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**AN BILLE UM AITHEANTAS A THABHAIRT DO
CHEARDCHUMAINN, 1998
TRADE UNION RECOGNITION BILL, 1998**

*Mar a tionscnaíodh
As initiated*

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Acts Referred to

Civil Service Regulation Act, 1956	1956, No. 46
Industrial Relations Act, 1946	1946, No. 26
Industrial Relations Act, 1990	1990, No. 19
Petty Sessions (Ireland) Act, 1851	1851, c. 93
Trade Union Act, 1941	1941, No. 22
Unfair Dismissals Act, 1977	1977, No. 10



AN BILLE UM AITHEANTAS A THABHAIRT DO
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BILL

5 *entitled*

AN ACT TO PROVIDE FOR RESOLUTION OF DISPUTES
CONCERNING TRADE UNION RECOGNITION, FOR
THE EFFECTS OF RECOGNITION, AND FOR RELATED
MATTERS.

10 BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

Disputes concerning Trade Union Recognition

15 **1.**—A dispute between a trade union and an employer concerning
the failure or refusal by the employer to recognise the trade union
for the purposes of this Act may be referred by either party to the
dispute to the Labour Relations Commission pursuant to section 25
of the Act of 1990.

Reference of
disputes to Labour
Relations
Commission.

20 **2.**—If the Labour Relations Commission reports to the Labour
Court that it is satisfied that no further efforts on its part will advance
the resolution of the dispute, or if the Chairperson of the Com-
mission (or a member or officer of the Commission authorised by
him or her) notifies the Labour Court that the Commission waives
its function of conciliation in the dispute, then either party to the
dispute may refer the dispute to the Labour Court for the purpose
25 of resolving the dispute.

Further reference to
Labour Court.

3.—(1) The Labour Court shall investigate every dispute referred
to it under this Act and shall hear all persons appearing to that Court
to be interested and desiring to be heard.

Investigation by
Labour Court.

30 (2) An investigation under this section shall be held in private
unless, at the request of one of the parties to the investigation, the
Labour Court decides to hold the investigation or any part thereof
in public.

(3) The Minister may by regulations specify—

35 (a) procedures to be followed by the Labour Court in carrying
out investigations (or any description of investigations)
under this section; and

- (b) time limits applicable to such investigations, including procedures for extending those limits in certain circumstances,

but before making any such regulations, the Minister shall consult the Labour Court.

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Power to order ballot.

4.—(1) In conducting an investigation under *section 3* the Labour Court may order the taking of a ballot of the employees in the employment or any category thereof.

(2) An order under this section may provide for any consequential or ancillary matters, including—

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- (a) the making available of the services of the Labour Relations Commission to assist in the taking of the ballot;

- (b) the category of persons entitled to vote and the manner of voting;

- (c) the information and facilities to be provided to the employees concerned by the parties to the dispute.

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Power of Labour Court to summon witnesses.

5.—(1) The Labour Court may for the purpose of any proceedings before it under this Act do any of the following things—

- (a) summon witnesses to attend before it;

- (b) examine on oath or affirmation (which a member or the registrar of that Court is hereby authorised to administer) the witnesses attending before it;

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- (c) require any such witness to produce to the Court any document in his or her power or control.

(2) A witness before the Court shall be entitled to the same immunities and privileges as if he or she were a witness before the High Court.

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(3) If any person—

- (a) on being duly summoned as a witness before the Court makes default in attending; or

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- (b) being in attendance as a witness refuses to take an oath or affirmation legally required by the Court to be taken, or to produce any document in his or her power or control legally required by the Court to be produced by him or her, or to answer any question to which the court may legally require an answer;

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he or she shall be guilty of an offence under this section and on summary conviction thereof shall be liable to a fine of £1,500 or to imprisonment for not more than 12 months or both.

Recommendation by Labour Court.

6.—(1) At the conclusion of an investigation under this Act the Labour Court shall issue a recommendation thereon and shall invite the parties to consider the recommendation and to report back to the Court thereon within a period defined in the recommendation.

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(2) Where the dispute concerns whether a trade union should be recognised by an employer for the purposes of this Act, the Labour Court shall not recommend that the trade union should be so recognised unless it is satisfied that the trade union is representative of employees in the employment or a substantial category thereof.

