DÁIL ÉIREANN

AN ROGHCHOISTE UM POIST, FIONTAIR AGUS NUÁLAÍOCHT

SELECT COMMITTEE ON JOBS, ENTERPRISE AND INNOVATION

Déardaoin, 18 Meitheamh 2015

Thursday, 18 June 2015

The Select Committee met at 1 p.m.

MEMBERS PRESENT:

Deputy Dara Calleary,	Deputy John Lyons,
Deputy Áine Collins,	*Deputy Gerald Nash (Minister of State at the Department of Jobs Enterprise and Innovation),*
Deputy Michael Conaghan,	Deputy Peadar Tóibín.
Deputy Seán Kyne,	
Deputy Anthony Lawlor,	

DEPUTY MARCELLA CORCORAN KENNEDY IN THE CHAIR.

Industrial Relations (Amendment) Bill 2015: Committee Stage

Chairman: This meeting has been convened for the purpose of consideration by this committee of the Industrial Relations (Amendment) Bill 2015, which was referred to the select committee by order of the Dáil on 11 June. I welcome the Minister of State, Deputy Gerald Nash, who has responsibility for business and employment, and his officials to the meeting. Before we begin, I ask members to switch their phones to airplane safe or flight mode, depending on their device. It is not enough to put them on silent mode as this will maintain the level of interference from the committee rooms and impacts negatively on the broadcast. There are 29 amendments tabled to the Bill. It is intended that we will consider this Bill until we conclude Committee Stage today. Is this agreed? Agreed. We will proceed through the Bill and if members wish to suspend for 15 minutes at a later stage, we can do so. I refer members to the list of amendments grouped for the purposes of debate, which has been circulated. We will now proceed to the consideration of the Bill.

SECTION 1

Chairman: Amendments Nos. 1, 3, 19 to 24, inclusive, and 29 are related. Amendment No. 1 is consequential on amendment No. 23. Amendments Nos. 1, 3, 19 to 24, inclusive, and 29 may be discussed together.

Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy Gerald Nash): I move amendment No. 1:

> In page 5, line 18, to delete "other than *section 35*" and substitute "other than *sections 23* and *35*".

Amendment No. 1 is a technical amendment to insert a reference in the new section 23, to be proposed in amendment No. 24, and which provides an amendment to the Workplace Relations Act 2015. This amendment excludes section 23 from the collective citation for the Industrial Relations Acts.

Amendment No. 3 is a technical amendment which adds a definition to the Workplace Relations Act 2015 for the purpose of the Bill. This is necessary as the Workplace Relations Act had not been enacted at the time of the publication of the Industrial Relations Bill 2015.

Deputy Tóibín's amendment, No. 19, seeks to provide an enforcement role for trade union officials. The amendment would also provide for the Minister to make regulations to provide for a right of access to trade union officials to the workplace and employees. It also prohibits an employer from coercing workers to relinquish or abstain from a registered employment agreement, REA. With the indulgence of the Chair I wish to go into some detail in response to the particular proposal.

Deputy Tóibín is absent, but he would probably know that I have seen a more general variation of the proposals and some alternative versions have been submitted to me by the trade union movement. I have had an opportunity recently to reflect on them and to give them detailed consideration. Proposals along those lines do not appear in the Bill, and I will not accept the amendments for the following reasons.

The first point is that the legislation is being introduced because its previous incarnation was struck down by the Supreme Court as unconstitutional on the grounds that the Oireachtas

had transferred the law-making powers of the State from itself to external bodies. In the McGowan case in 2013 the Supreme Court referred to "private bodies" being given the power to make laws. This is a point of which we should always be mindful when considering this much-needed legislation. I hope members will agree that inspection, policing and enforcement of laws is as much a core function of the State as the making of those laws in the first place, and to delegate that function to a private, external body, no matter what its standing and regardless of where we might stand personally on the principle raised by the issue under consideration, could be considered to be an abrogation of State responsibility. Even if it could be done under the Constitution it seems to me to be wrong in principle on a number of points. However, such provision would leave the legislation possibly open to legal challenge as regards an employer's constitutional right not to engage with or to recognise unions. Whether one accepts that or not, this is a consideration that I as Minister am obliged to take very seriously. Having worked with the relevant sectors and actors recently to restore the sectoral frameworks following the McGowan decision in 2013, I am absolutely loath to open the door and to actively invite such a challenge.

Members should be reminded as well that the powers of the National Employment Rights Authority, NERA, inspectors are quite extensive and they include the power to use reasonable force to enter a place of work or a premises reasonably believed to be used in relation to the employment of persons or keeping of records. NERA inspectors have powers to copy records, remove books, documents or records for a period the inspector reasonably considers necessary. Inspectors can, under warrant of the District Court, enter a domestic dwelling with other inspectors or members of the Garda Síochána in pursuit of documents or records. Those extensive powers are rightly and appropriately reserved for officers of the Minister, who are public servants of the State. Ultimately, Deputy Tóibín's proposed amendments relate to his concerns about possible compliance and enforcement issues.

In respect of REAs, it is clearly a matter for the parties concerned whether they wish to include in the agreement provisions access to the workplace for trade union officials. Sectoral employment orders, SEOs, will operate in sectors that might include large unionised workforces on the one hand and the smallest enterprises on the other, where employees are counted sometimes on the fingers of one hand and where the question of union membership in all likelihood does not arise. The sector may also include workplaces run by employers who insist on exercising their right, regardless of whether we might like it, not to recognise or negotiate with unions. The Bill and the SEOs made under it will have to apply and be enforced in a smooth and even-handed way across every workplace that would be a party to them or subject to their provisions. SEOs may well be enforced in workplaces where there is not an REA and no collective bargaining. It is not the function of an SEO to govern relations between unions and employers, and while there may well be room in a collective agreement for provisions to do with dispute resolution or compliance and monitoring or trade union access to workers, these provisions do not have a role in the context of an order which must be complied with and enforced in every workplace in the relevant sector. I emphasise that SEOs are all about securing minimum sectoral rates of pay. If an employer does not have trade union members in the workforce or if the employer does not recognise the union, the question then arises about how we can oblige the employer, by law, to provide what might be considered to be privileged access to union officials and under the remit of law enforcement.

My final concern relates to the sheer impracticality of the amendment as tabled. The proposals submitted would themselves require a level of policing that would be unachievable, and it would be unreasonable to expect me to make and then enforce regulations about le-

gitimate and illegitimate grounds for access, permissible conversations with staff who are not union members and the reasonable duration of such conversations, and then to construct a legal framework around that to allow for a worker's pay to be deducted where a trade union official overstays his or her welcome. My question is who would stand there with a stopwatch conducting that particular exercise. The measure is not practical at all. That said, I agree there are legitimate and validly held concerns about the enforcement of sectoral employment orders and they have been raised with me by both sides of industry. A recent submission I received from the Construction Industry Federation points to the importance of ensuring contractors, for example, can tender on a level playing field, and that is what the legislation is all about as well, from the perspective of employers in the construction sector in particular. On the enforcement and compliance piece, in many ways this is not an issue that will go away, so I have to close my mind to any additional responses, whether they be administrative or legislative. I will continue to examine any reasonable approach that may be taken to improve the enforcement of the law in the interests of workers and industry.

