



**Submission made to the
Joint Labour Committee Review undertaken by the Labour Court
in accordance with section 11 of the Industrial Relations (Amendment) Act 2012**

**IRISH CONGRESS TRADE UNIONS
February 28, 2013**

Introduction

The Irish Congress Trade Unions is the representative voice for workers on the island of Ireland. There are 52 unions affiliated to Congress representing over 800,000 working people in all sectors of the economy – public and private.

Congress is the largest civil society body on the island of Ireland.

On January 25, 2013, the Labour Court gave notice of its intention to review the Joint Labour Committees in line with the provisions of the Industrial Relations (Amendment) Act 2012. This submission is made to that review.

It was prepared by a Coordinating Group established by Congress, comprising John Douglas (Mandate), Patricia King (SIPTU), Gerry Light (Mandate), John King (SIPTU) and Brendan Byrne (Unite). Esther Lynch, Legislation & Legal Affairs Officer had responsibility in Congress.

The Congress group met on numerous occasions during January and February and met on two occasions with Ms Janet Hughes, as part of her considerations on behalf of the Labour Court.

The Labour Court has requested that submissions be made in relation to each JLC separately having regard for the criteria set out in the Industrial Relations (Amendment) Act 2012 and specifically section 11 sub section 3 (a) through to 3(i) governing the conduct of the Review. <http://www.irishstatutebook.ie/2012/en/act/pub/0032/sec0011.html>

The Coordination Group have adopted this approach and SIPTU, Mandate and Unite have prepared and made submissions dealing with the specific scope etc. of the relevant JLC. These submissions are supported by Congress and are attached.

There are some points in relation to the Review that Congress would like to highlight and we set these out below.

Context for the Review

The 2012 Act

The requirement to carry out a review of the Joint Labour Committees is set out in section 11 of the Industrial Relations (Amendment) Act 2012 (the 2012 IR Act). That Act implemented the reforms deemed necessary to deal with the concerns raised by the High Court in the John Grace Fried Chicken case. It is essentially about the need for the legislation to set out the policies and principles to guide and direct the making of Employment Regulation Orders. The enactment of the legislation demonstrates the desire of the Oireachtas to maintain the Joint Labour Committee System.

Action Plan Agreed by Government

The Review is taking place in the context of the Action Plan Agreed by Government in July 2011. The principle measures agreed in that plan are:

- that the number of JLCs would be reduced from 13 to six;
- that JLCs would have the power to set a basic adult rate and two higher increments;
- that JLCs would no longer set Sunday premium rates, rather this would be through a statutory code of practice;
- that companies would be able to derogate from an ERO, for a limited period of time, in circumstances of proven financial difficulty (this provision having been introduced at the insistence of the 'Troika' as referred to in the 'Explanatory Memorandum' to the Bill)

A copy of the 2011 Action Plan Agreed by Government is available at this link:

<http://www.djei.ie/press/2011/20110728a.htm>

Further clarification on Sunday Working Code of Practice is available here:

<http://www.djei.ie/press/2011/20111222a.htm>

Duffy Walsh Report

Congress recommends that the Review has regard for the recommendations made by the Duffy/Walsh Report (*Independent Review of Employment Regulation Orders and Registered Employment Agreement Wage Setting Mechanisms*). Central to that Report's recommendations were that the JLC system was of benefit to workers, employers and the economy and should be retained due to the "absence of any other fair system of determining pay and conditions of employment, beyond statutory minima, within the sectors concerned." (pg3). Duffy Walsh recommended that the Labour Court 'should undertake or commission a report into the scope of all remaining JLCs to ensure that the range of establishments to which they apply remains appropriate and that any necessary amendments be made to the establishment orders by which they were created' (Pg4) They found no justification for maintaining geographical restrictions on JLCs, they went on to recommend that the two catering JLCs should be amalgamated and that three of the (then) thirteen JLCs should be abolished (pg4).

Previous Reviews

Section 11 of the 2012 Act requires that the Review have regard for previous reviews by the Labour Relations Commission made under [section 39](#) of the [Industrial Relations Act 1990](#) in respect of the joint labour committee concerned.

Other Studies

The JLC system and the issue of low pay have been the subject of a great deal of comment and scrutiny in recent years. It is worth noting that academic analyses of the system have tended to reinforce the essential role played by wage-setting mechanisms in terms of protecting those who work in the relevant sectors, particularly the contributions from Michelle O'Sullivan of the University of Limerick, a foremost expert in this area.

