PAT RABBITTE — Workers' Party TD for Dublin South-West and Party spokesperson on Industry and Labour. Well known as a national official with the ITGWU where he worked for 15 years prior to his election. Former President of USI.

EAMON GILMORE — Workers' Party TD for Dun Laoghaire. Party spokesperson on the Environment, his knowledge of industrial relations is based on his eleven years as a Branch Secretary in the ITGWU.

On their election to Dáil Éireann both of the authors were unprecedentedly refused leave of absence to serve as TDs.

They were then summarily dismissed by the leadership of the ITGWU; now SIPTU.

Cartoons by kind permission of Martyn Turner.

BERTIE'S BILL

by Pat Rabbitte TD and Eamon Gilmore TD

Published by The Workers' Party

£1

FOREWORD

The Industrial Relations Act, 1990 is the most comprehensive revision of trade union law and industrial relations law generally since the 1906 Trade Disputes Act. Effectively, the Trade Disputes Act, 1906 is repealed in its entirety although most of its provisions are re-enacted but altered and modified in a manner that subtly imposes new restrictions on trade unions and trade unionists.

Trade disputes law has already been described as one of the most complex, convoluted and closely regulated areas of law. There can, of course, be no interpretation of the new law except by the Courts in due course. Also, as Trade Union TDs we have sought to avoid the pitfalls involved in seeking to offer prescriptions on how to cope with the new law in conflict situations.

Rather, this pamphlet is designed to alert trade union activists to the more important changes introduced by the Industrial Relations Act, 1990. In particular there are major changes in the law of picketing and, for the first time, ballots are mandatory not only for strikes but for *any form* of industrial action. There are new and more restrictive definitions, especially of key terms such as 'employer' and 'trade dispute' and, for the first time, 'industrial action' short of strikes is brought within the scope of legislative control. In addition there is an erosion to the point of negation of the right to strike in support of 'one individual worker'. Indeed the effect of the new restrictions are such that the much bruited-about relief to trade unions in respect of ex-parte injunctions will be significantly diminished in practice.

A former Minister for Labour has remarked that "trade disputes law reform is seen by both sides as a zero-sum game; if they win, we lose". As experienced trade union officials we are not claiming that most employers in this country will have resort to the new powers accorded them in the Act. However, the fact remains that the law has been changed decisively in favour of employers and in crunch situations they will have resort to it. We contested the Bill at all stages in the Dáil and not all amendments accepted by the Minister are cosmetic. However, on the critical issues in this zero-sum game the Minister and the employers have won.

Pat Rabbitte

PAT RABBITTE T.D.

Eamon Gilmore

EAMON GILMORE T.D.

This pamphlet is a general guide to the more critical provisions of the Industrial Relations Act, 1990. Workers affected by the Act's provisions should take appropriate advice.

INTRODUCTION

Going on strike is a very serious business. It is serious for the worker who undertakes it and for his or her family. Indeed, they probably suffer most.

It is also sometimes inconvenient and annoying for the public who may rely on services or products provided by the workers involved. In some cases, it also may affect the economy of either the local area, or indeed beyond.

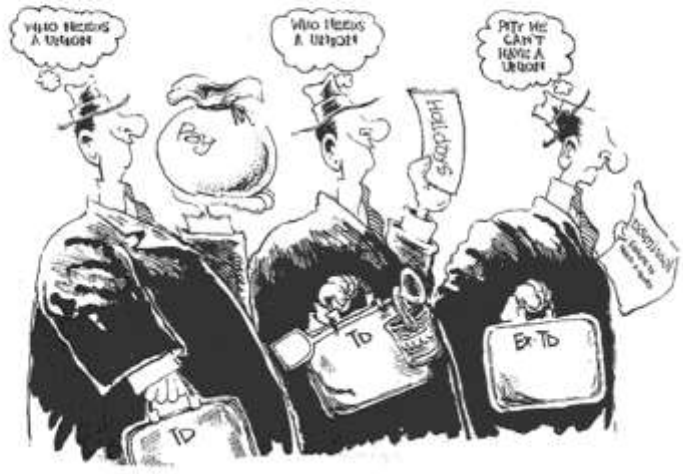
Sometimes, of course, it only affects the ego of the employer or his authoritarian obsession with having his own way or increasing his profit at any cost.

But, in principle, there is enough potential for damage to justify clear regulation of how strikes should be organised in the interests of both the worker and the public.

The Industrial Relations Act, 1990 is about much more than this.

It is a decisive intervention on the side of the employer in the delicately balanced dynamic that is the industrial relations process. It reflects an element of ignorance about how relations are conducted at the level of the workplace. This is intended to remove much of the bargaining power which workers have in an already uneven relationship with employers. But, it will end up damaging the industrial relations process itself.

