NEW EMPLOYMENT TIMES AND THE CHANGING DYNAMICS OF CONFLICT RESOLUTION AT WORK: THE CASE OF IRELAND

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I. INTRODUCTION

Conflict at work is commonplace. The sources of employment grievances are many and vary in complexity as well as intensity. Some arise from inter-management rivalries while others involve conflicts between employees. But most of all, workplace conflict arises from employee-management interactions. Employees sometimes allege inappropriate (if not illegal) behavior by managers—discrimination, bullying, violation of health and safety rules, and so on. For its part, management sometimes takes disciplinary action to address alleged bad behavior by employees—poor time keeping, drinking at work, etc. Thus, conflict is part and parcel of everyday working life. As a result, an important function of an employment relations system, both at national and company level, is to establish arrangements and procedures, which enjoy the confidence of both employees and management, to deal with workplace grievances expeditiously and fairly.[1]

Traditionally, the dispute resolution arrangements in Ireland have been heavily imbued with the voluntarist principles of the wider employment relations system. The assumption was that the bulk of disputes would be collective in orientation and those that were individual in character could be solved by collective procedures. This paper argues that a range of developments, economic, social, and institutional have resulted both in a weakening of voluntarist employment relations and an increasing reliance on legislation in

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1. Peter Feuille, *Why Does Grievance Mediation Resolve Grievances?*, 8 NEG. J. 131–45 (1992).

employment relations. This shift to legalism is impacting on the nature of employment disputes and is obliging public dispute resolution bodies to rethink established dispute resolution approaches. Public agencies dedicated to employment conflict resolution may need to change what they do.

The organization of the paper is as follows. The second section outlines the main employment dispute resolution agencies in Ireland. The third session suggests that adversarial employment relations are on the wane due to a range of factors. Section four goes on to argue that voluntarism too is on the decline. Then an assessment is made of the prospects of a revival of voluntarism through tougher trade union recognition legislation. After this assessment, the growth in labor market regulations is examined and it is suggested that this is leading to rights-based employment relations. The fifth section outlines the impact of non-union firms on conflict resolution. The penultimate section suggests that the combination of factors identified in the paper is leading Ireland toward a new governance system of employment dispute resolution. The key properties of this system are also set out. The conclusion brings together the arguments of the paper.

II. THE IRISH DISPUTE RESOLUTION REGIME

The Irish employment dispute resolution system is made up of a variety of agencies.[2] Perhaps the oldest dispute resolution body is the Labour Court. It was set up in 1946 and provides a range of services for the resolution of employment disputes: sometimes it hears appeals arising from decisions made by other employment dispute resolution agencies; in other cases it has an appellate and enforcement role in which it ensures that organizations are complying with the body of employment legislation over which it has jurisdiction. Another body is the Employment Appeals Tribunal that was initially set up to adjudicate on redundancy disputes, but its cope has been considerably extended as a result of legislation. It is a semi-judicial body designed to provide an informal and speedy procedure for individuals to vindicate their employment rights.

The Labour Relations Commission (LRC) was established by 1990 to provide a range of services to promote effective resolution of workplace disputes as well as stable, high quality employment

2. *See* PAUL TEAGUE, TOWARDS FLEXIBLE WORKPLACE GOVERNANCE: EMPLOYMENT RIGHTS, DISPUTE RESOLUTION AND SOCIAL PARTNERSHIP IN THE IRISH REPUBLIC (2005) for a fuller assessment of the dispute resolution system in Ireland.

relations.[3] It offers a free and informal conciliation service to help employers and employees resolve disputes. It also has a range of advisory and development services designed to encourage organizations to follow best practice employment relations activities. Another agency is the Rights Commissioners Service that was established in 1969. Rights Commissioners help solve employment disputes and grievances raised either by individuals or small groups of employees: these disputes can relate either to industrial relations problems or statutory employment rights. Thirteen pieces of employment legislation give Rights Commissioners an active role in the settlement in disputes.

The Equality Tribunal (Tribunal) was set up in 1999 and is a quasi-judicial body that can either mediate or investigate and then rule on cases of alleged discrimination. The Tribunal has competence to act in nine prohibited grounds of discrimination. The Tribunal was established because the government considered that a specialized agency was required to ensure proper compliance with the increasingly complex body of equality legislation. The Equality Authority sits alongside the Equality Tribunal and has the remit to promote all facets of employment equality. It undertakes a variety of activities to assess the extent to which employment practices and labor market dynamics impede equality at work.

The Labour Inspectorate is part of the Department of Enterprise, Trade and Employment rather than a stand alone agency. It is responsible for the enforcement of employment legislation. The unit carries out its responsibilities in two ways. One is through responding to complaints from the public concerning alleged infringements of employment rights. The other is carrying out spot inspection to ensure that firms, particularly those in vulnerable sectors, are complying with employment regulations. Finally, there is the Health and Safety Authority that is responsible for overseeing the implementation of legislation in this area, carrying out investigations when accidents at work occur and a variety of activities designed to promote safe working environments.

This institutional system more or less conforms to the public employment dispute resolution systems found in other Anglo-Saxon countries. Typically, these systems are marked with a degree of fragmentation, with responsibilities dispersed across a number of

3. Joe Wallace & Michelle O'Sullivan, *The Industrial Relations Act 1990: A Critical Review*, *in* IRISH EMPLOYMENT RELATIONS IN THE NEW ECONOMY 169 (Daryl D'Art & Tom Turner eds., 2002).

agencies. There is institutional support to help trade unions and employers resolve their differences and methods of adjudication are in place to rule in cases of alleged breaches of collective agreements. There is provision to hear cases on alleged infringements of employment rights: almost everywhere these quasi-bodies were set up to provide an accessible, speedy, and informal means of resolving employment disputes. Employment standard-setting and enforcement is usually organized on the basis of responding to a complaint and then penalties are given to those deemed to be in violation of the law. These arrangements were designed to fit hand-in-glove with the voluntarist system of industrial relations. The suggestion of this paper is that this complementarity has broken down due to institutional and labor market change

II. THE DECLINE OF ADVERSARIAL INDUSTRIAL RELATIONS ACTION

Probably the best starting point to chart the dimensions of change is the demise of adversarial employment relations action. Not so long ago it was pretty safe to suggest that a mainstay of Irish employment relations was adversarialism.[4] Adversarial employment relations is the situation where a strong "them and us" mentality pervades the relationship between trade unions and employers. Each side sees itself as having divergent, if not competing, interests. Collective bargaining is used to obtain a compromise or accommodation between the divergent positions normally adopted by trade unions and management.[5]

However, adversarial industrial relation action has been on the wane. To begin with, the operation of the latest of social partnership in the Republic since 1987, which is predicated on a consensual approach to employment relations, sits uneasily with adversarial attitudes whether displayed by management or employees.[6] Social partnership promotes cooperative interactions between managers and employees so that shared understandings and joint action can be fostered on business and workplace matters. "Mutuality" and not "adversarialism" is the by-word of social partnership. It would be

4. PATRICK GUNNIGLE, NOREEN HERATY & MICHAEL MORLEY, HUMAN RESOURCE MANAGEMENT IN IRELAND (2002).

5. SUMNER SLICTER, JAMES J. HEALY & E. ROBERT LIVERNASH, THE IMPACT OF COLLECTIVE BARGAINING ON MANAGEMENT (1960).

6. RORY O'DONNELL & PAUL TEAGUE, PARTNERSHIP AT WORK IN IRELAND; AN EVALUATION OF PROGRESS UNDER PARTNERSHIP 2000 (2001).

naïve to suggest that adversarialism has disappeared completely from the employment relations landscape. D'Art and Turner show that "them and us" attitudes are still widespread.[7] Nevertheless, even if this is the case the important point is that it has not lead to much adversarial industrial relations action. Social partnership seems to have created an institutional system that has effectively contained adversarial employment relations action.

