Trade Union Recognition

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IER Institute of Employment Rights

Introduction

The Blair government introduced a statutory recognition procedure whereby an independent trade union may request an employer to recognise it for the purposes of collective bargaining. If the employer refuses to do so, the trade union may apply to the Central Arbitration Committee (CAC) for a declaration of recognition if it can demonstrate sufficient levels of support.

Since it came into force almost 25 years ago the statutory recognition procedure has been beset with problems which have frustrated the ambitions of its authors and the expectations of trade unions. As the recent Amazon dispute has highlighted, the procedure is not effective when confronted with well organised employer campaigns designed to resist recognition. The legislation needs to be overhauled.

What does the Bill say?

- The Employment Rights Bill makes only minor changes to the rules on statutory recognition.
- Currently, applications for recognition are only admissible where the union has a minimum of 10% support among the relevant workers (the workers in the 'bargaining unit'). The Bill allows for that threshold to be lowered by future legislation to anywhere between 2% and 10%.
- Where a ballot is held to gauge worker support for recognition, the union must currently win the support of a majority of those voting AND at least 40% of the workers in the bargaining unit. The Bill removes this latter requirement so that the support of a majority of those voting is all that's required.
- In its recent *Consultation on Creating a Modern Framework for Industrial Relations* (November 2024), the Government also proposed changes to the rules that prohibit 'unfair practices' when a recognition ballot is being held. These include a new obligation on employers not to pack workplaces out with new recruits who are not union members, in order to dilute union support.

What are the defects?

- Even if the Bill is passed in its current form and all of the changes proposed in the *Consultation* are eventually made, a recognition ballot will still be required in the vast majority of cases. Ballots invite employers to engage in hostile campaigning, which can easily shade into unfair practices as the experience of GMB with Amazon recently showed.

What needs to be done?

The Supreme Court decision in the *Deliveroo* case must be reversed. In that case it was held that food delivery riders were not to be regarded as workers, with the result that their trade union could not make an application for recognition, thereby denying them access to collective bargaining.

The restrictions in the current legislation which mean that an independent trade union cannot make an application for recognition where the employer has already recognised a non-independent trade union should be reversed. This is a blatant anti-union strategy of some employers which should not be encouraged.

The need for a ballot must be reduced and to that end a union should be able to claim *automatic recognition* if it can show (i) a minimum level of membership (between 2% and 10%) and (ii) majority support within the proposed bargaining unit. This would be similar (though not identical) to the majority support determination procedure in Australia.

In rare cases where a ballot must still be held, the ballot rules should be revised, taking into account the recent experiences of trade unions at Amazon and other employers, so that:

- *the vote is conducted electronically wherever the union requests;*
- *only those workers who are in employment at the time the recognition application is accepted are permitted to vote;*
- *access to the workforce is organised on an equitable basis to ensure campaign fairness, prohibiting captive audience meetings by employers;*
- *employers are prohibited from*
  - *interfering with the relationship between workers and their trade unions, for example by encouraging, facilitating or inducing them to resign from membership;*

AND

  - *interfering with trade union recognition whether voluntary or statutory, for example by encouraging or seeking to persuade workers not to support it.*
- *If a recognition application is unsuccessful, the opportunity to make a fresh claim should be reduced from three years to three months.*