In this respect, it is not just unnecessary law, it is bad law.



JUST AN ORDINARY WORKDAY SOMEWHERE IN IRELAND

Maybe you have a problem — the management wants to change your conditions; turning the screw that little bit more. It's been like that recently.

So, you talk to a few people in the canteen. They agree; it's too much; time he was taught a lesson, right? So, what do you do; there's a meeting of the union section due on Thursday; you ask the section secretary to put it on the agenda — it is on it anyway.

You propose it; plenty of seconders, everyone agrees. A ban on overtime from Monday week. No problem, right. Someone says, but what about the other union — they're only 10% of the staff — Ignore them.

Wrong — soon; what you have just done will be illegal. No, we are not talking about some faraway Latin American dictatorship —we are talking about right here in Ireland. If you take industrial action in a way which breaches Bertie's Bill, you could be in trouble.

Here's why:
The Minister for Labour (Mr Fixit) has fixed it for the employers alright.

The State has now defined what a strike is; even worse, what industrial action is, and has laid down exactly how you can undertake it.

Like the man said; it's not illegal; just impossible.

Your union will be forced to have a rule that says that it can't organise, participate in, sanction or support a *strike or other industrial action* without a secret ballot.

Bang goes your overtime ban.

But there's more. Even if you had passed around the box at the meeting on Thursday, you could still be clobbered. What about those who didn't attend the meeting? The Act requires that every person who might be affected by the action must be given 'equal entitlement' to vote. This could mean the ballot at the meeting could be void.

So you have a bright idea. At your next union conference you will oppose the introduction of these rules into your union rule book, right?

Wrong again. Well; go ahead if you want to put your union out of business.

The legal protection which unions have had since 1906 when taking industrial action, picketing, etc. is now conditional on having the secret ballot provision in your rule book. What is more, the Executive Committee of the union has power to amend the rules whatever you or your conference might think.

And, it will have little choice. By the time the Act comes into full effect; the law requires your union to send a copy of its amended rule book to the Registrar of Friendly Societies (watchdog at the entrance to all union rulebooks!). If they haven't done it, they just sit back and wait, right?

Wrong yet again; this time in a big way. What happens then is that your union loses its negotiating licence!

So you pass the new rules. Maybe you can just ignore them pass; another resolution at next year's conference telling the full-time officials to ignore them.

Nice try, but wrong again. If they find out that it is either your "policy or practice" to disregard the requirements of the secret ballot on every mickey-mouse industrial action, your negotiating licence is on the slippery slope again. The Minister has power to revoke it. Game, set and match.

Legal; but impossible. Final score: employers get a walkover; workers not able to field a team!

Two Tales of One City

THE SECRET BALLOT

- *I hear the government is making it illegal to go on strike, Joe.*
- *No, not illegal; just impossible!*
- *What? Ah well, we can still put the squeeze on... bit of an overtime ban, work-to-rule, maybe.*
- *Maybe not! By the time you've had your secret ballot and given notice to the office, he'll have had enough time to set up again in Venezuela!*
- *Secret ballot! Notice! But, what's the point in having a right to take industrial action?*

  That's the point... there'll be no point.

Meanwhile; on a nearby golf course:

THE SECRET BULLET

- *I really don't know what all the fuss is about secret ballots.*
- *Me neither, Cecil – I've always thought of it as the only way. Your shot.*
- *Damn, another bunker! Anyway secrecy is your only chap. Which reminds me; what about the Wexford plant?*
- *Close it, is my view; that's what they say in Detroit anyway.*
- *I agree; so that makes it unanimous! See what I mean about the secret ballot!*
- *Yes – oh good shot, Cecil – and; when will we tell the unions?*
- *Well, not just yet – after all, it is a secret!*

SECRET BALLOTS

Irish trade unions have no difficulty about the principle of secret ballots. They have used secret ballots extensively in the running of their affairs. In fact trade unions conduct more secret ballots in their day to day operations than employers or the Government.

However, the initiative for the statutory regulation of secret ballots before a strike *or other industrial action* has come from employers and must be treated with suspicion. An examination of their arguments reveals, not surprisingly, that what they want most is not secret ballots as preconditions of strike action, but no strikes or other industrial action at all.

Section 14 of the new Act is not an affirmation of democracy in the workplace. It is a measure formulated over decades with clear objectives. Those are to delay industrial action of any type as long as possible, to extend the grounds on which injunctions can be obtained against trade unions, and ultimately to discourage ballots and therefore strikes and other industrial action.

If a trade union sanctions industrial or strike action and does not comply with the strike and detailed requirements of the section the employer can obtain an injunction to prevent the action continuing. In addition to this if a trade union disregards any requirements of the rules, for example, the obligation to disclose the members voting for and against a strike proposal, the Minister may revoke its negotiating licence.