Amendment No. 20 provides for an entitlement for a union to represent an employee's interests under an REA or sectoral employment agreement, including matters involving discipline and grievance procedures. In this regard, section 41(15) of the Workplace Relations Act 2015 already provides that a trade union official can accompany a worker in proceedings before an adjudication officer in relation to a complaint, while section 44(9) of the Act has the same provision in respect of proceedings before the Labour Court. Accordingly, I cannot accept the amendment.

I have dealt with amendment No. 21. Amendments Nos. 22 to 24, inclusive, provide for the enforcement provisions in relation to registered employment agreements and sectoral employment orders. Amendment No. 22 introduces a new section 21 in the Bill which provides for the standard record-keeping requirements. Employers to whom an REA or a sectoral employment order applies will be obliged to keep such records as are necessary to show whether they are compliant with the terms of the REA or SEO. Any employer who fails to keep such records shall be guilty of an offence and liable on summary conviction to a class C fine. In any proceedings before the Workplace Relations Commission, WRC, or the Labour Court, the onus of proving compliance with the record-keeping requirements is on the employer.

It has been necessary to await enactment of the Workplace Relations Act to include enforcement and compliance provisions in relation to REAs and SEOs under this Bill. That was necessary to ensure enforcement and compliance measures are consistent with the measures in the Workplace Relations Act in relation to employment rights compliance and enforcement provisions generally. The Workplace Relations Act has recently been signed into law and my colleague, the Minister, Deputy Bruton, has announced that the Workplace Relations Commission will commence operation on 1 October next. The Act provides for procedures aimed at delivering a world-class workplace relations service which is simple to use, independent, effective, impartial and cost-effective.

Amendment No. 23 provides for the functions of an adjudication office of the WRC and the Labour Court in relation to section 19, which deals with the prohibition on penalisation by an employer of a worker for invoking any right or making a complaint in relation to provisions dealing with SEOs, breaches of an REA, and breaches of an SEO. That is an important point to make. If it is determined that a complaint considered under section 41 of the Workplace Relations Act in relation to the provisions of this Act was well-founded, an adjudication officer shall do one or more of the following: require the employer to comply with the provision in respect

of which the complaint relates and, for that purpose, require the employer to take a specified course of action, or require the employer to pay to the worker compensation of such amount as the adjudication officer considers just and equitable having regard to all the circumstances, but not exceeding 104 weeks' remuneration. A decision of the court under section 44 of the Workplace Relations Act, on appeal from a decision of an adjudication officer, shall affirm, vary or set aside the decision of the adjudication officer.

Amendment No. 24 inserts a new section 23 which provides for the necessary amendment to the Workplace Relations Act of 2015 to accommodate the enforcement requirements in respect of registered employment agreements, REAs, and sectoral employment orders, SEOs. These include the addition of provisions relating to complaints concerning victimisation under section 19 of the Bill and breaches of REAs to the list of enactment set down in Part 1 of Schedule 5 of the Workplace Relations Act; and the addition of provisions relating to complaints for breaches of a sectoral employment order to the list in Part 2 of Schedule 5.

In addition, new inspection powers given to the National Employment Rights Authority, NERA, under the Workplace Relations Act 2015 will be extended to the provisions of Part 2 of this Bill, that is, the REAs and the SEOs section. In this context, section 27 of the Workplace Relations Act 2015 restates and consolidates all of the functions and powers of NERA inspectors in one location, having regard to current best practice and developments in case law. The powers of inspectors are supported by criminal sanctions provided to ensure that inspectors can carry out their duties without hindrance or obstruction and it will be an offence to obstruct, mislead or provide false information or documents to an inspector or to fail to follow a lawful requirement of an inspector.

Amendments proposed to Schedule 6 of the Workplace Act 2015 provide the necessary redress provisions on decisions of adjudication officers of the Workplace Relations Commission and decisions of the Labour Court.

Amendment No. 29 is a technical amendment to the Long Title of the Bill to insert a reference to amending the Workplace Relations Act 2015, as the new section 23 of the Bill provides for amendments to the Workplace Relations Act 2015.

Deputy Peadar Tóibín: Go raibh míle maith agat. Tá brón orm go raibh mé beagáinín déanach. Bhí Bille eile agam thuas sa Dáil.

I suppose the Minister of State will be aware and sympathetic that one of the great problems for workers is enforcement and compliance. It has been one of the massive difficulties until now, even during the period of this Government. All the best legislation in the world is not worth a penny candle if it is not enforced and if we do not have compliance from employers.

In the natural scheme of things, in the operation of a workplace, there are unions to make sure workers' rights are upheld. My amendments, Nos. 19 to 21, inclusive, simply seek to allow that natural representation to exist. The amendments provide for access to the workplace for designated union officials. They also provide for a right of employees to be represented by a trade union official in their place of work and to ensure compliance by employers. Prior to the McGowan judgment, these entitlements were part and parcel of the REA framework. As such, the amendments are not a revolutionary addition at all. It is just an effort to ensure that the natural relationship between worker, union and employer exists and that we have compliance.

If we do not have compliance, our own experience as public representatives tells us that

there is a breakdown in the relationship between employer and employee; and massive industrial relations problems develop, which is not good for employers, for completion of contracts or for the employee who has to stand on a picket line to enforce his or her rights. I appeal for the Minister of State to accept these very logical amendments, Nos. 19 to 21, inclusive.

Deputy Gerald Nash: I appreciate that Deputy Tóibín was unavoidably detained. I have given a lot of consideration to this and have an open mind as to how improvements could be made in terms of enforcement and compliance. We need to acknowledge that there has been a lacuna over the last few years, since the McGowan judgment. We have seen the effects of that, particularly in one industry which has concerned us all. It may very well have been the case that access for trade union officials was provided under certain REAs under the previous regime. There is absolutely nothing preventing both parties, subject to the terms of a registered employment agreement, from making such an arrangement.

Enforcement and compliance concern us all. We have a State agency, the National Employment Rights Agency, which has in many ways enhanced rights to police, enforce and inspect in order to ensure compliance on the SEO side, which is as it should be. As I said in my earlier contribution, it is up to the State, the Oireachtas and the Executive to make laws. It is then a matter for the responsible State agencies to enforce those laws and ensure compliance. I will be keeping a very close eye on the performance of our agencies in terms of the compliance and enforcement sides of the sectoral employment order piece. It is important that we reflect on these issues.

Deputy Tóibín will be only too familiar with the reasons the Supreme Court struck down the former REA system, which had been in place for many years. We will not go into all of those complex arrangements now. As I said earlier, what I do not want is to provide any space or invite an opening for any potential challenge to this critical legislation. As Minister of State, I have a responsibility to make sure the legislation is as robust as it can possibly be and to take all of the advice available to me to ensure that is the case.

