ryanair challenge – all Irish employers or representative bodies. However FDI influence on the subject of trade union recognition may very well take a less public route. Of significance here is the role of the American Chamber of

Commerce in Ireland (ACCI) lobbying on the transposition of the Information & Consultation Directive (Dobbins, 2008) and ICTU's fear of their "outright hostility" (Sheehan, 2013) though there are seldom any public pronouncements from ACCI on the subject. Questions also arise regarding the role of US MNCs in relation to the internal industrial relations of their suppliers/sub-contractors. Chapter 8 includes mention of the role of two such companies in the recognition rows of their suppliers: - the role of PC Ltd in the internal affairs of two of its suppliers, Deltrans and Led-Pack and that of Supersizers in Pegasus.

6.3.5 - Industrial Action

As part of its decision on preliminary issues, the Labour Court must satisfy itself that the trade union had "…not had recourse to industrial action after the dispute in question was referred to the Commission" (Section 2(1)(d)). In no case has the employer proved that industrial action took place, although they have argued so on a number of occasions (LCR17968; LCR18019 and LCR18265). However in each case the Court did not view the action as cause to rule out jurisdiction on the basis that refusing to provide weekend cover is not industrial action (*LCR17968 SIFCO Turbine Group and SIPTU*) and industrial action on another topic, or which was threatened but not instigated is not sufficient either (*LCR18019 RPS Group and TEEU*). Where parents of children at a crèche wrote to the employer complaining about the treatment of the workers, the Court deemed that this was not industrial action as there was no evidence that it was done "in combination or under a common understanding with the union or its members" (*LCR18265 Tots & Co., and SIPTU*).

While it is not a prohibition on the taking of industrial action, on which "employee power rests in the last resort" (Gospel & Palmer, 1993, p.191), Section 2(1)(d) does have the effect of making unions less inclined to take industrial action lest it prevent them from opting to use the procedures at a later date. It was certainly a factor in at least one of the cases to be reported on in Chapter 8 (Garry's) where the shop steward recalls reluctance to strike. On the other hand, all at Deltrans were at pains to point out that it was having "strike sanction in the back pocket" (John) that won them recognition. An earlier small study on union recognition by this

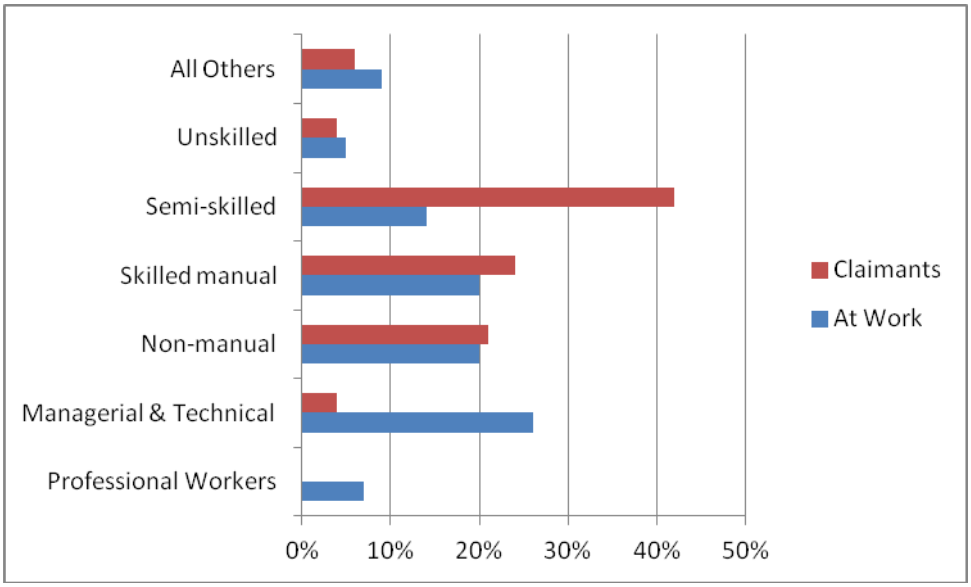
student found that the "taking or threatening of industrial action had a 50:50 chance of success [in gaining recognition] while going the S.I. 145 route had virtually none" (Gibbons, 2003, p.68). Additional pressure on unions not to select the strike option leaves them with fewer choices regarding how to proceed with a recalcitrant employer.

6.3.6 – Pay "in relation to the average of the class"

(Taylor, 1947, p.27)

Claimants' occupations were discussed in 6.2.7 above and over half of them found to be from operative grades with very few from senior salaried grades. In order to make comparisons with the Irish working population, these occupations were re-classified to demonstrate social class and shown alongside figures for those at work by social class in the 2006 census in Figure 6.3 below. The occurrence of 'Non manual' and 'Skilled manual' classes in those 'At Work' in the 2006 census closely matches their occurrence in the social class of claimants under the 2001 Act. 'Non manual' represents 20% of those at work and 21% of claimants; the figures for 'Skilled manual' are 20% and 24% respectively.

Figure 6.3 –Comparing 'At Work' with claimants' social class



Source: CSO

It is the categories either side of manual occupations where the major differences are found. 'Professional' and 'Managerial & Technical' classes

constitute a third of all at work but only 4% of claimants. Equally, 'Semi skilled' workers make up just 14% of those at work but are a major component of claimants at 42% of the total. This is further aggravated by the over-representation of declining sectors in the cases taken to the Labour Court. Of particular concern is Table 6.3 on page 90 demonstrating the economic sectors in which employers operate. At a time when the economy is quite clearly moving from the "traditional sector" to the "modern sector" (CSO 2013), 35% of cases under the 2001 Act concern manufacturing firms which comprise 13% of those at work, a figure which is also declining.

The economic sectors from which claimants arise is of concern not only for what it may imply about union organising targets (conversely it could imply that unions have no recognition problems in the modern sector) but also because the Labour Court awards improvements in pay and conditions based on industry norms or by comparison with "similar workers in unionised firms" (Sheehan, 2013). This is achieved by one or both parties making

> … comprehensive written and oral submissions and … [providing] the Court with comprehensive information on rates of pay and other conditions of employment in what they regard[ed] as analogous employments
>
> (LCR18582 Fournier Laboratories and SIPTU)

Analogous employments the Court will accept are those in the same sector, "the preponderance of private hospitals" for example in the case of Galway Clinic (*LCR18815 Galway Clinic and SIPTU*), and those "in which pay is determined by collective bargaining" (*LCR18772 Sercom Solutions and SIPTU*). The Court will not concede a claim where such information is absent: - "the Court was not provided with any information from which it could be deduced that this claim is justified by reference to negotiated rates in comparable companies" (*LCR18583 O'Connor Meats and SIPTU*) or where it is sparse: - "only two comparators were cited by the Union in support of its claim for additional annual leave" (*LCR18692 Irish Guide Dogs and SIPTU*). In the event that the 'Ryanair judgment' issues are repaired, the 2001 Act will still have very limited use in terms of pay issues in new/emerging or previously non-union sectors. How will analogous employments whose pay and conditions are negotiated be found in such sectors or for new occupations?

In earlier chapters this thesis traced the connection between the unitary roots of Ireland's approach to freedom of association and the consequent emphasis on notions of fair pay in industrial relations. The 2001 Act reaffirms this emphasis by directing that the Labour Court shall "have regard to terms and conditions of employment" (Section 5(1)) and not collective bargaining. The Labour Court interprets this to mean that its function is "to provide a measure of protection to workers whose pay and conditions of employment cannot be determined by collective bargaining" (*LCR17607 Moquette Ltd and MANDATE*) because they cannot be represented by a trade union. The Labour Court therefore awards increases if the pay of the claimant is found to be out of line with that of comparators. Once again, wages must be in "relation to the average of the class to which the man belongs" (Taylor, 1947, p.27). Class also arose in other situations, in for example Hillview Nursing Home's decision to recognise the union representing nurses but not that of support staff (*LCR18440 Hillview Nursing Home and SIPTU*). Similarly, at Galway Clinic the CEO objecting to *LCR18815 Galway Clinic and SIPTU* explained: - "We pay the same rates as the HSE for nurses and clinical staff. It's when you get down to cleaning and so on that there's a difference" (Dobbins, 2007a).

An emphasis on pay is further complicated by events of recent years, the demise of both the Celtic Tiger and of the social partnership system. Seventy-five per cent of all substantive recommendations issued by the Labour Court under the 2001 Act deal with pay; 25% with the application of national wage agreements on which the Court always ruled in favour. The difficulty now is that since 2008 there are much fewer pay increases and national wage agreements are no more; eligible comparators might well be introducing pay cuts rather than pay increases. Trade union defensiveness about the 2001 Act's ability to at least improve the pay and conditions of vulnerable workers would come to naught under these circumstances.

6.3.7 – "...unlikely to leave any perceptible mark on the industrial relations landscape"

(Rabbitte, 2000, p.6)

Trade unions, employers and politicians alike gave the 2001 Act but a lukewarm welcome. There was little outright opposition, most welcoming what they saw as support for the Act from both unions and employer representative bodies who seemed prepared to at least use it to avoid confrontation. At worst it looked to a few as something of a damp squib that would "sink ignominiously" (Higgins, 2001, p.17) and otherwise not "leave any perceptible mark" (Rabbitte, 2000, p.6). This study contends that it has left a mark and quite a perceptible one at that. It has legitimised both employer hostility to union recognition and employer support for non-union dispute resolution procedures whilst corralling trade unions into the individual representation of workers in trouble. Gall (2003, p.235) mentions the positive "demonstration and shadow effects" of the usage of Britain's statutory recognition provisions. There are also such effects from the usage of the procedures under the 2001 Act in Ireland but with arguably less positive tones. The 2001 Act has contributed to the changing meanings attributed to collective bargaining and changing views as to trade union roles therein. Cognisance should also be taken of the consequences of the procedures' association with semi-skilled workers in declining sectors when progress on substantive issues is so dependent on comparisons with analogous employments and the terms of social partnership agreements no longer negotiated. There is also the contribution of the Labour Court Recommendations to custom and practice and to the perceptions of what will succeed at the Labour Court. Trade unions are now disinclined to take industrial action and inclined to seek legal advice before proceeding under the Act. Employers and even the LRC are now also so inclined to the latter. There may yet be longer term implications for the "seemingly benign form of intervention" provided by the LRC (Murphy, 1997, p. 327) and the Labour Court's role as a "court of reasonableness and fair dealing" (Kerr, 2005, p.3).

These are the affects in a macro sense, actual and implied, but what of the effects at local level, the workplaces about which these Recommendations were issued? In exactly one-third of substantive recommendations, 28 out

of 84, unions subsequently applied to the Labour Court for a determination, i.e., where the employer had not implemented the Labour Court Recommendation and the union sought a Court order to force implementation. It is not safe to assume however, that all the other substantive recommendations were implemented nor to assess the effects of the 2001 Act by reference to the content of the Recommendations alone. Doherty (2013) remarks on the "outright concession of collective bargaining rights by employers" in two named Labour Court Recommendations but this study found that there are now no trade union members nor no collective bargaining at either of those locations (see next two chapters) further demonstrating the need to see behind the paper outcome and take the study to the workplace.

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Chapter 7
Where Are They Now?

The Labour Court Recommendations discussed in the previous chapter were issued over a 9 year period from 2002 to 2011 as per Table 6.1 on page 88. This study establishes the extent to which there are still workers at each location still in membership of the unions which took the cases, before moving on to examine the nature of that membership via a survey of union officials with current or potential responsibility in each case. This chapter deals with the results of this search in 7.1 below followed by the results of the survey regarding membership levels in 7.2, and includes workplaces no longer in membership, some in membership but with little activity, and finally, to a handful where collective bargaining occurs. Section 7.3 explores the survey results regarding bargaining and representative structures. In general, low levels of membership, weak representative structures and little bargaining activity were found amongst those workplaces involved in the procedures provided for in the 2001 Act. While there are difficulties attributing those levels entirely to the 2001 Act procedures, particularly in the absence of comparator workplaces, it is unlikely that such levels are representative of the trade union movement as a whole. The findings are summarised in the final section of this chapter, 7.4.

7.1 – Where are they now?

All of the unions who participated in the Labour Court hearings (as per Table 6.4 on page 94) were contacted; this project explained; given a list of workplaces where they had taken cases and asked if these workplaces remained in membership of their union and if so to provide the name and contact details of the official with current or potential responsibility. Each official was then contacted and invited to participate in a survey (See the questionnaire in Appendix J). The initial contact with six of the nine unions involved was made via telephone calls to personal contacts on the staff of each union (AGEMO/SIPTU; MANDATE; CWU; UNITE; TEEU and IBOA). Formal letters were written to the remaining three (BATU; IWU and IALPA/IMPACT). The personal contact seems to have been effective as all of

the unions contacted in this way eventually participated; none of the other three did.

Mutual trust played a role but two other issues may also be relevant. The non-participating unions were responsible for just eight of the total 97 workplaces involved, six of which were 'poaching' cases, unions seeking to represent members of the union for which this researcher works, which may have coloured their inclination to participate. Also the very nature of 'poaching' cases is that they fail at the preliminary stages of the process as the employer can legitimately demonstrate that s/he does engage in collective bargaining. It is more than likely that none of these workers are in membership of the original union. In any event, it was possible to identify the current membership status of 92% (n=89) of the 97 workplaces where cases were taken, thereby ensuring the continued validity of the survey.

Of the 89 workplaces involved in cases taken by participating unions, just less than a quarter (n=23) were no longer registered with those unions (See Table 7.1 below) meaning all of those members registered at that employment had resigned their membership or otherwise ceased to pay union dues[21]. There thus remained registered with unions a total of 66 of the original 89 companies where cases were taken under the 2001 Act by participating unions. The union organiser with potential responsibility for each was identified, contacted and invited to complete an on-line questionnaire at *Survey Monkey* (see Chapter 5 and Appendices E, F and J). Follow-up conversations with some officials resulted in 10 cases being deemed unsuitable for inclusion in the survey despite some workers still registered in membership. The reasons for their exclusions varied: - in five cases mergers and acquisitions resulted in the workplaces becoming part of much larger enterprises which already recognised unions. In the other five, the relevant unit closed or the relevant grade were made redundant or resigned although members in other units or grades remained employed and in the union but had not been the subject of the claim under the 2001

[21] Unions maintain membership lists, usually called registers, organised by place of employment. If all members in a workplace resign or if they all remain in arrears for a particular length of time (which varies from union to union), that workplace is removed from the register.

Act. There thus remained 56 workplaces for inclusion in the survey. Table 7.1 below outlines the response rates of each of the participating unions.

Table 7.1 – Defining the Survey Population

	SIPTU	MANDATE	CWU	UNITE	TEEU	IBOA	Total	%
Cases Taken by Participating Unions	**67**	**8**	**5**	**4**	**4**	**1**	**89**	
Workplaces not on membership register	**17**	**4**	**2**				**23**	**26%**
Not suitable due to merger/ amalgamation	**9**		**1**				**10**	**11%**
Survey Requests Issued	**41**	**4**	**2**	**4**	**4**	**1**	**56**	**63%**
Completed Questionnaires	**36**	**3**	**1**	**3**	**4**	**1**	**48**	**54%**
Percentage Response Rate	88%	75%	50%	75%	100%	100%	86%	

A total of 48 responses were received representing an overall response rate of 86% although the responses from individual unions varied between 50% in the case of the CWU; through 75% at MANDATE and UNITE; 88% in SIPTU and reaching 100% in both TEEU and IBOA. These 48 responses represent 54% of the cases taken by participating unions and 50% of all cases taken under the 2001 Act.

7.2 – Survey Results - Membership

The data was collected for two reasons: - 1) to determine the extent to which members remained in trade unions after the taking of a case under the 2001 Act and 2) to also understand the extent of their activism, the awkwardly named 'organisedness' from Chapter 5. Respondents were therefore asked four main questions about the membership at each

workplace, dealing with their membership status (Question 3); their representative structure (Question 4); the last industrial relations issue dealt with there (Question 5) and its means of resolution (Question 6). Question 2 concerned the length of time for which they had been responsible for the workplace and Question 8 sought to determine whether they were also the official who had referred the original case (See Appendix J). Appendix M tabulates the results of Questions 3, 5 and 6.

7.2.1 – Length of time for which officials have been responsible for workplaces – Questions 2 and 8

Table 7.2 below details the answers respondents gave to Question 2 regarding the length of time for which they had been responsible for each workplace.

Table 7.2 - Length of time officials had responsibility for workplace - Question 2

	SIPTU	MANDATE	TEEU	UNITE	IBOA	CWU	Total
Less than 1 year	**17**						**17**
1 – 3 years	**16**						**16**
3 years +	**3**	**3**	**3**	**3**		**1**	**13**
Unknown	**0**		**1**		**1**		**2**
Total	**36**	**3**	**4**	**3**	**1**	**1**	**48**

Roughly one-third of officials have been responsible for the relevant workplace for less than one year; another third between one and three years and a third for in excess of three years. Staff turnover is particularly evident in SIPTU, which, as explained earlier, has re-assigned all staff into new economic divisions having traditionally organised along geographic lines, see Chapter 4. This forms part of that union's implementation of the organising model and the consequent changes to union "architecture" required (Lerner, 2003). This is further emphasised in the answers respondents gave to Question 8 where respondents were asked if they were also the official who processed the original claim under the 2001 Act. Responses from each union were as detailed in Table 7.3 on the next page.

Table 7.3 – Current servicing officials who also referred the original claim under the 2001 Act – Question 8

	SIPTU	MANDATE	TEEU	UNITE	IBOA	CWU	Total
Question 8 "Are you also the Official who referred the original case … …under the 2001 Act?"							
YES	5	1	3	3	0	1	13
NO	31	2	1	0	1	0	35
Total	**36**	**3**	**4**	**3**	**1**	**1**	**48**

In SIPTU, only 5 officials out of 36 with current responsibility for a workplace was also the official who processed the original claim under the 2001 Act. Just less than one-third of workplaces have the original official as their local contact. Issues about staff turnover were also raised in some of the interviews with union members, explored in the next chapter. While some changes took place several years after the Labour Court Recommendations, in others they contributed to a sense of abandonment felt by some of the members involved in cases particularly where staff changed soon after the issuing of the Labour Court Recommendation (See Chapter 8).

7.2.2 - Membership Status – Question 3

Respondents were asked to describe the status of the members at each workplace and these are the groupings used in all of this study's subsequent analysis: -

A. whether these members were known to them[22] and/or still paying union dues;
B. if there were some individual / confidential members there but who had little contact with the union;
C. if the union represented members there on an individual basis only;
D. if there was an active core of members but without bargaining rights

[22] Union members sometimes pay their union dues by direct debit to union head office and have no contact with their local union branch office.

E. or if there existed full bargaining rights at that workplace (Question 3 on the questionnaire in Appendix J).

Full bargaining rights were not defined in the questionnaire nor in the letters of invitation to participate; it would be unnecessary to do so for practitioners but for the sake of clarity it is envisaged along the lines of Brown's 2008 definition explored in the previous chapter, that: -

> …any formal dialogue that takes place between employers and representatives of independent trade unions, that has an influence on the employment relationship, can be taken to constitute collective bargaining
>
> (Brown *et al*, 2008, p.3).

Table 7.4 below outlines the responses regarding bargaining status.

Table 7.4 –Bargaining Status – Question 3

Status	**Total**	**%**
A. Unknown to Respondent or non-paying	24	50%
B. Rare or no contact with current union official	6	13%
C. Individual representation only	9	19%
D. Active core of members but without recognition	7	15%
E. Full bargaining rights	2	4%
Totals	48	

Half of all workplaces reported on (n=24), while still on the union's national register were unknown to the local union officials for their area and/or the members had ceased paying union dues, perhaps indicating in some cases more recent closures and/or resignations from the union, see Group A in the Table 7.4 above. In Group B were a total of six (13%) workplaces where there were some individual confidential members who seldom contacted the union. Nine workplaces (19%) involved a membership that the union represented on an individual basis only, Group C. There was an active core

of members but without full bargaining rights in seven cases (15%) (Group D) and in two cases (4%) Group E, the respondents chose full bargaining rights as the option which best described the current status of the members at that workplace. See Table 7.4 above. These then are the categories to which union officials assigned each workplace. Workplace activists or shop stewards might well categorise their own workplace differently. This has happened in one of the ten cases explored in the next chapter (See Ard-na-Gaoithe) but as this chapter deals with survey results only those categorisations remain for now.

7.2.3 – Explaining Membership Levels

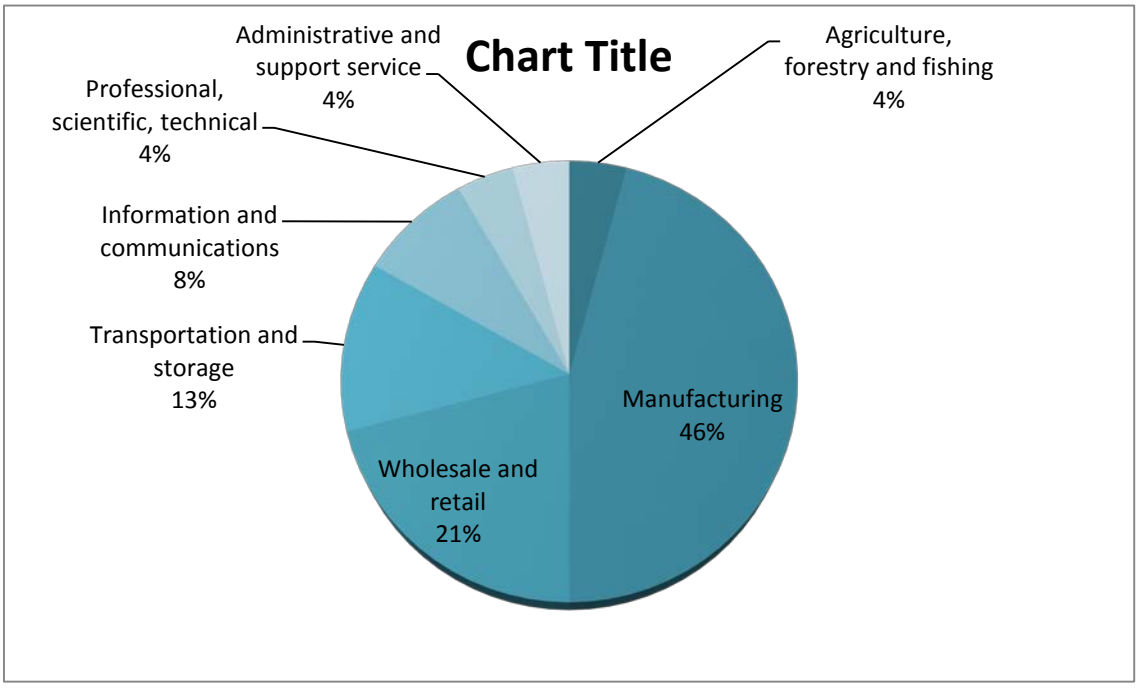
The data above demonstrates quite low levels of membership remaining in workplaces where cases were taken under the 2001 Act, both in terms of actual numbers of workplaces considered 'unionised' and in terms of the actual numbers of union members within such workplaces. Attributing this paucity to the 2001 Act alone is problematic. In light of the serious downturn in the Irish economy in the years between the taking of cases and the undertaking of this research, it is expected that some membership attrition may be attributed to economic factors via redundancies. Yet it was not possible to determine if all of those workplaces no longer on union registers had ceased functioning in the economy; seven of the 24 removed from national registers were found to have closed, but this is insufficient in answering the question.

In order to help determine whether economy was a factor, an examination of the economic sectors in which the relevant firms operated was undertaken. The previous chapter outlined the main economic activity of all firms involved in the 2001 Act, see Table 6.3. The largest single groupings were: - *Manufacturing* at 35%, *Transportation & Storage* (17%); *Wholesale & Retail* (15%) and *Human Health & Social Work* (11%). The economic sector of those firms removed from unions' national registers was also determined. *Manufacturing* and *Transportation & Storage* operations account for half of those workplaces removed from union registers since the Labour Court Recommendations were issued, six and four respectively. Those two sectors combined also account for a 48% reduction in the numbers at work between 2006 and 2011 (CSO, 2012). The reduction in those two sectors

therefore closely matches their reduction in the economy. Conversely *Human Health & Social Work Activities* (n=3) is the only other significant sector amongst removed companies but in terms of numbers at work, it shows an increase between 2006 and 2011 (CSO, 2012).

In setting up the survey population it was found that 24 of the workplaces which remained on union national registers were said by local officials to be unknown to them and/or the members had ceased paying union dues. The economic sectors in which these latter companies operate differ only slightly from those workplaces removed from the registers at an earlier date. See Figure 7.1 below.

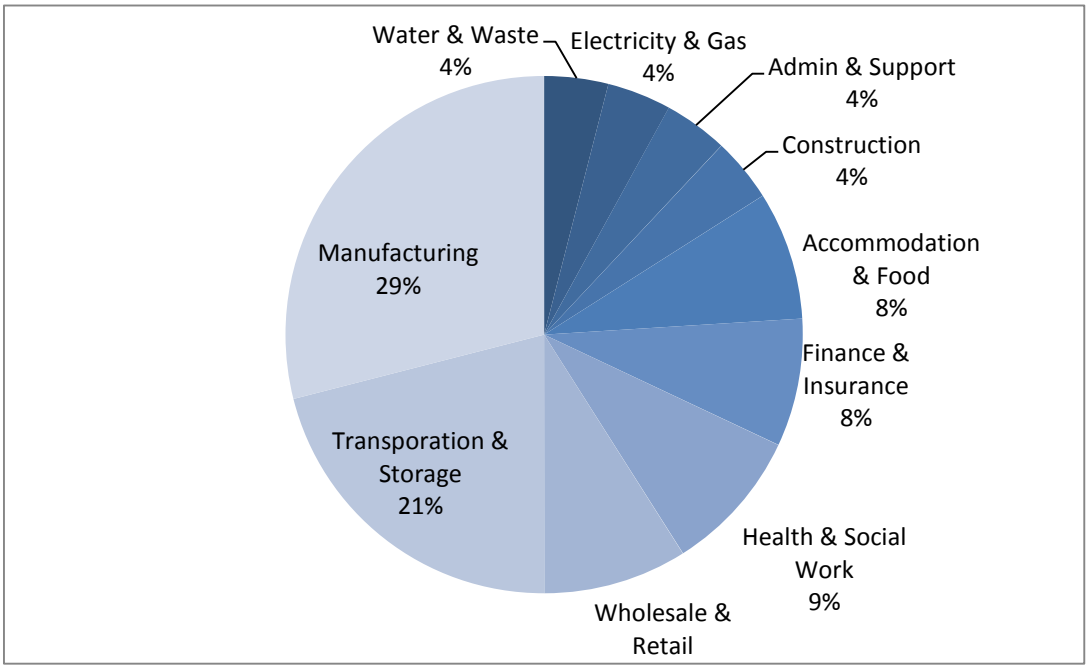
Figure 7.1 – Workplaces locally reported as closed/no members by Economic Sector



While *Manufacturing* is still the largest sector its share is twice what it was in the removed companies and with *Wholesale & Retail* both sectors account for three-quarters of all of these companies deemed by local officials to be not paying or completely unknown to them. See Figure 7.1 above.