O'Sullivan reiterated this thesis in a recent presentation to a Congress seminar on Decent Work (<http://www.ictu.ie/campaigns/decentwork.html>).

In a 2011 study, O'Sullivan and Wallace highlighted the fact that the workforce in this sector continues to be characterised by a high percentage of female workers, part-time workers and people with lower education attainment.¹

In recent years, the number of migrant workers in these sectors has risen considerably, as attested to by the Migrant Rights Centre of Ireland.

It is clear then that a great deal of time and consideration has been given to the question of whether JLCs should exist - and the unequivocal answer has been yes.

Therefore, the work of this Review is to examine the scope of the existing JLCs against the criteria posed in section 11 of the Industrial Relations Amendment Act 2012 and recommend the way forward for the remaining (ten) Joint Labour Committees i.e which ones should be retained, abolished or amalgamated.

Summary Recommendation on Joint Labour Committees

Our recommendations are based on the arguments set out in the submissions from our affiliated trade unions, SIPTU, Mandate and Unite, in which they make a strong case for the alignment set out below.

There are now 10 Joint Labour Committees in existence. Three were abolished in 2012 at the request of Minister. These were identified in the Duffy/Walsh report as relating to sectors that had become so small in terms of numbers employed, or which had effectively ceased to function:

- 1) Aerated Waters & Wholesale Bottling
- 2) 2) Provender Milling
- 3) 3) Clothing

As a result, there are now 10 Joint Labour Committees:

Agricultural workers JLC
Catering (Dublin and Dun Laoighre) JLC
Catering (other) JLC
Contract Cleaning JLC
Hairdressing JLC
Hotels (Dublin and DunLaoighre) JLC
Hotels (other excluding Cork) JLC
Law Clerks JLC
Retail Grocery and Allied trades JLC
Security Industry JLC

¹ O'Sullivan, M. and Wallace, J. (2011) Minimum Labour Standards in a Social Partnership System - the Persistence of the Irish Variant of Wages Councils, Industrial Relations Journal, Vol. 42, No. 1: 18-35

As the submissions made by our affiliates clearly demonstrate the following Joint Labour Committees can (with some amendment to the Establishment Orders) be clearly justified in accordance with Section 11 of the 2012 Act:

Retaining:

- 1) Agricultural Workers JLC,
- 2) Retail Grocery and Allied trades JLC
- 3) Law Clerks
- 4) Hairdressing

Amalgamating:

- 1) Hotels (Dublin and DunLaoighre) JLC;
- 2) Hotels (other excluding Cork) JLC;
- 3) Catering (Dublin and Dun Laoighre) JLC; and
- 4) Catering (other) JLC

Into a single, national **Hospitality JLC**.

In the event that the **Hospitality JLC** is not possible then the Review will need to allow for two national JLCs, one covering a Hotels JLC and the other a Catering JLC.

Two Joint Labour Committee to Transition to Registered Employment Agreements

Recognising the desirability of collective bargaining, work is at an advanced stage in establishing two Registered Employment Agreements: one for the Security Industry and another for Contract Cleaning.

However as a safeguard the review should allow that in the unlikely event that the Registered Employment Agreements cannot be finalised there is the possibility to revert to a Security Industry JLC and a Catering JLC.

In summary, the proposed outcome would be:

Five Joint Labour Committees

- 1) Agricultural Workers JLC,
- 2) Retail Grocery and Allied trades JLC
- 3) Law Clerks
- 4) Hairdressing
- 5) Hospitality JLC

Two New Registered Employment Agreements

- 1) Security Industry
- 2) Contract Cleaning

The submissions made by SIPTU, Mandate and Unite outline the rationale and scope for each of the proposed Joint Labour Committees.

New Joint Labour Committees

Congress notes that the possibility of new Joint Labour Committees is not addressed in this Review.

Urgent Need To Get The JLC System Back Up and Running

Congress cautions against a lengthy review process, as in the absence of the JLCs' Employment Regulation Orders there has been a deterioration of pay and conditions in these sectors.

There can be little doubt that the ruling of the High Court in July 2011 had both an immediate and ongoing impact on the pay and conditions of workers in the sectors of the economy covered by JLCs.

In the judgement in *John Grace Fried Chicken Ltd and Others v The Catering Joint Labour Committee, The Labour Court, Ireland and the Attorney General* (July 2011) the High Court declared some sections of the Industrial Relations Act 1946 and the 1990 Act to be unconstitutional. The effect of the judgement is that while all JLCs remained in existence their Employment Regulation Orders (EROs) became unenforceable and ceased to apply.

