

CLR-GB

Newsletter 1/2010

The **CLR-GB** Office is a platform linking CLR activities at EU and GB levels as well as work (academic and other) in GB in the field of Construction Labour Research. It will support related initiatives specific to GB.

Introductory Note:

The picture of economic austerity in Britain looks bleak, with plans to cut public-sector spending by 25% to 40%. At its core, the coalition partners seem keen to transform the role of the state to see more responsibility for the provision of public services handed over to the private sector and citizens in what is dubbed as the “Big Society” rhetoric. This will inevitably lead to decline in employment and erosion of employment conditions such as pay restraint, pensions’ reform and increasing work intensity. Similarly, because of increasing blurring of boundaries between the public and private sectors seen in the last few decades, fiscal constraints in public-sector budgets could harm private sector companies relying on government contracts for survival. Such is the case of the construction industry, and there are fears also of what is referred to as an imminent double-dip recession looming.

Despite all these, there appears to be little appetite for industrial action. Media reports have largely been lukewarm in responding to the high profile strike actions of UNITE in the case of British Airways. Questions regarding aspects of industrial democracy, and the prominence placed on the role of financial capital in shaping the nature of economic development seem to escape media emphasis. Instead, it can be observed that the reality is characterised by a greater degree of individualisation at the workplace and a further marginalisation of the collective voice. This newsletter issue centres on

representation at the workplace in the following ways. First, a review is provided, discussing the proceedings of a British Universities Industrial Relations’ Association (BUIRA) research seminar led by Professor Chris Howell who highlighted the shifts away from collective bargaining at the state level to negotiations taking place at the local firm level across a number of European countries. This raises the question as to how the voice of the worker can be effectively represented, a point that is pertinent to two recent reports into race relations in the construction industry reviewed here as well. Finally, an update on the issue of blacklisting in UK construction is provided.

Paul W Chan/CLR-GB August 2010

Do Institutions Matter? Erosion of National Models of Industrial Relations

British Universities’ Industrial Relations Association (BUIRA) Seminar, 26th February 2010, University of Westminster

This research seminar was organised as part of the BUIRA London Study Group. This seminar was led by Professor Chris Howell, Professor of Politics at Oberlin College, USA. Chris started his presentation by stating his chief hypothesis: that there is more convergence than divergence in the institutional characteristics of political systems across countries in Europe, and that this points towards the erosion of national models of industrial relations. He explained that studies of public institutions have conventionally emphasised distinctions between countries in terms of national characteristics that shape the political, financial, industrial relations and training systems. Understanding differences can help explain development trajectories of the political economy of nations, and serves to identify good practices of

governance. A well-known area that exemplifies such analysis is the varieties of capitalism literature, where categories of differences have been formulated to establish distinctions ranging from liberal economies (e.g. UK) to corporatist economies (e.g. Sweden), to state governance (e.g. France), and centrally-coordinated (e.g. Germany) economies.

For Chris, however, these categories represent a far too simplistic explanation of how political economies develop. Institutions, according to him, are highly plastic and malleable, and it is far more critical to study the dynamics of how institutions evolve over time than to explain the nature of these institutions in a static point in time. The premise of Chris's research is to observe how the systems of industrial relations, through the institutions that represent and govern them, across a number of European countries have changed over time. His view is that such empirical endeavours will shed light into what he termed "institutional plasticity", where institutionalised practices take on new forms, and new entities can displace established institutions and informal practices can circumvent institutionalised ways of doing things. Chris's research centres on four mechanisms of institutional change, namely (i) reform of industrial relations; (ii) institutional plasticity; (iii) the emergence of secondary institutions, and (iv) mechanisms to bypass institutions. He focuses on these mechanisms to analyse industrial relations systems in Sweden, France and the UK.

In Sweden, he observed the trend of shifting away from collective bargaining at the state level to collective bargaining increasingly at the firm and local levels. The role of trade unions in Sweden has also evolved to take on a monitoring function, rather than negotiation on behalf of the workers. Such a trend was also observed in France, where the traditionally state-interventionist style of industrial relations has now shifted to one where flexibility is permitted for negotiation to take place at firm level. The French case also exemplifies the emergence of new institutional forms of representation, with the formation of works council, where the role of worker representatives could cover a wide spectrum from consulting to negotiation. In the UK, the role of trade unions has certainly diminished since the Thatcher years, where there is political preference for employers to shape the nature of industrial relations. Collective bargaining in the UK is not regulated and employment tribunals and the conciliation service ACAS take on a more prominent role. Therefore, this analysis seems to point towards greater convergence, rather than divergence, in the systems of industrial relations across three countries that have often been distinguished by clear categories.

