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Trade unions and the sovereign power of the state. A comparative analysis of employer offensives in the Danish and Irish public sectors

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Summary

The changing composition of trade unions has far-reaching consequences for the relationship between unions and the polity. In particular, the concentration of trade union membership in the public sector – a process that has been taking place in most EU countries – implies a shift away from collective agreements towards legislation as the dominant way of managing employment relations. Pluralist models of collective bargaining assume a neutral, mediating role of the state, but in the public sector the state by definition acts as an employer as well. The state is equipped with the sovereign power to circumvent traditional bargaining agreements and force its will upon trade unions through legislation. The article investigates major bargaining disputes in Europe after 2008, focusing on two countries (Ireland and Denmark) that have different political environments and that, although affected differently by the financial crisis, underwent similar government interventions in labour relations. The findings suggest that a shift towards legislation is a tendency that affects all types of industrial relations systems.

Keywords

bargaining disputes, legislation, public sector, sovereign power, state

Introduction

The sovereign debt crisis of the EU after 2008 has brought a new wave of employer offensives against labour in many European countries. Specifically, governments acting in their role as an employer introduced wage cuts for employees in public administration, education, health and social care. In reaction, public sector unions called a series of strikes and used other forms of resistance, which made them the main organisers of anti-austerity protest across the continent (Glassner, 2010; Kriesi, 2014; Nowak and Gallas, 2014; Vandaele, 2011; Vaughan-Whitehead, 2013).

This article looks at two episodes of public sector employer offensives and also at trade unions' reactions within the distinctively different bargaining regimes of Denmark and Ireland. In Ireland, the article traces developments in the relationship between governments and trade unions from the eruption of the crisis, through to the public sector strike of 2009 until the Croke Park and Haddington Road concessionary agreements in 2010 and 2013. In Denmark, it analyses the school lock-out of 2013, which left the country's primary education system paralysed for weeks and was resolved by an act of parliament.

Using these cases, the article proposes a rethink of trade unions' relationship to governments. First and foremost, it argues that the stability of bargaining institutions depends on the willingness of the state to sustain them via its sovereign power, i.e. its legislative and administrative capacity to set the rules of the game. If the state decides to walk away from the bargaining table, it can use its sovereign power to intervene in employment relations unilaterally, despite trade union resistance. Sovereign power enables the state to back up its unilateral decisions with legislation and top-down administrative procedures. The ensuing power asymmetry between trade unions and the state is most visible in the public sector, where the state is the employer and the legislator at the same time.

By highlighting the power asymmetry that exists between the state and trade unions, this article contributes to the debate on the role of the state in shaping labour politics. Much of the literature on social pacts was built around the assumption that in a neoliberal era governments and trade unions are equally strong – or rather, equally weak – actors (Baccaro and Lim, 2007; Fajertag and Pochet, 2000). However, the

evidence presented here supports those views that attribute a strong, independent and proactive role to the state in managing industrial relations (Howell, 2005).

This study uses the comparative case study method to assess the changing relationship between governments and public sector unions within the EU. It analyses bargaining conflicts because these are the critical processes where the power resources of both the government and the union side are the most visibly exposed. These conflicts took place at the country level and the selection of countries in this article follows a most different systems design. Despite differences in the fiscal position and in the broader political environment, both Ireland and Denmark experienced employer offensives in the public sector.

The comparison of Denmark and Ireland suggests that the relative fiscal position of a country within the EU is not necessarily the best predictor of governments' shift towards unilateralism in labour relations. The Danish budget was in a stable position while Ireland experienced an emergency fiscal situation due to bank bailouts. Nevertheless, the Danish government was just as determined to rely on legislative intervention in collective bargaining as its Irish counterpart.

The point here is not that fiscal pressures or the economic governance of the EU would leave public sector bargaining unaffected. In fact, in the Danish case, the European Commission specifically requested the reform of the school system in the year preceding the lock-out (Erne, 2015: 354). Nevertheless, the Danish case also demonstrates that it is not only direct fiscal emergency that can trigger an employer offensive, but also the simultaneous, slow-brewing processes of EU recommendations and the takeover of the finance ministry by a neoliberal managerial cadre.

The cases presented here can also be contrasted in terms of the political environment. In Denmark, the lock-out was initiated under a social democratic government. In Ireland, the main government parties implementing austerity came from the centre-right. The Irish Labour party on the one hand criticised the first round of government intervention but then it assisted the government as a junior coalition partner in the Fine Gael government led by Enda Kenny.

