

LABOUR RELATIONS COMMISSION

**ADVISORY DEVELOPMENT
AND RESEARCH SERVICE**

REVIEW OF INDUSTRIAL RELATIONS

IN

THE HEALTH SERVICE

FOR

**THE MINISTER FOR HEALTH
AND CHILDREN**

MAY 2001

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Executive Summary

INTRODUCTION

Following a request from the Minister for Health and Children in September 2000, the Advisory Development and Research Service (ADRS) of the Labour Relations Commission consulted the principal Health Service management and trade union representatives throughout the country to establish an overview of the major issues/factors impacting negatively on industrial relations in this sector. The process was carried out from October 2000 to March 2001 and involved detailed discussions with over 60 management and union representatives (see Appendix I).

The Health Service is one of the largest employments in the State with approximately 80,000 people involved in the provision of health care. It operates in an extremely complex and demanding environment where issues concerning human resource management and development and industrial relations can become strained from time to time. It appears however that industrial relations in the Health Service are under continuous and sustained pressure.

Recent high profile, national disputes (nurses and NCHD's) have resulted in less than satisfactory outcomes e.g. many hold the view that the nurses' dispute could have been settled earlier and with a better result in terms of relations post-dispute.

In the main, the major disputes in recent years have been heavily influenced by economic and social factors. They have also been influenced by the legacy of reductions in funding and numbers in the late 1980's and early 1990's that contributed to the increased workloads and activity levels, and which have stretched staff considerably.

In addition to the national disputes numerous local issues arise on an on-going basis, many of which end up in actual or potential dispute situations. During the period 1998 to 2000 the Labour Relations Commission and Labour Court dealt with almost 1,000 cases in the Health Service. This level of activity, which represents a disproportionately high level of usage of third parties, is indicative of the extent of industrial relations activity in the Health Service generally. While many of these issues may have financial implications and management feel unable to negotiate or concede, many

more are routine, day-to-day issues, which could be dealt with at local health board/hospital level.

VIEWES OF LOCAL MANAGEMENT AND UNIONS

Management representatives consulted by the ADRS expressed the following views:

- Control from the centre are too strong;
- Poor industrial relations are damaging staff morale;
- Industrial relations procedures are not operating effectively;
- Unions are not operating the industrial relations process properly;
- The role and functions of the Health Service Employers Agency (HSEA) are in need of re-definition;
- The Human Resource/Personnel function is not properly resourced.

Union representatives expressed views on the following:

- The inflexibility of management;
- Frustration with the industrial relations process;
- Concerns in relation to the remit of the Human Resource function;
- Concerns in relation to the role of the Health Service Employers Agency.

CONCLUSIONS/PROPOSALS

Both management and unions in the Health Service are concerned with the current state of industrial relations. Because many disputes in the Service relate to some degree to Government pay policy and there is potential for wide repercussions, the speedy resolution of issues is not always possible. Consideration should be given to the extent to which authority can be devolved from the centre consistent with the principles of the Strategic Management Initiative (SMI). In the meantime all parties to the industrial relations process in the Health Service should work together to develop strategic responses in the areas of industrial relations, human resource management and human resource development.

Two key elements require attention, (i) the operation of the negotiation, disputes and grievance procedures, and (ii) the interaction between the major actors (management and their representatives and workers and their representatives).

PROCEDURES:

The following changes to the industrial relations mechanism should be considered:

- The parties should comply with the provisions in the Programme for Prosperity and Fairness, which call for the application of a voluntary code of practice consistent with the Code of Practice on Disputes Procedures Including Procedures in Essential Services (see Appendix II).
- All disputes and grievance procedures should incorporate clearly defined time frames, which are rigorously applied.
- The conduct of industrial relations business should be left to managers and union representatives.
- Referral of issues to a higher level or to a third party such as the Labour Relations Commission should only take place after every effort has been made to resolve disputes at local level.
- Labour Court recommendations must be the final step in the industrial relations procedures.
- Implementation and interpretation frameworks should be put in place at the conclusion of negotiations on national issues to ensure timely and consistent application of agreements throughout the country.
- The Labour Court and particularly the Labour Relations Commission should provide separate dedicated resources to the Health Service.
- Communication and consultation mechanisms based on the principles of partnership should be implemented throughout the Health Service.

ACTORS:

If the procedures are to work properly representatives on both sides must have the skills, authority and ability to carry out their functions. The division of responsibilities should be as follows:

- Central/Senior Local Level – strategy/policy/support;
- Local Front Line – experts with skills, authority and resources to deliver.

The focus of central management, in consultation with senior local management, should be the development of robust, modern human resource management, human resource development and industrial relations strategies for the Health Service. In addition, central management must act in a supportive and advisory role and allow local management to deliver the services within this framework. This is consistent with the provisions of the SMI and PPF [Modernising the Public Service and Framework I (1.4.3)]

The role of the HSEA is in need of re-definition. The Agency and senior Health Service management, in consultation with the Department of Health and Children, should carry out a review of its operations and resources.

It is necessary that senior Health Service management, or their representatives, be directly involved in national level negotiations – particularly their conclusion - to ensure that the intricate details and logistical issues are addressed at the appropriate stage.

The Health Service is labour intensive. The function which services its most important resource (employees) should be resourced to reflect this importance. A Human Resource/Personnel career structure, which reflects the needs of a modern, dynamic organisation, should be developed.

To ensure that corporate human resource policies complement “business” strategy (consistent with the modern strategic management approach where human resource/personnel decisions become integral to the strategic decision making) Human Resource Director posts should be at the level of those managers responsible for “business” strategies i.e. Programme Managers.

All managers who deal with employees and employee related matters on an on-going basis should have the skills necessary to deal with people management and the authority and support to fulfil their roles. In order to develop mutual trust and understanding with their counterparts on the union side joint training programmes should be developed and implemented.

Unions representing similar/same grades should consider negotiating as a group. This would eliminate any overlap, duplication and competing claims. Officials should continue to advise members on good industrial relations practice and ensure they understand that it is not possible to win concession of every claim.

In many ways the job of the employee representative/shop steward is similar to that of the front line manager. They must understand the people management and industrial relations processes. It would be very beneficial therefore if joint training programmes were developed at this level.

Unions should ensure that their employee representatives are properly trained and have easy access to the professional advice and expertise of officials. All should be aware of, and abide by the provisions of the Code of Practice on Duties and Responsibilities of Employee Representatives and the Protection to be afforded them by their Employer (copy at Appendix III).

PART 1: Background

- 1.1 Following an announcement by the Minister for Health and Children that the Advisory Development and Research Service (ADRS) of the Labour Relations Commission would carry out an audit of industrial relations in the Health Service, the Chief Executive of the the Commission, the Director of the ADRS and the Director of the Conciliation Service met the Minister and officials of his Department on 14th September 2000. It was agreed that the ADRS would consult with the principal management and trade union representatives throughout the country to establish an overview of the major issues/factors impacting negatively on industrial relations in the Health Service and report back to the Minister.
- 1.2 The consultative process, which commenced in October 2000 and concluded in March 2001, involved detailed discussions with over 60 senior officials in the organisations listed at Appendix I. In all but two Health Boards the Chief Executive Officer and Personnel Officer were interviewed. Similarly, in all Trade Unions involved Regional Secretaries and/or General Secretaries and Branch Officials active in the Health Sector were interviewed.