Earlier in my contribution, I informed the committee that I would not be accepting that amendment but I will be keeping an extremely close eye on the enforcement aspects of this matter. It is critical for employers' rights and for the performance of certain industries which may very well be subject to the SEOs that it happens.

Deputy Peadar Tóibín: In good employment law, there should be a natural equilibrium which allows for workers and employers to resolve their differences in an efficient, fair and open manner. That negates the necessity for massive State machinery to be called in to fix the problems. Often if problems are not nipped in the bud when they arise, they become very difficult, as people become entrenched and the courts are used.

We do not have that natural equilibrium at the moment. There is chaos, literally, in some sectors at the moment, the construction industry being one such sector. We have yet to see the proof of the functioning of the new arrangements but, to date, NERA and other organisations have had massive difficulty and time delays with enforcement. We have seen what should have been small difficulties fester and become big problems.

One of my worries would be that if, for example, a trade union official came onto a construction site and had a conversation for 15 minutes with a staff member, the boss could say he was not working for that time and dock his wages by 15 minutes for that meeting. Separating out the natural equilibrium of oversight that trade unions should have will only going to create more

problems down the road. I cannot overstate the importance of enforcement and compliance to the well-being of workers. Anybody who has listened to any trade unions in their discussions will say that the lack of these elements causes the most difficulty for workers.

If the Minister of State is not minded to accept these amendments, does he have an alternative wording that could bring about that level of natural oversight with which trade unions should be empowered?

Deputy Gerald Nash: What I have not heard in Deputy Peadar Tóibín's contribution to the debate is reference to the fact that all sides of industry have welcomed the general structure and reintroduction of SEOs. In recent years there has been a gap and exploitation has occurred. That is my view and I have said it publicly before and will say it again. The reintroduction of a system such as this can and will promote harmonious industrial relations. It has more than the potential to do so. If anybody is concerned about mechanisms to resolve differences between employees and employers, the legislation also provides a very strong dispute resolution mechanism. We should be mindful of it and people should point to it when they are discussing the legislation. They should consider all of the measures in the legislation in their entirety, including the protections provided for employees and how SEOs will be policed and enforced under the law.

Many myths have developed about how the old REA system operated. It was the case in many REAs that trade union officials had the name of an access officer with a particular company who would discuss issues as they arose. There was never any right of access to employees on site. Matters worked differently in some respects and sometimes there were informal arrangements, which was fine. It is up to trade unions to organise workers in particular sectors to ensure density is increased and I would be very supportive of this. It is the role of trade unions to represent their workers and work with the Government to ensure we have strong enforcement and compliance measures. They have done it and have been doing it for a long time during the years. In recent months they have been doing it with me and my colleagues to ensure we have strong legislation to protect the interests of working people. It is up to the State agencies, empowered by Parliament, to enforce the law and ensure those subject to the provisions of SEOs pay the rate and comply in every aspect.

Deputy Peadar Tóibín: I will not labour the issue. While State agencies have worked on many occasions, they have also failed employees on many occasions. A solution would be to try to fix matters before they reached the State agencies. There will not be a meeting of minds on this issue. However, I welcome the thrust of the legislation and hope it is enacted as soon as possible. I also welcome amendment No. 22 in the name of the Minister. If we did not have it, compliance would be impossible. The legislation includes many positive elements.

Amendment agreed to.

Deputy Gerald Nash: I move amendment No. 2:

In page 5, line 20, after "*Part 3*" to insert ", other than *section 35*,".

Amendment agreed to.

Section 1, as amended, agreed to.

NEW SECTION

Deputy Gerald Nash: I move amendment No. 3:

In page 5, between lines 27 and 28, to insert the following:

"Definitions

2. In this Act—

"Act of 2015" means the Workplace Relations Act 2015;

"Minister" means the Minister for Jobs, Enterprise and Innovation.".

Amendment agreed to.

Deputy Peadar Tóibín: On Report Stage I may table an amendment to expand the definition to include former workers in a company.

Chairman: Will it come under section 2?

Deputy Peadar Tóibín: Yes, in terms of definitions.

Section 2 deleted.

Sections 3 and 4 agreed to.

SECTION 5

Question proposed: "That section 5 stand part of the Bill."

Deputy Peadar Tóibín: Again, I may try to expand the section on Report Stage by way of an amendment to include retired and former workers as part of an employment agreement.

Question put and agreed to.

Section 6 agreed to.

SECTION 7

Deputy Peadar Tóibín: I move amendment No. 4:

In page 8, between lines 28 and 29, to insert the following:

"(6) An employer may subsequently apply to the Court to become party to the agreement in its application to any worker or workers to whom it applies.".

The amendment does exactly what it says on the tin. It seeks to specify that an employer may subsequently apply to a court to become party to an agreement in its application to any worker or workers to whom it applies. Representatives of ICTU and the TEEU have called for the procedure to allow an employer who was not party to an REA when it was originally registered to subsequently sign up to it. It would not alter the REA in any way but would increase the number of people working in a sector who would enjoy the same level of support.

Deputy Gerald Nash: There is no need to amend section 7 along the lines proposed in the amendment. The purpose of the amendment is to allow an employer to sign up to an existing REA as a new party. Section 8 already provides a mechanism by which an REA can be varied

in its application to any worker to whom it might apply. The variation provisions under that section will allow for an application by a new employer to become a party to an existing REA, subject to one of the existing parties to the agreement making the application to the courts. An existing party would have to make the application to the court.

Deputy Peadar Tóibín: Why would it have to depend on an existing party making the application?

Deputy Gerald Nash: We have considered the matter over time and that is the advice we have received. It is the parties which are subject to the agreement that need to vary it.

Deputy Peadar Tóibín: While IBEC and other employer organisations have expressed concern that there would be potential for variation, my amendment would not involve or allow for any variation. It focuses on an application to become a party to an agreement.

Deputy Gerald Nash: The advice we received was that parties subject to an agreement might not agree that additional parties should be subject to it. That is the advice we have received and the position we have taken and I do not intend to change it.

Deputy Áine Collins: I will table an amendment on Report Stage to section 7 regarding the substantial representation of workers.

Deputy Dara Calleary: I would also like to indicate a Report Stage amendment to section 7 to insert sunset clauses into the REA system.

Deputy Gerald Nash: It is not necessarily the case that an employer would like to sign up to an REA, given that employers can develop their own REAs. There is flexibility to allow this to happen. It must be a dynamic system. This might address the Deputy's concerns, which I understand. Nothing is preventing an employer from working with his or her employees to develop an REA that would be exclusive to them, as the subscribing parties.

Deputy Peadar Tóibín: While I understand that offers flexibility, my amendment would involve flexibility without the same level of effort. I understand that if a variation was to be made, the parties to the original contract or agreement would have to be in the driving seat in its development.

Deputy Gerald Nash: It is an agreement.

Deputy Peadar Tóibín: If no variation was involved, the opportunity should be available to employers.

Amendment put and declared lost.

Section 7 agreed to.

SECTION 8

Chairman: Amendments Nos. 5 and 6 are related and may be discussed together.

