

Proposals for reform of trade union rights in the UK

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The election on 8 June

The prospect of a Labour Party victory in the election to be held on 8 June brings with the prospect of a restoration of trade union rights and an end to the neo-liberal dogma that has held us in an iron grip since 1979. We have a Labour Party leadership which respects workers and their rights.

I have the honour to be the Chairman of the Institute of Employment Rights which is a think-tank of trade unions, academics and practising lawyers which has published a *Manifesto for Labour Law*. I am optimistic that the Labour Party will adopt in tis Manifesto for the election some of our suggestions. The central feature of the programme we propose is the restoration of a Ministry of Labour and of collective bargaining. We also address the common problems of zero-hours contracts, agency work, false-self-employment and inequality, discrimination, pay gaps and trade union rights to autonomy and to strike.

Collective bargaining

Collective bargaining in the UK has suffered a virtual collapse. In 1979 82% of workers had the benefit of collectively bargained terms and conditions. Today only 20% have that privilege (against a Europe wide average of over 60%). For the rest, they are at the mercy of employers and the so-called 'labour market.' The result in the UK has been stagnant real wages for all but the rich 1%. This has hugely increased inequality. The collapse of collective bargaining protection has meant: pensions cut, terms and conditions slashed, insecurity escalated, new forms of engagement such as zero-hours contracts and false self-employment have mushroomed, and productivity has slumped.

The IER's central proposal is the establishment in each industry of a Sectoral Collective Agreement between the two sides of industry and composed of equal numbers of employers' and trade union representatives. These will be established by negotiation

between the two sides of industry under the oversight of the (proposed new) Ministry of Labour. Where such negotiations fail a joint council will be set up by the Ministry of Labour itself which will add its own appointed members to break any future deadlock in negotiation.

The joint committees will set minimum terms and conditions for the industry – which will not prevent local agreements improving on the minimum terms. They may also negotiate other issues in the industry such as pensions, apprenticeships, abolition of zero hours contracts and the like. Minimum pay rates and allowances for specific jobs, enhanced rates overtime, unsocial hours, night-work and so on is best set by negotiation between the representatives of those who will pay and those who will receive the wages.

The terms and conditions set would apply to all employers and workers in the industry. They would be enforceable by the industrial parties through the machinery in the agreement setting them up, by the Labour Inspectors and by workers and employers using the Labour Courts.

This was the formula that worked for the UK from before the First World War. It was a solution adopted across Europe and in Roosevelt's New Deal in the USA as the means of extricating their economies from the Great Depression in the 1930s. Though abandoned in the UK and USA it remains the model on which the most successful economies of Western and Northern Europe function.

Sectoral collective bargaining has vital features which are familiar to you all, many of you coming from States where there is extensive collective bargaining. But we in the UK have been outsiders and it does no harm to re-state the case for collective bargaining, perhaps sometimes forgotten by those who do not have to argue for it!

Workers can only have a voice in setting their terms and conditions through collective bargaining. It is well established that the involvement of workers in decision making by their employers (not just confined to their terms and conditions of employment) is highly beneficial to business. But it is also a matter of principle that workers should have a say in

the enterprises for which they work and to which many of them dedicate so much of their lives. Democracy should not stop at the gate to the workplace.

Collective bargaining is in fact the only way of redressing the inherent imbalance in power in (at least to some extent) the unequal power of the employer over the worker.

Collective bargaining causes the real value of wages to rise. Widespread collective bargaining is the most efficient means of raising wages and reducing inequality of income. This is obviously good for the workers. But it is also good for the economy by increasing demand. It is also good for government revenue as taxes increase.

Collective bargaining has been demonstrated to diminish inequality. Economic inequality is now known to cause huge damage to individuals and to society (both rich and poor, curiously enough). Disparity in income and wealth is mirrored by disparity in living standards, health, life expectancy, and a loss of social mobility. These individual tragedies echo down the generations, creating huge burdens on the State as well as misery for its citizens. Inequality is bad for society and, in particular, for the economy.