(3) Where the dispute concerns whether a trade union which is not for the time being recognised should be recognised by an employer for the purposes of this Act, the Labour Court shall not hold that the trade union should be so recognised if another trade union stands recognised by the employer for the purposes of this Act as representative of employees in the employment or a category thereof to which the employees to whom the dispute relates belong.

7.—The types of redress for which a recommendation of the Labour Court may provide are— Scope of recommendation.

- (a) that the employer recognise a particular trade union specified in the order;
- (b) that a person or persons specified in the recommendation take such other course of action as is so specified; or
- (c) such other redress as may be appropriate in the circumstances of the case.

8.—(1) Every recommendation of the Labour Court under this Act shall be in writing and shall include a statement of the reasons for the recommendation. Form and content of recommendation.

(2) By notice in writing to the parties, the Chairperson of the Labour Court may correct any mistake (including an omission) of a verbal or formal nature in a recommendation under this Act.

9.—(1) A copy of every decision of the Labour Court under this Act shall be given to each of the parties; and every such decision shall be published and a copy thereof made available for inspection at the office of the Labour Court. Supply and publication of decisions.

(2) The contents of any document published or made available under this section shall be protected by absolute privilege.

10.—On or after the expiry of the period specified in *section 6(1)*, the Labour Court may, on the application of either party to the dispute, and having regard to the response (if any) received to the invitation tendered under that section, if it is satisfied that the recommendation has not been complied with, or is otherwise unlikely to resolve the dispute, and having afforded the parties an opportunity to be heard in that regard, make an employment regulation order under *section 43* of the Act of 1946 in respect of the particular employer and the particular trade union specified in the order, and confined to the particular employment so specified, notwithstanding that such order is not made on the proposal of a joint labour committee, and whether or not an employment regulation order so made and applicable to that employment is in force under that section. Order of Labour Court.

11.—An employment regulation order made under *section 43* of the Act of 1946 pursuant to *section 10* may, in addition to determining pay and conditions of employment, include provision as to the manner in which consultations referred to in *section 12(b)* are to take place, and as to the manner in which representation referred to in *section 12(c)* is to be provided. Scope of employment regulation order.

PART II

Effect of Recognition

Effect of
recognition.

12.—Where a trade union is recognised for the purposes of this Act, then the employer shall—

- (a) negotiate in good faith with the trade union in respect of the pay and conditions of employment of its members; 5
- (b) consult with the trade union in relation to its members on any matter in respect of which the employer is by any enactment required to consult with employees or their representatives; and 10
- (c) afford to each employee who is a member of the trade union the opportunity to be represented by the trade union in disciplinary proceedings.

PART III

Miscellaneous and General

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Determination of
whether trade union
is representative.

13.—In determining whether a trade union is representative of employees or a category thereof for the purposes of this or any other enactment, the trade union shall be held to be representative if it represents a substantial number of the employees concerned having regard to all the circumstances, whether or not it represents all or a majority of such employees. 20

Unfair dismissal.

14.—The dismissal of an employee for reasons related to the seeking of recognition by a trade union in respect of that employee shall be an unfair dismissal for the purposes of section 6(2)(a) of the Unfair Dismissals Act, 1977. 25

Amendment of Act
of 1946.

15.—Section 10 of the Act of 1946 is hereby amended by the deletion of “chairman” and the substitution of “Chairperson”; and references in any enactment to the chairman of the Labour Court shall be construed as references to the Chairperson.

Amendment of Act
of 1990.

16.—(1) Section 8 of the Act of 1990 is hereby amended by the addition to the definition of “trade dispute” of “and includes a dispute to which the *Trade Union Recognition Act, 1998* relates”. 30

(2) Section 24(3) of the Act of 1990 is hereby amended by the deletion of “chairman” and the substitution of “Chairperson”; and references in any enactment to the chairman of the Labour Relations Commission shall be construed as references to the Chairperson. 35

Repeal.

17.—Part III of the Trade Union Act, 1941 is hereby repealed.

Offences.

18.—(1) Summary proceedings for an offence under this Act may be instituted by the Minister.

(2) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be instituted within 12 months from the date of the offence. 40

(3) Where an offence under this Act which is committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person who, when the offence was committed, was a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, that person (as well as the body corporate) shall be guilty of an offence and shall be liable to be proceeded against and punished as if guilty of the offence committed by the body corporate.

(4) In relation to a body corporate whose affairs are managed by its members, *subsection (3)* shall have effect as if “director” included a member of the body corporate.

