

# DEVELOPMENTS IN INDUSTRIAL RELATIONS AND HUMAN RESOURCE MANAGEMENT IN IRELAND

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Once upon a time, not so very long ago, the ‘catechism’ of employment relations in Ireland read as follows. Collective bargaining with increasingly strong trade unions could be viewed as the standard and increasingly prevalent means of regulating pay and conditions of employment. Collective bargaining structures could take pay out of competition across the economy, and, in the Irish case, was inert to international labour mobility. It was preferable for the State to keep out of the conduct of employment relations, other than fulfilling a largely auxiliary function in the areas of dispute resolution and union rationalisation. Trade union and employer organisations were ill suited to the kinds of centralised and commonly tripartite arrangements found in some West European and Scandinavian countries. Collective bargaining mechanisms at firm and workplace level represented virtually the only means through which employers engaged with unions. Consultative arrangements beyond collective bargaining constituted exotic specimens, ill suited to Irish traditions, as were styles of human resource management that sought to bypass trade unions. Now virtually all of these precepts need to be revised in what is a particularly interesting period in Irish employment relations. My purpose in this article is to overview developments in human

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resource management and industrial relations in Ireland, concentrating mainly on recent trends and developments in the field, and sometimes ranging back over a longer time period, where this is necessary to provide a context for recent developments. The article touches on 5 major areas:

1. Developments in human resource management.
2. Social partnership.
3. Workplace partnership.
4. The circumstances of trade unions.
5. The industrial relations of migration.

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**1.  
Managing  
Human  
Assets?  
Developments  
in HRM**

One striking trend over the past decade in Ireland is the degree to which policymakers and politicians have come to identify and to recognise skills, knowledge, education and related human resource attributes as the key to Ireland's competitive advantage. Even in the dark days of the 1980s exercises in fiscal retrenchment sought to avoid cutting investment in education, which had been a key parameter of Irish economic and industrial policy since the 1960s. What has been striking from the 1990s, however, is the extent to which the creation of a skilled workforce and the harnessing of that workforce through high-performance work practices were recognised as pivotal and increasingly important components of Ireland's competitive position. Whether in the strategies of Forfás, the Labour Relations Commission (LRC), the National Centre for Partnership and Performance, or, more recently, in the reports of the Enterprise Strategy Group and Forum on the Workplace of the Future, and in the step-change in levels of investment in third-level and 'fourth-level' education, we see a strong emphasis on investment in 'human assets' as a pivotal force in Irish economic and work life.

We might then ask whether a 'new dawn' for human resource management has indeed been evident in developments in workplaces, and whether the new macro-level appreciation of the economic importance of investment in human assets and of high-performance work organisation have translated into significant changes on the ground? To answer this question, it needs to be broken down into two components. First, has the management of people become more closely aligned with the business strategies pursued by organisations and with the pressures to which these respond? And second, to the degree that a better alignment between the management of people and business strategy has become apparent, has this meant that the types of progressive human resource practices, commonly associated with the high-performance HRM model, have become pervasive in Irish businesses?

In answer to the first of these questions, it can be concluded with considerable confidence that ways of managing people have indeed become more closely aligned with, or dependent upon, business strategies and pressures over the past decade. Industrial relations and personnel practices seem no longer to be regarded as domains in which only marginal and incremental changes could normally be made – short of businesses finding themselves *in*

*extremis*, or wrestling with major changes in ownership and governance. This can be seen, for example, in the insistence of many US multinationals to avoid dealing with trade unions, in a major part because of a perception that product and process dynamism in fast-changing and turbulent product markets would be seriously compromised by engaging in collective bargaining. It was also evident in the 2005 Irish Ferries debacle, where industrial relations and employment arrangements were clinically realigned in pursuit of a low-cost business model; Ryanair's insistent alignment of its low cost business model with its employment relations model provides another striking illustration. Consistent with this picture, the extent of HR and IR, change driven by restructuring exercises in the private and public sectors, has been a prominent feature of LRC reviews and commentary in recent years (see Labour Relations Commission, 2006).