Despite the differences presented above, the outcome was similar in the two cases: government legislative intervention in bargaining institutions with the purpose of expenditure cuts and flexibilisation of employment conditions. The Danish case consists of a single event while the Irish case is built on a series of events with such

an outcome. The Irish case, therefore, demonstrates the evolving relationship between unions and the state over many rounds of austerity. The analysis of the Danish school lock-out at the same time helps the generalisation of the argument by explaining an unlikely event: the Danish government targeted a well-organised, institutionally embedded union that had a large strike fund. If the government offensive could succeed in this union-friendly environment, then potentially it could succeed anywhere.

To develop these claims, I first present the concepts of different employer traditions in the public sector and their implications for labour relations. Then I present the two cases of austerity-related conflicts in Ireland and the Danish school lock-out, using the concept of sovereign power as the main explanatory factor accounting for the development of these events. I conclude by linking the main findings from the case studies to the literature on the state's role in industrial relations. The article relies on mixed primary and secondary sources. The former includes interviews conducted by the author, newspaper coverage and professional reports on the events. The latter consist of the academic interpretations of the events mostly by industrial relations scholars with country-specific knowledge. A large section of the material presented here formed part of my dissertation research.

From the sovereign to the model employer and back

The state is not only an employer of public sector workers, but it also acts out of its sovereign authority and sets the legal conditions of bargaining. There are two approaches by which the state handles employment relations in the public sector, which also determine its relationship to public sector unions. As described by the specialised industrial relations literature, the first is the 'sovereign employer' and the second is the 'model employer' approach. These two ideal types represent different state-building and legal traditions: the first is associated with continental and east European countries following a 'Napoleonic or a Prussian' tradition, and the second with countries of a common law (Anglo-Saxon) tradition. Scandinavian public sector employment relations fall in between (European Commission, 2013: 104).

In its archetypical and historical form, the sovereign employer model is characterised by the absence of collective bargaining and the prohibition of strikes and union organisation in the public sector. Instead, unilateral managerial decisions

govern employment relations, which are supported by legislation (Bordogna, 2008; European Commission, 2013: 93–118). These systems also granted stable, lifetime employment tenure and a special – usually career civil servant – status to employees.

On the other hand, the model employer tradition means that the state acts as any other private sector employer in legal terms, but it sets standards by showing how it conducts its affairs with its own employees – at least this was the case in the post-war ‘golden age’. In practice, the model employer approach was associated with a more benign attitude towards trade unions, resulting in higher levels of union density than in the private sector, and the prevalence of collective agreements (European Commission, 2013: 104–106). Both the sovereign and the model employer traditions were geared towards preventing labour unrest in the public sector by providing an orderly, stable and predictable regime of human resource management in the public sector as compared to the private sector.

In the long run, there has been a Europe-wide shift towards the model employer approach, in line with the international conventions on the freedom of association, and as a result of repeated court cases in which even those groups that provide core functions of the state such as the police or military were granted the rights to organise, bargain collectively and strike (Eurofound, 2014; International Labour Office, 2006). From the two countries analysed here, Ireland was always closer to the model employer ideal type, and over the long term Denmark has also moved from the sovereign to the model employer approach (Christensen and Gregory, 2008: 211).

Until the 1980s teachers in Danish schools were career civil servants, falling strictly under the sovereign employer rule. From that time on, out of the need for more flexibility, local governments had started hiring teachers on a contractual basis, without granting them civil servant status (Christensen and Gregory, 2008: 211). In the early 1990s, this process reached a tipping point, as together with the full-scale decentralisation of public primary and lower secondary education all new teachers came to be recruited as local government employees rather than as career civil servants. The phasing out of the civil servant statute from the Folkeskole system was close to completion as of 2013, with only one-fifth of teachers still having this type of employment relationship (Wintour, 2013: 78).

Despite these long-term trends, in a situation where a redistributive issue has to be settled with a union, governments can fall back on the sovereign employer model. If it has the required parliamentary majority, a government can instantly turn towards a unilateral-sovereign management of the public sector. In that case, it will be a matter of fiscal pressures, as well as of the attitude of political parties and the general public towards unions whether or not the state relies on this power. However, this return to sovereign unilateralism does not mean that the state would also re-commit itself to guaranteeing a special legal status and long-term employment to employees. On the contrary, this time, sovereign power is used further to erode employment conditions in the sector.