The presentation sparked off a lively discussion, raising a number of pertinent questions. First, the

trend of individualisation of industrial relations seems worrying, since this shift towards liberalism serves to further diminish the role of trade unions, and decimate the function of effective worker representation. Secondly, a discussion ensued regarding the relevance of class struggles, and the need to scrutinise more deeply the interrelationships between capital and labour, given the relative importance placed on capital (both organised and disorganised) in contemporary times. Specifically, a point was made in relation to the need to distinguish between the owners of capital and those with a management role. Thirdly, whilst Chris provided a rich analysis of how institutions that govern worker representation have changed over time, less is known about the role of employers. A particular question was asked as to whether employers were institutionalised, given the breakdown of employer representation seen in the UK.

Race Relations in Construction

In this section, reviews of two recent reports are presented. These include *Race discrimination in the construction industry inquiry report* (Equality and Human Rights Commission, EHRC, July 2009) and *The 2012 Olympics: access to training and employment opportunities* (EHRC, Spring 2010). The two reports focus on race relations in the construction industry. Through a mixture of qualitative interviews/focus groups and quantitative analysis of labour force surveys, the EHRC presents a rather patchy state of construction employment issues in relation to ethnic minorities. Unsurprisingly, evidence of racial discrimination in construction was highlighted, reflected in the difficulties encountered by ethnic minorities in accessing vital information and networks to gain employment in construction, the tendency for cultural tensions to arise in the social dynamics of the construction workplace, the mismatch between representation of ethnic minorities in training courses, and the relatively lower conversion rate of those ethnic minorities on construction training courses into employment.

These observations by the EHRC resonate with much of the literature on diversity in construction. Calls have been made for more transparent means of recruitment in the industry, and greater efforts of outreach into the communities of ethnic minorities to promote career options available in the construction industry. This recommendation was particularly highlighted in the EHRC report on access to training and employment opportunities with the Olympics development, where it was found that local communities tend not to be given a fair chance in part because the informal "word-of-mouth" method of recruitment serves only to alienate prospective

applicants from these communities. What is interesting, nonetheless, is the suggestion that the number of ethnic minorities represented in official figures might be potentially downplayed because there is some anecdotal evidence that self-employed ethnic minorities may themselves be involved in operating within supply chains associated with the construction industry. The patchiness of official statistics was once again reiterated in the EHRC reports, and calls have been made for more accurate monitoring mechanisms. However, one of the critical points that appear to be missing from the EHRC reports is the nature of effective worker representation of ethnic minorities working in the industry. The EHRC noted that incidents of racial discrimination are often not reported formally, and verbal complaints are usually settled informally before these reach employment tribunals. This shows the absence of effective representation of the interests of workers from an ethnic minority background.

Blacklisting and Representation

For unions to operate properly, their reps need to feel free to discuss issues without fear of victimisation. However, the UK construction industry has a history of hostile vindictive relations between unions and employers, with reps and activists often being caught up as the collateral damage. The imprisonment of the Shrewsbury Pickets following the 1972 national builders strike is a much-publicised example of this trend. Workers prepared to take on the role of union representative during the recent past, have repeatedly complained about victimisation by their employers. This results in the reduced influence of trade unions in UK construction. The evidence of victimisation comes mainly in the form of dismissals and periods of unemployment. However, evidence of blacklisting unravelled in 2009 exposes the extent to which anti-union employers organise the process.

Consulting Association blacklist

In March 2009, the Information Commissioner's Office (ICO) published a report following a raid on the offices of an organisation called The Consulting Association. The initial findings exposed how The Consulting Association was operating a covert blacklisting operation on behalf of 44 major contractors in the construction industry over decades. The companies involved are all major multi-national household names including: Balfour Beatty, Sir Robert McAlpine, Kier, Carillion, Skanska, Costain, Vinci, and Laing O'Rourke. A centralised database held personal sensitive data on 3,213 individuals, the vast majority of the information relating to trade union membership or workers raising concerns about safety issues. The firms paid an annual subscription

fee to the Consulting Association, for this they were supplied information about perceived "troublemakers". Between April 2006 and February 2009 the construction companies paid in total more than £450,000 to use the service.

File entries included workers' names, addresses and National Insurance numbers but also press cuttings, photographs, work history and gossip supplied by senior contractors HR managers. Some individual files are up to 49 pages. The level of intrusion and systematic victimisation of blacklisted workers is sometimes quite breath-taking. The blacklist files contain pages of entries attributed to senior construction managers and make reference to union members raising concerns about unpaid wages or employer's failure to adhere to National Agreements. Files of some victimised workers have entries such as: "DO NOT EMPLOY UNDER ANY CIRCUMSTANCES". It is apparent that on some occasions individuals have been followed and telephone calls have been made to their spouses.