The vision of preserving a 'unified public service' (with common grades, pay arrangements and promotional paths), which underpins human resource management reforms in the public services, constrains the scope available to departments and agencies to tailor human resource practice to business and operational imperatives. But here too we see a greater emphasis on trying to use such limited flexibility as is available to align human resources better with organisational objectives and business plans. Reviews of HRM in the public service point to growing emphasis on the need for more scope for alignment of this kind (O'Riordan, 2004).

An insistence by some major employers, such as Independent Newspapers, Irish Ferries and Aer Lingus, that business imperatives needed to drive dispute resolution processes as well as employment relations arrangements has led to a new posture towards State-provided third-party institutions in the field of industrial relations. A more hard-headed posture has become evident: employers sometimes avoiding recourse to third-party institutions, disengaging from these institutions, or refusing to accept Labour Court recommendations, and citing business imperatives in their defence. Disputes are escalated with a view to obtaining more clear-cut, definitive and especially speedier outcomes than seen to be available by proceeding through conventional dispute resolution processes.

The second question outlined above concerns whether a closer alignment of business strategies with human resources commonly translates into higher levels of investment in human assets. Available evidence prompts scepticism as to whether developments in most workplaces are consistent with the claims and injunctions of public policymakers, reviewed earlier. Even if we leave aside recent data from the OECD showing that spending on education in Ireland places the country near the bottom of the international league table of advanced economies, we cannot easily discount the significance of the finding in the same review that Ireland ranks 17<sup>th</sup> out of 22 countries in the amount of job-related training that adult workers can expect to receive during their working lives, or that only 11 per cent take part in job-related continuing education and training, compared with over 25 per cent in the US and Scandinavia (OECD 2006). Also revealing are the data collected in a telephone

survey of 5,000 employees in 2003, designed by the ESRI and UCD for the National Centre for Partnership and Performance. These data indicate that less than 10 per cent of the workforce in the private and semi-state sectors was employed in workplaces with multiple progressive, high-performance HR practices: comprising financial participation; a policy of avoiding involuntary redundancies and lay-offs; recent participation in education and training paid for by the employer and direct or representative employee involvement. Nor does the picture alter that significantly if the data are confined to larger workplaces or workplaces in larger firms (see Roche, 2007a). Other surveys point to rising levels of work intensity in Ireland and declining levels of job autonomy, in Ireland as in other advanced economies (see Green, 2006; EU Foundation, 2006).

In the Irish public service, the high-performance model provides the underlying guiding vision of reform under the Strategic Management Initiative. Notwithstanding impressive progress in some public service areas with core practices, such as performance management, entrenched management postures, sometimes (for example in the case of the health services) flux, inconsistency and uncertainty with respect to strategy, and the seeming stranglehold of adversarial industrial relations processes appear to have limited very considerably progress along the high-performance road.

In summary, the management of human resources in Ireland appears to have become more strategically aligned with business strategies and conditions, but this has not translated into the advent on any wide scale of the high-performance HRM model promulgated also as public policy and as the key to Ireland's competitive advantage. We have a good distance to go before managing people becomes 'managing human assets' in any meaningful sense.

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## 2. Social Partnership and the Fabric of Economic and Political Life

Social partnership has been part of the Irish employment landscape for 20 years. It is important to recognise the significance of this. In terms of its longevity, the range of issues covered and the versatility of the model in finding compromise solutions to serious and difficult challenges – most recently that of immigration and the labour market – the Irish social partnership model is unique among European initiatives in 'new social pacts' during the 1990s and early 2000s. Most observers and scholars agree that social partnership has contributed to Ireland's recovery and exceptional economic performance. They disagree only in as regards weighting that should be attributed to social partnership agreements and arrangements in accounting for Ireland's exceptional economic track record, and as regards distributional outcomes – in other words, 'who gains most?' – from partnership.

In some important ways, the Irish social partnership model exemplifies thinking within Europe as to the features of new social pacts in general, or what has come to be called 'competitive corporatism' (Rhodes, 1998). The main thrust of successive social partnership agreements since 1987 has been on the promotion of economic recovery; the maintenance of national competitiveness;

adjusting to European economic integration and monetary union; and promoting improvements in wages, living standards and social services at levels consistent with these goals.