In terms of the reasons for the 'militancy of the government', the importance of legislative intervention must be stressed. The state is ready to take up conflicts even against well-organised public sector unions, because it knows that it can rely on legislative intervention to break up a conflict, and it can also rest assured that the intervention will favour its interest. The impartiality of the state is not guaranteed during an intervention in a bargaining conflict in the private sector either, but at least in that situation it is easier to distinguish the competing teams from the referee. Private sector employers and trade unions are the two competing teams and the state is supposedly the referee. In a public sector bargaining conflict, the roles are blurred, the state can play the role of one of the teams and also that of the referee at the same time. Furthermore, laws occupy a higher position in the hierarchy of legal instruments, therefore they can overwrite, extend, abolish or alter collective agreements.

Down by law or down by agreement – legislated and negotiated austerity in the Irish public sector

Despite a protracted experience of austerity, Ireland is often quoted in the political science literature for its absence of sustained popular mobilisation against the cuts (Arqueros-Fernandez, 2015; Kriesi, 2014). As public sector unions were amongst the primary targets of austerity and given their organisational capacities, they could have served as the backbone of resistance. In 2009 they indeed organised a one-day, general public sector strike, but that did not develop into sustained protest, and in 2010 and 2013, new rounds of austerity were not followed by strike action at all. Therefore, I look at the eruption of bargaining conflict in the

Irish public sector in 2009 and at its withering away in the subsequent years. The purpose is to explain the variation that this sequence embodies: why protest erupted in 2009 and why it subsided soon afterwards.

The outbreak of conflict in 2009 and then its withering away in later years can be explained by the change in the way in which the government used its sovereign power to introduce austerity. In the immediate aftermath of the financial crisis in 2009, the government withdrew from existing agreements with unions, demolished bargaining institutions and imposed cuts unilaterally through the power of law (Doherty, 2011). Unions called the 2009 strike not only and not primarily against the material effects of budget cuts, but rather against the unilateral way in which those cuts were introduced. In later rounds of austerity, the government combined the offer of negotiated wage cuts and employment stability with the threat of legislative intervention. This combination allowed the government to make public sector trade unions accept concessionary deals.

The crisis had swept away institutions of central bargaining and social dialogue that were the hallmark of Irish industrial relations during the good times. Between 1987 and 2009, a series of tripartite social partnership agreements were concluded in Ireland that covered both the public and the private sector. A new partnership agreement was signed in November 2008, but it was in force only for a few months as the economy plunged deeper and deeper into the crisis and both public and private employers backed off from paying the agreed wage increases (Sheehan, 2010).

The cancellation of the partnership agreement automatically meant a wage freeze for public sector workers. At the same time, in February 2009, the government also pushed through the legislature the first piece in a series of acts entitled 'Financial Emergency Measures in the Public Interest (FEMPI)'. The first FEMPI act introduced a special pension levy, amounting to a 7 per cent reduction in public sector wages (Geary, 2016: 136). In March 2009, the government again acted unilaterally when it passed an emergency budget to lower the salary of all public servants (Doherty, 2011: 374).

The government's preference towards unilateral action at the outset of the crisis came as a surprise to trade unions, most of whom built their pre-crisis strategies on compromise and institutional security (Bohle, 2011; Erne, 2013). One of my interviewees from Ireland's largest trade union, the Services, Industrial,

Professional and Technical Union (SIPTU) described the employer offensive in the following terms:

‘ ... and the experience of austerity was being enforced by legislation that could not be challenged. So the law of the land was imposing these cuts and the law said that the government was to decide and this is to happen.’

(Interview 1)

The experience may have been especially traumatic for mixed public-private unions such as SIPTU, who saw employers in the public sector introduce penalising legislation at the time when private sector employers abandoned social partnership altogether. The shock that came from the government's methods of introducing austerity featured prominently in public sector unions' decision to call industrial action. And unlike their colleagues in the private sector, they still had the organisational capacities to protest. According to my own calculations based on ESS data, in the average of the years 2008, 2010 and 2012, trade union membership density was 43.1 per cent in the Irish public sector and only 8.2 per cent in the private sector.

The Civil and Public Service Union (CPSU), a smaller union representing lower-paid civil servants, called a strike when the first FEMPI legislation was passed in February 2009, and in November the same year all major public sector unions decided to mobilise members for a national day of action (Geary, 2016: 136; Kriesi, 2014: 320). The work stoppage extended to all groups of public sector workers, but it stopped at the boundaries of the sector. That different public sector employees took common action was already a novelty, as during the social partnership times larger public sector trade unions had been quiescent and protest came from specific occupational groups such as nurses or secondary school teachers.

