The Fourteenth Countess Markievicz Memorial Lecture

Industrial Relations in the 1990s: Consensus and Participation

Bertie Ahern, T.D., Minister for Labour

6th November 1989

The Countess Markievicz Memorial Lecture Series

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The Countess Markievicz Memorial Lecture has been established by the Irish Association for Industrial Relations with the support of the Department of Labour.
Countess Markievicz was appointed Minister for Labour in the executive of the first Dail in 1919. The object of the Memorial Lecture is to provide an occasion for a substantive contribution to discussions in the Industural Relations area by a distinguished practitioner or academic.
The Fourteenth Lecture was given by Mr. Bertie Ahern, T.D., Minister for Labour, at the Royal College of Surgeons, Dublin, on 6th November, 1989.
Mr. Ahern was first elected to the Dail in 1977. He served as Assistant Whip from 1980/1981 and as Minister of State at the Departments of the Taoiseach and of Defence and Government Whip in 1982. He was Lord Mayor of Dublin in 1986/87. He has served as Minister for Labour since 10th March, 1987.

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Countess Markievicz

First of all, let me say how honoured 1 was to be asked to deliver this important lecture which has become a cornerstone of the industrial relations calendar. I would like to thank the Irish Association for Industrial Relations for that honour and 1 hope I can do justice to the occasion, walking, as I am, in the steps of such illustrious predecessors.

As the current Minister for Labour, in delivering this fourteenth lecture in the series, 1 would like to open this evening by reflecting briefly on the life of Constance Countess Markievicz, in whose memory this lecture series was established by the Association.

The details of her public life are familiar. Born in 1868, a Gore-Booth of Lissadell in Sligo; involved from almost the beginning in Na Fianna Eireann; second in command to Michael Mallin in an abortive attempt to defend St. Stephen's Green in the Easter Rising; held the Royal College of Surgeons for the week of the Rising; sentenced to death, her sentence was commuted to penal servitude for life because of her sex; Minister for Labour in both the first and second Dail; head of Cumann na mBan; she joined the Irregulars who occupied buildings in Dublin during the civil war and died in 1927.

These are the bare bones of a life. The pen-picture painted by F.S.L. Lyons in "Ireland since the Famine" adds some light and shade and I would like to quote extracts of it for you:

> "Tall. beautiful, dynamic, eccentric even by the relaxed standards of her class, she overflowed from domesticity into public affairs. Interested above all in women's rights — it was the suffrage question that first caught her interest she had a deep compassion for the poor who loved her for it to the end of her days ... she was not easy to work with voluble, seemingly arrogant ... and, as the years went on, becoming more and more bitter and intense" (op. cit. P. 285)

If anyone wishes to see the truth of this pen-picture, they need but look at Anna Nordgren's portrait of the Countess in the Department of Labour. The Countess looks down with wry detachment on the comings and goings in the entrance hall of the Department, where all can admire her striking presence.

Overview of Lecture

1 intend to speak this evening in some detail about my proposals

for the reform of industrial relations, trade dispute and trade union law. I will then conclude with a few words on how 1 see the future relationship of the Government and the social partners developing in the coming years. In my experience as a politician and Minister, it is impossible to separate industrial relations, understood as the interaction of management, trade unions and employees, from the broader environment. Politics at all levels, economics both national and international, social values and expectations, individual and national history, education and so on, all help to shape industrial relations.

I do not propose to try to produce any grand theory and, frankly, I am always a little suspicious of such theories. From the myriad of possible points of departure, 1 have selected just four factors which have shaped my reform proposals. I intend to offer brief reflections on these issues before considering the proposals in some detail. The headings under which I will discuss these four issues are:

- Pragmatic evolution;
- Consultation or consensus?
- Partnership; and
- … a time for war and a time for peace ...

Pragmatic Evolution

I believe that change in the legal framework for collective bargaining in this country is usually a pragmatic response to particular new circumstances. An integral feature of this pragmatism is a long-standing distrust on all sides of anything that smacks of a grand new plan.

