New Left Unions / Socialist Campaign Group
New Left Policy Forums

# Employment Relations and International Standards

## *Background*

No one can deny the improvements made to UK labour law since 1997. However, shouting about past achievements does not negate the fact that the UK framework of law remains "the most restrictive on trade unions in the western world"[1]

And while New Labour might gloat about such a situation, international law takes a different attitude. The UK framework of law has been systematically criticised year after year by those international supervisory bodies charged with protecting and promoting the fundamental rights of workers throughout the world. The most significant of these are supervisory bodies overseeing the International Covenant on Economic, Social and Cultural Rights of 1966, ILO Conventions 87 and 98, and the European Social Charter of 1961[2].

But the significance of the UK failure to protect and promote trade union rights goes beyond legal arguments. There has been a subtle shift in the role and function of trade unions in recent years, brought about by changes in the legal framework.

Unions traditionally had four main functions – as service providers (credit cards, mortgages "friendly society" functions); as representatives (representing workers at the workplace); as regulators (regulating the terms and conditions of workers at national, sectoral and enterprise levels) and as enforces (ensuring that employers meet their obligations and workers receive their rights).

However, in the current employment relations climate, unions are being denied their regulatory role and are being sidelined into service providers with a limited representative role at work. The regulatory role (essential to ensure a fair and just society) and the enforcement role (often achieved through industrial and solidarity action) have been systematically eroded despite being central to basic international labour standards.

In order to engender a new role for trade unions - a role more suitable for the new world order of the 21st century - our employment relations structure must be reformed and should have at its heart three core principles.

1. **Trade Union Autonomy.**

As the largest civil society organisations in the country, unions should be accepted as an alternative source of power in the workplace and empowered to carry out their representative and regulatory role without undue restrictions.

2. **Trade Union Participation.**

For trade unions to be effective they need a place at the table where the decisions are made. Such a voice would help ensure that workloads and rewards are distributed fairly throughout society. The best way to achieve that is to shift the focus of participation away from the enterprise and towards national or at least sectoral level bargaining.

3. **Trade Union Solidarity.**

Globalisation allows multinational companies to move capital and jobs wherever they like and yet globalisation has "*washed over British labour law without leaving even a mark*"[3]. If unions are to act in defence of workers and their jobs then the legal restraints preventing them from doing so must be removed.

***Proposal One:***

***In an effort to measure our legislation against these basic principles and to ensure our framework of law complies with minimum international standards, the first essential task in reconstructing employment relations is to undertake a complete audit of UK employment law.***

## *Trade Union Autonomy*

Trade unions play a crucial part in representing the interests of working people in the workplace and in government at all levels. With 7 million members they are the largest civil society organisations in the country, and it is appropriate that they should be empowered in a way that reflects their role in society. This requires a more mature acceptance by all political parties of the need for alternative sources of effective power.

A commitment to autonomy means above all the removal of the legal burdens under which trade unions labour. This includes both the burden of unnecessary internal regulation and the burden of prohibitions on what trade unions may do to represent their members. It is all very well for government to use trade unions as instruments of partnership, or as instruments for up-skilling the workforce. But when the Partnership Fund has been wound up and the Union Learning Fund has run dry, it is on more traditional methods that trade unions will have to rely.

***Proposal Two:***

***Trade unions should be free to determine the contents of their own rule books, to determine their own admission and disciplinary procedures and to decide their own activities in line with guidelines agreed by the Certification Officer. Any statutory controls that are found to interfere in this autonomy should be repealed.***

## *Trade Union Participation*

In the last 20 years, the number of workers covered by a collective agreement has fallen from 85% to less than 40%. This dramatic decline in the number of UK workers who have their terms and conditions negotiated by a trade union is unmatched in any other country in the world.

The importance of this loss of collective bargaining coverage cannot be overestimated. It is without doubt one of the key factors in explaining why, under New Labour as under the Tory governments, the divergence between rich and poor continues, why British workers have less holidays and less pay than workers in the rest of Europe and why British workers work longer hours than workers anywhere else in the European Union.