For much of the period since 1987 'solidaristic' goals, concerned with significantly improving public and social services, have been muted and treated as subsidiary to competitive 'imperatives'. In the same way, the improvement of the relative position of low-paid employees, in pursuit of ideals of social justice, has not been a priority (Baccaro and Simoni, 2003). In these respects the most recent agreements, especially *Towards 2016*, may mark a turn towards a more socially responsive agenda. This 'social turn' in the Irish partnership model has been spurred by pressures to respond to significant deficiencies in public and social service provision – pressures, not coincidentally, that are also politically as well as electorally compelling – as well as by growing disillusionment with and resistance to national pay bargaining by some unions representing the low-paid.

Notwithstanding its successes with social partnership, Ireland is commonly seen as an unlikely instance of effective accommodation between the State and social partners (see for example Hassel, 2003). Lacking centralised organisation among unions or employer bodies, or a tradition on the part of the State of imposing legal regulation on industrial relations or collective bargaining, the glue that binds the Irish social partnership model has little enough to do with how labour and capital are organised, or with the State's capacity to broker deals under the shadow of legal regulation.

Rather it appears that the gradual evolution of a dense network of linkages between the parties, comprising councils, committees, working groups, negotiating and dispute resolution forums has been a significant force in institutionalising social partnership, albeit imperfectly. The result being that the value to the parties of the partnership edifice itself, and their reluctance to risk its dissolution, has become an important ingredient in their thinking in the renegotiation of partnership agreements (see Roche, 2007b). An important ingredient, but not the main ingredient. As some parties to the recent deal made clear during the negotiations: first and foremost the deal had to serve their immediate economic interests: 'no deal was better than a bad deal', as we were reminded when the talks ran into trouble. Some commentators have claimed that the social partnership model now constitutes a parallel political system within the State, or even a 'new form of governance' in the broadest sense. Two perspectives are evident on this issue, and they are diametrically opposed in the claims they make.

The first view is that social partnership has usurped or displaced parliamentary democracy, and instituted in its place a system in which unelected and unaccountable leaders of interest groups cut deals with ministers and senior civil servants behind closed doors. Something of a chorus along these lines builds to a crescendo, especially in newspaper columns, each time a partnership agreement is renegotiated. The view appears to have little merit. Contacts, lobbying and dealings between economic and political elites have existed before or without social partnership. Indeed in his recent

book, *Preventing the Future: Why Was Ireland so Poor for So Long?* Tom Garvin claims that such a politics constrained Ireland's development for much of its history and well before social partnership became part of the fabric of Ireland's economic or political life (Garvin, 2004). In any case, all partnership agreements involve policy and spending commitments by government that can ultimately only be approved by the Oireachtas. The Oireachtas can insist on accountability if it chooses. All of the main political parties now support social partnership, albeit with varying degrees of enthusiasm and philosophical comfort or discomfort – hardly an indication of their concern that they have been politically displaced by the deals and networks associated with the social partnership process.

The second view of partnership as a new kind of politics claims that social partnership has instituted a higher and more effective system of democracy by bringing unions, employers and civil society groups into the heart of public policy-making and implementation at multiple levels and by disposing all parties to take a more open-minded and creative approach to pursuing their interests and resolving common problems (for an exposition of this view see O'Donnell 2001; O'Donnell and Thomas, 1998).

The result has been described as the advent of 'deliberative democracy'. This view can be criticised heavily for underestimating the degree to which partnership still stands or falls on long familiar compromises over pay, and because it fails to recognise the extent to which employers and unions – their primacy underwritten by government – dominate deal-making over matters that are important to them relegating civil society groups to a more marginal role (see Roche, 2007b). This perspective on social partnership also exaggerates levels of innovation and involvement by civil society groups in policymaking and implementation (Wall, 2004; Teague, 2006).