By preventing undercutting on labour costs to secure a competitive advantage, competition will focus on investment, efficiency, productivity, research and development - stimulated by increased demand from higher wages. The economy will become more efficient, as much recent economic research (including from the IMF) has shown. It has also been shown that collective bargaining tends to improve productivity by encouraging greater commitment to the job on the part of the worker

Setting an industry-wide rate for the job diminishes the advantage in importing cheap labour.

Since collective bargaining is a fundamental human right protected by international law the restoration of collective bargaining in the UK would bring to an end the annual condemnation of UK trade union law by the supervisory organs of the ILO. It will uphold the rule of law in industrial relations.

This proposal is a refutation of the illogical neo-liberal dogma that unions constitute a distortion of a free labour market in which it is beneficial if wages are driven down to the lowest sustainable level so justifying removal or restriction of fundamental rights at work. What is at issue here is an ideological conflict not just about the role of trade unions but also about the role of the State in regulating the economy to produce just outcomes. A progressive economic strategy will require a strong State presence in regulating wage determination and wage levels.

As Onaran and others¹ have shown:

Our analysis has underlined the negative effects that inhibiting union activities has on the economy. The evidence presented indicates that the long-term deterioration in collective voice in the UK and elsewhere in Europe has been counter-productive in terms of macroeconomic growth. Legal restrictions on the ability of trade union, where these bite sufficiently to reduce their bargaining capacity, are contrary to good economic policymaking where countries are in wage led growth regimes, and where labour's share of income has declined. Economic recovery and stable, equitable development needs a rise in the collective voice of labour.

BREXIT and Free Trade Agreements

The prospect of BREXIT means that we are now engaged in the fight to retain the rights which are derived from the EU. That fight depends on the outcome of the election, of course. The defence is inevitably technical and, I imagine of little interest outside the UK. But there is a wider battle too. It is against the FTAs which neo-liberalism will seek to impose on us to replace the EU. Whatever the defects of the EU (and there are many from a trade union perspective) they pale into insignificance compared to the FTAs.

We have become familiar with several. All negotiated in secret, one, JEFTA (the Japan EU Free Trade Agreement) unknown in the UK until a month ago though negotiations opened 4 years earlier. We also face the Trans-Atlantic Trade and Partnership Agreement ('TTIP'), though Trump seems to have put paid to this. The Trade in Services Agreement ('TISA'), the

¹ *Working for the Economy: The Economic Case for Trade Unions*, the University of Greenwich and the New Economics Foundation, 2015, at 33.

status of which is uncertain; and the Comprehensive Economic Trade Agreement ('CETA') with Canada, which has been passed by the EU Parliament and by the UK Parliament and some others. There are many other FTAs affecting the UK too such as the Korea/EU Agreement.

In fact, there are some 3100 FTAs spanning the globe. They are a key instrument in advancing neo-liberalism and globalisation. They are a disaster for trade union rights.

Negotiated in secret we now know their general structure. They focus on de-regulation, i.e. the reduction of legal protection to that of the lowest common denominator. This is particularly serious for food quality and environmental protection but it is also a major threat to workers' rights, especially health and safety. Multi-national corporations take their place on committees with oversight of regulation – trade unions and NGOs are excluded.

Corporations are entitled to 'fair and equitable treatment' (FET) and that their assets are not expropriated directly or indirectly. These corporations – and not trade unions, NGOs or citizens – are given the exclusive right to sue any government infringing these rights in Investor State Dispute Settlement (ISDS) arrangements which are decided in secret arbitrations. These ISDS arrangements override the courts of the country concerned and international courts such as the European Court of Human Rights. The UK neo-cons who complained that membership of the EU offended our sovereignty are quite happy to surrender the sovereignty of our courts and our government to the mercy of foreign corporations suing for millions and sometimes billions of dollars in ISDS arbitrations.

These procedures will be used to undermine laws which protect freedom of association, the right to collective bargaining and the right to strike. It is true that the FTAs have a labour chapter which proclaims the principles of the ILO but these chapters impose no obligation on the governments or the corporations and are unenforceable by workers or trade unions.

Workers across the globe must oppose these FTAs wherever they are proposed. For many of us our national laws are restrictive enough of workers' and trade union rights, we do not need more legal weapons aimed at us.