Certainly the figures support this assessment. There has been a considerable decline in collective industrial relations disputes. At the start of the eighties, about 440,000 working days were lost due to strikes and other forms of industrial action. By 2005 this figure had dropped to approximately 26,670 workings days lost. This decline has not been continuous and smooth as there has been some volatility in the employment relations scene. Thus, for example, in the nineties Ireland experienced about three years of falling industrial action followed by a sudden increase in industrial unrest that then quickly dropped away after a year. The surges in unrest are mainly due to a select number of public sector disputes involving a relatively high number of workers. Overall, however, the trend has been downward and Ireland has now a high level of employment relations stability. In 2005 only eleven collective industrial disputes were recorded, the lowest number since the formation of the State, involving fifteen organizations and 3,298 workers. To some extent, Ireland is simply reflecting an international trend. Almost all advanced economies have experienced a decline in industrial action over the past decade or so. At the same time, the figures pay a major compliment to the system of social partnership that has existed in the country since 1987. It also shows that while the ideology of adversarialism may have not gone away it is not being translated into industrial militancy.

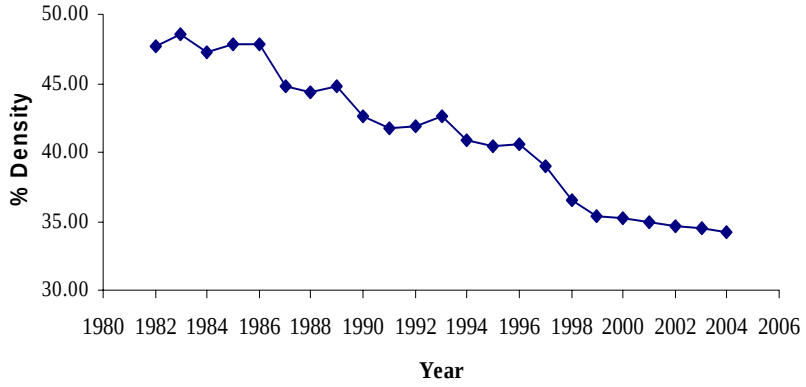
In addition, to helping bring about employment relations stability the institutions associated with social partnership have developed an important conflict prevention role.[8] In particular, the body first known as the High-Level Group, and now the National Implementation Group, which consists of the Secretary General to the Cabinet, the head of the main employers' organization, the Irish

7. Daryl D'Art & Thomas Turner, *An Attitudinal Revolution in Irish industrial relations: The End of Them and Us'?*, *in* IRISH EMPLOYMENT RELATIONS IN THE NEW ECONOMY 127 (Daryl D'Art & Thomas Turner eds., 2002). *See also* Daryl D'Art & Thomas Turner, *The Decline of Worker Solidarity and the End of Collectivism?*, 23 ECON. & INDUS. DEMOCRACY, 7–34 (2002).

8. Paul Teague & James Donaghey, *The Irish Experiment in Social Partnership*, *in* THE NEW STRUCTURE OF LABOR RELATIONS (Harry C. Katz, Wonduck Lee & Joohee Lee eds., 2004).

Business Employers Federation (IBEC), and the general secretary of the trade union confederation, the Irish Congress of Trade Unions (ICTU), has forged a troubleshooting role on employment relations conflicts. Thus, for example, in a recent dispute between pilots and management at the country's main airliner, Aer Lingus, the National Implementation Group intervened to encourage the two parties to use the conciliation services of the LRC to reach a settlement. In another episode, the group took the initiative and authored an agreement between IBEC and ICTU on trade union recognition. The effect of these actions is to establish an informal dimension to the formal national conflict resolution machinery that can respond quickly and decisively to potentially difficult employment relations situations.[9] It has operated effectively to intervene when industrial relations disputes threatened to get out of control. In effect, it now acts as a policeman against adversarialism in the employment relations systems.

Figure 1
Union Density, 1982–2004



Source: CSO Ireland

9. PAUL TEAGUE, TOWARDS FLEXIBLE WORKPLACE GOVERNANCE: EMPLOYMENT RIGHTS, DISPUTE RESOLUTION AND SOCIAL PARTNERSHIP IN THE IRISH REPUBLIC (2005).

IV. THE DECLINE OF VOLUNTARISM

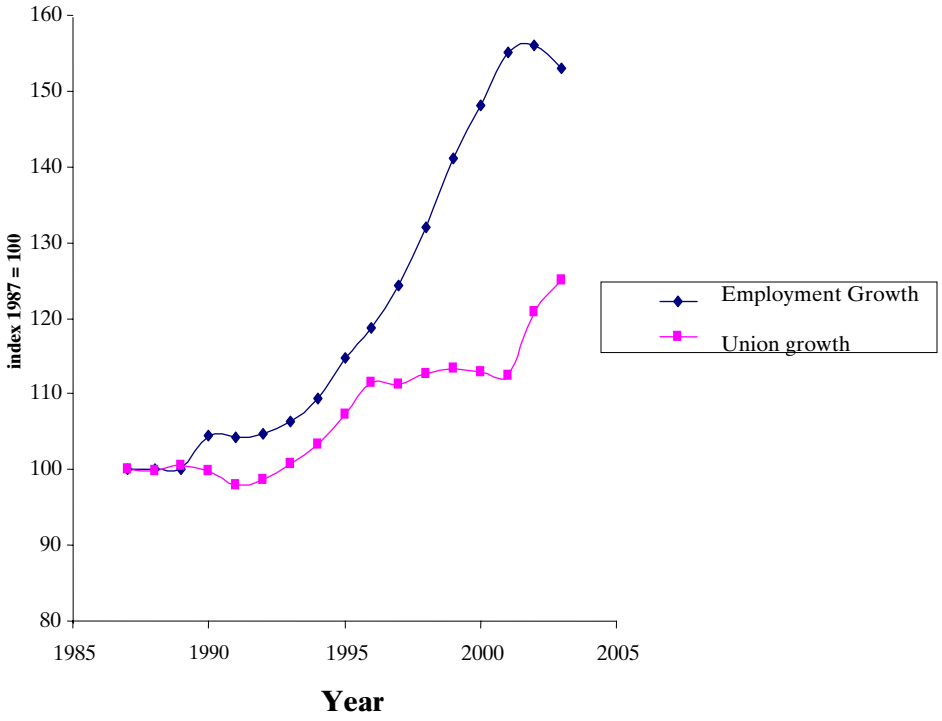
Another mainstay of Irish industrial relations has been voluntarism and like adversarial industrial relation action it too has lost some of its previous saliency. A voluntary system of industrial relations is premised on freedom of contract and freedom of association, and in terms of the British/Irish tradition, is based on free collective bargaining on the one hand and relative legal abstention in industrial relations on the other. At the same time, the voluntary tradition never meant a total rejection of public intervention or labor law, but merely a preference for joint trade union and employer regulation of employment relations. Over the years, strong trade unions were an indispensable feature of voluntarism as it meant that employers faced a genuine countervailing power in the system of free collective bargaining.

During the social partnership period, however, the trade union movement has experienced mixed fortunes.[10] On the one hand, as shown in Figure 2, the absolute numbers of those belonging to a trade union have increased over the past few decades. Yet when we turn to trade union density levels—the share of the labor force in trade unions—the trend is less comforting for organized labor. Since the mid-1980s, Irish trade union density levels, as demonstrated in Figure 1, have been declining, from a high of nearly 48% in 1983 to just over 35% in 2004. If the period of social partnership is specifically examined, trade union density has fallen from 43.8% to 35%. Trade union density in the private sector is down to 20%.[11]

10. Teague & Donaghey, *supra* note 8.

11. William K. Roche & Jacqueline Ashmore, *Irish Unions: Testing the Limits of Social Partnership*, *in* CHANGING PROSPECTS FOR TRADE UNIONISM: COMPARISONS BETWEEN SIX COUNTRIES 137 (Peter Fairbrother & Gerard Griffin eds., 2002).

