IER and CLASS Conference

**Employment Law after the Election: what kind of laws do we want?**

As the date for the general election looms ever nearer, the timing was perfect for a conference designed to highlight the needs of working people in the workplace and to pose the question to all parties - what are you going to do to restore decent employment rights to workers and trade unions. The Institute, in collaboration with CLASS (The Centre for Labour and Social Studies), brought together leading political and trade union leaders to discuss their view of how employment law should look after the election and employment lawyers to examine the labour law issues on the trade union agenda.

The Conference kicked off with Dave Prentis, (Unison) welcoming a full room of delegates and highlighting issues that he felt needed to be addressed. Tribunal fees were top of his list and he reminded us that Unison had twice sought reviews of this through the courts. He led the call, which was repeated frequently during the morning session, for industrial action regulations to be changed. He claimed that it was almost impossible to legally ballot members and that this has to be a key priority. He called for the right to have ballot boxes in the workplace as a key provision for greater participation enabling fair ballots to be held. He went on to mention the need for TUPE rights to be restored and for two tier workforce issues to be addressed. He called on Labour to give a commitment to restore these rights.

IER Chair, John Hendy QC, then focussed on the restoration of collective bargaining backed by the right to strike. These, he argued, must be at the heart of the demands to a future labour government. Collective bargaining is the only way to ensure justice in the workplace. Most importantly it is the only way that workers can secure fair wages and proper terms and conditions. He also pointed to the fact that international human rights law demands that the right to strike and collective organisation be permitted. He noted that it is not just trade unionist demanding this right but the Supreme Court of Canada in a recent judgement had recorded that the right to strike was essential through collective bargaining as it gives workers the right to withdraw their labour when collective bargaining reaches the end of its process. The judges went on to state that striking promotes equality and that the role of association provides workers with the power to match the power of the employers.

Following these opening remarks the President of IER, Professor Keith Ewing, took the chair to host a question time panel consisting of Natalie Bennett, Green Party; Jon Cruddas MP, Chair, Labour Party's National Policy Forum; Steve Turner, Unite Assistant General Secretary; Frances O'Grady, TUC General Secretary; and Mark Serwotka, PCS General Secretary.

As each panel member set out their views it became clear that collective bargaining, the right to strike and tribunal fees were the three top issues on the shopping lists of panellists. Natalie Bennett kicked off by stating that workers rights were at the core of a fresh break from the neo-political debate that has dominated UK politics for the last three decades and she agreed that collectivism was at the heart of changes needed. She reiterated the Green Party policy of calling for a minimum wage of £10 per hour and called for a ban on zero hours contracts and unpaid internships. In mentioning a range of other changes she would want to see, Natalie made clear that winning these arguments needs strong trade unions and this would be assisted by removing the 40% threshold currently required for trade union recognition.

Next up Jon Cruddas thought that there was a more fertile conversation around Labour than there has been for some time. He could see a different philosophy developing around living wage, zero hours contracts, tribunal fees system and other issues which he is expecting to see reflected in the Labour Manifesto. In responding to a question about tribunal fees being “reformed” rather than abolished and declining to answer yes or no to whether fees should be scrapped, Jon explained that he preferred to see a modern industrial relations system be evolved to meet modern times.

Frances O'Grady built on Jon's comments by reminding conference that without strong trade union organisation, individual rights rarely deliver the outcomes needed. She highlighted the 30 year growth in the imbalance between wealth and wages and the inequality this had brought. She argued also that the undermining of the right to strike needed to be tackled. Employment rights are one element of a much wider picture which has to be tackled to restore balance in the workplace. She saw electronic balloting for strikes as a good way to support democracy and challenge the government on its strike ballot proposals. She emphasised the need to talk about the right for workers to have a voice at work.

Mark Serwotka began by assessing where trade unions are now. He asserted that trade unions are weaker now than ever and there is a dilution of trade unions ability to do their job. The debate is not only about legal changes but also how trade unions can be more effective. He provided Conference with a long list of demands ranging from check off and facilities time for union reps to workplace balloting and mandatory equal pay audits. Finally he reminded Conference that the impact of universal benefits on the rights of workers raised issues for his members as they may be required to apply sanctions on fellow workers.

Steve Turner touched on the core principle that needs to be addressed which is the end to austerity. He posed the question, where is the demand for full employment and the demand for 1million social homes? How do we address the need for a sustainable environment? How do we address the need for a living wage determined through collective bargaining? He countered the suggestion that it was too difficult to organise casual workers, saying it was essential. In response to the issue of tribunal changes he said that tribunals do not deliver real rights, that can only be done at the workplace through collectivism. He then mentioned sectoral collective bargaining as a means to address many inequalities. Corporate governance needs to provide workers with the right to be heard at the heart of business. Free trade unions have to exist if social progress is to be achieved.

