STUDY

LABOUR AND SOCIAL JUSTICE

# TRADE UNION ACCESS TO WORKERS

## Barriers faced by representatives in Ireland within a comparative European context

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Ireland has comparatively low collective bargaining coverage in the European Union making the Directive on Adequate Minimum Wages of particular interest there. This report examines the views of Irish union officials on the current challenges pertaining to increased collective bargaining.

The findings reveal that union officials are largely positively disposed towards the Directive and optimistic it will contribute to addressing the current challenges. However, it was felt that the impact of the Directive is dependent upon how it is transposed.

The report offers recommendations for policy changes based on the findings and examples from other international contexts.

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LABOUR AND SOCIAL JUSTICE

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# INTRODUCTION

There has been increasing acknowledgement of the role of unions and collective bargaining in society. This has been coupled with the recognition of the need for legislative support for unions by Irish national institutions and organisations including the 2021 Citizens Assembly report on Gender Equality and the 2023 Irish Human Rights and Equality Commission report on collective bargaining and the Irish Constitution. The right to freedom of association in the Irish Constitution has in the past been viewed by the courts in a »severely restrictive« manner (Murphy and Turner, 2020: 122), but the Supreme Court in a recent seminal judgement rejected restrictive interpretations of the Constitution and the Industrial Relations Act 1990 and held them as positively disposed to the union functions of organising, campaigning, and industrial action.[1]

The value of union recognition and collective bargaining is widely recognised internationally. The positive impact of unions and collective bargaining are evident within workplaces, across workplaces, and in wider society (Fiorito and Padavic, 2022; Doellgast and Benassi 2020). From an economic perspective, collective bargaining can facilitate high employment and lower unemployment, reduce income and wage inequality, and protect vulnerable groups in society (Berg, 2015; Dorigatti and Pedersini, 2021; Bank for International Settlements 2019; Jaumotte and Buitron 2015; OECD 2018; Hayter, 2015; McDonnell, 2024; Freeman and Medoff, 1984). Collective bargaining alleviates the »democratic deficit« individual workers face from the imbalance in power in the employment relationship by allowing employees to participate in self-government to some degree and limiting the arbitrariness of employer decision making (Davidov, 2004). Unions enable workers to have a say and challenge organisational decision making and without this, workers may be unlikely to »truly voice their opinions« without collective representation (Freeman and Medoff, 1984: 8-9; Wallace et al., 2020). In addition, union recognition and collective bargaining have been recognised as essential features of a democratic society. There are ›spillover‹ effects of union membership from the workplace into society. There is a relationship between unions and improved quality of democracy because unions help increase wages, challenge government power, and foster democracy and member participation internally in union structures (Budd and Lamare, 2020; Turner et al., 2020). Union members are more politically active than non-members and have positive attitudes towards democracy (Turner et al., 2020).

It is the union-wage relationship that has attracted EU level attention with the introduction of the Directive 2022/2041 on Adequate Minimum Wages (AMW) in the EU. The Directive aims to improve living and working conditions by strengthening workers access to adequate minimum wage protection, whether through minimum wages, or through collective bargaining. It has sought to strengthen collective bargaining structures for two reasons. One reason is the recognition of the role of »strong collective bargaining« particularly at sectoral and cross-industry levels to ensuring adequate minimum wage protection (Recital 16). The Directive acknowledges the relationship between high collective bargaining coverage and high minimum wages and a low proportion of low wage workers (Recital 25). The Directive is underpinned by a perspective that sees strong collective bargaining and minimum wages as necessary for inclusive growth rather than as barriers to competitiveness (Natali and Ronchi, 2023: 4). Secondly, the need to strengthen collective bargaining is viewed as necessary because of the erosion of »traditional collective bargaining structures« in recent decades and key contributing factors have been »the decline in trade union membership, in particular as a consequence of union-busting practices and the increase of precarious and non-standard forms of work« (Recital 16). The Directive provides that it »is essential that the Member States promote collective bargaining« (Recital 24). In this context, with the aim of facilitating the exercise of the right to collective bargaining on wage-setting and of increasing collective bargaining coverage, the Directive states that Member States shall (a) promote the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage-setting in particular at sectoral and cross-industry level; (b) encourage constructive, meaningful and informed negotiations on wages between the social partners on an equal footing, where both parties have access to appropriate information; (c) take measures to protect the exercise of the right to collective bargaining on wage-setting and; (d) to protect workers and trade union representatives from acts of discrimination in terms of their employment; and take measures to protect trade unions

1 *H.A. O'Neil Ltd. v UNITE and Others* [2024] IESC 8. O'Donnell, J. para 59 and 72; Hogan, J. para 7; Murray, J. para 57.

and employers' organisations participating or wishing to participate in collective bargaining against any acts of interference by each other (Art. 4(1)). In addition, each Member State where collective bargaining coverage is less than a threshold of 80 percent shall provide for a framework of enabling conditions for collective bargaining and shall also establish an action plan to promote collective bargaining. The action plan shall set out a clear timetable with concrete measures to progressively increase the coverage rate (Art. 4(2)). The deadline for transposition of the directive into the national law of all Member States is 15 November 2024.

Collective bargaining is defined in the Directive as negotiations between an employer(s)/employers' organisations and trade unions for the purposes of determining working conditions and terms of employment so non-union employee representatives cannot satisfy the Directive's provisions. The Directive iterates that Member States should take measures to promote collective bargaining on wage-setting and these might include measures easing the access of trade union representatives to workers (Recital 24) but it does not elaborate on what these might look like. The Commission services clarified that, although Article 4(1) does not explicitly mention a right of access, facilitating the access for trade unions to workers can be a measure a Member State may take to protect and promote collective bargaining on wage-setting (European Commission, 2023: 25).

In April 2024, several Irish trade unions initiated the Respect at Work campaign (respectatwork.ie) with the aim of achieving a strong worker-centric transposition of the EU Directive on Adequate Minimum Wages such as through stronger rights for workers to have access to a union. This represents a critical juncture in Irish industrial relations in providing an opportunity to mould new institutional arrangements conducive to workers interests, but also in facilitating a renewed approach to dialogue and bargaining between unions and employers.

There are two elements to this report. The first is a desk-based review of the policy and practice on worker access to union representatives for the purposes of bargaining and representation in Ireland and internationally. The second part presents the findings of a large-scale survey of union officials in Ireland, examining their experiences of attempting to represent and organise workers in Irish workplaces, in particular centring on the achievement of union recognition for collective bargaining and representation purposes.

# 2

# TRANSPOSITION OF THE DIRECTIVE IN AN IRISH CONTEXT

The potential impact of the Directive will likely be greater in EU countries with low levels of collective bargaining coverage (Pasquier, 2021). Eustace (2024) describes Ireland as now being at a ›crossroads‹ for where the government must decide how best to implement the requirements and pursue the objectives laid down in the Directive. The average rate of collective bargaining in the EU is 56 percent while Ireland's is 34 percent[2] and only a little over a fifth of workers in the private sector are covered by collective bargaining (European Commission, 2020). The Irish industrial relations environment has, Doherty (2013) argues, provided one of the weakest legal protections for collective bargaining rights in the Western industrialised world. This environment has supported employers' capacity to avoid dealing with trade unions and the collective bargaining process (Murphy and Turner, 2014; 2016; Geary and Gamwell, 2019).

While Irish unions report satisfaction with the results of decentralised bargaining (in employment terms and conditions) when compared to centralised national bargaining (Paolucci et al. 2023), instances of decentralised bargaining are far from the norm in many sectors of the economy. Without substantial changes to facilitate union representation at workplace level, the extension of collective bargaining in a meaningful way to workers in the private sector presents a considerable challenge. A decline in union representation has occurred even though survey evidence indicates that the demand for trade union membership has remained strong in Ireland (D'Art and Turner, 2008; Geary and Belizon, 2022). A primary reason for the decline in union presence has been the difficulties unions have faced in securing union recognition from increasingly recalcitrant employers (D'Art & Turner, 2003). At workplace level no adequate legislative route existed through which unions could pursue recognition. Conceding recognition has remained purely voluntary on the part of the employer and the outcome in terms of dwindling density reflects the imbalance in resources available to unions and employers. Given the consistent refusal by governments to allow a statutory mechanism to facilitate union recognition, a compromise in the form of a body of so-called ›right to bargain‹ legislation (Industrial Relations (Amendment) Acts 2001/2004/2015) was enacted that was supposed to empower trade unions to instigate individual cases against organisations that did not engage in collective bargaining. In essence, these Acts provided a form of union representation rights to union members in non-union firms. The legislation, however, has not had a discernible positive impact on the capacity of non-union members to be collectively represented by a union (Duffy, 2019). The Labour-Employer Economic Forum (LEEF) High-Level Working Group on Collective Bargaining acknowledged union difficulties in using the Industrial Relations (Amendment) Act 2015 and that they had rarely used its provisions (LEEF, 2022). The High-Level Group did not, however, propose changes to the legislation but recommended the Labour Court make use of technical assessors in the process.

Alongside this, the High-Level Group recommended a process to encourage »good faith engagement« between unions and employers where a trade union has organised members in the enterprise, but where the employer does not engage in collective bargaining with a trade union or excepted body (LEEF, 2022). This process included the potential to oblige parties to engage in good faith engagement but not an obligation to reach any outcomes or agreement (LEEF, 2022). A non-exhaustive list of suggested elements of good faith engagement were provided including: participating in a meeting within a reasonable timeframe; giving genuine consideration to representations made by the other party; providing relevant information in a timely manner; giving a clear, considered written response to representations made by the other party following a good faith meeting within an agreed timeframe. Since the LEEF publication, reports indicate that Ibec's (Irish Business Employers Confederation) view of ›good faith‹ engagement amounts to a ›one-off meeting‹ and does not oblige employers to have additional meetings (Prendergast, 2024). Ibec has argued there is »little if any legislative changes required for the transposition of the directive« due to existing industrial relations legislation and, in its view, the 80 percent threshold in the Directive »imposes an obligation of effort, not result« (Houses of the Oireachtas, 2024).

In much of Europe, sectoral level bargaining and extension agreements bring large segments of the workforce into collective bargaining (Bosch, 2015). Schubert and Schmidt (2020) argue that extensions become increasingly difficult

2 The Irish figure is for 2017 and is from the OECD/AIAS ICTWSS database while Geary and Belizon put the figure at 43 percent from their 2021 survey.

to justify in countries with minimum wage legislation and a large amount of employee protection legislation. Furthermore, union representation in the workplace and opportunities to engage in good faith bargaining with employers at the workplace level are not necessarily advanced through a model of extension agreements. As De Spiegelaere (2024a: 21) notes, »countries with broad systems of extensions have collective bargaining coverage rates that are far above the trade union density rates«. The ETUI has stated that trade union density is more important to bargaining coverage in Ireland than in most other states (Eustace, 2021). Within the voluntarist system that operates in Ireland, density and bargaining coverage are relatively coterminous. France, in contrast, is a case where collective bargaining coverage is amongst the highest in Europe (98 percent) but union density remains low (five percent private sector). Low union density rates also pose challenges for the quality of agreements under extension arrangements. Eustace (2021:37) concluded that if an employer wanted to derogate from extended agreements »…it is relatively easy to do so, by concluding an enterprise agreement with unions who suffer from a very weak position at the enterprise level due to low membership rates«. To avoid such pitfalls, the position of unions at enterprise/workplace level is vital to securing meaningful agreements for workers.