Section 14 states that two years after the passing of the Act the rules of every trade union shall contain the following provisions:

S14.2.A:

> "the union shall not organise, participate in, sanction or support a strike or other industrial action without a secret ballot, entitlement to vote in which shall be accorded equally to all members whom it is reasonable at the time of the ballot for the union concerned to believe will be called upon to engage in the strike or other industrial action;"

While Irish trade unions support the principle of secret ballots, to make a secret ballot mandatory before *all forms of industrial action* as defined in the Act is an invitation to a rash of unofficial disputes. To expect workers to have a secret ballot for every nudge and shove they give their employer over every issue, however small, is to live in Disneyland.

This section will require trade union officials to wash their hands of the actions of their members where there has been action in breach of the Act. While unofficial action may undermine stable industrial relations, it is very often full-time trade union officials who hold the solution to such disputes; even if it involves ignoring the convention that they should not participate in discussions during an unofficial dispute.

The entire effect will be to bring the law into disrepute as being unenforceable.

If unions do conduct a secret ballot in favour of industrial action they will also have to give seven days' notice of the action if they are to avoid an injunction being taken against them.

This lack of reality in the provision is illustrated by the case where the health and safety of workers is immediately at risk. Most unions provide for the possibility of an immediate work stoppage.

Sanctions for the stoppage is requested from the union's national officials who normally have delegated powers to sanction a stoppage; and to waive the usual period of notice where circumstances require it. Under this Section there are no exceptions to enable workers to take immediate industrial action when their health or safety is at risk.

Section 14.2.(B):

> "the union shall take reasonable steps to ensure that every member entitled to vote in the ballot without interference from, or constraint imposed by the union or any of its members, officials or employees and, so far as is reasonably possible, that such members shall be given a fair opportunity of voting;"

What is meant by the reasonable possibility of a fair opportunity of voting is one which must have them cheering in the Bar Library.

This requirement, without a balancing restraint on employers to hold off changes, closures, etc. lacks even-handedness; is unfair and ignores the realities of the situation.

Interestingly, this provision is taken practically word for word from the anti-union legislation in the United Kingdom. As can be seen it applies not just to union officials but to any union member who might make an unguarded or ill-advised comment which could be construed by colleagues as "interference or constraint".

PICKETING

There is not much point in having a right to strike without the right to picket effectively. This Act greatly restricts that right to picket.

If you are in dispute with your employer you picket only the following places:

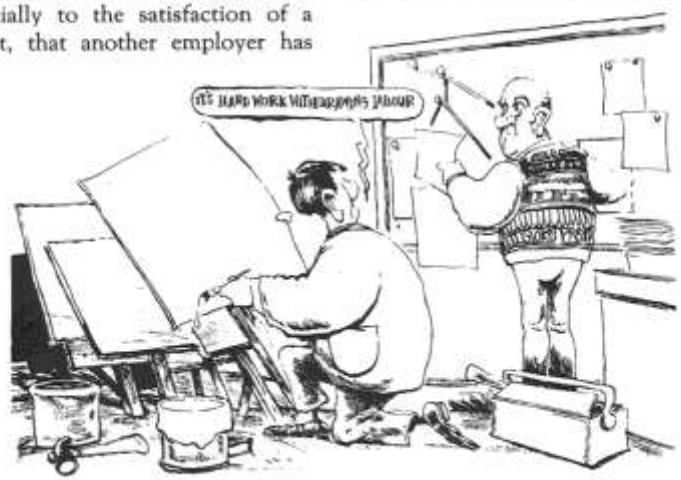
1. the place where your employer works or carries on his business, and **2.** the place where another employer who has directly assisted yours to frustrate the industrial action carries on his business. That is what is meant by a "secondary picket".

Even before this Act, Irish judges greatly restricted where you could carry on a secondary picket. This was not enough for some Irish employers who wanted even greater restrictions. They wanted **all** secondary picketing banned, and they have almost got their way.

Firstly, how can you establish, especially to the satisfaction of a Court, that another employer has "directly assisted" your employer to frustrate the strike?

More importantly, a company may facilitate the closure of your company, for example by agreeing to import and distribute a product previously manufactured by your company. You are redundant; the Act defines "employer" in such a way that this new company could not be considered to be yours (and with whom therefore you could not have a dispute). Could the importer/distributor be said to have "directly assisted" the frustration of the strike? The Minister in the Dáil made clear that he could not; don't put money on the Courts taking a more sympathetic view.

Take another example which shows how the Act ignores the complexities of the Irish labour market, and makes it easy for employers to obtain injunctions preventing secondary picketing.



Take the case of tens of thousands of women workers in the contract cleaning and contract catering business. One contract company may undercut another in order to get the contract. The workers from the first company are let go even though their jobs are not redundant. Under the previous law they could picket at their place of employment with a

Caught on a sticky picket!