Those workplaces remaining in membership were also examined with regard to economic sector. As with the total number of cases taken, *Transportation & Storage* and *Manufacturing* describe half of all workplaces. See Figure 7.2 below.

Figure 7.2 – Economic Sector of Workplaces still in Union Membership



Main economic activity was also compared to membership status groups, A to E, as per survey Question 3. In Group E where respondents report full bargaining, both firms operate in the *Transportation and Storage* sector of the economy. This is hardly significant however as there were 14 other companies in the same sector, one identified as having an active core of members and two where the members seldom if ever contact the union. There is no consistency in the economic activity of the companies in the other groups. In Group D, those with an active core of membership, six separate economic sectors are represented; the nine companies in Group C (individual representation) span six sectors; Group B, four. (Appendix M).

There is then some correlation between the sectors most affected by the recession and those workplaces where unions no longer organise but little of subsequent membership status can be attributed to economic factors. Country of origin patterns seem not to account for any differences either with Irish companies dominating every group; Irish owned firms

represented 68% of all workplaces where cases were taken and 78% of the 24 cases involved in the survey. Numbers of non-Irish firms are so small in each group that no significance can be attached.

What of membership levels within those workplaces where unions still organise subsequent to involvement with the 2001 Act? While union membership levels and density are not necessarily "the sacrosanct indicator of labour's success" (Sullivan, 2010), the levels reported here must be of some concern. Of the 97 workplaces involved in the Labour Court hearings, eight were taken by non-participating unions so their status is unknown; 10 cases were unsuitable for comparison and officials responsible for a further eight did not participate in the survey. This leaves 71 workplaces whose membership status is known and for 47 or 66% of those it is confirmed that they are no longer in membership of the union. This attrition rate seems high but in the absence of exact comparisons with other workplaces which did not refer cases under the 2001 Act, tells very little. Only SIPTU was able to confirm, without elaboration, that its attrition rate for those years is considerably lower than the 66% rate found here.

Levels of membership within workplaces are quite low. It was expected that unions would be reluctant to provide exact membership figures for each workplace so questions regarding numbers or even density were not therefore included in the questionnaire. During the process of tracking each workplace back to the referring union and contacting the current servicing official however, indications were given in confidence of the level of membership in each workplace. In order to preserve that confidentiality, numbers of members are expressed in Table 7.5 below according to whether membership is in single or double figures for those workplaces reported upon in the survey.

Table 7.5 – Membership Levels

Membership Levels	**No. of Workplaces**	**Total 48**
Membership levels of 10 or more		11
Membership levels of less than 10		32
Zero membership		3
Unknown		2

Three-quarters of workplaces had membership in single figures, a good half of those recording just one or two members; none had membership in treble or higher figures. The lack of comparators is again a problem but membership levels such as this are unlikely to be representative.

In addition to difficulties determining the reasons for loss of membership and deciding whether or not such losses are out of line with normal attrition rates, there is also a problem with determining at what point such losses occurred. Did members drift during the 'voluntary leg'; while awaiting the Labour Court Recommendation or in the years since the latter was issued? Was it the process or the outcome which caused the drift? Devine & Halpenny's examination of the voluntary leg procedures (in SIPTU) after just 18 months operation noted the following: -

> What stands out here is the very high membership density in the cases referred – an approximate average of 70%, with a range up to 100%. What is equally clear is that in a small number of cases membership collapsed or discontinued altogether in the course of or as a result of the process
>
> (Devine & Halpenny, 2002, p.5)

Member joining patterns could be discerned in 45 of the workplaces involved in the 2001 Act by reference to some unions' membership records and lists of members or copies of application forms on file. Those patterns were as follows: -

- Seven workplaces record no new members after the issuing of the Labour Court Recommendation
- Twelve workplaces show some joining activity immediately after the issuing of the Recommendation but which then ceases
- Twenty-two workplaces have gaps of between one and five years between the issuing of the Recommendation and the next newly recruited member at that workplace
- Four workplaces show a similar and on-going pattern of new members each year before and after the issuing of the Recommendation. The only significance to be drawn from this is that of these four workplaces, two are those two workplaces in Group E

which have full bargaining and one is from Group D, those with an active core but without full bargaining.

Thus the results of this part of the research are disappointing and point to a need for some means of tracking union membership attrition rates but do at least indicate low levels of new member recruitment amongst post-2001 workplaces.

7.3 – Survey Results – 'Organisedness'

On the basis that there ought to be a distinction between recruitment (of union members) and organising (as per the organising model), this thesis sought not just to examine the levels of membership in workplaces post-2001 Act procedures but also to understand the nature of that membership. In speculating as to the relationship between utilising the 2001 Act procedures and modern efforts at union renewal, there is an obvious need to be able to assess the extent to which members have formed a "'self-organised' organised (*sic*) workplace" (Gall, 2006, p.3), to assess their 'organisedness'. This suggested a number of indicators that might distinguish the 'organised' workplace from one where the trade union model might more resemble a service (Heery *et al*, 2000b); varying levels of "deliberative vitality" perhaps (Levesque & Murray, 2010). Thus the survey included questions regarding representative structure plus recent issues raised and resolved. The results are explored below.

7.3.1- Representative Structure – Question 4

Where respondents chose the first status option in Question 3 (see Table 7.4 on page 119), indicating that the members at the relevant workplace were unknown to them and/or were actually no longer in membership (Group A), the survey skipped to the end of the questionnaire as the subsequent questions regarding representative structure, issues dealt with and their means of resolution would not be relevant. As this option was chosen in 24 cases, there remained 24 continuing cases for the remaining questions.

Table 7.6 – Representative Structure – Question 4

Representative Structure	**Total**	**%**
No. of cases being reported on	24	
There is an elected shop steward	15	63%
There is an elected representative committee	5	21%
There is an elected safety representative	6	25%
One or more representatives are active at other levels in the Union	2	8%
One or more representatives are active at Trades Council or other TU body	2	8%
One or more representatives have been released with pay to attend training or union meetings	5	21%

In Question 4, respondents were asked to answer 'Yes', 'No' or 'Don't know' to a range of questions regarding the existence of shop stewards, elected committees or elected safety representatives at each location and to also answer in the same manner regarding the activities of these representatives outside the workplace. Table 7.6 above outlines the total positive responses which demonstrates a reliance on just one representative at workplaces; 15 or 63% of workplaces had one elected shop steward though only a third of these, five or 21% of total responses, reported the additional existence of an elected representative committee. There is an elected safety representative in a quarter of the workplaces (n=6); in five workplaces the union had succeeded in getting paid release for meetings or training. Activity outside the workplace was minimal; in only two cases was there any reported involvement within the union at sectorial or divisional level or outside the union at, for example, Trades Council. In nine workplaces respondents report the lack of any representative structure; no shop steward; no committee, no safety representative, no involvement in the union internally or on outside bodies.

Not surprisingly the likelihood of there being a representative structure increased the further a workplace was along a rough continuum between Group B who rarely contacted the union to Group E with full bargaining rights. Both workplaces in Group E with 'full bargaining rights' reported the existence of shop stewards, of elected representative committees and the acquisition of paid release. One of these also reported the existence of an elected safety representative. All seven workplaces in Group D, with an active core of members, reported the existence of an elected shop steward; two of these also included an elected representative committee and one had secured paid release. See Table 7.7 below.

Table 7.7 – Bargaining Status and Representative Structure – Questions 3 and 4

Bargaining Status and Representative Structure	Total	Shop Steward	Elected Committee	Elected Safety Rep	Sector / Divisional activity	Trades Council or similar	Paid Release
B - Rare or no contact	6	1	-	-	-	-	-
C - Individual Representation	9	5	1	2	1	2	1
D - Active Core	7	7	2	2	1	-	1
E - Full bargaining rights	2	2	2	1	-	-	2

The presence of elected safety representatives was reported in some workplaces across all groups except those in Group B those with little or no contact with the union. They may exist or existed in the past but the current union official is unable to report on that. In each of the two workplaces in Group E, with full bargaining rights, there was yet no reported activity outside of the workplace. In fact none of the bigger unions reported any activity outside of the workplace; only TEEU and IBOA reporting some, perhaps reflecting the greater competition for places in

larger unions. Alternatively it could be easier for officials in smaller unions to be aware of the activities of shop stewards and in the larger unions officials may not have been responsible for members for very long as already explored in Question 2 above.

7.3.2 – The nature of issues raised and their means of resolution – Questions 5 and 6

Respondents were asked in Question 5 to report on the nature of the last completed issue dealt with at those workplaces under examination. This included a question on the exact nature of the issue, followed in Question 6 by questions regarding how the issue was resolved. Twelve of 21 workplaces reported a collective issue being the last issue raised and resolved. Half of those collective issues were to do with pay; the others were hours of work (2) and one each of redundancy, pension, transfer of undertakings and one collective disciplinary issue (See Appendix M).

The two workplaces with full bargaining rights in Group E both reported collective issues (pay and hours respectively) as the issues last raised there and both were resolved at 3rd party, either the Labour Relations Commission or the Labour Court. Of the seven workplaces reporting an active core of members but without full bargaining rights (Group D), pay (n=3) and hours (n=1) again featured and along with one transfer of undertakings case represented five collective issues raised at those workplaces. The other two issues raised in Group D workplaces concerned individual disciplinary matters.

Not surprisingly individual issues dominated in Group C, those workplaces where the union represents members on an individual basis only. There were however three collective issues reported out of nine cases. There was some confusion with the responses regarding two Group B workplaces, those that rarely if ever contact the union official. In two cases contradictory responses were given in the survey, where union officials reported a collective issue in Question 5 despite having already identified in Question 3 that there were just a handful of confidential members at that location. Telephone calls to the two union officials revealed that they were reporting on the issues they had taken to the Labour Court under the 2001

Act those being the last issues raised at that workplace, which were indeed collective. They had dealt with no other issues there since. The issues reported on in the four other workplaces in Group B were two individual and two collective issues regarding disciplinary matters and pay respectively.

7.3.3 – Explaining levels of 'Organisedness'

If there were difficulties reaching causal explanations for membership patterns in the membership section of this chapter, then explaining levels of 'organisedness' is no easier. Yes, there is a correlation between bargaining status and representative structure; the further a workplace is along a continuum between 'rare contact' with the union official and 'full bargaining' the greater the likelihood that there is a shop steward, an elected committee and a safety representative. There is also a greater likelihood that collective issues are dealt with as opposed to individual disciplinary issues which are more likely at the other end of the continuum. Examination of the means of resolution of the last issue raised in each workplace revealed little. Part of the thinking behind this question was that the more 'organised' workplaces would demonstrate an ability and/or tendency to resolve issues in-house, by the shop steward. There was little evidence of this even in the otherwise more organised workplaces, but the question was answered by the union official who might not in any event have been aware of any issues resolved locally. The questionnaire asked about the last issue raised with them as officials. The fault may lie with reliance on surveys they being somewhat restrictive and dry by their nature, but viewing union officials as 'the union' is also problematic. The cases in the next chapter demonstrate that a different viewpoint is often expressed by the shop stewards and members at workplace level and that there is sometimes a level of activity beyond what union officials can see. Indeed is that not what should be expected from the "self-organised organised workplace"? (Gall, 2006, p.3)

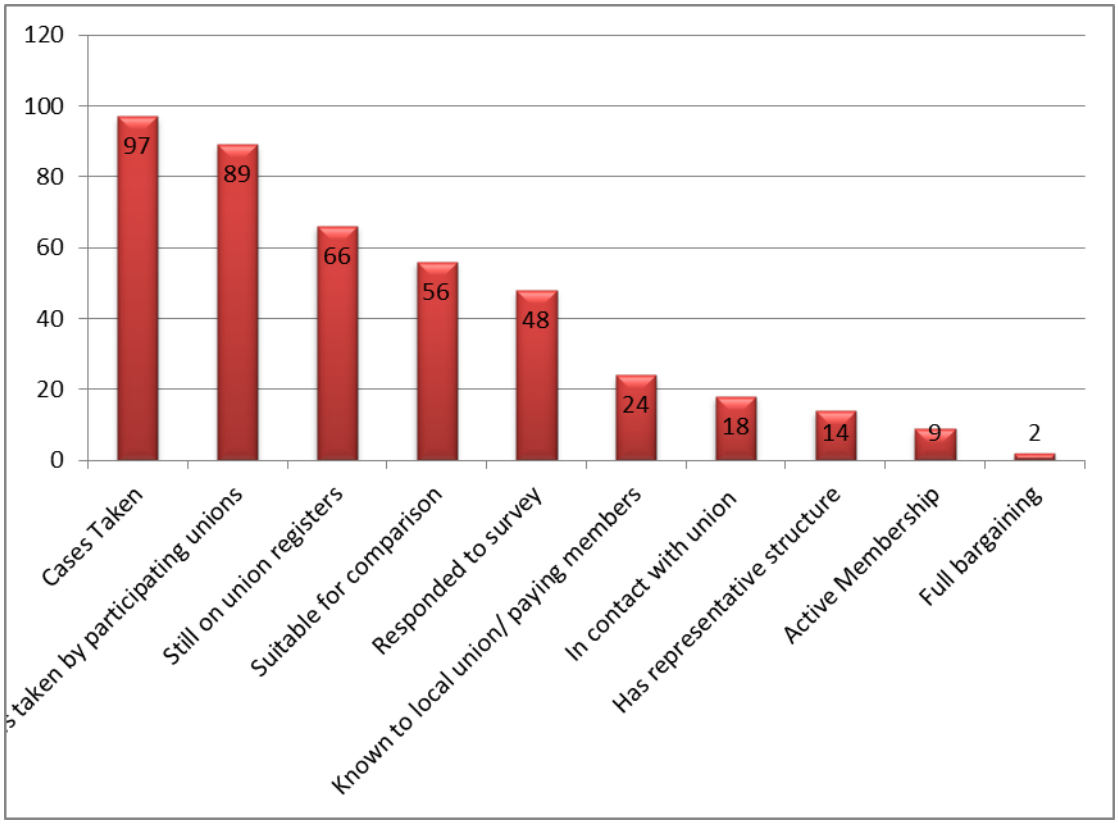
As with the interpretation of membership figures, the absence of comparator workplaces is keenly felt and makes it difficult to state with conviction that the levels found in these workplaces are at odds with those found in the generality of workplaces in union membership. An important

contributor could also be workplace or membership size; the largest groups of members are found in Groups E and D; membership levels in Groups B and C are all in single figures with a significant number recording just one or two members. Whether this refers to low density rates or low numbers in employment is not clear, but in either case, activity beyond the level of a single shop steward is nigh on impossible in those circumstances.

7.4 - Conclusion

Figure 7.3 below summarises the membership, bargaining and representative status of workplaces involved in the procedures provided for under the Industrial Relations (Amendment) Act, 2001.

Figure 7.3 – Membership, bargaining and representative status



In summary, of all the cases taken in 97 workplaces, the membership status of 89 has been established through contact with the trade unions involved. Sixty-six workplaces are still recorded on union registers maintained at each union's head-quarters. Of those, 10 are unsuitable for further comparison as merger and acquisition activity means the workplaces on the register are not the workplaces involved in the original

case. The potential servicing official of each of these 56 workplaces was identified and contacted and invited to complete the questionnaire as attached in Appendix J. Forty-eight did so and reported that a further 24 of these, while listed on the union's national register, are either unknown to the local union official or the members listed are no longer paying their dues or no longer working at that location. A further six, while consisting of paying members and of which the union official was aware, are not in contact with the union. This and in some cases a lack of familiarity with workplaces may be explained by the short length of time for which some officials have held their current responsibilities.

The recession in the Irish economy may have contributed somewhat to the loss of membership through redundancies but otherwise the economic sector (nor country of origin of the employer) makes no substantial difference to the retention of members or the subsequent bargaining or representative status. The nature of issues raised is closely linked to the bargaining and representative status identified at each workplace. Collective issues such as pay and hours are more likely to be reported where there is greater union activity and where the workers and their union have had some success in achieving collective bargaining despite the stated prohibition on same in the 2001 Act. Individual, mostly disciplinary issues are those raised where the union is least active and where there is individual representation but without any collective bargaining. A concern that emerges, of a changing union role, from collective bargaining to individual representation, has already been raised in the discussion on the Labour Court Recommendations and the survey results confirm the trend.

Fourteen workplaces have some kind of a union representative structure, nine of which report an active membership. In two (4%) of 48 cases reported on in the survey, the official reports the existence and exercise of full bargaining rights. Attributing cause to the 2001 Act is problematic but in terms of one of the supplementary research questions, i.e., whether the 2001 Act provides for union recognition "by the back door" (Creaton, 2005) or otherwise, the response must be a resounding no. Yet collective bargaining does exist albeit in a few locations. The next part of this study seeks *inter alia* to understand how this happened, how those two groups of workers were successful in establishing and maintaining collective

bargaining in an otherwise bleak picture for union membership and collective bargaining.

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Chapter 8

Return to "…the complex interactions of agency and dimension"

(Willman & Kelly, 2004, p.5)

This chapter continues the journey originally described in Chapter 5, from the overview of documentary analysis of the Labour Court Recommendations in Chapter 6 and moving in to the examination of union membership levels and of the nature of such union membership via a survey of union officials (Chapter 7). This chapter gets right to the core, to the workplace itself and those involved at that level. It is here that the data becomes rich and contributes further to some of the unique findings of this study.

The data reveals the importance of each union's organising campaign; how the campaigners (union staff, activists and shop stewards) set about organising the workers and representing their interests. An essential point emerged regarding the use of the procedures under the 2001 Act, whether it was viewed by the union at local level as a means or an end in itself. There were significant differences in outcome for those campaigns that consisted of a referral to the Labour Court as a last resort, and those campaigns where the referral to the Court was just one of a number of 'tools' used in a campaign with a broader focus and where not all of the members' interests were subject to the Labour Court Recommendation. This has important implications for mobilisation theory and for the organising model of trade unionism. The data also echo some of the findings regarding the statutory recognition procedure in the UK: - the "shadow and demonstration effects" explored by Gall (2005 and 2010) particularly with regard to the effects of the Ryanair case, and recognition of the "contending forces [that] come into play" (Moore, 2004, p.13) once the referral is in process. As in the UK, there are questions raised regarding the "relationship between legislation and industrial practice" (Moore, 2005, p.363). Leaders played a pivotal role in each campaign, in terms of both union officials and local activists. The chapter concludes in agreement with McKay *et al*, that the "… statutory procedure … cannot guarantee meaningful bargaining in the face of

employer opposition: ultimately this has to come from union organisation in the workplace" (2006, p.99).

The chapter proceeds as follows: -

Section 8.1 introduces the ten cases examined and situates them according to the continuum outlined in the previous chapter, from Group A with no members or no contact with the union through Groups B, C, and D, to Group E with full bargaining rights.

Section 8.2 examines the cases through the prism of theories on mobilising and organising seeking to establish to what extent the campaigns run matched or contradicted ideal types and thereby continuing the measurement of 'organisedness'. It also explores the extent to which the Labour Court Recommendations were implemented and whether there was substantive improvement in the conditions of employment as a result.

Section 8.3 returns to the idea of the continuum and compares the processes discussed in 8.2 with the outcomes in 8.1, exploring the connection between how campaigns were run and the subsequent membership, representative and bargaining status emergent in each case.

8.1 – Ten Representative Cases

The selection of cases for inclusion in this part of the study did not go according to plan but did eventually achieve a representative group. Starting with Group E, there were only two such cases with full bargaining rights, referred to hereinafter as Deltrans and Pegasus[23], both warehouses. The referring and servicing officials were easily sourced and more than willing to participate and encourage members to do likewise. Those interviews were set up and conducted early on in the project. Likewise two Group D workplaces were available, the firm referred to herein as Garry's

[23] In order to protect the workers at each location and to afford some discretion to union staff, all workplaces and individuals' names are anonymised.

and one other, a charity. Interviews in the latter had however to be postponed for a number of months due to extended leave on the parts of both the servicing official and of the shop steward. Garry's went ahead and during those interviews the referring official offered to also participate on another case, Rosses, a Group C case bringing the total at that stage to two Group E workplaces, one Group D and one Group C; two warehouses and two manufacturing plants.

Two Group B workplaces were available, Blackwater and Ard-na-Gaoithe, from the health and services sectors respectively. The confusion in Question 3 of the survey, between representation and activism now emerged. During the Ard-na-Gaoithe interviews it quickly became clear that although the servicing official had coded the workplace as Group B meaning the union represented members there on an individual basis only, there was a level of activism at that site which indicated it could also be coded as Group D, with those where there is an active core of members. It was decided to accept Ard-na-Gaoithe as the second Group D workplace along with Garry's in place of the charity which was then dropped from the study. Another workplace from Group B was sourced, Oakchurch, a second from the services sector. There seemed little hope initially of getting Group A workplaces, those with no members remaining or who were not in contact with the union official. However a chance remark during the Deltrans interviews led the way to Led-Pack a campaign in another warehouse in which all the main players from Deltrans had played a role. After many fruitless e-mails and telephone calls a former member at another Group A workplace, a care home here referred to as Knockrada, agreed to interview and the referring official was then also contacted and interviewed.

Table 8.1 below depicts the cases according to the membership status defined in Question 3 of the survey (See previous chapter) except for Ard-na-Gaoithe, and showing economic sector and geographic location and type.

Table 8.1 – Ten selected cases by membership status, economic sector and location

Workplace	Membership Status	Economic Sector	Location
Deltrans	E - Full bargaining	Transportation & Storage	Urban Mid-West
Pegasus	E - Full bargaining	Transportation & Storage	Urban East
Ard-na-Gaoithe	D – Active Core	Services	Rural West
Garry's	D - Active Core	Manufacturing	Urban South-East
Rosses	C - Individual Representation	Manufacturing	Urban South-East
Canalcon	C - Individual Representation	Manufacturing	Rural North
Blackwater	B – Confidential / Rare contact	Health	Urban West
Oakchurch	B - Confidential / Rare contact	Services	Rural Midlands
Led-Pack	A – No contact	Transportation & Storage	Urban Mid-West
Knockrada	A – No contact	Health	Rural Midlands

The cases are relatively representative of the generality of cases taken by economic sector: - there are three manufacturing plants, three transportation & storage facilities, and two each from the health and services sectors. It was not possible to get workplaces from Retail & Wholesale, the only other significant sector. The workplaces are geographically dispersed around the country: - one on the East coast; two each in the South-East, South-West, the West and the Midlands and one in the North. Four are in rural locations, two in small towns and four in larger cities. In keeping with the generality of claimants identified in Chapter 6, seven of the ten workplaces are Irish-owned and most of the workers involved are semi-skilled; only the two health sector cases had mixed occupations.

A total of 36 interviews were conducted in the ten cases; the referring official in all cases; the servicing or potential official participated in nine cases though all completed the questionnaire as explored in the previous chapter. Interviews were also held with a mixture of current and former members, activists and shop stewards in all cases except Oakchurch where there were no members and no contact details available for former

members. Table 8.2 below lists the interviewees in each case and also indicates whether the union case file was made available.

Table 8.2 – Ten selected cases - Interviewees

Workplace	Group	File Available	Referring Official	Servicing Official	Ordinary Member	Activist	Shop Steward
Deltrans	E	No	Conleth	Lesley	Rory (F)	John (F)	Tim Martin (F)
Pegasus	E	Yes	Eileen	Kelly	Marius Liam		Karl (F) Eamon
Ard-na-Gaoithe	D	Yes	Kevin	Frank (F)			Todd
Garry's	D	Yes	Morgan	Fred			Eric
Rosses	C	No	Morgan	Fred			Corina Kenneth
Canalcon	C	No	Oran		Peter		William
Blackwater	B	Yes	Kevin	Harry Frank (F)			Caroline
Oakchurch	B	Yes	Owen				
Led-Pack	A	No	Conleth	Majella Lesley (F)	Rory		
Knockrada	A	Yes	Ross	Ross	Sara		

All named are current post-holders except where names are followed by (F) indicating that the individual formerly held the role under which they are listed. In addition it should be noted that all of those listed as current shop steward with the exception of Tim in Deltrans, and Eamon in Pegasus were also present and active in the early stages of their respective campaign and could also be listed as former activists. There were redundancies at Garry's shortly before the interviews took place there and technically Eric was no longer shop steward as he was one of those made redundant.

Rather than have confusion about the use of the word organising, and distinctions between organising and recruiting, the remainder of this chapter will refer to union campaigns and campaigners meaning union staff

and activists/shop stewards. Campaigns are referred to according to the assigned name, Deltrans or Knockrada for example and it is the campaign which is referred to unless the text mentions the employer.

8.2 – Ten Cases through the prism of 'organisedness'

An essential question regarding the effect of the 2001 Act is how it affects those at the level of the workplace; how it interacts with current approaches to union purpose and renewal, particularly mobilisation theory and the organising model of trade unionism. Of equal importance are questions concerning agency and dimension; the relative merits of relying on mobilisation or institutional arrangements, and concerns about process and outcome. It is time then to return to the roots of these ideas, to Charles Tilly and his framework of "interest, organization, mobilization, opportunity and collective action" (1978, p.7). This part of the chapter views the campaigns in each of the cases through the prism of 'organisedness' a hybrid of mobilisation theory, the organising model and the extent to which the positive effects of each continue after the initial campaign. A pattern is found: - that those cases where the focus was on mobilisation, where there were higher levels of 'organisedness' were more successful in improving conditions, in building activism and in achieving recognition than those with a singular focus on the institution, on the 2001 Act alone.