In addition to meeting with provisions of the Directive, enhanced provisions for collective bargaining will also bring Ireland into line with provisions from other transnational charters and international guidelines (Table 1).

## 2.1 WORKER REPRESENTATION AND ACCESS TO UNIONS FOR WORKERS

ILO Conventions and Recommendations and decisions of the ILO Committee on Freedom of Association have established the following to support the principles of freedom of association and right to collective bargaining.

- Workers' representatives should be granted without undue delay access to the management of the undertaking and to management representatives empowered to take decisions, as may be necessary for the proper exercise of their functions.
- Workers' representatives should enjoy such facilities as may be necessary for the proper exercise of their functions, including access to workplaces.
- Workers' representatives should be granted access to all workplaces in the undertaking where such access is necessary to enable them to carry out their representation function.
- In regard to non-unionised workers, negotiation between employers and organisations of workers should be encouraged and promoted.
- No person should be dismissed or prejudiced in employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment (ILO, 2018).

For some time, evidence has indicated that there is a representation gap in Ireland meaning there are employees who would join a union but are unable to (D'Art and Turner, 1999; Murphy, 2016). Geary and Belizon (2022) found that 44 percent of non-union workers generally and over two thirds of non-union workers aged 16-24 would vote to establish a union in their workplace. Evidence suggests that workers have limited access to trade union representation and unions face considerable challenges in accessing workplaces. Research completed more than two decades ago

Table 1
**Collective Bargaining in Transnational Charters and International Guidelines**

| Document | Statement |
|---|---|
| OECD Guidelines for Multinational Enterprises on Responsible Business Conduct | Enterprises should within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards respect the right of workers to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment. |
| Universal Declaration on Human Rights | Sets out fundamental human rights and recognises »*The right to join trade unions and the right to collective bargaining*« (Article 23.4). |
| European Convention on Human Rights | Specifies trade union membership as an important political right essential to democracy: »*Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and join trade unions for the protection of his interests*« (Article 11). |
| Charter of Fundamental Rights of the European Union | Recognises the right of collective bargaining and collective action including the right to strike (Article 28). |

among full-time trade union officials working in private sector unions found that just 27 percent of employers permitted union access to the workplace, with 56 percent denying access. Furthermore, officials reported that 66 percent of employers discouraged workers from joining the union, 63 percent used managers to brief workers against the union, 48 percent victimised activists and 44 percent used management consultants to avoid recognition (D'Art and Turner, 2005).[3] A 2022 IRN-CIPD Pay and Employment Practices Survey of company representatives found that 75 percent of non-union companies had no intention of considering collective bargaining with a trade union, with large companies more likely to indicate they would not engage in collective bargaining than small companies (Prendergast, 2022).

To date in Ireland the State has approached union recognition and the collective right of workers to bargain as constitutional rather than legislative issues where Article 40.6.1.iii of the Constitution allows workers the right of association but not the right to representation (D'Art, 2020). Indeed, the Constitution has traditionally been interpreted as supporting an employer's right not to recognise a union (Turner et al., 2017) but the recent decision of the Supreme Court in O'Neil represents a marked change in this regard. Referring to Art. 40.3.1.iii., Hogan J. stated

> It is arguably implicit in these provisions that the right to form trade unions implies in turn at least some – perhaps as yet undefined – zone of freedom for those unions to organise and campaign. The effet utile of this constitutional provision would otherwise be compromised.[4]

Case study evidence illustrates management hostility towards unions and the difficulties experienced by workers attempting to secure recognition for union representation and collective bargaining (Geary and Gamwell, 2019; Geary, 2022). Extant relations between employers and unions, it has been argued, places few constraints aside from minimalist regulations on employer actions leaving Irish workers more exposed than those in regulated European labour markets to the structural contradictions of capitalism (Dobbins, 2010).

There are important differences in the formal structures for employee representation at the workplace level in the 27 EU Member States and Norway. A report by Eustace (2021) showed how institutional rights of unions can be reserved for those that pass a threshold of ›representativeness‹ in some countries. This approach was found to encourage consolidation among unions, as well as vigorous recruitment efforts to keep membership rates sufficiently high. This approach was also found to be advantageous to ensuring the efficiency of collective bargaining processes and the stability of agreements.

Müller and Schulten (2024) note the importance of measures to strengthen the capacity of unions including a right of access of unions to organisations in advancing collective bargaining (especially at a sectoral level) as well as measures to prevent union busting and support time/facilities for union representatives. Despite the significant and long-standing nature of rights of entry, the body of literature on the topic is relatively small (McFarlane, 2022). A right of entry is fundamentally important for workers to have union representation and for unions to communicate with members, as well as gaining insight into terms and conditions. A 2020 survey of affiliates of the European Trade Union Congress (ETUC) identified a pattern of employers using General Data Protection Regulation laws as way to deny unions a right to contact workers. The ETUC (2020) called on the European Commission to include digital access to workplaces as part of its initiative on fair minimum wages.

The Code of Practice on the Duties and Responsibilities of Employee Representatives gives guidance to employers, employees, and trade unions on the duties and responsibilities of employee representatives, including the protection and facilities they should be afforded to carry out their duties (LRC, 1993). As the Code notes, the manner in which employee representatives discharge their duties »significantly affects the quality of management/labour relations in the undertaking or establishment in which they work, its efficient operation and future development« (LRC, 1993). However, the Code is limited in supporting trade union officials to access workers and workplaces. A significant weakness of the Code is that »there is no requirement that the parties in any particular employment adopt them« and even in the early years after its introduction, there was a reported low take-up of it (Wallace and McDonnell, 2000). An enhanced right to access has been a motion called for by ICTU affiliated unions for some time.

A right to entry also provides unions with the ability to monitor and inspect how existing statutory and negotiated terms and conditions are implemented. The ETUI (2017) notes

> »the first professional labour inspection bodies appeared in Europe during the second half of the 19th century. They were the result of a very simple observation: that it was pointless adopting legislation to protect the working environment if you did not monitor what was happening in practice, discreetly, within businesses. Very soon, it became clear that the system would be incomplete unless the workers' movement was able to play a role in these inspection systems«.

Ireland continues to lack an enforceable legal framework supporting union presence in the workplace, arguably a key factor for unionisation (Toubøl and Jensen 2014; Marracone and Erne, 2023). The next section discusses a number of relevant approaches for consideration in addressing this deficiency.

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3 195 full-time union officials in eight trade unions organising in the private sector were sent a survey of which 82 completed questionnaires were returned, representing a response rate of 42 percent.

4 *O'Neil* [2024] IESC 8, 7.

# 3

# INSTITUTIONAL MEASURES TO SUPPORT UNIONISATION AND COLLECTIVE BARGAINING

There has been considerable attention paid to the legislative and institutional factors that contribute to higher levels of union recognition and collective bargaining in other countries in several recent national reports as well as in academic literature. These are very instructive, and it is not our intention to repeat their content (Eustace, 2021; Thomas, 2022; D'Art and Turner, 2003). In this section, we briefly present five examples of institutional measures that can support union recognition and collective bargaining. The first, a union default model, has been proposed by researchers. The remaining examples are of institutional measures in four countries: Australia, Romania, Sweden and Germany. The Romanian example is noteworthy given its recent history of government hostility towards unions.

## 3.1 UNION DEFAULT MODEL

As Harcourt et al. (2019: 66) argue, an »effective freedom to associate critically depends upon the availability of a union present in the workplace to join« but »workers are defaulted to being non-union in employment relationships across the world«. In contrast, a union default approach involves automatically enrolling workers in a union with bargaining coverage over their work, and the right to »be the appropriate default union… would be gained by the union passing a low minimum support threshold« (Gall and Harcourt, 2019: 409). The implementation of a default union could streamline the process of providing union representation, making it more accessible and efficient for those who want to be union members, potentially bridging the representation gap (Freeman et al., 2007). Although a union default does not guarantee enhanced union bargaining, it is viewed as one of the necessary conditions for it (Harcourt et al., 2023). In the Irish context where the constitutional right of association/dissociation has received so much attention, a default system preserves this right, facilitating with greater ease the freedom to associate while also preserving the freedom not to associate with a union (Harcourt et al., 2019). The approach resolves constitutional issues relating to closed shops because, in contrast to closed shop arrangements, a union default system would allow for opting out on an unrestricted basis (Harcourt et al., 2023). Research in Anglo-Saxon industrial relations regimes suggests a union default would receive majority support and prompt most workers to join unions and proponents of the approach have identified Ireland as one of the countries with the legal infrastructure by which a union default system could be established (Harcourt et al., 2019; 2021; 2023).

## 3.2 WORKER ACCESS TO UNIONS: AUSTRALIA

Rights of entry were initially conceived as a means for unions to investigate and secure compliance with industrial awards on behalf of workers in the context of Australia's traditional conciliation and arbitration system (McFarlane, 2022). The Workplace Relations Amendment (Work Choices) Act 2005 tightened rules governing rights of entry by unions to workplaces and unions responded angrily to the restrictive nature of the Act (Wooden, 2006). The Fair Work Act 2009 made subsequent changes which did not refer explicitly to a union right of entry but to *»provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians*« (Raftos, 2022). The Act refers to the objectives of »fairness and representation at work« including »recognising the right to freedom of association and the right to be represented« in line with the ILO Conventions. In the context of such, union officials have a right to enter workplaces for the purposes of investigating any suspected contraventions of the Fair Work Act or any breaches of enterprise level agreements. The Act also permits access for the purposes of holding discussions with employees. This element is crucial in advancing capacity to organise and establish bargaining. A right of entry permit is issued to unions officials to exercise their right of entry to a workplace and other entry requirements must also be met. A right to entry permit holder must be an elected officer of the union, or an employee of the union. Permits are valid for a three-year period, unless revoked or suspended by the Fair Work Commission (FWC), or the holder ceases to hold a position with a union. Permits provide for a right to access the workplace at 24 hours' notice to management, however, an exemption certificate can also be issued by the FWC to allow for entry without notice in special circumstances. Where a permit holder requests a right to entry for the purposes of holding discussions with employees they can meet or interview those who work on the site, are entitled to be represented by the union and are willing to meet with the union. Such discussions must be held during breaks and not paid work time in an area of the building agreed by the employer/occupier. Where no set location is

agreed, discussions can take place in any area that employees would normally take breaks. The legislation provides that an employer must not prevent, obstruct or intentionally delay a permit holder from entering the workplace and neither can they lawfully refuse or fail to comply with a permit holder's lawful request to produce or provide access to records or documents. Employers are prohibited from taking adverse action against a worker for being a union member or engaging in lawful union activity. Unions also have a right of entry where they suspect a contravention of the Work Health and Safety Act 2011. A recent court decision concluded that while workers names do not have to be disclosed to management, unions did not have a right under the Act to consult with workers on a confidential basis (workplacelaw.com, 2023).