In summary, the Irish social partnership model is distinctive and even unique in its longevity, scope and versatility; has contributed to economic recovery and prosperity and has become embedded or institutionalised in economic and political life through an increasingly dense and pervasive network model of organisation. The view that it has displaced or supplanted liberal democracy remains wide of the mark.

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### 3. Workplace Partnership and the 2006 Information and Consultation

In 2006 the Act transposing the EU Directive on Information and Consultation passed into Irish law. It is timely to review the current situation with respect to partnership in the workplace and the effects that the new law on information and consultation might be expected to have on developments in this area.

Workplace partnership has been a significant issue in Irish industrial relations since the late 1990s. The past couple of years have witnessed both developments and setbacks in this area. If the clock is wound back to the mid-1990s, the prospects for partnership in Irish workplaces seemed very positive to some commentators. In a widely noted study undertaken in 1996 for the OECD, the distinguished US scholar, Charles Sabel, claimed that there were

impressive indications of the emergence and spread of participative and co-operative forms of decision-making in Irish firms, which Sabel termed 'collaborative production' (Sabel 2006, Ch.2). In similar vein, the US industrial relations scholar, Robert McKersie, believed that Ireland, with its strong trade unions and foreign multinationals utilising leading-edge human resource practices, represented the 'ideal locale' for the emergence of a new model of employment relations, built around co-operation and partnership between management, employees and unions (McKersie, 1996). Such optimism chimed with the advent of framework agreements fostering workplace partnership in successive social partnership programmes between 1997 and 2003. A series of public policy reports and initiatives largely mirrored these optimistic projections.

A decade on from the emergence of partnership at the workplace as a core issue, it is hard to avoid the conclusion that progress in the area remains patchy and that the momentum has dropped. There has clearly been a good deal of experimentation and innovation with various forms of partnership and involvement. Studies of partnership arrangements have assessed these in mostly positive terms (see O'Connell *et al.*, 2004 and for a review of the Irish evidence as a whole, see Geary and Roche, 2005). But the pattern of innovation appears to be largely fragmentary in nature. Most commentators take the view that to be effective and durable, partnership arrangements need to incorporate, or to evolve towards, multiple innovations in areas such as job and work design, information exchange, co-operative relations with unions (where they are recognised), and 'stake holding' based on various forms of financial participation or gain sharing. In the light of research findings over the past couple of years, it is now clear that a set of arrangements of this kind are far from extensive in either unionised or non-union workplaces (Roche, 2007a). Some studies suggest that the turn of the millennium could have marked the 'high tide' of partnership and involvement in the unionised sector: a high level of experimentation around this time having been stimulated by the first new framework agreement on enterprise-level partnership in *Partnership 2000*, as well as by various transient EU funding programmes in support of workplace innovation (O'Dowd, 2006).

Over the past few years the collapse of some partnerships widely viewed as leading-edge exemplars has appeared ominous. Noted partnerships collapsed, for example, in Aer Rianta and RTE. These had chalked up significant achievements but still ultimately proved unsustainable. The reported eclipse (and possible collapse) of partnership in Bausch and Lomb is also ominous. On the credit side of the balance sheet, the emergence of partnership in Allianz and the initiative involving the AIB and IBOA are also noteworthy.

In the public service, partnership arrangements seem in the main to be 'treading water'. In a review undertaken in the early 2000s, a distinction was made between 'first generation' and 'second generation' partnerships. First generation partnerships, were seen as characterised mainly by a focus on 'softer' issues, worthy in themselves, but of limited concern to managers or unions (issues like communications, the climate of relationships and so forth); with

process, and with the configuration of structural arrangements. 'Second generation' partnerships, on the other hand, also addressed core business issues of major concern for managers, as well as areas of central concern for unions, including work practices, career progression and even pay and conditions. It was suggested that partnership activity in the public service was confined mainly to 'first generation initiatives' and that second generation partnership seemed a good way off (Roche, 2002). On the evidence available as regards the current state of workplace partnership practices in the public services, there seems little reason to revise this analysis in any fundamental way. Notable, however, have been attempts in the health service and local government to transit in the direction of second-generation partnership. Whether the situation or prospects in the public service more generally have been affected by the recent rather loose coupling of partnership with public service modernisation, or more specifically with the performance verification process therein, remains to be determined.<sup>1</sup>

