

Enhancing workers rights and Industrial relations

RE: Consultation on the Reform of the State's Employment Rights and Industrial Relations Structures and Procedures

From: The Sinn Féin Party

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Introduction:

Sinn Féin welcomes proposals aimed at reforming, enhancing and simplifying the state's employment rights and industrial relations structures. The existing systems have become complex and protracted and are not fit for purpose. They are also under immense pressure with some 15,000 complaints made to the LRC last year.

Any proposals put forward by the Minister to rationalise existing structures and vindicate individual grievances must be about enhancing and building upon existing workers and employment rights legislation. Structures and procedures are only as good as the law allows.

Reforms in this area must be matched with strengthened protection for workers including a constitutional right to collective bargaining and trade union recognition.

We particularly welcome a commitment from the Minister in the consultation document to *'encourage early resolution of disputes, the vindication of employee's rights and minimisation of the costs involved for all parties – employees, employers and Government – in terms of money, time and workplace productivity'*.

However Sinn Féin will strongly oppose any proposals which weaken protection for workers and panders to employer organisations seeking to row back on existing structures and procedures aimed at protecting the rights of workers.

With the above in mind we make the following observations:

1. Resolution of grievances and disputes as close to the workplace as possible and as early as possible after they arise.

Sinn Féin supports the objective of a speedy resolution of grievances and disputes as close to the work place as possible. However this requires a genuine commitment and equality of recognition for both employee and employer representative groups. This is not entirely possible as long as certain employers refuse to recognise trade unions and a constitutional right to collective bargaining is denied.

It would be foolhardy in the extreme as well as impractical to attempt to construct a workers' rights infrastructure which at each and every opportunity attempts to separate a worker from his colleagues in making a complaint or in seeking redress.

Yet to all intents and purposes the shape of the workers' rights infrastructure in Ireland appears to seek the highest level of individualisation possible.

It is certainly an important objective to attempt to streamline and simplify the workers' rights agencies, however if the objective ultimately is to provide better and more comprehensive protection to workers' then it is clear that there is a far more pressing need to address the lack of a constitutional right to collective bargaining. We are uncommon among comparable countries for the lack of such a provision, and we further have a system of bargaining which is very much focused on a sectoral level, rather than on a cross-industry basis.

The need for recognition of such a right has been raised by Trade Unions, and by Sinn Féin for some time now, in particular at the time of the Lisbon treaty. Furthermore it was a Programme for Government commitment to provide for such a right. This must be done as a matter of priority.

It is a fact that many employers flout the law because the penalties for non compliance with employment rights legislation are weak and ineffective. Stronger and more restrictive penalties for employers who fail to comply with their legal employment rights obligations or the enforcement of court awards would force employers to resolve grievances at the earliest opportunity.

It is also worth noting that the recent job losses at 'Talk Talk' in Waterford has highlighted the inadequate length of notice that must be given by employers to their employees in such circumstances. 30 days is entirely inadequate, and the Minister should give consideration to extending this period, perhaps up to 60 days, to ensure that workers do not have such a limited time in which to adjust to changed circumstances.

Sinn Féin proposes:

- That the Government immediately honours its commitment in the Programme for Government to legislate for collective bargaining including constitutional change if necessary.
- That stronger and more restrictive penalties be imposed on employers for non compliance of legislation and enforcement of awards at court and tribunal level.

2. A simple and efficient institutional structure and a high quality customer service with a single authoritative source of information, a single entry point and minimum scope for forum shopping.

There may be merit in having a single first instance entry and a single appeals entity. However the objective has to be to improve services, reduce waiting lists for hearings and ensure a more speedy vindication of employee's rights.

It is essential at the very least that we preserve a two-tier structure involving the tribunal/court functions and an appeal system.

Any proposed reforms in this area must simplify the system and procedures. We have a concern that structures which are working reasonably well and delivering greater flexibility and turn around time will be weakened under a new single authority. For example, the Labour Relations Commission has its origins in a desire for a more conciliatory body, recommended as early as the 1978 Commission of Inquiry on Industrial Relations. It's raison d'être is to be able to take a more flexible approach from the Labour Court. Any new structure must allow for such a conciliatory avenue for workers rights complaints, without prejudice for the equal need for an avenue resulting in a formal adjudication of the kind found at the Labour Court.

The functions of the various institutions and agencies are quite discrete and different, though there is unquestionably an overlap.

In approaching the potential restructuring of the workers' rights agencies it is necessary to identify the different functions which they carry out, and which would need to be provided for within any restructuring.