McFarlane (2022) found that restrictions imposed at workplaces during the pandemic raised unprecedented issues for trade unions seeking to exercise rights of entry in accordance with Part 3–4 of the Fair Work Act 2009. This had led to disputes about the appropriateness of occupational health and safety (OHS) requirements imposed by employers to mitigate the risk of COVID-19 infection and transmission.

## 3.3 COMPULSORY COLLECTIVE BARGAINING: ROMANIA

New legislation in Romania (Law 367/2022) is significant for giving unions stronger powers to represent workers and for supporting the development of collective bargaining (Roethig and De Spiegelaere, 2023). It is particularly important given the sweeping attacks on collective bargaining institutions by the government during the global financial crisis which weakened unions and reduced collective bargaining coverage from over 90 percent in 2010 to 36 percent in 2011 and to 15 percent by 2019 (Trif, 2013; Trif and Stochita, 2024; Schulten and Müller, 2021).

Key provisions of the new legislation include: company-level collective bargaining (though not conclusion of an agreement) is obligatory for employers with at least ten employees; unions can secure recognition at the sectoral level if they represent at least five percent of the workers in the sector; multi-employer and sector-level bargaining is facilitated and, in some cases, sectoral agreements can be made binding upon the whole sector depending on the proportion of the sectoral workforce employed by members of the signatory employer organisations (Trif and Stochita, 2024; Kinstellar, 2023). Cross-sectoral agreements can also be extended to the entire labour force in certain circumstances. There are obligations on employers to provide information to employee representatives during collective bargaining, to invite the trade union representative to board of director meetings on certain issues impacting employees, and greater information and consultation obligations on employers on a range of business issues (Popescu, 2022). In non-unionised workplaces, employers are obliged at the request of union federations to hold information sessions once a year on the individual and collective rights of employees and to invite union representatives (Kinstellar, 2023).

## 3.4 COMPULSORY COLLECTIVE BARGAINING: SWEDEN

Sweden along with Finland, Denmark, and Belgium are notable because they are a group of countries where there is support for union membership through public policy and law (Harcourt et al., 2019). Their collective bargaining rates are above 80 percent due to the presence of the union union-operated employment insurance scheme, the Ghent system, and in some cases, frequent extension of collective agreements (Müller and Schulten, 2024). In addition, these countries can have legal systems which support unions. In Sweden, a union has the right to negotiate with an employer on any matter relating to their union member while employers are obliged to initiate negotiations with a union where there are significant changes in its activities or work of a union member. This means employers are less likely to use procedures to delay resolving a dispute (O'Sullivan et al., 2015). While employers are not obliged to sign an agreement, they have a duty to negotiate even if a union has only one member in a workplace (Nyström, 2020). In addition, there are extensive obligations on employer to share business information with unions; regional union representatives are guaranteed access to the workplaces; and trade union representatives in the workplace have rights to facilitates and time off and have extended employment protection (Nyström, 2020). Institutional support for unions extends into dispute resolution processes so that in certain disputes, unions have a ›priority right of interpretation‹ and where there is a collective agreement, a national level union can veto an employer decision in certain instances. Voluntarism as it exists in Sweden,

> »…essentially means encouraging trade unions and employers to settle collective and individual disputes between the parties without resort to state mechanisms and agencies. However, this voluntarism is situated in a regulated statutory framework that provides a relatively even balance of power and obligates employers to engage with unions in the resolution of disputes« (O'Sullivan et al., 2015: 244).

## 3.5 INDUSTRY-LEVEL COLLECTIVE BARGAINING: GERMANY

Germany was historically known for relatively high collective bargaining coverage (74 percent in 1998) underpinned by a »dual system of interest representation« where collective agreements were set by unions and employers at the industry level and their implementation was monitored by company-based works councils (Müller and Schulten, 2019). While works councils are non-union bodies, most of their members are unionised. Collective bargaining is supported to some extent by legislation. The Collective Agreements Act provides that collective agreements are legally binding on signatories and can be extended across an industry by the federal or regional Ministries of Labour. Extended collective agreements, however, are not widespread primarily because employer organisations have the power to veto them (Müller and Schulten, 2019). Industry-level bargaining has also been

increasingly undermined by employer organisations favouring company level bargaining, by employers' withdrawal from employer organisations, and by the increasing use of derogations from industry level agreements (Müller and Schulten, 2019). Unions and employer organisations agreed to wide ranging derogations from industry agreements through ›opening clauses‹ on foot of government pressure in early 2000s (Schulten and Bispinck, 2018). The result of these changes, along with falling union density, is that collective bargaining coverage had declined to 51 percent by 2020 and there have been proposals to increase state support for collective bargaining, such as by strengthening extension mechanisms, using public procurement to advance collective bargaining, and offering tax relief to companies with collective agreements (Müller and Schulten, 2019; Hassel, 2022; Schulten and WSI Collective Agreement Archive, 2022). Nevertheless, collective bargaining coverage is still higher than in Ireland, for example, almost 40 percent of workers in hotels and restaurants are covered by an agreement (Müller and Schulten, 2019).

# 4

# SURVEY DESIGN AND RESULTS

## 4.1 DESCRIPTION OF SURVEY DESIGN AND DISTRIBUTION PROCESS

The survey instrument is based on an extended and revised version of one used in 2003 by Turner and D'Art (2005) in their study which captured the experiences of union officials from eight trade unions in union recognition campaigns. The survey instrument for this report took into account more recent scholarly research on union recognition and collective bargaining, as well as decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO on the 1948 Freedom of Association and Protection of the Right to Organise Convention and the 1949 Right to Organise and Collective Bargaining Convention. The survey instrument was designed with feedback from the ICTU and was piloted.

### 4.1.1 Survey responses

The survey was distributed online to union officials in April 2024 by individual ICTU affiliated unions. Approximately 293 union officials were sent the questionnaire and a total of 179 responses were received, representing a response rate of 61 percent. The majority of respondents (83 percent) worked in roles where they were primarily engaged in collective bargaining and industrial relations while the remainder were primarily engaged in organising workers (17 percent). Union officials were asked to indicate what broad category of union they worked for (general union, public sector union, craft union and private sector industry union) though some unions have considerable membership across the public and private sectors (Table 2).

Table 2
**Participant Data**

| Parameter | Category | |
|---|---|---|
| Gender | Female | 31 % |
| | Male | 62 % |
| | Non-binary | 1 % |
| | Prefer not to say | 6 % |
| Length of employment | Under 5 years | 27 % |
| | 6–10 years | 23 % |
| | 11–20 years | 29 % |
| | Over 20 years | 21 % |
| Category of union | General union | 56 % |
| | Public sector union | 23 % |
| | Craft union | 7 % |
| | Private sector (industry specific union) | 14 % |
| Job Role | Primarily engaged in collective bar-gaining/industrial relations | 83 % |
| | Primarily engaged in organising workers | 17 % |
| Number of recognition campaigns respondent involved in | 0 | 12 % |
| | 1–5 | 53 % |
| | 6–10 | 18 % |
| | 11–20 | 6 % |
| | 20+ | 11 % |
| Type of union recognition campaigns respondent most frequently involved in | Campaigns in workplaces or sectors targeted by the union for organising | 47 % |
| | Campaigns in new workplaces with no recognition agreement | 30 % |
| | Campaigns initiated after a grievance raised by workers in a non-unionised workplace | 23 % |

## 4.2 BARRIERS TO ORGANISING, BARGAINING AND REPRESENTATION

In the survey, union officials were asked to indicate what employer actions they had experienced acted as barriers in their organising, bargaining or representing roles. We have classified the barriers according to a schema developed by Roy (1980) and adapted by Gall (2004) who identified categories of actions by employers who oppose union recognition, and the schema has been used in studies on employer tactics in the USA and UK (Table 3). In addition to graphs below, the Appendix provides a detailed breakdown of responses.

Table 3
**Schema of Employer Anti-union Tactics**

| Category | Form | Examples |
|---|---|---|
| Awkward stuff | Stonewalling | Refusing/delaying responding to union meetings & access to workplace |
| Sweet stuff | Union substitution | Resolving grievances; improvements in pay/conditions; open communications; non-union consultation |
| Fear stuff | Union suppression: acts of intimidation and suppression to sabotage attempts at union organisation | Targeting shop stewards/activists; use of anti-union consultants; threats of closure; worker surveillance |
| Evil stuff | Ideological opposition to unions | Distribution of literature & presentations denigrating unions |

Source: Schema from Roy, 1980 and adapted by Gall, 2004. Additional material from Dundon, 2002.

### AWKWARD STUFF

- The most commonly encountered employer tactic in this category was the employer stonewalling union approaches followed by the employer preventing union officials from entering workplaces.
- Over two thirds of respondents had experienced employers refusing to facilitate digital access to contact employees while just under two thirds had reported that employers restricted employees' opportunities to interact with unions in public spaces such as car parks.

### FEAR STUFF

- The most commonly used employer action is this category according to respondents was victimisation of union members/activists (92 percent either occasionally or regularly).
- This was followed by employer use of management consultants (82 percent), employer monitoring of employee communications (77 percent) and employers threatening closure or relocation (63 percent).

