IRISH REPORT FOR THE PROJECT FOR THE STUDY OF CONCILIATION, MEDIATION AND ARBITRATION

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1. The System of Labour Relations

A. *Introduction*

Labour relations in Ireland has to a large extent been characterised by a commitment to legal abstention, sometimes referred to as "voluntarism". The system in the main is a voluntary one in the sense that the parties to the labour relations process are free both to agree or not to agree on the substantive principles which are to govern their mutual rights and obligations and to regulate their behaviour without the intervention of the State. The role of the State is primarily one of facilitating the relationship between trade unions and employers by providing the legislative framework within which trade unions can operate and also the machinery to assist the parties to resolve industrial disputes that may arise. The success of the procedures and institutions established within this framework is ultimately dependent on the commitment of the trade unions and employers and their willingness to use them. The effective performance of the various institutions can only be built on a high level of confidence placed in their staff and services by trade unions and employers based on their independence, availability of service and quality.

B. *Bodies involved with Labour Relations*

(i) Trade Unions

Up until the end of the 19th century, the development of trade unions in Ireland closely matched that of Britain, with the same legal system applying in both jurisdictions, substantial British economic and trade union penetration of Ireland and a free flow of labour between the islands. Ireland, however, was marked by a generally low legal of industrialisation. 1894 saw the establishment of the Irish Trade Union Congress (ITUC) with the aim of providing Irish workers with more satisfactory representation than that afforded by the British TUC. The Irish Transport and General Workers' Union (ITGWU), now the Services Industrial Professional Technical Union (SIPTU), was formed in 1909 from a split with a British-based Dockers' union and became the first powerful trade union organising only in Ireland.

Following independence in 1922, divisions persisted over the relationships between Irish and British-based trade unions – culminating in the 1945 split from the ITUC of the Congress of Irish Unions, which excluded British-based unions. The two organisations were reunited in 1959 under the new name of the Irish Congress of Trade Unions (Congress).

Congress is the principal central trade union federation. Its affiliates include: Irish-based trade unions which organise only in the Republic of Ireland; Irish-based trade unions which organise in both the Republic and Northern Ireland; trade unions which are affiliates of the British TUC and organise in both the Republic and Northern Ireland; and trade unions which are affiliates of the British TUC and organise only in Northern Ireland. 32 trade unions affiliated to Congress have their headquarters in the United Kingdom but under the Constitution of Congress and the Trade Union Act 1975 they are required to devolve a range of powers to their Irish membership.

64 trade unions are affiliated to Congress, 49 of which have members in the Republic. Unaffiliated trade unions represent less than 5% of total union membership. About 40% of trade union members are grouped in two major unions – SIPTU (206,871 members) and the Amalgamated Transport and General Workers' Union (50,467). The other bigger trade unions – the public sector union IMPACT (40,250), the retail, bar and administrative workers union MANDATE (37,979) and the Technical Engineering and Electrical Union (32,065) hold about a further 20% of total union membership.

Congress's principal responsibility is one of co-ordinating trade unions' activities and representing the trade unions collectively on government bodies. Congress also plays an important role in resolving inter-union disputes, especially demarcation, recruitment and jurisdictional conflicts.

The other union federation is the Irish Conference of Professional and Service Associations which has around 40,000 members and whose principal affiliates are the three Garda (the Irish policeforce) associations (the Association of Garda Sergeants and Inspectors, the Association of Garda Superintendents and the Garda Representative Association) and the two Defence Forces representative bodies (Permanent Defence Forces Other Ranks Representative Association and the Representative Association of Commissioned Officers), none of which are allowed to

affiliate to Congress. The Conference, however, also includes affiliates, such as the Irish Bank Officials Association, who are members of Congress.