As a result, the National Employment Rights Authority (NERA) could not enforce the minimum pay and conditions of employment prescribed in EROs, in force at the time of the High Court decision. Where prosecutions for non-compliance with an ERO had been commenced these were withdrawn and no further prosecutions could be initiated in relation to compliance with EROs in place prior to July 11, 2011. An examination of the District Court records show that literally hundreds of cases were struck out.

At a very minimum, this placed severe downward pressure on existing wages and conditions because of the removal of the legally-enforceable floor on anything other than statutory requirements. Left unchanged it will result over time in a continued significant downward movement in pay and conditions, invariably driving all these sectors down to the level of the Minimum Wage.

Employers operating in sectors covered by Joint Labour Committees are now legally obliged to pay only the minimum wage of €8.65 per hour in relation to new employees engaged

since that decision. Existing employees whose rates had been applied in accordance with the previous ERO system can only have these terms varied with their consent.

However there are numerous examples of employers 'offering' new contracts on 'a take it or leave' it basis, or through more indirect routes such as reducing the hours of work for existing staff and replacing these with new recruits paid national minimum wage rates and with contracts stripped of entitlements, such as sick pay, overtime and Sunday pay.

As the submissions from SIPTU, Mandate and Unite clearly demonstrate, employers have also cut the pay of existing staff and have not honoured existing terms of conditions.

This underlines the need for adequate enforcement. In her comprehensive review of the Joint Labour Committees from 2005, Michelle O'Sullivan reported on the opinions of employer, worker and independent members (comprising chairpersons and deputy chairpersons of the JLCs).

Her study revealed that the majority of respondents (52.4%) thought that EROs were either 'somewhat inadequately enforced' or 'inadequately enforced'.

The Labour Inspectorate has direct experience of enforcement and their case report for breaches of the Joint Labour Committees during the January to July 2011 period - the six months immediately prior to the Employment Regulation Orders becoming unenforceable - show some 33,576 workers were not paid €741,929 in wages.

High levels of non-compliance underline the need for effective enforcement including increased fines and other penalties for persistent offenders.

Congress believes there will therefore be a need for a very high profile information programme highlighting the revival of the Joint Labour Committees system and secondly the necessity for proper enforcement with adequate labour inspectors in place, both in terms of overall number and their powers to inspect. Inspections need to be sensitive to the fear of employer reprisals. It is widely acknowledged that JLC Sectors employ workers that are more vulnerable to exploitation and employer reprisals, such as young workers, women and increasingly over the last decade migrants. Information on their rights and entitlements is key.

No New Jobs or Price Reductions in the Intervening Period

Contrary to the claims of employer representative groups there is no evidence of increased job creation since the Employment Regulation Orders were placed in abeyance.

There is evidence of working hours being removed from workers who are entitled to be paid the ERO rate and *replaced* by new recruits on national minimum wage.

Nor have the promised price benefits to the consumer materialised, apart from sporadic 'special offers'.

Overall, the most vulnerable workers have experienced a worsening in pay and conditions of employment and genuine local business people who have tried to maintain decent terms and conditions have been undercut by more unscrupulous employers, in a case of bad jobs driving out the good.

Cost of Labour Low

In the sectors covered by Joint Labour Committees, the cost of labour generally represents less than a third of the costs to an employer. Even in the labour intensive 'accommodation and food & beverage services' sector only 31.6% of the 'basic price' is due to worker compensation (which includes wages and social insurance).

The 'basic price' is the price received by producers, not that which is paid by consumers. Therefore, once taxes are included the share of employee compensation in the final price will be below 31.6%.

Labour costs in these sectors are below international norms.

JLCs Support the Local Economy

Joint Labour Committees have a positive effect on local economies, as an increase in wages will lead to an increase in demand in the economy which in turn boosts employment. Domestic demand has collapsed by some 26% in recent years.

JLCs Support Decent Work

Workers in the JLC sectors do not benefit from collective bargaining and without the Joint Labour Committee they have no say in their pay, terms and conditions. Unlike most other western democracies Ireland does not have in place statutory support for the right to collective bargaining.

The sectors considered by the Review are in the main service Industries and they continue to be affected by conditions and factors that gave rise to create the need for Joint labour Committee mechanisms in the first place:

- Low levels of Trade Union density
- In the absence of a JLC system, worker will not be covered by Collective Bargaining, nor will they have an opportunity to engage in Collective Bargaining and will be disadvantaged as a result.
- As already seen, JLC sectors employ workers that are more likely or vulnerable to the risk of exploitation.