The Trade Disputes Act, 1906, is a good example of pragmatic evolution in practice. It may not be the most up-to-date of examples but I think it is typical. In 1824, with the repeal of the combination laws, trade unions were no longer criminal so far as statute law was concerned. However, with the growth of trade unionism, a number of legal problems emerged which were dealt with by a Royal Commission in 1867-1869. The reports of the Commission gave rise to the Trade Union Act, 1871, which clarified, amongst other things, that trade unions were not criminal at common law. However, in the case of *R.-v-Bunn* in 1872, it was held that a peaceful strike might amount to a criminal conspiracy at common law. Again a Royal Commission was appointed and in 1875 the Conspiracy and Protection of Property Act was passed. This Act, amongst other things, provides immunity against the common law charge of criminal conspiracy for

those acting "in contemplation or furtherance of a trade dispute". A number of court judgements after 1875 developed a new liability for civil conspiracy which exposed workers to the possibility of being sued for being involved in a strike. Following the *Taff Vale* case in 1901, a Royal Commission was established in 1903 and the Trade Disputes Act was passed in 1906. Much later, in 1982, following successive rulings by the Irish Courts which restricted the immunities of the 1906 Act to people employed in trade or industry, an amendment of this Act was passed. This extended the definition to all persons employed, with the exception of the Garda Siochana and members of the Defence Forces.

This short history of trade dispute law illustrates pragmatic evolution in practice. It also shows the distrust of any grand new plan. One attempt at a comprehensive new approach to industrial relations was the report of the Commission of Inquiry on Industrial Relations, established in May, 1978, by the then Minister for Labour, Mr. Gene Fitzgerald. After three years of hard work, it produced a hefty report with 119 main conclusions and recommendations but, for a variety of reasons, the implementation of its recommendations as a whole was never seriously considered.

I feel that one of the reasons was the traditional distrust of a comprehensive strategy for change. There was, of course, also the fact that the ICTU had withdrawn from the Commission at an early date. This inevitably did not increase the likelihood of the Commission's findings being accepted.

This leads me on to my next topic which I have phrased as a question: Consultation or consensus?

Consultation or Consensus?

I would like to open my discussion of consensus by giving three quotes from a front page article in the "Irish Times" which touch on the main issues. The Minister for Labour,

> "implied that disagreement might occur in talks with unions and employers on his new Labour Court proposals and trade union law amendments, but added that the Government and the Dail must be the final arbiter of the best public interest. . ."

The Minister also said that he:

> "must now discuss with the interested parties the areas of disagreement in the hope that the changes to be made in the law

will have general support. Should it be found not possible to secure 100% agreement, it will be my job to advise the Government so that the Government can decide where the public interest lies, and direct preparation of the legislation for submission to the Dail accordingly . . . "

And finally, the Minister said (and I quote the same front page article):

"Emotions are sometimes aroused by what appear to the outsider to be minor matters. There is a noticeable reluctance to make changes, even where existing procedures are admitted to be defective"

There you have the main features of the debate. The points made by the Minister are eminently sensible. It is a general principle of administration that Government works because of the consensus of the governed. But this principle is brought to extreme levels in the field of industrial relations because of the voluntary tradition of collective bargaining, and because the law provides a framework for the parties to work out their own arrangements. And, of course, where consensus is not forthcoming the Government and the Oireachtas must be the final arbiters of the public good.

But what has happened in practice? The first point to note is that the Irish Times article I have quoted from appeared on *21st September, 1966.* It was reporting on the first major statement of policy for his newly-established Department by the then Minister for Labour and our current President, Dr. Patrick Hillery. The issue of industrial relations reform has indeed been an active one on the agenda of my Department since its establishment 23 years ago. While a number of pieces of legislation have been enacted in that time, these have been pieces about which there was relatively little controversy.

Progress on more fundamental reform and indeed any measure of agreement as to what such reform should consist of has proved elusive. So elusive that the Federation of Irish Employers were prompted to ask three former Ministers for Labour to contribute to their industrial relations conference in 1987 under the heading: "Industrial Relations in Ireland — is there a veto on change?" I would ask the further question: Why is it so difficult to gain consensus on change?