The Irish Central Statistical Office reported that 265,000 workers were involved in the dispute. Based on my calculations this number represents around 80 per cent of all public sector workers in Ireland as of 2008. For the number of public sector workers, I used statistics from the Department for Public Expenditure and Reform (Central Expenditure Evaluation Unit, 2014: 17). John Geary claims that this was Ireland's largest ever one-day strike (Geary, 2016: 135). The Guardian reported

that despite being legally prohibited from industrial action during working time, even off-duty police joined the picket lines (McDonald, 2009).

The result of the strike in terms of substantive outcomes, however, was limited. Union leaders received an invitation to the negotiating table in exchange for calling off a second day of nationwide action. They did not question the need for austerity per se, and came to the talks with their own plans of savings, including a proposal to introduce 12 days of unpaid leave and also productivity reforms in the sector. The talks soon collapsed, when the government declined the proposal, following 'a revolt of government backbench legislators', who sensed that the public was angered by the idea of giving unpaid leave for public sector workers in times when the demand for public services was increasing (O'Connell, 2013: 355; Sheehan, 2010). The government returned to unilaterally imposed austerity until mid-2010, but unions dropped the idea of going on strike again.

Following the general public sector strike in 2009, the years 2010–2012 represent a quiet period in Irish industrial relations history. The lack of voice is attributed to the deals that two successive governments struck with public sector unions: the Croke Park agreement in 2010 and the Haddington Road accords in 2013. These deals guaranteed public sector employees' quiescence in the face of continuing austerity. The Croke Park agreement even had a formal peace clause (Department of Public Expenditure and Reform, 2010). In terms of substantive arrangements, these deals committed the government to abstain from compulsory redundancies in exchange for further wage cuts and employment flexibility. The Irish case further demonstrates the state's sovereign power, but it also shows that it cannot only provoke conflict, but can also facilitate quiescence. The government succeeded in pushing through these deals, relying on a threat of legislation and could curb the initial resistance of even health and education unions who initially opposed the deals. In 2009, the Irish state used its legislative capacity to demolish institutions and it provoked general resistance from public sector unions. In 2010 and 2013, the state mobilised the same power resources to build institutions and contain resistance, and even unions with a strong labour market position bent to the credible threat of penalising legislation.

These agreements were born as a result of a very cumbersome process, given the size of the cuts and the protracted nature of austerity. Specifically, the government manoeuvred itself into a very difficult position in 2013, when it proposed

to introduce a new round of reductions in public sector wages by reopening the Croke Park agreement that had in the first place been accepted by unions because it promised no further cuts until 2014 (Erne, 2013: 425). The newly proposed 'Croke Park 2' agreement was therefore rejected by the majority of the public sector unions. In fact, public sector members of the largest Irish union, SIPTU, voted against the deal despite the recommendation of their leadership, which saw no alternative to accepting austerity (Erne, 2013: 427).

Talks nevertheless swiftly resumed and were concluded within a few weeks, with the new Haddington Road agreement approved by the overwhelming majority of unions by late June 2013 (Arqueros-Fernandez, 2015: 230). I suggest that the reason for this had to do with the divide and rule tactics of the government and the reliance on the threat of legislative intervention. The government sliced up resistance by exploiting various cleavages within the public sector and flexed its muscle by preparing a new round of draconian emergency legislation. First, the government confirmed that it was ready to conclude a separate deal with those unions that had accepted Croke Park 2, including the Irish Municipal, Public and Civil Trade Union (IMPACT), the largest public sector union, and also invited the unions that had opposed the deal back to the bargaining table. The atmosphere of the weeks between Croke Park 2 and Haddington Road is best described by the words of the representative from the nurses and midwives' union, the Irish Nurses and Midwives Organisation (INMO):

'Instead of all the unions coming together, saying we have to go back to the government and saying that that was a bad plan, and leave it alone, don't do it anymore, they fragmented and the ones who had voted yes did not accept the majority decision and they then allied themselves with the government and said that now we have an agreement with you. And the government was strengthened by that. And then they started to negotiate with individual unions.' (Interview 3).

In both the Croke Park and the Haddington Road agreements the government committed to refrain from compulsory redundancies in the public sector (Central Expenditure Evaluation Unit, 2014: 3; Labour Relations Commission, 2014: 16). The government indeed kept this promise (O'Connell, 2013: 345). The offer of job

guarantees created a division within the public sector between employees in general clerical and technical grades who had a weaker labour market position and, therefore, valued this offer much more than nurses, doctors or teachers whose labour market position was safer to start with. In addition, professional unions as a rule are also better endowed with financial resources.