PART 2: Context

- 2.1 The Health Service is one of Ireland's largest employers with approximately 80,000 people involved in the provision of health care. Geographically the Service is widely dispersed throughout the State with employees based in facilities ranging from modern 'state of the art' to premises adapted from the late Victorian period. There are many grades and unions, functions and practices, payments and allowances. Demands from the public are ever increasing, public scrutiny is incessant and workloads are stretching staff considerably. Recruitment and retention of staff is a constant challenge. In such a complex and highly charged environment it is to be expected that industrial relations can become strained from time to time. Unfortunately, however, it seems that industrial relations in the Health Service are under sustained pressure.
- 2.2 In recent years a number of major national disputes have taken place in the Health Service, most recently involving nurses and non-consultant hospital doctors. These disputes were processed in the media spotlight and were damaging to staff and management alike. The divisive nature of these disputes and the difficulties associated with finding solutions resulted in less than satisfactory outcomes. For example, many of those consulted on both sides expressed the view that the nurses' dispute could have been settled earlier and with a better result in terms of relations post-dispute.
- 2.3 In the main, the major disputes in recent years have been heavily influenced by economic and social factors. The booming economy has increased workers' expectations generally while issues such as the cost and availability of housing and child-care has also informed decisions made by unions representing Health Service employees. These disputes have also been influenced by the legacy of reductions in funding and numbers in the late 1980's and early 1990's, which contributed to increased workload and activity levels.
- 2.4 In addition to national level disputes, numerous local issues arise on an on-going basis many of which end in dispute. During the period

1998 to 2000 the Labour Relations Commission and Labour Court dealt with almost 1,000 cases in the Health Service (see Figure 1 below). This level of activity is indicative of the extent of industrial relations activity in the Health Service generally.

FIGURE 1
Health Service Issues Dealt With by LRC and Labour Court
1998-2000

Year	Conciliation	Rights Comm	ADRS	Lab Ct*	Total
1998	181	97	3	19	300
1999	137	145	1	43	326
2000	178	153	13	27	371
Total	496	395	17	89	997

*Referrals to the Labour Court under Section 26 of the Industrial Relations Act 1990 and appeals of Rights Commissioner Recommendations under Section 13 (9) of the Industrial Relations Act 1969

- 2.5 In comparative terms, while Health Service employment represents approximately 5%* of the those at work throughout the economy it accounted for 10% (on average) of conciliation referrals and 5% (on average) of Rights Commissioner referrals during the period 1998 to 2000. It is expected that the level of usage of Rights Commissioners by Health Service employees will grow as the groups which attained access to the Rights Commissioner Service in 1998 become more aware of this option.
- 2.6 An analysis of issues dealt with at conciliation in 2000 is highly informative. Over half the issues relate to remuneration (55%), staffing issues account for 25%, conditions of employment account for 9%, grievance and disciplinary issues 2%, hours of work 2% and

* Number at work Feb 2000 1.65m - Source CSO

restructuring/rationalisation 7%. While many of these issues may have regional or national financial implications or relate to grades where management feel constrained to negotiate or concede, many more are routine, day-to-day issues which should/could be dealt with at local level. It seems that the situation has evolved to a point where local management feel so constrained by central management and unions feel so frustrated at the inflexibility of management that existing procedures are rendered ineffective.

PART 3: Management Views

- 3.1 Views expressed by the management representatives consulted fall into the following broad categories:
- Central Control;
 - Staff Morale;
 - Industrial Relations Procedures;
 - Union Organisation / Operation;
 - Health Service Employers Agency;
 - Human Resource/Personnel Function.
 - Miscellaneous.
- 3.2 **Centralised Management of Health Service Industrial Relations**
- 3.2.1 The Department of Health and Children's view of its own role and the role of the HSEA is quite clear. The Department sees its role as providing policy leadership in human resource management for the health system, including responsibility for the implementation of Government policy on pay and conditions of employment by Health Service employers. The HSEA also carries responsibility for implementation of Government policy on pay and related matters in discharging its role. This role also involves providing advice to Central Government on issues in the Health Sector. Since the Health Sector in Ireland is largely funded by the Central Exchequer, policy on pay and conditions must reflect Government policy. The health boards and local management are also of necessity guided by Government policy in this respect. In a small country with a highly unionised public sector it is virtually impossible to make concessions on pay and conditions in the Health Sector without having this run on in the other sectors (e.g. Environment, Civil Service etc.).
- 3.2.2 The vast majority of local Health Service management representatives consulted expressed concern at the centralised nature of the management of industrial relations and related issues in the Health Service. While they accepted the responsibilities of their posts they felt that sufficient authority and autonomy was not

devolved from the centre. They were of the view that this centralised system created a culture where:

- i. Managers were not prepared to take responsibility or initiative for fear of making a mistake or creating a precedent,
- ii. Responses were reactive,
- iii. Crisis management of disputes was the order of the day and,
- iv. Greater attention was given to disputes when strike threats were issued, which in turn bolstered the union view that this was the most effective method of progressing issues (see paragraphs 4.1.2. and 4.3.1. below).

- 3.2.3 Local management stated that the control imposed from the centre (Department of Finance, Department of Health and Children and Health Service Employers Agency) undermined their ability to manage industrial relations, constrained their flexibility to address issues at local level and damaged their credibility and effectiveness as managers. For example, they would argue that while new programmes introduced by the Department of Health and Children were usually well resourced existing programmes had to operate with restricted resources. This could impact negatively on industrial relations/human resource responses in less well resourced existing programmes. They also pointed to their inability to reward excellent performance or effectively manage under performance because of constraints imposed from the centre.
- 3.2.4 Local management accepted that because most major disputes are related to levels of remuneration and can have a major impact on Government pay policy their control over final outcomes was limited. However, they felt that inadequate consultation/ involvement of senior managers at the time of the negotiation of agreements led to implementation and/or interpretation difficulties and possibly to further industrial unrest. For example, they argued that because the recent nurses' settlement was concluded without sufficient consideration of the logistical difficulties associated with implementation, relations between nurses and management were further strained during and after the implementation stage.
- 3.2.5 Local management felt that the negotiating style of the Department of Finance was one where serious negotiation was typically left to the 'eleventh hour'. This could undermine management who may have

been holding a particular official line only to see major concession by that Department at a late stage in proceedings.

- 3.2.6 There was also concern amongst local managers that the Department of Finance did not understand the complexities or needs of the Health Service and that its motivation was not necessarily informed by what is best for the Service.
- 3.2.7 Concern was also expressed by management that outside influence exerted by unions on the industrial relations process at national and local level undermined their ability to manage industrial relations effectively.
- 3.2.8 As regards voluntary Health Service providers, the general view was that there was more flexibility on the part of management in this sector. These institutions would be concerned that this flexibility might be eroded now that many of them fall under the ambit of the recently established Eastern Regional Health Authority.

3.3 STAFF MORALE

- 3.3.1 Management were very concerned at the extent to which morale had deteriorated amongst staff in the Health Service in recent years. This was due to a number of factors. For example, employees were operating in an environment where they were under constant public scrutiny (regular critical articles and reports in the media), employees had to operate with limited resources and respond to the needs of an increasingly demanding public. They were concerned with the level of opportunities for training, development and advancement and they felt undervalued in financial terms at a time when the economy was experiencing unprecedented prosperity. As a consequence, the Health Service was no longer regarded as a preferred area of employment. Many employees were leaving the Service and it was becoming more and more difficult to recruit and retain suitable staff.