After a healthy growth of trade union membership from 422,000 in 1970 to 499,744 in 1980, the 1980s saw a decline to 474,019 in 1991. In terms of union density, according to OECD figures, this took the form of an increase from 59% in 1970 to 63.4% in 1980, declining to 58.4% in 1987. Union membership rose for the first time in six years in 1992. The increase was largely attributed to recruitment of women workers. The most recent figures, those from 1999, show a further increase to 561,793 members – around 42% of the workforce. Female membership continues to rise and accounts for approximately 40% of the total union membership. Union membership growth, however, has not kept pace with employment growth and, whereas *public sector* union membership remains high, some commentators have warned that union membership in the *private sector* is set to drop to below 20% within the next five years.

(ii) ***Employers' Organisations***

The Federated Union of Employers was formed in 1941, changing its name to the Federation of Irish Employers (FIE) in 1988. In 1993 FIE merged with the Confederation of Irish Industry (CII) to form the Irish Business and Employers' Confederation (IBEC). The other main employer organisation is the Construction Industry Federation (CIF) which was formed in 1935.

IBEC is the principal employers' representative organisation in relation to industrial relations, employment and social affairs. It combines the specialist industrial relations expertise of FIE and the more high profile industry lobbying function of CII. It represents some 7,000 employers, spanning both the private and public sectors, which between them employ an estimated 300,000 workers.

IBEC is politically independent and is funded solely by members' contributions. It is a negotiating partner with government and trade unions at national level. IBEC's major activities consist of the provision of advice, support and services to affiliated employers. Under law it is classified as a trade union and, since it negotiates terms and conditions on behalf of affiliated employers, it is required to hold a negotiation licence. At sectoral level employers may be represented by separate associations independent of IBEC, the most important of which is the Construction Industry

Federation (CIF). Its membership includes some 2,679 general contractors and equipment hire firms employing about 50,000 workers and its main organisational arms are its specialist associations for the various areas, such as the electrical contractors association, which have a high degree of autonomy relative to sub-sectoral needs.

C. The role of legislation and of collective negotiation

(i) Legislation

Trade union and industrial relations legislation in Ireland falls into three broad categories. First, there is the legislation inherited from the British – the Trade Union Acts 1871, 1876 and 1913 and the Conspiracy, and Protection of Property Act 1875 – which was in response to a series of judicial decisions which ensured that, during their formative years, trade unions had to operate in a hostile legal climate. This legislation, however, confers no positive rights; instead it confers immunities for trade unions and their members and officials against certain common law doctrines such as conspiracy and restraint of trade. The legislation also abstained from any detailed interference in the internal affairs of trade unions, except as regards the application of trade union funds for political purposes.

The aim of the Trade Union Acts 1941, 1971, and 1975 was to reduce the number of trade unions operating in Ireland by establishing a licensing system thus making it more difficult for new trade unions to become established and improving the procedures where two or more trade unions could merge. These Acts make it a criminal offence for any body of persons to carry on negotiations for the fixing of wages and other conditions of employment unless the body holds a negotiation licence or can be classified as an "excepted body".

The third series of Acts – the Industrial Relations Acts 1946, 1969, 1976 and 1990 – concern the institutional arrangements for the promotion of harmonious labour relations, namely the establishment of machinery for the prevention and settlement of industrial disputes.

In addition, there is a significant body of legislation, enacted since 1967, conferring important employment rights on workers such as the Unfair Dismissals Acts 1977 – 2001, the Payment of Wages Act 1991, the Maternity Protection Act 1994, the

Employment Equality Act 1998,the Organisation of Working Time Act 1997 and the National Minimum Wage Act 2000.

(ii) Collective Bargaining

There is no general legal obligation on employers to bargain collectively with, or recognise, trade unions representing their workers and collective agreements are regarded as lacking the force of law. Although collective agreements are not legally binding contracts, their provisions may be incorporated into the individual contracts of employment of the workers covered. If the parties so desire they may apply to have the agreement "registered" whereby it becomes legally binding not just on the signatory parties but also on employers who are not parties to the agreement. This facility, however, is little used: the most significant of the registered agreements is that for the construction industry.