The government also succeeded in breaking up the 24/7 Frontline Alliance, consisting of employees with special working time arrangements whom the new flexibility rules would have disadvantaged the most. The government was ready to offer concessions to the police and prison officers, to make sure that the employees providing the core activities of the state did not protest, that 'people with guns, those in uniforms and the central government are functioning' (Interview 2).

To slice up resistance, the government did not only rely on moderating some of its demands, but also on the threat of legislation. After the failure of Croke Park 2, the government started drafting a new financial emergency measure in the public interest (FEMPI) bill that would have applied to those employee groups not willing to sign up for bilateral agreements and would have put in place more severe cutbacks compared to what was proposed in the agreements (Sheehan, 2013).

The FEMPI bill was enacted in June 2013 and was the decisive factor that secured the eventual support of the Haddington Road deal by INMO and later by the militant secondary teachers' union, the Association of Secondary Teachers of Ireland (ASTI) as well, and held them back from taking industrial action. They could have relied on their organisational capacities to launch major industrial action, but it would have been too risky a move if done in isolation. They gave in, in exchange for some concessions on compensation for overtime (Arqueros-Fernandez, 2015: 230). An official from the Department of Public Expenditure and Reform described the situation of the nurses' and the secondary teachers' union as follows:

'Once you have a fight with your employer, and your employer is the state and if they got everybody else's support and you are in isolation on your own, you are in a very bad place.' (Interview 2)

The failure of Croke Park 2 and the success of Haddington Road also had an impact on the relationship between the Irish Labour Party and trade union leadership on the one hand and rank-and-file members of public sector unions on the other. The

Labour Party had traditionally strong ties with the largest public sector unions, IMPACT and SIPTU (Erne, 2013: 427). However, it was a junior coalition partner in the government in 2013 and had there been a failure to agree on a negotiated pay cut with unions, the entire onus of austerity would have fallen upon the party.

‘Hunting the biggest prey on the savanna’. The sovereign power of the state during the 2013 school lock-out in Denmark¹

In 2013, the Danish state took unprecedented action by locking out teachers in a dispute over the abolition of collective agreements on working time and work organisation (Hansen and Mailand, 2015: 8). A lock-out is an extreme manifestation of proactive employer behaviour in bargaining disputes, as it is the employers’ side that decides to shut down workplaces and stops paying employee wages in a bid to defeat trade union opposition to a proposed measure. On 1 April 2013, Danish public sector employers – Kommunernes Landsforening (KL, The Association of Danish Municipalities, Local Government Denmark) and the Moderniseringstyrelsen (Modernisation Agency of the Ministry of Finance) – shut down the entire primary and lower secondary school system, locking out 69,000 educators, mainly represented by Danmarks Lærerforening (DLF, Danish Union of Teachers) (DLF, 2013a; DLF, 2013b; FAOS, 2013). Some 875,000 pupils were directly affected, and during the four weeks of the conflict, an estimated 2 million lessons had to be cancelled. According to a survey commissioned by the main parents’ association, one in six parents had to ask for at least 10 hours off from the working week work to look after children (Skole og Forældre, 2013).

The conflict was resolved by legislative intervention: at the behest of the government, the Danish parliament adopted Act 409 that abolished collective agreements and prescribed a new regulation on teachers’ work organisation. The new rules were very close to the demands of the employer side as they vested managers with full prerogatives over the working time distribution of teachers (Hansen and Mailand, 2015: 8; Mailand, 2014: 425, 2016; Høgedahl and Ibsen, 2017).

¹ My interview partner in Interview 4 quoted a Danish newspaper article that used the hunting metaphor to describe the government’s daring attitude in relation to the lock-out.

This article explores the reasons why Danish public sector employers relied on such a radical measure against teachers and their unions. The Danish lock-out is puzzling since the employer side ignored established bargaining channels and locked out a union with a very strong membership base, a large strike fund and good mobilisation capacities. Therefore, the Danish case can serve as a least likely test case for the sovereign power argument. If the government side is able to rely on its sovereign power even in Denmark, which is on the high-end of the European spectrum regarding the strength of bargaining institutions, then the argument on the sovereign power of the state could similarly apply to countries with weaker bargaining institutions and trade unions. Denmark has institutionalised bilateral negotiations between employers and trade unions in the public sector and this system is underpinned by strong, that is representative and centralised, trade unions, in possession of large strike funds. The Danish state, however, had the capacity to turn this system on its head by using its legislative power: it did not only take the first move in the conflict by initiating a controversial policy reform and locking out teachers, but it also broke up the conflict unilaterally, in its own favour.