Emotions are sometimes aroused by what appear to the outsider to be minor matters. This is a point picked up and expanded by

Mr. Gene Fitzgerald who remarked at the FIE conference, just mentioned:

> "The experts and the practitioners who manage the system regard the field as nobody's concern but theirs, even on occasions when the issue has become a battlefield with widespread fallout"

Linked with this feeling of ownership of the industrial relations system is the reluctance to make changes, even where defects are acknowledged, mentioned in Dr. Hillery's statement all those years ago. At that Conference, Mr. Ruairi Quinn, one of my predecessors as Minister for Labour, had very strong words to say on this point:

> "Despite the objective agreement which could be obtained from individual members of trade unions and representatives of employers there was no collective will to introduce positive reforms into our industrial relations legislation by the social partners directly involved"

1 would not use those exact words to describe my own experience but I do recognise an element of truth in what Mr. Quinn had to say.

What then can be done to achieve change in industrial relations? 1 think the answer lies in making it very clear to the social partners that one is determined to actually apply the ideas in Dr. Hillery's 1966 statements. Reasonable efforts should be made to achieve consensus but, at the end of the day, the Government must decide in the public interest.

I would now like to shift the focus from the national level to the level of the workplace and the individual for my next topic which I have entitled: Partnership.

Partnership

In the seventh Markievicz lecture, Dr. Eric Batstone closed by telling the story of two children who were constantly fighting and who presented each other with a choice between fighting or reconciliation, but only from a position of dominance.

The relevance of the story is that, in the reform of workplace industrial relations, management and unions each want to get the better of the other and from a position of dominance tell the other

to adopt the perspective of partnership. As Dr. Batstone concluded, that is not a recipe for success.

So why have management and unions traditionally clung so tenaciously to an approach based on the conflict of interest when a more participative approach is saner and more productive? There are many possible reasons: fear of loss of status, loss of control or loss of power, a general fear of change, fear of failure, fear of being found out, lack of trust, apathy, feelings of helplessness in the face of the status quo, memories of bad experiences with unions or management, or adoption of dogmatic positions behind slogans such as "management's right to manage" or the "trade union movement's right to fight for workers". These reasons are no longer enough to justify failure to change.

People are not machines. As the old saying goes: hire a pair of hands and you get a mind and heart as well. If people are treated as machines, they don't just switch off. They may begin to work out their frustrations through inflexibility and pig-headedness, which will eventually damage business.

If, however, employees are treated as people by being listened to and given a voice in the company, they will respond by giving more of their knowledge and insights and by increasing their commitment and productivity.

If this increased contribution is in turn recognised and encouraged, the enterprise is entering into a virtuous cycle of increased productivity and employee satisfaction.

The *theory* of worker participation is all well and fine but what about the *practice?* Ministers for Labour have been preaching and encouraging participation for many years but the results have been disappointing, especially in the private sector. I have a feeling that it is a case of bringing the horse to water; but there does not seem to be any great desire on its part to drink.

At this stage, I would suggest that unions and management should ask themselves why they are not more actively involved in participation. It is not as if people are being asked to embrace participation for ideological or idealistic reasons. It is simply a question of their own enlightened self-interest.

I now want to turn to my fourth topic this evening which goes under the heading: … a time for war and a time for peace.

A Time for War and a Time for Peace

All Ministers for Labour are confronted by the dilemma as to whether there is ever a good time for legislative reform of industrial relations. In a time of general industrial relations strife, media pundits and armchair industrial relations experts show a tremendous interest in the problems which they maintain beset our industrial relations system. The call is heard on every side for Somebody to do Something. This is at a time when anybody who could possibly do anything to reform the system is immersed in the daily workplace battles required to keep head above water. In times of general strife, there is also an assumption that, if only the Minister or the unions or the employers acted in a particular way, then everything would be all right. In some way the practitioners are blamed for bad industrial relations although the overall environment within which they must operate may not be of their making or within their control.

On the other hand, in a time of relative industrial relations peace, the media and bar-room experts have moved on to other issues. Good industrial relations is then attributed to economic forces bringing a sense of realism to negotiations. This is of course partly true. But, it overlooks the hard work of industrial relations practitioners and improvements in the standard of industrial relations practices.

