Unions win long battle for freelance rights

THE NUJ has secured a major victory with the passing of the Competition Amendment Act 2017, which restores the right of freelance journalists to be represented by trade unions.

The new law ends the stranglehold of Competition law on freelance workers and has been hailed internationally as a significant achievement for the NUJ, SIPTU and the ICTU.

The two unions are now developing a strategy to recruit and organise freelance workers in the media and culture sectors.

The bill was signed into law by President Michael D Higgins on June 7th having secured the unanimous support of both the Dáil and Seanad. Its passage though the Dáil was marked by a reception hosted by the NUJ and SIPTU, including the Irish Musicians Union and Equity.

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The new Act grants rights for certain categories of self-employed workers, to be represented by a trade union for the purposes of collective bargaining. They include freelance journalists, voice-over actors and session musicians. Other groups will also be able to secure an exemption from the Competition Act 2002. This means that in time a wide range of workers currently denied union rights can secure recognition.

The bill’s sponsor Ivana Bacik cut a celebratory cake which was later shared on a cross-party basis with the Minister for Jobs, Enterprise and Innovation Mary Mitchell O’Connor, whose support for the bill was in sharp contrast to her predecessors and enabled smooth passage of the bill.

Labour leader Brendan Howlin praised the joint SIPTU/NUJ campaign and joined in tributes to current ICTU General Secretary Patricia King and ETUC Confederation Secretary Esther Lynch for their consistent support for freelance workers in a battle stretching back to 1998, when the then Competition Authority began to assert that Competition law had supremacy over the right of freelance workers to be represented by trade unions.

Speaking at the reception in Buswells Hotel Séamus Dooley, Acting General Secretary recalled that in 1998 the Irish Executive Council had vowed to fight attempts by the Competition Authority to undermine the rights of freelance workers. His predecessor Eoin Ronayne had warned the ICTU that action taken against the Irish Veterinary Union could be the first step in a protracted campaign.

Subsequently the Competition Authority moved against Equity, sparking a campaign during which SIPTU and the NUJ persisted in the face of unimaginable obstacles at national, European and international level.
By Séamus Dooley

“Do you not have a knife?” asked Mary Mitchell O’Connor as she graciously joined Senator Ivana Bacik in the Dáil bar for a Labour party celebration of the unanimous passing of the Competition Amendment Act.

As minister it must be said that Mitchell O’Connor had showed considerable flexibility in dealing with the Labour bill.

The ministerial amendments strengthened the legislation and her approach facilitated all party-agreement in the Dáil and Seanad.

It was a contrast to our experience of successive ministers, who had failed to engage with the issue.

It was fitting she should have been photographed with the sponsor of the bill both cutting a celebratory cake but the Acting General Secretary of the NUJ had neglected to bring along a knife.

The reception was at the height of the leadership battle between Simon Coveney and Leo Varadkar.

Varadkar subsequently demoted the Minister for Jobs, Enterprise and Innovation so my joke that Ms Mitchell O’Connor try the Fine Gael party rooms proved prophetic.

For the NUJ the all-party support was a vindication of a campaign which began in Spring 1998, when my predecessor Eoin Ronayne warned the ICTU that moves against the Irish Veterinary Union by the Competition Authority could undermine collective agreements for other unions.

Following my appointment as Irish Organiser I had accompanied Eoin to a meeting of the PNAI (now known as Local Ireland). Their advisor, Tom Hayes had signalled that a claim for an increase in the risible fees for freelance photographers working for provisional papers could breach European competition law.

Eoin and I met a now former officer of the Competition Authority who (off the record) told us we were completely exaggerating the potential for a problem. The legislation was not intended to impede trade unions.

The owners were determined that they could not be part of a criminal conspiracy under Section 4 of the Competition Act 1991.

The advice we kept getting was “see no evil, hear no evil” and don’t approach the Authority least we get an answer we would not like.

Equity subsequently faced court action from the Competition Authority. The nub of the matter was simple. The Authority regarded freelance agreements as a form of price fixing and freelances as “undertakings” or small businesses. Regional newspaper owners were off the hook!

Following Eoin’s move to the CPSU I replaced him as Irish Secretary and the struggle for reform of Competition law became my single transferrable speech at ICTU conferences and seminars.

We won the vigorous support of Patricia King, then Congress Vice President, and Esther Lynch, now Confederate Sectary at the ILO. General Secretary David Begg campaigned at the highest level and was offered tea and sympathy but kept plugging away.

On one occasion during the 2010 talks an official wrote of Patricia and Esther thundering across the courtyard of government buildings demanding the wording of a clause on freelance rights in the ascent agreement. His note surfaced in an FOI request by Ronan Brady, one of the group of NUJ freelance activists including Mary Maher and Barry McCall, who kept the flag flying.

