A NEW DEAL AND A NEW GOVERNMENT

IER
Institute of Employment Rights

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THE NEW government is to be congratulated for the commitment in the King's Speech on 17 July 2024 that it will honour its election manifesto pledge to implement the proposals made in *Labour's plan to make work pay – delivering a new deal for working people*, the latest version of its 2021 *New deal for working people*. The forthcoming Employment Rights Bill (and further measures thereafter) will certainly make a significant difference to our 31 million workforce.

But they only go part of the way to achieve the goals set out in *Labour's plan*, which includes the following statements:

- Labour will back working people to take their voice back, improve their terms and conditions and ensure protections at work are fit for the world today.
- ...ensuring workplace rights are fit for a modern economy and tackling insecure work, we'll increase productivity and create the right conditions for sustained economic growth.
- We will also learn from countries around the world that are looking to boost worker voice in response to economic challenges. Economists across the board also recognise the vital role that workers' voices and unions have in delivering a strong economy and rising living standards.
- Stronger trade unions and collective bargaining will be key to tackling problems of insecurity, inequality, discrimination, poor enforcement and low pay.
- A step change is needed in how working people exercise control over their working lives, and businesses need urgent action to address our nation's poor productivity.
- Labour believes strong collective bargaining rights and institutions are key to tackling problems of insecurity, inequality, discrimination, enforcement and low pay. When workers are empowered to act as a collective, they can secure better pay and conditions. Labour is committed to strengthening the rights of working people by empowering workers to organise collectively through trade unions.
- Our existing framework for industrial relations and collective bargaining is rife with inefficiencies and anachronisms that work against cooperation, compromise and negotiation. Modernising legislation Labour will update trade union legislation so it is fit for a modern economy, removing unnecessary restrictions on trade union activity and ensuring industrial relations are based around good faith negotiation and bargaining.

Labour's plan is to "end the Conservatives' scorched-earth approach to industrial relations". It is that approach which has led to a significant loss of worker voice, and of power at the workplace. That 'scorched-earth approach' involved placing significant legal restrictions on trade unions, and led to stagnant real wages, inability to resist a cost-of-living crisis, insecurity of income and employment, increasing in-







Sarah Woolley,
General Secretary, BFAWU

"We have to let our newly elected Parliamentary representatives know, we will not accept empty promises or half measures. We demand real change and we are not going to rest as a movement until we get it"

work poverty and the inability of workers to have a significant say in determining the conditions under which they work.

The *New deal* is a great start. But if voice and power are to be restored to workers, more radical steps will be required. The Tories left behind a legacy not only of financial incompetence and irresponsibility, but also one in which workers' rights are now in a dire state, as fully exposed by the P&O Ferries case, and as revealed again by the experience of the GMB at Amazon. **Here we identify a number of areas where the government's programme needs to be strengthened to achieve its stated objectives.**

Employment status

The first is the question of employment status, with British law designed in such a way as to exclude many working people from core trade-union and employment-protection rights. Labour's *New deal* expresses a clear commitment to 'move towards a single status of worker and transition towards a simpler two-part framework for employment status'. This is legal shorthand for enlarging the class of worker entitled to employment rights to include all workers other than persons genuinely in business on their own account. However, the commitment is subject to a 'full and detailed consultation' (despite the fact that the matter has been discussed for years and was the subject of two backbench Bills supported by the Labour Party).

It therefore does not appear in the list of labour-law reforms that the new government plans to present to Parliament. The continuing delay in addressing this fundamental question is surprising because many of the 'first 100 days' initiatives are interdependent on the question of employment status. These include the introduction of day-one rights, the prohibition of exploitative zero-hours contracts and the ending of fire and rehire. In the absence of a new single and broad definition of worker, many of those needing these protections will be excluded from them, and the impact of the reforms will be substantially diminished, while it is clear that a single status would assist with delivering the policy goals pursued by the new government.

Trade-union recognition

The government has identified a number of concerns with the statutory recognition procedure for trade unions seeking to establish collective-bargaining arrangements, promising a number of changes to the existing thresholds which present 'too high a hurdle'. It has also promised a general review of the procedure, which is long overdue given the relatively small number of claims now being made. These problems have since been very publicly ventilated following the recent Amazon case, in which the GMB made an unsuccessful claim in the face of resistance by the company. Despite having the support of 49.9% of those voting in the recognition ballot, the union walked away empty handed.