Worthwhile reform does not just mean stopping gaps or fiddling around with statute law or institutions. It also requires the parties to change *their* behaviour and must embody a mechanism for doing just that. Then the cry goes up that really things are going just fine the way they are and this or that particular reform is not needed. From a Minister's point of view, it is a no-win situation.

I think few people would disagree with me if I said that we seem to be in a time of relative industrial relations peace at present. Various reputable economic commentaries have painted optimistic pictures of the prospects for sustained economic growth.

Pay agreements covering the private and public sectors negotiated in conjunction with the Programme for National Recovery provide the opportunity for stability up to the end of 1990.

The level of industrial relations strife as represented by the figures for strikes and days lost is usually taken as a barometer of the state of industrial relations. These figures may not present a complete picture of workplace industrial relations but at least they provide a definite and familiar measure. The number of strikes has declined consistently since 1984. The 1988 figure of 72 strikes stands in dramatic contrast

to the 1984 figure of 191. Perhaps more importantly there has also been a dramatic fall in the number of days lost through strikes from figures in the 300,000 — 400,000 region in the early and mid eighties to 260,000 in 1987 and 130,000 in 1988. The figures for 1989 so far are even more encouraging.

This is no time for complacency, however, and practitioners at workplace level must continue to work hard to improve industrial relations in practice. The factors which gave rise to the very high levels of strike activity in the past are not banished forever. We should regard the present position as one of temporary respite, where we can prepare for the challenges of a more competitive future. Legislative reform proposals should not be seen as absolving practitioners from making an extra effort, but rather as complementing that effort.

I would like to turn now to those proposals but, before going into a description of the various elements, I would like to say a few words about the context in which the proposals evolved.

Background to Reform Proposals

The negotiation and ratification of the Programme for National Recovery in 1987 was a major achievement. It was all the more significant because it happened at a time when the Government was obliged to exercise tight control over the public purse. The Government had no choice but to make tough decisions in the national interest. The gravity of the situation facing the country needed the social partners to adopt the responsible and constructive position they did.

It was my hope that the same constructive attitude would prevail in discussions on industrial relations reform and the following paragraph was agreed for inclusion in the Programme.

> "The Minister for Labour will hold discussions with the social partners about changes in industrial relations which would provide a better framework for collective bargaining and dispute settlement and help to create conditions for employment — generating investment. It will be the aim of the parties to the Programme to conclude these discussions as soon as possible."

It seemed to me that, with the Programme in place, we were entering into a relatively stable and peaceful time in industrial relations which, combined with the goodwill generated by the ratification of the Programme, would produce an excellent environment for the

negotiation of a package of reform proposals. In this environment, I hoped that all parties would see the particular importance of creating conditions for increased employment-generating investment. Tackling unemployment was one of the main reasons for having a Programme in the first place. And tackling unemployment is still a central concern of this Government and must be a central concern of all the social partners. The statistics alone bring this home to us. There were 224,122 people on the live register in September of this year. That is 17.1% of the labour force. Some 46,000 people emigrated from this country in the year to April, 1989.

It is a cliche at this stage to say that better industrial relations can lead to more jobs and that industrial relations is one factor which we ourselves can control to a large extent. It is sad that this is a cliche because cliches do not tend to motivate people. I think the underlying point is so fundamental that it is worth putting to people again and again. Constructive action at workplace and national level to improve industrial relations is worthwhile as a means of saving existing jobs and making new jobs. It can help people feel less paralysed by the immensity of the twin problems of unemployment and emigration.

Indeed, it is likely that industrial relations reform would have a much higher profile if the unemployed had a greater say in the matter.

In drawing up the reform proposals, I was very aware of the need for a pragmatic package. I made it clear to the parties from the outset that I would engage in consultations in order to achieve as much consensus as possible. I told the employers and trade unions that I intended to get significant legislation on industrial relations on to the statute books and that I would not allow myself to get bogged down by interminable talking, as happened to others before me. In my opening remarks to the social partners, I had this to say on the subject of consensus:

> "From my reading of previous attempts at reform there seems to have been a chasing after the Holy Grail called "consensus". It seems to me that a true meeting of minds and hearts is not possible in this area. When I speak of achieving the maximum possible consensus in these discussions I have something far more modest in mind. I would like to see a package emerging which both sides can live with. I am not asking that everyone on both sides like all the proposals or even like the package as a whole. What I want

is for both sides to agree a package which is the best that can be achieved right now, given the condition of the country and given the views of the other side".