8.2.1 - Interests

These are a group's perceived losses and gains arising from their engagement with others, in this case a group of employees and their interaction with their employer. A necessary starting point in this perception is a sense of "injustice and grievance" (Kelly, 1998, p.27) contributing to a sense of 'us and them' with the 'us', the workers, attributing blame to 'them', the employer. The distinction between interests and issues (Simms, 2007a) has already been noted but the focus in this chapter is on issues, those matters workers raised with officials and/or were the focus of the Labour Court Recommendations. In the ten cases studied here the issues varied little, rates of pay generally but often complicated by employer behaviour such as reneging on a relatively small bonus payment or being selective as to its application.

The cancellation or perceived unfairness of bonus payments was a trigger in three cases, Deltrans, Garry's and Canalcon. In late 2002, Deltrans management advised workers that the company was not doing well and that it intended to discontinue payment of the annual €50 bonus at Christmas. Conleth, the local union official, says he

> … couldn't believe [his] luck the day Ringo [Deltrans shop steward] came into the office and said "the gobsh***s outside there have gone and cancelled Christmas" and shoved 160 [membership application] forms in to my hand!

Conleth had been representing members individually for about two years on mostly disciplinary issues with some limited success but had never been able to increase membership beyond 45 or so nor to bargain collectively. The employer having "cancelled Christmas" (John at Deltrans) was an emotive enough issue to wrought a sense of injustice in these workers who had for quite some time been indifferent to the union's organising efforts. The bonus itself was paltry; it was the sense of unfairness which united the workers, inculcated a 'them and us' feeling.

The bonus and employer mismanagement were also the triggers that stimulated union membership at Garry's. Eric, a shop steward at the time of the interview, was, in his own words "just an ordinary member" at the early stages of the campaign and recalls management circulating a list of workers and the bonus paid to each. Eric was a production worker and he and his colleagues felt particularly hard done by as "it was us on production putting out the big orders and they [other grades] were making money on our backs" (Eric). Their ire at the time was directed at other grades rather than the employer.

A history of dissatisfaction with individual pay rates and proposed changes in the bonus system prompted the workers at Canalcon to approach a local trade union official, Oran. He recalls well the day "two lads arrived looking to join … saying others interested too". He had had other similar approaches over the years that "went nowhere" so was not overly enthusiastic at first but agreed to meet whoever was interested in joining in a local hotel the following Friday evening.

> I shoved 10 or 12 [membership application] forms into my pocket on the way and when I got there the whole place had showed up, operatives, fitters and supervisors, the lot, it was great but I had to get someone to dash back to the office for more forms (Oran)

Oran reports a long list of issues raised by these workers; different issues for different grades and locations, but those "shouting loudest" were concerned mostly about the bonus.

As explained in Chapter 4, the social partnership's 'national wage agreement' was used as a benchmark for pay increases beyond the unionised sectors. At Blackwater, in its first two years of operation it paid nurses, but not support staff, the public sector rates of pay and honoured the percentage increases under national wage agreements for both categories of staff. In 2006, claiming a financial crisis, it failed to honour the increases due that year prompting large numbers of both support staff and nurses to contact the local general union. The failure of Rosses to pay national wage agreements was also a major bone of contention for the workers there.

A change in ownership triggered an upsurge of interest in union membership in several cases. At Ard-na-Gaoithe a new owner fell afoul of the local population (which included staff and their families) by claiming sole fishing and boating rights along sections of the lake and by disputing long-used walkers' right of way through the woods where the complex was located. He also replaced the General Manager who had been there for 27 years, part of the rural community where the complex was located and popular with staff and locals alike. "If he could replace him, none of us were safe" (Todd, shop steward at Ard-na-Gaoithe) prompting other grades of staff to join. The campaign here was a lively one, sometimes fought in the community, on local radio and newspapers; the referring official, Kevin, was politically active and adept at using the media. He describes the campaign as "brilliant" and "ideal for its iconic location in a small community, picture perfect really with its history, you can just see the master and servants in the castle". While a change of ownership was the trigger at Knockrada, Sara a student at the time of the campaign "wasn't too bothered" as she lived with her parents and had support there. Her concerns were more in relation to the plight of non-national workers and

the patients than herself as worker. Similarly at Rosses where there was "a lot of infighting" and where "a real sense of grievance was just not there" (Morgan).

Organising theory advocates the selection of issues which are "widely felt; deeply felt; winnable in part" (Banks & Conrow (a), n.d., n.p.); this was certainly the case in Deltrans. The reverse may explain the later lack of success at Led-Pack, which was targeted deliberately by Conleth who had been so successful at Deltrans. He felt he "had to think strategically and protect our Deltrans members' work, you know, they did similar work for the same customer on a lower rate of pay". He organised the Deltrans workers wearing their Deltrans uniforms to distribute leaflets outside the Led-Pack plant calling for parity of pay. Rory still works at Led-Pack and explains why the issue was not widely felt. He says "the core of the union at Led-Pack was the warehouse, that's where all the members came from" and they "alienated themselves" by seeking the Deltrans pay rates.

> Those were warehouse rates only, there was nothing [in the Deltrans pay scales] about a production line, because they didn't have one, but we [at Led-Pack] did and they forgot that (Rory)

In addition, the production line consisted mostly of non-nationals and "they didn't get it ... they thought that's the Irish looking after themselves and expecting us to support them" (Rory). The shop steward at Canalcon, William, reports something similar regarding the bonus there. He says this could never have been resolved as they did not present a united front. The employer decided to cut a 7% bonus for those employed after 2003 to 4.5% while those with longer service could retain the higher rate. When they tried to resolve this those who retained the 7% did not want any claim taken but "weren't upfront with Oran about it". He concludes that "there isn't a union in the world could sort that one out" (William).

Heery *et al* (2000*b*) point to the importance of justice-and-dignity type issues and Organising manuals also exhort campaigners to "express campaign goals and issues as a fight for social justice" (Banks & Conrow, a, n.d., n.p.). Deltrans certainly made a justice-and-dignity issue of an emotive "cancelling of Christmas" over a mere €50, a pathetic sum by

comparison with the 17% pay increase and incremental salary scales later achieved. The campaign at Ard-na-Gaoithe had something of the David and Goliath story to it which Kevin happily exploited. Knockrada could have made more of the plight of non-national workers at that location, used it to create a campaign about justice-and-dignity, but seems not to have done so, and concentrated on the bread-and-butter type issues of the Irish membership.

8.2.2 - Organization

This "refers to the structure of a group" (Kelly, 1998, p.25), how they organise themselves. Simms concludes that the "sustainability of union organising campaigns rests on ... [a] ... combination of interest formation and representation both *within* and *beyond* the workplace" (Simms, 2007a p. 450), both internally in the workplace and externally in the wider union movement and society. Important organisational issues found in this study include these matters but also union density and the union campaign itself, where and how the workers organised and how campaigners dealt with minority groups.

Within the workplace - At Ard-na-Gaoithe the union campaign was "strong on communication" (Todd) and had "a compulsion on participation" by all members, making them all attend general meetings and participate in every decision (Kevin). For the first meeting at the LRC Todd says "we already had a committee, a rep [representative] from every department and all eight of us filed into the meeting; that knocked them". All of those involved in Deltrans noted the strength of the union organisation at this plant. Martin and John were elected shop stewards at Deltrans when membership increased substantially in 2002 but had also been union activists in previous employments. They describe a very organised and focussed union campaign at Deltrans. "We were propagandists, building mountains out of molehills" and "leading management into battles we knew we could win" (Martin). Management at Deltrans had been dealing with the union official on individual matters, though only ever meeting him off-site and never putting anything in writing. Nonetheless campaigners realised the value of this for demonstrating "union instrumentality" (Frege & Kelly, 2004, p.34). John says "it was handy to have the individual cases going, that kept the

union profile up, kept union in people's minds" while they used the system of rotating shifts to systematically target all of the workers and ensure all were signed up.

Minority Groups – Union campaigners at both Pegasus and Deltrans were aware of some of the minority groups amongst the workforce and took care to address their issues, or at least those groups which might materially affect their case. At Deltrans the union organising committee identified a weak point for them whereby 40% of the workers were employed by an agency and not directly by Deltrans. The committee advised the agency workers that

> ...once we get to the table the first item on the agenda would be all agency workers removed from the site or else made direct [employees] so they all joined too
>
> (Martin, former shop steward)

At Pegasus the union approached the company regarding English language classes for migrant workers on the production line and reached an agreement whereby the union would provide the classes for its members and the employer would provide the facilities. This was later a factor in the firm's winning of an award. Yet it is only in 2013, some 7 years later that clerical workers are being targeted. Karl and Eamon, the shop stewards reported some limited success this year in recruiting two or three of "the girls in the office" but that grade was unimportant to them in the initial stages of the campaign.

At Knockrada, Sara, though otherwise "not too bothered" was upset at the way some of the non-nationals were being treated.

> Those nurses worked dreadful hours. One of them, straight from India, never got overtime, no holiday pay, she was owed loads ...the Philippine nurses, well they were institutionalised you know, they thought it was normal

Yet Ross, the union official makes no mention of this group of workers at all in his interview and seems not to have approached them regarding membership. Nowhere in the Knockrada file or the media coverage of the

case, is there any sense of an emphasis on the difference between "workplace injustice and union justice" (Johnson and Jarley (2004, p.557). Todd noted at Ard-na-Gaoithe that the Philippine workers never joined the union. Probing revealed that they worked and lived as a group and were distinct from the other workers as they worked in a restaurant in an annexe separate from the main complex. "There wasn't an issue really, there were a few Polish and Czech people working here in the main complex and they joined when the rest of their Department did" (Todd).

Beyond the workplace –The survey reported on in the previous chapter highlights fairly low rates of outside involvement specifically at Trades Council or at Sector or Divisional levels within unions with only two out of 24 workplaces recording any such activity. Some few exceptions arose in this part of the study. Martin and John when they worked at Deltrans were instrumental in organising other plants owned by the same firm and also established and served on the European Works Council. However those currently in membership there have no outside involvement on the Trades Council or at sectoral, divisional or national level in their union. At Pegasus, Karl sometimes takes annual leave to attend training on occasions when he is unable to acquire paid release and on his day off has shown support to two local groups of striking workers. These are exceptions. In the weeks preceding the interviews the Irish Congress of Trade Unions (ICTU) had organised major anti-austerity demonstrations; a national protest in Dublin on the 26th November 2012 and local demonstrations in several locations on the 9th of February 2013. None of the member interviewees had attended any of them and the majority were unaware of the events entirely.

While levels of wider union involvement are low now some years after the initial organising of these workers, there also seems to have been little involvement at the time of the original campaign even just in terms of moral support for one another. Take Rosses and Garry's as examples:- both located in the same town each within five minutes walk of the union office; were both organised at the same time by the same referring official; attended at the LRC and at the Labour Court under the 2001 Act within weeks of one another and have the same servicing official. Yet there was no connection between them; none of the member interviewees at one knew the

others nor were aware that they shared similar difficulties with their employers.

Union density – While accepting that union density need not be "the sacrosanct indicator of labour's success" (Sullivan, 2010) nevertheless unions cannot exist without members and there is in any event a critical mass needed to have any effect at the workplace. Determining numbers and density levels in the cases under review here was difficult. In some cases unions provided information while in others the information was collated from information on union files such as copies of application forms or attendance sheets at meetings or for ballots. This was augmented by the recollections of officials and shop stewards though the "twin problems of veracity and recall" (Field *et al*, 2005, page 55) should be borne in mind here as with any such recollections. Below is the information on each workplace after which Table 8.3 below on page 148 shows the resulting estimates in tabular form.

Deltrans - Union density at Deltrans reached the 100% mark at this particular location after the issuing of the Labour Court Recommendation and other depots in the same firm were subsequently organised. When its main customer, PC Ltd, closed its manufacturing plant there were disastrous consequences for Deltrans. The plant under examination here which once employed 300 now employs less than 50; 38 of those are in the warehouse with 25 in membership of the union.

Led-Pack - Conleth thinks union membership at Led-Pack never passed 40 and the union records for January 2010 (a few months after PC Ltd closed) show 26 names 14 of whom were in arrears. The following year that reduced to 4 and from January 2012 there has been just one member recorded there, the constant Rory.

Pegasus - Consistent with Eileen and Karl's description of events, the membership records at Pegasus show 15 new members in May of 2005 and an additional 5 later in the year. A further 10 joined during 2007. There are 4 or 5 new members each year since then, though likely to be replacement workers for those leaving or retiring as membership has

remained consistently between 30 and 33 members since 2010 out of an average workforce of 45.

Knockrada - The Knockrada file records the names of 10 members voting in a ballot on industrial action in June 2005, reducing to six by January 2006 when they voted to accept the Labour Court Recommendation. Records from 2010 show just two in membership, one joined just before the Recommendation was issued and one afterwards but neither name is on either ballot list. None of the original workers associated with the claim are in membership of the union at that location, though one has been located working elsewhere and still in membership.

Blackwater – the first members joined at Blackwater when it opened in 2004 with two or three joining each year up to 2006. Surges in membership are then noticeable when the employer first announced its changes to the pay structure and again just in advance of the Labour Court hearing. Kevin claims he had about 90 members at one point; Caroline the shop steward says 70; Frank says it "was well down" from those figures by the time he took over from Kevin and it now stands at 20. If there were circa 80 members there in 2006, density at that time is estimated to be at around 50%. Staff numbers have trebled since then and density now is likely not to exceed 15%.

Rosses - Early problems with union density at Rosses appear not to have been resolved. After the initial eight workers joined in 2005, a further five joined just before the Labour Court hearing. Since then four joined in 2007; two in 2009 and one in 2012 though total members in benefit has remained at 11 or 12 members at all times in this workplace with approximately 85 employed.

Garry's - Though the union claimed at various times to have a significant number of members, suggesting 35 at one point, and Eric the former shop steward says all production workers were in membership, the records show five in membership when the first approach was made to the company. A further five joined later in 2005 and five more just before the Labour Court hearing. Since then there has been one new member in 2008; two in 2009 and one in 2011. The records show a total of between 12 and 16 benefit

members each year to 2012 and as a result of redundancies there are now only eight members remaining, Eric is unemployed. Perhaps density reached 50 – 60% of the production workers at one point but quickly reduced to a third or less and now stands in single figures.

Canalcon - Oran's recollection regarding members joining en masse in 2005 is supported by the membership records. Thirty-five workers joined between February and March when the first Labour Court Recommendation was issued; with one other joining just before the Determination was issued and one other directly afterwards. It took another five years before one new member was added in Canalcon when between May and October 2011, 17 new members are recorded, shortly after a change in ownership. Current membership stands at 30. Density now is about 56% due to the influx in 2011 but had been less than 40% for the five years prior.

Ard-na-Gaoithe - Both Todd and Kevin claim high rates of union density were achieved during the campaign, 70% and 90% respectively. If their estimate of 100 workers is correct then, from the records to hand, density was significantly lower than either had claimed. Thirty four workers joined the union during 2002 and a further two or three each year up to 2012. Numbers remained around 30 up until redundancies in 2010 and there appear to be only six paying members currently. A further 11 are on the books but are in significant arrears[24]. If that latter group are included it brings current density to about 15%.

Oakchurch - Membership records are not available for this workplace but Owen claims 50% of the grade in question were in membership at the time the case was taken. There were major changes afterwards. There had been a pattern of lay-off during the winter months and re-hire the following spring. Few if any of the claimants were recalled in spring the year following the issuing of the Labour Court Recommendation but "the usual pattern there is they join when there is a problem - we resolve it and we

[24] It transpires some of these may be paying their union dues into the wrong account.

hear no more until the next problem" (Owen). There are currently no members at that location.

Table 8.3 below shows current membership numbers in each location with estimates of union density at the time the Labour Court Recommendation was issued and again at the time of research 2012/2013. Apart from Deltrans and Pegasus with density levels of 66% and 70% respectively, rates are very low in the remaining cases. Blackwater, Rosses and Ard-na-Gaoithe at best are at 15% and the others in single figures. Oakchurch, Led-Pack and Knockrada have no union membership at all except for Rory at Led-Pack. Redundancy has been a feature in some cases (Deltrans; Ard-na-Gaoithe; Garry's; Oakchurch and Led-Pack) and expansion at Blackwater. Nonetheless Deltrans and Pegasus stand out in terms of density levels and the consistency of same since they were first organised.

Table 8.3 – Ten selected cases - Membership and density levels

Workplace	Group	Current Membership	Density before LCR	Density 2012 / 2013
Deltrans	**E**	25	100%	66%
Pegasus	**E**	33	70%	70%
Ard-na-Gaoithe	**D**	17	30%	15%
Garry's	**D**	8	50%	≤10%
Rosses	**C**	12	15%	15%
Canalcon	**C**	37	70%	56%
Blackwater	**B**	20	0%	15%
Oakchurch	**B**	0	50%	0%
Led-Pack	**A**	1	10%	0%
Knockrada	**A**	0	24%	0%

8.2.3 - Mobilization

Atzeni (2010) disputes the essential role of leaders particularly with reference to workplace leaders and mobilisation theory (Kelly, 1998). Other studies emphasise the role of activists (Darlington, 2001; 2002; Fairbrother, 1996; 2000; Batstone *et al*, 1977; Beynon, 1973) while organising theory that of union officials or organisers who will help to frame issues particularly those which might not be "spontaneously identified" (Simms, 2007(b), p.125); "identify and construct common interests among a diversity of interest groups" (Simms, 2007(a) p.439) and "build the confidence of activists" (Simms, 2007(b), p.127). This study notes the role of each type of leader including those with national responsibilities.

National/Senior union officers played varying roles in these cases, twice brought in by local officials to talk to the members to help get them out of what were perceived to be difficult situations. In Deltrans, the workers voted to go on strike when the employer refused to implement the Labour Court Recommendation. Management made an interim offer of 14% in light of the pending strike. Tim (current shop steward) recalls the reactions to this, particularly that of Conleth (the official) who according to Tim "nearly went off his head" when the Committee rejected the offer. Conleth "brought up the Regional Secretary" and it was "no plain sailing" but the Committee insisted that they now "had management on the back foot so let's keep going and go to the gate" meaning to go out on strike (Tim). A similar situation arose in Ard-na-Gaoithe where a senior officer came to meet the members after a ballot in favour of industrial action there. The worker reaction here was different however according to Todd who remarks "were we ever glad to see him coming. He explained about the 2001 Act, that we could use that instead and wouldn't have to go on strike – phew!"

National officers were also those who took decisions in relation to Recommendations or Determinations once they became the focus of legal proceedings. At Canalcon, Oran the referring official, sought a Determination when the employer failed to implement the Recommendation. The employer reacted by issuing proceedings at the High Court. Union Head Office advised Oran that they would not be defending against

Canalcon's legal challenge "they were pulling the plug as Ryanair had already won their case" (Oran). A Settlement Agreement between the employer as applicant, the Labour Court as Respondent and the union as notice party is included on the Canalcon file. Effectively the union agrees "not to take any action in relation to the Determination" and the company agrees to adjourn proceedings much to Oran's disappointment. A similar situation arose at Blackwater where Frank's attempt at getting a Determination failed. "When Head Office saw Blackwater's submission, I got a call saying 'why haven't you that effin' thing withdrawn?'" (Frank). The senior/national officers in this study demonstrated more support for the 2001 Act than the local union officials and certainly seemed to prefer that option than to take industrial action in pursuit of union recognition.

What of the "entrenched union officials" (Hickey *et al*, 2010, p.56)? Their role in this study was often complicated by the "dual system of accountability to which union officers are subject", to the members on one side and to senior officers on the other (Kelly & Heery, 1994, p.90), as per Frank's and Oran's experiences above. This was aggravated by time constraints and staff turnover. Ross was the referring official at Knockrada at a time when officials in his union fulfilled all roles, from recruiting new members; servicing grievances locally and at third party and dealing with political and administrative issues for c. 2,000 members in a rural area. As such "I couldn't put the time into that campaign, you'd need Organisers to do the spade work" (Ross). Staff turnover was also an issue. At Blackwater, Kevin, the referring official was promoted and left the area after the Labour Court Recommendation was issued. Frank who took over from him remarked "Kevin got the Rec and took off" and there was a delay in applying for the Determination which eventually proved fatal. Blackwater's employer submission to the Labour Court drew the Court's attention to "the inaction" of the union "during the inordinate period of time which has passed since the Recommendation was issued" (Blackwater file). "They had us there, it wasn't dealt with in a timely fashion" (Frank).

It would have been ideal to examine the roles of union officials further particularly to see if for example they would conform to Watson's typology of "cosmopolitans and locals" (1988, p.83) or Kelly and Heery's 1994 study of "managerialists, regulationists or leaders" (p.192). Different styles and

personalities were certainly apparent: - Conleth and Eileen very focussed on organising; Kevin a more political animal and Ross at wit's end servicing a large number of members in a wide geographical area. Taking this any further on the basis of interviews of one or two hours duration and with a singular focus on the 2001 Act in one workplace would have been futile, though their attitudes to the 2001 Act bear notice. Owen and Eileen profess themselves pleased enough with the process in particular situations, Oakchurch and Pegasus respectively while Morgan is more neutral having used it only when he had "run into a road block" in both Garry's and Rosses. Conleth and Kevin were reluctant to use the procedures each having first balloted for strike though Kevin was happy with the outcome at both Ard-na-Gaoithe and Blackwater. Those in a servicing role were less happy, perhaps because they dealt with those same workplaces at a later date and many expressed a preference for a statutory recognition procedure in line with D'Art & Turner's similar findings in 2005. Frank was particularly forthright: -

> it was great for those working there at the time, they lined their pockets and fair play to them but we still didn't get recognition. What about those coming after them? They [management] wouldn't let me inside the gates; you'd think I was the devil incarnate. As an organising tool it's an absolute waste of space, there's no way of keeping the momentum alive (Frank)

Officials tended to credit activists and shop stewards for successes: - Ringo in Deltrans; Karl in Pegasus; Peter in Canalcon; Todd in Ard-na-Gaoithe were all praised by their referring official. Equally, workplace leaders were deemed part of the problem elsewhere; Conleth "didn't have a Ringo" in Led-Pack; a "totally inexperienced" Corina in Rosses subsequently 'sent to Coventry' by the members and at Garry's a "so enthusiastic" Eric but with "unreal expectations" (Morgan). All except John at Deltrans described themselves as Martin did, that is, "not really a leftie", so no sign then of the apparently essential "left-wing militants" (Kelly, 1998, p.35) even in the most successful campaigns. In fact, some officials felt the lack of enthusiasm acutely; Morgan was "doing all the pushing" at Rosses though good relationships between the referring official and the shop steward seem to have been a factor in the early stages in Pegasus, Deltrans, Ard-na-Gaoithe and Canalcon. Relationships changed as staff changed but also as

the role itself changed. Caroline was successful as an activist in Blackwater but seems ineffectual now as shop steward though in a situation where there is no recognition and she clearly is unimpressed with the current servicing official. William in Canalcon is similar. Eric at Garry's is an interesting case, weak in the early organising campaign but seems to have come into his own during their 3 week protest regarding their redundancy payments. There may then be issues regarding the "transition from organising to representation" as identified by Simms (2006). Moore (2011) encounters similar situations and sees the need for training for activists recalling Darlington's three types of activist activity 'facing' different others (Darlington, 1994). Perhaps the example of John at Deltrans suggests that rather than there being entirely different kinds of activists, that some at least can develop into left wing or militant shop stewards as a result of prolonged union activism.

8.2.4 – Opportunity

Opportunity speaks to those issues which trigger a group into acting "together in pursuit of common interests" (Tilly, 1978, p.7) usually "the policies and actions of employers and the state" (Kelly, 1989, p.37). Deltrans is a good example where the campaigners rejoiced at the cancellation of the bonus "and we got our chance" (John) something management at Led-Pack "was not stupid enough" to do (Conleth). Owen at Oakchurch seized the opportunity of what he termed an "emboldened" Chairperson of the Labour Court presiding over the Ard-na-Gaoithe case and also used the leverage opportunity of a forthcoming high profile event due to take place at Oakchurch.

Deltrans and Pegasus also understood quite well what could not be construed as opportunity. Conleth, for the Labour Court hearing "decided to narrow the issue down to the PPF [the most recent social partnership agreement], that way everyone would gain when we won", calculating correctly that there was no point in taking the agency workers issue to the Labour Court, nor the emotive but monetarily puny Christmas bonus. English lessons for non-nationals at Pegasus was another issue correctly not viewed as appropriate for the Labour Court but kept in reserve,

something it was in the employer's interest to later concede and around which the union could continue to campaign.

There is also revealed in these cases the concept of missed opportunity and the mistaking of process with outcome and vice versa. There is a sense amongst some union staff and shop stewards that the 'voluntary leg' of the process at the LRC was merely a passage, a means to the Labour Court and in turn that the issuing of the Labour Court Recommendation was in itself an end. Taking the 'voluntary leg' first - in several cases (Rosses, Garry's, Oakchurch) progress was made at the LRC which suggests some form of bargaining or at least accommodation between the parties. Yet this was not seen as an outcome in itself, an achievement to parade, an opportunity to demonstrate "union instrumentality" (Frege & Kelly, 2004, p.34). Indeed there is a suggestion that the relationship might actually have worsened as a result of the Labour Court hearing despite progress at LRC level, something also noted by Devine and Halpenny's earlier study (2002). At Garry's for example some progress was made at the LRC on at least four items which the members "relished" (Morgan) but later the company implemented the Recommendation to the letter refusing to extend it to grades not specifically mentioned. The Ard-na Gaoithe recommendation was eventually implemented in full, but the next servicing official there could "hardly get past the gate" (Frank). There is a sense that the Labour Court hearing somehow worsened the situation in several cases in line perhaps with Moore's contention that "...once a case is in procedure, a number of contending forces come into play..." (Moore, 2004, p.13)

Part of the problem for union officials is that the Labour Court Recommendation in other contexts is generally the end of the matter, of one particular issue. It will either be accepted by the membership or they may vote for industrial action or negotiations may even re-commence. Either way the Recommendation comes at the end of a process of engagement and negotiation between the parties, a process where there is likely some give and take. The difference with the 2001 Act is that the Labour Court hearing is held in isolation, maybe the only time the parties have been in the same room.

