

**Ken Gill Memorial Fund/
Institute of Employment Rights/
National Union of Teachers**

What Now for Trade Unions?

Adehi Hotel, Liverpool

8 February 2011

Challenging the UK's Anti-Union Laws

Introduction

Employers exploiting and developing existing law;

- ♣ Trade unions making better use of available opportunities;
- ♣ A search for new solutions to old problems.

Employers Exploiting and Developing Existing Law

- ♣ The problem of unilateral changes to working conditions
 - ♣ 90 days notice to terminate contracts and offer inferior terms
 - ♣ 90 days notice to alter contracts without employee consent
- ♣ The emergence of 'master and servant' contracts
 - ♣ *Bateman v ASDA Stores* [2010] UKEAT 0221_09_1102
 - ♣ *Malone v British Airways plc* [2010] EWCA Civ 125
- ♣ New BA Contract for Cabin Crew

The Company reserves the right to make reasonable additions and/or changes to any of your terms of employment from time to time. Such additions and /or changes may be made by way of a general notice applicable to all employees or by way of specific notice to you.

Trade unions making better use of available opportunities

- ♣ Duty of employers under Information and Consultation of Employees Regulations 2004

20.—(1) Where the standard information and consultation provisions apply pursuant to regulation 18, the employer must provide the information and consultation representatives with information on—

- ✦ the recent and probable development of the undertaking's activities and economic situation;
 - ✦ the situation, structure and probable development of employment within the undertaking and on any anticipatory measures envisaged, in particular, where there is a threat to employment within the undertaking; and
 - ✦ decisions likely to lead to substantial changes in work organisation or in contractual relations
- ✦ Regulations also provide that the employer must consult the information and consultation representatives on the matters referred to in bullet points 2 and 3, and in relation to bullet point 3 consult **'with a view to reaching agreement on decisions within the scope of the employer's powers'**.
- ✦ **Power of the CAC where employer fails to comply:** According to Information and Consultation of Employees Regulations 2004

Where the CAC finds the complaint well-founded it shall make a declaration to that effect and may make an order requiring the employer to take such steps as are necessary to comply with the terms of the negotiated agreement or, as the case may be, the standard information and consultation provisions.

- ✦ **Why are there no legally binding information and consultation procedures?**
 - ✦ A low threshold of 10% unless pre-existing agreements
 - ✦ But how many pre-existing agreements? 40% threshold

A Search for New Solutions to Old Problems

- ✦ Scrutiny by international agencies - Council of Europe, 16 December 2010:http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/UKXIX3_en.pdf

- ✦ The recognition of the right to strike by the European Court of Human Rights
- ✦ Implications for the United Kingdom: the RMT complaint, and other possible complaints

KDE
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