Figure 1
**Awkward Stuff Tactics**

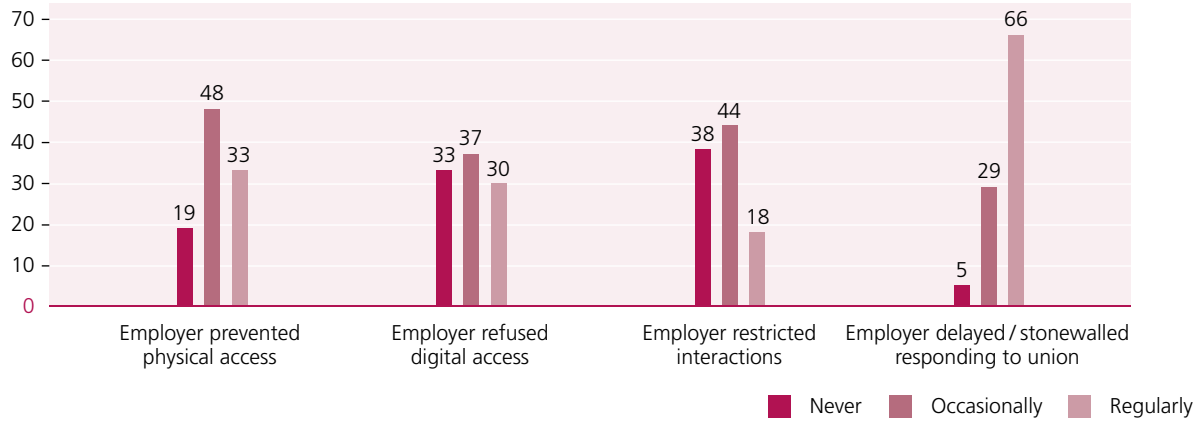


Figure 2
**Fear Stuff Tactics**

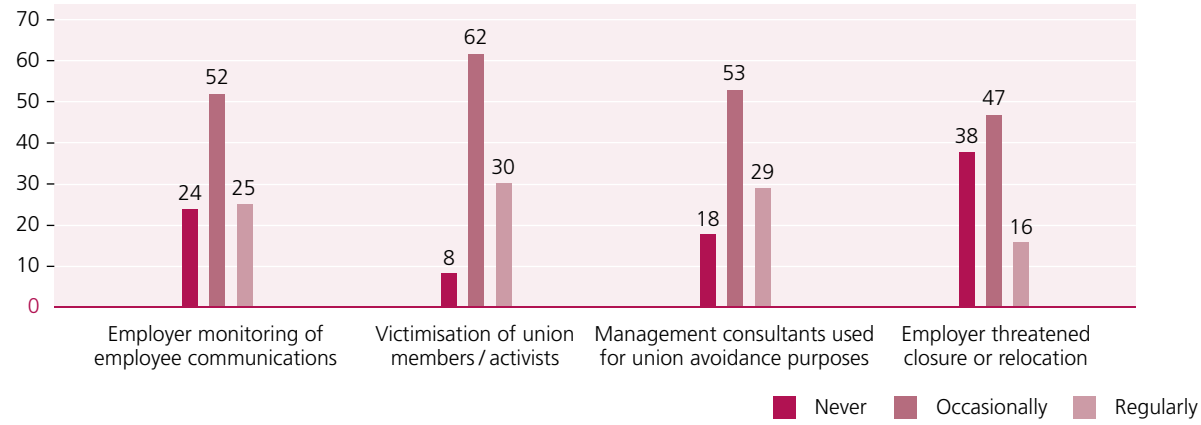



Figure 3
**Sweet Stuff Tactics**

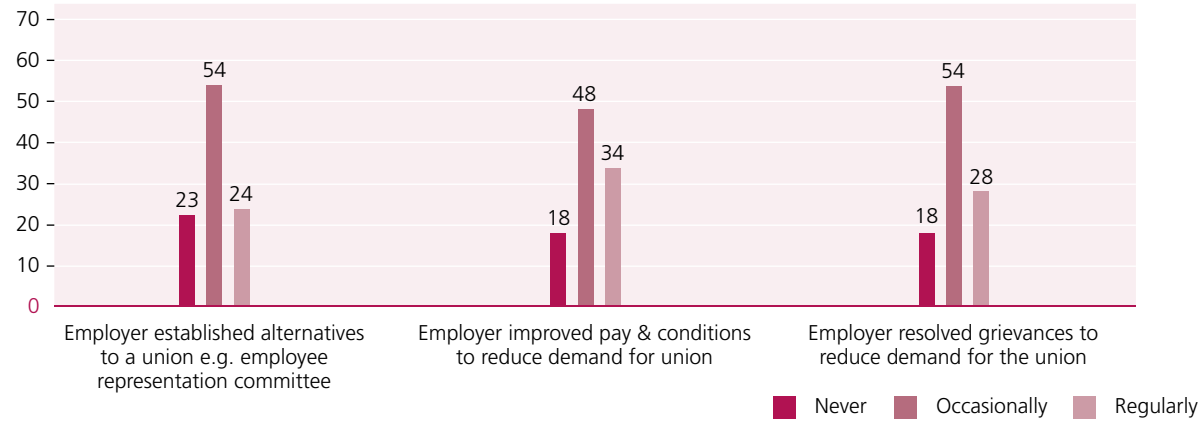



Figure 4
**Evil Stuff Tactics**


## SWEET STUFF TACTICS

There were similar levels of sweet stuff tactics reported with 82 percent of employers improving pay and conditions to reduce union demand, 82 percent resolving grievances and 78 percent of employers establishing alternative forums to unions.

## EVIL STUFF

- 88 percent of respondents reported that line managers briefed workers against the union.
- Half of respondents reported employers distributing anti-union literature.

We also invited respondents the option to indicate »other« factors that acted as a barrier to organising, bargaining and representing and over 83 respondents answered this. The most common barrier cited in comments was employee fear of employer reprisals or actual examples of employer reprisals, as shown by the following examples:

*»targeting of activists, constructive dismissals in the knowledge that they [employer] could lose a case in the WRC but willing to pay the settlement«.*

*»fear of being targeted for being representative / shop steward«.*

*»worker dismissed, unfair dismissal case settled, but had chilling effect!«.*

*»actual or perceived fear of reprisals«.*

Long established fear tactics associated with union busting tactics were referred to which included examples such as a

*»sham redundancy process initiated«, the »isolation of activists, i. e. moving to areas of workplace with limited opportunity with colleagues«, »worker apathy, fear of standing up to management lest it would reduce promotional prospects, poor performance ratings given to activists«.*

Migrant workers for whom English is not their first language are particularly vulnerable as language was referred to as a barrier to organising and as a source of control by employers:

*»Language barriers and fear of reprisals«*

*»Language barriers and racism, sponsoring of work visas, provision of company accommodation as leverage«.*

New forms of power and control also emerged in the tactics used by employers. Control over working hours and arrangements were noted:

*»in non-union workplaces use of power and control (over working hours, access to annual leave etc) used against union reps sends a message and is effectively union busting«.*

Of note was that home and remote working was referred to as something which workers feared being withdrawn for their involvement with the union:

*»home working threatened for following union instruction«, »blended working arrangements threatened, changes implemented with no consultation«.*

Other control practices referred to were:

*»use of non-disclosure agreements to prevent / scare workers from talking to each other« and the »use of bogus self-employment, abuse of nature of construction industry to let workers go«.*

The combination of actions referred to in this section, some more widespread than others, indicate the breadth of barriers that exist which undermine union's ability to organise, bargain and represent workers. Another barrier noted in qualitative comments was worker apathy:

*»workers believing they need to take no action and leave all the work up to the organiser«.*

*»worker apathy and fear of joining unions is quite usual even in well organised employments«.*

## 4.3 FACILITATORS TO ORGANISING, BARGAINING AND REPRESENTATION

Respondents were asked to indicate what actions they had encountered that they believed facilitated organising, bargaining, and representing workers. We divided facilitators into two categories: those that facilitated worker access to unions and those that established a supportive workplace environment for unions.

### 4.3.1 Worker Access to Unions

- The most common facilitator officials experienced in this category was the employer allowing organisers physical access to the workplace.
- Three quarters reported they had experience of employers allowing a union presence at induction.
- Two thirds of respondents had been given digital access to employees (usually refers to employer providing employee contact details or facilitating union digital communications to workers).
- Quite a high percentage of union officials had never experienced employers providing an employee list or contact details (58 percent). This may relate to General Data Protection Regulations, and this was something which officials noted in the barriers to organising workers also.

*»GDPR is often cited (bogusly) as a way of refusing to share contact details of member and / or potential members«*

### 4.3.2 Supportive environment

- In this category, being provided with facilities for union meetings was a commonly encountered facilitator by officials.
- Only 10 percent of respondents had regular experience of employers encouraging employees to be join a union, though 53 percent had experienced this as a facilitator at some point.
- Almost a third of officials had no experience of a closed shop, but over half had some experience of this acting as a facilitator.

Figure 5

**Facilitating access**


Note: The percentages above do not add to 100 percent as the 'non-applicable' responses are not included in the diagram.

Figure 6

**Facilitating a supportive environment**


Note: The percentages above do not add to 100 percent as the 'non-applicable' responses are not included in the diagram.

## 4.4 UNION OFFICIAL PREFERENCES ON MEASURES TO SUPPORT ORGANISING, BARGAINING AND REPRESENTING WORKERS

Respondents were presented with a list of measures that could support officials work in organising, bargaining and representing workers and they were asked to identify their top three preferred measures.

- Two thirds of respondents felt that strengthening legislative routes such as creating a statutory route to union recognition would be the most effective change that could be introduced.
- This was followed by the introduction of penalties for employers who engage in union busting tactics (52 percent).
- The next most commonly cited measures among respondents were the introduction of effective penalties for employers who victimise union representatives, and measures to facilitate organising such as ease of access.
- A small percentage of respondents indicated that other measures would be most effective. These are discussed in more detail further below.
- There were some differences in views on preferred measures between respondents in collective bargaining and industrial relations roles, and those in organising roles. (Table 4).
- When we examine union types, strengthening legislative routes was favoured by officials in general unions, public sector unions, and private sector industry unions (along with measures to facilitate organising and mobilisation). There were lower numbers of respondents from craft unions, but they favoured penalties on employers who inhibit union organising and penalties for employers who victimise union representatives.

Figure 7

**Effective changes to improve organising, bargaining and representation**

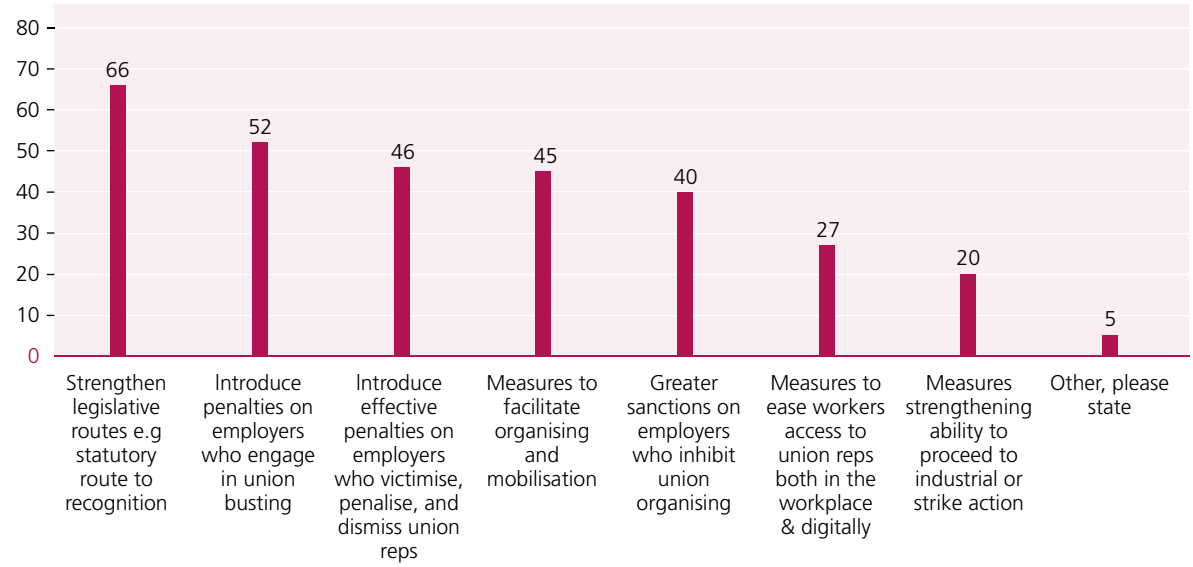



Table 4

**Preferences by union official roles**

| Respondents in collective bargaining and industrial relations roles (n=133) | Respondents in organising roles (n=27) |
|---|---|
| 1. Strengthen legislative routes such as a statutory route to union recognition (73 percent) | 1. Measures facilitating organising & worker mobilisation (56 percent) |
| 2. Introduce penalties on employees who engage in union busting (54 percent) | 2. Introduce effective penalties on employers who victimise, penalise & dismiss union reps (52 percent) |
| 3. Introduce effective penalties on employers who victimise, penalise & dismiss union reps (44 percent) | 3. Strengthen legislative routes such as a statutory route to union recognition (48 percent) |

Suggestions mentioned within the ›other‹ category included the introduction of nationally agreed time allocation for union representatives to interact with workers, and national pay agreements to apply exclusively to union members to avoid the free rider effect. Some suggestions also referred to changes within the union movement itself including greater cooperation between unions, for example, through joint initiatives targeting companies or having fewer unions operating in a sector. Other comments were:

> *»A complete overhaul of mindset amongst union officials and senior elected representatives of unions to move away from servicing and towards organising«*

> The creation of *»better relationships between different unions«*.