Such difficulties did not arise in Deltrans where there was "such excitement about that rec" recalls Martin, "the non-union [workers] worried they wouldn't get it" and the remaining 85 workers all joined. John says they "stayed on a high after that" which the official and activists used to good effect. Conversely, the Labour Court Recommendation was very much seen as an end in some other cases. In Oakchurch, the members "took the loot and ran" (Owen) while at Ard-na-Gaoithe they "lined their pockets" without thinking of "those coming after them" (Frank). Knockrada members "saw no victory" in the Labour Court Recommendation (Ross) while Garry's members were "pleased to have 'won' as such but they had expected more money" (Morgan). Some union staff seemed also to see the issuing as opposed to the implementation of the Recommendation as an end in itself and allowed a sort of hiatus to develop after the Recommendation was issued. Rory reports no union activity at all at Led-Pack after the Recommendation; Sara at Knockrada felt they, the members, "were left in limbo" afterwards; Eric says "it all fell apart" at Garry's while at Blackwater Caroline says "it all just faded away". Some of the "inaction" at Blackwater might be attributable to staff changes but not the "inordinate period of time" (employer submission to Labour Court) which elapsed between the issuing of the Recommendation and the application for the Determination. The Recommendation is seen as an end in itself, rather than part of the process, unlike at Pegasus, Deltrans and Ard-na-Gaoithe where the Recommendation was seen as an opportunity and immediately put to use but also crucially where they had other on-going issues around which to mobilise.

8.2.5 - Collective Action

Collective action in the context of this study means something other than Tilly's revolution or Kelly's strikes, something more along the lines of the Webbs' "continuous association of wage earners" (1920, p.1) working together, doing something collectively "in pursuit of common interests" (Tilly, 1978, p.7). Deltrans and Pegasus have consistently engaged in collective action in the years since their respective Labour Court Recommendations were issued. Deltrans shop stewards helped organise at other locations and established a European Works Council in the firm; Pegasus shop stewards ensured the continuation of English classes and

ongoing though unfinished negotiations on the handbook. Ard-an-Gaoithe, notwithstanding Roger's view in the survey, demonstrates some collectivism; Garry's did too in terms of organising a 3 week protest regarding their redundancy. At Blackwater Hospital, Rosses and Canalcon there is little evidence of any collective or co-operative action; most of what passes for union activity is merely conversations between individual shop stewards and the union organiser. In dealing with management, Kenneth would not "mention union as such … I just say 'the lads were wondering this or they were saying that'". Led-Pack and Knockrada never had any union activity after the Labour Court Recommendation and have none now and hardly a member between them.

Part of the difficulty with the 2001 Act is that use of the procedures can hardly be described as a collective act. The union files available all contain letters and submissions to and by union officials; advice and guidance from senior union officers; legal opinion, affidavits and judgments. The processing of cases requires little actual input from the workers themselves, the union members, by comparison with that required by union staff. In some cases there seemed to be little understanding of what was happening. Caroline at Blackwater knew nothing about the application for a Determination. An otherwise well-versed Karl at Pegasus admits he "didn't realise that it wasn't just another Labour Court hearing". Todd admits he found the process "daunting" and "a nightmare at times" and of the preliminary decision he said "that was six pages of legalese, no way I'd put that around". Marius remarks that when he first started work at Pegasus "the outside reps [union officials] were more active but now they have too many shops and we do not see them since a long time". Todd at the start of his interview enquired warmly after all the union staff he had encountered during the Ard-na-Gaoithe campaign; not just Kevin and Frank, but also their immediate superior the Regional Secretary, the administrative staff, the Head of Organising and the Head of Legal Affairs. He named them all correctly, first and last names, yet later in the interview when trying to speak of the then current servicing official, "yer man" was as much as he could manage without being prompted.

8.2.6 – Substantive benefits from the Labour Court Recommendations

It is time to collate the extent of the mobilising nature of the campaigns, to compare the process with the outcomes such as membership, representative structures and 'organisedness', but one other factor needs first to be taken into consideration. Some in the trade union movement defend the 2001 Act on the basis of its usefulness in improving the terms and conditions of employment of union members, that is those who would never be able to negotiate such improvements (Shanahan, 2007; Dobbins, 2007b). Has this been true of those cases in this part of the study? In four of the ten cases, Deltrans, Pegasus, Ard-na-Gaoithe and Garry's, the terms of their respective Recommendations were implemented and represented a substantial improvement in the pay and conditions of workers at those locations thus: -

Deltrans - In the case of Deltrans the Labour Court recommended in favour of the union's claim for payment of the terms of the then current national wage agreement, and it was implemented in full, albeit after a ballot for industrial action.

Pegasus - At Pegasus the Recommendation represented a substantial improvement in the terms and conditions of employment of all grades of worker at Pegasus. While the pay terms were implemented fairly swiftly, the non-pay elements were to be incorporated into an employee handbook which is still under negotiation.

Ard-na-Gaoithe - At Ard na Gaoithe the Labour Court ruled in favour of the union's claim on all points which meant pay increases in the region of €60-70 per week for many grades; a 13 week sick pay scheme and a 5% pension contribution from the employer to add to that of the employee. After the High Court ruling the pay increases were applied retrospectively to the date of the first meeting at the LRC and resulted in lump sum payments of up to €20,000 in some cases.

Garry's - The Labour Court recommended that in Garry's a pay structure be implemented on rates closer to those being offered by the company but significantly lower than those being sought by the union although subject to

subsequent national wage agreement increases. The Court found in favour of the company's offer of a graded sick pay scheme but ruled against the many restrictions the company had also suggested. The pay terms were implemented.

Only the workers *directly* involved in the claim at Oakchurch were successful.

Oakchurch - On the substantive issues the Court ruled that "the current rates paid to those associated with this claim are out of line and should be adjusted". Rates of pay were adjusted from €11 per hour in April 2006 incrementally to €14.50 per hour by January 2008 and were also subject to normal national wage agreement increases. These increases involving substantial improvements were implemented immediately for those involved in the claim but the rates were not applied to subsequent employees.

Rosses - At Rosses the Labour Court Recommendation did not provide any gains as such but confirmed agreement reached during the 'voluntary leg' at the LRC. The company had already offered to increase pay and to introduce both shift premia and a sick pay scheme. The Court recommended that these should be accepted and in addition that pay should be increased in line with any national wage agreements. Morgan was pleased with the Recommendation believing that while most of what was gained was as a result of the 'voluntary leg' process, the Recommendation "copper-fastened things, put it in writing". The Recommendation was implemented without any further discussions and the employer remained hostile even to the extent of having Morgan escorted off the premises by security staff when he drove into the car park to deliver leaflets to the shop stewards.

Workers at Canalcon, Blackwater, Knockrada and Led-Pack never benefitted from the substantive terms of their respective Labour Court Recommendations.

Led-Pack - The Labour Court recommended that Led-Pack "introduce a service related salary scale, in line with that paid by Deltrans"; that increases should be in line with National Wage Agreements and accepted the company's assurances that it would amend its disciplinary and

grievance procedure so that individuals could be represented by a union. The employer failed to implement the Recommendation and the usual course of events would have included an application for a Determination. Lesley was covering for Conleth's sick leave at the time and chose not to apply for a determination, awaiting the outcome of the Ryanair case.

Knockrada - At Knockrada the employer conceded recognition to the nurses' union at the hearing, so the Labour Court Recommendation dealt only with the issues raised by the general union. The Court was satisfied that rates of pay were "out of line with appropriate standards" and awarded pay increases close to the union's claim and the introduction of standard shift and overtime payments. The Recommendation was never implemented and the provision under the Act to seek a Determination in the event of a Recommendation not being implemented was not utilised. The Recommendation therefore had no substantive impact for those associated with it.

Blackwater - At Blackwater the Labour Court Recommendation provided that rates of pay be those negotiated in the HSE and generally paid in other health facilities; increased redundancy payments to 4 weeks per year of service and ruled that all further redundancies be implemented according to the Last-In-First-Out principle and that Blackwater should re-introduce the sick pay arrangements it originally offered to staff. The Recommendation was not implemented and the union applied to the Labour Court for a Determination. The hearing never went ahead and no Determination was ever issued.

Canalcon - The Court declined to rule on the substantive issues in dispute at Canalcon ruling that "the conditions of employment … for this group of workers, when viewed in their totality are not out of line with appropriate standards" and taking into consideration the employer's commitment to the introduction of a 39 hour week and a sick pay scheme and that its grievance and disciplinary procedures would be amended to include the "use of the machinery of the State in appropriate cases". The employer however "did exactly what it says on the tin" (Oran) and proposed a sick pay scheme in to which however the workers had to pay a fee before they were eligible for payment. William and Peter the current shop stewards said the

payments from the scheme were quite poor and that "if you were married or had kids you'd be better off just getting the welfare and not claiming that at all". The company adjusted the working week from 42 to 39 hours, the norm in the industry, but failed to compensate the workers for the loss of working hours. The union sought the Determination on the basis that the employer "failed to honour the[se] commitments" made at the Court hearing and referred to in the Recommendation (union correspondence to Labour Court). The employer based its objection to the Determination on the grounds that it had merely "intended" to implement these changes and that they were not part of the Recommendation as such and could not therefore be the subject of a Determination. In effect, "there was no benefit in the end" (William).

There is then a strong correlation between the bargaining status of a workplace (Groups A to E) and whether or not there were improvements in pay and conditions of employment as a result of the implementation of the Labour Court Recommendations. The best results were achieved in Groups E and D – Delpack, Pegasus, Ard-na-Gaoithe and Garry's.

8.3 – Is the 2001 Act "a credible union renewal strategy"?

(De Turberville, 2004, p.775)

Table 8.4 on the next page lists seven measures, the five components of mobilisation theory and of the organising model adjusted to take account of the situation since the issuing of the Labour Court Recommendations (*Interests* 8.2.1 above, *Organization* 8.2.2 above, *Mobilization* 8.2.3 above, *Opportunity* 8.2.4 above *and Collective Action* 8.2.5 above) alongside the outcomes in the shape of *Membership Patterns* (Table 8.3 above) and *Substantive benefits from Labour Court Recommendations* 8.2.6 above. Workplace names are entered opposite each according to whether they could be deemed to have scored positively or negatively under each measure, or are omitted for a measure where it was unclear, mixed or contradictory or where there was insufficient information.

Table 8.4 – Ten selected cases - Comparing 'Organisedness' and Outcomes

	Measures	Positive	Negative
'Organisedness'	Interests	Deltrans Ard-na-Gaoithe	Garry's Knockrada Rosses Led-Pack Canalcon
	Organization	Ard-na-Gaoithe Deltrans Pegasus	Knockrada Rosses Garry's
	Mobilization	Deltrans Pegasus Ard-na-Gaoithe Canalcon Blackwater	Led-Pack Rosses Garry's
	Opportunity	Deltrans Oakchurch Pegasus	Knockrada Led-Pack
	Collective Action	Deltrans Pegasus Ard-na-Gaoithe	Blackwater Rosses Canalcon Knockrada Oakchurch Led-Pack
Outcomes	Membership Pattern	Deltrans Pegasus	Knockrada Ard-na-Gaoithe Garry's Rosses Canalcon Blackwater Oakchurch Led-Pack
	Substantive improvements from Labour Court Recommendation	Deltrans Pegasus Ard-na-Gaoithe Garry's	Canalcon Blackwater Knockrada Led-Pack

Giving a plus or minus score for each entry as appropriate allows a ranking of workplaces into three broad categories according to how 'organised' they were, how good measurable outcomes were and according to bargaining status, Groups A, B, C, D, and E. See Table 8.5 below: -

Table 8.5 – Ten selected cases – High, medium and low scores on 'Organisedness'

	High	**Medium**	**Low**
'Organisedness'	Deltrans Pegasus Ard-na-Gaoithe	Blackwater Canalcon Oakchurch	Garry's Rosses Knockrada Led-Pack
Outcomes (Membership & Substantive Improvements	Deltrans Pegasus Ard-na-Gaoithe	Blackwater Oakchurch Garry's Canalcon Rosses	Knockrada Led-Pack
Groups **D & E =High** **C = Medium** **A & B = Low**	Deltrans Pegasus Ard-na-Gaoithe Garry's	Rosses Canalcon	Blackwater Oakchurch Knockrada Led-Pack

Thus a pattern emerges which might be described as a continuum whereby the greater the emphasis in the union's campaign on mobilisation and organising model type methods, the better the outcome in terms of membership levels, improved conditions, union activism and the likelihood of collective bargaining. Deltrans, Pegasus and Ard-na-Gaoithe can be seen at the higher end of the continuum opposite Knockrada and Led-Pack consistently at the lower end, with the middle ground occupied by Blackwater, Oakchurch, Canalcon, Garry's and Rosses. Of course there are anomalies; these are notional categories, the middle ground is occupied by very different situations. Garry's which might have scored quite lowly in terms of the early campaign at that location yet had an active core by the time redundancies took place in 2012. The crisis of redundancy might have contributed to this but the changing abilities of Eric as his role changed has

already been noticed. Ard-na-Gaoithe, consistently at the higher end of the continuum had initially been categorised by Roger the current servicing official as fitting into Group D, confidential members who rarely contact him. Todd explains "There are no issues here, we don't need the official, we've taught them [the management] a lesson". He goes on to describe an incident which took place during negotiations he led (without the union official) regarding redundancies and pay cuts as a result of the economic recession in 2010. One Department Head was seeking to have cuts applied to a service charge paid in departments other than her own. The General Manager replied, according to Todd, "like a burnt child who's always careful, he said to her 'yeah, I'll cut the service charge alright, but YOU can go to the High Court and try to explain it'".

This chapter describes campaigns in ten very different situations with varying outcomes, though a pattern can be established. The more a campaign matched a mobilising or Organising model approach and with subsequently higher levels of 'organisedness' the better the outcome for the union as an organisation in terms of membership levels and activism. This also holds true for members; higher levels of 'organisedness' seem to contribute to greater improvements in their pay and conditions, at least in so far as the Labour Court Recommendations were actually implemented. Positive views of the process can be expected from union members in Groups D and E though few of them credit the 2001 Act procedures *per se* with their current situation. There are no members remaining at Oakchurch or Knockrada; the lone member at Led-Pack was not enamoured of the process; there are mixed views at Canalcon. Several however echo Kenneth and Corina at Rosses who associate the Labour Court process with "getting the union in" and who both said that their workplace was previously, and would again be, "ten times worse" without the union.

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Chapter 9

The best laid schemes o' mice an' men - *Revisited*

The 'best laid schemes' of this or any qualitative research are informed by the goals of the researcher, two major goals being the practical and the intellectual (Maxwell, 2005, p.16). Practical goals are bound up with the need to justify the study and with achieving something practical "meeting some need, changing some situation, or achieving some objective" (Maxwell, 2005, p.21). Intellectual goals concern the need to understand meanings and contexts and to discover and elucidate the "unanticipated phenomena and influences" and causal explanations of a study (Maxwell, 2005, p.22-23). This chapter will deal with these practical and intellectual goals and the extent to which they and the research questions outlined in Chapter 4 have been answered.

9.1 - The intellectual goals

The intellectual goals of a study are those most closely linked to the conceptual framework which in this case concerned the interactions between a particular dimension and the agency of a particular actor. The dimension was described as a "static interpretation of freedom of association" (Leader, 2002, p.128) and the industrial relations framework which evolved therefrom; the agency, that of workers and trade unions and how they function or renew themselves (Chapter 4). Thus, the main research question concerned how one aspect of that dimension, the Industrial Relations (Amendment) Act 2001, interacted with the agency of the workers and trade unions trying to mobilise under its terms.

The exploration of Labour Court Recommendations in Chapter 6 reveals patterns in the usage of the 2001 Act procedures. The bulk of the cases are taken by two trade unions (SIPTU and MANDATE) representing mostly semi-skilled workers employed in just a few economic sectors (*Manufacturing, Transportation & Storage, Wholesale & Retail*) by Irish employers. The emergent substantive recommendations deal for the most part with pay and those union claims which are successful are so by reference to three specific criteria: - by reference to existing labour law (e.g.,

provision of pay slips,); by reference to pay rates and conditions in analogous employments and by reference to pay rates and improved conditions achieved by the currently defunct social partnership system (sick pay and pension schemes). In terms of direct effect, then, the 2001 Act procedures confirm legal minimum or social partnership conditions of employment for mostly semi-skilled workers which category constituted some 14% of the total 'At Work' figures during the years in which the cases were taken (CSO, 2012). At least that would be the effect *if* the Labour Court Recommendations were implemented; Chapter 8 demonstrates that many were not.

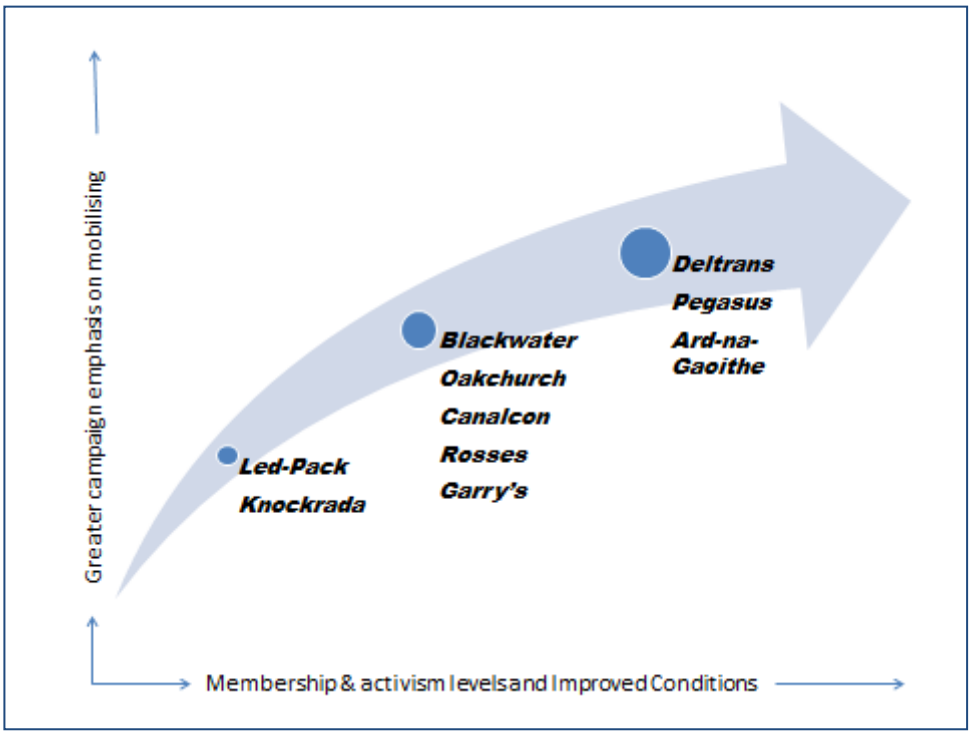
The narrowness of the 2001 Act coverage is also emphasised by reference to the economic sectors in which cases are mostly taken. At a time when the economy is quite clearly moving from the "traditional sector" to the "modern sector" (CSO 2013), 35% of cases under the 2001 Act concern manufacturing firms which comprise 13% of those at work, a declining sector in itself. A focus on pay and comparisons with rates in unionised firms in the same industry must present a difficulty for unions attempting to use the procedure during a recession where there is downward pressure on wages and/or in new emerging previously non-union sectors. How will analogous employments be found for these workers? How will 'fair pay' increases be determined in the absence of national wage agreements?

The Recommendations also have indirect effect, suggesting or emphasising particular approaches to industrial relations. As the 2001 Act is precluded from providing for collective bargaining, the rights or wrongs of trade union recognition are not discussed; there is no debate nor arbitration on the merits or otherwise of trade union recognition in any particular workplace. The 2001 Act exerts such "control over the agenda" that "the matter is not discussed" (Lukes, 2005, p.22). There is however increased discussion on legal interpretations of the Labour Court Recommendations with, particularly in light of the Ryanair challenge of one Recommendation, an inclination on the part of employers to sue in the courts of law; a consequent inclination to seek legal advice on the part of trade unions, the Labour Court and the Labour Relations Commission. The Labour Court has already had to amend how it hears cases under the 2001 Act amid

concerns that such juridification may yet extend to the Labour Court's operations under other industrial relations legislation.

Part of an intellectual goal can be to address a perceived gap in the literature, in this case, rather than focussing separately on the 2001 Act and on union organising, to see the connections and possible contradictions between trade union participation in the 2001 Act procedures and those same trade unions' adherence to new forms of renewal, a focus on mobilisation or the so-called 'organising' model of trade unionism. Is there a conflict? At the level of the workplace the effect of the 2001 Act depends on the context in which it is used. A pattern emerges in Chapter 8, described as a continuum, whereby the greater the emphasis in the union's campaign on mobilisation and organising model methods, the better the outcome in terms of membership levels, improved conditions, union activism and the likelihood of collective bargaining. See Figure 9.1 below.

Figure 9.1 – An 'Organisedness' Continuum



The more successful union campaigns included: -

- issues that were "widely felt; deeply felt; winnable in part" (Banks & Conrow, (a), n.d., n.p.); that included outlying or minority groups and grades;
- issues that could be described as justice-and-dignity issues even though (and particularly if) the bread-and-butter type issues were referred to the Labour Court;
- union officials with an organising as opposed to a servicing focus;
- strong workplace leaders and consistency in union density;
- the use of the Labour Court referral and recommendation as an opportunity, a means to an end and not ends in themselves and finally,
- the coexistence of the Labour Court process with some forms of collective action, if not industrial action or its potential

In that sense the 2001 Act need not conflict with mobilisation theory or the organising model of trade unionism so long as it is used as just one tool in a strategic approach, one from the "'toolbox of practices'" available (Simms & Holgate, 2010, p.157).

The nature of the collective bargaining and trade unionism which emerges as a result of the 2001 Act emphasises the foregoing even further. Collective bargaining does not automatically follow from participation in the procedures provided for under the 2001 Act, not that it was ever intended to so do. In only two cases out of 48 for which there is such information can collective bargaining be said to exist; collective bargaining, that is, according to traditional definitions involving trade unions as defined by Brown (2008) and by the Labour Court in the Ashford Castle case (LCR117675) (See Chapter 6). The 2001 Act however, in allowing legal intervention into such definitions has changed the definition of collective bargaining in Irish industrial relations. There now exists, even in trade union minds, the concept of "'genuinely independent' non-union 'collective bargaining'" even if only "for the purpose of the 2001-2004 Acts" (ICTU, 2013, p.35).

The changing definition of collective bargaining also speaks to the nature of the trade unionism which emerges from the 2001 Act. Chapter 6 demonstrated the tendency of Labour Court Recommendations to support the role of trade unions in the representation of individual members in trouble with their employers *via* grievance and disciplinary procedures. Acceptance of non-union forms of collective bargaining emphasises this corralling of unions into the role of individual representation, likely confined to issues around misbehaviour and exit, as opposed to the trade union role of representative of a class. Chapter 7 confirms this changing role. Membership levels in workplaces where cases were taken are mostly in single figures; so low as to make any kind of collectivism virtually impossible. This raises a question as to why these workers stay in membership of the union. The answer, in the absence of any "improved pay and conditions" must be "support if I had a problem at work" (Waddington & Whitston, 1997, p.521), 'if' being the operative word; union membership becomes a type of insurance. One union official describes it so: - "the usual pattern there is they join when there is a problem - we resolve it and we hear no more until the next problem, then they join again …", hardly a recipe for union renewal.

In many of the cases explored in this study, there is no obvious organising subsequent to the issuing of the Labour Court Recommendations, so determining the kinds of issues around which workers organise had few examples to examine. Of the workplaces traced and where the servicing official participated in the survey, less than one-third are in contact with the union after having used the procedures, and by implication there must be little by way of union activity in those workplaces which are not in contact. Individual issues are more likely to be raised than collective issues particularly at the end of the continuum where low membership levels and low compliance with strategic mobilising are to be found. It is worth noting that at both Deltrans and Pegasus, in addition to the bread-and-butter type issues being dealt with at the Labour Court, there was concurrently a separate justice-and-dignity type issue being dealt with in the workplace (agency workers; English classes for minorities). A culture of collective activity seems to have been created during the campaign and seamlessly continued after the Labour Court Recommendation was issued.

9.2 - The Practical Goals

Ireland is at a crossroads where trade union recognition is concerned. The procedures introduced in legislation in 2001 and amended in 2004 with the aim of resolving disputes on recognition has failed to satisfy either side and has fallen into disuse as a consequence of Ryanair's legal challenge. Trade unions *via* ICTU are lobbying for, and Government Ministers are promising, amended legislation. Determining the specifics of any such new legislation needs to be informed by discovering and acknowledging any limitations in the existing legislation, including limitations specifically separate from those caused by the Ryanair judgments which might in any event be resolved. It is essential to know what other effects participation in the legislative procedure might have, on membership levels for example and on employers, whether it could aggravate employers further or prove their allegation that the procedure would let "union recognition in by the back door" (Creaton, 2005).

Taking membership levels first and seeking to determine whether or not workers remain in unions and remain active, on the evidence of this study, they do not. Excluding the ten cases not suitable for inclusion in the survey and the eight cases where officials did not respond, this leaves 71 workplaces whose membership status is known and for 47 or 66% of those it is confirmed that they are no longer in membership of the union which referred the original case to the Labour Court. There may yet be economic reasons for this level of attrition and in the absence of comparators it is not possible to attribute all of the loss of membership to the taking of cases under the 2001 Act. However levels of activism or 'organisedness' are also low. Only 14 out of 24 workplaces in contact with their union official have some kind of a union representative structure, nine of which report an active membership. In two (4%) of 48 cases reported on in the survey, the official reports the existence and exercise of full bargaining rights. Unlike membership levels, economic decline can hardly be responsible for low levels of activism; intuitively it should increase activity at least with negotiations on redundancies. Union density levels particularly in small workplaces could be a factor, but as with membership levels, the union movement could not have continued in existence if those levels of membership and activism were representative of the movement as a whole.