In summary, JLCs provide the only mechanism by which the interests of workers in these sectors can be protected and advanced. Unlike collectively bargained Registered Employment Agreements, JLCs do not need the parties to be substantially representative of either workers or employers to which they relate (*Duffy/Walsh Report paras 8.16-8.19*).

It is worth underscoring the point that there is no requirement for trade unions to meet thresholds of representivity in respect of Joint Labour Committees. Indeed it is the very absence of bargaining strength that justifies the existence of the JLC. This is confirmed in section 11 of the 2012 IR Act governing the Review of the JLCs, that provides where the Court is satisfied (section 11.4) that maintaining the JLC would ‘promote harmonious relations’ and assist in the avoidance of industrial unrest’ it may recommend to the Minister to maintain, amend, amalgamate etc. various the Joint Labour Committees. Further reinforcement for our analysis is available in section 37 of the 1946 Act in relation to the establishment of a JLC.

Workers in JLC sectors have an unusually low amount of power and they can’t leave the job for a better one. It has been shown (Binmore, Rubinstein, & Wolinsky, 1986) that different ‘time-preference’ can affect bargaining. For example, if a worker is living hand to mouth they won’t be in a position to leave their current job in search of another one. In contrast, employers are unlikely to be living hand to mouth, and are less likely to miss a rent payment and risk eviction if a deal is not made. .

The weak bargaining position of the workers concerned, allied with the openness of the labour market, mean that the JLCs have a significant and central role in modern Ireland’s social, economic and industrial relations landscape. Employment Regulation Orders (EROs) set out terms and conditions that are typically found in collective agreements and provide a way for workers to have a say about their pay, terms and conditions. Without the JLCs workers and their unions have been left with no effective mechanism for determining such essential matters as overtime and sick pay.

28th February 2013

**Ends
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APPENDIX ONE

SUBMISSION TO THE INDEPENDENT REVIEW OF EMPLOYMENT REGULATION ORDER & REGISTERED EMPLOYMENT AGREEMENT WAGE SETTING MECHANISMS (Irish Congress of Trade Unions, February, 2011)

INTRODUCTION

This review is the precursor to an attack on the pay and conditions of some of the most hardworking and vulnerable workers in Irish society. Congress does not question the integrity of the members of the Independent Review Body but the motives of those who are targeting Employment Regulation Orders (EROs) and Registered Employment Agreements (REAs) are indeed suspect. It appears that the European Commission is interfering in the Irish labour market in order to tip the scales against lower paid and vulnerable workers in favour of social dumpers and would-be employers of sweated labour.

The speed with which this review is being expedited suggests that the IMF, the European Commission and the Government are determined to thwart the desire of the Social Partners to continue the REA system that has served certain vital sectors of the Irish economy very well. It also appears that an attempt is to be made to dismantle the Joint Labour Committees (JLCs). These JLCs exist to prevent exploitation and abuse of workers. Workers who now enjoy moderately decent conditions may be forced to accept forms of exploitation that have been outlawed in this jurisdiction since the Victorian era.

THE JOINT LABOUR COMMITTEE SYSTEM HAS BEEN REVIEWED MANY TIMES BEFORE

Many times and on many occasions down the years the JLC system has been examined, investigated, reported upon, monitored, and reformed with a view to ensuring that it remained a relevant and useful tool for regulating terms and conditions in certain agreed sectors of the Irish economy. In spite of the robust objections of IBEC to any enforceable terms in any sector each of these reviews concluded that the advantages of JLCs for employers, workers and the Irish labour market far outweighed any disadvantages.

REGISTERED EMPLOYMENT AGREEMENTS HAVE WORKED WELL

While the JLC system has undergone several reviews the REA system has come under less scrutiny. With the exception of the Electrical Contracting REA none of the 68 existing REAs have been subject to any significant independent review for many years. The parties to the active REAs (approximately 5 in number) required no review as years of experience had convinced all sides that the REA system had made a valuable contribution to sustainable enterprise and good industrial relations. The recent collapse of our construction industry did not happen as a result of the existence of REAs. In fact the existence of the REA served to moderate wage inflation when tender and property prices rose to catastrophically unsustainable levels resulting in the economic bubble which led to the crisis.

Experience of the construction industry REA has recently proved that the system can respond in a flexible way to a downturn in the industry when the parties agreed to a substantial downward revision of pay rates of 7.5%.

The parties to the active REAs entered into them and remain in them voluntarily and have been happy to be left to alter them to suit the agreed needs of their industries in varying circumstances.