Centralised wage agreements are a distinctive feature of Irish labour relations. Successive national programmes of social partnership have been a significant factor in achieving a positive investment climate, near full employment, relatively low inflation, high growth levels and major reductions in the national debt. In 1987 a three year Programme for National Recovery was negotiated between the government, the trade unions, the employers and the farming organisations, which *inter alia* provided for staged pay increases. On its expiry the Programme for Economic and Social Progress (1990-1993) was negotiated, followed by the Programme for Competitiveness and Work (1994-1997), Partnership 2000 (1997-2000) and, most recently, the Programme for Prosperity and Fairness. The pay terms of the current agreement allow for increases totalling 15% over 33 months. Collective bargaining on issues other than pay occurs at various levels – industry, enterprise and plant – but the trend in recent years has been towards company level bargaining. In a number of companies, however, the centralised wage agreement has been used as a floor on which additional pay increases or reward mechanisms have been negotiated

D. Conflicts

There are a range of agencies in the labour relations arena whose task is conflict resolution. Apart from the Labour Court which was established in 1946, there are the Rights Commissioners (established in 1969), the Employment Appeals Tribunal

(established in 1967), the Director of Equality Investigations (established in 1998) and the Labour Relations Commission (established in 1990). All these bodies are created by statute and exercise a variety of jurisdictions. In addition there are important non-statutory agencies such as the National Implementation Body (NIB) which was established to monitor and police the current national programme in an effort to avert major industrial disputes that might fall through the formal disputes settling framework. In effect the NIB is merely the formal embodiment of an informal and *ad hoc* dispute settling process, which had been well established during the earlier national programmes. The NIB is a three person body made up of a Government appointed chair (the Secretary General of the Department of the Taoiseach) and a nominee from both Congress (its General Secretary) and IBEC (its Director General).

The ordinary civil courts tend to deal with appeals on points of law from the Labour Court and the Employment Appeals Tribunal but occasionally employment disputes, such as actions for damages for wrongful dismissal or applications for injunctions to restrain industrial action, are dealt with them directly.

II. Labour conflicts and the means for solution

There is no overt legal typology of labour conflicts in Ireland whether as between individual and collective conflicts or as between conflicts of rights and conflicts of interest, but both distinctions are well recognised by the social partners and the various statutory agencies. Claims that arise under the employment rights legislation are dealt with by the appropriate decision –making body on an individual basis and the process clearly requires adjudication on the claimant's legal rights. There is no "class action" procedure, although cases can be run on a representative basis if both sides agree.

The principal decision making body here is the Employment Appeals Tribunal which hears both claims under the Redundancy Payments, Minimum Notice and Unfair Dismissals legislation and appeals from decisions of the Rights Commissioners under the Payment of Wages Act, the Maternity, Adoptive and Parental Leave legislation and the Employers' Insolvency legislation. The Tribunal, which sits in a number of divisions, is a tri-partite body consisting of a legally qualified chair and two lay wing people drawn from a panel of trade union and employer nominees. The Rights Commissioners (of whom there are six) also decide claims under the Organisation of Working Time, the National Minimum Wage and the Part-Time Workers legislation but appeals in these cases go to the Labour Court. The Labour

Court also hears appeals under the Employment Equality legislation from decisions of the Director of Equality Investigations.

The distinction between individual and collective disputes of interest is recognised to some extent by the legislation which first established the office of Rights Commissioner (Industrial Relations Act 1969). This Act provides that where a trade dispute - other than a dispute connected with rates of pay of, hours or times of work of, or annual holidays of, *a body of workers* – exists or is apprehended, a party to the dispute may refer it to a Rights Commissioner for an investigation and a recommendation setting forth his or her opinion on the merits of the dispute. Here the Rights Commissioner is clearly not adjudicating on the parties' *legal* rights but subsequent legislation has conferred on them jurisdiction to deal with certain legal disputes. The Rights Commissioner service is seen by the trade unions and employers as a cost-effective and efficient system by which disputes involving an individual regarding alleged breaches of employment rights or non grade-wide grievances on pay or employment matters can be resolved on a user friendly access basis.