I allowed months for the discussions. Then began the arduous and painstaking legislative process which all proposals must go through.

In the middle of this work, there was also time out for an election and the formation of a new Government. The work has now been virtually completed and I hope to be in a position to publish a Bill within a few weeks.

My proposals cover five broad areas and I now intend to focus on each of these in turn. The five areas are:—

1. Trade Dispute Law
2. Injunctions and pre-strike ballots
3. Trade Union Organisation
4. Joint Labour Committees
5. Reform of the dispute settling machinery (including the establishment of a new Labour Relations Commission)

Trade Dispute Law

The Trade Disputes Act, 1906, is the main statute in the area of trade dispute law. Its five short sections lull one into a false sense that trade dispute law is simple and clear. The full complexity of the case law in this area was brought home to me by the discussions with the social partners. I have no intention here of launching into a long discourse on trade dispute law. The subject is covered by a number of excellent reference books which deal with the fine points of law in a far more precise fashion than I could in the short time at my disposal here.

My own approach to the reform of trade dispute law was pragmatic. I recognised that the 1906 Act was an old Act. When Constance Markievicz became the first Minister for Labour, it was already twelve years old.

Apart from the single-section Act in 1982, the 1906 Act has not been changed since it went onto the statute book. I saw that there were many flaws in the immunities. I also saw the reception given to the earlier proposals on a positive right to strike. I therefore identified five areas which I thought could usefully be tackled in amending legislation. Briefly, the proposed changes are as follows: — The removal of immunity from picketing a person's home, except in circumstances where business is carried on from there.

— Clarification of the position in relation to secondary picketing to provide that such picketing will be legal only in situations where a second employer acts in a way calculated to frustrate a strike by directly assisting the employer who is party to a dispute.
— The removal of immunity from disputes involving one individual worker where procedures have not been followed.
— The removal of immunity in the case of workmen -v— workmen disputes.
— Extension of immunity to cover a threat to breach, or to induce a breach, of contract of employment in the context of a trade dispute.

Most of these proposals are self-explanatory and the reasons for them are clear but I would like to say a few words about the proposal relating to secondary picketing which has been the subject of much attention and discussion.

Secondary picketing is a very emotive term and I think it is important that we clarify what exactly we mean by secondary picketing. It is the situation in which employees of one employer place a picket on the premises of a second distinct employer in the course of a dispute. The point should be made that the incidence of this type of action is relatively rare. The precise legal position in regard to secondary picketing is unclear but is generally accepted to be as set out in the 1978 case *Ellis-v- Wright.* In that case, it was held that:

> "the fundamental requirement to render a picket lawful is that it must be in contemplation of furtherance of a trade dispute. That necessitates a *clearly discernible connection* between the premises picketed and the dispute in the sense that the employer or workman affected by the picket is directly connected with the dispute".

Although this interpretation limits the extent of the protection provided for secondary picketing under the Trade Disputes Act, 1906, such picketing is still legal in a wide range of circumstances. Case law is, of course, subject to modification and development at any time and I feel that statute law should provide the guide to what is permissible in the area of picketing. I want to make it clear that my proposal does not extend the right of secondary picketing but rather regulates and clarifies the position.
The specific proposal is to confine protection for picketing at the premises of a second employer to the situation where the second

employer has acted in a way calculated to frustrate the strike or other industrial action by directly assisting the employer who is party to the dispute. Steps taken by an employer to fill gaps in the market caused by a strike in another company would not entitle a union to engage in secondary picketing. There must rather be direct assistance from the second employer of a kind calculated to frustrate the strike. An objective test would apply to the reasonableness of the picketers' belief that the second employer had acted in such a way. It would not be sufficient for the picketers to rely on a sincerely held belief. They would have to show good cause for that belief.