THE RECENT ATTACKS ON JLCs & REAs

The recent attacks on REAs have come from two sources both of whose aim is the deregulation of industry. On one hand the most vociferous critics of the REA are motivated by political ideology and have little understanding of the needs of those industries that have chosen the REA system as the preferred mechanism for regulating their affairs. On the other hand some employers with long histories of refusing to honour the agreed terms of the REA are determined to use the current recession to cut workers wages and to withdraw pension and sick pay arrangements. This attack on labour standards will do nothing to bring the construction industry out of recession. With no universally applicable minimum conditions other than the now deflated minimum wage the opportunities for cross border and social dumping will greatly increase. Contractors from Eastern Europe and nearby Northern Ireland will be free to tender for Irish construction work at rates that could not be matched by the most exploitative of our indigenous companies.

THE STAGE FOR THIS REVIEW HAS BEEN SET BY A POLITICAL AND MEDIA CAMPAIGN

Congress is in no doubt that the aim of those who pushed for this review is to have the JLC's and REA's cancelled. Over the last number of months, individuals identifying themselves as employers, have been waging a campaign in the broadcast media claiming that the very basic conditions enjoyed by workers covered by JLCs and REAs are a restraint on trade. This campaign portrays itself as spontaneous but is clearly directed by the 'competitiveness through exploitation lobby'. The campaigners suggest, amongst other things, that skilled experienced workers should accept the recently deflated minimum wage for out-of-hours and Sunday working. They maintain that a fully trained and experienced chef or waiter who works unsocial hours or on Sundays should receive no premium payment however small.

It must be admitted that the various employers organisation have not been involved in this campaign. However, the campaigners have been encouraged by partisan interviewers. There is something unwholesome about broadcaster celebrities, who enjoy colossal salaries, acting as cheerleaders for this 'competitiveness through exploitation lobby'. There is also something objectionable about well heeled politicians objecting to lower paid workers receiving a small Sunday premium as compensation for the disruption to family and personal life which such unsocial working patterns entail. If the competitiveness through exploitation lobby succeeds in its objective, construction workers, hairdressers, cleaners, catering workers, and agricultural workers will have no

minimum standards or protection other than the deflated National Minimum Wage. Many of them will lose their sick- pay schemes and many thousands of workers will lose the entitlement to an occupational pension scheme.

The Government which connived at this latest assault on workers rights assured those same workers during the Lisbon referendum that their rights would be respected and protected. Congress supported the Lisbon Referendum and urged workers to vote in favour. Government spokespersons referred repeatedly to Congress position during the referendum campaign. We now have the spectacle of a European Commission (in breach of its own treaties) and the Irish Government working together to seek to deny vulnerable workers the right to moderately decent terms and conditions employment.

ORIGINS AND HISTORY OF JOINT LABOUR COMMITTEES

Joint Labour Committees and Employment Regulation Orders have their origins in the UK Trade Boards Act (1909). The original intention of the Act was to focus on extreme exploitation. Trades Boards were initially established in sectors and trades where there was believed to be considerable risk of exploitation then referred to as 'sweated labour'.

The Trades Boards Act (1918) extended the scope to sectors 'where there existed inadequate machinery for regulating terms and conditions of employment and where collective bargaining is underdeveloped'. The underlying principle was that a level playing field of minimum standards would apply within a given industry to avoid giving a competitive advantage to the most exploitative employers. Winston Churchill said of this system, that 'it protected the good employer from the bad and the bad employer from the worst'.

JLCS IN IRELAND TODAY

The Industrial Relations Act 1946 (section 35) gives the power to the Labour Court to establish Joint Labour Committees. Many thousands of Irish workers in rely on EROs for their basic terms and conditions of employment. Currently, there are 13 JLCs in existence, as follows:

*Aerated Waters & Wholesale Bottling; Agricultural Workers; Catering (Dublin and Dun Laoghaire); Catering (other); Clothing;
Contract Cleaning; Hairdressing; Hotels (Dublin and Dun Laoghaire);
Hotels (other excluding Cork); Law Clerks;
Provender Milling; Retail Grocery and Allied Trades;
Security Industry.*

CONGRESS DEMANDS THAT JLC SYSTEM SHOULD BE RETAINED

JLCs are a valuable element of our industrial relations system. JLCs offer protection

against exploitation and abuse of workers. The sectors where they operate are in the main low skilled trades and sectors where vulnerable workers such as women, young people with low educational attainment, and migrant workers tend to proliferate. The JLC system provides an important forum where the pay and conditions of employment of vulnerable workers can be discussed and advanced in the context of a sectors ability to pay. When minimum terms are set by a JLC the process is sensitive to the needs and capacity of the sector concerned to pay and absorb the terms. Indeed there is nothing to prevent employers seeking reductions in rates and conditions in difficult economic circumstances.