The principal agencies dealing with disputes of interest, however, are the Labour Relations Commission and the Labour Court both of which can become involved in individual and collective disputes. The Labour Court, however, also has appellate jurisdiction in certain conflicts of rights (see above).

III Extra – judicial means for the solicitor of labour conflicts

In the Irish labour relations system, the parties to the collective bargaining process are free to settle their disputes by negotiation and compromise. In the event of their failing to resolve their differences, the law does not impose a settlement or require resort to certain procedures. The parties are free, within certain limits, to take industrial action whether by way of a strike and picket or by way of a lockout. The State, however, does provide machinery for assisting the parties in the resolution of their disputes, whether individual or collective.

Official state provided conciliation machinery has been in operation in Ireland since 1896. The Royal Commission which was set up after the 1889 dock strike to report on whether legislation could be directed "to the remedy of any of the problems that might be disclosed" rejected, by a majority, any idea of compulsory reference of trade disputes to state boards of arbitration whose decisions would be legally binding. The majority of the Commission felt that less faith should be placed in legal sanctions and more emphasis placed on the development of voluntary institutions. They did recommend, however, that the Board of

Trade, whose powers devolved after 1922 (the creation of the Irish Free State) to the Department of Industry and Commerce, should be bestowed with discretionary powers to enable it to take the initiative in aiding with advice and to conciliate on the application of both parties to the dispute. The outcome was the enactment of the Conciliation Act 1986 (the 1896 Act) which applied both to Britain and Ireland.

This legislation was generally regarded as useful but, with the wartime state of emergency, a wages standstill was imposed by government order in 1941. This was one of a series of measures which the Irish Government put into force with a view to limiting the inflationary effects of an expanding supply of money in a time of reduced supplies of goods. Complementary measures included price controls and limitations on company dividends and directors' remuneration.

The original wage freeze was moderated, as the emergency period progressed, by a series of emergency bonus awards, whose grant was subject to recommendations by emergency wages tribunals. These tribunals, which consisted of legally qualified chairmen together with employer and worker members, were appointed by the Minister for Industry and Commerce and the system was administered by his Department. By 1946, however, wages had fallen significantly behind pre-1939 rates in real terms.

The Government were naturally concerned that, when the emergency restrictions were lifted, there would be an orderly release of the pent up pressures, not only in the private sector but also in the civil and public services. The Government did not consider the pre-war machinery to be suitable for this. It was not that the 1896 Act was inherently defective but simply that it had been designed for very different conditions. New means by which differences could be more smoothly adjusted were felt to be required.

Sean Lemass, Tanaiste and Minister for Industry and Commerce, initiated moves to institute machinery for dealing with trade disputes in 1944. Prolonged discussions and negotiations with the trade union and employer bodies followed, and on 25 June 1946 an Industrial Relations Bill was introduced in Dail Eireann and was ultimately enacted on 27 August 1946.

The Industrial Relations Act 1946

The Industrial Relations Act 1946 (the 1946 Act) repealed the 1896 Act and established the Labour Court as an independent adjudicating body charged, *inter alia*, with the task of promoting harmonious industrial relations. The Court's principal function was to lie in the

promotion of good industrial relations by assisting employers and trade unions to settle their disputes in accordance with procedures laid down in the Act. It fulfilled this in two ways, namely (i) the provision of a conciliation, and subsequently an industrial relations, service and (ii) the investigation of trade disputes and the making of recommendations towards their settlement.

The Court was judicially described in 1949 as a "highly responsible board of conciliation charged with the duty of promoting harmony between workers and employers and it investigates a trade dispute with a view to making not an order but a recommendation….The object is to bring about peace by persuasion instead of submission by coercion." The Court's recently adopted *Mission Statement* is to "find a basis for real and substantial agreement through the provision of fast, fair, informal and inexpensive arrangements for the adjudication and resolution of industrial disputes".

