

Reconstruction after the crisis: a manifesto for collective bargaining

by K D Ewing and John Hendy QC



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ISBN
978-1-906703-20-2

August 2013
published by the
Institute of
Employment
Rights
4th Floor, Jack Jones
House, 1 Islington,
Liverpool, L3 8EG
e-mail
office@ier.org.uk
www.ier.org.uk
Design and print by
Upstream (TU)
www.upstream.coop

This publication is published in association with the Centre for Labour and Social Studies (CLASS), a new think tank established in 2012 to act as a centre for left debate and discussion. Originating in the labour movement, Class works with a broad coalition of supporters, academics and experts to develop and advance alternative policies on a range of economic, social and industrial issues.

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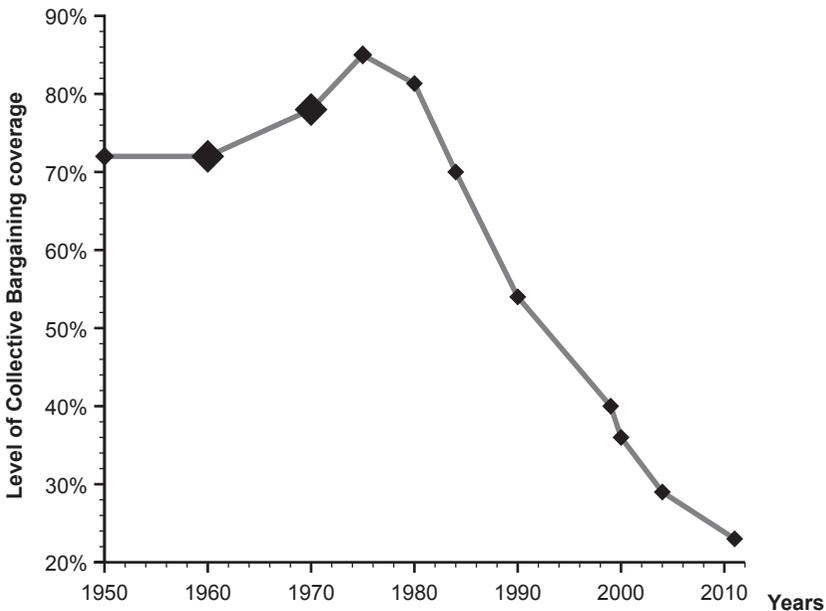
introduction

- 1.1** This report is the product of a series of discussions which have taken place with trade union colleagues,¹ the Institute of Employment Rights and the Centre for Labour and Social Studies (CLASS). It was considered that the solution to the current crisis must involve a change to the structure of industrial relations in the UK. Indeed, it was considered that current features of UK industrial relations have been a cause of the depth of the current crisis.
- 1.2** The object of the discussions was to devise a new industrial relations settlement to lift the UK out of its deep and prolonged economic crisis (so much deeper and longer here than in comparable countries) and its catastrophic consequences.² The current crisis is in reality a full scale disaster which has lasted three years already and has affected the whole of Europe, North America and many other parts of the world. A long-term solution is proposed which would have immediate impact.
- 1.3** In short, we propose the restoration of collective bargaining as a way of reducing inequality, enhancing employee voice in the workplace, and raising wages and generally improving terms and conditions of employment. This is neither new nor radical, with similar initiatives having been adopted by governments of all political stripes across the world over the last hundred years, in response to economic crises such as the one we are now encountering.
- 1.4** There can be little doubt that one of the most profound industrial weaknesses in the UK, that has substantially contributed to the current situation, is the massive contraction of the coverage of collective bargaining in the UK. In 1979 roughly 82% of the British workforce had some part of their terms and conditions set by collective bargaining.³ This was around the Western European average (then and now). Collective bargaining coverage is now well below 25% and falling, the reasons for this decline being considered in the pages that follow.
- 1.5** Until very recently, the United Kingdom was isolated in the EU as the only country with collective bargaining coverage below 50%. It appears, however, that the governing elite in Brussels are taking advantage of

the economic crisis generally and the weaknesses in the Eurozone in particular to attack collective bargaining institutions in a number of EU jurisdictions. This is particularly true in relation to Romania and to Greece, where financial support from the international community has been made conditional on changes being introduced to collective bargaining systems.

Figure 1 Collective Bargaining in Britain

The level of collective bargaining coverage (including wages councils) has dramatically declined as can be seen from the following table:



Note 1: The data in this graph are drawn respectively from S Milner, 'The Coverage of Collective Pay-setting Institutions in Britain, 1895- 1990' (1995) 33 BJIR 69 (1950-1980); N Millward, A Bryson and J Forth, *All Change at Work? British Employment Relations, as Portrayed by the Workplace Industrial Relations Surveys Series* (2000), p 197 (1984, 1990, 1998), K Brook 'Trade Union Membership: An Analysis of Data from the Autumn 2001 Labour Force Survey', (2002) 110 (7) *Labour Market Trends*, p 343. See also P Davies and M Freedland, *The Evolving Structure of Collective Bargaining in Europe 1990-2004; National Report on the UK*, (European Commission and University of Florence, 2004 (2000); H Grainger *Trade Union Membership 2005* (DTI, 2006), pp 12, 39 (table 28), B Kersley, C Alpin, J Forth, A Bryson, H Bewley, G Dix and S Oxenbridge, *Inside the Workplace: Findings from the 2004 Workplace Employment Relations Survey* (2006), B van Wanrooy *et al*, *The 2011 Workplace Employment Relations Study, First Findings* (2013), p 22 (table 1) (2004, 2011).