The JLC system ensures that competition within a sector will not be at the expense of labour standards. The system is advantageous to the good employer who provides good terms and conditions as it prevents unfair competition from 'race to the bottom' competitors.

To dismantle this system during the worst recession in our country's history will result in pay retrenchment in the sectors concerned and expose workers to exploitation and increased poverty. Social cohesion in Ireland will be further damaged if workers who already suffering from low pay and who have received no increases in recent years are reduced to the recently deflated minimum wage.

AN OLD REFRAIN

As JLCs have been reviewed time and again it is possible to anticipate the arguments which will be advanced by those who wish to end the system. What follows is an outline of the most common arguments we have heard and our response to each:

Argument against JLCs

The JLC system is no longer relevant and should be abolished as the National Minimum Wage (NMW) provides a nation-wide minimum floor payment for all workers in lower paid industries and negates the need for sector specific minimum rates, as provided for by the JLC system. The existence of a wide range of protective employment legislation has made the requirement to have alternative sector specific measures redundant.

Congress response

The National Commission on the Minimum Wage considered the future of JLCs following the introduction of the minimum wage and recommended that they should continue in the sectors they covered. It was never intended that minimum wage legislation should offset or supplant other forms of statutory wage determination. If it this had been intended the legislation could have easily made provision to that effect.

In some sectors as well as a minimum hourly rate there needs also to be other elements of earnings that have a legally enforceable floor, such as sick-pay,

division of gratuities, and deductions for board and lodgings etc.

Notwithstanding minimum wage legislation JLCs remain relevant in fixing wages to reflect skill levels and differentials between different occupational groups. For instance in the context of the hotel sector the JLC sets different rates for various categories of staff, such as chefs, waiters etc. It could not be seriously suggested that all groups regardless of skills levels or occupational classification should be on the deflated national minimum wage. Equally it would be unfair to have a situation in which rates above the minimum could be determined arbitrarily by the employer.

EROs regulate more than wages and universally applicable statutory rights and can include annual leave, working hours, rest periods, sick pay schemes, negotiating rights, and dispute and disciplinary procedures.

Argument against JLCs

JLCs rates do not allow an employer to claim inability to pay the minimum terms of an ERO and are therefore not sensitive to the conditions of the individual enterprise. Neither does the individual employer have the ability to seek cost offsetting measures when an ERO increase is granted.

Congress response

In every review of the JLC system this matter was examined in detail. The conclusion reached on each occasion was that an inability to pay clause would negate purpose of the ERO which is to establish a level playing field within the sector. No employer would consent to comply with an ERO if it was known that a competitor was exempt.

There is nothing to prevent an individual employer seeking productivity or other concession from the workforce and the level of the enterprise.

Argument against JLCs

Comparing the terms of various EROs across regions and industries can reveal anomalies and inconsistencies which serve to suggest that JLCs are a hangover from another era.

Congress response

Where anomalies and inconsistencies of substance have been identified the system has proved to be sufficiently flexible to resolve outstanding problems
☐ If some terms of an ERO puzzle a radio broadcaster or a politician it only serves to highlight that industrial relation systems are the major concern of those who have to live with the consequences of what is contained in the ERO. Uniformed public comment is sometimes unhelpful. This is particularly so in difficult economic times. It is sometimes easier to find scapegoats than to suggest common ways forward for an industry or sector.

REGISTERED EMPLOYMENT AGREEMENTS

There are 68 employment agreement registered with the Labour Court yet the Labour

Court has observed that the system is sparsely used in the overall of Irish industry. Active REAs are now most common in sectors which are characterised by internal competition amongst a large number of employers. REAs are regarded as particularly appropriate in labour intensive sectors where labour costs are a high proportion of overall costs, and where firms compete against each other for available work through competitive tender. These characteristics are most prevalent in construction and electrical contracting, both of which are covered by registered employment agreements. Indeed these are precisely the two REAs targeted for attack by 'the competitiveness through exploitation lobby'. Congress can only assume that these are the REAs which the European Commission and the Government have targeted for abolition after this review

REAs: THEIR ORIGINS & PURPOSE

Registered employment agreements were enshrined in the Industrial Relations Act 1946. They are intended to promote pay determination by collective bargaining and ensure industrial relations stability. The system allows representative trade unions and employers to negotiate collectively for an entire trade or industry and provides that the rates and conditions thus agreed have universal application within that trade or industry. This system allows for the establishment of legally enforceable common rates of pay and conditions of employment across the trade or sector to which the agreement relates.