There have been calls for the complete outlawing of secondary picketing. I believe that to do so would tilt the balance unfairly to the benefit of employers. It would allow employers too wide a scope to circumvent the effects of legitimate industrial action.

I now want to turn to my proposals on injunctions and pre-strike ballots. These proposals illustrate the interplay of consensus and pragmatism which 1 have discussed separately earlier.

Injunctions and Pre-Strike Secret Ballots

The use of injunctions in trade disputes has been an issue of contention for many years. The problem can be stated very briefly.

In many trade disputes, injunctions were sought by employers and granted by judges without the employees concerned being aware that the injunction was being sought. The injunction, or the threat to get one, was also used as another bargaining counter in negotiations. The injunction is a powerful tool in the hands of an employer because a worker who refuses to obey an injunction faces committal to jail for contempt of court.

The problem in trade disputes is that, because of the complexity of the law in this area, the haste with which a case is heard and the obvious damage that the employer is about to suffer, it is relatively easy for an employer to get an injunction.

Even where the workers have warning of the application, the substance of the case cannot be examined in detail and the industrial relations reality cannot be dealt with. The temptation has been for employers to seek strategic advantage rather than compensation at law.

The solution I have prepared is very simple. My proposals provide that, if a secret ballot favours industrial action and the trade union gives at least one week's notice to the employer concerned, the employer

may not apply to any court of law for an 'ex parte' injunction. In addition, a court will not grant an interlocutory injunction if the trade union establishes a fair case that it was acting in contemplation or furtherance of a trade dispute.

The restrictions on the granting of injunctions will not apply in the case of unlawful entry or trespass or action likely to cause death or personal injury. This last provision will ensure that injunctions are still available in genuinely serious cases.

It can be seen that the restrictions on injunctions are closely linked to pre-strike secret ballots. If an employer is given one week's notice of a strike after a secret ballot in favour of a strike, then in practice the employer will have considerable notice of the impending strike. While the ballot is being conducted and during the notice period, negotiations can continue. In the event of a strike going ahead, there is adequate time for special arrangements to be made for an orderly shut-down if necessary. In this kind of situation, the employer has no excuse for rushing off to seek an injunction without giving notice to the workers concerned.

By linking the secret ballots to the injunctions, I hope to solve a real problem in a pragmatic fashion and I also hope to win the acceptance of both sides to these proposals.

Many of the larger unions have pre-strike ballot provisions in their rule books already and the majority of union members have the protection of some such rule. A survey of procedure agreements undertaken by my Department indicates that half of these agreements provide for strike notice. My proposals will thus give a legislative under-pinning to the existing best practice and extend it to all unions.

In this way the evolution of a more orderly approach to dispute processing will be given a new impetus.

My proposals provide that, two years after the passing of legislation, the rules of every trade union will be required to contain a provision that no strike or industrial action will take place without a secret ballot. Trade union rules will also be required to provide that all members whom it is reasonable for the union concerned to believe at the time of the ballot will be called upon to engage in the strike or industrial action be given a fair opportunity of voting without constraint. The idea is to provide for minimum requirements by law. It will be up to each union to adopt rules to suit its own structures and circumstances, while meeting the minimum requirements. Aggrieved members of a union are the only ones who will be able

to take legal action for failure to implement secret ballot rules.

There are two points to be made in relation to this. First, there is evidence that aggrieved union members will take action against their union if it flouts its rules. Secondly, the union rule book is a means of regulating the relations between a union and its members, and therefore, it is appropriate that only those members should have the ability to take action arising from the rule book. My proposals on injunctions are aimed at taking normal industrial relations conflict out of the law courts. Allowing employers to take action against a union for not holding a ballot would bring the law courts centre stage again in industrial relations disputes.

The level of bitterness engendered by a legal intervention in a trade dispute is not compatible with building a participative approach, and is thus in my view counter-productive. Furthermore, legal intervention does not help in the reduction of the root cause of the dispute.