3.4 INDUSTRIAL RELATIONS PROCEDURES

- 3.4.1 The primary concern of management was that industrial relations procedures were not always properly utilised or exhausted by the

unions. In many cases ballots for and/or threats of industrial action emerged before procedures had been completed - in fact in some cases central management indicated that they only became aware that a problem existed when notice of industrial action was served. Consequently, in many instances, management only focused on issues when strikes were threatened.

- 3.4.2 Management were of the view that in some instances union officials referred issues to third parties such as the Labour Relations Commission to pacify members regardless of the merits of the issues in dispute. There was also a view that unions regarded Labour Relations Commission proposals or Labour Court recommendations as starting points rather than conclusions. This forced management to keep their best offers in reserve.
- 3.4.3 Management voiced concern at the non-implementation in the Health Service of the provisions of the Code of Practice on Dispute Procedures including Procedures in Essential Services. They were also concerned that the unions had not always honoured the industrial peace clauses of national agreements such as the Programme for Prosperity and Fairness (Framework I, Annex I, Clauses 11 and 12).
- 3.4.4 Management were critical of the union tactic of using political influence (in their view helped by the accessibility of politicians) and exploiting the vulnerability of the Health Service in dispute situations. In many instances this pressure paid off, ultimately undermining management. They felt that unions did not seem to consider the wider consequences of their actions and tended to push to the limit. For example, it was suggested by managers that unions used improvements in services as opportunities to force concessions from management with little regard for the consequences for patient care. In other cases unions sought to have locally agreed arrangements applied widely – this further restricted management flexibility at local level. The view was that union demands were ever changing and little, if any, credit was given for positive management responses.
- 3.4.5 While management expressed appreciation of the efforts of the Labour Relations Commission and Labour Court they were

concerned at the time required to access these services and suggested that greater resources should be made available to both organisations to allow speedier access to, and conclusion of, procedures.

- 3.4.6 Management expressed concern at the extent to which they could become over stretched in dispute situations because they must deal with disputes on a number of fronts viz., (i) direct talks with the unions on the issues in dispute, (ii) negotiations in relation to emergency cover in the event of industrial action and, (iii) the public relations aspect of the dispute.

3.5 UNION ORGANISATION / OPERATION

- 3.5.1 Management expressed concern at several aspects of union organisation in the Health Service. Firstly, they felt that there were too many unions representing some categories of staff (e.g. four representing nurses). In their view this could lead to inter-union tensions which could be damaging to industrial relations. They felt that it would be easier to deal with unions representing same/similar categories on a group basis. Secondly, there was a fear that managers who are union members may have divided loyalties and/or conflicts of interest. Situations could arise where management colleagues were dealing with each other in adversarial situations. It was also suggested that in some cases implementation of settlement terms might be impeded by those not benefiting. Thirdly, some management representatives were of the view that the unions were the only advocates for staff – consequently management were losing touch with staff. Finally, there was a view that some employee representatives/shop stewards and some union officials were not sufficiently trained or experienced to understand the complexities of the Health Service.

3.6 THE HEALTH SERVICE EMPLOYERS AGENCY

- 3.6.1 Local management generally appreciated the efforts of the HSEA, however they did express concerns in relation to the role and functions of the Agency and the resources available to it.

- 3.6.2 While accepting that the maintenance of Government pay policy was an imperative, local management felt that the Agency was too closely controlled by the Department of Finance and the Department of Health and Children making it virtually impossible for it to fulfil its role as advocate of the Health Service employers. Its credibility could be undermined by decisions taken at political or Departmental level - for example, during negotiations on disputes the Department(s) could make concessions which were contrary to the positions being held by the Agency. The view was that the HSEA should be empowered to act as the key national authority in managing Health Service industrial relations.
- 3.6.3 Local management were concerned at their lack of involvement in policy and strategy development. They believed that the Agency must have a closer relationship with management and be given strategic and operational independence by the two Departments. This would require a re-definition of its role, remit and authority.
- 3.6.4 Local management representatives were of the view that the HSEA was inadequately resourced. This limited its ability to represent the interests of Health Service management and to communicate and consult effectively with its members.

3.7 HUMAN RESOURCE / PERSONNEL FUNCTION

- 3.7.1 In general, management felt that the Human Resource/Personnel function was not given the priority, in terms of resources and status, that it deserved. Specifically, they expressed the following views:
- There was no apparent strategic focus in the Health Service on manpower planning or employee and organisational development. Personnel departments were heavily involved in recruitment of new staff;
 - Human Resource/Personnel resources and status were insufficient throughout the Service (e.g. in one Health Board two staff members were responsible for issues relating to industrial relations covering almost 7,000 employees). The personnel function was not regarded as specialist - in most instances general staff were assigned to this area;

- Training and development of staff who have personnel functions - whether in the personnel department or as front line managers with supervisory duties - was not adequate;
- The effectiveness or otherwise of the personnel function depended largely on the personalities involved. This inevitably led to inconsistency;
- The pay and career prospects for potential personnel managers in the Health Service were not attractive enough.

3.8 MISCELLANEOUS

3.8.1 All those consulted were made aware that the focus of this exercise was on the major issues impacting on industrial relations in the Health Service. However, the following issues were also mentioned by several management representatives.

- Communication and consultation in the Health Service needed to improve. Information flows in both directions between centre and local level were criticised.
- While there was a view that partnership might help in the long term, management considered that the motives of the unions were in doubt and felt that in some cases the partnership process was being used to advance industrial relations agendas.

PART 4: Union Views

4.1 OVERVIEW

- 4.1.1 The collective feeling expressed by those union representatives consulted during this exercise was one of frustration - frustration with delays and the fact that issues were left to fester, frustration with their inability to process claims for their members, frustration with the apparent inability of management to negotiate, frustration at the inability to have national deals implemented quickly at local level and frustration with the resultant anger directed at them by their members. Many were of the view that the situation was close to breaking point.
- 4.1.2 One of the consequences was that employees were leaving the Health Service at a time when it was becoming more and more difficult to recruit replacements. In essence, the unions were of the view that normal procedures did not work in the Health Service and that the only way to get a response or make progress was to threaten industrial action. It is worth noting however that many of those consulted felt that management in the voluntary sector had more flexibility and were therefore in a better position to deal with local issues in particular.
- 4.1.3 For ease of reference the union views are categorised under the following headings:
- Management;
 - Industrial Relations Process;
 - Human Resource/Industrial Relations Function;
 - Health Service Employers Agency;
 - Miscellaneous.

4.2 UNION VIEWS ON MANAGEMENT

- 4.2.1 Unions were of the view that management had little authority to negotiate - at national level all decisions of import were taken by the Department of Finance and/or the Department of Health and

Children and/or the HSEA or referred to the Labour Relations Commission and/or Labour Court for validation. The credibility of senior Health Service managers was undermined by their exclusion from the concluding stages of major negotiations such as the settlement of the nurses' dispute. They argued that local level issues were referred to Health Board headquarters level and from there to the centre. They concluded therefore that Health Service management had little, if any influence and therefore lacked credibility. They believed that they were reactive, had no culture of making decisions and had no strategic overview of industrial relations in their organisations. In their view there was a sense that managers were afraid to make decisions because of the likely consequences. Unions were also of the view that some managers use the control exerted from the centre as an excuse for inactivity.