The Court's most visible function is the making of recommendations for the resolution of trade disputes, which are defined by the 1946 Act as being disputes or differences "between employers and workers or between workers and workers connected with the employment or non-employment, or the terms of the employment, or with the conditions of employment, of any person". Allthough this definition refers to "employers" and "workers", the Court will investigate trade disputes involving a single worker.

The Labour Court

The Court, which was established on 23 September 1946, consisted originally of a full-time Chairman, one part-time Deputy Chairman and two employers' and two workers' members (the ordinary members). In 1969 the Act was amended so as to provide that the Minister might appoint further Deputy Chairmen who, henceforth, were to be full-time. At present the Court consists of a Chairman, two Deputy Chairmen and six ordinary members. The six ordinary members are nominated for appointment by "organisations representative of workers' and employers' trade unions", the former being Congress and the latter being IBEC.

None of the members of the Labour Court are required to be lawyers (although the first Deputy Chairman was an eminent senior counsel with long experience of chairing emergency wages tribunals). Indeed a suggested amendment in the Dail that the Chairman be a practising barrister or solicitor of not less than five years standing was comprehensively defeated. It was also suggested that the Chairman be given the tenure of a High Court Judge since that status would enable him or her to be free from pressure and free from the suspicion

that pressure could be applied. The Minister felt it unwise to do this as it could mean making a permanent choice and having no power to rectify the position if the Government found that the Chairman was neither suitable nor satisfactory!.

Section 3 of the Industrial Relations Act 1969 provides that, whenever the Chairman is of the opinion that it is expedient, for the speedy dispatch of business, that the Labour Court should act by divisions, he or she may direct accordingly and, until such direction is revoked, the Court shall be grouped into divisions. The Chairman then assigns to each division the business to be transacted by it and, for the purpose of the business so assigned to it, each division shall have the power of the Court and the chairman of the division, being one of the Deputy Chairmen, shall have all the powers of the Chairman. Under section 8 of the 1969 Act, Labour Court investigations must be held in private unless one of the parties requests a public hearing.

Section 20 (3) of the 1946 Act provides that where any question arises under the Act at a meeting or sitting of the Labour Court and the members are unable to agree on the determination of the question the following provisions shall have effect:

(i) if the majority of the ordinary members agree, the question shall be determined accordingly;
(ii) if the majority of the ordinary members do not agree, but a majority of all the members agree, the question shall be determined accordingly;
(iii) otherwise the question shall be determined in accordance with the opinion of the Chairman.

Section 20(4) then provides that the decision of the Labour Court shall be pronounced by the Chairman or such other member as he or she shall authorise for this purpose, and no other opinions whether assenting or dissenting, shall be pronounced nor shall the existence of any such other opinion be disclosed.

Since its establishment the Labour Court has had periodically to deal with doubts about its independence and successive Chairmen have often had to stress that the Court is a wholly independent forum for the settlement of disputes which does not act as an arm of government economic policy. The point was forcefully made by the first Chairman at the Labour Court's inaugural meeting in 1946.

> "By the passage of the Industrial Relations Act the Oireachtas effected a very noteworthy change. It has transferred from a Government department to a specially constituted Court the responsibility of securing a reasonable adjustment and settlement of differences between employers and workers by negotiation, discussion and agreement between the parties. This Court is an independent body, independent of government and of every other body. It is so constructed that representatives of employers and workers may take part on a basis of equality under its work. The Act may be regarded as an expression of industrial self-government."

Despite its name, the Labour Court is generally not concerned with the determination of legal questions, except when it is exercising its functions under legislation such as the Organisation of Working Time Act 1997 and the Employment Equality Act 1998. 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. The late Professor Charles McCarthy put it well when he wrote that a Labour Court recommendation was "essentially a third view" not a judgment and that the Court was established as "a body whose purpose was to promote accommodation…..to act as an honest broker, neither to apply law nor to create it." Although precise figures are not maintained by the Court, a very high percentage of its recommendations are ultimately accepted by both parties.