There is now an urgent need for major changes without the delay of a review if the statutory procedure is to play a part in enabling 'working people to take their voice back' and 'empowering workers to organise collectively through trade unions'. A union should be entitled to recognition if it can show 10% membership and provide evidence of majority support within a bargaining unit. Where a union fails to meet this threshold for whatever reason, it should in any event have a right to bargain collectively on behalf of its members ('members only' bargaining), if its members so choose. There should be no need for a ballot to

secure recognition, minimising the opportunity for hostile employer action. In addition:

- the current rule banning an application for recognition for three years following an unsuccessful Central Arbitration Committee (CAC) application should be revised: six months is long enough given the high turnover in many workplaces;
- the law on unfair (labour) practices should be amended so that it is unlawful for an employer to interfere with the relationship between workers and their trade unions, for example by encouraging, facilitating or inducing them to resign from membership of the union, and
- bargaining under the statutory recognition procedure should not be limited (as at present) to pay, hours and holidays, but should include all contractual terms and conditions (and anything else agreed).

Sectoral collective bargaining

But although major surgery on the recognition procedure is required, it will not be enough to prevent the continuing decline in levels of collective-bargaining coverage throughout the economy as a whole, far less restore it. One of the major challenges facing the government will be how to increase collective-bargaining density, which once stood at more than 80%, depending on the method of calculation, and which now stands at 40% according to figures produced by the Office for National Statistics. However, the latter appears to cover not only workers whose terms and conditions are governed by collective agreements directly but also those where employers set terms and conditions by reference to collective agreements.

Although a gradual and strategic roll-out of sectoral collective bargaining would be the most effective way of extending and expanding the number of workers protected, Labour has put this plan on hold and is now committing to introduce sectoral bargaining arrangements only for adult social care, restore negotiating procedures for school support staff, and protect national collective bargaining for the fire service. Important though this will be for the workers in these sectors, it does not begin to touch the wider problem, and falls far short, for example, of the 80% coverage target adopted by the EU as part of its 2022 directive on adequate minimum wages.

It would be deeply ironic if a Labour government were to exploit Brexit to avoid the need to grow collective bargaining, given that EU countries which do not meet the 80% target are now required to develop an action plan in collaboration with trade unions to "set out a clear timeline and concrete measures to progressively increase the rate of collective-bargaining coverage, in full respect for the autonomy of the social partners".

The right to strike and the rule of law

There can be no effective collective bargaining without an effective right to strike. The *New deal* proposes major

Steve Gillan,
General Secretary, POA



"This year is the 30th anniversary of Prison Officers being denied the right to strike – a restriction that has no place in a modern society and should be repealed if the Labour government are serious about a *New deal for workers*"

Daniel Kabede,
General Secretary, NEU



"Industrial action is a last resort but one workers must have access to if faced with unacceptable behaviour from employers. Stripping away, as promised, the unjustifiable restrictions on the right to strike currently in place is a welcome and vital step to show this government is serious about fairness at work"





Stop union busting bosses like Amazon

A framewor

changes to the law relating to industrial action, including the welcome repeal of the Strikes (Minimum Service Levels) Act 2023. It also proposes to repeal the Trade Union Act 2016 and introduce major changes to the notice and balloting rules with the introduction of online and workplace balloting for industrial action. But important though these provisions may be, they do not fully address the heavy burden of restrictions under which trade unions currently operate. Those restrictions include the inability of unions to engage in sympathy or solidarity action to help others in distress, a power that would have been helpful and ought to have been permitted during the P&O affair in March 2023.