Figure 2
Union and Employment Growth Compared, 1987–2003



Source: CSO Ireland

This trend has been mainly fuelled by the emergence of non-union forms of employment relations. The increasing number of multinational enterprises moving into the country, which have been reluctant in recent times to cede recognition to trade unions, is an important factor behind this trend.[12] The growth of small enterprises, those enterprises with fifty or fewer employees that have traditionally been a poor recruiting ground for organized labor, have also played a role. One view is to suggest that trade unions are "on the road to perdition,"[13] but it is far too early to argue this point in the Irish case.

12. Patrick Gunnigle, Michelle O'Sullivan & M. Kinsella, *Organised Labour in the New Economy: Trade Unions and Public Policy in the Republic of Ireland*, *in* IRISH EMPLOYMENT RELATIONS IN THE NEW ECONOMY 222 (Daryl D'Art & Thomas Turner eds., 2002).

13. David Metcalf, *British Unions: Resurgence or Perdition? An Economic Approach*, *in* TRADE UNIONS: RESURGENCE OR DEMISE? 10 (Sue Fernie & David Metcalf eds., 2006).

Ireland is some distance away from "employment relations without trade unions." Yet falling trade unions density rates have important implications for conflict in the workplace. In particular, it raises the question whether organized labor can operate as effectively as in the past as the guarantors of economic citizenship.[14]

In the heyday of collective bargaining, trade unions mainly having high density rates were an indispensable instrument of a collective form of economic citizenship. This model of economic citizenship worked from a collective contract toward the status of individuals; on the basis of a collective bargain between employers and workers that balances interests at the aggregate level, rights and responsibilities were ascribed to individual organizations and workers. This happened in a way to exclude serious conflict at the micro-level. Thus, trade unions were an important institution for establishing and upholding employee rights and responsibilities at the workplace. This system of collective economic citizenship, one of the most positive by-products of voluntarism, is now under pressure.

Emerging trends in employment disputes support the argument that the voluntarist system is losing functionality. On the one hand, as outlined earlier, there has been a huge drop in the number of collective industrial relations disputes—strikes for example. On the other hand, the number of cases handled by the public dispute resolution agencies is almost 35% higher than it was a decade ago. An important distinction to make is between conflicts of interest and conflicts of rights. Conflicts of interests are normally associated with employment relations disputes between employers and employees over aspects of pay and working conditions such as changes to reward systems or proposed changes to the working environment. Conflicts of rights are more concerned with alleged violations of legally enforceable employment rights. The Labour Court estimates that about 78% of referrals to all employment adjudication bodies relate to issues of rights rather than issues of interests.[15]

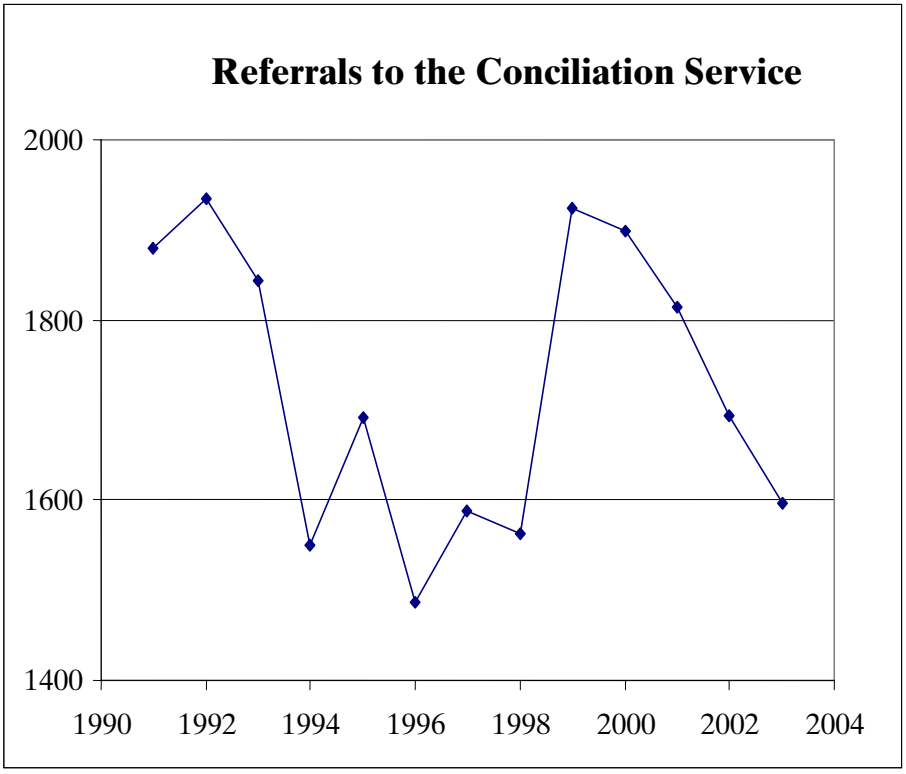
In other words, the bulk of employment disputes relate to employment law rather than to employment relations matters: the trend appears to be that employees are seeking vindication of alleged breaches of individual employment rights by using the state dispute resolution machinery rather than collective bargaining arrangements.

14. Joe Wallace, Unions in 21st century Ireland—Entering the ice age?, presented at the Industrial News Conference, "No Vision no Future?" (Feb. 27, 2003).

15. Kevin Duffy, Chairman of the Labour Court, The Labour Court and the "Explosion" in Labour Legislation, Presentation to the Industrial Relations News Conference, Shaping the Future (Feb. 24, 2007) (on file with author).

Paradoxically, this emerging trend shows that the voluntarist system of employment relations was effective, it tended to successfully resolve employment disputes, whether of a collective or individual character—inside the organization without recourse to the employment dispute resolution agencies. However, the system appears less able to do this now. At the same time, this argument should not be pushed too far. For example, another indicator of the weakening of voluntarism is the decline in the number of cases handled by the Conciliation Services Division of the LRC, which is mainly responsible for brokering settlements to collective industrial relations disputes. Figure 3 maps this trend and it shows that the number of referrals to the Conciliation Service have declined from over 1,900 in 1999 to approximately 1,600 in 2004. But the figure of 1,600 indicates that there is still a relatively high demand remaining for Conciliation services. Voluntarism is down but not out.

Figure 3



Source: Labour Relations Commission Annual Reports

Of course, this assessment begs the question of whether voluntarism can be returned to full vitality. The big ongoing debate in the country about trade union recognition speaks to this concern. One argument is that trade union decline is due to the absence of effective trade union recognition laws.[16] Thus, on this view, voluntarist industrial relations are more likely to bloom again if labor law makes it easier for trade unions to recruit new members. This argument merits full assessment. Traditionally, the Labour Court dealt with union recognition cases by issuing a non-binding recommendation on how to resolve the dispute. Over years, the Labor Court typically made recommendations that supported employee demands for union recognition. Gunnigle argues that a sizable number of employers did not comply with these

16. Daryl D'Art & Thomas Turner, *Union Recognition and Partnership at Work: A New Legitimacy for Irish Trade Unions?*, 36 INDUS. REL. J. 121, 121–39 (2005).

recommendations because they faced no effective legal or public sanctions for adopting this approach.[17] The main reason why no effective sanction could be introduced was that employers have the constitutional right of free association and thus not to recognize a trade union may infringe this right. As a result, the enforcement regime for trade union recognition cases was considered weak and ineffectual.