Gall (2010a) contends that employer hostility is increased by the use of statutory recognition procedures in which he includes the 2001 Act, which prompts asking that question of the cases in this study. A retrospective examination of events five or six years later however is not the ideal route as it cannot be determined whether employers were more or less hostile before the taking of a case and there would in any event be difficulties attributing causality. Without comparison with other campaigns where the 2001 Act was *not* a feature, it cannot be determined if those employers were any more or less benign. Nonetheless some of the cases studied herein suggest at least a tendency to worsening of relations after the Labour Court hearing where previously progress had been reported at the 'voluntary leg' at the LRC. Such progress suggests some level of accommodation between the parties, contrived or enforced perhaps to the extent that the parties derive no ownership or no worth from it, and there is no lasting effect in terms of building a relationship.

Does the 2001 Act provide trade union recognition 'by the back door' or otherwise? If assessing this question by reference to the cases in this study, that is those cases that proceeded through the 'voluntary leg' to the 'fall-back' procedure at the Labour Court, then the answer has to be a resounding 'no'. Of the 97 workplaces examined and excluding the ten cases not suitable for comparison, in only two cases was there found what union officials recorded as 'full bargaining rights', in Deltrans and Pegasus. In one other case, Ard-na-Gaoithe, the union is recognised only to the extent that the shop steward conducts negotiations; union officials, management "wouldn't let … inside the gates" (Frank).

Trade unions, *via* ICTU, have campaigned for legislative measures to deal with the question of trade union recognition though there seems little debate much less research to support the view that such measures are the best way of dealing with recognition rows. In the absence of comparisons with other means of resolving the situation it is not possible to rank the various means according to which is best or worst. The question also needs further defining: - the 'best means' for whom exactly? In terms of the pertaining issue of trade union recognition, what can be said is that the 2001 Act does not address the question at all. It side-steps it and deals

with the substantive issues in dispute and makes no provision for collective bargaining or any "continuous association of wage earners" (Webb & Webb, 1920, p.1) at the workplace. It also side-steps the issue in a macro political sense; the discussion on union recognition in Ireland now centres on fixing what Ryanair broke. The results of this study would indicate that that is the wrong debate for trade unions. Fixing what Ryanair broke will not address the other problems identified in this study such as low retention of members and low levels of activism even amongst retained members. In addition, any appreciable improvement in pay and conditions should be attributed to mobilising tendencies rather than Labour Court recommendations.

In terms of whether or not the 2001 Act is the best approach for trade unions as *organisations* wishing to "offer more to its members than a long and unsuccessful dispute" (SIPTU, 2001), then the 2001 Act is certainly successful. It is a less costly and painful route for all concerned, though trade unions have not gained from it in terms of membership, activism nor demonstrations of "union instrumentality" (Frege & Kelly, 2004, p.34) whatever its contribution to industrial peace. Some of the union members involved may however feel differently about the process. In some of the less successful campaigns, members there view the process as "getting the union in" (Kenneth) without which they say "things would be ten times worse" (Corina). Others expressed relief that they could use the process and "wouldn't have to go on strike" (Todd) and where a "strike wouldn't have worked" (Eric). Whether as a result of their success in achieving collective bargaining, or because of it, none of those involved in the Deltrans or Pegasus campaigns credit the 2001 Act with their achievements. Perhaps it is the best approach for weaker groups of members, the last refuge of the powerless.

This thesis now turns to the final chapter providing conclusions and a return to centenary commemorations.

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Chapter 10
Centenary Commemorations 1914 - 2014

This concluding chapter provides a summary of the work undertaken and details its contributions and limitations before reflecting on the lessons learnt during the process of its completion.

10.1 - Summary

The starting point for this study has been trade union recognition in Ireland: - its vexed history detailed in Chapter 2 while the interpretation of freedom of association which underpins it was explored in Chapter 4. That latter chapter also dealt with how trade unions function and hope to renew themselves by institutional means and by mobilising and gave some prominence to the organising model of trade unionism currently popular with Irish trade unions. Chapter 3 explained the institutional means at the disposal of unions in situation where employers refuse to recognise them, the Industrial Relations Amendment Act of 2001 in particular. The mixed methods approach chosen (Chapter 5) afforded an extensive exposé of the workings of the 2001 Act; from a broad macro overview of the Labour Court Recommendations and their implications (Chapter 6) to a thorough determination of the extent and calibre of union membership remaining at each relevant workplace (Chapter 7) and finally to an in-depth understanding of how union campaigns unfolded in ten selected workplaces (Chapter 8). Each data chapter analysed and discussed the data reported on therein while Chapter 9 discussed the results of all data streams by reference to the precise research questions posed. The study confirms the inadequacy of the 2001 Act in providing for trade union recognition but also raises concerns with the narrowness of its usage and heralds important implications for its revival in the event of anticipated amendments to its terms. Poor levels of both membership and activism were found though the use of mobilising or organising model techniques alongside the 2001 Act procedures tended to result in better outcomes.

10.2 – Contributions and Limitations

To the best of the author's knowledge this is the only study of the 2001 Act which both examines all of the Labour Court Recommendations issued, placing them in industrial and political context and also uncovers their consequential impact. The contribution made is therefore on a number of levels: - to the body of UK and Irish literature on union recognition and union mobilising/organising; to recommendations on trade union practice and to the debate on trade union recognition. The UK and Ireland share common industrial relations origins making their literature on union organising and recognition mutually relevant and of interest. For that reason it was decided to limit the conceptual framework of this study to the literature mostly from those two jurisdictions seeking to also make a contribution there. There is a focus too on the organising model of trade unionism because of its potential importance to Irish trade union function in the future and partly as the Irish literature on this topic is more sparse. While the campaigns in the cases studied here were not run in accordance with a classic organising model, they were measured against its basic tenets. In addition to confirming the usefulness of some aspects of the model, the findings also point to some of the potential pitfalls, two related issues in particular, union "architecture" (Lerner, 2003, p.9) and the use of dedicated organisers. The organising model's distinction between organising and servicing and its focus on organising the industry rather than the individual employer suggests changes to union structures potentially creating separate divisions for green-field organising, for brown-field or in-fill recruitment and servicing, and for individual grievance handling. The cases studied here demonstrate that staff turnover and differentiated functions can contribute to a lack of continuity in the members' connection with their union and a sense of isolation or abandonment after having been the intense focus of perhaps several members of staff, and then becoming the responsibility of one hardly known individual. Campaigns run truly according to the organising model might, even ought to create stronger more resilient union groupings but even then there may be a need to focus more on the hand-over from initial organising to whatever form of on-going relationship is to exist.

This work also contributes to the literature on trade union recognition in both jurisdictions, particularly with reference to statutory union recognition provisions. The debate on trade union recognition in Ireland often includes examination of the statutory union recognition provisions in the UK and speculation that were such a system available in Ireland it might address some of the problems with the 2001 Act (Geary, 2014). Yet many of the shortcomings of the UK's statutory union recognition procedure are evident in the cases studied here: - greater employer hostility and counter mobilization (Heery & Simms, 2010; Gall, 2010a); consequent limitations on scope (Moore, 2004; Moore, 2005); a dearth of collective bargaining (McKay *et al*, 2006) and a failure to mobilise or stimulate activism. The 2001 Act is demonstrably not a statutory recognition procedure but a statutory resolution procedure for issues in dispute. Perhaps the real matter in contention is not so much *union recognition* as it is *statutory procedure*; that statutory procedure in and of itself is the essence of the problem. The non-negotiable delivery of terms by a third party cannot have mobilising effect and does nothing either to build a relationship between the parties.

The data suggests particular issues for professional trade union practice, principally the best results achieved by those union campaigns displaying particular elements: - a mobilising /organising model focus; good leaders both staff and workplace based and an ability to view the 2001 Act procedures as just one element in an otherwise strategic campaign. In some cases a hiatus seems to have developed after the issuing of the Labour Court Recommendation, accidentally wrought by staff turnover but also in some deliberate and not always explicable decisions not to proceed any further. There is a need to see beyond the Recommendations and view the union campaign as continuing. Unions should also consider when referring cases under the legislation whether "throwing in the kitchen sink" makes sense (Higgins, 2006); workers need issues around which to organise.

Previous studies regarding the 2001 Act focussed on the contents of the Labour Court Recommendations (Doherty, 2009; Doherty, 2013; Higgins, C., 2001; Sheehan, 2004), the 'Ryanair effect' (Doherty, 2007; Dobbins, 2007a; Sheehan, 2007a and 2012b), on limited time periods (D'Art & Turner, 2006) or on the attitudes of union officials (D'Art & Turner, 2005). This study included all the Recommendations under the 2001 Act but also

examined issues at the level of the workplace. The experiences of all union campaigners, staff and members alike were a crucial part of the study; the inclusion of those who have to live with the consequences, the workers, contributed greatly to the study's originality. Initial plans to compare workplaces which had been through the procedure with those which had not could not be fulfilled within the timescale of this study. That limitation can be addressed in the future by comparing the cases in this study with those where only the 'voluntary leg' was used; those who took the 'Section 20' route and/or with those who had taken industrial action to achieve recognition. In the event of the enactment of the anticipated changes to the 2001 Act, a cohort of cases taken after those changes could also be used for comparison purposes.

10.3 - Reflections

Question 3 on the union officials' survey regarding bargaining status caused me some disquiet (See Chapters 7 and 8). Officials could legitimately describe the workplace as one where they represented members on an individual basis only, Option C, but, as I discovered later this could co-exist with an active core of members, Option D. Although probably rare, it nonetheless provided an important lesson regarding the difference between representation and activism and that the two are not mutually exclusive. It also emphasised that servicing officials may not always appreciate the nuances of the union activity of members in their charge thus the necessity for research to reach beyond them and to also include the general union membership.

Did this thesis support or negate the hypothesis that participation in the procedures provided for under the Industrial Relations (Amendment) Act 2001 militated against worker activism? That something has militated against worker activism is beyond doubt though whether all of it can be attributed to the 2001 Act is a moot point. The context in which the 2001 Act procedures were used has been shown to be of major importance. Where all of the issues in dispute were referred to the Labour Court as a last resort when campaigners found themselves in deadlock, then the results suggest there was little achieved by this sole reliance on the procedure. There is little evidence that working conditions, membership

levels or union activism benefitted at all from the Labour Court Recommendations which ensued even if they were implemented. If however only some of the issues of importance to the workers were referred to the Labour Court and there remained in place a wider campaign around some other perhaps justice-and-dignity type issues, then there have been gains on all three measures, i.e., working conditions, membership levels and union activism. An exclusive reliance on the procedures under the 2001 Act raises difficulties for the "autonomy, legitimacy and efficacy" necessary for interest representation (Hyman, 1997, p.310). Autonomy of the workplace representative or wider union from the employer is irrelevant if there is no engagement; there is no "record of 'delivering the goods'" (*ibid*) nor efficacy in terms of union effectiveness; the 'goods' are delivered *via* a third party. It is not so much that the 2001 Act *per se* militates against worker activism more its usage in the wrong context, as the last refuge of the powerless, has detrimental effect.

One of the shortcomings of the 2001 Act for trade unions is its failure to deal with the question of trade union recognition, still at issue 100 years after the 1913 Dublin Lockout. Those tumultuous events were being commemorated while writing the foregoing chapters. Now as the final chapter is being written it is 2014 and the opportunity presents to commemorate the events of 1914; the return to work "on the best terms available" of those still on strike by mid-January of that year (Yeates, 2001, p.521) an "inconclusive end" to the Lockout (Plunkett, 1980, p.133). Plunkett reflects: -

> That, then, was about as far as general trade unionism in Ireland had progressed up to the outbreak of the First World War. It had established its right to organise … [and] … it had won official endorsement for the view that the employee had a right to be heard
> (Plunkett, 1980, p.133)

What has changed? One hundred years later trade unions still have the right to organise and any return to using the 2001 Act procedures according to their original intent still only guarantees that an employee, singular, has a right to be heard. It does nothing to promote, seems almost to deny, the right to collective bargaining or union recognition, that is management and unions "jointly determining terms and conditions of

employment on a collective basis" (Salamon, 1987, p.408). Will it take another 100 years to resolve 1913's "unfinished business"?

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Bibliography

1913 Committee – [Online] http://1913committee.ie/blog/?page_id=8 (Accessed 13th December 2013)

Abbott, K., (2006) 'A review of employment relations theories and their application', *Problems and Perspectives in Management*, 1

Ahlstrand, B. (1990) *The quest for productivity: a case study of Fawley after Flanders*, Cambridge: Cambridge University Press

Allen, K., (2000) *The Celtic Tiger: the myth of social partnership in Ireland*, Manchester: Manchester University Press

Allen, K., (2009) 'Social partnership and union revitalisation' in Gall, G., (ed.) (2009) *The Future of Union Organising: Building for Tomorrow*, Basingstoke: Palgrave, Macmillan

Almond, P., and Ferner, A., (2006) *American multinationals in Europe: managing employment relations across national borders*, Oxford: Oxford University Press

Armstrong, M., and Murlis, H. (1998) *Reward management: a handbook of remuneration strategy and practice*, London: Koran Page Ltd

Atzeni, M., (2010) 'Chapter 2: A Marxist perspective on workers' collective action', in Atzeni, M., *Workplace conflict: mobilization and solidarity in Argentina*, Basingstoke: Palgrave-Macmillan, pp. 14-31 [Online] Available at: - https://dspace.lboro.ac.uk/dspace_jspui/bit.stream/2134/7845/3/Marxist_perspective_ Atzeni_Chapter2.pdf (Accessed 1st February 2013)

Badigannavar, V., and Kelly, J., (2005) Why are some union organizing campaigns more successful than others? *British Journal of Industrial Relations* 43(3) pp. 515-535

Banks, A., and Conrow, T., (a) (no date) *Developing strategic campaigns: a manual for union activists, educators and organisers*, - available for purchase at: - www.teresaconrow.com

Banks, A., and Conrow, T., (b) (no date) *Developing strategic campaigns: guide for facilitators*, - available for purchase at: - www.teresaconrow.com

Banks, A., and Metzgar, J., (1989) 'Participating in management: union organizing on a new terrain', *Labor Research Review*, 1(14), pp. 2-53

Barbour, R., (2007) *Doing Focus Groups*, Thousand Oaks, CA: Sage

Barrett, S. D., (2004) 'The sustainability of the Ryanair model', *International Journal of Transport Management* 2, pp. 89–98.

Barry, F., and Bergin, A., (2012) *Offshoring, inward investment and export performance*, ESRI Working Paper No. 430, March 2012, Dublin: Economic and Social Research Institute

Batstone, E., Boraston, I., and Frenkel, S. (1977) *Shop stewards in action*, Oxford: Basil Blackwell

Bell, J. (1987) *Doing your research project: a guide for first-time researchers in social science and education*, Milton Keynes: Open University Press

Beynon, H. and Blackburn, R., (1972) *Perceptions of work: variations within a factory*, Cambridge: Cambridge University Press

Beynon, H., (1973) *Working for Ford*, Harmondsworth: Penguin

Blackburn, R.M., and Prandy, K., (1965) 'White-collar unionization: a conceptual framework', *British Journal of Sociology*, 16(2), pp. 111 – 122

Boyd, A (1972) *The rise of the Irish trade unions 1729 – 1970*, Tralee, Co. Kerry: Anvil Books Ltd

Bronfenbrenner, K., Friedman, S., Hurd, R. W., Oswald, R. A. and Seeber, R. L (eds.) (1998) *Organizing to Win: New Research on Union Strategies*, Ithaca, NY: Cornell University Press

Broughan, T., (2000) Industrial Relations (Amendment) Bill, 2000, 19th October 2000, Dáil Éireann Debate Vol. 524 No. 4 [Online] Available at: http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2000101900019?opendocument (Accessed 2nd November 2013)

Brown, W. (1997) 'The High Tide of consensus: The system of industrial relations in Great Britain (1954) revisited', *Historical Studies in Industrial Relations*, 4

Brown, W., Bryson, A., and Forth, J., (2008) *Competition and the retreat from collective bargaining,* NIESR Discussion Paper No. 318, August 2008, [Online] Available at: - http://niesr.ac.uk/sites/default/files/publications/210808_110817.pdf (Accessed 11th December 2013)

Budd, J.W., Gomez, R., and Meltz, N.M., (2004) 'Why a balance is best: the pluralist industrial relations paradigm of balancing competing interests', in Kaufmann, B.E., (ed.) (2004) *Theoretical perspectives on work and the employment relationship*, Champaign-Urbana: Industrial Relations Research Association

Bunreacht na hEireann – Constitution of Ireland (1937) Dublin: Government Publications Office

Burke, U., (1998) Dáil debate on the Trade Union Recognition Bill, 1998 [Online] Available at: - http://debates.oireachtas.ie/dail/1998/02/24/00016.asp (Accessed 10th October 2012)

Carter, B., and Cooper, R., (2002) 'The organizing model and the management of change: a comparative study of unions in Australia and Britain', *Industrial Relations*, 57(4) pp. 712-740 (Accessed 24th January 2014)

Cavendish, R (2003) End of the 100 Years War, History Today, 53(10) [Online] Available at: - http://www.historytoday.com/richard-cavendish/end-hundred-years-war (Accessed 13th December 2013)

Central Arbitration Committee (n.d.), 'What is the Central Arbitration Committee?' [On-line] http://www.cac.gov.uk/index.aspx?articleid=2239

Central Statistics Office (2012) *This is Ireland: Highlights from 2011 Census, Part 2* [Online] Available at:- http://www.cso.ie/en/media/csoie/census/documents/thisisirelandpart

2census2011/This%20is%20Ireland%20Highlights,%20P2%20Full%20doc.pdf – (Accessed 2nd September 2013)

Central Statistics Office (2013) *Industrial production & turnover*, Dublin: Central Statistics Office, 8th January 2013, [Online] Available at:- http://www.cso.ie/en/media/csoie/releasespublications/documents/industry/2012/prodturn_oct2012.pdf - (Accessed 12th January 2013)

Christian, T. J., and Ewing, K. D., (1988) 'Labouring under the Canadian Constitution', *International Law Journal*, 17, pp. 73-91

Clark, A., (2005) 'The Guardian profile: Michael O'Leary', *The Guardian*, Friday 24th June 2005 [Online] Available at: - http://www.guardian.co.uk/environment/2005/jun/24/theairlineindustry.travelnews?INTCMP=SRCH (Accessed 8th October 2012)

Clegg, H.A., (1951) *Industrial democracy and nationalisation*, Oxford: Blackwell

Clegg, H.A., (1975) 'Pluralism in industrial relations', *British Journal of Industrial Relations* 8(3), pp. 309 – 316

Cole, G., (1939) *British Trade Unionism Today*, London: Gollancz

Colling, T., (2006) 'What space for unions on the floor of rights? Trade unions and the enforcement of statutory individual employment rights', *Industrial Law Journal*, 35(2) pp. 140-160

Collings, D.G., Gunnigle, P., and Morley, M.J. (2005) 'American Multinational subsidiaries in Ireland: changing the nature of employment relations?' in Boucher, G., and Collins, G., (eds.) *The New World of Work: Labour Markets in Contemporary Ireland*, Dublin: Liffey Press

Collings, D.G., Gunnigle, P., and Morley, M.J. (2008) 'Between Boston and Berlin: American MNCs and the shifting contours of industrial relations in Ireland', *The International Journal of Human Resource Management*, 19(2) February 2008, pp. 240-261

Commission of Inquiry on Industrial Relations (1981) *Report of the Commission of Inquiry on Industrial Relations*, Dublin: Stationery Office

Committee on the Constitution (1967) *Report of the Committee on the Constitution (1967)* Dublin: Stationery Office

Connolly, H., Marino, S., and Miguel Martinez, L., (2011) "'Justice for Janitors' goes Dutch: the possibilities and limitations of an organising approach in the Netherlands", Paper presented to BUIRA Conference, 2011, University of Greenwich,

Constitution Review Group (1996) *Report of the Constitution Review Group (1996)* Dublin: Stationery Office

Crosby, M (2009) 'CleanStart – Fighting for a Fair Deal for Cleaners' in Gall, G. (ed.) (2009) *The Future of Union Organising : Building for Tomorrow*, Basingstoke: Palgrave, Macmillan

Crosby, M., Easson, M., and Forum, L.R., (1992) *What should unions do?* Sydney: Pluto Press Australia

CSO (2012) *Profile – At Work*, Stationery Office: Dublin [Online] Available at: - http://www.cso.ie/en/media/csoie/census/documents/census2011profile3/Profile%203full%20doc%20for%20web%20sig%20amended.pdf (Accessed 18th February 2013)

D'Art, D. And Turner, T. (2003) 'Union recognition in Ireland: one step forward or two steps back?' *Industrial Relations Journal*, 34(3) pp. 226 – 240

D'Art, D., and Turner, T. (2005) 'Union recognition and partnership at work: a new legitimacy for Irish trade unions?' *Industrial Relations Journal* 36(2) pp. 121 – 139

D'Art, D., and Turner, T., (2006) 'Union organising, union recognition and employer opposition: case studies of the Irish experience', Irish Journal of Management, 26(2) pp. 165 – 184

D'Art, D., and Turner, T., (2010) 'Irish trade unions under social partnership: a Faustian bargain?' *Working Paper Research Series*, Paper No. 9/10, October 2010

D'Art, D., Turner, T., and O'Sullivan, M., (2013) 'Introduction: the continuing relevance of trade unions', in Turner, T., D'Art, D., and O'Sullivan, M., (eds.) (2013) *Are trade unions still relevant? Union recognition 100 years on*, Dublin: Orpen Press

Daly, B., and Doherty, M., (2010) *Principles of Irish Employment Law*, Dublin: Clarus Press Ltd

Daly, M., and Yeates, N., (2003) 'Common origins, different paths: adaptation and change in social security in Britain and Ireland', *Policy & Politics*, 31(1) pp.85-97

Darlington, R., (1994) *The dynamics of workplace unionism: shop stewards' organisation in three Merseyside plants*, London: Mansell

Darlington, R., (2001)'Union Militancy and Left-Wing Leadership on London Underground', *Industrial Relations Journal*, vol. 32, no. 1, 2001, pp. 2-21.

Darlington, R., (2002) 'Shop Stewards' Leadership, Left-Wing Activism and Collective Workplace Union Organisation', *Capital and Class*, vol. 26, no. 1, 2002, pp. 95-126.