Moreover, employers in Danish education challenged a union which was very well-endowed with organisational and financial resources even by Nordic standards. One of my interviewees at DLF quoted a newspaper editorial stating that, 'the government had sought out the biggest prey on the savanna' (Interview 4). The most relevant aspect of this power was that due to its long and conflict-free history as well as consistently high density rates, the union had accumulated a large strike fund.

DLF is one of the oldest and largest trade unions in Denmark: founded in 1874 it has had a continuous presence in education ever since. The union had an estimated density of 97 per cent in 2011 (Jørgensen and Pedersen, 2011). This implies a stable flow of membership dues, a part of which was directed to a strike fund that had not been used before 2013 (Andersen et al., 2008: 261). Thanks to its large strike fund, DLF was capable of holding out for four weeks against the lock-out, and could have even lasted longer according to my informants on the employee side and confirmed not only by news media but also by the local government association's website (Interview 5, 22 October 2015, KL.dk, 7 March 2013, as summarised in FAOS, 2013). An analysis published on KL's website estimated that DLF's DKK 1.7bn strike fund would have been enough to cover a daily DKK 800 strike pay for the 43,000 members affected by the conflict for 50 days. Using a different calculation,

another source predicted that DLF could hold out for as long as 10 weeks (DR.dk, cited on 1 March 2013 by FAOS, 2013). In addition, DLF devised a scheme that distributed the compensation for locked out members not as wage but as a loan, making the transaction non-taxable (Interview 5).

Given the large and cleverly used strike fund of the union, it was a risky move to initiate the lock-out due to the possible damage to pupils. For example, a lock-out that would have lasted until the end of the school year would have made school-leaving exams and graduation impossible. To avoid a protracted conflict, the employers' side would have had to moderate its claims to make a compromise with the union possible. Given the ultimate nature of KL's claims, toning them down – for example by not demanding full management prerogatives but only that the union accept an increase in teaching hours – would have equalled defeat. Therefore, KL had to make sure that it could expect legislative intervention in its own favour if the union did not yield in due course.

I suggest that the employers' side risked going into the conflict because it could rely on the safety measure of legislative intervention when the dispute did not go in the expected direction. Both the timing and the procedure of legislative intervention mattered. The timing of the legislation was the less contentious issue, as it is part of the Danish model that the government can and has to intervene in bargaining conflicts when their consequences are excessively grave for the population (Committee on Freedom of Association, 2014: 55–56). In fact, the union called for government intervention – that would 'put an end to an absurd play' – several times, right from the beginning of the lock-out (Anders Bondo Christensen's article in *politiken.dk*, 12 April 2013, quoted in FAOS, 2013)

On the other hand, during the intervention, the boundaries between the employer and the legislator function of the state were blurred, and this predetermined that the outcome of the intervention would favour the employers' side. In Denmark, a legislative intervention follows the same procedure in the public and the private sector – the Ministry of Employment drafts the bill, which is then put to vote in the parliament, and is enacted. Figure 1 sketches the interaction of different actors during this process in 2013, demonstrating the relationships between employers, unions, the government and the legislature.