In 2010 we secured a firm commitment to legislation but no action was forthcoming.

Former Secretary General at the Dept of the Taoiseach Dermot McCarthy frankly admitted that the clause, in terms of legal advice, had been one of the most expensive ever included in a national programme.

It provided legal vindication for our campaign but also showed the level of resistance among the
permanent civil service and the Competition Authority to use the social partnership process to achieve legal change for freelance workers.

The arrival of the Troika threatened to sink our campaign as Christine Lagarde warned that amending Competition law could lead to the withdrawal of the IMF, the World Bank and the European Commission recovery programme.

NUJ General Secretary Michelle Stanistreet and I visited the ILO in Geneva. At the IFJ Ronan beat the drum loudly.

The NUJ placed the issue centre stage at every IFJ and EFJ conference and even hosted conferences in Dublin to highlight the plight of Irish workers.

Lay activists played a huge part in piling on the pressure and when the bill finally passed representatives of Dublin freelance branch were to the fore in celebrating a victory which now brings significant organisational challenges and opportunities.

Ultimately persistence paid off. Much credit is due to Senator Ivana Bacik and Senator Ged Nash for taking full advantage of the current configuration in Seanad Éireann to push through the legislation.

You were right there Michael!

On June 7, as President Higgins signed the Competition Amendment Bill into law he could be forgiven for feeling a sense of achievement as the legislative wheel turned full circle.

Being above politics, he could not show his pleasure at signing the bill and no doubt lifelong Equity member Sabina Higgins was equally inscrutable.

The bill has been sponsored by Senator Ivana Bacik and had its origins in a 2006 bill drafted by then Deputy Michael D Higgins.

That early legislation was not accepted by the Fianna Fáil government and opposed by the then Fine Gael spokesperson on Enterprise and Employment Leo Varadkar.

A version of the bill sponsored by Emmet Stagg met a similar fate but Senator Bacik persevered, with the help of the trade union campaign, and secured all party support.

A feature of the most recent parliamentary exchanges was the positive approach taken by the Minister Mary Mitchell O’Connor.

As a junior barrister, Ivana Bacik had advised the NUJ when the spectre of the Competition Authority first loomed over the NUJ.

President Michael D Higgins is welcomed to the International Federation of Journalists (IFJ) World Congress in 2013 by then NUJ President Barry McCall, who recalled the President’s support for freelance workers. Also in the picture is NUJ General Secretary Michelle Stanistreet and then IFJ General Secretary Beth Costa.
The recent success of Irish trade unions in re-establishing the rights of self-employed workers to collectively bargain is particularly important in the journalism, cultural and entertainment industries where freelance journalists, artists, session musicians and actors and other self-employed workers have to act collectively — otherwise there is no chance to reach fair agreements with powerful organised groups such as broadcasters and advertisers.

The success is a vindication for trade unions in Ireland who have long called for the right of all workers, including self-employed workers, to have their right to organise and collectively bargain through a trade union recognised and promoted.

The legislation will be used by trade unions throughout the EU to demonstrate that EU Competition Rules cannot be used to justify prohibitions on self-employed workers bargaining collectively, a point made very clearly by the International Labour Organisation when they considered the case raised by the Irish Congress Trade Unions in 2016.

The enactment of the legislation throws the spotlight on the EU Commission. The EU Commission is the ‘Guardian of the EU Treaties’ but in this case it was the trade unions who proved to be a more effective guardian of the EU treaties. This lack of action was probably more disappointing than surprising. Despite the previous ruling of the Court of Justice of the European Union, in the Albany case, that the social policy objectives of the Treaty are to be given equal weight with all other Treaty objectives. The Treaty provisions explicitly stipulate the objective of promoting social dialogue and collective bargaining between employers and workers. The Court could not be clearer “It is beyond question that certain restrictions of competition are inherent in collective agreements between organisations representing employers and workers.

However, the social policy objectives pursued by such agreements would be seriously undermined if management and labour were subject to Article 85 (1) of the Treaty when seeking jointly to adopt measures to improve conditions of work and employment. It therefore follows from an interpretation of the provisions of the Treaty as a whole which is both effective and consistent that agreements concluded in the context of collective negotiations between management and labour in pursuit of such objectives must, by virtue of their nature and purpose, be regarded as falling outside the scope of Article 85 (1) of the Treaty.”

One essential function of European trade unions is to take wages and working conditions out of competition. We need a level playing field of rights not the battle field that competition on wages and conditions will create. The EU Commission needs to live up to its responsibilities and provide better guidance to Member States so that they do not put restrictions on the rights of self-employed workers in the name of EU Competition Rules.