Deputy Gerald Nash: I move amendment No. 5:

In page 9, lines 20 and 21, to delete "Labour Relations Commission" and substitute "Workplace Relations Commission".

The purpose of amendments Nos. 5 and 6 is to change the reference to "Labour Relations Commission" in section 8(5) and 8(6) to "Workplace Relations Commission". This arises following the enactment of the Workplace Relations Act 2015, which provides that the functions of the LRC will be undertaken by the WRC.

Deputy Dara Calleary: Can the Minister of State talk us through how the provision in section 8 that the Labour Court can vary the REA without the consent of one or both parties might work? Is that the nuclear option or is there a danger that it may become the default option in the event of difficulties? What are the restrictions around its becoming the default option?

Deputy Gerald Nash: I do not think it will become the default option. I understand the Deputy's concerns. We have ironed this out. It has been the subject of much discussion between employers and trade unions and everybody is satisfied with that provision, but I do not expect it will become the default position.

Deputy Dara Calleary: I may table some amendments on Report Stage to ensure that it does not in a future Labour Court become the default option.

Amendment agreed to.

Deputy Gerald Nash: I move amendment No. 6:

In page 9, line 22, to delete "Labour Relations Commission" and substitute "Workplace Relations Commission".

Amendment agreed to.

Section 8, as amended, agreed to.

SECTION 9

Deputy Peadar Tóibín: I move amendment No. 7:

In page 10, line 26, after "concerned" to insert the following:

"and 3 months' notice of this decision shall be given to the trade union by the Court of its decision after which an appeal maybe heard no later than 6 weeks after the decision has been made".

The cancellation of registration is discussed and defined in section 9. The last part of that section states:

The Court may cancel the registration of an employment agreement if it is satisfied, having regard to subsection (3)(c) of section 7, that a trade union who was a party to the agreement is no longer substantially representative of the workers concerned.

My simple amendment allows for notice to be given to the union by the court of its decision, allowing a period in which an appeal may be heard. I am not talking about an undue length of time - three months' notice and six weeks for an appeal. That would allow for a more harmonious relationship and make sure the workers do not have the rug pulled from under their feet if they are party to an agreement.

Deputy Gerald Nash: Section 9(5) of the Bill provides that the Labour Court may cancel the registration of an employment agreement if it is satisfied that a trade union that was a party

to the agreement is no longer substantially representative of the workers concerned.

The purpose of amendment No. 7 is to require the court to give three months' notice to the trade union of its decision and to allow for an appeal of the decision within six weeks.

Any consideration by the Labour Court as to whether a trade union is no longer substantially representative of the workers concerned would require the court to engage with the trade union in advance and consider submissions from the union on the issue. In this regard, the trade union would have advance notice of the Labour Court's consideration of the issue. Moreover, it is not considered appropriate to allow an REA to remain in place for three months after it has been determined by the Labour Court that a trade union is no longer substantially representative of the workers involved.

It is also important to remember that a cancellation of the registration of an employment agreement does not affect an individual worker's entitlement to the terms of an REA under his or her personal contract of employment, which can only be changed by agreement between the worker and employer. Accordingly, I cannot accept this amendment.

Deputy Peadar Tóibín: It has been my experience that when an REA is no longer functioning, while it may not affect the contract of the individual who worked under the REA, we all know what happens in the workforce - other individuals can be employed and have different terms and conditions, and those terms and conditions can be more competitive from the employers' perspective, and there can be displacement of what in the eyes of the employer are more uncompetitive contracts.

While the Minister of State's last point is valid to a certain extent, it does pose challenges to the worker. There is a balance to be struck between the employer and employee and it is important to be fair to both sides. On many occasions, however, the legislation is skewed in favour of the employer. A three-month notice to a worker of a change in the climate in which that worker works is decent practice. If the union cannot come up with the goods on why that decision is incorrect, the decision is enforced. That is a rebalancing in favour of the employee's needs and rights.

Deputy Gerald Nash: I understand where the Deputy is coming from. There would, however, be a question about the appropriateness of allowing an REA to trundle along, as it were, for several months after the Labour Court had found that the trade union was no longer substantially representative of the workers covered by the agreement. That would pose all kinds of legal questions.

Amendment put and declared lost.

Section 9 agreed to.

SECTION 10

Deputy Peadar Tóibín: I move amendment No. 8:

In page 10, line 31, after "apply," to insert "agency worker,".

The Minister of State will understand from his previous work the tenuous nature of work for agency workers. Historically their rights have not been defended robustly. There have been changes in the term of this Dáil to agency workers' rights. This amendment aims to ensure that they and their needs are included in the remit of this Bill.

Deputy Gerald Nash: I am glad that the Deputy has acknowledged the protections that have been afforded to agency workers under the Protection of Employees (Temporary Agency Work) Act 2012, which provides that an agency worker is entitled to the same basic working and employment conditions that apply to employees recruited directly by the hirer firm to do the same or a similar job. Everybody would welcome that. These terms and conditions are ordinarily included in enactments, collective agreements or other pay arrangements that apply generally in respect of employees or any class of employees. Accordingly, the terms and conditions specified in an REA will apply to temporary agency workers by virtue of section 6 of the 2012 Act. Therefore, there is no need to amend section 10 of the Bill along the lines proposed in this amendment.

Deputy Peadar Tóibín: If the Minister of State is fully confident that there is no chance that this sector of employees will be left out, I will not press the amendment.

Deputy Gerald Nash: It absolutely applies under the 2012 Act.

Amendment, by leave, withdrawn.

Section 10 agreed to.

Sections 11 agreed to.

SECTION 12

Deputy Peadar Tóibín: I move amendment No. 9:

In page 11, between lines 33 and 34, to insert the following:

"(g) subsistence,".

It was felt that this section, the definition section, left out a right that workers had enjoyed previously, especially in the construction industry, where a worker who typically worked ten or 15 miles away from home might get a call from the boss to head to Kerry for three or four weeks of work, putting excessive travel and subsistence expense on the worker. In certain sectors this is called country money.

If we include subsistence in this section, we will remove the opportunity for an employer to exploit a worker in respect of the cost of attending work.

Deputy Gerald Nash: Remuneration for what might be more correctly described as "travelling time" can be included in the terms of a sectoral employment order, SEO. Section 12 of the Bill provides for a definition of "remuneration" for the purposes of a Labour Court recommendation for the terms of an SEO. The definition is based on the definition of "remuneration" included in the Protection of Employment (Temporary Agency Worker) Act 2012. That definition includes basic pay and a list of other elements in excess of basic pay that may be included as part of the court's recommendation for a rate of remuneration for a particular sector. In this context, I do not consider subsistence, which is normally paid to workers to cover out-of-pocket expenses incurred for the purposes of carrying out their duties, as part of a person's pay. Moreover, subsistence payments are normally treated differently for tax purposes by the Revenue Commissioners. Accordingly, I do not propose to include it as part of the definition of remuneration and I cannot accept this amendment.