This matter produced heated exchanges in the negotiations preceding the signing of several national social partnership agreements. In 2000, the High Level Group on Trade Union Recognition, which was set up to devise a solution to the problem, proposed a new procedure to address employer and trade union concerns about union recognition in a two part report. The first part recommended that the LRC establish a Code of Conduct on Voluntary Dispute Resolution (Resolution). The LRC supported this recommendation and introduced such a code in October 2000. The Code created a new procedure for resolving union recognition disputes. It starts when a union makes a claim on the company that relates not to recognition, but to an employment relations matter, for example, improved pay and conditions. If the company refuses to recognize the claim and collective bargaining does not occur, the claim can be referred to the LRC. The LRC first brings together the disputing parties in an effort to reach a voluntary settlement. If no resolution occurs the LRC can make its own proposals. If these fail to produce a settlement, the parties are asked to enter a mutually agreed "cooling-off period," which normally lasts for about six months. During the cooling-off period, the LRC may engage expert assistance, including the involvement of the Irish Congress of Trade Unions (ICTU) and the Irish Business and Employers Federation (IBEC), to help solve the dispute. If the cooling-off period ends without the dispute being resolved, the LRC disengages from the process.

The second part of the High-Level Group's Report set out the procedures to be followed in this deadlock situation. It is also the procedure invoked when an employer or union refuses to use the voluntary dispute resolution code. These procedures formed the basis of the Industrial Relations (Amendment) Act of 2001. When the parties refuse to participate in the LRC's voluntary code, the Act allows the case to be heard by the Labour Court. Normally, the Labour Court hearing results in a nonbinding recommendation on the

17. Patrick Gunnigle, *Paradox in Policy and Practice: Public Policy and Trade Unions in the Republic of Ireland*, 21 IRISH BUS. & ADMIN. RES. 39, 39–54 (2000).

substantive matters of the dispute: recommendations of the Labour Court cannot mandate collective bargaining between a union and employer. If this recommendation does not lead to a settlement, either party can ask the Labour Court for a determination that more or less repeats the contents of the recommendation, but opens up two other possible resolution procedures. Under the first option, the union waits twelve months for the determination to be implemented. If this does not happen, the party can go to the Circuit Court to have the determination legally enforced. Under the alternative option, known as the fast-track procedure, either party to the dispute can seek a review of the determination after three months. Provided that the circumstances of the case have not radically changed, the review simply reaffirms the initial determination. If the decision of the review is not followed within six weeks, the case can be brought before the Circuit Court for a legally binding "enforcement order."

Some unions were unhappy with the 2001 Act, as it did not introduce any new regulation on trade union recognition disputes and also because the procedures created were much too cumbersome. The focus was more or less on procedural matters, with the Act introducing a "right to bargain" rather than a proper recognition procedure. This dissatisfaction caused the matter to figure once again in the negotiations leading to the 2003 social partnership agreement, *Sustaining Progress*. The procedures established by the 2001 Industrial Relations Act were revised by the agreement. Under the new deal, the government was committed to providing the LRC and the Labour Court with the necessary resources to ensure that union recognition dispute cases are settled within a maximum time frame of thirty-four weeks instead of a two year period that was the norm under the 2001 Act. Under the new arrangements the voluntary stage at which the LRC seeks to obtain a voluntary agreement lasts only six weeks. If no agreement is reached, the case goes automatically to the Labour Court that is obliged to issue a recommendation within a three week period. A trade union then has four weeks to seek a binding determination that can ultimately be legally enforceable. Another part of the new package was a new victimization code that clarified the meaning of the term. The new code is designed to help the LRC and the Labour Court when addressing cases involving allegations of victimization against individuals involved in union organizing activity. These changes were made law in the 2004 Industrial Relations Act.

The revised procedures still fall short of a statutory regime on union recognition. This has lead to calls for Ireland to introduce a similar law on union recognition as was introduced by the New

Labour Government in the United Kingdom in 1998. Realistically, the current government, or possibly a government of any political hue, is unlikely to cede to this request. Politicians are reluctant to introduce tougher regulation on this matter as it may tarnish the country's reputation as a welcome home for inward investment. It is a vivid example of how economic openness causes a country's politicians to voluntarily constrain their actions.[18] Thus, although unions remain unhappy with the present arrangements, any tougher interventions that go beyond the compromise set out in the 2003 social partnership agreement are unlikely.

With recognition rules likely to remain unchanged for the foreseeable future, unions are not going to find trade union organizing any easier. But one of the unintended consequences of the 2001 and 2004 Industrial Relations Act was the creation of a "shadow" form of collective bargaining in non-union firms. It must be remembered that the procedure set up by the 2001 and 2004 Industrial Relations Acts did not directly relate to trade union recognition, but enabled a trade union to raise an employment relations grievance such as a claim for improved pay and conditions at the Labour Court on behalf of employees in a non-union organization. The Labour Court when considering these claims uses LRC Codes of Conduct on particular employment relations issues, the going pay rate for particular jobs and industries, and the terms and conditions of national social agreements as benchmarks. Thus, if a company is considered to be paying employees below the occupational or industry norms the Labour Court is likely to rule that it should raise the pay level by the required amount.

The thinking behind this procedure is that if unions have the ability to pursue indirectly an industrial relations issue on behalf of non-unionized employees then employers might be persuaded to recognize a trade union and establish a conventional collective bargaining relationship.[19] In the period between 2002–2005, fifty-two cases were brought under this arrangement, but activity on the matter has gathered pace since the 2004 Act streamlined the procedure. Major unions, particularly the Services, Industrial, Professional and

18. Patrick Gunnigle, David G. Collings & Michael J. Morley, *Accommodating Global Capitalism? State Policy and Industrial Relations in American MNCs in Ireland*, *in* MULTINATIONALS AND THE CONSTRUCTION OF TRANSNATIONAL PRACTICES: CONVERGENCE AND DIVERSITY IN THE GLOBAL ECONOMY 113 (Anthony Ferner, Javier Quintanilla & Carlos Sánchez-Runde eds., 2006).

19. Daryl D'Art & Thomas Turner, *Union Recognition in Ireland: One Step Forward or Two Steps Back?*, 34 INDUS. REL. J. 226, 226–40 (2003).

Technical Union (SIPTU), have stepped up its activities on the matter. Most of the cases have involved small, non-unionized firms that employ less than fifty people. In the majority of cases, the Labour Court has backed the union case and the involved firms have been obliged to increase pay levels to identified going wage rates for the industry and occupation, and in some cases the percentage increase has been significant. In other cases relating to pay, the Labour Court has instructed organizations to comply with the terms of existing national social agreements. Only a few cases have involved large firms and multinationals. In some of these cases, the Court has sided with the employer against the union claim: the prevailing pay and working conditions were not deemed to be out of line with the unionized sector. There have been a few cases involving large firms in which the Labour Court has sided with the union and not the employers where the large firms have been reluctant to abide by the initial ruling. In three cases, *Quinn Cement v. SIPTU, Goode Cement v. SIPTU/AGEMOU*, and *Ashford Castle v. SIPTU*, the Labour Court has been obliged to issue legally binding determinations in an effort to get the companies to comply with the initial recommendations. However, even after the Labour Court issued these determinations the three companies have declared that under no circumstances will they cede trade union recognition.

However, the biggest *cause celebre* of the procedure has been the Ryanair Dispute. Ever since 1998 there has been a trade union recognition dispute between the airline and its pilots. A number of high level initiatives were made to resolve the dispute without much success. At the end of 2005, at a preliminary hearing, the Labour Court ruled that a trade dispute existed between Ryanair and Impact, which opened the door for the Labour Court to use the provisions of the 2001 and 2004 Industrial Relations Acts. Almost immediately, the airline referred the matter to the High Court. But it ruled that the Labour Court had the jurisdiction to address the case. The company reacted to this decision by referring the matter to the Supreme Court. The decision of the Court in this case will not only have far reaching implications for the company, but also for how trade union claims are processed under the 2001 and 2004 Industrial Relations Acts.[20]

Thus, the experience so far suggests that the "right to bargain" procedures have had an impact on the pay and working conditions of some small firms and at the same time generated considerable

20. T. Dobbin, *The Impact of the 2001–2004 Industrial Relations Acts*, INDUSTRIAL RELATIONS NEWS, Dec. 8, 2005, at 7.

controversy involving a select number of large firms. Interviews with employer organizations suggest that none of the organizations that have been brought to the Labour Court have actually conceded union recognition: they remain non-union companies. One suggestion is that the procedures have lead to a shadow form of collective bargaining whereby the Labour Court effectively transposes pay and conditions from the unionized sector to the non-union sector.[21] But the hopes of the unions that the 2001 and 2004 Industrial Relations Acts might give a boost to trade union recognition activities and in turn to voluntarism have not come to fruition. A new mechanism has inadvertently been created where unions can use the state machinery to help improve the lot of workers in non-union companies. It is an arrangement that creates a strategic dilemma for unions: do they bear the considerable costs of developing these cases when experience suggests that the return in terms of new members is very low? Another way of putting this quandary is whether unions will choose to essentially modify voluntarism and adopt a new form of action that involves them using the state machinery to champion the interests of non-union workers. However, whatever pathway the unions choose it is unlikely to lead to a revival of voluntarism.

