Reclaim our rights
Repeal the anti-union laws

- Secure the repeal of all the anti-trade union laws;
- Secure the introduction of new laws which enshrine instead the rights of workers, without penalisation, to take industrial action (including solidarity action), to be represented by their unions, and for their unions to have the right to have their own constitutions free from state and employer interference, so fulfilling the UK's international law obligations under the ILO Conventions and the Social Charter of the Council of Europe;
- Support workers and unions penalised or threatened by the anti-union laws.

Reclaim our Rights
PO Box 17556
London EC2Y 8PA

ISBN 1 87327 159 X

50p

London demonstration against Industrial Relations Bill 8th December 1970

Designed by Megan Dobney
Printed by Wernham Printers Ltd (TU) London N17

Bob Crow and John Hendy QC

Reclaim our rights

Repeal the anti-union laws

Bob Crow and John Hendy QC

Bob Crow is the Assistant General Secretary of the National Union of Rail, Maritime and Transport Workers (RMT). Until he became a full time official, he had worked on London Underground from the age of 16.

John Hendy QC specialises in labour law. He has written many books and articles on the subject and has appeared in many of the leading cases. He is Standing Counsel to the National Union of Journalists, the National Union of Mineworkers, and the Prison Officers' Association.

They represent the organising committee of Reclaim our Rights which consists of delegates from the following sponsors (as at 6th March 1998):

National unions Bakers Food & Allied Workers' Union; Ceramic & Allied Trades Union; Communications Workers' Union; National Union of Teachers in Further and Higher Education; National Union of Journalists; National Union of Mineworkers; Professional Footballers' Association; Rail Maritime & Transport.

Regions FBU London Region; NUM (Lancashire); NUM (Nottinghamshire); NUM (North East); NUM (North Western); NUM (Yorkshire); RMT London Transport Regional Council; RMT Midland Region; RMT North West Region; RMT Southern Regional Council; RMT Scotland Region; RMT South West Region; RMT North East Region; RMT South Wales Region; UCATT Midland Region; UNISON London Region; UNISON North West Region.

Branches AEEU Wisbech; ASLEF Bristol; ASLEF Doncaster; CPSA ES North East London; CPSA DoH (London); CPSA Newham & Waltham Forest BA; CPSA ES London Regional Co-ordinating Committee; CWU London Postal Engineering; CWU S. London Motor Transport; EPIU Merseyside; MSF Aberdeen Educational; MSF Avon Staff; MSF Ealing; MSF Hounslow & Feltham; Merseyside Port Shop Stewards Committee; NASUWT South Derbys; RMT branches: Aberdeen; Andover and Salisbury; Ashford No.1; Bakerloo Line; Berwick Rail; Birmingham Engineering; Bletchley & Northampton; Bridgend, Llantrisant and district; Brighton Joint; Bristol Rail; Camden No.1; Cardiff; Carlisle City; Carmarthen; Cinque Port; Coatbridge & Airdrie; Covent Garden; Coventry No.1; Derby Rail; Deptford; Docklands Light Railway; East Ham; East Midlands Bus; East Midlands Central; Edinburgh No 1; Euro Passenger; Exeter Rail; Finsbury Park; Glasgow No.1; Glasgow No.5; Glasgow No.14; Glasgow No.21; Glasgow Workshops; Gloucester; Hammersmith & City; Harlesdon; Holborn; Hull Rail; Inverkeithing; Jubilee & East London; Liverpool No.5; London Transport Retired; LUL Fleet Maintenance; London Underground Main Works; LUL Signal, Electrical & Track; Manchester South; Manchester Victoria; Manchester No.5; Mid Cornwall; Middleton Road; Miles Platting; Neasden; Newcastle & Gateshead; North Clyde; Penzance; Piccadilly & West; Pontypridd; Portsmouth; St Pancras; Sheffield & district; Stafford; Stratford No.1; South Hampshire; Swansea; Swindon Rail; Walsall; Warrington; Waterloo; Wimbledon No.1; Wishaw & Motherwell; Wolverhampton; TGWU 1/1228; TGWU 5/373, TGWU 6/603 Merseyside Docks & Waterways; TGWU/ACTS 8-10/157; UCATT Crook; UCATT London No.2; UCATT Oxford Central; UCATT 1st Sheffield; UCATT 3rd Sheffield; UNISON Ashford; UNISON Berkshire County; UNISON Kent County; UNISON Kirklees; UNISON Liverpool City Council; UNISON London Voluntary Sector; UNISON South Manchester Hospitals.