- 4.2.2 There was a view amongst union representatives that the Department of Health and Children and the Department of Finance did not fully understand the complex needs of Health Service employees. It was also felt that the Department of Finance exerted too much control over the Service.

4.3 INDUSTRIAL RELATIONS PROCESS

- 4.3.1 Unions were of the view that procedures were ineffective and believe that it took too long and required too much effort to resolve issues. Issues raised by unions were delayed and frustrated by the absence of key or experienced managers, the inability to get answers and meetings and the absence of responses to correspondence. To unions, it seemed that managers delayed in the hope that issues would disappear. These endless delays led to frustration, avoidable problems were left to fester and unions were therefore forced to refer issues to third parties such as the Labour Relations Commission or ballot members to get responses from management. Their view was that pressure got results – waiting was futile. The situation was further exacerbated by difficulties arranging Labour Relations Commission conferences and Labour Court hearings due to resource difficulties in both organisations. In contrast, unions were of the view that when management wanted a meeting it could be arranged almost immediately.

- 4.3.2 Progress at local level depended on the personalities involved on the management team. In some cases managers would try to negotiate while others used procedures to frustrate. Some managers did not operate agreements in the spirit in which they were negotiated and tried to avoid or re-interpret provisions. As a consequence unions had to police agreements constantly.
- 4.3.3 Local managers did not interpret or apply national agreements consistently - in effect such agreements had to be renegotiated 'hospital by hospital'. This resulted in delays in fully implementing agreements such as those negotiated with the nurses and the non-consultant hospital doctors. This generated bad feeling and further damaged the credibility of the industrial relations process.
- 4.3.4 Some union representatives consulted suggested that some managers, who are trade union members, might have conflicts of interest while dealing with employees represented by other unions.
- 4.3.5 Industrial relations procedures were not well enough communicated to staff and managers in the Health Service.
- 4.3.6 A number of union representatives felt that there should be a group arrangement in bigger locations and/or where similar grades are represented by more than one union.

4.4 HUMAN RESOURCE / INDUSTRIAL RELATIONS FUNCTION

- 4.4.1 The general view of unions was that the Human Resource/Personnel function was not adequately resourced to address the personnel and industrial relations problems being experienced by union members on a daily basis.
- 4.4.2 At the central level (Department of Health and Children) turnover of key officials due to transfer and/or promotion undermined the positive working relationships which developed over time between Departmental officials and union officials. There was a view that the Department should assign a high level official who could act as a 'trouble shooter' and who would be available to respond quickly to queries.

- 4.4.3 At Health Board level the unions were of the view that the Human Resource/Personnel function was a low priority, that it was poorly resourced and that key posts were filled by generalists, many in acting positions. As a consequence they believed that there was a lack of professionalism, consistency, continuity and commitment to this important function.
- 4.4.4 It was also the view of the unions that deficiencies existed in the personnel administration system - for example accounts personnel were not available outside office hours. As a consequence staff working outside these hours found it extremely difficult to resolve any pay related problems they might have. This could have a very negative impact on morale. It was the view of the unions that these deficiencies resulted in union officials having to spend significant amounts of time processing routine issues relating to terms and conditions and employment rights of members. As a consequence, many routine personnel issues ended up going the industrial relations route.
- 4.4.5 It was the view of unions that many front line managers with responsibility for employees did not have adequate industrial relations or human resource management experience/skills. Many managers were not familiar with the terms and conditions of employees under their supervision or the formal disputes, grievance and bullying/harassment procedures.

4.5 HEALTH SERVICE EMPLOYERS AGENCY

- 4.5.1 There was a lack of clarity amongst union representatives in relation to the role and functions of the HSEA. Many were of the view that the Agency's role was to block union claims and to act as a conduit for the Department of Health and Children and the Department of Finance. They believed that it had no mandate to negotiate but simply stalled union claims for as long as possible.
- 4.5.2 The unions believed that the Agency's credibility was in question because of control from the Department of Health and Children and the Department of Finance.

- 4.5.3 The unions felt that the HSEA was poorly resourced and that high turn-over of staff damaged its effectiveness and credibility.
- 4.5.4 Unions were of the view that HSEA and Department of Health and Children were slow to communicate circulars and agreements to management in the Health Service - in many cases the union informed local managers of developments. This had the potential to lead to confusion in relation to what was actually agreed.

4.6 MISCELLANEOUS:

- 4.6.1 All those consulted were made aware that the focus of this exercise was on the major issues impacting on industrial relations in the Health Service. However, the following issues were also mentioned by several union representatives.
- Unions were of the view that communications generally in the Health Service were deficient and the consultative process was poor.
 - Some union representatives were of the view that partnership in the Health Service was being used by management to implement change on the one hand and frustrate union issues on the other hand;
 - Many union representatives expressed concern at the extent to which temporary contracts of employment were used by management - in many cases employees had been on temporary contracts for several years.

PART 5: Conclusions

- 5.1 The objective of this consultative process is to determine the major factors which impact negatively or have the potential to damage the orderly process of industrial relations in the Health Service both at national and local level.
- 5.2 These conclusions are based on the views and opinions detailed in Parts 3 and 4 above. The proposals set out in Part 6 are designed to address the problems identified during the consultative process.
- 5.3 There is enormous frustration in the Health Service. Local management are frustrated at their lack of empowerment and at the tactics used by unions to overcome this problem. Unions are frustrated at the delays and the perceived negativity of management responses to legitimate issues raised on behalf of their members.
- 5.4 The Health Service accounts for a significant proportion of Public Sector employment. Management negotiators are therefore constrained because of the potential for knock-on costs throughout the Service and the wider economy. National issues will therefore continue to be centrally regulated. However, significant numbers of issues become disputes because of lack of flexibility and authority on the part of local management which in turn results in a lack of adherence to procedures on the part of unions. It is incumbent on all sides to be innovative, inventive and imaginative in determining ways of dealing with such problems. A first step would be the implementation of the proposals set out in Part 6 below by both sides in a spirit of partnership and co-operation.

PART 6: Proposals

6.1 INTRODUCTION

- 6.1.1 Many disputes in the Health Service, whether they are major national industrial disputes or routine local issues, relate to some degree to pay and personnel policy. The potential for wider repercussions is therefore an ever-present barrier to the speedy resolution of issues. In such circumstances it must be decided politically the extent to which authority can be devolved from the centre consistent with the principles of the Strategic Management Initiative (SMI) and the wider considerations of Government pay policy. This is a longer term issue which will require in-depth consideration. In the meantime, however, it will be necessary for all parties to the industrial relations process in the Health Service to work together in a spirit of co-operation to respond to the various challenges which have been identified by developing certain specific strategic responses in the areas of industrial relations and human resource management. This should result in a more effective and efficient industrial relations process, which in turn should help to improve the industrial relations climate.
- 6.1.2 The key issues requiring attention revolve around the two most vital elements in an industrial relations process, (i) the operation of the negotiation, disputes and grievance procedures and, (ii) the interaction between the major actors i.e. management and their representatives and workers and their representatives. The proposals set out below attempt to address these issues in a co-ordinated way.