So major issues that arise regarding workplace partnership concern how the momentum might be regained, and the likely effects on the area of the recent transposition of the EU Directive on Information and Consultation. The new and controversial Act (Employees (Provision of Information and Consultation) Act 2006) introduces for the first time in Irish industrial relations history a set of statutory arrangements for keeping employees apprised of developments in companies' plans and operations. In the process, Ireland is coming into closer harmony with practices in the advanced European countries. But what of the likely effects of the new Act on the more ambitious objective of fostering multi-stranded, second-generation partnership arrangements?

Commentators have described the provisions of the new Act as 'minimalist' in giving effect only to the basic levels of information and consultation required to comply with the letter of the Directive; in instituting the so-called 'opt-in trigger mechanism' that requires 10 per cent of the workforce in an undertaking to signify their desire to initiate negotiations to establish new arrangements (subject to minimum and maximum threshold numbers of employees), and in allowing for direct as well as representative arrangements for information and consultation. Given the basic architecture of information and consultation set down in the Act, it has been suggested that resulting arrangements are likely largely to underwrite the current state of affairs (Geary and Roche, 2005). Some commentators had suggested or hoped that the Directive might

<sup>1</sup> Under *Sustaining Prosperity* (2003-2005) and *Towards 2016* (2006), action plans outlining the responses of different sectors of the public service to the modernisation proposals contained in the National Agreements are required to be endorsed by partnership committees. Following endorsement and subsequent approval by Performance Verification Groups, however, the chief officers in each of the sectors are responsible for the implementation of the measures outlined in the action plans. Little evidence is yet available as to the centrality or otherwise of partnership committees and groups of various kinds with respect either to the derivation or implementation of these action plans.



prove transformative, or that it might have acted as a catalyst to accelerate progress in the wider area of partnership in the workplace (see National Centre for Partnership and Performance, 2004). In the light of the provisions contained in the Act, in particular the opt-in requirement required to trigger the right to information and consultation act, the few recorded instances in which companies and unions negotiated pre-emptive agreements, as provided for in the Act, and the low level of recorded activity since the terms of the Act came into force in July 2006, it appears reasonable to suggest that we will see instead a continuation of considerable variation in information and consultation practices, as in partnership practices more generally.

The strongest and most robust models are likely to emerge in circumstances where considerable progress was already apparent prior to the advent of the Act. In many firms and workplaces, in contrast, the Act is unlikely to institute anything more than rudimentary arrangements for information and consultation, or for partnership more generally.

The new social partnership agreement, *Towards 2016*, dispensed with the framework agreement format that had been adopted as the principal means of animating partnership between 1997 and 2005. As agreements of this type had manifestly reached their limit as effective catalysts of partnership this is not a setback. It remains open to question, however, whether the new format adopted under *Towards 2016*, which involves a dispersal of efforts to animate partnership across a range of loosely connected programmes, initiatives and funds involving the social partners, will fare much better.

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#### 4. The Circumstances of Trade Unions

The last 20 years have been very difficult for Irish trade unions. Over the past decade alone union density has declined from about 46 per cent of those at work to less than 35 per cent. The level in the private sector is around 28 per cent. The current level of density overall is comparable to that originally attained by Irish unions in the early 1950s. It is important to underline that the recent and current situation of Irish unions is without precedent. Never in their history have unions in Ireland experienced a continuing decline in levels of organisation during a period of economic and labour market buoyancy. When added to this are indicators of a stiffening of employer resistance to recognition, apparently across the board, but especially sharply defined among multinationals of US origin (D'art and Turner, 2005), the scale of the challenge faced by unions becomes very clear. In considering the prospects of Irish trade unions halting or reversing declining density, we need to examine the effects of the workplace partnership model and of the new so-called 'right to bargain' provisions introduced under the 2001-2004 Industrial Relations Acts. Developments in both areas are important because unions in Ireland have sought to respond to their predicament through variously emphasising both partnership and organising models of union revival (Frege and Kelly, 2004).