TUCs Aberdeen; Berwick; Brent; Burnley; Camden; Carlisle; Dunfermline/Cowdenbeath; Ealing; Erewash; Greenwich; Haringey; Hyndburn & Rossendale; Irvine & District; Lancaster & Morecambe; Liverpool; Merseyside; Merton; Newham; Salford; Southwark; Wirral.

Others Free Trade Unions Campaign; NATFHE Rank & File; Haldane Society of Socialist Lawyers – Employment Committee; International Centre for Trade Union Rights; Indian Workers Association of Great Britain – Coventry branch; IWA – Greenwich Branch; International Committee in Defence of ILO Conventions; Women of the Waterfront.

Summary

This booklet give an account of the anti-union laws and what should be done about them. It is in eight chapters as follows:

What are the anti-union laws?

Most of them were passed by the last Conservative government but some are much older. They cut down the ability of unions to run their own affairs, in particular to organise industrial action.

What is the purpose of the anti-union laws?

They were passed to cut employers' labour costs. This is a misguided policy because, in fact, it helps inefficient employers and damages the national economy.

What has been the effect of the anti-union laws?

Workers have lost the protection of collective agreements. Inequality is increasing.

Is Britain alone in having anti-union laws imposed on it?

Some countries have more repressive laws than the UK and some countries ignore their laws. Many countries have followed Britain's lead in imposing anti-union laws.

What does international law have to say about the UK's anti-union laws?

The UN, the Council of Europe and the ILO have all condemned the UK's laws.

What laws should we have?

Union laws should respect human rights, equality, democracy, justice and fairness. International standards needs to be applied globally.

What is the New Labour Government proposing?

The New Labour Government refuses to make the changes necessary to bring the UK into line with its international legal obligations.

What is to be done about the anti-union laws?

The trade union and labour movement must campaign for the repeal and replacement of these laws. That campaign can only succeed if led by the TUC. Union bodies are invited to pass the motion at the end of this booklet.

What are the anti-union laws?

When people in Britain talk of the anti-union laws they usually mean the legislation (Acts of Parliament) passed by the Conservatives between 1979 and 1995. These laws:

- cut down workers' and unions' freedom to take lawful industrial action (there is no right to strike in UK law, unlike say France, Italy or South Africa where the right is written into the Constitution);
- make "secondary action" unlawful. So workers can only take industrial action against their own employer. They are not allowed to take action in support of other workers, even other workers employed in a sister company. Nor are they allowed to take action against a company which controls their employing company;
- make unlawful: action in support of a closed shop;
- make unlawful: action to persuade an employer to employ only union members;
- make unlawful: action aimed at reinstating sacked strikers;
- impose extremely complex and technical pre-strike ballot provisions. This has meant that anti-strike injunctions are often granted to employers because of some minor infringement of the balloting rules by the union;
- require unions to send a series of notices to employers before a strike is called, amongst other things, identifying every worker to be involved;
- only allow pickets to picket their own place of work – even if it has shut down or moved to somewhere else;
- make unions liable for unlawful industrial action by their members unless they write (at the earliest opportunity) to each member "repudiating" the action;
- deny all unofficial strikers the right to bring unfair dismissal claims and denies official strikers that right unless the employer sacked (or rehired) some but not all of them;
- reduce benefits to strikers' families (those taking industrial action are denied all benefits);
- establish a state official to finance members wanting to sue their unions (with no means test – unlike Legal Aid which is being abolished for workers wishing to sue their employer for accidents);
- override union rulebooks (for example in relation to elections to certain positions in unions);
- restrict the way unions can spend their funds (eg. they are the only organisations in the country which are not permitted – whatever their rules or members say – to pay off a member's fine);
- prevent unions disciplining members for (eg.) not taking industrial action (even if lawful, balloted action);
- encourage derecognition;
- allow employers to discriminate against union members who wish to retain recognition;

- prevent public bodies from selecting contractors on the basis of union membership or decent rates of pay and conditions.

These are just the obvious examples of the Tory anti-union laws. The Tories, whilst inflicting more laws on the unions also set about cutting workers' rights (a process they called "deregulation"). So rights, for example, to claim unfair dismissal, maternity pay and leave, to minimum wages and to the wider application of collective agreements were all reduced or removed.