6.2 INDUSTRIAL RELATIONS PROCESS

- 6.2.1 As detailed in Sections 3 and 4 above, both management and unions view the ineffectiveness of procedures as damaging to industrial relations. In order to begin to address this problem the mechanism itself and the roles and functions of the primary participants must be reassessed.

6.3 MECHANISM

- 6.3.1 Unions speak of delays, management are critical of the use of strike threats and outside influence by unions. The credibility and relevance of the mechanism must therefore be re-established with both parties as a matter of priority. The Commission therefore proposes the following:
- i. The Programme for Prosperity and Fairness (Framework I, Annex II, paragraphs 23-25) recommended that all Public Service organisations should agree voluntary codes of practice with the appropriate unions by 30 June 2000. These voluntary codes were to be consistent with the Code of Practice on Disputes Procedures including Procedures in Essential Services (copy at Appendix II). Unfortunately this has not yet happened. The Commission proposes therefore that the parties immediately initiate discussions with a view to implementing this provision of PPF as a matter of urgency.
 - ii. Where they do not already exist, all disputes and grievance procedures should be amended to incorporate clearly defined time frames. All time frames must be realistic and must be adhered to by all parties.
 - iii. The integrity of the process must be maintained by ensuring that the conduct of industrial relations business is left to managers and union representatives – outside influence should not be encouraged or accepted by either side as an alternative to the full utilisation of the appropriate industrial relations procedures.
 - iv. Both management and unions must ensure that all efforts are made to resolve disputes at the most appropriate level in the process and that issues are only referred to the Labour Relations Commission when all other options have been fully exhausted.
 - v. The Labour Court must be accepted as Court of last resort and the end of the process.
 - vi. As regards national issues the parties should develop an agreed implementation and interpretation mechanism to ensure timely and consistent application of agreements throughout the country.
 - vii. The Labour Court and particularly the Labour Relations Commission should provide separate dedicated resources to the

- Health Service. This will have resource implications for the Commission in terms of available industrial relations personnel.
- viii. Both sides were critical of the effectiveness of communication in the Health Service. Central management are not satisfied that local management communicate effectively with them and vice versa. Unions are concerned at the time necessary to circulate relevant information. Management are concerned that details of agreements cannot be finalised until formally accepted by unions.
 - ix. Good consultation and communication are vital to the development and maintenance of a positive industrial relations environment, indeed Partnership 2000 (Section 10.16) regards effective communication and participation as vital to the process of change. It is essential therefore that managers, employees and unions communicate openly and regularly at all levels in the Health Service. This should help to break down barriers and build mutual trust and understanding and help to ensure that routine issues are dealt with in an efficient manner and that potential disputes are defused. The Commission proposes therefore that communication and consultation mechanisms based on the principles of partnership, as espoused in Partnership 2000 and the Programme for Prosperity and Fairness, be implemented throughout the Health Service.
 - x. In the immediate term an easily achievable and effective initiative would be the development of a web-site for the dissemination of easily accessible information throughout the Health Service on terms and conditions of employment, agreements, circulars, procedures, etc.
 - xi. Health Service employees should be aware of their terms and conditions of employment and the various procedures in existence in their employment. An Employee Handbook containing such information should be made available to all employees.

6.4 THE MAIN ACTORS

- 6.4.1 If the procedures are to work properly representatives on both sides must have the skills, authority and ability to carry out their functions. The main actors in this context on the management side are Central

Management including the HSEA, Local Health Service Management, Human Resource/Personnel practitioners, Front Line Managers, and on the union side Full-Time Officials and Employee Representatives/Shop Stewards.

- 6.4.2 In simple terms the division of responsibilities should fall along these lines: -
- Central/Senior Local Level Management – develop strategy and policy and provide advice and support;
 - Front Line Local Level Management – experts with skills and resources to conduct the day-to-day business of industrial relations in the work place.

6.5 CENTRAL MANAGEMENT

- 6.5.1 Strategic management revolves around the identification of the purpose of an organisation and developing a plan to advance it. This involves organising people and tasks to achieve the objectives. The human resource management system is key to this end. It must deal with recruitment and retention, staff development and evaluation and reward mechanisms.
- 6.5.2 The Commission believes that the focus of central management, in consultation with senior local management, should be the development of robust, modern human resource management, human resource development and industrial relations strategies for the Health Service. In addition, central management must act in a supportive and advisory role and allow local management to deliver the services within this framework. This is consistent with the provisions of the SMI and PPF [Modernising the Public Service and Framework I (1.4.3)]
- 6.5.3 The role of the HSEA in the industrial relations context is defined in the Agency's Corporate Plan (1998 – 2001) as to: -
“Represent and support employers in the management of industrial relations”.
- 6.5.4 Both sides expressed concerns in relation to the role and functions of the Agency. In view of these concerns and the fact that the HSEA

has been in operation for five years the Commission feels that it is appropriate that the Agency and Senior Management of all its client organisations, in consultation with the Department of Health and Children carry out an urgent review with a view to clearly establishing how it will discharge its functions as the main representative organisation for Health Service employers. This review should take account of the strategic framework proposed at paragraph 6.5.2 above.

- 6.5.5 The Department of Health and Children has increased the resources available to the HSEA each year since its establishment. Nevertheless, both management and unions expressed concerns in this regard. It is clear that the constraints within which the Agency must operate make it extremely difficult for it to compete in the market place for experienced staff. The Commission believes therefore that there is a compelling case for the provision of greater resources to an Agency representing the management of a highly diverse, professional and multi-location 80,000 strong employment sector. Consideration should be given to the levels of professionalism and expertise required to operate effectively in this environment. The Commission proposes therefore that the review referred to at paragraph 6.5.4 above should also consider the issue of resources. It is noted that the Department has indicated that it would be positively disposed to ensuring that the Agency is properly resourced to carry out its functions.

6.6 LOCAL HEALTH SERVICE MANAGEMENT

- 6.6.1 Senior local management feel that that inadequate input at national discussions/negotiations leads to problems with interpretation and implementation. These can, in turn, cause major difficulties for unions and have the potential to spark further disputes. The Commission proposes therefore that senior local management (or their representatives) be directly involved in national level negotiations and in particular at the concluding stages of such negotiations.

6.7 HUMAN RESOURCE/PERSONNEL MANAGEMENT

- 6.7.1 The provision of health care is labour intensive. It is clear that employees are the most important resource in the Health Service. The Human Resource/Personnel function, which services this most important resource, should therefore be properly resourced to reflect this importance.
- 6.7.2 Traditional personnel management practice is increasingly giving way to the more comprehensive concept of human resources management, which recognises the need to generate greater commitment to the enterprise from employees, in order to meet the objectives of both the employees and the organisation. This applies equally to the Health Service which needs to have a Human Resource/Personnel career structure which reflect the needs of a modern, dynamic organisation. The preponderance of generalist and acting appointments must be replaced at Board headquarters level by a more professional, structured career path. This should allow for the development of a strategic, policy and advisory role at the centre with the skills, resources and authority necessary to deliver on the objectives of the service.
- 6.7.3 While it is acknowledged that the recent appointment of Human Resource Directors in Health Boards is a positive development, the Commission would question the level at which these appointments have been made and would suggest that it is necessary to have such posts at the level of those managers responsible for 'business' strategies (i.e. Programme Managers) to ensure that corporate human resource policies complement 'business' strategies. This is consistent with the modern strategic management approach where human resource/personnel decisions become integral to strategic decision-making.