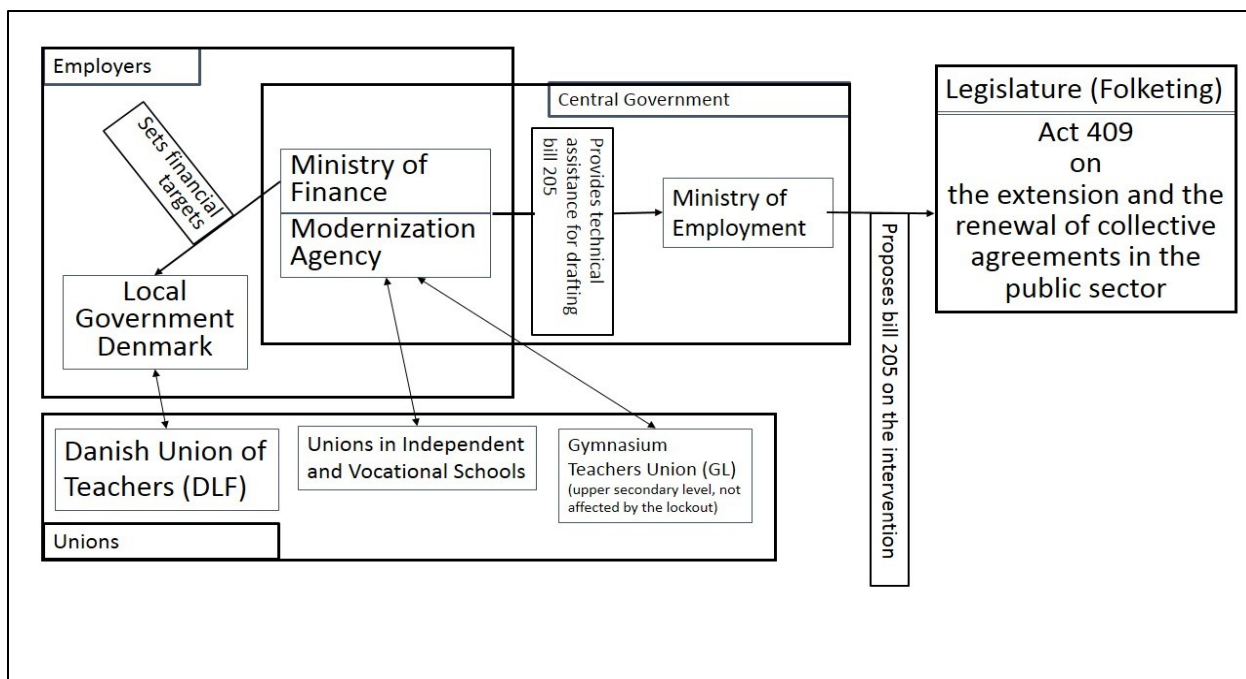


Figure 1. Legislative intervention in the Danish school lock-out, April 2013.

The Ministry of Employment normally prepares the draft bill based on the official recommendations from the conciliator, but that was not available in the school lock-out case, as the conciliator found the positions of the two sides too wide apart to produce such a document (Committee on Freedom of Association, 2014: 54–55). Consequently, the ministry started drafting the bill from scratch, and DLF was left out of this process. This is one of the main allegations that DLF made in its complaint to the ILO and which was not explicitly rejected in the government response to the ILO either. According to DLF, this was the first time in the ‘context of a legislative intervention’ that the employee side was excluded from the drafting process (Committee on Freedom of Association, 2014: 53).

While DLF was left out of the process, the Ministry of Employment requested the assistance of the Modernisation Agency of the Ministry of Finance – as one of the arrows shows in Figure 1. This fact was also acknowledged by the Ministry in its response to the ILO, but presented as a technical issue: ‘in the absence of a mediation proposal from the Official Conciliator, it was necessary to seek technical support from the Modernisation Agency’ (Committee on Freedom of Association, 2014: 56). Nevertheless, the Modernisation Agency directly participated in the lock-out as an employer; therefore, I take its parallel involvement in drafting the bill as a proof of the influence that the employers’ side had on the legislation. The union

claimed that the municipal association KL was also involved in the drafting of the bill. This was neither confirmed nor rejected by the government as far as the documentation of the ILO complaint goes.

The process could still go wrong for the government at the final step. The immediate political risk that the central government faced in relation to the lock-out was that the law it proposed to break up the conflict would not go through the Danish parliament (Folketing). Postponing the vote by sticking to the normal procedure and not allowing an urgent one would already have caused serious disruption and further delays in school-leaving exams. The political risk for the government in the broader sense was that the lock-out would become an issue in electoral politics: that opposition parties would use the situation to their own benefit by openly criticising the government and taking the union's side. Party politics hijacked the 2007–2008 conflict in health care. Back then, although there was no legislative intervention, general elections were approaching, and the opposition social democrats and other parties on the left promised wage increases to striking health care workers in the event that they come to power. Social democrats had won the elections, but by then the conflict was resolved and wage increases were granted to these groups in the new collective agreement.

The 2013 conflict took place in an entirely different political setting. A centre-left coalition government headed by social democrats was in power and it was in the middle of its electoral term. Both facts lowered the risks that were associated with the legislative intervention. First, the conservative opposition was very unlikely to pick up on the issue and support the trade union side. As my interview partner who was active in the negotiations on KL's side put it:

'And if we had had a right-wing government, it would have been very tempting for a left-wing opposition to make politics out of this. But when we have a left-wing government, you can be quite sure that the right-wing opposition will not make politics out of it because they will say okay this is good right-wing policy.'

(Interview 5).

Indeed, the legislative intervention was supported in the Danish parliament by all the major political parties except the Red-Green Alliance (Unity List-Enhedslisten) and the Liberal Alliance (Folketinget, 2013). The populist anti-immigration Dansk

Folkeparti (DF, Danish People's Party) was also highly critical of the lock-out but eventually it voted in favour of the intervention (Sorensen, 2013). Before the lock-out, DF criticised government plans for the school reform alongside the teachers' union DLF. An education policy spokesman of DF even published a joint article on the school reform with the chairman of DLF, and spoke at one of the protest rallies during the lock-out (Ahrendtsen and Christensen, 2013). Social democratic politicians accused DLF of collaborating with the far-right, but the chairman of DLF, Anders Bondo Christensen denounced this as pure 'lock-out propaganda' and claimed that DLF is an independent actor that is however ready to talk to any of the parliamentary parties (Skaerbek and Elghiouane, 2013).