Deputy Peadar Tóibín: Standard travelling times are based on daily journeys. While country money is difficult to define for legislative purposes, it tended to apply to people who encoun-

tered radical changes to their travelling times. This is why I proposed to put it in the different category of subsistence.

Amendment put and declared lost.

Section 12 agreed to.

SECTION 13

Question proposed: "That section 13 stand part of the Bill."

Deputy Dara Calleary: I may table an amendment on Report Stage to include the phrase "former workers" in section 13(1).

Question put and agreed to.

Section 14 agreed to.

SECTION 15

Deputy Peadar Tóibín: I move amendment No. 10:

In page 13, after line 41, to insert the following:

"(e) the percentage of workers in the identified economic sector earning two-thirds or less of median income;

(f) the pervasiveness of part time and/or short hour contracts in the identified economic sector;"

This amendment reflects an ongoing conversation I have had with the Minister of State, Deputy Nash. Section 15 sets out the matters a court shall take into account when it makes a recommendation. These include levels of employment and unemployment and competitiveness in the particular economic sector. Although they are intended to assist the court in finding a balance between employers' and employees' claims, they are described through the prism of an employer's perspective. As legislators we should also take account of other issues, including the high percentage of workers on low pay in this State. My amendment would require the court to have regard to workers earning two-thirds or less than the median income, which is the definition of low pay, and the pervasiveness of part-time or short-time contracts. Given that the Minister of State has committed to dealing with the issue of low pay, it is strange that the issue is not included in this Bill.

Deputy Gerald Nash: In dealing with low pay, we should take into account the suite of measures I either have introduced or am preparing to introduce, rather than isolating particular legislation. The question of low pay and decent work should be addressed in its totality. Section 15 of the Bill sets out a comprehensive and challenging set of factors that the Labour Court must take into account when making a recommendation to the Minister in respect of a sectoral employment order. Amendment No. 10 would add two further factors that the court would be required to take into account. However, adding factors to the already wide-ranging list set out in section 15 could result in the court finding it difficult to undertake the level of analysis that would be required. I had given consideration to the factors that might be taken into account when determining an SEO and I do not consider it necessary to refer specifically to median earnings or proportions above or below particular proportions of median earnings.

The question of part-time and short-hour contracts is being examined as part of the comprehensive study that I have commissioned into these issues. I expect to receive the findings of that study in the coming period and where the evidence supports the need to change laws or regulations in this area, I will make recommendations to the Government in that regard. As we know from the McGowan judgment, the John Grace Fried Chicken case and other court cases, the more we put into legislation of this nature, the more we expose it to challenge. We need to take a careful approach to these matters. I think the Bill strikes a sufficient balance in respect of the factors that a court needs to take into account. We need to be conscious of the judgments of the courts on the REA and JLC structures. I am satisfied that the factors that the court will be obliged to take into account are robust and sufficiently balanced.

Deputy Peadar Tóibín: This is an important amendment. We should proof everything we do against low pay. The Department should not produce anything that is not equality-proofed in respect of pay and wages. If we do not include these factors, the court will be directed by the legislation to disregard the prevalence of low pay and precarious work. The level of unemployment and competitiveness will be the only factors taken into account. The Minister of State has an opportunity to change this and I suggest he apply the rule of thumb of eradicating low pay in all the legislation for which he is responsible.

Deputy Gerald Nash: In the absence of an SEO system, employers are only obliged to pay the national minimum wage. That is not something anyone would be prepared to stand over. The Bill sets out a robust range of factors to ensure standards are improved in the industries to which SEOs apply and that rates of pay are well in excess of minimum wage. We should also be mindful of the other measures I have introduced or am in the process of introducing, which will have a transformative effect for people who are on low pay. I caution against isolating one particular piece of legislation and saying that it does not do enough to protect people on low pay. I have spoken about this to people from the TUC in the UK. They would love to have sectoral employment orders. They would really like to have systems like this where we can improve the pay, terms and conditions of people in exposed and vulnerable industries. We are doing that. Unlike some other countries across the world during the great recession, we have not hollowed out our employment rights legislation. In fact, we have enhanced it. We are introducing new frameworks and wage setting mechanisms to protect people in vulnerable industries. This is considered to be a positive thing. I am satisfied that the range of factors we will ask the Labour Court to take into account enshrined in legislation are sufficiently strong to achieve the objectives of Deputy Tóibín, which I share.

Deputy Peadar Tóibín: I will press the amendment.

Amendment put and declared lost.

Section 15 agreed to.

SECTION 16

Chairman: Amendment No. 11 is consequential on amendment No. 12. Amendments Nos. 11 and 12 are related and may be discussed together by agreement.

Deputy Gerald Nash: I move amendment No. 11:

In page 15, line 13, to delete "The Minister shall" and substitute "Subject to *subsection (4)*, the Minister shall".

Amendments Nos. 11 and 12 are linked. The standard provisions dealing with the laying of orders before the Oireachtas have been included in the published Bill but following advice from the Office of the Attorney General, it has been decided that in order to add constitutional protections to the legislation providing for sectoral orders, the more robust provision requiring a positive resolution from the Oireachtas before any order is made would be appropriate. Amendment No. 12 provides for the requirement for the positive Oireachtas resolution in section 16(4). Accordingly, any order made by the Minister under section 16(1) is subject to the requirements of new section 16(4) and amendment No. 11 provides for this.

Amendment agreed to.

Deputy Gerald Nash: I move amendment No. 12:

In page 15, to delete lines 26 to 30 and substitute the following:

"(4) Where it is proposed to make an order under this section, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made unless a resolution approving of the draft has been passed by each such House.".

Amendment agreed to.

Section 16, as amended, agreed to.

Sections 17 and 18 agreed to.

SECTION 19

Chairman: Amendments Nos. 13 to 18, inclusive, are related and may be discussed together by agreement.

Deputy Peadar Tóibín: Does the Chairman wish me to speak to all of these amendments?

Chairman: Yes.

Deputy Peadar Tóibín: I move amendment No. 13:

In page 16, line 25, after "not" to insert "blacklist,".

The Minister of State will be aware of blacklisting, which reared its ugly head in Great Britain recently. This practice involves a systematic surveillance of trade unionists who are simply active within the legal parameters of that country. They have been targeted and victimised by employers and companies which are employed simply to identify who the trade unionists are and give their details to employers to make sure they are not employed. If a subcontractor is working in a particular area and one of these trade unionists is involved, the subcontractor is not to be employed. It is incredible how organised and commercial its development in Great Britain has been. It has led to disasters for people. It has led to unemployment, violence and horrific hardship for families and communities.

The Minister of State might feel that we have not had many examples of it here but we know that some of the companies that have been named and shamed in Great Britain operate in Ireland and have previously won State contracts. Examples include Balfour Beatty, BAM and Carillion. Over 30 of these companies work in the State at the moment. My worry is that if we do not tackle this and use an opportunity to prevent it happening, friends and family who are trade unionists and are simply seeking to ensure that workers have decent pay and condi-

tions could be blacklisted and prevented from taking up decent work in the future. This section relates to the prohibition on penalisation of a worker by an employer. The section deals with many different issues so this is why I would like to include blacklisting in it.