Partnership in the workplace has been pursued to enhance unions' capacity to represent their members and in an effort to make unions appear more attractive and relevant to employers as well as employees. Union members appear to prefer partnership as a mode of representation as compared with traditional adversarial collective bargaining (ICTU, 1998). However, the limited incidence of partnership arrangements involving unions, the concentration of these arrangements in the public sector – where union density is already both high (at about 69 per cent) and relatively secure – and the apparent disinterest of employers in the face of unions' offers of partnership-based recognition agreements (see D'Art and Turner, 2005), points to the limits of the workplace partnership model as a vehicle for union revival in Irish circumstances.

The other plank of unions' response has been to emphasise a renewal of servicing, but most particularly of organising, as a means of promoting recovery and growth. Central in this respect has been the pursuit of legal changes in the capacity to represent and negotiate on behalf of members in circumstances where employers are unwilling to concede recognition. The so-called 'right to bargain' mechanisms set down in the Industrial Relations Acts 2001-2004 have aroused considerable controversy and sharply contrasting opinions. The procedure allows unions representing members in companies unwilling to accord recognition to refer disputes to the Labour Relations Commission. Disputes that remain unresolved at this level may then be referred to the Labour Court, in the first instance for a voluntary recommendation as to the terms on which settlements might be obtained, and subsequently for binding determinations if voluntary settlements are unobtainable. The new procedure amounts to a kind of mediated collective bargaining, where attempted settlements are brokered by the State's agencies for dispute resolution. The Labour Court is precluded from recommending recognition *per se*, while recognition is unlikely to arise at the LRC unless voluntarily acceded to by employers. An accompanying code of practice outlaws victimisation in conjunction with the procedure. Some commentators have claimed the new mechanisms involve 'recognition through the back door', or the 'end of voluntarism'; others even claiming that the new arrangements represent a constitutional 'wolf in sheep's clothing' hat challenges the fundamental rights of employers.

The new procedures – a classic Irish solution to an Irish problem – have aroused great controversy, but a sober assessment seems to be required of the effects of the new procedure on union organising activity. Some trends are now clear. The level of usage or 'volume of traffic' has risen significantly under the amended and

streamlined procedures introduced by the 2004 Act.<sup>2</sup> Unions have been advantaged by the shortening of the period required to exhaust the full procedure from 2 years to 6 months; from time frames at each stage, and from triggers for Labour Court intervention set down at different stages of the procedure.

Some commentators have called attention to the ‘expansive’ recommendations and determinations issued in the area by the Labour Court.

- Companies have been obliged to implement national pay rises negotiated under national social partnership, and sometimes to continue this practice into the future.
- Other companies have been obliged to apply more favourable pay and conditions prevailing in unionised establishments in their sector.
- A company has been obliged to institute an incremental pay system so as to permit transparency with respect to comparisons with rates in unionised establishments.
- Unions have been accorded a representative role in grievance procedures.
- The Labour Court has adopted a strict definition as to what constitutes collective bargaining, thereby preventing firms from avoiding the jurisdiction of the public dispute resolution agencies by claiming that they engage in collective bargaining with their employees but without involving trade unions.

These are significant developments, and the Acts and Codes certainly confer important powers and considerable discretion on the Labour Court. But what of the implications of ‘mediated collective bargaining’ of this kind for unions and the challenges they face in recruiting and retaining members?

The 2004 revisions have certainly increased unions’ capacity to obtain a favourable outcome for their members over a shorter period of time. But the overall impact of the new arrangements on union recruitment and density are open to question. Hundreds rather than thousands of firms have proceeded through the new arrangements, most of these employing small numbers of people. Large companies and especially multinationals have largely remained outside the net, or have managed to persuade the Labour Court against awarding recommendations in unions’ favour. So the direct effects of the new arrangements on union recruitment and density seem very modest.