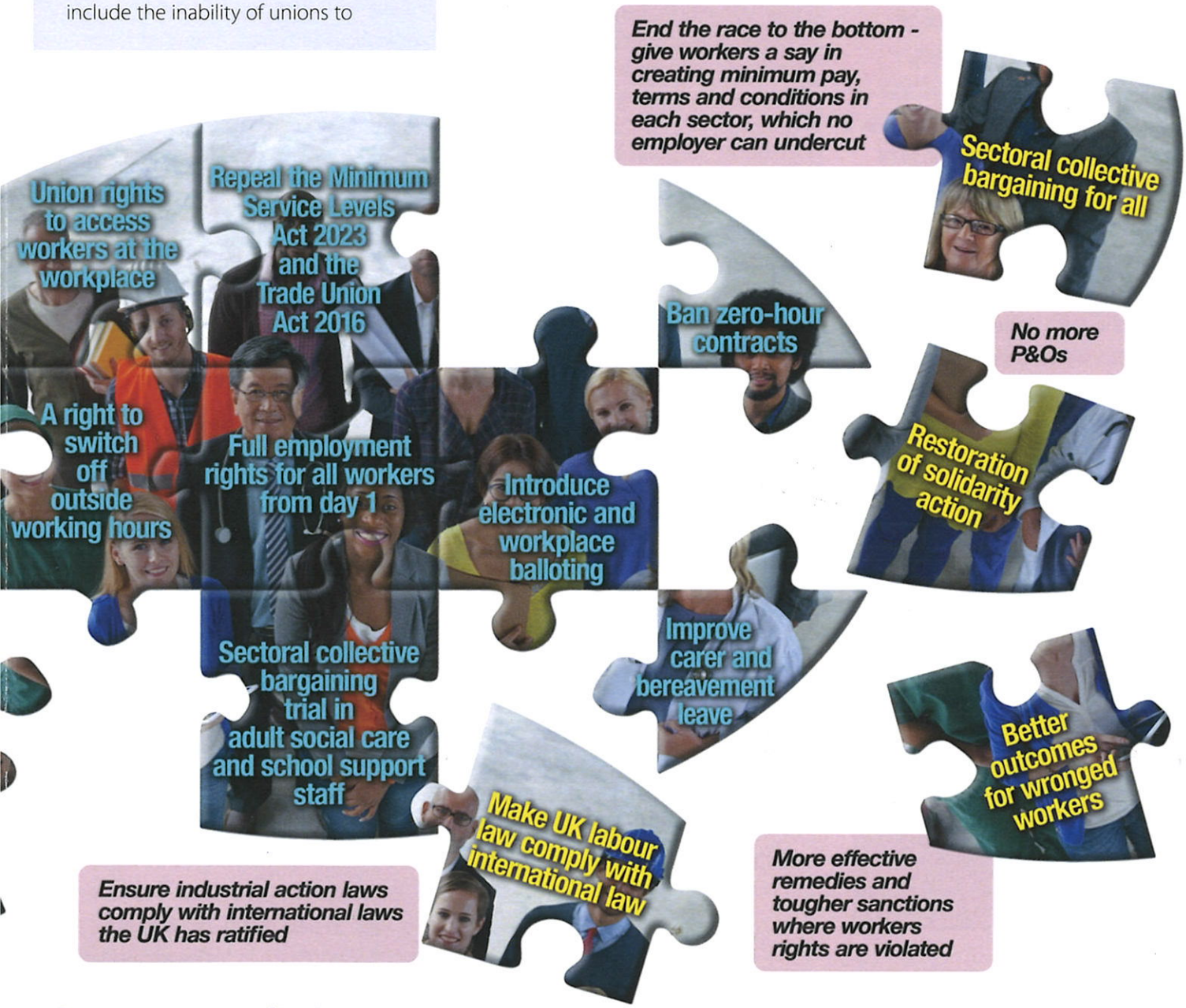
These restrictions go back to the Thatcher era, which the Blair and Brown governments did not reverse. But it is now time to break free from this controversial legacy. To this end, the

Continued overleaf...

Gawain Little,
General Secretary, GFTU



"The complete repeal of the 2016 and 2023 anti-union Acts, along with the introduction of electronic and workplace balloting, represents a huge step forward - the first Labour government to repeal significant anti-union legislation. The next step is to complete that process and undo all of Thatcher's anti-union laws"



k of labour law fit for the 21st century: time to complete the picture...

Paul Nowak,
General Secretary, TUC



"The UK desperately needs a new deal for working people. The country's 14-year experiment with ultra-flexible labour markets has failed. We have seen lacklustre growth, flatlining pay and millions of families have suffered the indignity of precarious work, not knowing how they will pay their next bill. Through its combination of enhanced employment rights, stronger enforcement and repeal of anti-trade union legislation, Labour's *New deal* will help fix our broken labour markets and deliver a growing economy that supports working families in every part of the country. And we know that is popular with voters and with many employers. The TUC looks forward to working with ministers, unions and businesses to make this Bill a reality - supporting trade-union organising in workplaces across the country"



New deal initially promised that industrial-action law will comply with the UK's ratified international legal obligations, including the right to engage in sympathy and solidarity action. *Labour's plan* does not denounce this commitment, though it does not mention it specifically. But conformity with the international standards ratified by and binding on the UK is essential if the 'scorched-earth approach to industrial relations' is to be abandoned and the 'inefficiencies and anachronisms that work against cooperation, compromise and negotiation' in industrial relations and collective bargaining are to be removed.