Amendment No. 14 relates to the same issue, trade unions and trade union activity. I do not fully understand amendment No. 17. In respect of amendment No. 18, the Minister of State has obviously included intimidation and coercion in this section. Intimidation and coercion are, obviously, worthy issues to focus on but I would include harassment because it can be a more low-level, insidious and difficult issue with which a worker must deal. I was going to include haranguing but that might mean that politicians would be able to use that as a defence in future.

Deputy Gerald Nash: Amendment No. 13 seeks to include a prohibition on blacklisting of workers in the anti-victimisation provisions in section 19 if the workers are covered by an SEO. The purpose of amendment No. 14 is to add trade union membership or activity to the activities in respect of which an employer may not penalise a worker to whom an SEO applies.

A number of protections have been in place for some time for workers who consider that they have been subject to victimisation in the workplace. Any worker who find themselves subject to victimisation already has the opportunity to take a case under the Industrial Relations Acts. The 2004 code of practice on victimisation provides that where there is a dispute in an employment where collective bargaining fails to take place and where negotiating agreements are not in place, no person should be victimised or suffer any disadvantage as a consequence of their legitimate actions or affiliations arising from that dispute. Procedure for addressing complaints of victimisation is set out in the Industrial Relations (Miscellaneous Provisions) Act 2004 and these protections will be enhanced in the context of provisions in Part 3 of this Bill relating to the Government's commitment on collective bargaining. Accordingly, I cannot accept amendments Nos. 13 and 14.

The purpose of amendment No. 15 is to change the reference to Minister in section 19(1)(b) of the Bill to the Workplace Relations Commission. This is required following the enactment of the Workplace Relations Commission Act 2015, which provides that complaints will in future be made to the commission rather than to the Minister.

The purpose of amendment No. 16 is to specify that proceedings relating to a complaint of victimisation in this section are now provided under the enforcement provision contained in Part 4 of the Workplace Relations Act 2015.

I want to flag that I will seek to further amend amendment No. 17. We want to correct an incorrect reference there to the Workplace Relations Act and to propose a new subsection and I will address this on Report Stage.

The purpose of amendment No. 18 is to include harassment as part of the list of victimisation measures to be covered by the term "penalisation". Section 19(4) of the Bill provides an non-exhaustive list of acts or omissions by an employer that would constitute penalisation for the purpose of this Bill, the main concern being that they affect a worker to his or her detriment with regard to any terms or conditions of his or her employment. In this context, harassment would clearly come within the scope of this overarching definition. That being the case, I do not consider it necessary to include a specific reference to it in the Bill. Accordingly, I cannot accept amendment No. 18.

Deputy Peadar Tóibín: I am getting the feeling that the Minister will not accept anything

an Opposition Deputy might come up with because blacklisting is a new issue and is not covered anywhere else in legislation. It is a serious threat to workers and has been evident in other countries. It is carried out in a very professional and focused manner. Rather than us sitting here in six months or, God willing, two years' time and discussing the fact that this has taken hold, is a crisis and is in the media and being debated during Leaders' Questions, would it not be better to be comprehensive in the way we deal with the rights of workers in this scenario and make sure that blacklisting is not allowed to become prominent within the Irish system? Harassment is a problem. It could easily be said that many of these issues could logically be covered by "penalisation", but they have purposely been identified individually to provide a clear definition for those who will have to make judgments on them in the future. I suppose that is why we are looking to have them included in the Bill.

Deputy Gerald Nash: If action in the area of blacklisting needs to be examined, I think we should be looking at all the relevant legislation in the round. I would guard against addressing the issue of blacklisting in the context of this Bill or indeed in any piecemeal fashion. We will all agree that blacklisting is a disgraceful practice. I discussed this matter with leading officials in the British GMB union when I opened their annual conference in Dublin a couple of weeks ago. They spoke with some experience because this is a live issue in the UK. I do not have any evidence to suggest it is a widespread practice in this country at present. If such evidence is identified, I will deal with the matter comprehensively and quickly. It would be incumbent on me to do so. I assure Deputy Tóibín that if these practices emerge in this country, they will be addressed forthwith.

Deputy Peadar Tóibín: I reiterate that prevention is better than cure.

Amendment put and declared lost.

Deputy Peadar Tóibín: I move amendment No. 14:

In page 16, between lines 25 and 26, to insert the following:

"(a) trade union membership or activity,".

Amendment put and declared lost.

Deputy Gerald Nash: I move amendment No. 15:

In page 16, line 27, to delete "Minister" and substitute "Workplace Relations Commission".

Amendment agreed to.

Deputy Gerald Nash: I move amendment No. 16:

In page 16, line 33, after "proceedings" to insert "under Part 4 of the Act of 2015".

Amendment agreed to.

Deputy Gerald Nash: I move amendment No. 17:

In page 16, between lines 36 and 37, to insert the following:

"(4) If a penalisation of a worker, in contravention of *subsection (1)*, constitutes a dismissal of the worker within the meaning of the *Unfair Dismissals Acts 1977* to *2015*,

relief may not be granted to the worker in respect of that penalisation both under Part 4 of the Act of 2015 and under those Acts.".

Amendment agreed to.

Deputy Peadar Tóibín: I move amendment No. 18:

In page 17, line 9, to delete "or intimidation" and substitute ", intimidation or harassment".

Amendment put and declared lost.

Deputy Peadar Tóibín: I move amendment No. 19:

In page 17, between lines 9 and 10, to insert the following:

"(5) The Minister may authorise other persons, including designated union officials, to carry out inspections and monitoring of Registered Employment Agreements, Registered Employment Orders and Employment Regulation Orders.

(6) The Minister may make regulations providing access, for union officials, to the workplace and employees for the purpose of this Act.

(7) An employer shall not coerce workers to relinquish or abstain from a registered employment agreement.".

Amendment put and declared lost.

Question proposed: "That section 19, as amended, stand part of the Bill."

Deputy Gerald Nash: I would like to clarify that amendment No. 17 will need to be further amended. As I have already pointed out, I intend to table an additional amendment in this regard on Report Stage.

Question put and agreed to.

NEW SECTIONS

Deputy Peadar Tóibín: I move amendment No. 20:

In page 17, between lines 9 and 10, to insert the following:

"Union entitled to represent members' interests

20. (1) A trade union, at the request of the employee, may represent the employee in relation to the employee's rights and entitlements under a registered employment agreement and sectoral employment order.

(2) A union is entitled to represent its members in relation to any matter involving the discipline or grievance procedure.".

Amendment put and declared lost.

Deputy Peadar Tóibín: I move amendment No. 21:

In page 17, between lines 9 and 10, to insert the following:

"Access to workplaces

20. (1) A trade union official is entitled, in accordance with this section to enter a workplace for purposes related to—

(a) monitoring compliance with the operation of a registered employment agreement and sectoral employment order,

(b) monitoring compliance with other Acts dealing with employment-related rights of trade union members,

(c) seek compliance with relevant requirements in any case where non-compliance is detected,

(d) discuss trade union business with trade union members,

(e) seek to recruit employees as trade union members,

(f) provide information on the trade union and trade union membership to any employee on the premises.