Reversing this decline is essential not only to protect and promote social justice and industrial democracy but because international treaties require it[4]. It had been the practice of UK governments to promote collective bargaining until 1979 when the Conservative Government removed the obligation from the statute book. Contract compliance is one way by which the Government could encourage employers to engage with trade unions thereby increasing collective bargaining coverage. But other policy proposals should also be considered:

***Proposal Three:***

***a) the duty of ACAS to encourage the extension of collective bargaining machinery should be restored***

***b) public authorities and public utility regulators should be required when awarding contracts and issuing licenses to take into consideration whether the business recognises trade unions.***

***c) the introduction of sectoral bargaining should be reinforced with the legal machinery necessary to extend agreements to all companies and workers operating within the sector.***

***d) the statutory recognition machinery should be extended and simplified in the hope of restoring collective bargaining coverage to some of the 8 million workers excluded since 1979.***

## *Trade Union Solidarity*

For most people, solidarity means an opportunity for civil society to help itself. In relation to trade unions, that means an opportunity for one group of workers to help others who may be in dispute with their employer. If workers are fired for going on strike, why should they not have the right, recognised by international law, to call on the members of their own union for support?

Britain's strike laws have been condemned again and again at the international bar of law on a number of counts, including - the narrow list of issues around which lawful industrial action can be organised; the fact that any industrial action is classed as a breach of contract leaving the striker open to dismissal; the fact that *all* secondary action is treated as unlawful in the UK; the fact that the legislation regulating strike action (ballots, notice provisions; warning notices etc) is so complex that workers' are intimidated away from utilising their basic right to strike.

To correct these fault-lines, these legal restraints should be removed to enable trade unions to act in defence of common interests. And it is not only solidarity to help British workers that needs considering. There is also an international dimension, with globalisation allowing the unlimited freedom of multinational corporations to move capital and jobs wherever they like. Yet British law prevents British trade unions from supporting international trade union action when the global corporations abuse the considerable power they now wield.

***Proposal Four:***

***UK law should respect and protect the fundamental right of workers to take industrial action, including secondary action, in line with the ILO and the European Social Charter[5].***

## *Reasons for change*

Apart from the general inequality and unfairness inherent in our current system of labour law, the weakness in the law also undermines attempts to end discrimination at work. Discrimination and inequality of opportunity are still endemic in the UK despite the fact that in 2001 there were no fewer than 30 Acts of Parliament, 38 Statutory Instruments, 11 Codes of Practice and 12 European Community Directives and Recommendations in place[5]. The reason for the failure is threefold:

**a.** ***The legislation is difficult to understand.*** The extraordinary complexity of the legislation, developed as it has in a piecemeal way in response to specific and immediate events with little consistency between the different statutory regimes makes the law particularly hard to navigate.

**b.** ***The legislation is difficult to access***. The framework of UK discrimination law is "hierarchacal" in its coverage. In some strands, citizens are protected in all spheres of life (education, training, services, work). In others the law only offers protection against discrimination in the workplace. Similarly, if you face discrimination on multiple grounds (ie sex, race, religion) you have to chose which to pursue or try to untangle the web of discriminatory practices, linking the practice to the cause. An impossible task

**c.** ***The legislation is difficult to enforce.*** The current legislative approach is a highly individualistic one: in the main, complaints relate to individuals and the outcomes apply to individuals. Calls for "class" actions – where the *act* rather than the *impact* of discrimination would be dealt with by the courts have been shunned.

To correct these weaknesses, four policy proposals for improving the framework of law should be considered:

***Proposal Five***

***a) the negative rights of employees should be replaced by a positive obligation on employers. To enact this policy shift, there should be a legal duty on employers to scrutinise their employment procedures and eliminate any discriminatory practices.***

***b) employers ought to be required to work with unions – preferably at a sectoral rather than enterprise level - to determine the causes and eliminate the practices of glass ceilings and sticky floors.***

***c) the Government should use its purchasing power to reward good employers. This could be done by ensuring that public contracts are restricted to those who adhere to non-discriminatory practices.***

***d) UK discrimination law should undergo a radical process of reform with the aim of producing a coherent and consistent body of anti-discrimination legislation.***

## *The UK and Europe*

The policy proposals canvassed here should not be seen as excessive. Many of them - sectoral bargaining, recognising the added value (economic and social) brought by collective bargaining, respecting trade union autonomy and recognising the right to strike - are at the heart of the 2004 European Constitution and associated Charter of Fundamental Rights.