The procedure and general atmosphere prevailing at a Labour Court hearing for the purpose of investigating a trade dispute bear little resemblance to the formalities of the civil courts and are best described by the Court itself in its explanatory handout.

> "Formalities are reduced to a minimum. Written submissions are made by both parties before the Court investigation commences. These written submissions are read at the Court hearing by the main spokesperson for each side but the fact that certain aspects of the dispute are not covered in a written submission does not prevent a party from covering these additional aspects by way of supplementary oral submissions. Any points on which clarification or elaboration is required will be dealt with by way of question by members of the Court. The more fully facts and arguments are given in the written and oral submissions the less need there will be for members of the Court to put questions."

A certain amount of formality, however, is indispensable to the orderly conduct of proceedings, which must be conducted with due dignity and decorum.

The Labour Court is empowered by section 21 of the 1946 Act to summon witnesses before it, to examine on oath the witnesses before it and to require any such witness to produce to the Court any document in his or her power or control. The High Court has confirmed, however, that the Labour Court has a wide discretion to regulate its own procedures in this respect, *i.e.* to allow unsworn testimony, but that it should not be deterred by considerations of difficulty or inconvenience from taking evidence on oath where it would otherwise be proper or desirable to do so.

When the Labour Court issues a recommendation, it must set forth its opinion both on the merits of the dispute and the terms on which it should be settled. Before 1969 the Labour Court was also obliged to have regard to the public interest, the promotion of industrial peace, the fairness of the terms to the parties concerned and the prospects of the terms being acceptable to them. These criteria were somewhat confusing and difficult to reconcile. A settlement acceptable to the parties might be against the public interest and one which was not acceptable would hardly promote industrial peace. This problem because particularly acute in the 1960's when the Labour Court had to resist strongly the idea that it should be the "promoter or implementer" of the national wage agreements. The requirement to have regard to the four above-stated criteria was deleted by section 19 of the 1969 Act although the Court is still entitled, if it wishes, to have regard to any or all of them.

As noted above, the parties are under no obligation to accept the Labour Court's recommendation and nothing can be done if they fail to implement it. The Court's duty is simply to make a recommendation; the responsibility for the settlement remains at all times with the parties themselves. Quite apart from the absence of any legal machinery for the enforcement of Labour Court recommendations, the immunities against civil liability contained in Part II of the Industrial Relations Act 1990 remain available in the event that a strike or other industrial action ensues.

It was hoped that, in the course of time, respect for the Labour Court's intelligence and integrity and the common-sense basis of its recommendations would create a climate in which its recommendations would ordinarily be accepted, particularly since the Labour Court is normally precluded from investigating a dispute unless both parties request it to do so. It was also clearly intended that the reference of a dispute to the Labour Court should be reserved for only the most serious and intractable disputes and only then when all else had failed. Until

1970 the Court issued, on average, just over 100 recommendations a year. The 1970's, however, saw a dramatic increase in the use of the Court and its services and in 1983 alone it issued 918 recommendations. This increase was due in part to the effect of the national wage agreements but in the main it was attributed by the Court to an increased reluctance or inability on the part of negotiators to reach sensible situations themselves. The Labour Court was increasingly becoming a court of first resort and a large number of essentially trivial disputes were being referred for adjudication. One of the stated principal objects of the Industrial Relations Act 1990 (the 1990 Act) was to restore the original purpose and status of the Labour Court to that of being, in the words of the Minister for Labour, "the final authoritative tribunal in industrial relations matters", whose recommendations would again be documents "with great moral authority". This was to be achieved by the establishment of the Labour Relations Commission (the Commission) which was charged with general responsibility for promoting the *improvement* of industrial relations.

The Labour Relations Commission

The Commission, which was established with effect from 21 January 1991, has its primary aim the encouragement and facilitation of a more pro-active approach to dispute resolution and prevention with the main responsibility being shifted back to the parties themselves. The Commission's Mission Statement is "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". The Commission carries out this mission by *inter alia* providing an industrial relations conciliation service and an industrial relations advisory and development service. As the Minister pointed out at the time of the Commission's establishment, the attainment of this end would entail "a reappraisal by trade unions and employers of their whole attitude towards negotiation and dispute resolution".