(2) A discussion in a workplace between an employee and a trade union official who is entitled under this section to enter the workplace for the purpose of the discussion must not exceed a reasonable duration.

(3) An employer may deduct from an employee's wages any amount in respect of the time the employee is engaged in a discussion referred to in *subsection (1)(d)*.".

Amendment put and declared lost.

Deputy Gerald Nash: I move amendment No. 22:

In page 19, between lines 26 and 27, to insert the following:

"CHAPTER 4

Miscellaneous

Records

21. (1) An employer, to whom a registered employment agreement or sectoral employment order applies, shall keep, at the premises or place where his or her worker works or, if the worker works at 2 or more premises or places, the premises or place from which the activities that the worker is employed to carry on are principally directed or controlled, such records as are necessary to show whether this Part is being complied with in relation to the worker and those records shall be retained by the employer for at least 3 years from the date of their making.

(2) An employer who, without reasonable cause, fails to comply with *subsection (1)* shall be guilty of an offence and shall be liable on summary conviction to a class C fine.

(3) Without prejudice to *subsection (2)*, where an employer fails to keep records under *subsection (1)* in respect of his or her compliance with a particular provision of this Part in relation to a worker, the onus of proving, in proceedings before the Workplace Relations Commission or the Labour Court, that the provision was complied with lies

on the employer.".

Amendment agreed to.

Deputy Gerald Nash: I move amendment No. 23:

In page 19, between lines 26 and 27, to insert the following:

"Decision of adjudication officer under section 41 of the Act of 2015

22. (1) This section applies to a decision of an adjudication officer under section 41 of the Act of 2015 in relation to a complaint of a contravention of—

(a) *subsection (1)* of *section 19*,

(b) a registered employment agreement (within the meaning of *Chapter 2*), or

(c) a sectoral employment order (within the meaning of *Chapter 3*).

(2) A decision of an adjudication officer to which this section applies shall do one or more of the following, namely—

(a) declare that the complaint was or, as the case may be, was not well founded,

(b) require the employer to comply with the provision in respect of which the complaint concerned relates and, for that purpose, require the employer to take a specified course of action, or

(c) require the employer to pay to the worker compensation of such amount (if any) as the adjudication officer considers just and equitable having regard to all the circumstances, but not exceeding 104 weeks' remuneration in respect of the worker's employment calculated in accordance with regulations under section 17 of the Unfair Dismissals Act 1977, and the references in the foregoing paragraphs to an employer shall be construed, in a case where ownership of the business of the employer changes after the contravention to which the complaint relates occurs, as references to the person who, by virtue of the change, becomes entitled to such ownership.

(3) A decision of the Court under section 44 of the Act of 2015, on appeal from a decision of an adjudication officer to which this section applies, shall affirm, vary or set aside the decision of the adjudication officer.".

Amendment agreed to.

Deputy Gerald Nash: I move amendment No. 24:

In page 19, between lines 26 and 27, to insert the following:

"Amendment of Act of 2015

23. (1) The Act of 2015 is amended—

(a) in section 3 by the insertion of the following subsection after subsection (5):

"(5A) For the purpose of the operation of this Act, and to the extent only that this Act applies, in relation to *Part 2* of the *Industrial Relations (Amendment)*

Act 2015, references in this Act to employee shall be construed as references to worker within the meaning of that Part.",

(b) in section 41, by the insertion of the following subsection after subsection (18):

"(19) In this section, references to specified person for the purposes of a complaint in relation to a provision specified in—

(a) paragraph 29 or 30 of Part 1 of Schedule 5, or

(b) paragraph 11 of Part 2 of Schedule 5,

shall be construed as references to a trade union representative of the person entitled to present the complaint.",

(c) in Part 2 of Schedule 1, by the insertion of the following paragraph after paragraph 18:

"19. *Part 2* of the *Industrial Relations (Amendment) Act 2015*",

(d) in Schedule 5—

(i) in Part 1, by the insertion of the following paragraphs after paragraph 28:

"29. A registered employment agreement within the meaning of *Chapter 2* of *Part 2* of the *Industrial Relations (Amendment) Act 2015*

30. *Section 19(1)* of the *Industrial Relations (Amendment) Act 2015*",

and

(ii) in Part 2, by the insertion of the following paragraph after paragraph 10:

"11. A sectoral employment order within the meaning of *Chapter 3* of *Part 2* of the *Industrial Relations (Amendment) Act 2015*",

and

(e) in Schedule 6—

(i) in Part 1 (*Acts of Oireachtas*), by the insertion of the following paragraph after paragraph 34:

"35. *Section 22(2)* of the *Industrial Relations (Amendment) Act 2015*",

and

(ii) in Part 2 (*Acts of Oireachtas*), by the insertion of the following paragraph after paragraph 34:

"35. *Section 22(3)* of the *Industrial Relations (Amendment) Act 2015*".".

Amendment agreed to.

Section 20 agreed to.

SECTION 21

Question proposed: "That section 21 stand part of the Bill."

Deputy Dara Calleary: I might propose changes to the definitions section on Report Stage on the issue of former workers.

Question put and agreed to.

Section 22 agreed to.

SECTION 23

Deputy Peadar Tóibín: I move amendment No. 25:

In page 20, line 11, to delete "voluntary".

Deputy Dara Calleary: I want to give an indication under section 23 that I might table a Report Stage definition on the question of retired and former workers.

Deputy Peadar Tóibín: This amendment, which seeks to delete the word "voluntary", goes to the heart of this debate. Section 23 provides that "for the purposes of this Act, 'collective bargaining' comprises voluntary engagements". I suppose that goes to the heart of the problem. This Bill definitely improves the situation of workers. There is no doubt about that. However, the voluntary nature of union recognition is probably not where the Minister and I want to go on this issue in the long run. I know there are constitutional issues, etc., that may preclude us from going down this route. It is important that we seek compliance with the judgments of the European Court of Human Rights on this matter. We should not lose sight of that objective.

Deputy Gerald Nash: This goes to the heart of the matter. An important definition of "collective bargaining" is provided for in this section of the Bill. The courts found flaws with the absence of such a definition in the past. This matter is fundamental to this whole discussion. The purpose of Deputy Tóibín's amendment is to remove the reference to the term "voluntary" from the proposed definition of "collective bargaining" in section 23 of the Bill. In developing legislative proposals on collective bargaining, the Government has been keen to respect the positions of stakeholders and develop proposals that sustain what has traditionally been described as the "voluntary" system in this country. Crucially, we also need to make sure workers have confidence in the system. In the absence of collective bargaining, effective systems should be available to workers to make sure discussions on issues like remuneration and terms and conditions can be determined by the Labour Court in the context of a set of legal arrangements like this. Those considerations should be made on the basis of comparisons with similar companies. It should be possible for recommendations to be secured by way of Circuit Court order if necessary.