V. THE SPREAD OF REGULATION AND EMPLOYMENT STANDARD SETTING

Another factor that challenges voluntarism in Ireland is the significant growth in employment legislation. During the past decade or so, as Table 1 shows, there have been fourteen separate pieces of labor legislation. Virtually no aspect of the employment relationship is now completely free from regulation. In these circumstances, it is more difficult to describe the Irish employment relations as voluntarist. A more accurate portrayal would be to say that a rights-based dimension is emerging to Irish employment relations. This growth in employment legislation is not primarily the result of a deliberate strategy pursued either by government or the social partners. Most of the recent employment legislation has its origins in the European Union (EU) social policy and it shows that European employment Directives are having an impact on industrial relations systems in the member states and that successive Irish governments have been very punctilious in diffusing European law.

21. C. Higgins, *2001–2004 IR Acts: Non-union Dispute Process Here to Stay?*, INDUSTRIAL RELATIONS NEWS, Feb. 15, 2005.

Table 1
Labor Laws Adopted Since 1990

Industrial Relations Act, 1990—Updates and amends previous industrial relations legislation.

Payment of Wages Act, 1991—Covers methods of payment, allowable deductions, and employee information in relation to wages by means of a payslip.

Unfair Dismissals Act, 1993—Updates and amends previous legislation dating from 1977.

Maternity Protection Act, 1994—Replaced previous legislation and covers matters such as maternity leave, the right to return to work after such leave, and health/safety during and immediately after the pregnancy.

Terms of Employment (Information) Act, 1994—Updated previous legislation relating to the provision by employers to employees of information on such matters as job description, rate of pay, and hours of work.

Adoptive Leave Act, 1995—Provides for leave from employment principally by the adoptive mother and for her right to return to work following such leave.

Protection of Young Persons (Employment) Act, 1996—Replaced previous legislation dating from 1977 and regulates the employment and working conditions of children and young persons.

Organisation of Working Time Act, 1997—Regulates a variety of employment conditions including maximum working hours, night work, and annual and public holiday leave.

Parental Leave Act, 1998—Provides for a period of unpaid leave for parents to care for their children and for a limited right to paid leave in circumstances of serious family illness.

Employment Equality Act, 1998—Prohibits discrimination in a range of employment-related areas. The prohibited grounds of discrimination are gender, marital status, family status, age, race, religious belief, disability, sexual orientation, and membership of the Traveller community. The Act also prohibits sexual and other harassment.

National Minimum Wage Act, 2000—Introduces an enforceable national minimum wage.

Carer's Leave Act, 2001—This provides for an entitlement for employees to avail of temporary unpaid carer's leave to enable them to care personally for persons who require full-time care and attention.

Protection of Employees (Part-Time Work) Act, 2001—This replaces the Worker Protection (Regular Part-Time Employees) Act of 1991. It provides for the removal of discrimination against part-time workers where such exists. It aims to improve the quality of part-time work, to facilitate the development of part-time work on a voluntary basis, and to contribute to the flexible organization of working time in a manner that takes account of the needs of employers and workers. It guarantees that part-time workers may not be treated less favorably than full-time workers.

Organisation of Working Time (Records) (Prescribed Form and Exemptions) Regulations, 2001—This obliges employers to keep a record of the number of hours worked by employees on a daily and weekly basis, to keep records of leave granted to employees in each week as annual leave or as public holidays, and details of the payments in respect of this leave. Employers must also keep weekly records of starting and finishing times of employees.

Industrial Relations Act 2001 and Industrial Relations Act (Miscellaneous Provisions) 2004—The 2001 Act establishes a series of procedures that trade unions can use to progress "a right to bargain" claim for employees in non-unionized companies. The 2004 revised and makes simpler these procedures.

Employees (Provision of Information and Consultation) Bill 2005—This provides for the establishment of a general framework setting out minimum requirements for the right to information and consultation of employees in undertakings with at least fifty employees. The Bill gives employers the option of concluding

> agreements, before a date to be prescribed following enactment of the Bill. It also places the onus on employees to trigger a request that an employer sets up an information and consultation procedure.

This increasing use of labor market legislation shows little sign of easing. The government will also be obliged in the near future to refashion existing EU-inspired employment regulation as part of the EU drive to update and modernize European labor market legislation. Thus, although the government is committed to delivering a leaner regulatory environment, it is difficult to see how this can be done in the employment area without seriously reducing the established body of employment rights.

The growth in the volume and complexity of employment law has accelerated the trend toward the legalization of employment conflict resolution. When many of the employment conflict resolution bodies were first established it was anticipated that these would be lawyer free zones, operating beyond the bounds of formal judicial proceedings.[22] But this early assumption is a far cry from current practice. Virtually all cases handled now by the conflict resolution agencies have an input from lawyers and barristers. The result is that proceedings to resolve disputes in these supposedly quasi-judicial bodies have become legally high-bound and overly adversarial. Moreover, the notion of "letting people have their day in court" has become a pervasive mentality within the conflict resolution system.

A further consequence of legalization has been to deepen the segmentation and specialization between public conflict resolution bodies. Thus, for example, in 1999 the government found it necessary to create the Equality Tribunal in response to the growing complexity of equality legislation. A result of institutional segmentation is that there are now seven different agencies associated with the vindication of employment rights. At the same time, there is a degree of overlap with regard to the issues that can be handled by each institution. With a variety of access points to the conflict resolution agencies the danger is that these arrangements will become less user-friendly as individuals become confused or uncertain about where to lodge a case. Moreover, the opportunities increase for "grievance-shopping," the situation where individuals go from institution to institution with a grievance in search of a favorable result. Further, the pursuit of

22. *See generally* JOSEPH WALLACE, PATRICK GUNNIGLE & GERARD MCMAHON, INDUSTRIAL RELATIONS IN IRELAND (2005) (especially chapter 4)

multiple claims in different bodies becomes more likely. Yet another problem in a multi-institutional environment is that members of each organization become excessively territorial in mentality, causing them to be more interested in defending their own patch than participating in forms of cross-institutional collaboration.

Perhaps the biggest spillover from the growth of employment regulations has been the growth of a non-compliance problem. Many of the new small firms that have emerged in recent times, which frequently have little competence in the management of the employment relationship, have found it difficult to keep abreast of the growth of employment regulations. As a result, many workplaces are not complying with some of the employment standards established by law. The problem is that more labor law leads to a mass of employment rules that are very difficult to enforce properly. In these circumstances, the key issue for the government is to regulate in a smarter way. The traditional top-down regulatory approach to obtain compliance may not be subtle enough in this new situation. This approach involves near-random inspections of various worksites to investigate the extent to which firms are adhering to substantive rules established by legislation. If violations are found then the organization is likely to face some form of sanction. Whether this approach is fully effective is open to question. First of all, even though there has been a growth of labor law, regulatory resources are severely limited, which means that only a tiny proportion of organizations can be properly inspected. In other words, the probability that an organization will receive a site visit is fairly low, which may encourage firms to be complacent about whether or not they are adhering to the law.