6.8 FRONT LINE MANAGEMENT

- 6.8.1 Managers who deal with employees and employee related matters on an on-going basis should have the skills necessary to deal with people management and the authority and support to carry out their duties. Appropriate training programmes should therefore be put in place to ensure that all such managers have the opportunity in the immediate

future to gain the necessary skills. Consideration should also be given to the requirements necessary for new appointees to such posts.

- 6.8.2 In order to develop mutual trust and understanding with their counterparts on the union side the Commission proposes that joint training programmes be developed and implemented (see paragraph 6.10.1 below).

6.9 TRADE UNION OFFICIALS

- 6.9.1 If the integrity of the industrial relations process is to be maintained it is vital that outside influence is not brought to bear by either side. Indeed, if the improvements proposed at paragraph 6.3 above are implemented it will considerably diminish the need for trade unions to seek to use outside influence or threaten industrial action in order to move the process forward.
- 6.9.2 It would also be beneficial to industrial relations in the Health Service if unions representing similar/same grades negotiated in single table bargaining units. This would eliminate any competing claims.
- 6.9.3 It is vital that officials continue to advise members on good industrial relations practice and ensure that they understand that that it is not possible to win concession of every claim. A negative answer can also be a legitimate management response on occasions to claims which they genuinely believe do not have any firm basis.

6.10 EMPLOYEE REPRESENTATIVES/SHOP STEWARDS

- 6.10.1 In many ways the job of the employee representative/shop steward is similar to that of the front line manager. They must understand the people management and industrial relations processes. It would be very beneficial therefore if joint training programmes were developed for employee representatives/shop stewards and front line managers (see paragraph 6.8.2 above).
- 6.10.2 It is incumbent on all unions to ensure that their employee representatives/shop stewards are properly trained and have ready

access to the professional advice and expertise of officials. All should be aware of, and abide by the provisions of the Code of Practice on Duties and Responsibilities of Employee Representatives and the Protection to be Afforded Them by Their Employer (copy at Appendix III).

Appendix I

ORGANISATIONS CONSULTED BY ADRS

Unions

Amalgamated Engineering and Electrical Union, Amalgamated Transport and General Workers Union, Irish Hospital Consultants Association, Irish Medical Organisation, Irish Municipal Public and Civil Trade Union, Irish Nurses Organisation, Medical Laboratory Technologists' Association, Psychiatric Nurses Association of Ireland, Services Industrial Professional Trade Union (Dublin Public and Private Sector, North East, North West, West, Midlands, Mid West, South West, South East), Technical Engineering and Electrical Union, Union of Construction Allied Trades and Technicians.

Management

Department of Health and Children, East Coast Area Health Board, Eastern Regional Health Authority, Health Service Employers Agency, Irish Business and Employers Confederation, Midland Health Board, Mid-West Health Board, Northern Area Health Board, North Eastern Health Board, North Western Health Board, South Eastern Health Board, Southern Health Board, South West Area Health Board, Western Health Board.

*Appendix II

CODE OF PRACTICE

Dispute Procedures, Including Procedures in Essential Services

SECTION I - INTRODUCTION

1. Section 42 of the Industrial Relations Act, 1990 makes provision for the preparation of draft codes of practice by the Labour Relations Commission for submission to the Minister for Labour.
2. In February 1991 the Minister for Labour, Mr. Bertie Ahern TD, requested the Commission to prepare codes of practice on dispute procedures and the levels of cover which should be provided in the event of disputes arising in essential services. When preparing this Code of Practice the Commission held meetings and consultations with the Irish Congress of Trade Unions, the Federation of Irish Employers, the Department of Finance, the Department of Labour, the Local Government Staff Negotiations Board, the Labour Court and representatives of the International Labour Organisation. The Commission has taken account of the views expressed by these organisations to the maximum extent possible in preparing this Code.
3. The Code recognises that the primary responsibility for dealing with industrial relations issues and the resolution of disputes rests with employers, employer organisations and trade unions. It is the intention of the Code to ensure that in line with this responsibility employers and trade unions:
 - (a) agree appropriate and practical arrangements for resolving disputes on collective and individual issues;
 - (b) observe the terms of these agreements; and
 - (c) refrain from any actions which would be in contravention of them.
4. The Code is designed to assist employers[†] and trade unions in making agreements which recognise the rights and interests of the parties concerned and which contain procedures which will resolve issues in a peaceful manner and avoid the need for any of the parties to resort to actions which will lead to

* Codes of Practice are available at www.lrc.ie

[†] The use of the word "employers" in the Code includes employer organisations where relevant and appropriate.

a disruption of supplies and services, and a loss of income to employees and of revenue to employers.

5. The major objective of agreed procedures is to establish arrangements to deal with issues which could give rise to disputes. Such procedures provide for discussion and negotiation with a view to the parties reaching agreement at the earliest possible stage of the procedure, and without resort to any form of industrial action.
6. The Code provides practical guidance on procedures for the resolution of disputes between employers and trade unions and how to operate them effectively. The principles contained in the Code are appropriate for employments in the public and private sectors of the economy irrespective of their function, nature or size.
7. The procedures of the Code provide a framework for the peaceful resolution of disputes, including disputes in essential services. The Code also provides general guidance to employers and trade unions on the arrangements which are necessary to ensure minimum cover or service where disputes which give rise to stoppages of work could have serious and adverse consequences for the community or the undertaking concerned and its employees.
8. Although the Code has been prepared primarily for employments where terms of employment are established through employer/trade union agreements, its general principles should be regarded as being applicable to other undertakings and enterprises and to their employees.

SECTION II - GENERAL PROVISIONS

9. Agreements between employers and trade unions on dispute settlement procedures can make a significant contribution to the maintenance of industrial peace. The dispute procedures contained in the Code should be seen as providing an underpinning for the conduct of industrial relations in the enterprise and in relationships between the parties.
10. Agreements on dispute procedures should be seen to be fair and equitable as between the interests of the parties and should include provision for the resolution of disputes on collective and individual issues, and such procedures should be introduced where they currently do not exist.
11. Employers and trade unions should examine existing procedures at the level of the enterprise and take whatever steps may be necessary to ensure that the principles outlined in the Code are incorporated within them.
12. Dispute procedures should be as comprehensive as possible covering all

foreseeable circumstances and setting out the consecutive stages involved in the resolution of disputes on collective and/or individual issues. Such procedures should include agreement on the appropriate level of management and trade union representation which will be involved at each stage of the procedure. The actions required of the parties at each stage of the procedure should be clearly indicated.

13. Agreements between employers and trade unions should be in writing so as to eliminate the possibility of misunderstandings arising from lack of awareness of procedures or misinterpretation of informal arrangements which may have come to be regarded as “custom and practice”.
14. Employees and management at all levels should be aware of the agreed procedures. Accordingly, arrangements should be made for these procedures to be communicated and explained through whatever means may be appropriate.
15. Dispute procedures should afford early access to disputes resolution machinery and to arrangements for the settlement of collective and individual issues within a reasonable timescale. The introduction of any specific time limits for the operation of different stages of a disputes procedure is a matter for consideration by employers and unions at local level.
16. The procedures for handling disputes on collective and individual issues should take account, where appropriate, of the functions of the relevant State agencies (the Labour Relations Commission, the Labour Court, the Rights Commissioner Service, the Equality Service and the Employment Appeals Tribunal) so as to facilitate the potential use of these services in the development and maintenance of good industrial relations.
17. Nothing in the Code precludes an employer and trade union in an enterprise, industry or service from adding other stages to their dispute procedures should this be considered appropriate.
18. The operation of dispute procedures should be reviewed from time to time with the object of improving the practical working of the procedures.
19. The Labour Relations Commission will provide assistance to employers and trade unions in formulating agreed dispute procedures in accordance with the Code.