19.—(1) The Minister may make regulations for the purpose of giving effect to this Act. Regulations.

(2) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as practicable after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to anything previously done thereunder.

(3) Any order or regulation made under this Act may contain such consequential, supplementary and ancillary provisions as the Minister considers necessary or expedient.

20.—(1) In this Act— Interpretation.

“Act of 1946” means the Industrial Relations Act, 1946;

“Act of 1990” means the Industrial Relations Act, 1990;

“Minister” means the Minister for Enterprise, Trade and Employment;

“trade union” includes an excepted body within the meaning of section 6 of the Trade Union Act, 1941.

(2) For the purposes of this Act—

(a) a person holding office under, or in the service of, the State or otherwise as a civil servant, within the meaning of the Civil Service Regulation Act, 1956, shall be deemed to be an employee employed by the State or Government, as the case may be, under a contract of service;

(b) an officer or servant of a local authority for the purposes of the Local Government Act, 1941, a harbour authority, a health board or a vocational education committee shall be deemed to be an employee employed by the authority, board or committee, as the case may be, under a contract of service; and

(c) in relation to an agency worker, the person who is liable for the pay of the agency worker shall be deemed to be the employer.

(3) In this Act—

- (a) a reference to a section is a reference to a section of this Act, unless it is indicated that reference to some other enactment is indicated;
- (b) a reference to a subsection is a reference to the subsection 5
of the provision in which the reference occurs, unless it
is indicated that reference to some other provision is
indicated;
- (c) a reference to any enactment shall be construed as a refer-
ence to that enactment as amended, adapted or extended 10
by or under any subsequent enactment (including this
Act).

Short title.

21.—This Act may be cited as the Trade Union Recognition Act,
1998.



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EXPLANATORY MEMORANDUM

The Bill provides a mechanism to resolve disputes concerning failure by employers to recognise a trade union. The definition of “trade union” under the Bill is broad to include staff associations or other excepted bodies. The main provisions of the Bill are as follows—

- Initially a dispute is to be referred to the Labour Relations Commission (*section 1*), which will attempt to resolve the dispute by conciliation.
- If this fails to resolve the dispute, the matter may be referred to the Labour Court, which investigates and makes a recommendation on the dispute (*sections 2 to 9*). The key criterion is that in order to be recognised, the union must be representative of a substantial number of employees or of a substantial category thereof. In addition, a dispute cannot be referred under this Bill if there is an existing union recognised for the employees concerned.
- If the recommendation is not complied with, or is otherwise unlikely to resolve the dispute, the Labour Court may, having heard the parties, make an employment regulation order for the particular employment (*section 10*). The employment regulation order may include provision for statutory consultations and disciplinary representation (*section 11*) as well as pay and conditions. Ultimately an employment regulation order is enforceable in the courts under the Industrial Relations Act, 1946.
- Once a union is recognised an employer must negotiate with it in good faith, consult in accordance with statutory obligations and allow members to be represented by it (*section 12*).
- *Part III* contains miscellaneous provisions, including the criteria for determining whether a union is representative (*section 13*) — this is in line with the decision in *Federation of Irish Rail and Road Workers v. Great Southern Railway* [1942] Ir. Jur. Rep. 33, that a union which represented about one-third of employees was sufficiently representative for the purposes of a statutory provision.

- Provision is also made that dismissal because of a recognition attempt is unfair (*section 14*), thus avoiding a problem which has arisen in the UK (see *Carrington v. Therm-A-Store Ltd.* [1983] 1 WLR 138); and widening the definition of “trade dispute” to cover a recognition dispute (*section 16*). The Bill also repeals provisions found unconstitutional in *National Union of Railwaymen v. Sullivan* [1947] I.R. 77 but not formally repealed (*section 17*).

The question of trade union recognition is one of balance between the rights of both sides of the industrial relations equation. The Bill is carefully tailored to allow full preliminary conciliation and to introduce a binding employment regulation order only as a last resort. It takes into account the fact that employers are already obliged to consult with trade unions under a variety of EU and domestic enactments, and that the further requirements of this Bill fit in to that existing pattern. The Bill does not interfere with the legitimate rights of either side of industry, but establishes a framework within which those rights can be harmonised where a dispute arises.

An Teachta Tomás Ó Bracháin,
Feabhra, 1998.