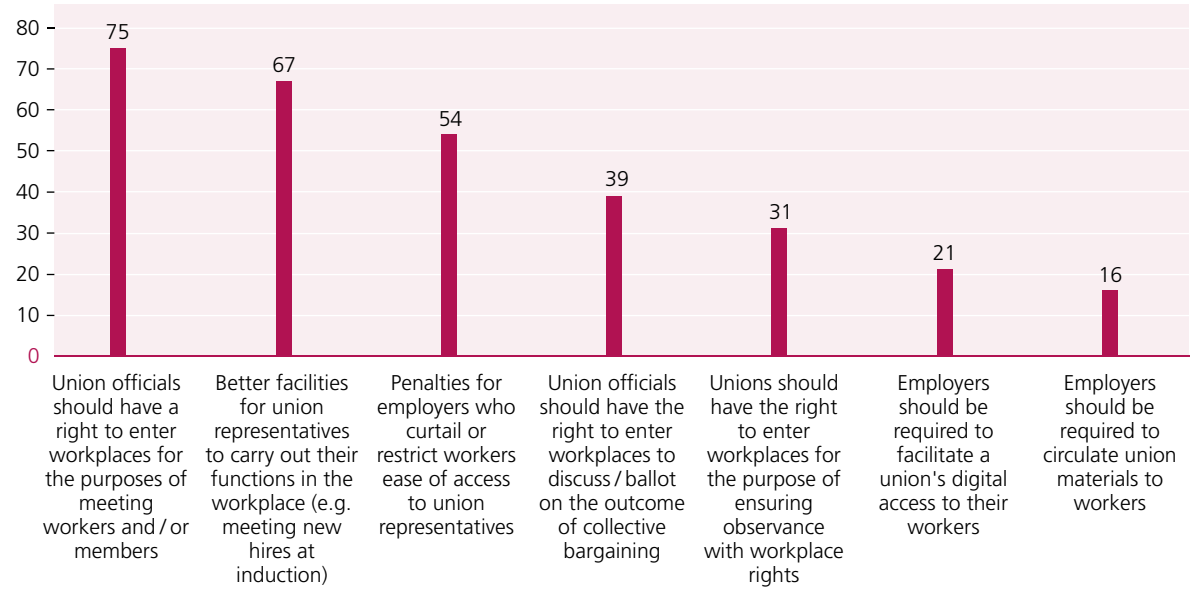
Reference was also made to the education of young people: *»trade unions should be part of education in schools, we need trade unions to be a normal part of starting work«*.

Such a measure could be viewed as a measure to address the ›never member‹ phenomenon whereby the percentage of people who have never been union members has grown (Bryson, and Gomez, 2005). Two respondents recommended the introduction of a union default system or compulsory union membership while, relatedly, another referred to the negative impact of free riders.

Specifically in relation to measures supporting ease of access, the preferred choices of union officials were:

- A right to enter workplace for the purposes of meeting workers (75 percent).
- Better facilities for union representatives to carry out their functions (67 percent).
- Penalties for employers who curtail or restrict workers' ease of access to union representatives (54 percent).
- There was no difference between the two categories of union official role in their preferences on measures to support ease of access.

Figure 8
**Changes to facilitate ease of access**




– A right to enter workplace for the purposes of meeting workers was favoured by general unions, craft unions, and private sector industry unions. Better facilities was favoured by public sector unions.

## 4.5 UNION RECOGNITION

Respondents were asked to indicate their view on the most important function of union recognition. Three quarters of respondents indicated that engaging in collective bargaining with an employer is the most important function (Fig. 9). However, 23 percent of respondents indicated instead that they believed the most important function was that the union can act a collective representative for members in the workplace or as a representative of individual members in workplace matters such as grievance and discipline.

When asked about achieving union recognition, 31 percent of union officials indicated that union recognition has become more difficult to secure during their time working for the union, while 29 percent indicated it is much more difficult to secure (Fig. 10). Only six percent noted a positive change in this regard. All union types found union recognition more difficult to secure, but private sector industry unions were more likely to report union recognition was more difficult or much more difficult to secure (89 percent). While respondents in public sector unions were the least likely to indicate that union recognition was more difficult or much more difficult to secure, only 13 percent said that union recognition was easier or much easier to secure.

*»A significant number of publicly funded organisations have a non-union position which is totally wrong«.*

Figure 9
**Most important function of Union Recognition**

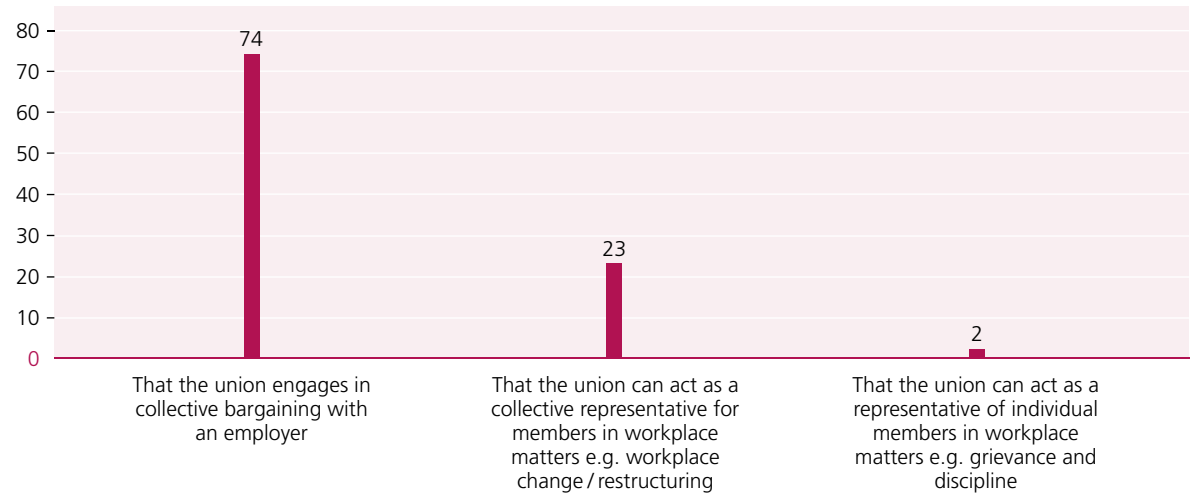
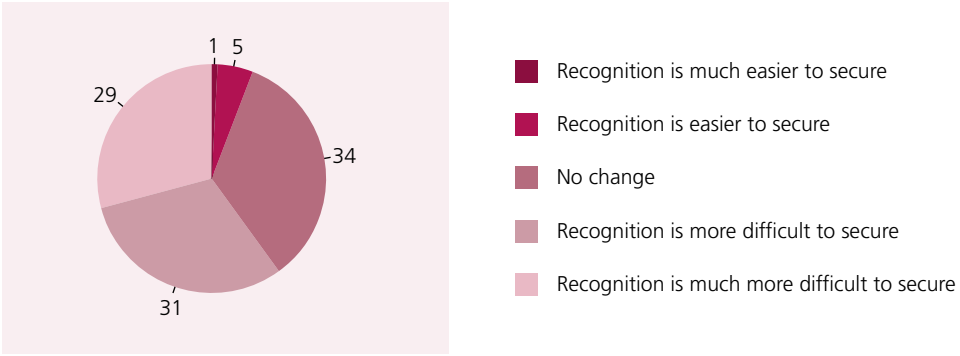
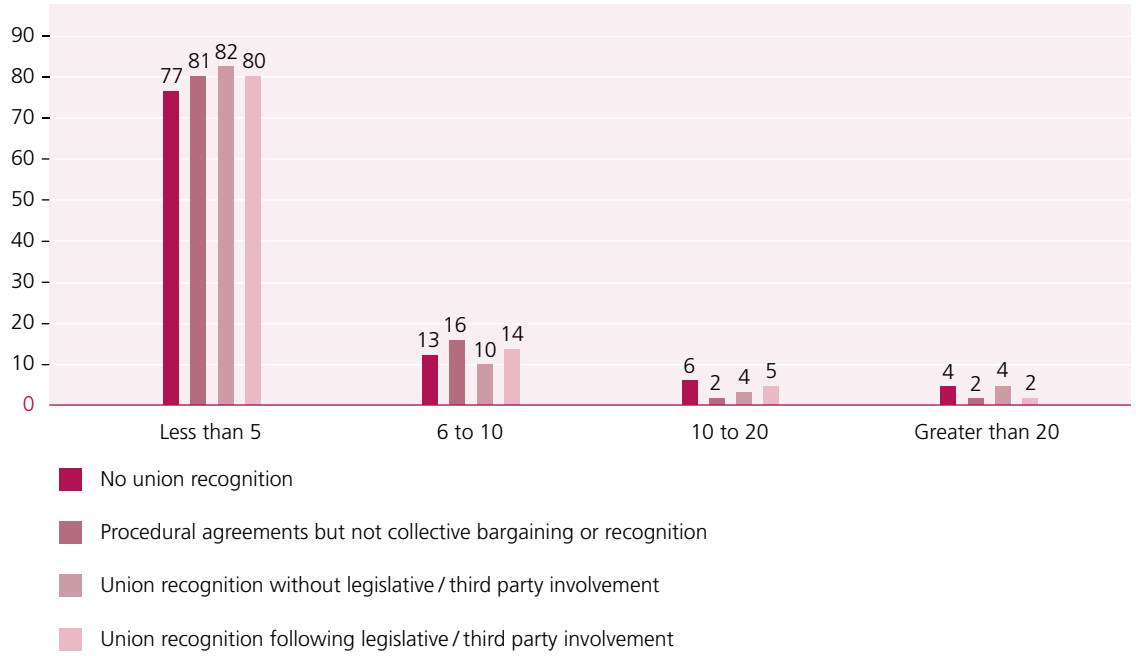


Figure 10
**Change in ability to secure union recognition**




The survey asked respondents about the outcomes of union recognition campaign they had experience of. Most respondents had less than five campaigns across all types of outcomes (77 percent – 82 percent). Very few respondents had more than 20 campaigns (two percent – four percent) (Fig. 11). The percentage of respondents with 6 to 10 campaigns is highest for procedural agreements (16 percent) and recognition following legislative / third party intervention (14 percent). The percentage of respondents with 10 to 20 campaigns is relatively low across all types, with a slight increase for union recognition following legislative / third party intervention (five percent).