SECTION III - EMERGENCY/MINIMUM SERVICES

20. While the primary responsibility for the provision of minimum levels of services rests with managements, this Code recognises that there is a joint obligation on employers and trade unions to have in place agreed contingency plans and other arrangements to deal with any emergency which may arise during an industrial

dispute. Employers and trade unions should co-operate with the introduction of such plans and contingency arrangements. In particular, employers and trade unions in each employment providing an essential service should co-operate with each other in making arrangements concerning:

- (a) the maintenance of plant and equipment;
- (b) all matters concerning health, safety and security;
- (c) special operational problems which exist in continuous process industries;
- (d) the provision of urgent medical services and supplies;
- (e) the provision of emergency services required on humanitarian grounds.

21. In the event of the parties encountering problems in making such arrangements they should seek the assistance of the Labour Relations Commission.

SECTION IV - DISPUTE PROCEDURES - GENERAL

22. The dispute procedures set out below should be incorporated in employer/trade union agreements for the purpose of peacefully resolving disputes arising between employers and trade unions. Such agreements should provide:
 - (a) that the parties will refrain from any action which might impede the effective functioning of these procedures;
 - (b) for co-operation between trade unions and employers on appropriate arrangements and facilities for trade union representatives to take part in agreed dispute procedures;
 - (c) for appropriate arrangements to facilitate employees to consider any proposals emanating from the operation of the procedures.
23. Trade union claims on collective and individual matters and other issues which could give rise to disputes should be the subject of discussion and negotiation at the appropriate level by the parties concerned with a view to securing a mutually acceptable resolution of them within a reasonable period of time. Every effort should be made by the parties to secure a settlement without recourse to outside agencies.
24. In the event of direct discussions between the parties not resolving the issue(s), they should be referred to the appropriate service of the Labour Relations Commission. The parties should co-operate with the appropriate service in arranging a meeting as soon as practicable to consider the dispute.
25. Agreements should provide that, where disputes are not resolved through the intervention of these services and where the Labour Relations Commission is satisfied that further efforts to resolve a dispute are unlikely to be successful, the parties should refer the issues in dispute to the Labour Court for investigation and recommendation or to such other dispute resolution body as may be prescribed in their agreements.

26. During the period in which the above procedures are being followed no strikes, lock-outs or other action designed to bring pressure to bear on either party should take place.
27. Strikes and any other form of industrial action should only take place after all dispute procedures have been fully utilised.
28. Where notice of a strike or any other form of industrial action is being served on an employer a minimum of 7 days' notice should apply except where agreements provide for a longer period of notice.
29. The procedures outlined in paragraphs 24 and 25 above refer to employees who have statutory access to the Labour Relations Commission and the Labour Court under the Industrial Relations Acts, 1946 to 1990. In the case of employees who do not have access to these bodies, for example certain employees in the public services, discussions should take place between the parties concerned with a view to developing procedures which would be in accordance with the principles included in this Code to the extent that such procedures do not already exist. In developing such procedures the parties should have regard to such considerations as the size and complexity of the employments concerned, the nature of the services provided, and the terms of employment of the employees involved.

SECTION V - ESSENTIAL SERVICES - AGREEMENTS ON SPECIAL PROCEDURES

30. In the case of essential services, additional procedures and safeguards are necessary for the peaceful resolution of disputes and these should be included in the appropriate agreements between employers and trade unions. These services include those whose cessation or interruption could endanger life, or cause major damage to the national economy, or widespread hardship to the Community and particularly: health services, energy supplies, including gas and electricity, water and sewage services, fire, ambulance and rescue services and certain elements of public transport. This list is indicative rather than comprehensive. The provisions of this section of the Code could be introduced by agreement in other enterprises or undertakings where strikes, lock-outs or other forms of industrial action could have far-reaching consequences.
31. These additional procedures and safeguards should be introduced through consultation and agreement in all services and employments coming within the scope of paragraph 30 above. The parties should recognise their joint responsibility to resolve disputes in such services and employments without resorting to strikes or other forms of industrial action.

32. The introduction of these additional procedures and safeguards should be accompanied by arrangements for the dissemination and exchange of information relating to various aspects of the life of the undertaking concerned including its relationship with the community which it serves. Employers should make appropriate arrangements for consultation with the unions through the use of agreed procedures especially where major changes affecting employees' interests are concerned.
33. Except where other procedures and safeguards have been introduced which ensure the continuity of essential supplies and services, agreements negotiated on a voluntary basis should include one of the following provisions in order to eliminate or reduce any risk to essential supplies and services arising from industrial disputes:
- (a) acceptance by the parties of awards, decisions and recommendations which result from the final stage of the dispute settlement procedures where these include investigation by an independent expert body such as the Labour Court, an agreed arbitration board or tribunal or an independent person appointed by the parties;
- OR
- (b) a specific undertaking in agreements that, in the event of any one of the parties deciding that an award, decision or recommendation emerging from the final stage of the dispute settlement procedure is unsatisfactory they will agree on the means of resolving the issue without resort to strike or other forms of industrial action, such agreements to include a provision for a review of the case by an agreed recognised body after twelve months, such review to represent a final determination of the issue;
- OR
- (c) provision that the parties to an agreement would accept awards, decisions or recommendations resulting from the operation of the final stage of the dispute procedure on the basis that an independent review would take place at five-yearly intervals to examine whether the employees covered by the agreement had been placed at any disadvantage as a result of entering into such agreement and if so to advise, having regard to all aspects of the situation, including economic and financial considerations, on the changes necessary to redress the position.

SECTION VI - ESSENTIAL SERVICES - MAINTENANCE OF INDUSTRIAL PEACE

34. Where the parties have not concluded an agreement incorporating the procedures referred to in paragraph 33(a) or (b) or (c) and otherwise where for

any reason a serious threat to the continuity of essential supplies and services exists, or is perceived to exist, as a result of the failure of the parties to resolve an industrial dispute and where the Labour Relations Commission is satisfied that all available dispute procedures have been used to try to effect a settlement, the Labour Relations Commission should consult the Irish Congress of Trade Unions and the Irish Business and Employers Confederation about the situation. The objective of such consultation should be to secure their assistance and co-operation with whatever measures may be necessary to resolve the dispute including, where appropriate, arrangements which would provide a basis for a continuation of normal working for a period not exceeding six months while further efforts by the parties themselves or the dispute settlement agencies were being made to secure a full and final settlement of the issues in dispute.

Appendix III

CODE OF PRACTICE

Duties and Responsibilities of Employee Representatives and the Protection and Facilities to be afforded them by their Employer

INTRODUCTION

Section 42 of the Industrial Relations Act, 1990 makes provision for the preparation of draft codes of practice by the Labour Relations Commission for submission to the Minister for Enterprise and Employment.