The system promotes stability in industrial relations by precluding trade unions from seeking to enforce more favourable terms than those prescribed by the agreement. Industrial relation disputes have to be referred to the Labour Court, before a trade union could support a strike. A significant advantage for employers is that an REA prevents firms, which would otherwise have paid lower rates than those agreed from gaining a competitive advantage over firms who observed the agreed rates and conditions of employment. This *level playing field*" aspect of REAs, is regarded by the employers and unions in the relevant sectors as the basic *raison d'être* for the system and is why Congress believes REAs should continue to exist wherever the parties so desire.

REAs IN THE SOCIAL PARTNERSHIP ERA

REAs were much discussed by Government, employers and unions during many of the Social Partners discussion and agreements which characterised Irish industrial relations prior to the collapse of national Social Partnership in 2009. During those discussion there was no criticism of the system or any suggestion from any quarter that REAs have 'a negative impact on economic performance and employment levels'. Rather there was a consensus that these agreements should be maintained and strengthened. The National Employment Rights Authority was created because all sides wished to see full compliance with the terms of REAs (and EROs). When a legal challenge to an ERO in the hotel industry suggested that changes might be required to the REA system to make it more robust to legal challenged all sides agreed that legislation to that effect would be introduced. The Government resiled that the Government had already surrendered to

the competitiveness through exploitation lobby.

PROBLEMS WITH THE REAs

In spite of the support for REAs from both unions and employers there were some problems with the system. The main problem was that as the construction and electrical industries became fragmented as they restructured with large employers making way for smaller contractors and sub-contractors. This fragmentation of the industry led to some contractors and sub-contractors attempting to undercut each other by failing to comply with the terms of the REA. The problem was not confined to contractors from Northern Ireland and further afield but it was most difficult to deal with such cases. The efforts of the trade unions, the Construction Industry Monitoring Agency, EPACE and National Employment Rights Authority were usually effective when it came to dealing with non-compliant indigenous companies but it was more difficult with companies registered outside the State. Enforcing the terms of the Construction Industry Pension REA on companies from Northern Ireland remains a serious problem.

European enlargement in 2005 put a particular strain on the REAs as many thousands of workers from Eastern Europe and many foreign contractors arrived into the Irish labour market cases of non-compliance rose exponentially. In 2005 there was a bitter dispute involving a Turkish company Gama who went to elaborate lengths to deprive their workforce of their entitlements. This bitter and prolonged industrial dispute was eventually resolved in favour of the exploited workers. The company tried to evict these workers from their accommodation and threatened to cut off their food supply during the dispute. The law Courts prevented the Government Labour Inspectorate from helping these workers and had it not been for the existence of the REA Gama would still be winning contracts in Ireland by the use of exploited and abused labour.

Although the GAMA dispute and many other instances of non-compliance were eventually resolved construction employers and workers learnt a valuable lesson. Unless terms and condition are legally enforceable many contractors and subcontractors will not comply. If the REAs are destroyed it is almost certain that companies from outside the State will ignore even the deflated minimum wage rate and Gama type sweated labour will become the norm rather than the exception in the Irish construction industry

THE EUROPEAN COURT OF JUSTICE LAVAL JUDGEMENT

The parties to the active REAs considered the implication of the European Court of Justice Judgement in the Laval case and comfort was taken from the fact that REA terms and conditions are universally applicable and therefore binding on any foreign company who might wish to tender for work in Ireland. If the REAs are cancelled companies from outside the state can tender for Irish projects and bring labour in on the deflated minimum wage or less. Irish companies regardless of their efficiency and productivity will not be able to compete. Thus any public capital expenditure program is unlikely to put Irish companies or workers back to work.

When the Lisbon Treaty Referendum was rejected on the first occasion the Government commissioned research from Millard Brown to try to establish the reasons for the

decision. This research revealed that concern for workers' rights was a major factor. In subsequent discussions with the European Commission the Government secured a statement as to the high importance placed on workers' rights by the Commission. This statement and concern about the emerging jurisprudence of the European Court of Justice (ECJ) became central in the public debate which preceded the second Lisbon referendum.

The relevance of this to this review is that the controversial ECJ cases – *Laval*, *Viking*, *Luxembourg and Ruffert* – all resulted in judgements which privileged the right of establishment of business over human rights as they relate to protection of workers. In the referendum debate it was consistently argued by Government ministers that the existence of legally binding pay determination machinery acted as a buffer against a 'race to the bottom' which would otherwise be a risk arising out of the ECJ judgements.

