**Labour Law and the Fair Work Agenda**

**Institute of Employment Rights / Welsh TUC meeting, Cardiff University 16th July 2019**

**Collective Bargaining, Social Partnership and Fair Work in Wales**

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I’m going to talk about how Institute of Employment Rights ideas, can be, and are being, put into practice. My focus is on the fair work and labour law agenda in Wales. I am going to talk about what collective bargaining is, and about social partnership. I am going to explain social partnership as a form of collective bargaining.[[1]](#footnote-1) Then I will talk about the announcement last week by First Minister Mark Drakeford on fair work and social partnership.

When we think of basic employment rights in the UK, we think of minimum wage law, the right to paid holidays and the like. But underpinning these basic employment rights are a set of rights known as fundamental rights. These are part of international law. These are rights that belong to workers wherever they live on the planet and whatever employment they are in. They are called fundamental rights because they provide a framework for the right to have rights, a framework for our rights as human beings to have rights at work. Without the fundamental legal principles being in place, other rights like decent pay and holiday and maternity leave, they don’t have a firm enough basis on which to stand. The fundamental principles provide the underpinning recognition of the humanity of all workers. They represent the general agreement of societies around the world of fundamental principles as necessary condition for societies to recognise workers as human beings and for those societies to then build basic rights at work.

The fundamental rights are fourfold:

1 – The abolition of child labour.

Children must be allowed a childhood, to access an education, employers must not put children to work for them, its cruel, inhumane, abusive.

2 – The elimination of all forms of forced and compulsory labour.

Slavery is an abomination, to require human beings to work by force or compulsory is repulsive and inhumane, it is cruel.

3 – The elimination of all discrimination in employment and occupation.

Workers should be treated as equals and no-one should be prevented from accessing work or entering an occupation because of discrimination arising from their religion, or sex, or their race. Nowhere in the world should this happen. These fundamental principles apply whether or not an individual nation has ratified a particular convention of the International Labour Organisation. They are fundamental to the world of work, anywhere and everywhere in the world.

4 - The fourth and final fundamental right is the right to freedom of association and effective recognition of the right to collective bargaining.

So that forth pillar of the right to have rights is the ability for workers to join and participate in trade unions and for those trade unions to enjoy effective recognition within nation states around the world so that they can reach collective agreements with employers.

This is because labour is not a commodity, human beings are not for sale, human beings are worth more than to be traded in competition with one another, it is an affront to human dignity everywhere in the world. Human dignity is realised by collective bargaining, by reaching collective agreements about the value of work and about what workers are willing to offer collectively in return for their employment.

Having a voice as a worker is fundamental to being recognised for one’s humanity as a matter of law. In an employment context that voice must be collective, and it must be supported for the purpose of reaching agreements with employers, who are also speaking and acting collectively because employers have rights to freedom of association too.

The evidence says that rights at work are most beneficial to societies when those rights are developed through collective agreement. That is why the International Labour Organisation operates in the way it does. Collective agreement is the method through which international labour law is made, through tripartite agreement between states, employers’ organisations and workers’ trade unions. This type of collective bargaining; engaging governments with employers and workers is called social partnership. The purpose, as with as all types of collective bargaining is to reach forms of collective agreement.

Forty years ago, 82% of the UK workforce was covered by a collective agreement. It was not 100% of workers but 82% is probably high enough to see that the fundamental principle of a recognition of the right to collective bargaining was effective. It impacted on the vast majority of workers’ lives. Now, less than 30% of workers in the UK are covered by a collective agreement. Less than 30% of workers are connected in recognition of this expression of human dignity, less than 30% of workers are drawing on a collective agreement about the value of their work and what they are willing to offer collectively in return. Is this a mark of effective recognition? Is this good enough?

For its landmark publication, Rolling out the Manifesto for Labour Law, the Institute of Employment Rights pulled together 26 of the most eminent and respected scholars and practitioners of labour law in the UK. They included 4 QCs, and 18 professors of law and industrial relations. It was agreed across the expert group that collective agreement coverage of below 30% is nowhere near good enough for the UK and a long way from being effective. The evidence tells us that basic employment rights in the UK are not operating as they should because of disregard for the fundamental principles relating to trade unions and disregard for the dignity of human beings as workers.

To fix the problems with the regulation of labour in the UK, IER experts have recommended:

1. A Ministry of Labour at heart of Government. There was a Ministry of Labour in the UK from 1916 and a successor Department of Employment until Thatcher abolished it. The proposed new Ministry of Labour for the 21st Century would provide representation of the interests of working people at cabinet level, that’s what we mean by at the heart of government.
2. The instigation of collective bargaining in the UK economy would be the key function of that Ministry of Labour. It would have responsibility for a Collective Bargaining Act, for setting up multi-employer and **sector-wide** arrangements for the negotiation of minimum standards of employment between unions and employers’ associations. This would mean overseeing the operation of National Joint Councils for industries and sectors to negotiate collective agreements, to resolve disputes relating to the implementation of those agreements, and to represent the interests of the sector to relevant government departments.
3. It should promote **enterprise level** collective bargaining. That is, bargaining for workplaces that enhances the minima set out in sector-wide collective agreements. In concert it would also harness the power of government procurement to require all tenderers and contractors to recognise a union and to comply with all relevant collective agreements.
4. The Ministry of Labour would have responsibility for charting a radical overhaul of employment rights. This includes creating a new, fair and clear legal status for workers so that we don’t continue with this confusion over who is a worker or an employee, and we have day 1 rights, we do away with qualification periods, we have rights which are designed to diminish inequality.