This is a rule-of-law duty on the State consistently ignored by previous governments. However, it is essential to enhance (no further than international law permits) the (fundamental human) right to strike in order to provide the only lever available to enable some degree of equal arms in the process of collective bargaining and worker protection. It would also be consistent with Labour's general commitment to "update trade union legislation so it is fit for a modern economy, removing unnecessary restrictions on trade union activity and ensuring industrial relations are based around good faith negotiation and bargaining".

Lessons from P&O

A major test of the *New deal* is whether it will address the defects of British law which were revealed by the P&O case in March 2023. This was a seminal moment which highlighted the chronic lack of protection for British workers at the time, and one that demands a major re-appraisal of the British approach to labour law. The P&O affair revealed rights without remedies and a legal regime that enables employers to choose whether or not to comply with their legal obligations. So although the case raised a large number of issues about the substance of the law (notably

Sharon Graham,
General Secretary, Unite



"Unite was the only union to oppose Labour's repeated watering down of the *New deal*. The government now has a huge opportunity to redress the balance at work in favour of workers and must deliver real tangible benefits. Collective bargaining rights are key to this. That is the tried and tested method for pushing up pay"

Mick Whelan,
Chair Labour Unions,
General Secretary, ASLEF:



"The *New deal*, created alongside Labour Unions, will revolutionise work for millions, bringing decent conditions, fair pay, and a re-balancing of power in the workplace. We expect swift progress on priorities including banning zero-hours contracts, ending fire and rehire, and expanding union rights, all of which we negotiated through Labour's policy processes. We look forward to Bills being laid this autumn and will continue to lobby for worker rights at every opportunity"

on fire and rehire), it also raised equally important but largely ignored issues about remedies, sanctions and enforcement. How will the rights proposed by the government prevent a P&O happening again without decent remedies and strong sanctions?

The proposals for a Fair Work Agency to inspect, investigate and enforce workers' rights are very welcome. But if the FWA is to make a significant impact, workers must have effective remedies. So while the commitment in the *New deal* to the removal of statutory caps on compensation is important, agencies such as the CAC and bodies such as employment tribunals must also have powers to grant orders to restrain unlawful decisions by employers, and to make meaningful orders to comply with the statutory obligations. Beyond the foregoing, the FWA must have the same powers as the Financial Conduct Authority and the Information Commissioner's Office to impose hefty financial sanctions on companies and, in particular, company executives in the case of egregious violations of workers' rights.

Conclusion

The proposals in the King's Speech are a good start in redressing the balance of power in the workplace. But they are thin on detail in some areas, and unduly modest in their ambition in others. It is clear that the government faces huge challenges in transitioning from a failed neo-liberal economy characterised by high levels of inequality, low wages and poor working conditions. But that challenge can only be met if there are no compromises in restoring trade-union power and enhancing workers' rights, in a dynamic and evolving programme of progressive reform.

We accept that the Thatcher programme of deregulation took three terms to complete (and it still was not finished). We accept also that A *new deal* can be only the start in a programme moving in the opposite direction. But it is essential as a matter of priority that workers' rights should be *universal* and apply to everyone; that the role and status of trade unions are fully *restored* and the influence of trade unions greatly *expanded*, and that labour law is made *effective* by a proper suite of remedies and sanctions.

September 2024

Fran Heathcote,
General Secretary, PCS



"The promised Employment Rights Bill signals the beginning of a new dawn in labour relations and a significant improvement in workers' rights. But more needs to be done to rebuild an economy ravaged by years of Tory cuts, starting with radical improvements to collective bargaining structures and coverage across the economy, particularly in the public sector"

Christina McAnea,
General Secretary, UNISON



"The fair pay agreement promised in care will rejuvenate recruitment in a sector that's long struTled to hold on to the workers needed to support an ageing population [...] It's only bad bosses who won't want this initiative to succeed. Decent employers and staff across the UK know making work pay means a real change for the better"

Mick Lynch,
General Secretary, RMT



"The end of a Tory government is always good news for working-class people, but they will now rightly expect the incoming Labour government to make real quantifiable changes to improve their lives"

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For more information about the Campaign for Trade Union Freedom, visit **www.tradeunionfreedom.co.uk**

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