

volume 09 number 2

2009 Summer Edition

# federation news

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INSTITUTE  
OF  
EMPLOYMENT  
RIGHTS



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The Institute of Employment Rights was launched in 1989. As a labour law 'think tank', supported by the trade union movement, its purpose is to provide research, ideas and detailed argument. In 1994 the Institute was granted charitable status.

The results of the work of the Institute are published in papers and booklets and developed at conferences and seminars. Our aim is to provide the tools of analysis and debate for the trade union movement in the area of labour law.

The General Federation of Trade Unions was founded in 1899. It provides services and benefits, mainly in the fields of education and research, to affiliated unions. The education work of the Federation is administered through an Educational Trust, which was established in 1971. *Federation News* is a series of short articles in the subject areas of labour law, labour economics and industrial relations, which are of interest to industrial relations practitioners and students.

We welcome the submission of articles for consideration for publication in future editions. Please send articles to the Institute of Employment Rights at the above address or electronically to [cad@ier.org.uk](mailto:cad@ier.org.uk).

The views expressed in *Federation News* do not represent the collective views of the Institute of Employment Rights or of the GFTU, but only the views of the authors. The responsibility of the Institute and the GFTU is limited to approving this publication as worthy of consideration within the labour movement.

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## Editorial: Issues of Enforcement

All the labour rights in the world are nothing unless they are enforced properly. Without some kind of device or actor to support workers achieving their rights, they just become paper tigers. This is not to say that there is one simple means of enforcing rights, rather there is a mix ranging from collective enforcement through trade union action and collective bargaining, which in an ideal world is both the simplest and most effective, through to employment tribunals and emerging methods to promote the rights of otherwise marginalised and 'hard to reach' workers.

The aim of this edition of Federation News is to provide some insight into both the challenges to enforcement of both individual and trade union rights, but also to look at some potential ways forward. Key questions when looking at the enforcement of labour rights include the freeing of trade unions to protect the rights of not just their members, but those working for subcontractors working at unionised worksites or on a sectoral basis; the need for a strategic balance between litigation and collective pursuit of the best deal for workers; the importance of considering new enforcement mechanisms in relation to the most vulnerable; and the possibilities of creating unified and proactive institutional enforcement bodies.

### Collective action to defend rights

One of the most crucial challenges faced by trade unions in enforcing the rights of workers over and above statutory minima is that posed by the decisions of the ECJ in Viking and Laval, and subsequent decisions, which restrict the rights of both trade unions and public authorities to take action to support decent wage levels. This came to a head recently in relation to the Lindsey Oil dispute. Professor Keith Ewing puts forward some clear practical solutions, notable fast and clear domestic legislation to implement the Posted Workers Directive and avoid the problems created by Viking and Laval. A clear legislative call which needs to be implemented before the forthcoming election.

Unions do not always find it easy to marry their role as a collective political organisation with that of supporting individual enforcement of employment rights. This places the role of trade union legal services in focus. Georgina Hirsch suggests that litigation should not be the only role for trade union legal services. Looking to lessons from the USA, she suggests that a strategic approach to litigation, and a litigation minded approach to industrial legal advice, can together help defend and enhance the power of trade unions to fight for their members.

During litigation tensions can arise when balancing the aspirations of individuals for an immediate solution and compensation and the collective pursuit of rights. This is put in stark light by Bronwyn McKenna's explanation of the issues that have arisen in relation to UNISON's campaign for equal pay on behalf of its members and the Courts' views on the appropriateness of a collective rather than litigation approach to unpicking the complexities of gender equality in public sector pay.

### Protecting the most vulnerable, new enforcement challenges

The TUC's Commission on Vulnerable Employment (COVE) has come up with some very clear recommendations on enforcement, as a means of trying to ensure that vulnerable workers are better treated. These include the extension of licencing along the lines of the Gangmasters Licencing Authority to not only construction, but the whole agency sector; equal rights for agency workers; changes to the enforcement of tribunal awards; more resources for enforcement agencies; review of immigration rules which can lead to conditions for exploitation and an urgent review of employment status. Such steps are urgently required, as Alison Balchin notes "The extent of exploitative treatment uncovered by CoVE was shocking, taking place in a legal framework that fails to prevent exploitation. This analysis is reinforced by Sonia McKay, who points out the plight of

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Published by the GFTU Educational Trust  
4th Floor  
Headland House  
308/312 Grays Inn Road  
London WC1X 8DP

in association with  
The Institute of Employment Rights  
The People's Centre  
50-54 Mount Pleasant  
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Produced by IER  
Printed by Upstream  
Cover pic of Construction site, Belfast  
© ILO/M Crozet

Price £8 to IER subscribers and members  
(£30 others)

**Alison Balchin** is an Employment Rights Officer at the TUC. Her areas of expertise include precarious work, employment status, agency work, extension of licensing, whistle blowing, data protection and monitoring at work. Prior to joining the TUC in 2003, Alison advised ATL, the BMA and the West Midlands Low Pay Unit.

**Jack Dromey** is Deputy General Secretary of Unite. He chaired the campaign that brought the Gangmasters Licensing Authority into being. Jack served as a member of both the TUC Commission on Vulnerable Employees and the Government's Vulnerable Workers Forum. He now leads for the TUC on the newly-established Fair Employment Enforcement Board.

**Keith Ewing** is Professor of Public Law at Kings College London and President of the Institute of Employment Rights.

**Steve Gibbons** is Director of Labour Rights at Ergon Associates. He specialises in collective and individual labour rights, particularly in an international context. He has acted as a consultant to the ILO, World Bank, European Commission and others. Prior to joining Ergon, Steve was Head of Employment Law at Incomes Data Services and Editor of IDS Brief

**Georgina Hirsch** is Director of Legal Services for Unite the Union. Georgina's work includes input on policy and lobbying on employment rights and related issues, as well as responsibility for member's cases and ensuring that the union's officers and reps have appropriate and up to date training on all significant developments.

**Phil James** is Professor of Employment Relations at Oxford Brookes University. He has researched and published widely in the fields of occupational health and safety including the co-authored IER book *Regulating Health and Safety at Work: An Agenda for Change*. Phil is currently deputy editor of the journal *Policy and Practice in Health and Safety*.

**Carolyn Jones** is Director of the Institute of Employment Rights

**Sonia McKay** is Professor of European Socio-Legal Studies at the Working Lives Research Institute where she heads a number of research projects mainly focusing on migration. Sonia previously worked for LRD, the independent trade union-based research organisation, where she held the post of employment law researcher from 1983.

**Bronwyn McKenna** is UNISON's Director of Organising and Membership. She specialises in trade union and employment law, particularly discrimination, equal pay, TUPE and collective consultation. She is a member of the CAC and of the Administrative Justice and Tribunals Council and chairs the Council's Employment Task Group. She represents the Administrative Justice and Tribunals Council on the Tribunal Procedure Committee.

**Keith Mizon** is ACAS' Director of Individual Dispute Resolution, responsible for statutory individual conciliation and individual mediation services. He has worked as both an ACAS accredited collective and individual conciliator/mediator. Recently, he was part of a team delivering seminars and mediation training to Australian Federal and State Industrial Relations Commissioners.

**Alan Ritchie** has recently been re-elected as General Secretary of the building workers union, UCATT.

**Bob Simpson** is a Reader in Law at the London School of Economics. He specialises in Labour Law with particular *interests in collective labour law and the law relating to pay*. His *Building on the National Minimum Wage* was published by the IER in 2001. Bob is an EC member of IER and sits on IER's Publications Sub Committee.