For its part the European Commission has consistently registered advocacy from the ETUC for an addendum or 'Monti-clause' to a future treaty to prevent the ECJ from acting in such an unbalanced way. An alternative, to amend the Posted Workers' Directive, to restore the balance of workers' rights is not deemed to be politically possible because of differences between the EU accession states and the original EU 10. The Commission has always argued that the necessary legal protections could be put in place at national level.

All this needs to be viewed in the context of the 'Balkenstein Directive' on Services. The so called 'country of origin' principle incorporated in the original legislation was successfully registered by the European Parliament on the grounds that it would undermine employment conditions. However, the ECJ, using the teleological method of judicial activism, has effectively negated the decision of the EP. To cap it all now the Commission, in collaboration with the Irish Government, is attempting to dismantle the few remaining constraints preventing a race to the bottom in Ireland.

THE SHORT AND LONG TERM EFFECTS OF CANCELLATION OF REAs

If the REAs are cancelled there will be a number of short and long term effects which we will deal with in turn.

The short term effects

1. There will be significant wage retrenchment as employers will offer only the deflated minimum wage to highly skilled construction workers desperate for employment. This will mean that the basic craft rate which stood in January 2011 @ €18.60 per hour and is now €17.51 per hour will be reduced to €7.65.

2. Contractors from outside the State will win public contracts and bring their own workers with them Gama style. The Irish State has already shown that it has no power to prevent Gama style abuse of migrant workers. In the absence of an REA the powerlessness will be exacerbated.

3. As Irish companies will be unable to compete they will fail and thousands of construction workers will be trapped in long term unemployment.

4. The construction workers pension is at present the most sustainable private funded occupational pension scheme in the State. This scheme will have to be wound up because employers will refuse to pay the contribution.
5. Workers will lose travel and subsistence entitlements which made up an important element of their income. Bonus and overtime payments which made a significant element of a construction workers pay during the boom have all but ceased to exist in the industry.
6. New capital investment in the industry will not lead to increased employment for Irish workers and our world class apprenticeship training and construction skills schemes will wither on the vine due to lack of trainees.
7. Construction work will be carried out by cheap labour from outside the state. Our indigenous skilled workforce will be consigned to long term unemployment with ever reducing social welfare payments.
8. Many of the highly skilled construction workers who have been trained at the expense of the Irish taxpayer will migrate to other countries where they can work and earn a living wage.
9. There is the possibility of increasing xenophobia and even civil unrest.

The long term effects

1. Companies will have no certainty in costing labour when tendering for a project. Labour costs will be cut to the bone. This in turn will lead to renegotiation and escalation of tender prices during the lifetime of a project.
2. With no binding agreed rates large projects will be cockpits of industrial unrest. Workers will use any industrial muscle they have to achieve a decent wage.
3. Much of this industrial unrest will be unofficial. As long as the REAs remain employers have recourse to the courts for a remedy in the case of wildcat action. If the REAs are cancelled employers will have no such remedy.
4. Irish workers will cease to regard a job in construction as worthwhile. Why would a young apprentice spend four years in intensive training in order to work in cold, dangerous, dirty conditions to receive the same rate they could command for sitting at a supermarket checkout? For that matter why would a highly skilled worker with no security of employment climb a hundred feet into a crane everyday in all weathers

for a pittance?

CONCLUSION

Congress asks the Review Body to find that JLCs and REAs have made and continue to make a positive contribution to the Irish economy. They remain a protection to workers during the worse times of recession. They are versatile enough to allow for reductions in hard times as well as improvements in good time. JLCs and REAs will also be seen to be a great value to employers if and when there is an upturn in the economic conditions of the country.

JLCs are not out of date. The economics and politics espoused by the competitiveness through exploitation lobby which wants deregulation of the market rather than better regulation is a throwback to the Victorian era. It is the lack of proper regulation which got us into this mess in the first place.

Congress asks the Review Body to find that the Government should honour the agreement they made to legislate to strengthen REAs. The Government should be asked also deal with the lack of compliance by Northern Ireland companies with the construction industry pension REA.

Finally if employers wish to change or dilute the terms of either EROs or REAs because of difficult economic circumstances the procedures exist for them to do so. If however it is intended to strip vulnerable workers of very basic protections at a time of recession when their collective bargaining strength is at an all time low then all the talk during the Lisbon debate by the EU Commission and the Government about respecting workers rights will be to have been nothing but an exercise in deceit.

ENDS