An important feature of the EU Charter is that it includes for the first time not only traditional civil and political rights, but also a long list of social and economic rights, including fundamental trade union rights. Indeed, one of the main characteristics of the European model is the degree to which trade unions participate in the decision-making through a process of social dialogue.

New Labour's attempt to "protect" the UK's restrictive labour laws from the fundamental rights proclaimed in the European Constitution failed. Once ratified, the Constitution will lock the UK government into the European social model of industrial relations. And unlike the British "adversarial" model of labour law – a model which is extremely damaging to the economy and to social structures - the European social model by contrast, is based on a system of "rights," accepting the concept of fundamental citizens' and workers' rights[6].

And the claim that the Charter will have no legal force in the UK is no less than political spin. Outside the UK and more importantly in the relevant courts, the Constitution and Charter are seen as powerful legal treaties, having direct effect in individual states, supremacy over national laws and enforceable in the courts.

Indeed the President of the European Court of Justice (the most important forum deciding the legal effect of the Charter) claims that the "constitution will bring new areas and new subjects under the court's jurisdiction" He believes: "A complete catalogue of fundamental rights will simplify things in the interest of legal certainty[7]".

***Proposal Six***

***The European Charter of Fundamental Rights should be welcomed. However, in order not to weaken its impact by association with economic policies that are more in line with a neo-liberal, free market agenda as written into the European Constitution, the Charter should be incorporated as an independent piece of domestic law.***

## *Political Context*

The important role played by trade unions - economically, socially and industrially – has been forgotten in the UK. Strike action evokes pictures of the past and the most common response to the examples of bad employment practices is the "one bad apple" claim. More worryingly international labour standards are looked on as irrelevant.

Economically too the role played by unions is routinely ignored. What is most significantly missing from any political analysis of the labour market is the economics of employment rights. Good employment conditions stimulate productivity; strong unions help to prevent the downward spiral associated with the free-market global economy. He said what was needed was an analysis of the real labour market rather than the imaginary "new" economy upon which New Labour policy was based.

***Proposal Seven***

a. ***Trade unions, academics and lawyers should bring examples of bad employment practices to the attention of politicians and the media.***

b. ***In cases where a strong legal challenge can be made, unions should be encouraged to pursue them through the domestic and international courts to ensure that the***

## *Conclusion*

There are three main themes surrounding the issue of employment relations and international standards:

1. First, there is a pressing need to re-state the case in favour of trade unions. There is a lost generation – not only of workers but also politicians and journalists – who have to be re-convinced that unions bring added value to the workplace, to the community and to the economy. This is not just a task for trade unions. Government also has a role to play and can do so most effectively by introducing contract compliance and by regulating a role for trade unions.

2. Second, trade unions work best when they are allowed to develop their own rules and when they are allowed to take action without undue restrictions. Clearly there is a role for a Certification Officer to ensure that rule books meet acceptable standards of democracy, fairness, transparency and legality. Similarly, nobody would ask for unrestricted rights to take industrial action. However, beyond ensuring fairness and accountability, external controls on unions should be removed.

3. Third, trade unions work most effectively when operating at national and sectoral levels. Such procedures operate successfully through Europe; they would fulfil fundamental rights to organisation and action enshrined in international law and they would go some way to removing the UK equality deficit.

---

[1] Tony Blair in The Times, 31st March 1997.
[2] For a full analysis of the international complaints made against the UK, see the submission made to the Joint Committee on Human Rights by Keith Ewing and John Hendy, QC IER 2004 available from www.ier.org.uk
[3] Professor Keith Ewing in an unpublished report produced for the New Left Policy Forum discussion on 13th July 2004.
[4] In ILO Convention 98 and Article 6 of the European Social Charter.
[5] For a full list of policy proposals aimed at bringing UK strike laws up to International standards see A Charter of Workers' Rights edited by KD Ewing and John Hendy, QC, IER 2002
[6]See Achieving Equality at Work, edited by Aileen McColgan, IER 2003
[7]See paper prepared by Dave Feickert for UniEuropa, May 18 2004 and discussed at the New Left Policy Forum on 13th July 2004
[8] Financial Times, 18th June 2004, page 6 as quoted by Professor Brian Bercusson in an unpublished report for the New Left Policy Forum discussion on 13th July 2004