The main purpose of this Code of Practice is to set out for the guidance of employers, employees and trade unions the duties and responsibilities of employee representatives (frequently referred to in trade union rule books and employer/trade union agreements as shop stewards) and the protection and facilities which should be afforded them in order to enable them to carry out their duties in an effective and constructive manner.

When preparing this Code of Practice the Commission held meetings and consultations with the Irish Congress of Trade Unions and the Irish Business and Employers Confederation. It also consulted with the Departments of Enterprise and Employment and Finance. The Commission has taken account of the views expressed by these organisations to the maximum extent possible in preparing this Code. It has also had regard to the procedures and practices applied in undertakings and establishments which have pursued sound industrial relations policies and to the provisions of trade union rule books.

GENERAL

1. Employee representatives, for the purpose of this Code, are
 - (a) employees of an undertaking or establishment who have been formally designated employee representatives for that undertaking or establishment by a trade union in accordance with the rules of that trade union and any employer/trade union agreement which relates to the appointment of such representatives in that undertaking or establishment and
 - (b) who normally participate in negotiations about terms and conditions of employment for all or a section of the workforce and who are involved in the procedures for the settlement of any disputes or grievances which may arise in that undertaking or establishment.

Reference to trade unions throughout this Code includes reference to “excepted bodies” under the Trade Union Acts, 1871 – 1990. An “excepted body” is a body which may lawfully negotiate wages or other conditions of employment without holding a negotiation licence. “Excepted body” is defined in section 6(3) of the Trade Union Act, 1941, as amended, and includes an association, all the members of which are employed by the same employer.

2. The duties and responsibilities of employee representatives and the protection and facilities to be afforded them under this Code are indicative of the important position and role of such representatives in our system of industrial relations and in the resolution of disputes/grievances. The manner in which employee representatives discharge their duties and responsibilities significantly affects the quality of management/labour relations in the undertaking or establishment in which they work, its efficient operation and future development.

DUTIES AND RESPONSIBILITIES OF EMPLOYEE REPRESENTATIVES

3. The principal duties and responsibilities of employee representatives include -
 - (a) representing members fairly and effectively in relation to matters arising within the undertaking or establishment in which they work and which concern employment and conditions of employment;
 - (b) participating in negotiation and grievance procedures as provided for in employer/trade union agreements or in accordance with recognised custom and practice in the undertaking or establishment in which they work;
 - (c) co-operating with the management of the undertaking or establishment in ensuring the proper implementation and observance of employer/trade union agreements, the use of agreed dispute and grievance procedures and the avoidance of any action, especially unofficial action, which would be contrary to such agreements or procedures and which would affect the continuity of operations or services;
 - (d) acting in accordance with existing laws and regulations, the rules of the union and good industrial relations practice; liaising with and seeking advice and assistance from the appropriate full-time trade union official;
 - (e) having regard at all times to the safe and efficient operation of the undertaking or establishment;
 - (f) subject to any other arrangements made between an employer and a trade union, employee representatives should conform to the same job

performance standards, company rules, disciplinary conditions and other conditions of employment as comparable employees in the undertaking or establishment in which they work.

ELECTION OF EMPLOYEE REPRESENTATIVES

4. Employee representatives should be elected/designated in accordance with the appropriate trade union rules and procedures and, where relevant, in accordance with employer/trade union agreements. These procedures and agreements should ensure that such representatives will be representative of the trade union members concerned. Such representatives should normally have a minimum of one year's service in the undertaking or establishment concerned; their appointment as employee representatives should be confirmed in writing by the union to the employer and the union should provide relevant information, advice and training to employee representatives on their principal functions and duties. Nothing in this Code precludes an employer from providing additional training.
5. The number of employee representatives should be reasonable having regard to the size of the undertaking or establishment concerned, the number of trade union members employed and the structure of trade union organisation within the undertaking or establishment.
6. Following notification of the appointment of an employee representative, the employer should provide the representative with relevant information about the normal procedures for communicating with the appropriate representatives of management.

PROTECTION OF EMPLOYEE REPRESENTATIVES

7. Employee representatives who carry out their duties and responsibilities in accordance with paragraph 3 of this Code should not –
 - (a) be dismissed or suffer any unfavourable change in their conditions of employment or unfair treatment, including selection for redundancy, because of their status or activities as employee representatives.OR
 - (b) suffer any action prejudicial to their employment because of their status or activities as employee representatives,

without prior consultation taking place between the management and the relevant trade union.

Where it is established that an employee representative has been

dismissed in contravention of the provision at (a) above such representative should normally be re-instated.

8. Section 7 of this Code is without prejudice to the provisions of the Unfair Dismissals Acts, 1977 and 1991.
9. Where an employer considers that an employee representative has acted or is acting beyond the usual authority and functions of an employee representative as set out in paragraph 3 or in a manner which is damaging to the undertaking or establishment, the employer should, in the first instance, take the matter up with the employee representative concerned and failing satisfaction at that level with his/her trade union.

FACILITIES FOR EMPLOYEE REPRESENTATIVES

10. For purposes of effectively ensuring the provision of reasonable facilities for employee representatives in accordance with paragraph 11 below, employers and trade unions should enter into agreements at the level of the undertaking or establishment which would incorporate the following provisions suitably adapted to the circumstances of the particular undertaking or establishment as referred to in paragraph 12 below.
11. Employee representatives should be afforded such reasonable facilities as will enable them to carry out their functions as employee representatives promptly and efficiently and in accordance with paragraph 3.
12. The granting of such facilities should have regard to the provisions of paragraph 5 and especially to the needs, size and capabilities of the undertaking or establishment concerned and should not impair the efficient operation of the undertaking or establishment.
13. Employee representatives should be afforded necessary time off for carrying out their representative functions in the undertaking or establishment in which they work. In the absence of formal standing arrangements, employee representatives should obtain prior permission from an appropriate representative of management. Such permission should not be unreasonably withheld. Reasonable limits may be set on the amount of time off.
14. On the same basis as at paragraphs 10 and 12 above, employee representatives should be granted reasonable time off for trade union meetings and training courses which relate to their activities as employee representatives.
15. The question of payment of wages in respect of time off for any of the

purposes set out at paragraphs 13 and 14 above should be the subject of discussion in advance at the level of the undertaking or establishment.

16. Employee representatives in the undertaking or establishment should be granted reasonable access to all workplaces where they represent trade union members and where such access is necessary to enable them to carry out their representative functions.
17. Employee representatives should have access, without undue delay, to management at the appropriate level on matters relating to their representative functions and responsibilities.
18. In the absence of check-off arrangements, employee representatives should, by agreement, be permitted to collect union dues regularly in the undertaking or establishment.
19. Employers and trade unions should agree arrangements whereby employee representatives, acting on behalf of their trade union, should be permitted to post notices relating to normal activities of the union in the undertaking or establishment in a place agreed with management to which employees have easy access.
20. Employee representatives, acting on behalf of their trade union, should be permitted to distribute non-political news sheets, pamphlets, publications and other documents relating to normal trade union activities amongst the members of the union in the undertaking or establishment.
21. The use of the facilities referred to in paragraph 19 and 20 above should have regard to the orderly operation and tidiness of the undertaking or establishment.
22. Management and trade unions should agree on the particular information and facilities which should be made available to employee representatives to enable them to carry out their functions and responsibilities in accordance with this Code.