The range of topics posed to the panel was extensive. In answer to the opening question of what one thing would you change in the first 100 days of a new government – strike ballots and the abolition of zero hours contracts topped the responses. However Jon Cruddas disagreed and said he would introduce rights to trade union organisation through something similar to the old fair wages rules.

John Hendy pointed to three pieces of past legislation which he argued could do much to restore trade union rights. He would reintroduce Trade Disputes Act 1906, the Trade Boards Act 1909 (which introduced National Wage Councils) and the Fair Wages Resolution, first introduced in 1891 and amended later in 1909 and 1946. He went on to argue that public procurement was a further key step to the success of sector bargaining. In addition he argued for the re-introduction of a Ministry of Labour

Both Jon Cruddas and Steve Turner argued for a new model of industrial relations to be designed for the current century and agreed it was a live discussion within the Labour Party. Although in favour of sector bargaining a word of caution was issued to remind conference that without power it would be useless.

Frances O'Grady in addressing another question distinguished between minimum wage, living wage and a fair wage. She argued that there needs to be supporting institutions where trade unionism is weak and she believes that Ed Milliband gets this and accepts that trade unions have a role to play. On a further word of caution about sector bargaining she said it doesn't always deliver membership. More important for the right of access for trade unions to speak to workers be restored.

Mark added that we start with what we can control which is in the public sector to set the standard for collective bargaining. A new government should be compelled to have proper bargaining structures which allow discussions to take place with those making the decisions on pay. Once that structure is correct, then it can be used as an example for good practice for private sector.

All panel members, bar Jon Cruddas, gave a resounding yes to the question asking if they believed tribunal fees should be abolished Steve Turner suggested that the idea of a different entry point which is informal, free and based on principles of reasonableness should be looked at.

John Hendy agreed with everyone adding that currently government was defending an indefensible system. With average awards at £4700; the rate of reinstatement awards 0.01% with some years no reinstatement awards at all. He stated "The whole shooting match needs to be looked at".

After a brief respite for coffee, the Conference heard from IER experts, John Hendy, Keith Ewing, Simon Deakin and Professor Aileen McColgan along with Victoria Phillips from Thompsons on the legal issues arising from the discussion.

Casualisation of the workforce was the first question addressed by the panel. Important because it determines who gets access to employment rights. Simon Deakin from Cambridge University argued that we need to end workfare and the strict conditionality that accompanies social security law. Additionally we needed to challenge the subsidy of employers through tax credits. This system has led to inefficient firms who won't pay a living wage. He argued that zero hours legislation can be addressed simply through intermediate regulatory methods which enable us to name and shame.

Professor Aileen McColgan addressed discrimination legislation and described it as some of the best in the western world. However, access to justice and redress fails to deliver good outcomes for claimants. She argued that tribunals are not the answer and don't work. She suggested that perhaps an Equality Inspectorate or something similar could help to resolve matters at an earlier stage. But ultimately she argued the collective approach is the best answer for dealing with these issues. She went on to say that pregnancy discrimination is still rife and that a system needed to be implemented whereby someone who is pregnant cannot be dismissed without judicial authorisation.

Victoria Phillips of Thompsons agreed that the tribunal system simply doesn't work to resolve issues, particularly discrimination cases. She said it was a mistake to focus on individual rights rather than collective organisation as an answer to injustice. The ability of TU reps to do their jobs properly needed better protection.

Keith Ewing pointed to the fact that tribunal fees was a recurring theme of the Conference. Finding an alternative is the Holy Grail. Systems have been tried such as arbitration but workers still wanted to go to tribunal. In the meantime he posed the question what happens on 8th May when a short term response was essential.

John Hendy referred to the statutory recognition procedure. He reminded us that in1979 82% had benefit of collective agreement; by 2011 this had fallen to 23%. By 2015 this is likely to be around 20%. Only Lithuania had a lower coverage. This explains the degree of inequality and poverty today. He explained that when statutory recognition was introduced in 2000 the decline was halted for just one year. After the first year of the machinery the problems re-occurred. He said the machinery was next to useless to extend collective bargaining.

A question was posed on how leverage (corporate campaigning) can be used. Keith Ewing responded by saying that this is a legitimate activity for trade unions to engage in. These strategies were pioneered in the States where peaceful activity is a right. Employers were upset with this since they couldn't control it. The more effective this is in the UK the more likely it is to attract restrictions by the current government.

On the question of zero hour contracts and the pernicious nature of these, a delegate pointed out that current government proposals only address the exclusivity terms of some contracts which are limited and asked, can you simply outlaw these contracts? Simon Deakin responded by saying that the imposition of statutory rights could enhance the rights of workers on zero hours contracts. We could also argue for there to be no duty on a worker to accept such a contract so that benefits were not lost. This is not a legal issue it is a political argument.