Figure 11
**Outcomes of union organising campaigns**

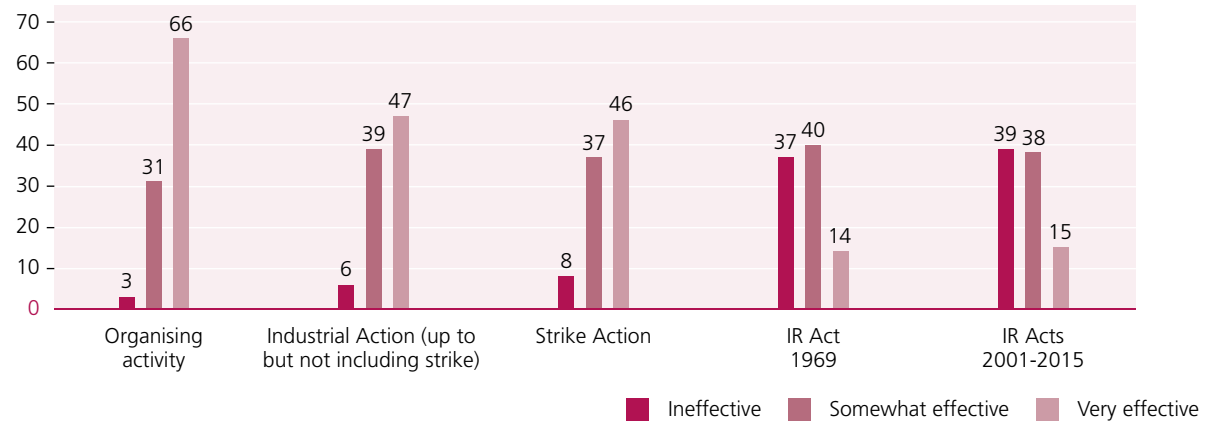



In regard to the effectiveness of approaches to achieving union recognition, two thirds of respondents indicated that the most effective approach was through organising activity, with industrial action being the second most effective approach (Fig. 12). These approaches, while demonstrating union strength and solidarity, can be labour intensive for unions. The findings revealed that existing legislative approaches were viewed as only somewhat effective or were ineffective.

- Similar levels of officials in collective bargaining and organising roles found organising activity to be effective.
- Higher proportions of those in organising roles viewed organising to be ›very effective‹.
- Higher proportions of those in organising roles considered legislative routes as ineffective compared to those in collective bargaining roles.

Figure 12

**Effectiveness of approaches in achieving recognition**




Note: The percentages above do not to 100 percent as the 'non-applicable' responses have been excluded.

Some qualitative comments provided insight into union officials' views on existing legislative provisions:

*»Industrial Relations (Amendment) Act 2015 did not deliver the desired effect«*

*»Labour Court Section 20 (1) recommendations for employers to recognise trade unions not worth the paper that they are written on. 2015 Act a complete failure of legislation«.*

*»The 2015 act in particular has proven to be particularly toothless. It is evident in the lack of cases and successful outcomes. Overall people want to join but in the sector I represent they do not want to ›cause trouble‹. I personally represent a number of sections where I inherited Labour Court recommendations taken under section 20 (1) and the members were too reluctant to have a dispute to vindicate the recommendation. It leads to a ridiculous situation where members are in limbo.«*

One respondent noted their anticipation of the transposition of the AMW Directive as providing an opportunity to address problems with the existing legislative provisions.

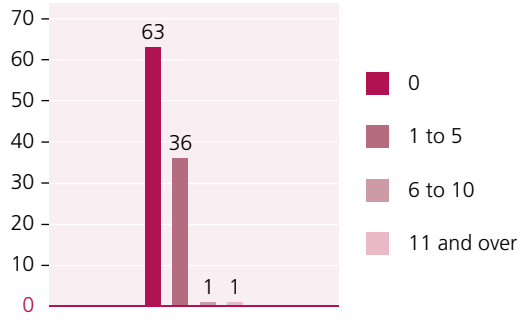
*»In my experience when limited union recognition I rely on the outdated but sometimes effective statutory implements in place but they can only get you so far. So the EU directive when implemented will be a game changer I believe«.*

There were also officials who commented that positive expectations of previous legislation had not been met:

*»We have had many false dawns with the 2001 and 2004 INDUSTRIAL RELATIONS (MISCELLANEOUS PROVISIONS) ACT and the Industrial Relations (Amendment) Act 2015 that legislation was going to provide the opportunity for unions to organise. This wasn't to be and we continued to organise by reaching out to workers or them reaching out to us. After many years working in this job it is apparent that the only way we will build density is with the support of proper legislation which clearly provides workers with the right to collective bargaining and clearly states that the only excepted body is a trade union«.*

Figure 13

**Cases of De-Recognition**

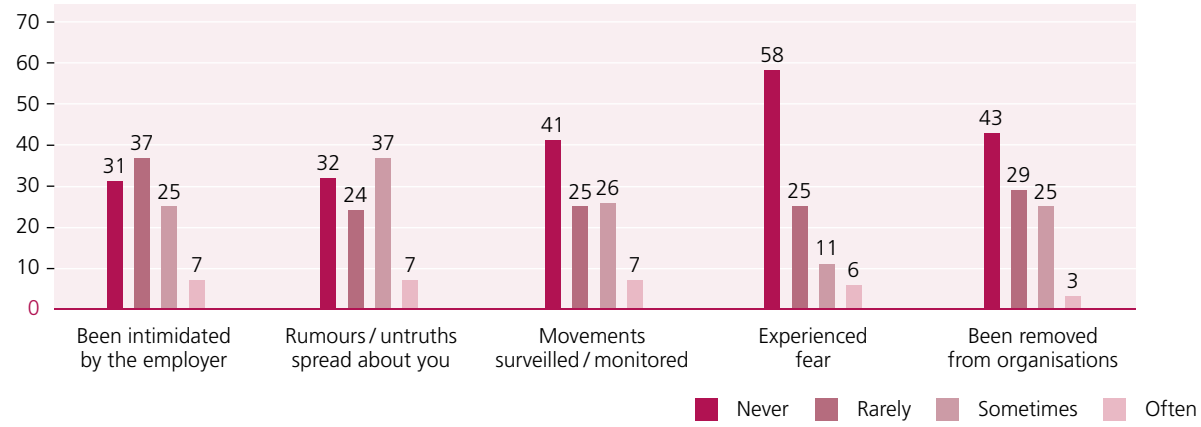



## 4.6 EMPLOYER ACTIONS TOWARDS UNION OFFICIALS

Respondents were asked to indicate if they had personally experienced hostile employer actions (Fig. 14).

- The most commonly experienced action against union officials themselves was having rumours spread about them. There were broadly similar proportions of officials who had experienced employer intimidation, surveillance, and being removed from organisations either sometimes or often.
- The majority (58 percent) had never experienced fear as part of their role but the remainder experienced fear at some stage.
- There were some differences in experiences between officials in different roles.
  - A higher percentage of those in organising roles

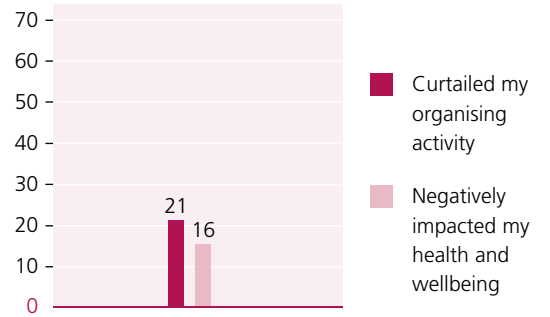
Figure 14
**Employer Actions Experienced by Union Officials**




(54 percent) reported having been intimidated by an employer than those in collective bargaining roles (28 percent).
  - A higher percentage of officials in organising roles had experienced fear (21 percent) than those in collective bargaining roles (15 percent).
  - A higher proportion of officials in collective bargaining roles (47 percent) said they had rumours spread about them than those in organising roles (33 percent).
- Some differences in experiences were reported by male and female officials.
  - Higher percentages of female officials reported having their movements monitored (45 percent vs 29 percent of male officials); being intimidated by an employer (41 percent vs 28 percent of male officials) and experiencing fear (24 percent vs 13 percent of male officials).

In terms of the impact the above actions had on union officials, a substantial minority reported the behaviours had curtailed their organising activity and negatively impacted their health and wellbeing (Fig. 15). There was little difference between male and female officials in relation to the impact of employer actions on their organising activity and personal wellbeing.

Figure 15
**Impact of employer actions on union officials**




## 4.7 VIEWS ON THE AMW DIRECTIVE

- When asked about the impact of the AMW Directive, the highest level of agreement expressed among union officials was that it would facilitate increased access to collective bargaining (78 percent) (Fig. 16).
- Similar proportions of respondents indicated that the Directive would facilitate increased membership for unions; would bring about greater access to the workplace for unions; would facilitate increased union recognition and; would positively impact workplace relations.

In qualitative comments, respondents noted that the potential of the Directive is dependent on the nature of its transposition:

> *»Access on site in workplaces is essential to organising. Without it the forthcoming directive will only have a limited impact in my view. Union's should be able to access sites where they have sufficient density regardless of recognition in order to help members«.*

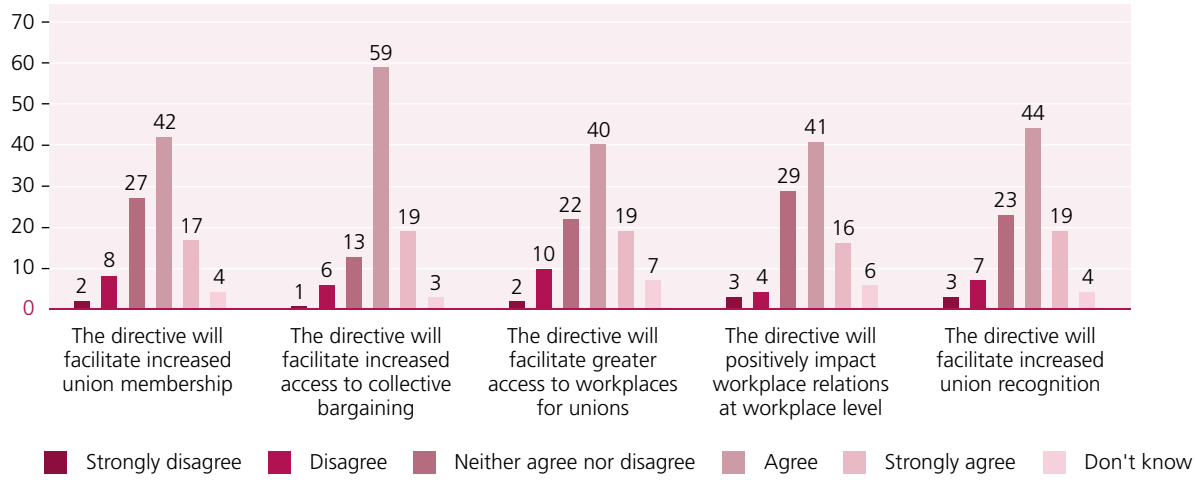
> *»As we know from past experiences in particular the 2004 Act, it will depend on the transposition of the directive into National legislation that will have the greatest impact on the successfulness of the right to collective bargain and increased trade union members, having direct access to workers in the workplace will provide better opportunity for density building for example we need to curb the ability of non union workers benefitting from union activity, increases etc«.*