While employers will not have a right to take direct legal action against trade unions which fail to hold a pre-strike ballot, unions will face an array of sanctions if they choose to ignore their pre-strike ballot rules. Failure to include a secret ballot rule in the rule book will lead to cancellation of the negotiation licence and thus to loss of the right to negotiate pay or conditions or to take industrial action. Any aggrieved member will be able to take legal action against a union which fails to follow its ballot rule and there will be special sanction provisions in relation to unions which consistently ignore their ballot rules.

Workers striking against the wishes of a majority as expressed in a ballot will lose the immunities provided by the 1906 Act.

To sum up, the aim of my proposals on injunctions and pre-strike ballots is to bring more order to the processing of disputes.

I would now like to talk briefly about my proposals in relation to trade union organisation.

Trade Union Organisation

The profile of trade union membership in Ireland is clear: a large number of small unions, a considerable number of tiny unions and two or three large unions dominating the membership.

Collective bargaining is becoming more complex as industry and commerce become more sophisticated. Union members and potential union members are thus demanding more diverse and more professional services from unions. It is not feasible for small and tiny

unions to provide these services. A multiplicity of unions also leads to undue complexity and scope for added confusion and disputes in collective bargaining. It has, therefore, been a long-standing policy of successive Ministers for Labour to encourage rationalisation of the trade union movement. There are two sides to this policy. On the one hand, unions are encouraged to merge and are given grants towards expenses incurred during such mergers. On the other hand, new breakaway unions are discouraged through requiring them to have a minimum level of membership and to make a deposit in the High Court. My proposals envisage a doubling of these minimum membership requirements and a fourfold increase in deposits.

I am also proposing to improve the present system of grants through a technical amendment and by allowing unions which fail for some reason to complete an attempted merger to claim expenses incurred. The aim of these proposals is to encourage trade unionists to build a trade union movement capable of meeting the challenges of the 1990s and beyond.

Before going on to outline my proposals in relation to reform of the dispute settling machinery, I intend to refer very briefly to the proposed changes in relation to joint labour committees.

Joint Labour Committees

Joint Labour Committees set statutory minimum rates of pay for certain poorly-paid sectors. I have carefully examined the operation of these Committees and I am satisfied that they perform a useful function in protecting workers in vulnerable sectors of the economy. I believe they have a continuing role to play and the amendments I am proposing will improve the functioning of existing committees, speed up the establishment of new committees and remove technical bars to the effective enforcement of statutory minimum rates of pay. I am hopeful that these improvements will go some way towards helping to tackle the problem of low pay.

Reform of the dispute settling machinery

When industrial relations reform is being discussed, it is usually trade dispute law which is highlighted but I would like to turn now to the equally important area of the machinery for the resolution of disputes.

The changes which I am proposing in this area have four major objectives:—

1. To give a new general responsibility for the promotion of good industrial relations to an appropriate body;
2. To encourage and facilitate a more active approach to dispute prevention and resolution;
3. To restore the original purpose and status of Labour Court investigation and recommendations; and
4. To make provision for a number of new functions and services.

The major proposal to give effect to these objectives is the establishment of a new Labour Relations Commission which will be guided by a tripartite council, with employer, trade union and independent representation. Before outlining the function of the Commission and the thinking behind its establishment, I would like to make the point that the Labour Court has served us extremely well in the 43 years of its existence. When it was established in 1946, it had the difficult task of moving from war-time statutory wage controls back to a voluntarist approach to collective bargaining.

Since this transition, the Court has successfully adapted to numerous changes from decentralised to centralised pay bargaining and back again. The Court has been instrumental in resolving countless disputes, thus saving the economy millions of pounds.

To say that there is a need for change in the institutional framework is not to take from the contribution which the Court has made but rather to suggest that the contribution of the State machinery can be enhanced by a change of structures, a re-drawing of objectives and an expanded role.

1 feel that it is necessary to establish a new body which will be specifically charged with promoting better industrial relations. The Labour Court as an institution of the middle ground, to use a phrase beloved of the late Dr. Charles McCarthy, felt spancelled in its ability to make public pronouncements on industrial relations. As experience with legislation designed to expand the Court's role introduced in 1969 shows, the Court is unlikely to break out of the mould it has been in for many years and thus an additional body is required to supplement the machinery.