But could the new arrangements also have *indirect* effects, as some have suggested? Might employers have become more likely to concede recognition under the shadow of the new mechanisms and

<sup>2</sup> No comprehensive data source is available on trends in referrals under the Acts. However, cases referred to the Labour Court have been closely monitored by the weekly industrial relations magazine, *Industrial Relations News (IRN)*. IRN’s coverage indicates a rise in the overall level of activity under the Acts subsequent to a series of amendments introduced in 2001, at the behest of the unions. These revisions streamlined the operation of the new procedure and reduced the time that could elapse at all stages in the procedure.

facing the prospect of legal compulsion in their dealings with staff? Have unions become more adept at exploiting the new arrangements to win pre-emptive recognition agreements – using the ‘carrot as well as the stick’, as some have described such an approach. While we cannot at this juncture be certain, it seems reasonable to suggest that, on balance, any indirect effects arising from the new arrangements have been modest. While some unions have clearly geared up their recruitment activities, there is little evidence of any widespread or successful strategy that couples the new ‘right to bargain’ arrangements with the offer of ‘pre-emptive’ recognition deals. In instances where something along these lines has been tried, the available research evidence suggests that employers in the main have been unimpressed and unreceptive (D’Art and Turner, 2005).

Overall, it can be concluded that the revised arrangements have had a modest effect on unions’ fortunes with respect to representation and organisation. Though they may well, of course, have a more pronounced cumulative effect over time, they certainly do not appear transformative in any profound sense, or to have ushered in a regimen of ‘union recognition through the back door’, as their critics sometimes claim.

The jurisdiction of the Labour Court under the new right to bargain procedure was contested in a dispute between Ryanair and some of its Dublin-based pilots. A Supreme Court judgment arising from the Ryanair dispute was delivered in February 2007, and appears ominous for unions with respect to several aspects of the operation of the new procedure. First of all, because the Labour Court now has the power to issue binding determinations, the Supreme Court has insisted that a formal legal process should ensure in hearings under the right to bargaining procedure. The Labour Court has always held the power to take evidence under oath and to subpoena witnesses and documents, but has chosen not to act as a court of law in a strict procedural sense, in the belief – widely shared in the professional industrial relations community – that the resolution of industrial disputes was better served by a less legalistic process. Following the Supreme Court ruling, it may become standard for the parties to disputes concerning the right to bargain to be legally represented, for witnesses to be called to give evidence and for those witnesses to be cross-examined on any evidence presented. The expense involved for trade unions, the likelihood of more protracted hearings at the Labour Court and the prospect that union members and activists may be called on to give evidence and to endure cross-examination seem likely to reduce substantially the attractions of the new procedure as a means of gaining access to collective bargaining. Perhaps more ominous still for trade unions is the suggestion in the judgment that collective bargaining might indeed be said and be found to occur in instances where employees are not represented by trade unions. Thus the limited support provided by the new procedure for union revitalisation has now been placed under a cloud.

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## 5. The Industrial Relations of Migration

One of the most pressing and controversial issues of recent years concerns the effects of migration on collective bargaining and industrial relations. The context here is the extraordinary pace at which Ireland has become a 'standard' advanced European economy in the sense that it is now characterised by a level of employment by non-nationals comparable to other leading European economies. Immigrant workers now make up about 10 per cent of the Irish workforce, a level equivalent to the average for EU 15 countries. No more than a few years ago the industrial relations consequences of immigration scarcely registered as a concern. Challenges arising around immigration tended to be restricted in the main to the merits of responding to labour and skills bottlenecks in specific areas through the issuing of work permits, or focused on wider debates as to whether asylum seekers should be permitted to work while their cases for remaining in Ireland were being processed. It is truly remarkable how an issue that was of little priority just a few years back has since become probably the most significant and keenly contested issue in Irish industrial relations. The speed with which Ireland has become a standard advanced European economy in terms of the immigration profile of its workforce has meant that the main interests and institutions in industrial relations have inevitably been playing 'catch-up' with respect to the challenges posed.

Unions, employers and government, as well as commentators in general, have disagreed sharply with respect as to how the effects of migration on the labour market, pay and industrial relations can validly be portrayed. Serious deficiencies in our data and research infrastructure have left plenty of room for the free play of rival positions. Underlying the various positions and contributions to the debate, two major and polar perspectives are recognisable.