Worker and employer representatives have played a key role in working with Government to develop clear and workable frameworks in this area in the spirit of real social dialogue and social partnership. It is in this context that the definition of "collective bargaining", as provided in section 23, has arisen. It was the subject of detailed discussion involving me, my Department officials and others as well as employer and worker representatives to reach this point. It has been agreed with stakeholder interests. More fundamentally, the definition will deliver for our economy, working people and employers.

It is important to remember that this position is consistent with the policies of successive

Governments down the decades. It takes on board a great deal of the institutional learning that has been acquired over generations through the prism of the voluntary system of industrial relations, which is premised upon the principles of freedom of association and freedom of contract. This system has not been without difficulty but, by and large, it has served the country, the economy and society well.

It is worth noting that the principle of volunteerism is recognised at international level. Article 4 of the International Labour Organization, ILO, Convention on the Right to Organise and Collective Bargaining, CO98, reads:

> Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Accordingly, I cannot accept the amendment.

Deputy Peadar Tóibín: An individual in a legal dispute has the right to select his or her solicitor and how that solicitor represents him or her, given that the solicitor is more *au fait* with the legal landscape than the individual and would be better able and skilled to represent that individual. The same logic applies to a worker who is seeking to have a trade union official represent him or her in a workplace dispute, as the individual may not be *au fait* with the landscape as regards his or her rights. My amendment makes representation mandatory in that regard.

It is a question of balancing the rights of employers and employees. When both are on an even footing, there is the most respect between them. It is where groups are on uneven footing that there are the most industrial relations battles. This is why we are tabling this amendment. I imagine that the Minister of State and I will not have a meeting of minds on it, but I will press it anyway.

Amendment put and declared lost.

Section 23 agreed to.

Sections 24 and 25 agreed to.

SECTION 26

Chairman: Amendments Nos. 26 and 27 are cognate and will be discussed together.

Deputy Gerald Nash: I move amendment No. 26:

> In page 25, line 18, after "established" to insert ", to the satisfaction of the Court,".

Section 26 of the Bill inserts a new section 5(7) into the 2001 Act and provides that, where collective agreements concerning the grade, group or category of worker are not commonplace in similar employments to the employment that is the subject of the trade dispute, the court shall have due regard to all evidence presented by the parties whether by way of collective agreements or established by other means. The purpose of amendment No. 26 is to clarify that, when considering the issue of making a recommendation, it will be necessary for the Labour Court to be satisfied regarding the evidence submitted by means other than collective agreements.

Section 27 of the Bill inserts a new section 6(8) into the 2001 Act to provide guidance to the

Labour Court when considering the issuing of a determination where a recommendation has not been accepted or where the employer has resiled from the implementation of a previously accepted recommendation. It mirrors the relevant provisions in section 26.

The purpose of amendment No. 27 is to clarify that, when considering the issuing of a determination where a recommendation has not been accepted or where the employer has resiled from the implementation of a previously accepted recommendation, it will be necessary for the Labour Court to be satisfied regarding the evidence submitted by means other than collective agreements.

Amendment agreed to.

Section 26, as amended, agreed to.

SECTION 27

Deputy Gerald Nash: I move amendment No. 27:

In page 26, line 20, after "established" to insert ", to the satisfaction of the Court,".

Amendment agreed to.

Question proposed: "That section 27, as amended, stand part of the Bill."

Deputy Dara Calleary: I may table amendments on Report Stage to include former workers in this section.

Question put and agreed to.

Sections 28 and 29 agreed to.

SECTION 30

Deputy Gerald Nash: I move amendment No. 28:

In page 27, to delete line 6 and substitute the following:

"Dismissals Act 1977'.

(3) An application to the Circuit Court under this section shall be made to the Circuit Court sitting in the circuit in which the employer concerned carries on his or her business.".".

Section 30 of the Bill amends the Industrial Relations Act 2001 by the insertion of a new provision allowing for interim relief pending determination of any claim for unfair dismissal arising from a member of the trade union involved and having provided evidence, information or assistance for the purposes of the examination or investigation made by the Labour Court under section 2(1) of that Act. This section should be read with section 35 of the Bill, which makes the appropriate amendment to section 6 of the Unfair Dismissals Act 1977.

Amendment No. 28 inserts a new subsection (3) to section 30 of the Bill. Its purpose is to clarify that an application to the Circuit Court for interim relief pending determination of a claim for unfair dismissal shall be made to the Circuit Court sitting in the circuit area in which the employer concerned carries on his or her business.

Deputy Peadar Tóibín: I am cautious about this amendment because of the question of

the balance between employee and employer. For example, if the employee lives in west Kerry and the construction company is based in Dublin but carries out its business around the State, will the employee have to travel from Kerry to the Dublin Circuit Court? If someone is of little means, staying in a bed and breakfast or hotel or travelling up and down could be prohibitively expensive.

Deputy Gerald Nash: The Courts Service will be reasonable and pragmatic.

Deputy Peadar Tóibín: Does the Minister of State understand from where I am coming?

Deputy Gerald Nash: Yes. It is a point worth making. The unfair dismissals claim could be brought to the Circuit Court sitting in the circuit area in which the employer concerned carried on his or her business. I appreciate the Deputy's point. I will consider it further and revert to him. Knowing how the Courts Service works, I understand that it will be practical about the operation of a sitting in a way that satisfies the needs of everyone involved in the case.

Deputy Peadar Tóibín: The Minister of State might table an amendment to underline that practice.

Deputy Gerald Nash: I will consider that.

Deputy Peadar Tóibín: Go raibh maith agat.

Amendment agreed to.

Section 30, as amended, agreed to.

Sections 31 to 35, inclusive, agreed to.

TITLE

Deputy Gerald Nash: I move amendment No. 29:

In page 5, line 11, after "1977;" to insert "to amend the Workplace Relations Act 2015;".

Amendment agreed to.

Title, as amended, agreed to.

Bill reported with amendments.

Deputy Gerald Nash: I wish to mention a number of amendments on which I intend to reflect and bring forward amendments on Report Stage. It was remiss of me not to do that. At this point I intend to bring forward three amendments: an amendment to the definition of "worker" under section 23 of the Industrial Relations Act 1990 to provide, in particular, access to the Workplace Relations Commission and the Labour Court for individual retired persons for the purpose of pursuing issues related to the terms and conditions of the relevant worker that pertained at the time of the retirement; an amendment to the definition of "agriculture" under section 1 of the Industrial Relations Act 1976 to give effect to the recommendation in relation to the agriculture joint labour committee, JLC, in the context of the Labour Court review of all the JLCs which was undertaken in 2013; and an amendment to the Industrial Relations Act 1946 to address the lacuna in relation to the making of orders providing for the establishment of new JLCs.

Chairman: I thank the Minister of State and his officials for attending today's meeting

Message to Dáil

Chairman: In accordance with Standing Order 87, the following message will be sent to the Dáil:

The Select Committee on Jobs, Enterprise and Innovation has completed its consideration of the Industrial Relations (Amendment) Bill 2015 and has made amendments thereto.

The select committee adjourned at 2.32 p.m. *sine die*.