Most of the Commission's functions were previously discharged by the Labour Court – such as the provision of a conciliation service – but in addition the Commission is empowered to provide an industrial relations advisory service and to prepare codes of practice relevant to industrial relations. The 1990 Act provides that, except where there is a specific statutory provision for the direct reference of trade disputes to the Labour Court, trade disputes shall first be referred to the Commission. The 1990 Act further provides that the Labour Court will not normally investigate a dispute unless it receives a report from the Commission to the effect that the Commission is satisfied that no further efforts on its part will advance the

resolution of the dispute and that the parties to the dispute have requested the Labour Court to investigate.

The increased emphasis given to conciliation through the establishment of the Commission should ensure that more cases are settled at that level and fewer cases heard by the Labour Court. Indications from both the Court's and the Commission's Annual Reports are most favourable in this respect. The Labour Court, however, remains concerned that in some cases it is still being used "as a staging post on the negotiation highway" and that any diminution or dilution of its role in the industrial relations process as "the court of last resort" can only be detrimental to the entire machinery on which the economy relies for the orderly resolution of disputes.

Public Sector Conciliation and Arbitration Schemes

Public service and local authority employees were deliberately excluded from the scope of the Industrial Relations Act 1946 and although non-officers of local authorities and health boards were included in 1955, public service industrial employees in 1969 and officers of local authorities and health boards in 1998, negotiations on pay and conditions for civil servants and other employees in the public service are concluded under agreed schemes of conciliation and arbitration.

The schemes provide for a joint conciliation council where management and trade unions negotiate under a chairman. Each side has a secretary and reports are prepared of discussions on claims and agreed by both sides. The reports may record agreement or disagreement and the recommendations are submitted to the appropriate Minister. A wide range of items may be discussed at conciliation but the main items specified for discussion are pay, allowances, overtime rate, hours, grading and principles governing recruitment, promotion, discipline, superannuation and annual sick leave.

The schemes also provide for an Arbitration Board, for claims which have been disagreed at conciliation, with an independent Chairman, who reports on each claim to the relevant Minister. The schemes do not expressly state that the Arbitration Board's decision is conclusive but provide instead that the Government, on receiving the decision, can refer the matter to the Oireachtas with a recommendation that the award be varied or rejected.

IV Assessment of extra-judicial means for the solution of labour conflicts

1. Practical Assessment: some statistical indicators

During the three-year period 1998-2000, a total of 5,602 disputes were referred to the conciliation service of the Labour Relations Commission. Of these, 3,608 came from the private sector and 1,654 came from the public sector. An overall settlement rate of 83.6% was achieved. 55% of the disputes referred in 2000 concerned pay (35% and 38% in 1999 and 1998 respectively) and 11% of the disputes referred that year concerned conditions of employment (35% and 26% in 1999 and 1998 respectively). Other disputes in 2000 concerned restructuring/rationalisation (26%), grievance and disciplinary issues (3%), hours of work (3%), and union recognition/representation (2%). 53 disputes involved five or fewer workers with 14 of those involving a single worker. In contrast, 1,062 disputes were referred to the Rights Commissioner service under the Industrial Relations Acts.

Although the number of one-person or small-number disputes referred to the Commission's conciliation service has not increased over the last few years, the Commission remains concerned at the number of such disputes being referred. The Commission has been examining how best to deal with this problem and the guiding principle in its deliberations has been the need to make optimum use of the conciliation service's resources *i.e.* primarily in areas of "collective disputes of principle". In the Commission's *Strategy Framework 2002-2004* it is indicated that, as a further step in the Commission's aim of providing a fast, effective and efficient dispute resolution service, a programme is to be initiated to encourage the use of the Rights Commissioners service for individual and small group disputes "which do not raise broader policy issues". This would ensure the availability of experienced Commission experts for the resolution of "larger and more significant" disputes.