Several other comments related to the nature of collective bargaining that may occur as a result the Directive, noting that it must be a form that represents the needs of workers rather than a compromised approach compatible with employers' expectations:

> *»Unfair practices by Employers need to have punitive consequences with fines and Courts being able to*

Figure 16

**Potential Impact of the AMW Directive**




*declare automatic recognition if unfair practices are established. The litmus test should not be is collective bargaining compatible with management but if effective bargaining possible«.*

The issue of non-union bodies was raised:

*»The requirement for laws to allow for unrestricted collective bargaining with all enterprises is a necessity. However, I would be wary of any legislation which allowed for employers to circumvent Trade Union collective bargaining by way of ›Accepted Bodies‹ or ›Employee representative committee's‹ as employers can more easily influence the constituent members and or decision-making process.«*

Respondents recommended that organisations which access public funds should conform to regulations on collective bargaining:

*»Making it mandatory that employers who access public money in any format allow collective bargaining and union recognition. Making it mandatory that firms over a certain employee number have to afford workers the right to collectively bargain and be allowed professional advice from unions if they so decide but they cannot be confined to internal councils or committees only.«*

*»A strong transposition of the AMW Directive represents the best opportunity to legislate for the kind of protections and penalties required to support union organising which will grow collective bargaining. Ireland is an outlier in Europe and this is a chance to rectify that. The government has said it supports collective bargaining but needs to put these sentiments into action, for example it could stipulate that all public/state contracts have union recognition and collective bargaining as a condition of the contract. It could also ensure that where staff in collective redundancies want union support that the employer cannot prevent that«.*

A number of comments also referred to the wider industrial relations context, the role of various industrial relations actors and the power of industrial relations machinery of the state:

*»More legislative power to the WRC and Labour Court re enforcement«.*

*»Aside from giving the ability of unions to effectively engage with workers through meaningful access, what could be more reasoned than giving workers the ability to sit across from employers and bargain on their collective issues, serious thought needs to be given to the institutional framework in which the Labour Market resides, there should be greater scope for Sectoral Bargaining arrangements and TU's should be given greater representation & say within/on state institutions/bodies relating to the Labour Market«.*

Finally, while much of the commentary around actions centred on legislation, it was noted that legislation should not be viewed as an end in itself but as a conduit towards the achievement of true industrial democracy.

*»No law can make an employer ›want‹ to recognise the Union. Collective strength can make an employer ›need‹ to recognise a union«.*

# 5

# SUMMARY OF FINDINGS

The findings from the survey can be summarised as follows:

- Union recognition has become more difficult to secure for all union types but especially for private sector industry unions.
- Organising activity and industrial action were considered by officials as more effective in achieving recognition than using legislative routes.
- The three most common anti-union tactics officials encountered (at least occasionally) were the employer stonewalling/delaying responding to the union, victimisation of union members/activists, and line managers briefing employees against unions. Fear and apathy amongst workers featured strongly in qualitative comments as barriers to union officials' representing roles.
- The most common anti-union employer action experienced by officials themselves was spreading rumours/untruths about them. Of the five hostile employer actions towards officials presented in the survey, female officials encountered three of them to a greater extent than male officials.
- A fifth of officials have curtailed their organising activity and almost one in six had been personally negatively impacted by employer behaviours towards them.
- The most common employer facilitators for union work were employers allowing unions physical access to workplaces and employers offering facilities for union meetings. Quite a high percentage of union officials had never experienced employers providing an employee list or contact details.
- In terms of policy preferences to support officials' work, there are some differences in views between categories of officials but the two measures which featured in the top three choices of each group were stronger legislative routes such as a statutory route to union recognition and penalties for employers who victimise union representatives. Stronger legislative routes was the top choice of officials in collective bargaining roles while measures to support organising and mobilisation was the top choice of officials in organising roles.
- In relation to measures which might support ease of access of workers to unions, the preferred choices of union officials were a right to enter workplaces for the purposes of meeting workers and better facilities for union representatives to carry out their functions.
- Officials were positive about the potential role of the AMW Directive in supporting collective bargaining, but they are cognisant that its effectiveness depends on its transposition.

# 6

# RECOMMENDATIONS

Based on the survey findings, the following are recommendations which can be considered by unions.

## 6.1 POLICY MEASURES

**Union recognition, collective bargaining and workers' ease of access to union representation**

### OPTION 1 UNION DEFAULT PILOT

Given the challenges identified in this report as regards worker access to union representation, unions could advocate for the introduction of union default pilot amid transposition of the AMW Directive on the basis that such an initiative supports the development of processes which facilitate a roadmap to increased bargaining coverage and strengthening the role of trade unions. Unions, employers and the state in Ireland have illustrated a capacity to demonstrate progressiveness in piloting innovative workplace and labour market interventions that have received international attention. For example, the four-day week concept and the Basic Income Scheme for artists were successfully tested in Ireland on a pilot basis. In the same vein, a union default could be piloted in a segment of the labour market including in union-friendly workplaces. For example, semi-state bodies which already have a high percentage of unionised workers or an entity which received significant state funding might provide interesting cases in which to pilot a union default. The government could financially support unions in offering free membership for a time (e. g., one year) to determine what effects there might be on membership levels (Harcourt et al., 2024). A union default pilot would support the achievement of Article 9 of the Directive which calls on Member States to consider criteria that guarantee basic trade union rights and compliance with collective bargaining standards when awarding public contracts and concessions; Article 3(3) which explicitly confirms that collective bargaining is the prerogative of trade unions and not of ›workers‹ organisations' and Article 4(1) which guarantees the right to collective bargaining on wage-setting and protects workers and their representatives who participate (or wish to participate) in collective bargaining from discrimination (Mueller et al., 2024). In addition, a union default model would arguably negate the need for most other types of legislative protections for unions and their members.

### OPTION 2 STATUTORY RIGHTS

Unions could advocate for statutory rights to union recognition, collective bargaining, and ease of access to workplaces akin to those in country examples noted earlier (Romania and Sweden are the strongest of the four countries). For any statutory rights that are introduced, penalties for non-compliance should be substantial. There is no research to our knowledge that has examined and calculated an appropriate level of penalties for violations of union busting rights and protections. Breaches of GDPR regulations are indexed to financial turnover of organisations, such is the importance attached to ensuring penalties act as a deterrent to breach of citizens' rights. Meanwhile, research on breaches of wage laws in the USA concluded that »damages would need to exceed 24 times the unpaid wages owed in order for the cost-benefit analysis come out in favour of compliance« (Hallett, 2018).

There are additional policy measures that could be considered. For example, some have argued in favour of a solidarity fee where non-union members who are covered by a collective agreement pay a fee supporting union incomes (De Spiegelaere, 2024). While this measure could partly address the problem of free riders, it would not tackle employer hostility to unions. There are also practical considerations, for example, the level of the fee charged to non-members may influence their decision to join unions or not (Danişman and Göksel, 2015). Finally, the capacity for unions to exercise secondary action as an instrument of industrial power is an aspect which may also be considered worthy of review in the Irish context. Notably cases in the Scandinavian and Nordic contexts have demonstrated the power of secondary action in moving non-union employers towards the establishment of collective agreements.

Unions could engage with the Data Protection Commission to create guidelines for unions and employers on the appropriate interpretation and application of GDPR in a workplace representation context. GDPR may inhibit efforts for both unions and employers to facilitate access to workers. Unions could consider accompanying guidance on any legislative changes pertaining to the AMW Directive on how to facilitate digital access to workers in such a way as to comply with GDPR.

**Victimisation of union representatives and union officials**

## EMPLOYEE VOICE AS A HEALTH AND SAFETY ISSUE

Unions could consider presenting the denial of union rights not only as a labour law/collective issue but also as a health and safety/individual issue under the Safety, Health and Welfare at Work Act 2005. Furthermore, unions could advocate that national agencies with responsibility for the implementation of workplace health and safety should include in their records whether breaches of existing workplace health and safety are from organisations with a union recognition agreement in place. Unions have a significant role to play in addressing psychosocial risks in the workplace. Indeed, the ETUI (2023) has pointed to the pressing need for a strong EU response to tackle psychosocial risks in the form a new directive. Existing research shows that increased psychosocial risks is more common among three groups of workers: the young, women/feminised work, and the less educated and these groups can also be concentrated in sectors with low levels of unionisation. Therefore, restriction of workplace representation and voice can be viewed as predisposing individuals to increased psycho-social risk and indeed may constitute a psychosocial risk in itself or act as a precursor to exposure to risk since capacity for worker voice is limited.

## STRENGTHENING VICTIMISATION MEASURES

According to the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) and Committee on Freedom of Association, »anti-union discrimination is one of the most serious violations of freedom of association, as it may jeopardize the very existence of trade unions« (ILO, 2018: 201) but employee victimisation is only partially considered in existing legislation in Ireland. The Unfair Dismissals Acts 1977-2015 prohibit the dismissal of workers based on their union membership but does not apply to victimisation in other forms. In addition, the Acts do not prevent the dismissal from occurring. The Code of Practice on Victimisation (S.I. No. 463 of 2015) recognises the victimisation of employees while Section 8 of the Industrial Relations (Miscellaneous Provisions) Act 2004 prohibits victimisation of employees on account of their membership and activities of unions/excepted bodies. Complaints under the 2004 IR Act on victimisation are specific to conditions – where it is not the practice of the employer to engage in collective bargaining negotiations and the internal dispute resolution procedures (if any) normally used by the parties concerned have failed to resolve the dispute. In addition, while the Code of Practice deals explicitly with the kind of activities termed evil or fear stuff, it is unclear how it can be applied where organisations engage in a sophisticated suite of tactics including for example the withdrawal of workplace benefits which are not legally protected such as working from home arrangements or flexible working hours.

Unions could consider pursuing statutory rights to protect employee representatives from victimisation and to strengthen union access to workers given that the Code of Practice on Duties and Responsibilities of Employee Representatives has not prevented the victimisation of representatives, according to the survey results. In other countries, anti-discrimination protections are codified through employment relations or employment equality legislation and can extend to union membership, non-membership, and union activities (Kilcommins et al., 2004; ILO, 2022). Over 20 years ago, the lack of protection in Ireland for workers against »lesser forms of detriment than dismissal based on trade union membership« was criticised by the European Committee of Social Rights (Kilcommins et al., 2004: xiv). New protections should be expansive enough to encompass the various types of discrimination identified in this report, for example, by incorporating digital communication and ensuring that communications with union officials are secure and not subject to monitoring or surveillance. Statutory protections could also broaden the dismissal protections afforded to worker representatives. For example, in Germany employers are prohibited from dismissing works council members while in Finland, the termination of employment of an employee representative in many instances requires the majority consent of other workers and in the event a dismissal is found to be unlawful, the maximum redress available to representatives is higher than for dismissals of other workers (ILO, 2022; ILO, n.d.; Waas, 2012; Sigeman, 2002).