In its approach to dispute prevention and resolution, the Commission will have an educational role, encouraging parties in practice to take more responsibility for their own disputes. Over the years there has been an increasing tendency to refer cases to conciliation and to the Court, as well as to other third parties. This trend seems to indicate that parties to disputes are losing the ability to resolve

their differences themselves. In the case of the Labour Court, there is a danger that conciliation could become a mere stepping stone to the Court. Under the proposed changes it will be necessary for the parties to make a genuine attempt at settlement before the dispute can be referred to the Court.

A more participative approach to relations between employers, trade unions and workers cannot be built if the parties regularly hand responsibility for finding a solution to their own disputes to a third party, who is expected to hand down a decision.

I think it would be dangerous for the Irish industrial relations system to move in the direction of the Australian system, for example. In Australia, every issue rises out of the work-place into the external machinery and the system is referred to picturesquely as the anti-gravity model of industrial relations. How can a more participative approach to problem-solving on a wide range of issues develop at work-place level if the employers and trade unions are regularly talking to third parties about each other, rather than continuing to talk to each other across a table?

I foresee a new level of maturity in Irish industrial relations practice, but coming of age is not always easy. My aim is to ensure that fewer cases are referred to a full Court hearing. But this will not undermine the importance of the Court or hinder access to the Court when that is really necessary. In fact, the Court will be more important than before, because it will be dealing with the most serious disputes as a court of final resort.

This will ensure that the Labour Court recommendation will once again be a document with great moral authority, as intended by Mr. Sean Lemass when he established the Court in 1946.

The Commission will, as I have said, have a general responsibility for promoting better industrial relations and it will provide an advisory service. It will also be required to monitor and review developments and to undertake and commission research into matters relevant to industrial relations.

Another very important function will be its power to draw up codes of practice in consultation with employers and trade unions. Codes are particularly well suited to the voluntarist tradition of collective bargaining in Ireland. They will not create new legal obligations or offences but will be available to be taken into account in proceedings before any body which deals with industrial relations. Codes will give guidance on good industrial relations practice to practitioners and

those called on to intervene in disputes, including judges. I believe that codes can help to publicise the best industrial relations practice on different issues and be an aid and encouragement to those seeking to improve practice and procedures.

If Not Now, When?

I would like to conclude my contribution on industrial relations reform with an image from Samuel Beckett's play "Waiting for Godot". The two main characters in the play spend their time disputing and storytelling while they wait for Godot to arrive to give them some unspecified help which in some unspecified way will improve their lot. It seems that Godot does not arrive. At the end of the play one character says: "Well? Shall we go?" to which the second character says: "Yes, let's go". The final stage direction says it all: "They do not move".

For too long everyone in the area of industrial relations has been saying: "yes, let's reform" but in the end no-one moves. I have seen the work which has gone into reform proposals over the years without result.

It is my intention to be the Minister to break through the inertia to put a significant piece of reforming legislation on the statute books within the next few months.

Conclusion

Finally I would like to refer again to the title of this paper and in particular to its emphasis on consensus and partnership and to say a few words about how I see the relationship between Government and the social partners developing over the next few years. The Programme for National Recovery has worked well. I will not go into the details as I think that the fact has now been generally accepted. As with the industrial relations reform package, all sides are not absolutely happy but have come to accept that this approach of consensus and partnership is better than the tension and conflict which result from the attempt of any one group to press its own interests regardless of any other considerations.

In the late twentieth century in some places compromise has become a dirty word with strictly pejorative connotations. What we need in this country is not conflict based on ideology but economic and social progress by agreement, by consensus and by partnership.

In my view it sometimes takes a bigger person to compromise than to fight.

The message I wish to give is clear. When the present Programme ends next year, I feel we need a further agreement on similar lines to take its place so that further progress can be achieved in the economic and social development of this country. It will not be achieved by one group or the other seeking to dominate. It will only be achieved if each group is willing to make sacrifices for the common good. In my view, there is no other option except the road of consensus and partnership. I therefore conclude with an appeal to all sides to make consensus and partnership the passwords for the next decade