

Theme 4: Employee representation and employee voice

Legislating for workforce consultation

Mark Hall's current research, which falls under this theme and that on legal regulation, continues to address the implications for UK law and industrial relations of the EU information and consultation Directive. Transposition of the Directive during 2005 means that the UK now has, for the first time, a general statutory framework giving employees the right to be informed and consulted by their employers on a range of business, employment and restructuring issues. Hall's work during the year focused on the nature of domestic legislation to implement the Directive, employer and union responses and the development of research into the practical impacts of the legislation within UK companies.

An article published in the *Industrial Law Journal* assessed the significance of the Information and Consultation of Employees (ICE) Regulations in the light of the UK's previous approaches to the regulation of employee consultation and in terms of potential patterns of implementation. A key aspect of the government's legislative strategy has been to maximise employers' flexibility of response to the Regulations. The experience of both the UK's union recognition legislation and the 1999 Regulations that implement the EWCs Directive suggests that the main impact of the ICE Regulations may be a kind of 'legislatively-prompted voluntarism', with the existence of the new legislation driving the spread of organisation-specific consultation arrangements.

Hall also published a Warwick Paper in Industrial Relations in which he made an initial assessment of the strategies being pursued by employers and trade unions in response to the ICE Regulations, based on an ongoing programme of interviews with officials and advisers from employer and trade union bodies, management consultancies and other advisory bodies, and drawing on earlier case studies of information and consultation arrangements within four leading companies – Abbey National, BMW Hams Hall Motoren, BP Exploration and B&Q. Hall explained the 'slow start' to the process of implementing the Regulations in terms of the design of the legislation, particularly the absence of a set cut-off date for 'pre-existing agreements', and a seemingly cautious approach by employers and trade unions. Even where employers are being proactive, the predominant approach can be characterised as one of 'risk assessment' rather than 'compliance', whereas union attitudes towards the new legislation are primarily defensive, reflecting concern that the Regulations could potentially threaten union-based arrangements.

Other publications deriving from the project included two case study-based chapters in an edited collection. Hall also presented a paper on employer and trade union strategies under the new legislation to a workshop organised by the *Industrial Relations Journal* and subsequently submitted an article for publication in a special issue of the Journal.

In the autumn of 2005, IRRU carried out a survey of the information and consultation practices of member organisations of the West Midlands Employment Relations Forum (WMERF). The aim was to gauge what steps, if any, employers had been taking in response to the ICE Regulations. IRRU doctoral researcher Aristeia Koukiadaki assisted with the drafting of a brief questionnaire and Duncan Adam, IRRU's survey research assistant, undertook the statistical analysis of the returns. The research showed that almost two-thirds of organisations surveyed were actively

responding to the introduction of the legislation. Thirty-seven percent had already made modifications to existing arrangements and another 27% planned to review current practice or introduce new information and consultation arrangements. Organisations recognising trade unions were more likely than non-union organisations to have set up an information and consultation body involving employee representatives, to inform and consult employees directly, and to have made changes in response to the new legislation or to intend doing so. The main findings of the research were press-released by WBS. A short paper summarising the findings is available at <http://www.wbs.ac.uk/downloads/research/wmerf-1205.pdf>.

In late 2005, Hall successfully tendered with Mike Terry and John Purcell (University of Bath) for a major 2-4 year Department of Trade and Industry (DTI) research project involving longitudinal case studies of organisational responses to the ICE Regulations. Investigating 24 companies in the private sector, the research will gauge the diversity of arrangements being adopted and evaluate the quality and impact of the consultative relationships that ensue. The perspectives of management, trade unions (where these are recognised) and employee representatives will be addressed through in-depth interviews, and those of employees through attitude surveys conducted amongst a representative sample of the workforce in participating companies. The field research will be undertaken in successive waves, commencing with the larger undertakings employing 150 or more employees that are already covered by the ICE Regulations and moving on to smaller undertakings which will be covered from either 2007 or 2008 (depending on their size). A key feature of the research is its longitudinal dimension, under which developments in participating companies will be tracked over a 2-3 year period. This will facilitate understanding of the dynamics involved in the establishment of new, and the modification of existing, arrangements and in the evolving impact of information and consultation practice.

The DTI-sponsored project is due to begin in early 2006. Jane Parker will be employed as a research fellow. Alongside this, Hall's own research will continue to monitor the impact of the Regulations more generally, including case law developments and emerging union strategies.

Trade union organising activity

Since her appointment in July, Melanie Simms has continued working on research examining the future of worker representation and, specifically, trade union organising in the UK. Her current research focuses on successful organising campaigns targeting service sector employers and she has been involved in disseminating findings to a range of practitioner groups including the TGWU, GMB and the TUC. Specific findings highlight the importance of union structures which encourage the development both of workplace activism and of strategic action at sectoral and national levels. The findings also emphasises the importance of union structures (as opposed to workplace or worker characteristics) in influencing the effectiveness of collective representation after recognition has been granted. A paper examining the factors associated with different organising outcomes was presented at the annual BUIRA conference.

Together with Deborah Dean, Simms has been awarded £2000 from the WBS Research Development Fund to examine successful attempts by unions to mobilise non-standard workers in higher education and the entertainment industry. Work will commence in 2006.

Legal strategies of trade unions

Trevor Colling's current work focuses on legal strategies within trade unions, particularly in relation to the enforcement of individual employment rights. It thus also engages with IRRU's legal regulation theme. Union involvement in the employment tribunal system is not entirely new: they have always offered advocacy and legal services to individual members, particularly in relation to personal injury claims. There has been suggestive evidence for some time, though, of a sophisticated approach to the law in which individual claims are used to build support for collective interests. For example, cases taken under the discrimination jurisdictions have been used to demonstrate union capacity to represent the interests of marginalised groups or as a lever to pressure employers during collective bargaining. An article to be published in the *Industrial Law Journal* explores the factors that might encourage or impede strategies of this kind, referred to as 'legal mobilisation'. Fieldwork conducted in two medium-sized professional unions found sophisticated legal functions and evidence of high-level strategic challenges to employers. Yet there was limited evidence of 'legal mobilisation' in the terms sketched out above. Explanations lay partly in the increased legalism within tribunals, and the consequent need to retain qualified legal representation rather than to allow union officials to represent members. This had raised the costs associated with litigation whilst also reducing significantly the opportunities to shift from the legal to the negotiating arena, almost a pre-requisite of successful 'legal mobilisation'. On the other hand, both unions were able to rely on relatively sophisticated and mature bargaining relationships and to develop by extending union membership and organisation in existing sites. It was acknowledged that use of the law might be more frequent amongst larger unions, better able to afford the costs of legal mobilisation; particularly where their memberships were more dispersed and the law assisted them in gaining access to new workplaces or influence over employers. In short, use of the law has become a familiar tactic for trade unions but their methods and objectives are likely vary significantly according to their particular membership constituencies and the organising challenges that they face.