So, the four points are:

1. A new ministry – a department at the heart of government to represent workers
2. A new act of parliament to instigate forms of collective bargaining
3. Government led promotion of collective bargaining as a social good, recognising this in procurement practices and monitoring the making of collective agreements and their impacts
4. Radical reform of employment rights.

Now, let me turn to what Mark Drakeford has announced:

1. A new department at the heart of welsh government. The Office of Fair work, situated inside the first ministers’ office and with a cross-departmental remit.
2. A new act, the Social Partnership Act that will instigate negotiation, bargaining and the conclusion of agreements between government, employers’ associations and trade unions
3. The promotion of collective bargaining as a social good in Wales, reform of procurement practices to ensure funding from Welsh taxpayers creates fair work and rewards employers entering into collective agreements. For government to monitor collective bargaining coverage across Wales as a key equality and prosperity indicator.
4. On rights at work, to implement the recommendations of the Fair Work Commission in Wales that reported back in May.

Because of the fantastic work of the Fair Work Commission, the definition of fair work now operating in Wales is:

**“work in which workers are fairly rewarded, heard and represented, secure and also able progress in a healthy inclusive environment, where rights are respected”.**

Key parts of the definition therefore concern fair pay, not minimum wage pay, secure work, not zero-hours contracts and for working people to be heard and represented, reversing the harmful UK political culture that has silenced trade union voice and diminished worker dignity.

The fair work commission has recommended Welsh Government take all measures possible to support and promote trade unions and collective bargaining.

This is important because we must recognise that Welsh government does not have a free hand in matters of employment rights and industrial relations. The devolution of law-making powers has retained these matters as being the responsibility of Westminster. But this does not mean there is no scope for progress. Making progress in Wales, using what we have, has been a key message of the recommendations of the Fair Work Commission. They have identified that Wales **can:**

* Develop a clear and robust view of the employment and industrial relations legislation that it wants to see and to actively press the UK government for it. Not sitting on the sidelines because of the reservation of legal powers to Westminster but actively arguing, and being seen to argue, for rights which will work in Wales.
* Press for better enforcement mechanisms, specifically for enforcement arrangements in Wales, for example dedicated and transparent attention to breach of minimum wage law in Wales by the UK authorities that carry those duties. And moreover, for the Office of Fair Work to enhance the role of UK enforcement agencies by involving trade unions and employers associations in drive for universal enforcement of the bare minimum, the very least, to which Welsh workers are entitled.
* Provide public money only to organisations that are fulfilling or working towards fulfilling the definition of fair work. This includes inward investors to wales, those companies tasked with our infrastructure projects and all organisations engaged in public sector contracting, the investment of public money for fair work based on fair work as a social value in procurement. And there are more ideas to explore, for example about the possibility of designing business rates and business tax liabilities in ways that create incentives for fair work.

Finally, I want to talk about the role of the Office for Fair Work as the lynchpin of social partnership. Trade union recognition and engagement in collective bargaining is to become a national indicator of economic success and equality in Wales. It means that:

The spread of employers paying at least as much as the Welsh Living Wage **and** the spread of employers engaging in collective bargaining

are to be adopted as “national milestones”.

The Office of Fair Work will be responsible for establishing Fair Work Forums. These will engage social partners to identify fair work problems that are particular to their own sectors and to tailor specific remedies by collective negotiation and agreement.

The Fair Work agenda is a source of invigoration for collective bargaining in Wales. Where does it begin? In social care. According to the recommendation of the Fair Work Commission the sector of social care will be the birthplace of Fair Work Forums in Wales.

This Fair Work Forum will bring together unions, employers’ associations and government for tri-partite negotiation, over a fair work future for Wales’ Social Care workforce. In my view, this is such a smart move. No-one can be in any doubt that the social care workforce and the social care sector across the UK is crying out for a different approach to the regulation of wages, recruitment and retention, training, investment, contracting, and quality of care.

Wales has already shown **significant** leadership in social care. It has already innovated in its use of regulatory powers. It has driven down the use of 15-minute care visits, which we know are scandalous because people cannot be cared for properly that way and workers cannot earn a decent living on 15 mins pay. Wales has driven down on the use of zero-hours contracts, with regulations that demand care workers are given a choice of a guaranteed hours contract after 12 weeks in a zero-hours contract job in social care. These workers in Wales get a choice that they would not otherwise have. Care workers in Wales are gradually being professionalised, because of regulation that requires them to join an occupational register to assert their skills and access training and be recognised and rewarded as professionals. **But**, to be effective, this innovative regulation needs the fundamental rights of care workers in Wales to be respected. Care workers, like all other workers in Wales, need effective recognition of trade unions in order to be able to reach collective agreements.

A Social Partnership Act for Wales comes from recognition that trade unions need decisive change in their political and legislative environment in order be able to thrive.

Although Welsh Government does not have a freehand to improve rights at work, a Social Partnership Act and Office of Fair Work at the heart of government can deliver something distinctive for working people.

1. Because ‘social partnership’ in a Welsh context should not be confused with ‘partnership agreements’ or ‘no-strike agreements’ between management and trade unions. [↑](#footnote-ref-1)