The malign scenario points to a 'race to the bottom'. This is seen to involve downward pressure on pay levels and employment conditions; the spectre of generalised job displacement; rampant exploitation – particularly the exploitation of immigrant workers – rising earnings inequality; the possible marginalisation of immigrant communities and the spectre of tension and conflict between migrants and other workers. The benign scenario points, in contrast, to a 'drift to the top'. This is seen to involve immigrant workers occupying jobs vacated by workers moving to higher-paid and more productive jobs; an expectation that having gained job experience in Ireland rising numbers of immigrant workers too will gain the higher-skilled jobs that better match their levels of education; a moderation of upward pressure on wages, particularly at the upper end of the labour market (rather than falling pay levels), and a decline in earnings inequality (see Barrett *et al.*, 2006; Barrett and Duffy, 2006).

Where the balance will fall between these scenarios remains to be determined (NESC, 2006). For now it is clear that immigration is a highly variegated phenomenon in respect of its effects on the labour market and industrial relations: the effects of migration on migrants and other workers appears to depend on their levels of skills, the sector of the labour market in which they work, the level

of protection they enjoy from unions and the disposition of their employers.

The comprehensive measures agreed in *Towards 2016*, combined with amendments to the European Services Directive, should insulate many against flagrant breaches of health and safety legislation, violation of minimum pay and social entitlements arrangements, the strategic use of redundancy and outsourcing as a means of job displacement – the so-called ‘Irish Ferries on land’ scenario – the undercutting of prevailing employment standards by public contractors and abuses in other areas. Some have suggested that such a range of measures have made the Irish labour market one of the most highly regulated in Europe. If this were so, it would certainly be a sharp turn-around: Ireland having been portrayed in the recent past as having one of the most lightly regulated labour markets in Europe (see NESC, 2005). The creation through social partnership of what Kieran Mulvey has aptly described as a ‘compliance model’ (Mulvey, 2006) can and should be defended in terms of social justice. What bears emphasis, however, is that the new measures are also consistent with the human resource priorities of the knowledge-intensive competitive strategy that Ireland has set itself in the new global order: to succeed through investment in human assets rather than through ‘sweating’ those assets.

In the light of recent developments, the industrial relations of migration in Ireland may now shift focus. Concern may now pivot less frequently around instances of gross exploitation and fear; lack of safe working conditions; acute job insecurity and denial of rudimentary ‘justice on the job’; or reluctance to access due process through third-party agencies. What may now come more frequently into play are such issues as the perils of labour market segmentation, the management of diversity and pursuit of equal opportunities in employment and the protection of collectively agreed pay and employment standards (above legally-fixed minima). It is clear that the protection of employment standards remains a major concern of trade unions, as evidenced, for example, in the remarkable (and abortive) proposal in the Partnership 2016 talks to re-institute a system of sectoral pay norms of the kind that existed under the multi-employer and multi-union collective bargaining arrangements that were common before their collapse in the early 1980s.

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## 6. Conclusion

The past two decades have witnessed some of the most significant changes in the worlds of work and employment in Ireland in at least half a century. Much that had seemed fixed and immutable is now changed or in the melting pot, especially in the areas of the alignment of employment relations with business imperatives, the role of the State, the conduct of collective bargaining, the circumstances of trade unions and the implications of the increased openness of the Irish labour market. Areas of continuity with past practice should also be given due weight, particularly the limited emphasis on competition through investment in ‘human assets’ and the faltering progress of partnership initiatives in the workplace. Contradictions and inconsistencies are also apparent: unions have

been invited to become social partners in the macroeconomy, but appear increasingly unwelcome partners in the workplace. Public policy emphasises investment in skill formation and associated work practices as a primary driver of competitive advantage but the reality on the ground commonly falls well short of such a vision, and an increasingly open labour market opens up avenues for employers to compete on the basis of low labour costs. Whether Ireland develops a model of work and employment consistent with the aspiration of moving up the value chain and promoting economic and social inclusion remains an open question.

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