Another problem is that the combination of extensive employment rules and surprise visits may introduce an excessive adversarial ethos into the enforcement process. Too much adversarialism in this process may reduce the willingness of organizations to cooperate with initiatives designed to promote the voluntary compliance with regulations. The capacity of the enforcement agency to obtain a constructive dialogue with organizations to ascertain best practice methods to comply with regulations without impairing productivity and competitiveness may be diminished. Extensive regulation alongside adversarial enforcement may result in too much emphasis being placed on deterrence, which focuses regulatory effort on detecting violations, establishing guilt, and penalizing wrongdoers. However, too much reliance on deterrence runs the danger of triggering a culture of

regulatory resistance among organizations, which may produce a climate of confrontation between government and business on the theme of employment standard-setting.[23]

However, the counter situation of passive regulation—the situation in which employment laws are under-enforced—is equally unattractive as it could well result in the regulatory regime lacking credibility. Thus a regime of labor market regulation must navigate between the twin dangers of over regulation and under enforcement. There is increasing recognition by public institutions involved in either setting employment standards or promoting high grade conflict management strategies that these twin dangers need to be avoided. This has given rise to a new governance agenda for the employment relationship.[24] At the center of this new agenda is the notion of effective compliance rather than adversarial enforcement. Effective compliance has a number of dimensions. One is that more sophisticated enforcement strategies are required to target those firms and sectors that are at risk of violating labor standards and regulations. Another element is a system of responsive regulation, which involves using both carrot and stick measures to encourage compliance. Ayres and Braithwaite use the idea of an enforcement pyramid to capture the meaning of responsive regulation.[25] At the bottom of the pyramid are firms that comply with regulations voluntarily. In the middle of the pyramid are various support and assistance schemes to help firms comply with regulations. At the top of the pyramid are traditional deterrence oriented strategies that involve sanctions and penalties to obtain compliance.

The emphasis on compliance rather than enforcement changes the dynamics of the regulatory regime. More emphasis is placed on prevention rather than punishment, on obtaining the goals of employment legislation rather than penalizing regulatory violations. Less energy is channeled into developing legal cases and more is spent on developing sustainable compliance strategies inside organizations. Greater effort is made to build up relationships with firms and industries so that the emphasis is not on ensuring organizations refrain from doing prohibitive activities, but on constructing corporate strategies that will guarantee compliance with the law in the course of

23. EUGENE BARDACH & ROBERT A. KAGAN, GOING BY THE BOOK: THE PROBLEM OF REGULATORY UNREASONABLENESS (1982).

24. MALCOLM M. SPARROW, THE REGULATORY CRAFT: CONTROLLING RISKS, SOLVING PROBLEMS, AND MANAGING COMPLIANCE (2000).

25. IAN AYRES & JOHN BRAITHWAITE, RESPONSIVE REGULATION: TRANSCENDING THE DEREGULATION DEBATE (1995).

improving competitiveness. Thus the new governance agenda is about public agencies moving away from enforcing overly prescriptive regulations and rules in a bureaucratic, top-down manner to a more open-textured and consensus orientated approach that uses new techniques such as benchmarking and rolling standards of best practice to obtain compliance with employment legislation.[26]

The emergence of rights-based employment relations also impinge on the activities of the public agencies charged with preventing and resolving employment disputes and grievances. With the increase in employment legislation public dispute resolution bodies have to place greater emphasis on the prevention of employment disputes. One aspect of this work involves the promotion of best practice. Consider the matter of workplace diversity programs. Promoting diversity in the workplace has become a key matter in the management of the employment relationship as it is seen as a way of protecting the social, ethnic, or sexual identities of individuals as well as the perspectives and needs that arise from these core identities. Usually workplace diversity programs are designed to prevent discrimination and unfair treatment; value and utilize the diversity of employees; balance work and family responsibilities; and eliminate employment-related disadvantage on the basis of gender, race, religion, disability, sexuality, and age. Most programs involve initiating specific activities and actions on the theme of diversity, assigning managerial responsibility to this task, and putting in place monitoring and evaluation procedures to assess the effectiveness of the programs. A key task of the dispute resolution bodies is to identify best practice diversity programs and promote them across organizations, thereby reducing the incidence of employment grievances based on diversity. Thus the rise of legalism in the employment relations is causing a rethink on the part of the public dispute resolution community about how they do business.

VI. THE RISE OF THE NON-UNION SECTOR AND DISPUTE RESOLUTION

Side-by-side with these developments toward the decline of voluntarism and the rise of legalism in employment relations has been the growth of the non-union sector. A key aspect of human resource policies in the non-union sector is internalization, which involves a

26. Orly Lobel, *The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought*, 89 MINN. L. REV. 342, 342–470 (2004).

reluctance to engage with public conflict resolution bodies and a strong preference for in-house forms of conflict resolution.[27] There are two broad categories of non-union firms in Ireland. One is the large number of multinationals that are located in the country. The Irish foreign-owned sector employs about 130,000 people in about 1,050 companies. In addition, it is indirectly responsible for thousands of more jobs. Most foreign-owned companies are from the United States. In total there are 489 U.S. companies in Ireland that employ nearly 90,000 people. Multinationals make an immense contribution to Irish economic output. Foreign-owned companies are responsible for almost three-quarters of all exports in the high technology sector. These companies often use quite advanced people management and conflict management strategies.[28]

The other category of non-union firms is the growing number of small enterprises. Ireland has about 172,000 small firms that employ about 66% of the workforce and generate 60% of national turnover. About 16,000 new small firms are created every year. All in all, small firms are a crucial part of the economy. Most small firms are located in "price-sensitive" sectors such as retailing and distribution. As a result, many are obliged to pursue "cost-based" competitive strategies. Many small firms do not have "in-house" human resource management expertise and thus their ability to keep abreast of employment regulations is not as developed as large organizations, which invariably have well-honed human resource management departments.[29]

The non-union sector generates two quite different challenges for conflict resolution. One is whether the strong presence of non-union multinationals will create a transmission mechanism for the diffusion of alternative dispute resolution (ADR) procedures to resolve employment disputes. For the most part, the origins of these ADR procedures lie in American human resource management.[30] This innovation emerged in the late eighties as an employer response to the massive increase in litigating cases relating to employment disputes.

27. Sue Fernie & David Metcalf, *The Organisational Ombuds: Implications for Voice, Conflict Resolution and Fairness at Work*, 13 ADVANCES IN INDUS. & LAB. REL. 97, 97–138 (2004).

28. Patrick Gunnigle, David G. Collings & Michael Morley, *Exploring the Dynamics of Industrial Relations in US Multinationals: Evidence from the Republic of Ireland*, 36 INDUS. REL. J. 241, 241–256 (2005).

29. EUROPEAN INDUSTRIAL RELATIONS OBSERVATORY (EIRO), INDUSTRIAL RELATIONS IN SMES, EIRO Update 3 (European Found. for the Improvement of Living & Working Conditions 1999).

30. JOHN T. DUNLOP & ARNOLD M. ZACK, MEDIATION AND ARBITRATION OF EMPLOYMENT DISPUTES (1997).

To counteract this trend, employers began writing contracts that required a prospective employee to sign, as a condition of recruitment, a commitment to arbitrate alleged breaches of statutory employment rights, particularly in the area of unfair dismissals.[31] In some cases, these contracts involved employees giving up their right to use the courts to settle workplace grievances. Some uncertainty existed about the legality of these employment contracts. But in 1991, the U.S. Supreme Court cleared up this uncertainty in its ruling in the controversial case, *Gilmer v. Interstate/Johnson Lane Corp*. In this ruling the U.S. Supreme Court approved the use of binding arbitration by non-union employers to resolve conflicts over employment discrimination claims. The wider impact of the ruling was that it gave employers the green light to develop employment contracts that contained binding arbitration clauses as an alternative to litigation.[32] Contracts of this kind make it difficult, if not impossible, for workers to use the courts to enforce statutory employment rights. For the past decade, U.S. companies have been busy building new "private" systems of conflict resolution that are purposely designed to disconnect in-house procedures from external arrangements that exist to enforce statutory employment rights. Table 2 sets out the main ADR arrangements that have been put in place by employers.