Esther Lynch: spotlight on the EU Commission
Union seeks meeting with Naughten on media policy

In the wake of the decision by Celtic Media Group Plc and INM to walk away from the proposed INM acquisition of the regional newspaper group the NUJ has sought a meeting with Communications Minister Denis Naughten on the future of the media in Ireland.

Acting General Secretary Séamus Dooley pointed out that it would have been inappropriate for the union to seek a meeting while awaiting a decision on the Celtic Media Group acquisition but that is no longer a live issue.

The NUJ welcomed the news that Independent News and Media (INM) would not be acquiring Celtic Media after the two companies confirmed they were walking away from the proposed €4 million takeover.

Celtic Media publishes the Westmeath Independent, Offaly Independent, Westmeath Examiner, Anglo Celt, Meath Chronicle and the Connaught Telegraph newspapers.

Séamus Dooley welcomed the removal of the threat to media diversity but said the government needs to enable a wide ranging debate on the future of the media industry. It should now be a narrow debate focussed on individual transactions or on concentration of ownership.

Leech verdict welcomed

The National Union of Journalists has welcomed the determination of the European Court of Human Rights (ECHR) that the Supreme Court’s €1.25m award in the Monica Leech defamation case was disproportionate and that it breached Independent News and Media’s freedom of expression.

The case concerned the action taken by communications consultant Monica Leech over a story about a burglary at her home almost 12 years ago.

Séamus Dooley, NUJ Acting General Secretary, described the determination as “a landmark judgement for Irish journalism”.

“The NUJ has long been concerned at the risk posed to media organisations by the current defamation regime. The ECHR emphasised the need for ‘a detailed and specific direction’ to juries and this is consistent with the long held belief of the NUJ. We support the principle of juries in defamation cases but it has long been clear that juries need direction when deciding on the scale of damages,” he said.

“The ruling is extremely significant because of the emphasis placed on the importance attached to the concept of freedom of speech and the need for an appropriate level of damages.

“The award against the Evening Herald was a striking example of a situation which has long been a concern to editors, journalists and publishers.

“This judgement should discourage rich and powerful people who currently seek to silence the media to think twice before going down the lucrative libel route.

“In any campaign for libel reform there must also be an emphasis on use of the office of the Press Council of Ireland and the Press Ombudsman as an alternative to legal action. Newspaper owners and shareholders should lead by example in this regard.”

Dooley is re-elected

Acting Irish Secretary Séamus Dooley has been re-elected to the Executive Council of the ICTU.

He has also been appointed by the ICTU to the newly formed Worker Employer Advisory Committee of the Irish Human Rights and Equality Commission. The NUJ has to the fore in proposing establishment of the new committee, a significant breakthrough in placing employment issues and rights on the agenda of the commission.

BDC 2017

The Irish Biennial Delegate Conference takes place on Saturday 18th November in the Gresham Hotel, Dublin.

We are now seeking motions for the conference. All motions need to be agreed at a properly constituted branch meeting and returned to the Irish office by 5pm on Friday 28th July 2017.

Branches have also been invited to nominate delegates and members who wish to be considered should contact their branch officer.

IEC election

Nominations are invited for the new Irish Executive Council. The new council will take office following Biennial Delegate Conference on 18 November, 2017.

Branch nomination forms must reach NUJ, 2nd Floor, Spencer House, Spencer Row, Off Store Street, Dublin 1 by 5pm on Friday 28 July.
Media workers should not be targets

The importance of trade union support for public service broadcasting was debated at the Biennial Delegate Conference of ICTU in Belfast recently.

The IEC tabled an amendment to a motion tabled by UNITE which encouraged unions and their members “to create a progressive debate about a fairer society through democratically controlled new media forums and discussions”. The motion claimed that “the effective ownership and control of mainstream media by a neoliberal group” was damaging working people.

Acting General Secretary Séamus Dooley secured IEC agreement to an amendment on the basis that the UNITE motion, while accusing the media of attacking public services, ignored the principle of public service broadcasting and also sought to attribute a wide variety of economic ills to the media and, by implication, to trade union members.

Far too often trade unions attack media workers, Séamus told the Conference, explaining that the amendment was intended to remind colleagues that journalists, photographers, researchers and producers were union members who were entitled to the same respect as other workers.

“Unions have every right to criticise RTÉ but too often we have experienced attacks on public service broadcasting and unthinking calls for boycotts of the licence fee, with no regard for the implications for employment.

“In the words of Raymond Williams, journalists should be ‘the arrow and not the target’,” he added.

The motion was passed.