In response to perceived client demand the Commission is also investigating the possibility and appropriateness of offering mediation on request in suitable cases. Consideration is also to be given to offering an arbitration service in selected appropriate cases.

V Extra Judicial means for the solution of labour conflicts across the community

Solution of collective conflicts derived from the application of community legislation

A. Council Directive 94/45/EC (as amended by Council Directive 97/74/EC)

The European Works Council Directive was transposed with Irish law by the Transnational Information and Consultation of Employees Act 1996, as amended by the European Communities (Transnational Information and Consultation of Employees Act 1996) (Amendment) Regulations 1999 (S.I. No. 386 of 1999). Two provisions of the 1996 Act provide that certain disputes between central management and employees (or their representatives) are to be referred to arbitration. Section 20 provides for the referral of disputes, concerning the withholding by central management of commercially sensitive information, to "an independent arbitrator" appointed by the Minister for Enterprise, Trade and Employment. Section 21 provides for the referral of disputes, concerning the interpretation or operation of agreements for the establishment of an information and consultation arrangement, to "an independent arbitrator" appointed as agreed between the parties. If the parties cannot reach agreement on the appointment or terms of appointment of an arbitrator, either of them may apply to the Labour Court "which shall refer the dispute to the arbitration of one or more persons as it thinks fit". The arbitrator is required to make his or her determination on the basis of the written submissions of the parties but is given discretion to conduct a hearing if the circumstances of the case require it. The 1996 Act further provides that a party to an arbitration under either section 20 or 21 "may not appeal to a court against a determination of the arbitrator except on a point of law".

Although section 21 does not apply to Article 13 agreements, a dispute between SIPTU (the Union) and Baxter Healthcare SA (the company) over the selection process for representation on the company's European Forum was referred to the Labour Court under section 26 (1) of the Industrial Relations Act 1990 (LCR 15824). Employees of the company's Irish operations were entitled to two representatives on the Forum. The company wanted to have one representative for the Union's members and another to represent the non-union members. The Union, however, wanted the two representatives to be elected by a ballot of the total workforce. The Labour Court noted that the agreement provided that employee representatives to the Forum were to be selected "according to arrangements to be agreed between the local representatives of management and employees" and further noted that, had the 1996 Act applied, the method of election would have been governed by the First Schedule to the Act which provides for a single election conducted by proportional representation with all employees being entitled to vote. In the absence of agreement, the Labour Court considered it reasonable to recommend the adoption of this procedure. To assist the parties, the Labour Court further recommended that an "independent outsider" be appointed to supervise the ballot and that the names of the candidates and their location be the only information given on the ballot papers. In the event of the two places being filled by

representatives of either group involved in the dispute, the substitute delegate place should be filled by the employee from the other group who polled the highest number of votes.

B. Council Directive 98/59/EC

The Collective Redundancies Directive was transposed into Irish law by the Protection of Employment Act 1977, as amended by the Protection of Employment Order 1996 (S.I. No. 370 of 1996) and the European Communities (Protection of Employment) Regulations 2000 (S.I. No. 488 of 2000). Disputes over whether the employer has consulted with employees' representatives or whether those representatives have been provided with all relevant information may be referred to a Rights Commissioner for adjudication. The complaint may be referred by an employee or by a trade union acting on his or her behalf.

C. Council Directive 77/187/EEC as amended by Council Directive 98/50/EC (now consolidated by Council Directive 2001/23/EC)

The Acquired Rights Directive was transposed into Irish law by the European Communities (Safeguarding of Employees' Rights on Transfer of Undertakings) Regulations 1980 and 2000 (S.I. Nos. 306 of 1980 and 487 of 2000). Disputes on whether either employer has informed and consulted employees' representatives as required by the 1980 Regulations may be referred to a Rights Commissioner for adjudication. The complaint may be referred by an employee or by a trade union acting on his or her behalf.