Note 2: Some of these figures, particularly the early ones, may significantly under-estimate collective bargaining density, with the Ministry of Labour and National Service reporting much higher levels (86%) just after the second world war.

- 1.6** The Troika (the European Commission, the European Central Bank and the International Monetary Fund) has demanded decentralisation and fragmentation of collective bargaining activity, away from national level (covering all workers and employers in the country) and sectoral level (covering all in a particular industry) to enterprise level (the level of the company). Part of the effect of decentralising collective bargaining in this way is, of course, that many employers take the opportunity to opt out. In consequence, collective agreement coverage haemorrhages.⁴
- 1.7** The United Kingdom was the pioneer, first in the development of collective bargaining (from 1917 to 1921, and from 1934 to 1979), and then in the attack on collective bargaining (from 1980 until today), see Figure 1 above. But we are not alone, with industrial relations structures in countries in what was once social democratic Europe now also falling like ninepins. In leading liberal market economies such as the United States and Canada, the erosion is even greater than in the United Kingdom. The recent developments in Wisconsin highlight a national malaise in the USA.⁵
- 1.8** Some of these trends are discussed more fully in chapter 7 below, indicating the full extent of the challenge for European trade unions generally. The starting point for us, however, is the position in the United Kingdom, in relation to which we argue in the pages that follow that the revitalisation of collective bargaining must be the priority for trade unions, so that we can begin to reverse the long slide, and move towards a system in which every worker enjoys the protection of a collective agreement and the protection of their trade union in their workplace.

Box 1.1

We are not Alone – The Attack on Collective Bargaining in Greece

The Constitution of Greece provides that ‘General working conditions shall be determined by law, supplemented by collective labour agreements contracted through free negotiations and, in case of the failure of such, by rules determined by arbitration’ (Art 22(2)). The system operating in Greece was one where the national agreement set minimum terms and conditions for all workers. Industry-wide ‘sectoral’ agreements then established specific provisions sector by sector, improving on the national agreement, while enterprise level agreements in turn built upon the relevant sectoral agreement.

The austerity package implemented by the Troika, apart from imposing pay cuts by law and invalidating any provisions in collective agreements which made provision to the contrary, also provided that both sector and enterprise-based agreements could henceforward provide less favourable terms and conditions than the relevant national agreement.

Under the new law, moreover, ad hoc associations of employees could negotiate these latter arrangements where there were no trade unions. This last provision was a response by the Greek government to the concerns of the Troika that enterprise-level agreements were not sufficiently widespread. This was because there were very few trade unions at enterprise level, with enterprise agreements applying only to enterprises with more than 50 workers, and with Greek law requiring a minimum of 20 persons to establish an association.

Following a report on the Greek situation by an ILO High Level Mission, these changes were strongly criticized by the ILO Committee of Experts as violating the obligations of the Greek government under ILO Convention 98 (on which see paragraph 4.6 below). The Committee of Experts challenged the procedures for the decentralisation of collective bargaining, and in particular the procedures permitting derogation from sectoral agreements by non-union associations of workers at enterprise level.

These latter provisions led the Committee to express ‘deep concern’ that the changes – ‘aimed at permitting deviations from higher level agreements through ‘negotiations’ with non-unionized structures’ – are ‘likely to have a significant – and potentially devastating – impact on the industrial relations system in the country’. This, however, was only the start, the Committee expressing the fear ‘that the entire foundation of collective bargaining in the country may be vulnerable to collapse under this new framework’.⁶

About the Institute

The Institute of Employment Rights seeks to develop an alternative approach to labour law and industrial relations and makes a constructive contribution to the debate on the future of trade union freedoms.

We provide the research, ideas and detailed legal arguments to support working people and their unions by calling upon the wealth of experience and knowledge of our unique network of academics, lawyers and trade unionists.

The Institute is not a campaigning organisation, nor do we simply respond to the policies of the government. Our aim is to provide and promote ideas. We seek not to produce a 'consensus' view but to develop new thoughts, new ideas and a new approach to meet the demands of our times.

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The authors of this report set out a timely argument for the introduction of a statutory framework for collective bargaining. Keith Ewing and John Hendy trace the historical background to the current economic crisis – including the dismantling of trade union rights by successive governments since 1980 – and set out a viable alternative for economic growth based on international law and best European practices. The end result is a considered and fully evidence-based policy recommendation summed up in a succinct ten point manifesto for collective bargaining.

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