Unions could examine strengthening aspects like the Code of Practice on the Right to Request Flexible and Remote Working such that these arrangements cannot be used coercively. Anti-victimisation measures typically tend to focus on the use of coercion or force. However, there needs to be an understanding of the impact of tactics which commonly fall within the domain of ›sweet tactics‹, and the extent to which these hamper workers' ability to organise, for example, organisations who make short-term changes or address ›low hanging fruit‹ issues to divert attention from organising in the immediate future. The ways in which workers can be victimised can change. Qualitative data from this survey indicates that the withdrawal of non-contractual arrangements such as remote working or flexible working time arrangements can be victimisation practices. Arguably sweet tactics based on an absence of rights makes such tactics potentially more impactful.

Unions could advocate for legislation which recognises and prohibits employer mistreatment towards union officials. To date, codes of practice and legislation recognise the victimisation of employees but not hostile employer treatment of union officials who attempt to engage with workers in the course of their work. While many pieces of employment legislation require an employer-employee relationship for individuals to access employment rights, there are examples of laws where employers have responsibilities towards non-employees such as in regard to health and safety.

## UNION-BUSTING MEASURES

Specific anti-union busting policy measures would mean the introduction of sanctions that go beyond those prohibiting the use of victimisation measures. Protecting the

Right to Organize (PRO) Act in the US contains some of the most significant changes to labour law in decades. Reform is also needed in the Irish context to reflect contemporary changes in ways of working and in digitalisation which impact the capacity for employers to exercise control over workers' organising abilities.

Evidence from other countries indicates how supportive legal and institutional measures can facilitate collective bargaining and employee representation but a cautionary note is that supportive measures can also be diluted or removed by governments. Referring to the Romanian experience during the global financial crisis, Trif and Paolucci (2019) commented that the reliance of the social partners on statutory provisions to support collective bargaining left unions exposed once the support was rescinded so they had to rely on internal power resources.

## 6.2 INTERNAL UNION PRACTICES

### UNION SUPPORTS

Unions could consider how they currently train and support organisers given our findings that organisers can experience adverse wellbeing due to employer actions. Ensuring that unions' own structures support positive wellbeing for organisers is critical, but this does not negate the need to address employer hostility towards union officials and its effects on them.

### INFORMATION SHARING

Information sharing across unions which allows for mapping of employers engaging in anti-union tactics and the nature of union busting tactics in different sectors and workplaces is important. Data could also track if instances of employee victimisation are pursued as complaints under existing legislation.

# 7

# CONCLUSION

While the Directive has the potential to deliver a significant increase in collective bargaining coverage, its benefit to workers is dependent on its transposition, and unions experience in the past is that EU laws have been introduced in Ireland in a conservative fashion (Reidy, 2023). There has already been concern about the statements of officials from the Department of Enterprise, Trade and Employment to the Seanad Select Committee on EU scrutiny that no legislative change is required to transpose the Directive (O'Riordáin, 2024). This is reminiscent of the approach taken to the 2005 EU Directive on Information and Consultation, the transposition of which ensured that its impact on the ground remained extremely limited (Geary and Roche, 2005; Dundon et al., 2006). A stronger approach to the transposition of the AMW Directive, this time aligning with the spirit of the directive, could support more robust voice and employee involvement arrangements, and bring Ireland into line with international guidelines such as the Universal Declaration on Human Rights, the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union.

# APPENDIX

Table 1

**Barriers to organising, bargaining and representation (Percentage and Response Count)**

| Barriers | Never | | Occasionally | | Regularly | | Total |
|---|---|---|---|---|---|---|---|
| Employer prevented organisers/officials from entering the workplace | 19 % | 32 | 48 % | 80 | 33 % | 56 | 168 |
| Employer refused to facilitate digital access for the union to contact employees | 33 % | 51 | 37 % | 57 | 30 % | 47 | 155 |
| Employer restricted opportunities for employees to interact with union representatives in public spaces e.g. car parks, transport | 38 % | 60 | 44 % | 70 | 18 % | 28 | 158 |
| Employer distributed anti-union literature | 50 % | 81 | 44 % | 72 | 6 % | 10 | 163 |
| Employer monitoring of employee communications | 24 % | 36 | 52 % | 79 | 25 % | 38 | 153 |
| Victimisation of union members/activists | 8 % | 14 | 62 % | 104 | 30 % | 51 | 169 |
| Line managers briefing workers against the union | 12 % | 20 | 53 % | 88 | 35 % | 58 | 166 |
| Management consultants used for union avoidance purposes | 18 % | 28 | 53 % | 83 | 29 % | 46 | 157 |
| Employer established alternatives to a union e.g. employee representation committee | 23 % | 37 | 54 % | 88 | 24 % | 39 | 164 |
| Employer improved pay & conditions to reduce demand for union | 18 % | 28 | 48 % | 74 | 34 % | 52 | 154 |
| Employer resolved grievances to reduce demand for the union | 18 % | 29 | 54 % | 86 | 28 % | 45 | 160 |
| Employer threatened closure or relocation | 38 % | 58 | 47 % | 72 | 16 % | 24 | 154 |
| Employer delayed/stonewalled responding to union | 5 % | 8 | 29 % | 47 | 66 % | 109 | 164 |
| Other, please state (e.g. worker apathy or fear of reprisals etc.) | 6 % | 5 | 33 % | 27 | 61 % | 51 | 83 |

Table 2

**Facilitators to Organising, bargaining and representation**

| Facilitators | Never | | Occasionally | | Regularly | | Not applicable | | Total |
|---|---|---|---|---|---|---|---|---|---|
| Employer provided union with employee list & contact details | 58 % | 100 | 27 % | 47 | 11 % | 18 | 4 % | 6 | 171 |
| Employer allowed organisers physical access to workplace | 4 % | 6 | 37 % | 64 | 56 % | 96 | 3 % | 5 | 171 |
| Employer facilitated digital access to employees | 29 % | 50 | 38 % | 64 | 27 % | 46 | 6 % | 10 | 170 |
| Employer permitted union presence at induction | 21 % | 36 | 54 % | 92 | 22 % | 37 | 4 % | 6 | 171 |
| Employer offered facilities for union meetings | 5 % | 9 | 54 % | 92 | 40 % | 69 | 1 % | 1 | 171 |
| Closed shop arrangement in place | 31 % | 53 | 41 % | 69 | 14 % | 23 | 15 % | 25 | 170 |
| Employer encouraged employees to join | 36 % | 61 | 53 % | 89 | 10 % | 17 | 1 % | 2 | 169 |

Table 3
**Level of change in securing union recognition since working for the union**

| Level of change | Percentage | Count |
|---|---|---|
| No change | 33 % | 45 |
| Recognition is more difficult to secure | 31 % | 42 |
| Recognition is much more difficult to secure | 29 % | 40 |
| Recognition is easier to secure | 5 % | 7 |
| Recognition is much easier to secure | 1 % | 2 |
| **Total** | **100 %** | **136** |

Table 4
**Attainment of Union Recognition in campaigns under taken**

| Outcome | Less than 5 | | 6 to 10 | | 10 to 20 | | Greater than 20 | | Total |
|---|---|---|---|---|---|---|---|---|---|
| No union recognition | 76.79 % | 86 | 12.50 % | 14 | 6.25 % | 7 | 4.46 % | 5 | 112 |
| Procedural agreements but not collective bargaining or recognition | 80.53 % | 91 | 15.93 % | 18 | 1.77 % | 2 | 1.77 % | 2 | 113 |
| Union recognition without legislative/third party involvement | 82.30 % | 93 | 9.73 % | 11 | 3.54 % | 4 | 4.42 % | 5 | 113 |
| Union recognition following legislative/third party involvement | 80.00 % | 88 | 13.64 % | 15 | 4.55 % | 5 | 1.82 % | 2 | 110 |

Table 5
**Effective ness of different approaches to attaining union recognition**

| Approach | Ineffective | | Somewhat effective | | Very effective | | Not applicable | | Total |
|---|---|---|---|---|---|---|---|---|---|
| Organising activity | 3 % | 4 | 31 % | 41 | 66 % | 89 | 0 % | 0 | 134 |
| Industrial Action (up to but not including strike) | 6 % | 8 | 39 % | 53 | 47 % | 64 | 7 % | 10 | 135 |
| Strike Action | 8 % | 10 | 37 % | 49 | 46 % | 61 | 10 % | 13 | 133 |
| IR Act 1969 | 37 % | 50 | 40 % | 53 | 14 % | 19 | 9 % | 12 | 134 |
| IR Acts 2001-2015 | 39 % | 51 | 38 % | 50 | 15 % | 20 | 8 % | 11 | 132 |

Table 6
**Impact on of employer action on union officials**

| Impact | Percentage | Count |
|---|---|---|
| Curtailed my organising activity | 21 % | 37 |
| Negatively impacted my health and wellbeing | 16 % | 28 |
| No impact on my organising activity | 42 % | 74 |
| No impact on my health and wellbeing | 21 % | 37 |
| **Total** | **100 %** | **176** |

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# UNION ACCESS TO WORKERS

## Barriers faced by representatives in Ireland within a comparative European context

The findings show that union recognition has become increasingly difficult, especially in the private sector. Current legislative routes are seen by union officials as inferior to organizing activity and industrial action for achieving union recognition. Employer hostility and anti-union sentiment are significant problems. Common anti-union tactics include stonewalling/delaying responses, victimization of union members, and line managers briefing against unions. The most common anti-union action experienced by officials was spreading rumours about them. Female officials faced three out of five hostile employer actions more often than male officials.

Stronger legislative routes like a statutory path to union recognition and penalties for employers who victimize union representatives were the common preferences across union roles for supporting their work. These were particularly notable among officials in collective bargaining roles. Conversely, measures to support organizing and mobilization were favoured by officials in organizing roles, highlighting that organizing is seen as an effective route to union recognition. Preferred measures to support union access included the right to enter workplaces to meet workers and better facilities for union representatives.

Recommendations include two key policy measures. First, addressing union recognition and collective bargaining through a union default pilot or statutory rights with significant penalties for non-compliance. Second, tackling victimization of union representatives by presenting denial of union rights not only as a labour law issue but also as a health and safety issue. This includes strengthening the Code of Practice on the Right to Request Flexible and Remote Working to address ›sweet tactics‹ and advocating for stronger legislation on victimization based on union membership or prohibiting mistreatment of union officials. Internal union practices recommended include information sharing and enhanced training.

Further information on the topic can be found here:
**ireland.fes.de**

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