31. Arnold M. Zack, *Agreements to Arbitrate and the Waiver of Rights under Employment Law*, *in* EMPLOYMENT DISPUTE RESOLUTION AND WORKER RIGHTS IN THE CHANGING WORKPLACE (Adrienne E. Eaton & Jeffrey H. Keefe eds., 1999).

32. Katherine V. W. Stone, *Employment Arbitration under the Federal Arbitration Act*, *in* EMPLOYMENT DISPUTE RESOLUTION AND WORKER RIGHTS IN THE CHANGING WORKPLACE (Adrienne E. Eaton & Jeffrey H. Keefe eds., 1999).

Table 2
Alternative Conflict Resolution Mechanisms

Type of ADR mechanism	***Key elements of ADR mechanism***
Ombudsman	A designated "neutral" third party inside an organization assigned the role of assisting the resolution of a grievance or conflict situation. The activities of an ombudsman include fact-finding, providing counseling, and conciliation between disputing parties. High-grade persuasion skills are the key asset of a good ombudsman.
Mediation	A process under the stewardship of a third party designed to help those involved in a dispute reach a mutually acceptable settlement. The third party has no direct authority in the process and is limited to proposing or suggesting options that may open a pathway to a mutually agreeable resolution.
Peer Review	A panel composed of appropriate employees or employees and managers that listens to the competing arguments in a dispute, reflects upon the available evidence, and proposes a resolution. Whether or not the decision of the panel is binding varies across organizations.
Management Review Boards	Sometimes called "conflict resolution boards," these panels are solely composed of managers and have more or less the same remit as peer reviews. Again the decision of the panel may or may not be final.
Arbitration	A neutral third party is empowered to adjudicate in a dispute and set out a resolution to the conflict. This may or may not be binding depending upon the prevailing labor legislation and the design of the arbitration process.

So far no reliable data has been collected on the extent to which non-union multinationals are using alternative dispute management techniques.[33] There are a number of well published cases involving leading companies such as Intel that appear to operate quite elaborate conflict resolution procedures. However, the extent to which these companies are representative of the broader population of multinational companies is an open question. Despite the absence of evidence there is considerable discussion about the appropriateness of ADR procedures for Irish industrial relations. A major theme in these discussions is that employer-promulgated conflict management

33. Thomas Turner, Daryl D'Art & Patrick Gunnigle, *Multinationals and Human Resource Practices in Ireland: A Rejection of the "New Conformance Thesis": a reply*, 12 INT'L J. OF HUM. RES. MGMT. 128, 128–133 (2001).

arrangements run the risk of compromising distributive and procedural justice at work. Consider the matter of procedural justice. The three key components to this concept are neutrality, trust, and reputation.[34] Employer-driven conflict resolution systems may not win the confidence of employees if they are seen to be designed to benefit the employer.[35] Thus it is likely that a straight diffusion of "American" style ADR procedures into Ireland would face considerable opposition.

The other challenge that arises from the growth of non-union companies is to ensure that small firms have the capabilities to resolve workplace conflict in a fair and efficient manner. Most of these firms have no formal human resource management department and as a result may not have the knowledge to ensure that they fully comply with employment regulations nor the expertise to ensure that grievances are handled in an appropriate manner.[36] Many of the public resolution agencies as well as employer bodies organize seminars and workshops to develop small firm capabilities in these areas. Questions exist about whether these initiatives alone are sufficient to improve the handling of employment disputes by small firms. Public agencies charged with promoting effective conflict resolution may have to think of new ways to address this problem. The problem, however, is that evidence from elsewhere suggests that such innovative action has not been particularly effective.[37] This is potentially a difficult matter as the size of the small firm sector is likely to increase in forthcoming years. The prospect is that a large part of the economy may exist where the mechanisms used to promote conflict resolution are not optimal.

The growth of the non-union sector creates a number of challenges for the public dispute resolution system, but probably the biggest one is of connectivity. In the past, when voluntarism was in its heyday, the public dispute resolution machinery had few problems in developing a close rapport with unionized organizations: a dense network of industrial relations experts existed, consisting of trade union officials, personnel managers, and public officials. These

34. Zack, *supra* note 31.

35. David Lewin, *Dispute Resolution in the Nonunion Firm: A Theoretical and Empirical Analysis*, 31 J. CONFLICT RESOL. 465, 465–502 (1987).

36. Juliet MacMahon, *Employee Relations in Small Manufacturing Firms*, *in* INDUSTRIAL RELATIONS AND THE NEW ORDER: CASE STUDIES IN CONFLICT AND COOPERATION 147 (Thomas Turner & Michael Morley eds., 1995).

37. SARAH PODRO & RACHEL SUFF, MAKING MORE OF ALTERNATIVE DISPUTE RESOLUTION, ACAS POLICY DISCUSSION PAPERS 1 (2005), *available at* http://www.acas.org.uk/media/pdf/t/9/AcasPolicyPaper1_1.pdf.

people communicated with one another on an on-going basis and through these discussions general labor market norms were established delineating the boundaries to acceptable and non-acceptable employment relations activity action. The network also ensured that the public employment dispute resolution system was connected with ground-level industrial relations activity. However, the rise of non-union firms is threatening to loosen this connection. On the one hand, large multinationals with their well developed internal human resource management capabilities consider that they have little to learn from the public agencies charged with dispute resolution. On the other hand, many small firms seem not to be interested in learning from dispute resolution agencies. Thus, the public dispute resolution agencies are finding it difficult to connect with a significant part of the economy. This situation could potentially result in the public dispute resolution agencies losing legitimacy and the ability to establish labor norms relating to the dispute resolution process.

VII. TOWARD A NEW GOVERNANCE CONFLICT RESOLUTION SYSTEM

The arguments presented in the preceding sections suggest that changes to the Irish industrial system are promoting a new governance conflict resolution agenda for the country. This new agenda is about adopting conflict resolution arrangements to a situation where voluntarism is weakening and a rights-based employment relations activity is becoming more pronounced. The three key values of a new governance system of conflict resolution are neutrality, trust, and reputation. The underlying assumption is that, to be effective, conflict resolution systems must win the confidence of both employers and employees: they must not be deemed to be imbalanced one way or the other. Table 3 outlines the key aspects of a new governance system of conflict resolution.

Table 3
New Governance and Dispute Resolution: The Key Properties

- Multiple channels for the resolution of conflicts both inside and outside the organization in recognition that not all grievances can be solved the same way and that some will require third party public intervention.
- Arrangements that promote the resolution of conflicts close to the point of origin. At the same time, these organizational schemes should not be designed in a manner that dilutes prevailing employment rights or makes it difficult for employees to access public bodies that handle complaints about infringements to employment rights.
- Methods of regulation that are not guided by a "command-and-control" mentality but by a cascading effect that involves the use of "soft" methods of regulation before the "hard" edge of legal penalties is brought into the equation.
- Blurred boundaries between conflict resolution and conflict prevention activities in recognition of the close interdependencies and complementarities between initiatives in each field: a conflict resolution system is more likely to function better when arrangements are in place that are successful in promoting cooperative management-employee interactions.
- Troubleshooting arrangements that can be quickly brought into play to fend off a potential employment conflict or break an impasse that exists in a dispute. Such trouble-shooting arrangements should be a feature of both public and private organizational conflict resolution systems
- Acceptance by all employment relations actors that the non-union sector is a permanent feature of employment relations systems and that the unionized sector may learn from the conflict resolution practices followed by "advanced" non-union companies.
- Procedures that seek to improve conflict resolution in some non-union firms.
- Mechanisms that are designed to promote mutual gains or integrative bargaining that emphasize the merits of joint action and collaborative problem-solving by managers and employees.