Given the simplicity of the process and the size of the 44 companies involved, it is not surprising that their systematic blacklisting had such a devastating impact upon employment prospects of trade union activists. During an unprecedented building boom lasting 1996-2008, when the industry was desperate for skilled workers, many unionist activists on the blacklist found it almost impossible to gain work. The blacklist has resulted in people suffering long periods of unemployment, leaving the industry altogether, losing their homes and causing family tension.

Silencing Safety Problems

Safety reps were blacklisted for speaking to managers about asbestos, near fatal accidents or poor toilet facilities. Copies of official union safety reps credentials, intended to provide a safety rep with protection and encourage the employer to provide facilities, even appear in the files. The victimisation of building workers prepared to raise concerns about safety not only causes unemployment and financial hardship for the individual concerned, it also sends out a message to all workers on site. If even union safety reps, supposedly protected by legislation, can be dismissed and find it difficult to find future employment, the result is that the rest of the workforce become reticent to complain about safety issues, in case they too lose their jobs. In an industry as dangerous as construction, when workers are fearful of voicing concerns, this has a direct impact on the fatality and accident figures. Unions as a matter of course report dismissals of safety reps to the Health and Safety Executive (HSE). If union safety reps have been systematically victimised and dismissed over many years, what has the HSE done about it? The routine response from HSE inspectors

is that dismissals are an “industrial relations issue” and that the HSE could not get involved. Yet, the HSE espouses support for worker involvement. In reality, however, not a single case involving victimisation of safety reps has been dealt with in the past 4 years according to the HSE’s own figures!

Legal Challenges

The discovery of the blacklist files has resulted in a number of legal challenges. The construction press has reported that legal teams representing dozens of blacklisted workers are preparing a Data Protection claim to take to the High Court similar to a US style Class Action. On the face of it, breach of the Data Protection Act appears an easy victory for the claimants; the legal wrangling will be about level of loss and compensation.

Another legal remedy has been via the Employment Tribunal route. However, the main legal difficulty in fighting the cases under current UK employment legislation is the need to demonstrate an employer-employee relationship between the blacklisted worker and the blacklisting company. As major contractors are now using sub-contractors and Employment Agencies to provide almost all the labour, the relationship with the individual workers is notoriously difficult to establish in UK Employment law.

The first Employment Tribunal arising out of the blacklisting scandal was heard in March 2010 (Dooley v Balfour Beatty). Documentary evidence showing that Balfour Beatty had supplied information to the blacklist database was described as “*ghastly*” in court by the judge Mr. B T Charlton. The blacklist file was provided as part of the Balfour Beatty bundle of documents, who argued that the information on the file was justification for a dismissal in the 1990s. The decision turned on the question of employee status and found that Mr. Dooley was not an employee of Balfour Beatty, and only “employees” are protected by unfair dismissal legislation. Despite the prima facie evidence, the narrowness of the current UK legislation resulted in Balfour Beatty walking away scot-free.

Human Rights

This is why some of the Employment Tribunal cases are now attempting to use the European Convention on Human Rights to fight their claims. In the famous Wilson and Palmer case at the European Court of Human Rights (ECHR), the ECHR concluded that “... *it is of the essence of the right to join a trade union for the protection of their interests that employees should be free to instruct or permit the union to make representations to their employer or to take action in support of their interests on their behalf. If workers are prevented from so doing, their freedom to belong to a trade union, for the protection of their interests,*

becomes illusory. It is the role of the State to ensure that trade union members are not prevented or restrained from using their union to represent.” The ECHR ruling reinforces the positive obligation to secure the enjoyment of rights granted by Article 11 and also emphasises the right for a worker not only to be a passive member of a trade union but to be free to play an active role and receive full representations without fear of victimisation, discrimination or suffering detriment.

Blacklist Support Group

A final positive outcome of the current campaign is the formation of a *Blacklist Support Group* for workers affected by the Consulting Association scandal. The group was set up following a meeting hosted by John McDonnell MP at the House of Commons for blacklisted workers from a variety of different unions and some workers who have been forced to leave the construction industry altogether. The group provides an informal support network for blacklisted workers, working alongside official union campaigns, to share information regardless of which union they belong to, to ensure that the voice of those blacklisted is always central in any discussion about new legislation and expose the illegal practices of the major construction firms involved in blacklisting. The *Blacklist Support Group* has been very active since its formation as part of the UK government Consultation process on new Blacklisting Regulations, at Employment Tribunals, the National Building Awards and in the press.

Dave Smith, Blacklist Support Group

To Our Readers:

The CLR-GB Newsletter is the organ of exchange for CLR in Great Britain. This function depends on the co-operation of its readers. The editors ask everybody who is interested in construction labour to contribute with information and commentaries.

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