Social democrats and their coalition partners also had to take into account the risk of losing teachers' votes at the next election. Teachers form a large electoral group that traditionally supports social democrats, and whose allegiance was indeed shaken by the lock-out. In October 2013, a few months after the lock-out and just before local elections, a poll commissioned by DLF showed a shift in teachers' voting intentions away from the Social Democrats and their left-wing ally the Socialistisk Folkeparti (SF, Socialist People's Party) towards the Red-Green Alliance (Lauridsen, 2013). Nevertheless, they did not form a large enough group to decide an election on their own, especially when the date of the next national election was approximately two years away and therefore the government had ample time to recover their support or to mobilise the support of other groups.

Conclusion

The examples of employer offensives in Denmark and Ireland point to the fragility of bargaining institutions and otherwise strongly organised unions in the face of legislative intervention from the state. The power that comes from sitting at the bargaining table evaporates once the other side decides to leave the table and enforces changes through its sovereign power.

In other words, the power that labour gains from being part of institutions is always conditional upon the support of the state as a sovereign actor. Therefore, the cases of employer offensives in this article can serve as strong tests for broader arguments on the transformation of the state's role in contemporary labour relations. If the state is able to terminate institutional compromises with its own employees, it has the potential to apply the same hierarchical principles to the rest of the labour

market too. We must acknowledge, however, that the extent to which the state realises this potential is conditioned by many other factors, most importantly the preferences of private sector employers.

This article documents the transformation in the way governments treat their own employees. The case studies suggest that instead of retreating from labour market institutions, the state continues to shape them, but not necessarily for the benefit of employees and their trade unions. The findings presented here provide evidence for the thesis advanced by many industrial relations scholars outside the social pacts literature, who claim that rather than trying to save them, the state played an active role in dismantling the labour-friendly institutional arrangements of the post-war settlement (Howell, 2005; Solinger, 2009).

This activist role has two main dimensions: first, the state takes up fights against strongly organised employee groups and pulls out from institutionalised compromises with them – this is clearly documented in both the Danish and the Irish case. Secondly, the state increasingly deals with employees directly (e.g. through labour codes, minimum wage legislation and unilateral social policy) rather than through the mediation of trade unions (Solinger, 2009).

In the case of the Danish lock-out, there was a clear shift towards the direct management of employment relations: the employer side not only pushed for a revision of working time arrangements within the existing institutional framework but abolished collective bargaining on the issue altogether. The Irish case is more intricate, as the state first moved towards unilateralism but then offered concessionary collective agreements to public sector unions, which they accepted.

The instances of state intervention that undermine labour's institutional position can serve as a reminder of the dangers associated with state-oriented renewal strategies of unions (Bohle, 2011; Ost, 2000). As pointed out by Dorothee Bohle, trade unions – even in the private sector – see recognition by the state as the guarantee of their survival in hard times; in her words trade unions 'have increasingly become part of the state' (Bohle, 2011: 98). Whether this was a choice or unions were structurally forced into this position is a matter of debate. Nevertheless, by creating stronger links to the state, unions for a while stabilised and – according to Bohle – even enhanced their institutional position, but in parallel they lost their autonomy and were able to deliver little to members in terms of material outcomes. Bohle concludes by pointing out that when the crisis struck, the embeddedness of

trade unions in the hierarchical structures of the state prevented them from taking sustained and effective protest action against the state.

The article also provides further evidence on the increasing tensions between trade unions and mainstream, centrist social democratic parties. The tension was the highest in the Danish case, where the main supporter of the lock-out was the Minister of Finance who was a member of the Danish Social Democratic Party but after the change of government started working with the consultancy firm McKinsey (*Bjarne Corydon | McKinsey & Company, 2017*). During the lock-out, the finance ministry not only dominated the entire government structure but could also make the parliamentary fraction of the Social Democratic Party fall in line and support the legislative intervention in its uncompromised form.

Finally, as the reliance on state-sponsored institutions seems less and less of a viable strategy for unions, further research should look into the alternative power resources of unions, such as organising on the ground, building alliances with service users or appealing directly to the public in conflict situations.

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