Davies, A.C.L., (2009) *Perspectives on labour law*, 2nd edition, Cambridge: Cambridge University Press

De Leeuw, E 'Self-administered questionnaires and standardized interviews' in Alasuutari, P., Bickman, L and Brannen, J. (eds.) (2008) *The Sage handbook of social research methods*, Sage Publications

De Turberville, S.R., (2004) 'Does the 'organizing model' represent a credible union renewal strategy?' *Work, Employment and Society* 18(4) pp. 775 – 794

Devine, F., and Halpenny, M., (2002) 'Report to the Vice President on the experience of branches in processing disputes under the code of Practice on Voluntary Dispute Resolution (S. I. No. 145 of 2000)', unpublished SIPTU report – available on request from SIPTU, Liberty Hall, Dublin 1

Dickens, L., and Hall, M., (2003) 'Labour law and industrial relations: a new settlement?', in Edwards, P., (ed.) (2003) *Industrial Relations: theory and practice*, 2nd edition, Oxford: Blackwell

Directive 2002/14/EC of the European Parliament and of the Council of the 11th March 2002 establishing a general framework for informing and consulting employees in the European Community

Dobbins, T., (2001) 'Rise in union membership hides decline in density levels, *Industrial Relations News* 26 – 05/07/2001

Dobbins, T., (2003) 'Thematic feature - works councils and other workplace employee representation and participation structures' available at: - http://www.eurofound.europa.eu/eiro/2003/09/tfeature/ie0309203t.htm

Dobbins, T., (2004) 'New Act Bars Victimisation of Both Non-Union and Union Workers', *Industrial Relations News 09* - 26/02/2004

Dobbins, T., (2005a) 'Irish industrial relations system no longer voluntarist', http://www.eurofound.europa.eu/eiro/2005/03/feature/ie/0503202f.htm - Accessed 10th November 2013

Dobbins, T., (2005b) *Labour Inspectorate wants greater powers to police employers*, available at:- http://www.eurofound.europa.eu/eiro/2005/04/feature/ie0504204f.htm – Accessed 5th March 2013

Dobbins, T., (2007a) 'Firm considers High Court challenge over '2001-2004' pay ruling', *Industrial Relations News*, IRN 7 - 20/02/2007

Dobbins, T., (2007b) 'Unresolved union recognition question back on social partnership agenda', *Industrial Relations News*, IRN 16 – 01/05/2007

Dobbins, T., (2008) 'Government and employers 'colluded' to dilute consultation law, report claims', *Industrial Relations News*, 42, November 2008

Dobbins, T., (2008) 'Government and employers "colluded" to dilute consultative law, report claims', *Industrial Relations News* 42 - 21/11/2008

Dobbins, T., (2010) 'Ireland – developments in social partner organisations: employer organisations', *EIROnline*, at:- http://www.eurofound.europa.eu/eiro/studies/tn0910049s/index.htm - (Accessed 13th October 2012)

Dobbins, T., (2010) 'The case for 'beneficial constraints': why permissive voluntarism impedes workplace cooperation in Ireland', *Economic & Industrial Democracy*, 41(4), pp. 497 – 519)

Dobbins, T., and Sheehan, B., (1998) 'Annual Review for Ireland', *EIROnline* – http://www.eurofound.europa.eu/eiro/1998/2/feature/ie9812129f.htm - Accessed 25/03/2010

Doherty, M., (2007) 'Union sundown? The future of collective representation rights in Irish law', *Irish Employment Law Journal*, 4 (4) [On-line] http://doras.dcu.ie/17031/1/M_Doherty_IELJ_Ryanair_Article_Submitted_Version.pd (Accessed 4th August 2013)

Doherty, M., (2009) 'Representation, Bargaining and the Law: where to next for the unions? http://doras.dcu.ie/17034/1/Doherty,_NILQ_Revised_Submission_Trade_Unions.pdf [Accessed 4th August 2013]

Doherty, M., (2013) 'When You Ain't Got Nothin', You Got Nothin' to Lose…. Union Recognition Laws, Voluntarism and the Anglo Model' *Industrial Law Journal,* 42(4) pp.369-397

Donaghey, J., and Teague, P., (2007) 'The mixed fortunes of Irish unions: living with the paradoxes of social partnership', *Journal of Labor Research*, 28(1), pp. 19 – 41

Dundon, T., and Collings, D.G., (2011) 'Employment relations in the United Kingdom and Republic of Ireland', in Barry, M., and Wilkinson, A., (eds.) (2011) *Research Handbook of Comparative Employment Relations*, Cheltenham: Edward Elgar

Dundon, T., Dobbins, T., Cullinane, N., Hickland, E., and Donaghey, J., (2014) 'Employer occupation of regulatory space of the Employee Information and Consultation (I&C) Directive in liberal market economies' *Work, Employment & Society* 0950017012466688, first published on January 6, 2014 as doi:10.1177/0950017012466688

Dunlop, J., (1958) *Industrial Relations Systems*, New York: Holt

Edwards, P. (1995) *Industrial relations: theory and practice in Britain*, Oxford: Blackhall

Eisenhardt, K.M., 'Building theories from case study research' in Huberman, A. M., and Miles, M.B., (eds) (2002) *The Qualitative Researcher's Companion*, Sage

Erickson, E., Fisk, C., Milkman, R., Mitchell, D., and Wong, K., (2002) 'Justice for janitors: lessons from three rounds of negotiations', *British Journal of Industrial Relations* 40(3) pp. 543-568

European Commission, Director-General for Employment and Social Affairs (2002) *Employment in Europe 2002: recent trends and prospects*, Brussels: European Commission

Ewing, K. D., and Hendy, J., (2010) 'The dramatic implications of Demir and Baykara', *Industrial Law Journal*, 39(1) pp. 2-51

Ewing, K., (2002) 'Human rights and industrial relations: possibilities and pitfalls', *British Journal of Industrial Relations*, 40(1) pp. 138-149

Fairbrother, P., (1996) 'Trade unions and human resource management in Britain: case study evidence from the public sector, utilities and manufacturing', *Employee Relations* 18(6) pp. 10-27

Fairbrother, P., (2000) 'British trade unions facing the future', *Capital & Class*, 24, Summer 2000, pp. 11-42

Fennell, C., and Lynch I., (1993) *Labour Law in Ireland*, Dublin: Gill & Macmillan

Ferner, A., (1997) 'Country of origin effects and human resource management in multinational companies', *Human Resource Management Journal* 7(1), pp. 19-37

Fichter, M., and Greer, I., (2004) 'Analyzing social partnership: a tool of union revitalization' in Frege, C., and Kelly, J., (eds.) (2004) *Varieties of unionism: strategies for union revitalization in a globalizing economy*, Oxford: Oxford University Press

Field, J., Johnston, A., Wadsworth, J., and Wellings, K., 'Studying sexual lifestyles' reproduced in Yates, S.J., (2004) *Doing Social Science Research,* Sage Publications in association with The Open University

Fiorito, J and Jarley, P. (2010) 'Understanding organising activity among international unions', *Industrial Relations Journal* 41(1), pp. 74-92

Fitzgerald, K., (2007) 'Leading law experts differ on impact of Ryanair judgment', *Industrial Relations News*, IRN 7 – 20/02/2007 - http://www.irn.ie/issues/article.asp?id=11810&issueType=7 [Accessed – 29th December 2013]

Flanders, A., (1965) *Industrial relations: what is wrong with the system?*, London: Faber

Flanders, A., (1973) 'Measured day-work and collective bargaining', *British Journal of Industrial Relations*, 11(3) pp. 368-392

Flanders, A., (1974) 'The tradition of voluntarism', *British Journal of Industrial Relations*, 12(3), pp. 352-370

Fletcher, B., and Gapasin, F., (2008) *Solidarity divided: the crisis in organized labor and a new path toward social justice*, Berkeley: University of California Press

Flynn, P., and McAuley, D., (1998) *Report of Enquiry into industrial action at Dublin Airport in March 1998*, Department of Enterprise, Trade and Employment, Dublin: Government Publications Office

Forde, M., and Byrne, A. P., (2010) *Industrial relations law*, 3rd edition, Dublin, Round Hall Thomson Reuters

Fox, A., (1966) *Industrial sociology and industrial relations*, Donovan Commission Research Paper, No. 3, HMSO, London

Fox, A., (1973) 'Industrial relations: a social critique of pluralist ideology' in Child, J., (ed.) (1973) *Man and Organization*, London: George Allen & Unwin

Fox, A., (1974) *Beyond contract: work, power and trust relations* London: Faber & Faber

Frege, C., and Kelly, J., (eds.) (2004) *Varieties of unionism: strategies for union revitalization in a globalizing economy*, Oxford: Oxford University Press

Friedman, S., (2003) 'Foreword' in Gall, G., (2003) *Union organizing: campaign for trade union recognition*, London: Routledge

Gall, G., (1993) 'What happened to single union deals? A research note' *Industrial Relations Journal*, 24(1), pp. 71-75

Gall, G., (2003) *Union organizing: campaign for trade union recognition*, London: Routledge

Gall, G., (2006) 'Introduction: the fruits of labour?' in Gall, G., (ed.) (2006) *Union recognition: organising and bargaining outcomes*, London: Routledge

Gall, G., (2010a) 'Statutory Recognition Provisions as Stimulants to Employer Anti-Unionism in Three Anglo-Saxon Countries' *Economic and Industrial Democracy*, Vol. 31(1) pp.7-33

Gall, G., (2010b) *Union organising' and the health of the union movement in Britain*, Liverpool: Institute of Employment Rights

Gall, G., (ed.) (2006) *Union Recognition: Organising and bargaining outcomes*, London: Routledge

Gall, G., and Fiorito, J., (2011) 'The backward march of labour halted? Or what is to be done with 'union organising? The cases of Britain and the USA', *Capital & Class*, 35(2) pp. 233-251

Geary, J. (2014) 'Collective bargaining is a process that allows workers to have a collective voice at work' *The Irish Times*, 21st January 2014

Geary, J.F., and Roche, W.K., (2001) 'Multi-nationals and human resource practices in Ireland: a rejection of the 'new conformance thesis', *International Journal of Human Resource Management* 12(1) pp. 109-127

Gibbons, T., (2003) 'Why do some recognition campaigns work and others do not: trade union recognition in the West of Ireland', unpublished MA thesis, Keele University, Staffordshire

Gilmore, E., (2000) Industrial Relations (Amendment) Bill, 2000, 19th October 2000, Dáil Éireann Debate Vol. 524 No. 4 – Accessed 2nd November 2013

Gilvarry, E., and Hunt, B., (2008) 'Trade union recognition and the Labour Court: picking up the pieces after Ryanair', in Hastings, T., (ed.) (2008) *The state of the unions: challenges facing organised labour in Ireland*, Dublin: Liffey Press

Gonzalez-Perez, M-A., Dundon, T., and McDonaugh, T (2009) 'State policy and union organising tactics in the Republic of Ireland' in Gall, G (2009) (ed.) *The Future of Union Organising: Building for Tomorrow*, Palgrave, Macmillan

Government for National Recovery 2011 - 2016 (2011) Dublin: Stationery Office

Guest, D. (1991) 'Personnel management: the end of orthodoxy', *British Journal of Industrial Relations*, 29(2) pp. 149 – 175

Gunnigle, P., (2000) 'Paradox in policy and practice: public policy and trade unions in the Republic of Ireland', *Irish Business and Administrative Research*, 21 (Summer) pp. 39-54

Gunnigle, P., (2000) 'Paradox in policy and practice: trade unions and public policy in the Republic of Ireland', *Irish Business and Administrative Research*, 21(2), pp. 35-54

Gunnigle, P., Lavelle, J., and McDonnell, A., (2007) *Industrial relations in multinational companies: double-breasting and trade union avoidance in Ireland*, Working Paper, March 2007, Limerick

Gunnigle, P., MacCurtain, S., and Morley, M.., (2001) 'Dismantling pluralism: industrial relations in Irish greenfield sites', *Personnel Review*, 30(3) pp. 263-279

Gunnigle, P., Morley, M. & Turner, T., 'Employee Relations in Ireland: An Organisational Level Perspective' in Gunnigle, Flood, Morley, & Turner (Eds.) (1994) *Continuity & Change in Irish Employee Relations*, Dublin: Oak Tree Press

Gunnigle, P., O'Sullivan, M., and Kinsella, M., 'Organised Labour in the New Economy: Trade Unions and Public Policy in the Republic of Ireland' in D'Art, D., and Turner, T., (Eds.) (2002) *Irish Employment Relations in the New Economy*, Dublin: Blackhall

Hann, D., and Teague, P., (2012) 'Individual employment rights and the renewal of economic citizenship: lessons from the Rights Commissioners in Ireland', *Work, Employment & Society*, 26(4), pp. 623-637

Harvey, D., (2005) *A brief history of neo-liberalism*, Oxford: Oxford University Press

Heery, E., (2003) 'Trade unions and industrial relations', in Ackers, P., and Wilkinson, A., (Eds.) (2003) *Understanding work and employment: industrial relations in transition*, Oxford: Oxford University Press, pp. 278-304

Heery, E. and Simms, M. (2010) 'Employer responses to union organising: pattern and effects' *Human Resource Management Journal*, 20:1, pp. 3-22

Heery, E., (2005) 'Sources of change in trade unions', *Work, Employment & Society*, 19(1) pp. 91 – 106

Heery, E., Kelly, J. And Waddington, J (2003) 'Union Revitalization in Britain', *European Journal of Industrial Relations* 9(1) pp. 79-97

Heery, E., Simms, M., Delbridge, R., Salmon, J., and Simpson, D., (2000a) 'Union organization in Britain: a study of policy and practice', *International Journal of Human Resource Management*, 11(5) pp. 986-1007

Heery, E., Simms, M., Simpson, D., Delbridge, R., and Salmon, J. (2000b) 'Organizing unionism comes to the UK', *Employee Relations*, 22(1), pp. 38 – 57

Heery, J., and Adler, L., (2004) 'Organizing the unorganized' in Frege, C., and Kelly, J., (eds.) (2004) *Varieties of unionism: strategies for union revitalization in a globalizing economy*, Oxford: Oxford University Press

Hickey, R., Kuruvilla, S., and Lakhani, T., (2010) 'No panacea for success: member activism, organizing and union renewal', British Journal of Industrial Relations, 48(1) pp.53-83

Higgins, C., (2001), 'The 'right to bargain' law – is it working?', *Industrial Relations News* 45 – 29/11/2001

Higgins, C., (2006) 'Non-union employers more willing to do 'voluntary leg' pay deals', *Industrial Relations News*, 41, 02 November 2006

Higgins, C., (2008) 'Commission on SIPTU's future sets out radical changes', *Industrial Relations News* 29, 30/7/2008

Higgins, C., (2007a) 'High Court review of 2004 Act dropped after Company's 'legal' deal with union', *Industrial Relations News*, IRN 42 - 21/11/2007

Higgins, C., (2007b) 'Ryanair judgment 'fallout' begins as Fyffes contractor threatens High Court review', *Industrial Relations News*, IRN 7 - 20/02/2007

Higgins, J., (2001), Industrial Relations (Amendment) Bill, 2000, Dáil Éireann Debate 9th May 2001, Vol. 535 No. 5 – Accessed 2nd November 2013

High-Level Group on Trade Union Recognition (1997) *Report of the high level group established under paragraph 9.22 of Partnership 2000*, Dublin: Department of Enterprise Trade and Employment

High Level Group on Trade Union Recognition (1999), *Report of the high level group on trade union recognition*, Dublin: Stationery OfficHogan, & Whyte (2003) *JM Kelly – The Irish Constitution*, Dublin: Butterworths

Holliday, A. (2002) Doing and writing qualitative research, Sage

Horgan, J., (1989), 'The future of collective bargaining', in UCD (1989) *Industrial relations in Ireland: contemporary issues and developments*, Dublin: University College Dublin

Howlin, N., and Fitzpatrick, R. C., (2007) 'The feasibility of mandatory trade union recognition in Ireland', *Dublin University Law Journal*, 29, p. 178

Hoxie, R., (1923) 'Trade Unionism in the United States', in McCarthy, W., (Ed) (1985), *Trade Unions*, Penguin, Harmondsworth

Hyman, R. (1995) 'Industrial relations in Europe: theory and practice, *European Journal of Industrial Relations*, 1(1), pp. 17 – 46

Hyman, R., (1975) *Industrial Relations: A Marxist Introduction*, London: Macmillan

Hyman, R., (1989) *Strikes*, 4th editions, London: Macmillan

Hyman, R., (1997) 'The future of employee representation', *British Journal of Industrial Relations*, 35(3) pp. 309-336

Hyman, R., (2001) *Understanding European Trade unionism: between market, class and society*, London: Sage Publications

IBEC-ICTU (2010) *National protocol for the orderly conduct of industrial relations and local bargaining in the private sector*, Dublin: Irish Business & Employers' Confederation and Irish Congress of Trade Unions

Industrial Relations (Amendment) Act 2001, No.11/2001, Dublin: Stationery Office

Industrial Relations (Miscellaneous Provisions) Act 2004, No. 4/2004, Dublin: Stationery Office

Industrial Relations Act 1946, No. 26/1946, Dublin: Stationery Office

Industrial Relations Act 1969, No. 14/1969, Dublin: Stationery Office

Industrial Relations Act 1990, No. 19/1990, Dublin: Stationery Office

Industrial Relations News (1998) 'Union asks members not to back ESAT sponsored event', *Industrial Relations News*, *IRN 37*, 01/10/1998

Industrial Relations News (2001) 'Conference Report: SIPTU Conference: Recognition rethink, internal re-organisation', *Industrial Relations News* 38, 11/10/2001

Industrial Relations News (2005) 'Ryanair – union's claim gets green light from Court', *Industrial Relations News* 6 – 03/02/2005

International Brotherhood of Teamsters, *The Teamster Organizers Handbook,*

International Labour Organization (1960) *Collective Bargaining*, Geneva: ILO

International Labour Organization (2012) 'Case No. 2780 (Ireland)', in, *363rd report of the committee on freedom of association*, presented at ILO Governing Body, 313th session, 15-30 March 2012, pp. 723-815

International Transport Workers' Federation (n.d.) *Organising Manual* London: International Transport Workers' Federation, ISBN No: 1-90467-46-4 Available from: http://www.itfglobal.org/education/index.cfm

Irish Congress of Trade Unions (1996) *Recognition of Unions and the Right to Bargain*, Dublin: Irish Congress of Trade Unions

Irish Congress of Trade Unions (1998) *Proposals on Trade Union Recognition and Representational Rights,* Dublin: Irish Congress of Trade Unions

Irish Congress of Trade Unions (2002) *Report of Working Group on Trade Union Recognition*, Dublin: Irish Congress of Trade Unions

Irish Congress of Trade Unions (2009) *There is a better fairer way*, Dublin: Irish Congress of Trade Unions

Irish Congress of Trade Unions (2010) Complaint on Freedom of Association against the Government of the Republic of Ireland, Dublin: Irish Congress of Trade Unions

Irish Congress of Trade Unions (2011) Universal Periodic Review (UPR) Stakeholder Submission to the United Nations Twelfth Session of the UPR Working Group Human Rights Council 6th October 2011

Irish Congress of Trade Unions (2013a) Dublin May Day Demonstration http://www.ictu.ie/ccn/events1/2013/05/01/[11th January 2014]

Irish Congress of Trade Unions (2013b) Securing respect for the right to collective bargaining in Ireland: Submission to the Minister for Jobs, Enterprise & Innovation, March 2013, Dublin: Irish Congress of Trade Unions

Irish Trade Union Federation (TUF) (2003) *The TUF guide to labour law for union representatives*, Dublin: Irish Trade Union Federation

Jackson, D., (2007)' A study of the Industrial Relations (Miscellaneous Provisions) Acts 2001 – 2004 as a mechanism to assist in the revitalisation of unions in Ireland', unpublished BBS research assignment, Dublin: Dublin City University

Jacob, J., (1998) Dáil debate on the Trade Union Recognition Bill, 1998 - http://debates.oireachtas.ie/dail/1998/02/18/00018.asp - Accessed 10th October 2012

Jacobi, O., (2003) 'Union recognition in Germany: a dual system of industrial relations with two problems of recognition', in Gall, G., (2003*) Union organizing: campaign for trade union recognition*, London: Routledge

Johnson, N. B., and Jarley, P., (2004) 'Justice and union participation: an extension and test of mobilization theory', *British Journal of Industrial Relations*, 42(3) pp. 543-562

Kahn-Freund, O. (1977) *Labour and the Law*, 2nd edition, London: Stevens

Kahn-Freund, O., (1944) 'The illegality of a trade union', *Modern Law Review*, 7(4) November 1944, pp. 192-205

Kahn-Freund, O., (1954), 'Legal framework' in Flanders, A., and Clegg, H., (eds.) (1954) *The system of industrial relations in Great Britain*, Oxford: Basil Blackwell

Katz, H., and Darbishire, O., (2000) *Converging divergences: worldwide changes in employment systems*, Ithaca, NY: Cornell University Press

Kelly, A., and Brannick, T., (1985) 'Industrial relations practices in multinational companies in Ireland', *Journal of Irish Business and Administrative Research*, Vo. 7, pp. 98-111

Kelly, J., (1989) *Rethinking industrial relations: mobilization, collectivism and long waves*, London: Routledge

Kelly, J., (2001) 'Foreword' in D'Art, D., and Turner, T., (Eds.) (2002) *Irish Employment Relations in the New Economy*, Dublin: Blackhall

Kelly, J., (2005) 'Social movement theory and union revitalization' in Fernie, S., and Metcalf, D., (eds.) (2005) *Trade unions: resurgence or demise?*, Oxford: Routledge

Kelly, J., and Heery, E., (1994) *Working for the union*, Cambridge: Cambridge University Press

Kerr, A., (1997) 'Collective Labour Law' in Murphy, T.V., and W. K. Roche (Eds.) (1997) *Irish industrial relations in practice*, 2nd edition, Dublin: Oak Tree Press

Kerr, A., (2005) 'National report Ireland', in, *The evolving structure of collective bargaining in Europe 1990 – 2004*, Research project co-financed by the European Commission and the University of Florence - http://eprints.unifi.it/archive/00001163/01/Irlanda.pdf - [Accessed 8th October 2012]

Kerr, A., and Whyte, G., (1985) *Irish trade union law*, Abingdon: Professional Books Ltd

Labour Court (2007) *Matters arising from decision of the Supreme Court in Ryanair v Labour Court and IMPACT*, Dublin: Labour Court

Labour Court (n.d.) 'Mission Statement' [On-line] http://www.labourcourt.ie/labour/labour.nsf/lookuppagelink/HomeLinks (Accessed 25th April 2013)

Labour Relations Commission (1997) *Annual Report,* Dublin: Labour Relations Commission

Labour Relations Commission (2004a) *Annual Report*, Dublin: Labour Relations Commission

Labour Relations Commission (2004b) *LRC guidelines on the processing of SI76 cases,* Dublin: Labour Relations Commission

Labour Relations Commission (2006) *Annual Report, 2006*, Dublin: Labour Relations Commission

Labour Relations Commission (2007) *Annual Report, 2007*, Dublin: Labour Relations Commission

Lane, T and Roberts, K. (1971) *Strike at Pilkingtons*, Fontana, London

Lavelle, J., Gunnigle, P., & McDonnell, A., 'Unions on the edge? Industrial relations in multinational companies' in Hastings, T., (2008) (ed.) *The state of the unions: challenges facing organised labour in Ireland*, Dublin: Liffey Press

Leader, S. (2002) 'Choosing an interpretation of the right to freedom of association', *British Journal of Industrial Relations* 40(1) pp. 128 – 137

Lerner, S., (2003) 'An immodest proposal: a new architecture for the house of labor', *New Labor Forum* 12(2) pp. 9-30, Summer 2003

London Metropolitan University (2011) *Harvard Referencing Guide,* Library Services, London Metropolitan University [Online] Available at: -

https://metranet.londonmet.ac.uk/fms/MRSite/psd/ls/general/Harvard%20Referencing%20guide.pdf (Accessed 12th January 2014)

Lupton, T., (1963) *On the shop floor: two sides of workshop organization and output*, Oxford: Pergamon Press

Lynch, P., (1994) '1894-1994: an overview', in, Nevin, D., (ed.) (1994) *Trade union century*, Cork: Mercier Press

MacPartlin, B., (1997) 'The development of trade union organisation', in Murphy, T.V. and Roche, W. K., *Irish industrial relations in practice*, Dublin: Oak Tree Press

Markowitz, L (2000) *Worker activism: After successful union organizing*, M.E. Sharpe, New York

Martin, R., (1999) 'Mobilization theory: a new paradigm for industrial relations', *Human Relations* 52(9), pp. 1205-1216

Martin, R., 'Politics and industrial relations' in Ackers, P., and Wilkinson, A., (Eds.) (2003) *Understanding work and employment: industrial relations in transition*, Oxford: Oxford University Press, pp. 161-175

Maxwell, J.A. (2005) *Qualitative research design: an interactive approach*, Sage

McDonough, T., and Dundon, T., (2010) "Thatcherism delayed'; the Irish crisis and the paradox of social partnership', *Industrial Relations Journal*, 41(6) pp. 544 – 562

McGinty, B., (2010) 'IBEC sets out opposition to mandatory union recognition', *IBEC Agenda*, Issue 6 2010

McGovern, P. G. (1989) 'Union recognition and union avoidance in the 1980s' in UCD (1989) *Industrial relations in Ireland: contemporary issues and developments*, Dublin: University College Dublin

McKay, S., Moore, S., and Wood, H., (2006) 'The nature of collective bargaining achieved through the statutory procedure' in Gall, G., (ed.) (2006) *Union recognition: organising and bargaining outcomes*, London: Routledge

Meenan, F., (1999) *Working within the law: a practical guide for employers and employees*, 2nd edition, Dublin: Oak Tree Press

Michels, R., (1959) *Political parties*, 2nd edition, Glencoe, Illinois: Free Press

Milkman, R., and Voss, K., (eds.) (2004) *Rebuilding Labor: Organizing and Organizers in the New Union Movement*, Cornell University Press

Millar, S., (2012) 'Cabinet confidential' *Liberty*, 11(7), September 2012, Dublin: SIPTU

Milmo, D (2010) 'Michael O'Leary's apologies: the top six', *The Guardian*, Thursday 15th July 2010 [On-line] http://www.guardian.co.uk/business/2010/jul/15/michael-oleary-apologies?INTCMP=ILCNETTXT3487 (Accessed 8th October 2012)

Mooney, P., (2000) Industrial Relations (Amendment) Bill 2000, 2nd Stage, 30th May 2000, Seanad Éireann Debate, Vol. 163 No. 11 – oireachtasdebates@oireachtas.ie – (Accessed 2nd November 2013)

Moore, S., (2004) 'Union mobilization and employer counter-mobilization in the statutory recognition process' in Kelly, J., and Willman, P. (eds.) 2004 *Union organization and activity: the future of trade unions in Britain*, Routledge

Moore, S., (2005) 'The relationship between legislation and industrial practice: A study of the outcome of trade union recognition' *Employee Relations*, 28(4) pp. 363 – 373

Moore, S., (2011) *New trade union activism: class consciousness or social identity*, Basingstoke: Palgrave Macmillan

Morrin, D., (2002) 'Right to Bargain' Rules – Time Factor a Major Concern, *LRC Review*, Vol. 1.1

Muller-Jentsch, W., (2004) 'Theoretical approaches to industrial relations', in Kaufmann, B.E., (ed.) (2004) *Theoretical perspectives on work and the employment relationship*, Ithaca, NY: Industrial Relations Research Association/Cornell University Press

Murphy, T.V., 'The resolution of industrial disputes' in Murphy, T. V., and Roche, W. K., (eds.) (1997) *Industrial relations in practice*, Dublin: Oak Tree Press

Murray, P. (2008) *Americanisation and Irish industrial development, 1948 – 2008*, NIRSA Working Paper 42, November 2008

Naughten, D., (2000) Industrial Relations (Amendment) Bill 2000, 2nd Stage, 30th May 2000, Seanad Éireann Debate, Vol. 163 No. 11 – oireachtasdebates@oireachtas.ie – Accessed 2nd November 2013

Nevin, D., (ed.) (1980) *Trade unions and change in Irish society*, Mercer: Dublin

O'Connor, J., (2004) Unpublished 'SIPTU General President address', at Galway-Mayo Institute of Technology, 19 April 2004, available on request from SIPTU Communications Department, Dublin 1

O'Connor, J., (2007) Policy speech (Bantry) by SIPTU President, Jack O'Connor, *Industrial Relations News* 13 – 04/04/2007

O'Kelly, K. P., (2010), 'The end of social partnership in Ireland?' *Transfer: European Review of Labour and Research*, 16(3) pp. 425-429

O'Sullivan, M., and Gunnigle, P., (2009) "Bearing All the Hallmarks of Oppression" Union Avoidance in Europe's Largest Low-cost Airline' *Labor Studies Journal* 34(2) June 2009, pp. 252 – 270

O'Toole, J., (2000), (2000) Industrial Relations (Amendment) Bill 2000, 2nd Stage, 14th June 2000, Seanad Éireann Debate, Vol. 163 No. 17 [On-line] oireachtasdebates@oireachtas.ie – (Accessed 2nd November 2013)

Oireachtas Debates (2010) Joint Committee on Transport Debate, 24th February 2010 [On-line] http://debates.oireachtas.ie/TRJ/2010/02/24/00004.asp- (Accessed 13th October 2012)