— I hear there's a new law to stop teachers going on strike.

— Whad'ya mean, teachers. It's for everybody.

— Well, when I heard Bertie saying he was going to nail secondary picketing — I thought, that puts me in the clear; I only ever got the Primary Cert.

— You might be right; anyway it's a law degree you'd need now before putting up any sort of a picket. Remember "an injury to one is the concern of all". Not any more it isn't — now if you've got an injury, you can bleed to death.

— Yeah, I read that. You're taking your life in your hands putting up a picket now, even where you're picketing the person who's taken your job away.

— That's right. You know the way "somebody else" always owns the company you work for — well, if your gaffer gives you the push; and you try picketing that "somebody else" — your "secondary" education is going to begin — get it?

— Yeah, very funny. But at least you can picket your own employer.

— Well — you'd want to be careful — if you get sacked on your own for starting a union, you'll be dragged through every hoop in the circus before you can either strike or picket — even your primary picket! — Get it?

— Yeah, even funnier. Just a minute. There's nothing funny about this at all. The poor worker is bound hand and foot by this bloody law.

— That's right — no-one wants to see trouble on the picket-line — but this law makes it look like someone doesn't even want to see a picket-line.

— Yeah, it's more like a clothes line — we've been hung out to dry again!

view to getting their jobs back. Under the new law they cannot do so because they will not be able to establish that the new contractor had the purpose of frustrating the strike or other industrial action.

To deprive workers of the right to take secondary action is to deprive them of an element of their strength; "to make them enter the economic struggle with one hand tied". Irish judges have tended to be unduly restrictive of workers engaging in secondary picketing. This Government has made it impossible for them.

INSIDE BERTIE'S MIND

Mr B. Ahern:

"Let us take the example of the motor-bike couriers who developed the service when there was a protracted postal strike in 1979. Under the legislation, postal workers would not be able to put a secondary picket on those companies. Is Deputy Rabbitte saying they should be allowed to do so?"

Mr Rabbitte:

"Absolutely."

You're on your own!

— Hello. I'm from KNOCKDOWN PRICES LTD. Did the union tell the boss I organised the union here last week?

— Well, we wrote to him for a meeting and said you were the shop steward.

— Now I've got the sack on a trumped-up charge about lates. The crowd want a ballot for strike while the iron is hot.

— Sorry. Ye can't strike anymore in support of one individual worker without going through the procedures including the Employment Appeals Tribunal.

— How long will that take?

— About 4 months, maybe 6 months — ye can go on strike then if the members still want to vote for strike. That's the law.

— Sure I'll be forgotten by then... what are the chances of the Employment Appeals thing-am-ajig reinstating me?

— Very poor. The record shows that about 20%, or one in every five, are reinstated.

— You mean I'm a goner?

DISPUTES INVOLVING ONE INDIVIDUAL

The Federated Union of Employers (now the Federation of Irish Employers) has since 1981 wanted to restrict the right to strike in return for employment legislation which protects workers' rights. The employers' position has been that the law should be used to "formalise and standardise industrial relations procedures, and that disputes should either be channelled through compulsory machinery or be resolved through judicial or tribunal awards."

Secion 9 (2) of the Act gives employers what they wanted. It provides that no industrial action involving one worker can take place unless exhaustive procedures have been followed.

This section will inevitably cause confusion because nowhere in the Act is there a satisfactory definition of a dispute concerning one individual as opposed to a group of individuals. Indeed it has always been a cherished principle of trade unionism that "an injury to one is an injury to all".

Another consequence of this section will be to transform numerous voluntary collective agreements into legally enforceable agreements in so far as disputes involving "one individual" are concerned.

The value of an act such as the Unfair Dismissals Act was that it was an alternative to taking industrial action. Now, however blatantly unfair a dismissal may be, a union will have to wait until procedures are exhausted before taking any form of industrial action to save a job.

In practice it will take 4 to 6 months to "exhaust the procedures" which means that there is virtually no chance of members striking in support of their dismissed colleague after such a time lapse. Justice delayed is justice denied.

Employers will take full advantage of the new law where they want to get rid of a particular employee.

INJUNCTIONS

The provision in Section 17 of the Act restricting the right of employers to obtain injunctions in trade disputes was welcomed by some in the trade union movement.

However, this concession is more apparent than real. In order to prevent an employer taking injunctive proceedings trade unions must comply with the strict requirements on secret ballots for *every form* of industrial action. In addition, they must also serve the employer with seven days notice of industrial action, however minor that action may be.

Title: Bertie's Bill
Organisation: Workers' Party
Author: Pat Rabbitte, Eamon Gilmore
Date: 1990