Namely those functions are

- adjudication
- the hearing of appeals.
- inspection and investigation,
- enforcement,
- dissemination of information on workers' rights,
- conciliation conflict resolution and dialogue,
- the issuing of recommendations/decisions

Any structuring must take cognisance of the vital importance of each of those functions. We are concerned that the danger would exist that only a few of those functions would become the focus of any new structures. In particular we would be concerned that the workers' rights agency/agencies would largely be concerned with addressing the complaints which are presented to it, and seeking their resolution, at the expense of the essential task of ensuring that employers are compliant with their obligations, and of the dissemination of essential information to workers.

We already have inadequate amounts of Labour inspectors in Ireland, which results in limited amounts of investigation and inspections and we would be concerned that this situation would not only not be addressed, but could deteriorate under the new structures if there is not a conscious effort to ensure that workers' rights are protected in a proactive way at all stages.

Any new structures cannot merely be an institution or agency to deal with complaints, which would give excessive leeway to unscrupulous employers.

In addition to ensuring that the agencies purposes are fulfilled both at workplace level, and at adjudication, it is also crucial that the different forms of approaches to a complaint are preserved. The need for a firm, reliable and comprehensive tribunal such as the Labour Court is obvious; however, it is essential that as stated previously, flexibility within the structures is preserved. It must be considered that the Employment Appeals Tribunal was established to provide a relatively informal and inexpensive means of adjudication, however, workers and Trade Unionists

increasingly express frustration at the 'lawyerisation' of the EAT and the reduction in informality. We would affirm the need for the structures to be as accessible as possible, and to allow for informal hearings where possible and appropriate. In particular we would affirm the need for the retention of the Rights Commissioners role within any such system, which would be essential for the purposes of informality, and workers being confident in the system.

Sinn Féin proposes:

- that any reformed or new institutional structures work on the basis of best practice
- That savings achieved through greater efficiencies and economies of scale be invested in the new structures to reduce waiting times for hearings and the appointment of more Labour inspectors
- Maintaining the format of the rights commissioner role as employee representatives have found this to be least formal and 'worker friendly' of all the services especially to those not accustomed to more formal meetings and procedures
- The Introduction of a single claim form for all pieces of legislation. At the moment employees have to complete multiple forms as each individual act requires the filling in of a separate form. This is an area which can and must be simplified in the interests of both the employee and the employer.
- Where possible, cases be taken on a chronological basis. It is not uncommon for employees to have to wait up to eighteen months and more for a hearing while the case of another employee waiting only a couple of months is heard first. The system needs to be fair as well as transparent.
- That legislative change is introduced to further protect workers. For example currently if an employer is found to have not paid holiday pay and entitlements it can only be backdated up to a maximum of six months. In a situation where an employee was deprived of their entitlements for much longer periods this is disregarded. All money owed to an employee should be returned and not just amounts owed within the previous six months.
- The format of the Employment Appeal Tribunal needs to become less legalistic. For example requests for interpreters should be able to be made in writing instead of having to appear before the tribunal in person as is currently the case

3. Minimum number of cases presenting for resolution at formal hearings through active case progression and an increased range of interventions.

At face value the objective of minimising the number of cases presented for resolution at formal hearings seems laudable. However there is a danger here that the Minister may go too far and pander to employers representative groups who seek to limit opportunities for employees to seek redress through the state's employment rights and industrial relations structures.

It is imperative that the rights of an employee and its representatives are protected

and enhanced including the right to redress through the courts. Any rowing back of this right would be unacceptable to Sinn Féin. We are also concerned that the dissemination of employment rights information, as under NERA, could be curtailed under structural changes and amalgamations.

We would further note that it would of course, be a false impression if there was a reduction in the number of cases presenting for resolution at formal hearings because of a reduction in the investigation oversight and inspection functions of the workers' rights agencies. Reform and restructuring cannot be allowed to become a pretext for a reduction in the level of oversight within the workplace itself, nor for a reduction in the dissemination of information and promotion of workers' rights.

Sinn Féin proposes:

- That the right of workers to seek full redress through the courts and employment rights structures is protected and indeed built upon including a full right to appeal
- The dissemination of employment rights information is protected and must not be curtailed as part of any restructuring process
- To avoid unnecessary cases being taken by employees, if an employer is found to be in non compliance of employment rights legislation that this be applied to all employees of the said employer through rigorous checking. This will achieve greater consistency and reduce a duplication of individual grievance cases.

Conclusion:

As stated earlier Sinn Féin is in favour of reforms which simplifies the system and makes it easier for workers to seek redress and resolution of grievances. We will oppose any moves that seek to undermine or curtail existing employment rights or redress opportunities.

Progressive structural reform is necessary and welcome. However it is essential that any such reforms ensure that all the functions that are necessary to protect and vindicate workers rights are preserved. Furthermore it is vital that the Government moves to strengthen workers rights legislation including providing a constitutional right to collective bargaining and trade union recognition/