This table shows that this system has several important properties. First of all, it recognizes the importance of legal interventions to provide those in work with a plinth of statutory employment rights. At the same time, it encourages the invention of new, more decentralized arrangements for the implementation of these rights and a move away from command-and-control methods to ensure compliance with these regulations. Second, it seeks to reconcile in-house arrangements for the settlement of conflict with a public conflict resolution machinery. No effort is sought to substitute one for the other. Third, it encourages the blurring of the boundary between conflict resolution and conflict avoidance activity. As stated at the start of this article, work conflict is almost unavoidable, but it can be managed either poorly or well. Effective management of workplace conflict involves not only having the procedures in place to address disputes once they arise but also a wider range of human resource management policies—employee voice mechanisms, fair payment systems, etc. that minimize the incidence of employment grievances. Finally, it encourages a range of instruments used to solve workplace grievances. All in all, the new agenda seeks to reform conflict resolution institutions in a manner that makes these relevant to all facets of modern complex labor markets.[38]

Elements of the new governance agenda can be found in the work of the Irish public dispute resolution agencies. For example, the Equality Tribunal encourages participants in disputes to use its mediation service reach settlements on their own. The LRC also recently added a new mediation service to its repertoire of activities and is keen to develop new preventive dispute resolution activities. A recent government-led review (Review) of the Employment Rights Bodies has introduced much needed reform.[39] For example, because of the variety of dispute resolution agencies, an individual who has a grievance may not know which body to contact. The Review has resolved this problem by designing the system so that there is one referral point for grievances. This will be a welcomed administrative change. Another positive development is that the latest national social partnership agreement has tripled the number of labor inspectors to make enforcement efforts more effective.

38. NEGOTIATIONS AND CHANGE FROM THE WORKPLACE TO SOCIETY (Thomas A. Kochan & David B. Lipsky eds., 2003).

39. DEP'T OF ENTER., TRADE & EMPLOYMENT, KILLEEN ANNOUNCES RE-VAMP OF DISPUTE RESOLUTION SERVICES AND MODERNISATION OF LEGISLATION (2005), *available at* http://www.entemp.ie/press/2005/20050524.htm (discussing a program of action).

All these developments suggest that parts of the new governance agenda for conflict management are being developed within the country. However, other changes have to be made to embrace more fully the new governance agenda. For example, the public employment dispute resolution agencies are too fragmented. No body has the responsibility to monitor the effectiveness of the agencies. There is not even any formal arrangement for the agencies to discuss different experiences and developments. Institutional fragmentation encourages turf wars about which agencies have responsibility for particular dispute resolution functions. It is a situation that contrasts sharply with the more unified systems of labor market agencies found in continental European countries such as France and Spain. These unified bodies promote coherent approaches to workplace governance.

Another aspect of the present system that is out of kilter with the new governance approach is the enforcement regime for employment regulation. This regime is still too much focused on seeking out deviant employers and then issuing them a penalty. Employers and trade unions seem to be content with this approach. For their part, employers are not vexed about organizations that are not complying with legal labor standards being issued with a penalty. For a start, employers are normally uncomfortable with business strategies that involve violating the law to steal a march on rivals. However, they are also relaxed about penalty-based regulatory systems because it effectively means that a public agency that is taking a case against an organization in breach of a labor standard is unlikely to interfere in its internal affairs: the organization takes its punishment and no pertinent questions are usually asked about what type of corporate strategies will be used to ensure full compliance with the law in the future. Trade unions too seem happy with the traditional penalty-based approach mainly because it is a visible and clear-cut form of punishment for the violation of labor standards. Again the situation in continental Europe is much different. Here, as Piore points out, officials in employment rights bodies act not to enforce the law but to promote labor market order.[40] Thus, their primary task is not to issue penalties, but actually to work with companies so that they are in a position to comply with employment regulations in the long-term: it is

40. Michael J. Piore, Looking for Flexible Workplace Regulation in Latin America and the United States, Paper presented at the Labour Standards Application: A Compared Perspective Conference, Buenos Aries, Argentina (Nov. 28–30, 2005), *available at* http://econ-www.mit.edu/faculty/download_pdf.php?id=1296.

more about developing compliance strategies than catching the violator.

Another change that needs to happen is to reduce the divide between conflict resolution and conflict prevention activities. Again there is an unholy alliance between employers and unions on the matter. Employers do not want public agencies engaging with organizations on how to improve their human resource management systems so that employment disputes can be kept to a minimum: such actions are considered to be interfering too much in the internal affairs of the enterprise. Trade unions are also lukewarm about agencies taking this approach as it may reduce their role as the representative voice of employees. But it is an approach that is being challenged elsewhere. For example, in Canada blurring the boundaries between conflict resolution and prevention is at the center of the massive overhaul taking place in the employment dispute resolution agencies. The goal is to obtain more integrated links between dispute resolution and the wider human resource management policies of the organization.

VIII. CONCLUSIONS

On the surface, it appears that we are experiencing a golden age of employment relations stability as the big collective industrial relations disputes that were such a problem for the country in the 1970s and early 1980s have now more or less subsided. However, if we look at the large increase in cases being referred to the public dispute resolution bodies, most of which relate to the vindication of employment rights, it becomes immediately apparent that workplace conflict and its resolution is still very much a live issue. This paper argues that big changes in the dynamics of the industrial relations systems lie behind these paradoxical developments. Voluntarism, the key organizing principle for employment relations for so long, is now under pressure. The decline of trade unions is perhaps the biggest factor causing the weakening of voluntarist principles and practices. Although voluntarism is not down and out, it is difficult to see how it can be re–installed to its previous dominance.

Alongside the weakening of voluntarism, the role of legislation has substantially increased in the governance of the employment relationship. The significant growth in the volume and complexity of labor law alongside the declining density of trade unions has given rise to rights-based employment relations activity with five consequences. First, labor law establishes much of the employment relations

framework and is an increasingly important driver in the system. Second, an increasing amount of employment relations activity is in some way regulated by the law. Third, a greater range of employment relations activity is being solved by or with reference to labor law. Fourth, the legal profession has become increasingly involved in the processing and settling of employment relations grievances. Fifth, a process has been created that involves people interacting with employment relations issues as legal subjects and not as members of a collective institution such as a trade union.

These changes in the institutional dynamics are happening against the drop out of rapidly changing labor markets that are not only creating new forms of employment disputes, but an ever increasing number of non-union firms. New institutions alongside new labor markets are creating new employment relations dynamics. Consider the case of large non-union organizations. Most of these organizations have responded to the growing legalization of the employment relationship not by trying to circumvent it but by building internal structures and processes that ensure that the meaning and legitimacy of the law is constructed by organizations themselves. The strategy is to keep the law and public agencies at a distance from the internal dynamics of organizations. The aim is to refashion the content of the law and present it as the result of business-led action. For example, in the wake of the EU Parental Leave Directive, the personnel profession developed the case for family-friendly policies at the workplace. Of course, small non-union firms tend to pose different problems that relate to compliance.

These developments are directly impinging on the activities of the public employment dispute resolution agencies. Many of these institutions are recognizing that we are living in new employment times that require new approaches to employment standard-setting, dispute resolution, and prevention. Attempts are being made to launch new pro-active initiatives to make it less likely that disputes will rise. These developments are to be welcomed, but the whole suggests that more needs to be done. Greater coordination has to occur among the dispute resolution agencies so that discussion and debate occurs on their various experiences. New closer methods of working with firms are required so that they can establish clear ground rules on what constitutes acceptable and unacceptable practice in relation to particular employment rules. Working closer with firms will allow them to identify and get a better insight into high performance dispute resolution policies. These revisions are not beyond the capabilities of the dispute resolution bodies. It is

incumbent upon them to make a concerted effort to upgrade their activities for, in today's labor market, their activities are more central to workplace justice than ever before.