John Hendy added to this by saying that collective agreements don't exist in those sectors where such contracts exist in the main therefore that leads to the argument for wages councils. He went on to say that collective agreements resolve one of the causes of resentment towards immigrants. They determine what the going rate is for work in predominantly unorganised sectors. Whilst not solving racism issues it does take a chunk out of the arguments used. Victoria Phillips said her worry about legislating against zero hours contracts was that corporate lawyers would simply devise another form of exploitation. But she agreed that S23 of the ERA could be used to extend rights to many workers currently excluded.

Aileen McColgan dealt with the "popularity" of tribunals. She recognised the benefits to disabled workers and other discrimination cases in changing workplace practice. But enforcement was the problem. She suggested that tribunals could change so that according to value or type of claim a grid was devised limiting the number of days available thus preventing parties from arriving with trolley loads of files for the case. This she argued could encourage settlement.

Following Lunch, the focus centred on the trade union agenda for labour law and Vice President of the Institute, Sonia McKay chaired a panel of trade union leaders including Billy Hayes, CWU, Christine Blower, NUT, and Matt Wrack FBU.

Billy Hayes kicked off the session by referring to the Policy Commission which is looking at employment law within the Labour Party. The first issue he addressed was low pay. He referred to Cameron's recent statement that people needed a pay rise and the fact that a large number of people were faced with low pay. This he asserted needs a move from minimum wages to living wages. He then moved on to the need for sectoral bargaining. He pointed to the fact that workers outside a trade union generally had lesser conditions of employment. He cited Whistl (a delivery company now competing with Royal mail) as proof of the differential between their delivery people compared to Royal Mail. Ofcom is saying that the collective agreements with Royal Mail is undermining competition and he accused the regulator of interfering in the arrangements yet remaining unaccountable.

Christine Blower talked about the impact on teachers and childcare workers of disqualification by association. She explained that people working with young children (under 8) have to apply for a waiver if they are living in a household where someone has a relevant conviction against children. This limited provision has been extended by some to include teachers in secondary schools and that we have to be careful that laws are not used to prevent people from working. The interpretation of counter terrorism provisions is also in danger of having teachers reporting on children if they believe that they are likely to be radicalised.

On tribunals she addressed the access to justice issues previously discussed and called for these to be part of any Labour government's agenda. Christine made clear her union's position on the need to a return to collective bargaining for the teaching sector. She drew to Conference's attention the employment relations document presented to the ILO in 2006 which set out a framework of international standards for all countries to be working to. It stated that national policy should be formulated in consultation with the most representative bodies for employers and workers. She argued that this could form the bedrock of a future government's approach from day one. She also called for government to change laws which prevent strikes for political purposes which currently prevents teacher unions striking against OFSTED.

Matt Wrack spoke about the alarming downward trend in trade union membership. He said the strategic issue for the movement is the continuance of austerity leading to reduction of workers in trade unions. Turning to his own union’s action on pensions he said that the FBU had met the thresholds for industrial action being muted by the Tories. Despite that, victimisation of workers was a problem for the fire service. Local disputes have also arisen where S188 procedures are used to get workers dismissed and re-engaged on lesser terms. He referred to the Carr report which represented a further attack on trade union organisation and he expressed fears that this could rise again if the Tories are re-elected. He told Conference that if the government can't get us on thresholds then they will look to emergency services legislation to prevent strikes. He would demand changes to the law which currently prevent us from organising and protecting our members and called for a positive charter for workers rights. These rights needed to include the right to representation at the workplace and to rebuild workplace organisation..

In the debate that followed a question was raised about the extension of representation to non-union members and the type of recognition legislation needed. Christine Blower in commenting on non-union members having the same right to collectivism referred to the post entry closed shop in Massachusetts teachers union, which provided for those not wishing to be members to pay an agency fee. Matt Wrack commented on the issue of widening representation and told conference that a balance needed to be drawn between the cost of union membership and spending time looking after those who don't join the union.

Billy Hayes responded on the recognition legislation needed by saying that recognition should not depend on reaching a majority but should be an automatic right to any number of workers above one who demanded it. A delegate from the floor added the telling comment that “recognition legislation is not fit for purpose”.

The Conference ended with Keith Ewing and John Hendy summing up the discussion and looking at the way forward.

Keith Ewing thanked Sonia and the panels for their contributions. In winding up he referred to the right for a decent wage which should be set at the European decency threshold. If we don't bargain collectively, something which is unique to trade unions, then we are no different to any other lobby group or organisation. Increasingly he stated, we are told that if we want to do collective bargaining we must do it the way the state determines, locally or plant based bargaining not sectorally. This, he argued, has to change. If we want to raise wages then we need collective bargaining. He reminded Conference that we introduced sector bargaining to Germany postwar and that had been extended across Europe. In the UK we have dismantled this method over last 30 years.

Finally, John Hendy thanked everyone for their contributions. In conclusion he made the point that sector bargaining needs government support to become a reality. On industrial action he called for the right to strike and not to have to rely upon judge made law. This, he argued, should be a demand of the next Labour government.

Roger Jeary