Partnership 2000 for Inclusion, Employment and Competitiveness, (1996) Dublin: Government Publications Office

Phelps Brown, E. H., (1959) *The growth of British industrial relations*, London: Macmillan

Plowman, D. H., 'Research design and research strategy' in Kelly, D., (1999)(ed) *Researching industrial relations*, 2nd edition, The Federation Press, Sydney

Plunkett, J., (1980) 'Changed Times', in Nevin, D., (ed.) (1980) *Trade unions and change in Irish society*, Mercer: Dublin

Programme for Prosperity and Fairness (2000) Dublin: Stationery Office

Public Service Agreement, 2010 – 2014 (Croke Park Agreement), (2010) Dublin: Department of Public Expenditure and Reform

Rabbitte, P. (1998) Dáil debate on the Trade Union Recognition Bill, 1998 - http://debates.oireachtas.ie/dail/1998/02/18/00018.asp - Accessed 10th October 2012

Rabbitte, P., (2000) Industrial Relations (Amendment) Bill, 2000, 19th October 2000, Dail Éireann Debate Vol. 524 No. 4 – Accessed 2nd November 2013

Roche, W. K., (1997) 'The trend of unionisation', in Murphy, T. V., and Roche, W. K., (eds.) (1997) *Irish industrial relations in practice*, Dublin: Oak Tree Press

Roche, W. K., (2001) 'Accounting for the trend in trade union recognition in Ireland', *Industrial Relations Journal*, 32(1), pp. 37-54

Roche, W. K., (2008) 'The trend of unionisation in Ireland since the mid-1990s' in Hastings, T., (2008) (ed.), *The state of the unions: challenges facing organised labour in Ireland*, Dublin: Liffey Press

Roche, W.K., and Geary, J.F., (1996) 'Multinational companies in Ireland: adapting to or diverging from national industrial relations practices and traditions', *Irish Business & Administrative Review*, 17, pp. 14-31

Roche, W.K., and Turner, T., (1994) 'Testing alternative models of human resource policy effects on trade union recognition in the Republic of Ireland', *International Journal of Human Resource Management*, 5(3), pp. 721 – 753

Rose, J.B., (2006) 'Collective bargaining performance of newly certified unions in Canada: process and outcomes', in Gall, G., (ed.) (2006) *Union recognition: organising and bargaining outcomes*, London: Routledge

S.I. No. 145/2000 - Industrial Relations Act, 1990 (Code of Practice on Voluntary Dispute Resolution) (Declaration) Order, 200

S.I. No. 146/2000 - Industrial Relations Act, 1990 (Code of Practice on Grievance and Disciplinary Procedures) (Declaration) Order, 2000

S.I. No. 76/2004 - Industrial Relations Act 1990 (Enhanced Code of Practice on Voluntary Dispute Resolution) (Declaration) Order 2004

Salamon, M., (1987) *Industrial relations: theory and practice*, London: Prentice-Hall

Sapsford, D. (1979) 'Strike activity in Ireland: an economic analysis of a particular aspect of Irish industrial relations', *Journal of the Statistical and Social Inquiry Society of Ireland*, 24(2) pp. 29-68)

Shanahan, J. (2007) 'Has the Supreme Court decision killed the 2001-2004 Acts?', *Industrial Relations News*, IRN 26 – 11/07/2007

Shaw, R (2011) 'NUHW Defeats SEIU at CPMC, Boosting Community Struggle Over Proposed S.F. Hospital' at: - http://lists.portside.org/cgibin/listserv/wa?A2=ind1105C&L=PORTSIDELABOR&P=R2&1=PORTSIDELABOR&9=A&J=on&K=2&d=No+Match%3BMatch%3BMatches&z=4 – [Accessed 5th March 2013[

Sheehan, B., & Geary, J., (1998) 'Ireland set to introduce a national minimum wage in 2000'

http://www.eurofound.europa.eu/eiro/1998/04/feature/ie9804246f.htm - [Accessed 31st January 2013[

Sheehan, B., (1998a)' The Ryanair dispute: focus now on damage limitation', *Industrial Relations News* 7 – 12/02/1998

Sheehan, B., (1998b) 'Ryanair – no winners emerge from weekend of chaos as enquiry team faces unenviable task', *Industrial Relations News* 11 - 12/03/1998

Sheehan, B., (1999) 'Union recognition talks at critical juncture as Government's view is outlined', *Industrial Relations News* 1, 07/01/1999

Sheehan, B., (2004) 'Multinational wins employee representation case', http://www.eurofound.europa.eu/eiro/2004/12/inbrief/ie0412202n.htm – [Accessed 4th January 2013]

Sheehan, B., (2007a) 'Labour Court's guidelines for 2001-2004 cases in the wake of 'Ryanair' judgment', *Industrial Relations News* 14 – 17/04/2007

Sheehan, B., (2007b) 'LRC gets legal advice on membership issue after 'Ryanair' ruling', Industrial Relations News, IRN 10 – 14/03/2007

Sheehan, B., (2008) Employers and the traditional industrial relations system: how the bonds have been loosened', in Hastings, T., (ed.) (2008)*The state of the unions: challenges facing organised labour in Ireland*, Dublin: Liffey Press

Sheehan, B., (2011) 'Solution to collective bargaining issue must suit "our economic traditions", *Industrial Relations News*, 40 – 02/11/2011, [On-line] http://www.irn.ie/issues/article.asp?id=17941&issueType=2 (Accessed 12th January 2014)

Sheehan, B., (2012a) 'Collective bargaining – ILO findings may move "solution" a step closer', *Industrial Relations News* 14 – 04/04/2012

Sheehan, B., (2012b) 'No "independent enquiry" into 'Ryanair' case – Bruton', *Industrial Relations News* 35 – 26/09/2012

Sheehan, B., (2013) 'Collective bargaining legislation to breathe new life into 2001 Act?', *Industrial Relations News* 44 – 04/12/2013

Sheehan, B., and Geary, J., (1998) Ryanair dispute closes Dublin Airport, Eurofound, *EIROnline*, March 1998 [On-line] http://www.eurofound.europa.eu/eiro/1998/03/inbrief/ie9803224n.htm (Accessed 8th October 2012)

Sheehan, B., and Geary, J., (1998) Union recognition report advocates voluntary procedures, Eurofound, *EIROnline*, 28/02/1998 at: www.eurofound.europa.eu/eiro/1998/02/feature/ie9802141f.htm – (Accessed 12th October 2012)

Simms, M., (2001) review of Markowitz, L. (2000) *British Journal of Industrial Relations*, 39(2), June 2001, pp. 329 – 331

Simms, M., (2006) 'The transition from organising to representation', in Gall, G., (2006) (ed.) *Union recognition: organising and bargaining outcomes*, London: Routledge

Simms, M., (2007a) 'Interest formation in greenfield union organising campaigns' *Industrial Relations Journal* 39(5) pp. 439 – 454

Simms, M., (2007b) 'Managed activism: two union organising campaigns in the not-for-profit sector, *Industrial Relations Journal* 38(2) pp. 119-135

Simms, M., and Holgate, J., (2010) 'Organising for what?' *Work, Employment and Society*, 24(1) pp. 157 – 168

SIPTU (2001) 'The Industrial Relations (Amendment) Act 2001, signed into effect on June 1, promises workers and unions a binding mechanism to deal with employers who will not negotiate with them', SIPTU Press Release– available on request from Communications Department, SIPTU, Liberty Hall, Dublin 1

SIPTU (2013) 'Patricia King tells Conference that 'establishment' will resist collective bargaining' SIPTU Press Release – 13th October 2013 [Online] http://www.siptu.ie/media/newsarchive2013/fullstory_17648_en.html (Accessed 20th December 2013)

Sullivan, R. (2010) 'Labour market or labour movement? The union density bias as barrier to labour renewal', *Work, Employment and Society*, 24(1) pp. 145 – 156

Sweeney, P., (2008) *Ireland's economic success: reasons and lessons,* Dublin: New Ireland

Taylor, F. W., (1947) *Scientific management*, New York: Harper & Bros

Teague, P., and Donaghey, J, (2009) 'Why has Irish social partnership survived?', *British Journal of Industrial Relations* 47(1), pp. 55-78

Thomason, G. (1984) *A textbook of industrial relations management*, London: Institute of Personnel Management

Thompson, P., and Bannen, E., (1985) *Working the system: the shop floor and new technology*, London: Pluto Press

Tilly, C., (1978) *From mobilization to revolution*, New York: McGraw-Hill

Towards 2016: review and transitional agreement, 2008 – 2009, (2008) Dublin: Stationery Office

Towards 2016: Ten-year framework social partnership agreement, 2006 – 2015, (2006) Dublin: Stationery Office

Trade Union Recognition Bill, (1998) [On-line] http://www.oireachtas.ie/documents/bills28/bills/1998/0598/b598.pdf (Accessed 8th October 2012)

Trades Union Congress - TUC – *Guide to organising: a framework for planning, implementing and winning organising campaigns FIND*

Turner, L., (2004) 'Labour's mission in global economy', in Frege, C., and Kelly, J., (eds.) (2004) *Varieties of unionism: strategies for union revitalization in a globalizing economy*, Oxford: Oxford University Press

Turner, T., D'Art, D., and Gunnigle, P., (1997) 'Pluralism in retreat? A comparison of Irish and multinational manufacturing companies', *International Journal of Human Resource Management*, 8(6), pp. 825-840

Turner, T., D'Art, D., and Gunnigle, P., (2001) 'Multinationals and human resource practices in Ireland: a rejection of the 'new conformance thesis: a reply', *International Journal of Human Resource Management* 12(1) pp. 128-133

Turner, T., D'Art, D., and O'Sullivan, M., (2013) 'Still a struggle? Union recognition a hundred years on', in Turner, T., D'Art, D., and O'Sullivan, M., (eds.) (2013) *Are trade unions till relevant? Union recognition 100 years on*, Dublin: Orpen Press

Turner, T., O'Sullivan, M., and D'Art, D. (2009) 'The Impact of Organising Methods on Member Recruitment in Irish Trade Unions', *Internal Labour Process Conference*, http://www.ilpc.org.uk/Portals/56/ilpc2009-paperupload/ILPC2009paper-4061.doc - (Accessed 31st March 2010)

Visser, J., (2006) Union membership statistics in 24 countries, *Monthly Labor Review*, January 2006

Von Prondzynski, F., (1989) *Von Prondzynski and McCarthy on Employment law in Ireland*, 2nd edition, London: Sweet & Maxwell

Voos, P. B. (1997) 'The Future of Employee Representation: Discussion', *British Journal of Industrial Relations* 35(3) pp. 332 - 336

Waddington, J., and Whitston, C., (1997) 'Why do people join unions in a period of membership decline?' *British Journal of Industrial Relations,* 35(4) pp. 515-546

Wall, T., (2003) 'Interview: Tom Wall, Assistant General Secretary, ICTU', *Industrial Relations News* 13 - 27/03/2003

Wallace, J. (2003) 'Unions in 21st century Ireland – entering the ice age', Presented at the Industrial Relations News Conference at University College Dublin, 27th February 2003 - http://zanran_storage.s3.amazonaws.com/www.countdownnet.info/ContentPages/44322145.pdf - (Accessed: 28th August 2012)

Watson, D., (1988) *Managers of discontent: trade union officers and industrial relations managers*, London & New York: Routledge

Watson, T.J. (2008) *Sociology, work and industry*, 5th edition, London and New York: Routledge

Webb, S and Webb, B., (1897) Industrial Democracy, 1920 edition, London: Longmans, Green & Co.,

Webb, S., and Webb, B., (1920) *History of trade unionism*, 2nd ed., London: Longman

Wedderburn, K. (1986) *The Worker and the Law*, 3rd edition, London: Sweet & Maxwell

Wedderburn, Lord (1987) 'Freedom of association or right to organise', *Industrial Relations Journal*, 18(4) pp. 244-254

Wedderburn, Lord (1989) 'Freedom of association and philosophies of labour law', *Industrial Law Journal*, 18, pp.1 – 38

Whyte, G. F., (1995) 'The constitutionalisation of Irish law', *Journal of the Irish Society for Labour Law*, 10

Willman, P., and Kelly J., 2004 "Introduction" in Kelly, J., and Willman, P. (eds.) 2004 *Union organization and activity: the future of trade unions in Britain*, London: Routledge

Yeates, P., (2001) *Lockout: Dublin 1913*, Dublin: Gill & Macmillan

Yin, R. K. (2009) Case study research: design and methods, 4th edition, Thousand Oaks, CA: Sage

Appendix A

Industrial Relations (Amendment) Act, 2001

Number 11 *of* 2001

INDUSTRIAL RELATIONS (AMENDMENT) ACT, 2001

ARRANGEMENT OF SECTIONS

Section

ACTS REFERRED TO

Industrial Relations Act, 1946	1946, No. 26
Industrial Relations Act, 1990	1990, No. 19
Industrial Relations Acts, 1946 to 1990	
Trade Union Act, 1941	1941, No. 22
Trade Union Act, 1942	1942, No. 23

Number 11 *of* 2001

INDUSTRIAL RELATIONS (AMENDMENT) ACT, 2001

AN ACT TO MAKE FURTHER AND BETTER PROVISION FOR PROMOTING HARMONIOUS RELATIONS BETWEEN WORKERS AND EMPLOYERS, TO AMEND AND EXTEND THE INDUSTRIAL RELATIONS ACTS, 1946 TO 1990, AND TO PROVIDE FOR RELATED MATTERS. [29*th May,* 2001]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.

1.—(1) In this Act—

"Commission" means the Labour Relations Commission;

"Court" means the Labour Court;

"excepted body" means an excepted body within the meaning of section 6 of the Trade Union Act, 1941, as amended by the Trade Union Act, 1942;

"Minister" means the Minister for Enterprise, Trade and Employment.

(2) In this Act—

(*a*) a reference to a section is to a section of this Act unless it is indicated that a reference to some other enactment is intended,

(*b*) a reference to a subsection is to a subsection of the provision in which the reference occurs unless it is indicated that a reference to some other provision is intended, and

(*c*) a reference to another enactment is to that enactment as amended by or under any other enactment, including this Act.

Investigation of dispute by Court.

2.—(1) Notwithstanding anything contained in the Industrial Relations Acts, 1946 to 1990, at the request of a trade union or excepted body, the Court may investigate a trade dispute where the Court is satisfied that—

S.2

(*a*) it is not the practice of the employer to engage in collective bargaining negotiations and the internal dispute resolution procedures (if any) normally used by the parties concerned have failed to resolve the dispute,

(*b*) the employer has failed to observe a provision of the Code of Practice on Voluntary Dispute Resolution under section 42 of the Industrial Relations Act, 1990 (or any code of practice amending or replacing that code), or has failed to observe such a provision in good faith,

(*c*) the trade union or the excepted body or the employees, as the case may be, have not acted in a manner which, in the opinion of the Court, has frustrated the employer in observing a provision of such code of practice, and

(*d*) the trade union or the excepted body or the employees, as the case may be, have not had recourse to industrial action after the dispute in question was referred to the Commission in accordance with the provisions of such code of practice.

(2) In the course of an investigation under *subsection (1)* the Court shall have regard to the entirety of labour relations practices in the employment concerned including labour relations practices engaged in by the employer or an associated employer in another employment including an employment outside the State.

Preliminary hearing.

3.—On receipt of a request under *section 2*, the Court may hold a preliminary hearing to determine whether or not the requirements specified in that section have been met.

Amendment of section 21 of Industrial Relations Act, 1946.

4.—Section 21(1) of the Industrial Relations Act, 1946, is amended by the insertion after "under this Act" of "or any investigation under the *Industrial Relations (Amendment) Act, 2001*,".

Recommendation by Court on trade dispute.

5.—(1) The Court, having investigated a trade dispute under *section 2*, may make a recommendation giving its opinion in the matter and, where appropriate, its view as to the action that should be taken having regard to terms and conditions of employment, and to dispute resolution and disciplinary procedures, in the employment concerned.

(2) A recommendation under *subsection (1)* shall not provide for arrangements for collective bargaining.

Determination by Court on trade dispute.

6.—(1) Where, in the opinion of the Court, a dispute that is the subject of a recommendation under *section 5* has not been resolved, the Court may, at the request of a trade union or excepted body and following a review of all relevant matters, make a determination.

(2) A determination under *subsection (1)* may have regard to terms and conditions of employment, and to dispute resolution and disciplinary procedures, in the employment concerned but shall not provide for arrangements for collective bargaining.

(3) A determination under *subsection (1)* shall be in the same terms as a recommendation under *section 5* except where—

(*a*) the Court has agreed a variation with the parties, or S.6

(*b*) the Court has decided that the recommendation concerned or a part of that recommendation was grounded on unsound or incomplete information.

Determinations of Court.

7.—(1) Every determination made by the Court under *section 6* shall be in writing and shall include a statement of the reasons for the determination.

(2) The Court may, as it thinks proper, by order give effect to any determination from such date as the Court specifies in the order.

(3) An order under *subsection (2)* shall be served on the parties to the dispute.

Effect of industrial action.

8.—(1) Subject to *subsection (2)*, the Court shall cease its investigation or review under *section 6* and withdraw any recommendation where, either at the request of the employer or on its own initiative, the Court has satisfied itself that industrial action in relation to the dispute that is the subject of an investigation has taken place.

(2) If, having regard to all the circumstances, the Court is satisfied by a trade union or excepted body that it is reasonable to proceed with its investigation or review under *section 6*, it shall so proceed.

(3) *Subsection (1)* shall not apply where the procedures provided for by *sections 2*, *5* and *6* have been exhausted.

Review of determination of Court.

9.—After a period of 3 months but not later than one year from the date of a determination under *section 6*, the Court may, on the application of either party to a dispute, review such determination, and—

(*a*) vacate the determination and the order giving effect to the determination where, in the opinion of the Court, the dispute has been resolved,

(*b*) affirm the determination and the order giving effect to the determination where, in the opinion of the Court, the dispute has not been resolved, or

(*c*) vary the terms of the determination and the order giving effect to the determination where—

(i) the Court agrees such variation with the parties, or

(ii) the Court is satisfied that the determination or a part of the determination was grounded on unsound or incomplete information.

Enforcement of determination or review by civil proceedings.

10.—Where an employer fails to comply with—

(*a*) the terms of a determination under *section 6* within one year from the date on which the determination is communicated to the parties, or

(*b*) the findings of a review of a determination under *section 9* within 6 weeks from the date on which such findings are communicated to the parties,

S.10

on the application of a trade union or excepted body, the Circuit Court shall, without hearing the employer or any evidence (other than in relation to the matters aforesaid) make an order directing the employer to carry out the determination or review in accordance with its terms or findings, as appropriate.

Appeal to High Court on point of law.

11.—Where a determination is made by the Court under *section 6*, either party to the dispute may appeal to the High Court on a point of law.

Regulations.

12.—(1) The Minister may make regulations for the purposes of reviews under *sections 6* and *9* and for the purpose of enabling any other provisions of this Act to have full effect.

(2) Regulations under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary for the purposes of the regulations.

(3) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Short title, collective citation, construction and commencement.

13.—(1) This Act may be cited as the Industrial Relations (Amendment) Act, 2001.

(2) This Act and the Industrial Relations Acts, 1946 to 1990, may be cited together as the Industrial Relations Acts, 1946 to 2001, and shall be construed together as one.

(3) This Act shall come into operation on such day as the Minister may appoint by order.

Appendix B

S.I. No. 145/2000 - Industrial Relations Act, 1990 (Code of Practice on Voluntary Dispute Resolution) (Declaration) Order, 2000

WHEREAS the Labour Relations Commission has prepared under subsection (1) of section 42 of the Industrial Relations Act, 1990 (No. 19 of 1990), a draft code of practice on voluntary dispute resolution where negotiating arrangements are not in place and where collective bargaining does not take place;

AND WHEREAS the Labour Relations Commission has complied with subsection (2) of that section and has submitted the draft code of practice to the Minister for Enterprise, Trade and Employment;

NOW THEREFORE, I, Mary Harney, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by subsection (3) of that section, the Labour (Transfer of Departmental Administration and Ministerial Functions) Order, 1993 (S.I. No. 18 of 1993), and the Enterprise and Employment (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. No. 305 of 1997), hereby order as follows:

1. This Order may be cited as the Industrial Relations Act, 1990 (Code of Practice on Voluntary Dispute Resolution) (Declaration) Order, 2000.

2. It is hereby declared that the code of practice set out in the schedule to this Order shall be a code of practice for the purposes of theIndustrial Relations Act, 1990 (No. 19 of 1990).

SCHEDULE

1 - INTRODUCTION

1. Section 42 of the Industrial Relations Act, 1990 provides for the preparation of draft Codes of Practice by the Labour Relations Commission for submission to the Minister, and for the making by him of an order declaring that a draft Code of Practice received by him under section 42 and scheduled to the order shall be a Code of Practice for the purposes of the said Act.

2. In May 1999 the Minister for Enterprise, Trade and Employment requested the Commission under section 42 (1) of the Industrial Relations Act, 1990 to prepare a draft Code of Practice on Voluntary Dispute Resolution where Negotiating Arrangements are not in place and where Collective Bargaining does not take place.

3. The Code of Practice is in response to the recommendations set out in the Report of the High Level Group on Trade Union Recognition on voluntary dispute resolution procedures. The High Level Group, involving the Departments of the Taoiseach, Finance and Enterprise, Trade and Employment, the Irish Congress of Trade Unions (ICTU), the Irish Business and Employers Confederation (IBEC) and IDA-Ireland, was established under paragraph 9.22 of *Partnership 2000 for Inclusion Employment and Competitiveness*, to consider proposals submitted by the

ICTU on the Recognition of Unions and the Right to Bargain and to take account of European developments and the detailed position of IBEC on the impact of the ICTU proposals.

4. When preparing and agreeing this Code of Practice the Commission consulted with the Department of Enterprise, Trade and Employment, ICTU, IBEC and the Labour Court and took account of the views expressed to the maximum extent possible.

5. The major objective of the Code is to provide a recognised framework that has the full support of all parties for the processing of disputes arising in situations where negotiating arrangements are not in place and where collective bargaining fails to take place.

2 - PROCEDURES

Where negotiating arrangements are not in place and where collective bargaining fails to take place, the following process should be put in place with which management and unions should fully co-operate in seeking to resolve the issues in dispute effectively and expeditiously:-

1. In the first instance, the matter should be referred to the Labour Relations Commission who will appoint an Officer from its Advisory Service to assess the issues in dispute.

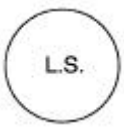
2. The Labour Relations Commission Officer will work with the parties in an attempt to resolve the issues in dispute.

3. In the event that the issues in dispute are not capable of early resolution by the Labour Relations Commission intervention, an agreed cooling-off period shall be put in place.

During the cooling-off period, the Labour Relations Commission Advisory Service will continue to work with the parties in an attempt to resolve any outstanding issues. The Commission may engage expert assistance, including the involvement of ICTU and IBEC, should that prove helpful to the resolution of any differences.

4. If after the cooling-off period all issues have been resolved, the Labour Relations Commission will disengage. Before disengaging, the Commission may make proposals to the parties for the peaceful resolution of any further grievances or disputes.

5. In the event of issues remaining unresolved after the cooling-off period, the Labour Relations Commission shall make a written report to the Labour Court on the situation. The Labour Court shall consider the position of the employer and the union and shall issue recommendations on outstanding matters.



Given under my Official Seal, this 26th day of May, 2000

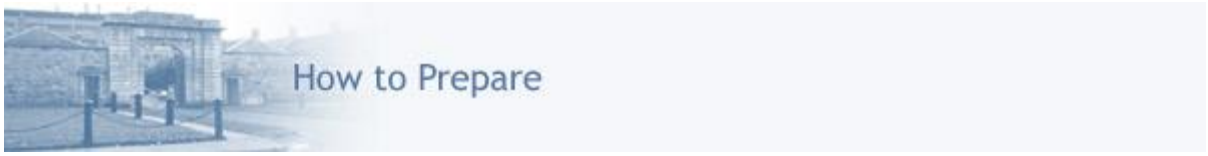
Mary Harney

Appendix C

LRC Guidelines for [processing cases under S. I. 76

The Labour Relations Commission

" To Promote the development and improvement of Irish industrial relations policies, procedures and practices through the provision of appropriate, timely and effective services to employers, trade unions and employees"



How do I prepare for an SI 76?

SI 76 is also known as 'Enhanced Code of Practice on Voluntary Dispute Resolution (SI 76 of 2004)' provides a recognised framework for the processing of disputes arising in situations where negotiating arrangements are not in place and where collective bargaining fails to take place. This Code was drafted to enhance the effectiveness of existing procedures and to this end a number of new measures were introduced. These measures include:

1. Referrals, under the new code, must adhere to the **prescribed format** (detailed in the appendix of code). Referrals must include contact names, addresses and numbers for the union and company, category of worker/s involved, descriptions of issues in dispute and details of previous communications. Our experience has been that the more detail initially given in respect of the issues in dispute, the more productive the process has been.

2. The new code also imposes a 6 week timeframe for completion of the LRC stage of the process. On receipt of an invitation to participate in the process, respondents have 2 weeks to accept. If the invitation is accepted, there are then a further 4 weeks for substantial engagement on the issues in dispute. This timeframe can only be extended by agreement and where progress is being made.

3. The new code is complemented by 'S.I. No. 139 of 2004, Code of Practice on Victimisation'. SI 139 provides guidelines for participants to the Enhanced Code in respect of behaviour, which might be considered 'victimisation' and also provides a mechanism for complaint and redress.

In summary, when preparing for an SI 76:

1. Parties referring issues should ensure that as much detail as possible is supplied to the LRC in the first instance.
2. Respondents should ensure that they comply with the timeframes when replying.
3. In light of the 6 week timeframe, parties to the process are requested to be flexible in respect of their availability.
4. All parties to the process should be aware of the provisions of 'S.I. No. 139 of 2004,Code of Practice on Victimisation'.

Appendix D

All Labour Court Recommendations, Decisions and Determinations issued under the 2001/2004 Acts

Database Number	Labour Court No.	Employer	Subject	Year
2	LCR20080	GLOBAL TELE SALES LTD	LRC REFERRAL	2011
3	LCR20079	DELL	UNION APPLICATION	2011
4	LCR19750	BORD GAIS EIREANN	LRC REFERRAL	2010
5	LCR19721	CRIBBIN FAMILY BUTCHERS	UNION APPLICATION	2010
6	LCR19188	BELL SECURITY	LRC REFERRAL	2008
7	LCR19154	COLSO ENTERPRISES	LRC REFERRAL	2008
8	LCR19092	A-TRUSS LTD	LRC REFERRAL	2007
9	LCR19002	CASTLE T FURNITURE LTD	LRC REFERRAL	2007
10	LCR18968	Q PARK IRELAND LTD	LRC REFERRAL	2007
11	LCR18897	KARDEX SYSTEMS IRELAND LTD	LRC REFERRAL	2007
12	LCR18845	FERNLEY AIRPORT SERVICES	UNION APPLICATION	2007
13	LCR18825	JIGSAW DAY NURSERY LTD	LRC REFERRAL	2007
14	LCR18820	ASHFORD CASTLE	LRC REFERRAL	2007
15	LCR18815	GALWAY CLINIC	LRC REFERRAL	2007
16	LCR18807	SWORDS PACKAGING	LRC REFERRAL	2007
17	LCR18772	SERCOM SOLUTIONS	LRC REFERRAL	2006
18	LCR18692	IRISH GUIDE DOGS FOR THE BLIND	LRC REFERRAL	2006
19	LCR18682	Q PARK IRELAND LTD	LRC REFERRAL	2006
20	LCR18675	DOYLE CONCRETE	UNION APPLICATION	2006
21	LCR18672	THE KILDARE HOTEL AND GOLF CLUB	LRC REFERRAL	2006
22	LCR18671	FREEFOAM PLASTICS LTD	LRC REFERRAL	2006
23	LCR18666	BAYFIELD SUPPLIES LTD	UNION APPLICATION	2006
24	LCR18648	LITTLE RASCAL CRECHE	LRC REFERRAL	2006
25	LCR18621	FEDERAL SECURITY	UNION APPLICATION	2006
26	LCR18601	THE OVAL CRECHE	UNION APPLICATION	2006

27	LCR18589	O'DONOVAN OFF LICENCES LTD	LRC REFERRAL	2006
28	LCR18582	FOURNIER LABORATORIES LTD	LRC REFERRAL	2006
29	LCR18583	O'CONNOR MEATS LTD	UNION APPLICATION	2006
30	LCR18579	CAROLAN'S LONDIS SUPERMARKET	UNION APPLICATION	2006
31	LCR18575	GERARD LABORATORIES	LRC REFERRAL	2006
32	LCR18556	QK COLD STORES LTD	LRC REFERRAL	2006
33	LCR18542	WEXFORD VIKING GLASS LTD	LRC REFERRAL	2006
34	LCR18535	BRACKERNAGH CROUGHAN'S SUPERVALU	LRC REFERRAL	2006
35	LCR18532	ROCHFORD BRADY LEGAL SERVICES	LRC REFERRAL	2006
36	LCR18529	MEDENTECH	LRC REFERRAL	2006
37	DECP062	FINLAY BRETON	PRELIMINARY	2006
38	LCR18489	METROPLEX	LRC REFERRAL	2006
39	LCR18480	MCI WORLD COM	LRC REFERRAL	2006
40	LCR18469	DUNNES STORES	UNION APPLICATION	2006
41	LCR18468	TARA SERVICE STATION LTD	LRC REFERRAL	2006
42	LCR18461	SHOW JUMPING ASSOCIATION	LRC REFERRAL	2006
43	LCR18454	JOHNSTON, MOONEY & O'BRIEN	UNION APPLICATION	2006
44	LCR18455	SANIRISH LTD	LRC REFERRAL	2006
45	DECP061	GREEN ISLE FOODS (BOYLE)	PRELIMINARY	2006
46	LCR18442	WEST WOOD CLUB LTD	LRC REFERRAL	2006
47	LCR18446	BANTA GLOBAL TURNKEY LTD	LRC REFERRAL	2006
48	LCR18440	HILLVIEW NURSING HOME	UNION APPLICATION	2006
49	LCR18438	GEORGE BREW & CO LTD	LRC REFERRAL	2005
50	LCR18404	M1 NORTH-LINK LTD	LRC REFERRAL	2005
51	LCR18387	JOHNSON MATTHEY	LRC REFERRAL	2005
52	LCR18346	MURPHY'S SUPERVALU	LRC REFERRAL	2005
53	LCR18344	UNITED AIRLINES	LRC REFERRAL	2005
54	LCR18307	M1 NORTH-LINK LTD	UNION APPLICATION	2005
55	LCR18303	DAVIS CENTRA QUICKSTOP	LRC REFERRAL	2005
56	LCR18280	DATA ELECTRONICS	LRC REFERRAL	2005
57	LCR18271	CLEARSTREAM TECHNOLOGIES LTD	LRC REFERRAL	2005

58	LCR18274	EXEL TECHNOLOGY SUPPLY CHAIN	LRC REFERRAL	2005
59	LCR18269	GENESIS GROUP	UNION APPLICATION	2005
60	LCR18265	TOTS & CO	LRC REFERRAL	2005
61	LCR18242	AMCOR FLEXIBLES	LRC REFERRAL	2005
62	LCR18234	WATERFORD CREDIT UNION	LRC REFERRAL	2005
63	LCR18226	SCHERING PLOUGH - BRINNY CO	LRC REFERRAL	2005
64	LCR18206	MCM SECURITY	LRC REFERRAL	2005
65	LCR18207	DEERHAVEN LTD T/A THE CARD CO	UNION APPLICATION	2005
66	LCR18190	GERARD LABORATORIES	LRC REFERRAL	2005
67	LCR18188	CLEARSTREAM TECHNOLOGIES LTD	LRC REFERRAL	2005
68	LCR18184	ORMONDE WASTE LTD	LRC REFERRAL	2005
69	LCR18151	QUINN CEMENT	ARISING FROM DEC	2005
70	LCR18137	ANALOG DEVICES	LRC REFERRAL	2005
71	LCR18136	BOSTON BRACE EUROPE LTD	LRC REFERRAL	2005
72	DECP052	QUINN CEMENT	PRELIMINARY	2005
73	LCR18117	WESTERN HEALTH BOARD	LRC REFERRAL	2005
74	LCR18109	ARKOPHARMA IRELAND LTD	LRC REFERRAL	2005
75	LCR18111	WRIGHT WINDOW SYSTEMS	LRC REFERRAL	2005
76	LCR18087	GREYHOUND WASTE DISPOSAL CO	UNION APPLICATION	2005
77	DECP051	RYANAIR	PRELIMINARY	2005
78	LCR18072	GERARD LABORATORIES	LRC REFERRAL	2005
79	LCR18040	FIRST CITIZEN NURSING HOME	LRC REFERRAL	2004
80	LCR18037	GOODE CONCRETE	UNION APPLICATION	2004
81	LCR18019	RPS GROUP LTD	LRC REFERRAL	2004
82	LCR18016	BANC TEC	LRC REFERRAL	2004
83	LCR18013	GE HEALTHCARE	LRC REFERRAL	2004
84	LCR17972	ALL WATER SYSTEMS	LRC REFERRAL	2004
85	LCR17968	SIFCO TURBINE GROUP	LRC REFERRAL	2004
86	LCR17939	BUCKLEY'S SUPERVALU	LRC REFERRAL	2004
87	LCR17933	CREAGH TRANSPORT LTD	UNION APPLICATION	2004
88	LCR17932	CARLINGFORD NURSING HOME	LRC REFERRAL	2004

89	LCR17925	NN EUROBALL IRELAND LTD	LRC REFERRAL	2004
90	LCR17919	RADIO KERRY	UNION APPLICATION	2004
91	LCR17914	ASHFORD CASTLE	ARISING FROM DECP 032	2004
92	LCR17908	COOLEY DISTILLERY PLC	LRC REFERRAL	2004
93	LCR17906	STERILE TECHNOLOGIES IRELAND LTD	UNION APPLICATION	2004
94	LCR17897	CLEARSTREAM TECHNOLOGIES LTD	UNION APPLICATION	2004
95	LCR17891	METEOR MOBILE COMMUNICATIONS	LRC REFERRAL	2004
96	LCR17760	ASHFORD CASTLE	UNION APPLICATION	2004
97	LCR17745	BANK OF IRELAND	UNION APPLICATION	2004
98	LCR17699	MARBLE & GRANITE SUPPLIES LTD	SECTION 2(1)	2003
99	LCR17685	AGTEC IRELAND LTD	UNION APPLICATION	2003
100	LCR17679	MILLERPAK LTD	UNION APPLICATION	2003
101	LCR17607	MOQUETTE LTD T/A DOYLES SUPERVALU	SECTION 2(1)	2003
102	LCR17472	SAM HIRE	ARISING FROM DECP 031	2003
103	LCR17469	IRISH EXPRESS CARGO	UNION APPLICATION	2003
104	LCR17398	NOBLE WASTE DISPOSAL LTD	UNION APPLICATION	2003
105	LCR17236	BANTRY BAY SEAFOODS	UNION APPLICATION	2002
106	LCR17098	JETWASH LTD	UNION APPLICATION	2002
107	DECP032	ASHFORD CASTLE	PRELIMINARY	2003
109	DECP041	BANTA GLOBAL TURNKEY (apt)	PRELIMINARY	2004
110	LCR17797	IRISH EXPRESS CARGO	ARISING FROM LCR 17469	2004
111	DECP031	SAM HIRE	PRELIMINARY	2003
112	DIR051	ASHFORD CASTLE	DETERMINATION	2005
113	DIR0513	ANALOG DEVICES	DETERMINATION	2005
114	DIR071	BAYFIELD SUPPLIES LTD	DETERMINATION	2007
115	DIR054	CARLINGFORD NURSING HOME	DETERMINATION	2005
116	DIR082	CASTLE T FURNITURE LTD	DETERMINATION	2008
117	DIR042	CLEARSTREAM TECHNOLOGIES LTD	DETERMINATION	2004
118	DIR061	DATA ELECTRONICS	DETERMINATION	2006
119	DIR064	DUNNES STORES	DETERMINATION	2006

120	DIR072	FOURNIER LABORATORIES LTD	DETERMINATION	2007
121	DIR0511	GENESIS GROUP	DETERMINATION	2005
122	DIR056	GERARD LABORATORIES	DETERMINATION	2005
123	DIR052	GOODE CONCRETE	DETERMINATION	2005
124	DIR055	GREYHOUND WASTE DISPOSAL CO	DETERMINATION	2005
125	DIR057	JETWASH LTD	DETERMINATION	2005
126	DIR074	KARDEX SYSTEMS IRELAND LTD	DETERMINATION	2007
127	DIR063	M1 NORTH-LINK LTD	DETERMINATION	2006
128	DIR041	METEOR MOBILE COMMUNICATIONS	DETERMINATION	2004
129	DIR053	NN EUROBALL IRELAND LTD	DETERMINATION	2005
130	DIR031	NOBLE WASTE DISPOSAL LTD	DETERMINATION	2003
131	DIR073	O'CONNOR MEATS LTD	DETERMINATION	2007
132	DIR0510	ORMONDE WASTE LTD	DETERMINATION	2005
133	DIR065	QK COLD STORES LTD	DETERMINATION	2006
134	DIR059	QUINN CEMENT	DETERMINATION	2005
135	DIR032	SAM HIRE	DETERMINATION	2003
136	DIR0512	STERILE TECHNOLOGIES IRELAND LTD	DETERMINATION	2005
137	DIR081	SWORDS PACKAGING	DETERMINATION	2008
138	DIR062	WEST WOOD CLUB LTD	DETERMINATION	2006
139	DIR058	WRIGHT WINDOW SYSTEMS	DETERMINATION	2005

Appendix E

E-mail to SIPTU Staff

Organiser:-

Re:

Date as per e-mail (21 issued on the 11th April 2012; 22 issued on the 12th April 2012)

Dear Colleague,

Previous correspondence from the Divisional Organiser refers. As he explained, I am investigating the aftermath of participation in the procedures provided for in the *Code* or *Enhanced Code of Practice on Voluntary Dispute Resolution* (SI145 of 2000 and SI 76 of 2004; the 2001 and 2004 IR Acts). I am interested in the nature of the membership currently at those workplaces and the kinds of issues which have since arisen.

To that end I understand you are responsible for _____ which was the subject of Labour Court Recommendation No. _____ . I have prepared a brief questionnaire regarding the current situation there – just 8 questions – which should take no longer than 3 minutes to complete on your I-phone or laptop, just by clicking on the survey link below. Even if you have had no contact with these members go ahead as the questionnaire provides for that option – and you will finish in less than 1 minute!

If you are responsible for more than one relevant employment, you will receive this message for each of those workplaces. Please complete the questionnaire separately for each one. To take the questionnaire now, click on the link below.

https://www.surveymonkey.com/s/SIPTU_SURVEY_Code_of_Practice_on_Voluntary_Dispute_Resolution

Thanks for your help.

Tish Gibbons

Appendix F

E-mail to all union contacts – except SIPTU

From: Tish Gibbons
Sent: 24 June 2013 15:50
To:
Subject: Survey on Dispute Resolution Procedures under 2001 / 2004 Acts

Dear

Our telephone conversation of even date refers.

For a college dissertation, I am investigating the aftermath of participation in the procedures provided for in the *Code* or *Enhanced Code of Practice on Voluntary Dispute Resolution* (SI145 of 2000 and SI 76 of 2004; the 2001 and 2004 IR Acts). I am interested in the nature of the membership currently at those workplaces (but not exact numbers) and the kinds of issues which have since arisen. SIPTU has already participated and I would like also to include the cases taken by other unions such as yours. Please be assured that the results will be anonymised and no reference will be made in the final thesis or elsewhere which could identify the workplace, staff or member involved.

To that end, from the Labour Court website I understand your Union took x number of cases, listed below with a link to the Recommendations, in case you need them to help jog memories.

LCR No. Company Date Link

I have prepared a brief questionnaire regarding the current situation in each location – just 8 questions – which should take no longer than 3 minutes to complete on your I-phone or laptop, just by clicking on the survey link below. Even if the union has had no contact with these members since the case was taken or if the relevant grade is no longer represented there, go ahead as the questionnaire provides for that option – and you will finish each in less than 1 minute.

If you need any help or clarification / assurance before completing the survey, you can get me at 087 6776819. If you are happy to complete the questionnaire now, the survey link is here:-

https://www.surveymonkey.com/s/2001-2004ActsSurvey-XUnion

Yours fraternally,

Tish Gibbons

Tish Gibbons

Researcher

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Appendix G

Interview Schedule – Union Officials

Opening

1. **Purpose of interview** – project work for a research qualification – interviewing officials, shop stewards and members about their experiences of the procedures under the Industrial Relations Acts 2001/2004 (SI76) – want to talk about the events that led up to the taking of the case and about the situation since the Labour Court Recommendation was issued.
2. **Recording** – make sure agreeable before switching on
3. **Anonymity** – explain all company and individuals are anonymised.
4. **Consent Form** – Explain its purpose and ask for signature.

Referring Officials –

Talk to me about such a place – do you remember when they joined first? Prompt as necessary for: - what triggered them? How many? Density? Issues? Employer?

Did you consider options other than 2001 Act? Prompt for ballot on industrial action? Sanction? Other Court procedures? Section 20? Member reaction?

Who were the workplace leaders, tell me about them.

The 'voluntary leg' – how did that go? Any progress there? How did members/ activists deal with it?

Going to the Labour Court – how did you feel about that? How did the members feel? Tell me about the hearing itself, employer behaviour on the day, worker reaction.

The Labour Court Recommendation – when it issued – what did you think? What did the members think? Was it implemented? If not, why not? Did you apply for a Determination (where appropriate)?

Talk to me about the membership there since the Recommendation – density, attitudes, activism.

Was it worth it?

Are the files, submissions, available?

Servicing Officials

Opening

1. **Purpose of interview** – project work for a research qualification – interviewing officials, shop stewards and members about their experiences of the procedures under the Industrial Relations Acts 2001/2004 (SI76) – want to talk about the events that led up to the taking of the case and about the situation since the Labour Court Recommendation was issued.
2. **Recording** – make sure agreeable before switching on
3. **Anonymity** – explain all company and individuals are anonymised.
4. **Consent Form** – Explain its purpose and ask for signature.

You know the background to such a place – 2001 Act – Labour Court Recommendation – was/was not implemented *(as appropriate)* – x number of members there now.

When did you take them over? Talk to me about those members – On the survey you coded them as A, B, C, D, E, *(as appropriate)* – tell me a bit more about them, their issues, activism, participation in the Branch.

Tell me about the shop steward – any members still there from the start?

Membership levels – they have fluctuated/remained static/up or down *(as appropriate)* since the Recommendation was issued. How would you account for that?

Do you think there is any possibility of re-organising that workplace?

Will you introduce me to the shop steward/former activists/ members?

Are the files/submissions etc available?

Officials with more than one case i.e,

Referring Official for Deltrans also referring official for Led-Pack

Referring Official for Garry's also referring official for Rosses

Servicing Official for Garry's also servicing official for Rosses

Very different outcomes – how would you account for that?

Did the experience of one inform your actions in the other?

Appendix H

Interview Schedule – Union Members

Opening

1. **Purpose of interview** – project work for a research qualification – interviewing officials, shop stewards and members about their experiences of the procedures under the Industrial Relations Acts 2001/2004 (SI76) – want to talk about the events that led up to the taking of the case and about the situation since the Labour Court Recommendation was issued.
2. **Recording** – make sure agreeable before switching on
3. **Anonymity** – explain all company and individuals are anonymised.
4. **Consent Form** – Explain its purpose and ask for signature.

When did you start working there? Occupation? When did you join the union? What started the union there x number of years after it opened *(as appropriate)*.?

Talk to me about the campaign – tell me the story from your point of view?

Had you any prior union experience? Were you a leader/activist?

Describe the run-up to going to the LRC and the Court? Did you discuss options with the official? Did you agree with the decisions taken? If leader, how did the others feel? How did you keep them on-side during all of this?

Did you attend at the LRC / Labour Court hearing? What was that like? How did you describe it to the others when you came back?

What did you think of the Recommendation when it first came out? And now? Was it implemented?

Talk to me about working here since – what's it like? There are x members – what does that mean in terms of density – can you see it growing – how does the employer treat you?

How active are you in the union? On the branch/Sector/ Divisional committee *(as appropriate)*? Did you attend the anti-austerity demonstrations in such a place on such a date? Why or why not *(as appropriate)*?

You played a significant role – what motivated you? Would you do it again? Was it worth it?

Any opportunity to talk to some of the others?

Anything else you want to tell me?

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The Employment

1. Select from the list below the relevant employment as per the cover letter:-

Other (please specify)

2. Please indicate the length of time, to the nearest year, for which you have been responsible for this workplace:-

	Yes
Up to 1 year	☐
2 years	☐
3 years	☐
4 years	☐
Over 5 years	☐

SIPTU Survey - Code of Practice on Voluntary Dispute Resolution

The Members

3. Please select ONE of the options below which best describes the current status of the members at that employment.

- ◯ I have had no contact with and/or was unaware of this workplace (If you select this option, you may skip to Question 7)
- ◯ This union has some individual/confidential members who seldom contact the union
- ◯ This union represents members there on an individual basis only
- ◯ This union has an active core of members here but no bargaining rights
- ◯ This union has full bargaining rights at this workplace

SIPTU Survey - Code of Practice on Voluntary Dispute Resolution

4. At this workplace ...

	Yes	No	Don't know
Is there one or more elected shop stewards or workplace representatives?	☐	☐	☐
Is there an elected representative committee?	☐	☐	☐
Is there an elected safety representative?	☐	☐	☐
Are any members from this workplace active outside the workplace at Sector; Division or National levels within the Union?	☐	☐	☐
Are any members from this workplace active in the wider trade union movement, i.e, Trades Councils, ICTU committees, etc?	☐	☐	☐
Have elected representatives been released with pay to attend union meetings or union organised training?	☐	☐	☐

SIPTU Survey - Code of Practice on Voluntary Dispute Resolution

The Issues and how they were resolved

5. In relation to the last or most recent COMPLETED issue dealt with at this employment, select ONE of the following which best describes the issue.

- ◯ Averting a pay cut
- ◯ Pay increase
- ◯ Application of National Wage Agreement
- ◯ Increments
- ◯ Service Pay
- ◯ Christmas or other Bonus
- ◯ Overtime rates including Sunday or anti-social premia
- ◯ Travel/subsistence rates
- ◯ Recognition of educational awards for pay or promotion
- ◯ Hours of work, including shifts, rosters.
- ◯ Sick leave or pay for same
- ◯ Annual leave or pay for same
- ◯ Pension
- ◯ Access to education or training
- ◯ Redundancy
- ◯ Outsourcing or use of contractors
- ◯ Disciplinary case
- ◯ Bullying/harassment
- ◯ Equality / parity
- ◯ Health & Safety
- ◯ Jury Service
- ◯ Canteen or other Services i.e, cleaning/toilets/car park
- ◯ Grievance & disciplinary procedures
- ◯ Negotiation of full Collective Agreement
- ◯ Union recognition
- ◯ Organising other workers in their grade
- ◯ Organising other grades at the workplace
- ◯ Support for striking workers elsewhere
- ◯ Agitation regarding Government spending cuts or other political issue

If some other issue raised, please explain here.

6. In relation to the SAME issue selected above, please select ONE of the options below which best describes how the issue was dealt with.

- ◯ It was an individual matter referred to MISC and dealt with entirely by them
- ◯ It was an individual matter dealt with by a shop steward or elected committee
- ◯ It was an individual matter I processed locally or at third party
- ◯ It was a collective issue resolved in-house by the shop steward or an elected committee
- ◯ It was a collective issue resolved by negotiations with the employer involving myself or other full-time union officer
- ◯ It was a collective issue resolved by the threatening or taking of industrial action
- ◯ It was a collective issue resolved by recourse to a 3rd party, ie., LRC, LC, EAT
- ◯ It was a collective issue not requiring negotiations
- ◯ It was a political or social issue not requiring negotiations with the employer

SIPTU Survey - Code of Practice on Voluntary Dispute Resolution

You

7. Insert your own name in the box below

8. Are you also the Official who referred the initial case for these members under the 2001/2004 legislation?

- ◯ Yes
- ◯ No

If you are not the Official who took the initial case, please insert the name of the Official who took the case:-

Appendix K

Interviews

Name	Official / Member	Relevant Workplace	Date	Face-to-Face / Telephone	Recorded Yes or No
Todd	SS (F&C)	ArdnaGaoithe	8th February 2013	F	Y
Frank	SO	ArdnaGaoithe	30th April 2013	T	N
Kevin	RO	ArdnaGaoithe	7th August 2013	T	N
Frank	SO (F)	Blackwater	30th April 2013	T	N
Kevin	RO	Blackwater	2nd May 2013	T	N
Harry	SO	Blackwater	3rd September	F	Y
Caroline	SS	Blackwater	4th September	F	N
Oran	RO	Canalcon	24th July 2013	T	N
William	SS ©	Canalcon	5th September 2013	F	Y
Peter	SS (F)	Canalcon	5th September 2013	F	Y
Martin	SS (F)	Deltrans	18th January 2013	F	Y
John	OM (F)	Deltrans	18th January 2013	F	Y
Conleth	RO	Deltrans	18th January 2013	F	Y
Rory	OM (F)	Deltrans	4th July 2013	F	Y
Lesley	SO	Deltrans	6th July 2013	T	N
Tim	SS (F)	Deltrans	7th August 2013	F	Y
Morgan	RO	Garry's	18th July 2013	T	N
Eric	SS (F&C)	Garry's	23rd July 2013	F	Y
Fred	SO	Garry's	23rd July 2013	T	N
Ross	RO / SO	Knockrada	22nd July 2013	T	N
Conleth	RO	Led-Pack	4th July 2013	F	Y
Rory	OM (F)	Led-Pack	4th July 2013	F	Y
Majella	SO	Led-Pack	12th Sept. 2013	T	N
Lesley	SO (F)	Led-Pack	12th Sept. 2013	T	N
Owen	RO/SO	Oakchurch	3rd September 2013	T	N
Eamon	SS ©	Pegasus	13th March 2013	F	Y
Liam	OM (F)	Pegasus	13th March 2013	F	Y
Marius	OM ©	Pegasus	13th March 2013	F	Y
Karl	SS (F)	Pegasus	7th July 2013	F	Y
Eileen	RO	Pegasus	3rd August 2013	T	N
Kelly	SO	Pegasus	3rd August 2013	T	N
Morgan	RO	Rosses	1st August 2013	T	N
Kenneth	SS (©	Rosses	2nd August 2013	F	Y
Fred	SO	Rosses	2nd August 2013	F	Y
Corina	SS ©	Rosses	9th August 2013	F	N

Appendix L

Information Sheet and Consent Form – Tish Gibbons
I am a research student at the Working Lives Research Institute at London Metropolitan University, working towards a professional doctorate in Researching Work. For my thesis I am examining the aftermath of Labour Court Recommendations issued under the Industrial Relations (Amendment) Act 2001. I am interviewing union officials, shop stewards, activist and members regarding their experiences of taking cases under the Act and the subsequent nature of union activity.
As a participant you have a right to withdraw from the process at any time during the interview without prejudice and/or without providing a reason. Should you do so, all data gathered to that point will be destroyed if you so request. Your identity and that of any individual mentioned will not be revealed.
If you have a complaint about the conduct of the interview or the use of data gathered, please contact the Working Lives Research Institute at
Working Lives Research Institute London Metropolitan University 31 Jewry St London EC3N 2EY
Telephone 00 44 20 7320 3042
E-mail workinglives@londonmet.ac.uk
Consent Form
I have read and understood the information sheet regarding Tish Gibbons' research project. I have been given the opportunity to ask questions about the assignment and have had any such answered satisfactorily.
I agree to participate voluntarily in an interview.
I agree / I do not agree to the recording and transcribing of the interview (*Delete as appropriate*)
Signature of Participant

_____
Signature of Interviewer
_____
Date