But some anti-union laws pre-date the Tory laws and are embedded in British law. So, for example:

- a person taking industrial action (which may be a work-to-rule) is, in the eyes of the law, in "fundamental breach of the contract of employment" and so may be dismissed by the employer;
- an employer seeking an urgent injunction against a union need not prove the case "beyond a reasonable doubt" (as in a criminal case) or "on the balance of probabilities" (as in an ordinary civil case) but need only put forward "an arguable case", "a serious issue to be tried".

What is the purpose of the anti-union laws?

Much of the law brought in by the Conservatives was introduced under cover of propaganda. For example, it was said of the pre-strike ballot laws that they were to restore democracy to union members. In fact, there was negligible evidence that strikes were undemocratic. The reason for the balloting laws had nothing to do with union democracy. They were designed to give employers grounds to get injunctions to stop strikes. If union democracy was the issue the right to complain would have been restricted to members – and members only. But the Conservatives gave the right to sue to employers who have no vote in the ballot.

The real purpose of the anti-union laws was to weaken workers' power at the workplace, and to increase employers' power. Unions, of course, are seen (correctly) as an hindrance to the free operation of the labour market which treats humans like commodities. Therefore unions had to be "disempowered". The same motive lay behind the nineteenth century laws which classed a strike as a fundamental breach of contract.

So what lies behind these laws is really economic: they aim to cut the costs to employers of labour as a commodity in the labour market.

Unfortunately, this strategy is bad for ordinary people as the next chapter shows. Ironically, the strategy also fails for capitalism as well. Anti-union (and anti-worker) laws do cut labour costs both in terms of wages and conditions. But this does not make for greater efficiency. In fact, greater inefficiency in the labour market is encouraged. Competition favours the cheap labour employer over the employer which would prefer to invest in technology and training. For such investment a stable, committed workforce is essential. Research shows that high labour standards in fact promote "productive efficiency" both

in firms and in national economies. Low labour standards promote the opposite.

High labour standards, pay and pensions give workers a better standard of life and also give them more to spend. This has the effect of increasing demand for goods and services. This, in turn, generates more jobs. Demand in the economy diminishes with falling wage rates. This causes more unemployment and yet further reduces demand. Bad conditions and low pay makes workers less committed and less productive. An employer has little incentive in investing in such workers. They have less incentive to stay and repay training with higher productivity.

Higher pay also increases tax and national insurance revenue. Low pay has the reverse effect. More government income means more spending. This creates more employment and more services. Low wages and low standards (and, particularly, high unemployment) generate not just less government money to spend but also more demand for services, as illustrated in the next section.

So the economic motivation behind laws designed to cut labour costs is short-sighted and self destructive.

What has been the effect of the anti-union laws?

Without doubt these laws have increased employers' power. They have reduced the power of trade unions. They have reduced the power of the workers.

This can be translated into figures, but not perhaps those which might be expected to illustrate the point.

It is sometimes said that the anti-union laws have caused union membership to drop. Union membership has fallen – but only to an extent comparable to other similar countries. Between 1970 and 1995 union membership as a percentage of all employees fell in the UK from 45% to 32% and in Australia from 50% to 33%. There was no wave of anti-union laws in Australia in this period. It is likely that the fall in union membership in so many countries was caused by almost universally unfavourable economic conditions, an adverse political climate, and changing patterns of employment.

But the really significant figures are that the number of workers covered by collective agreements negotiated by trade unions has shrunk dramatically more in the UK than in any other country. Between the same dates the number of workers covered by collective agreements, as a percentage of all employees, fell in the UK from 83% to 48% but in Australia only from 88% to 80%.

Collective agreement coverage is the single most essential protection for the living standards of ordinary people. It has been slashed. This is the real harvest of the anti-union laws.

Approaching ten million people in the UK live below the poverty line. One in every four children in the country lives in poverty.

The effect of smashing up of collective agreements can be seen in another statistic. Inequality has grown faster in the UK over the last 20 years than in any other country in the world except the USA.

According to *Inequality in the UK*, by the Institute of Fiscal Studies, the bottom 5% of earners averaged earnings of £90 per week in 1983 and this had hardly changed in 1993. The top 5% increased their earnings over the same period by 50% to £550 per week. According to the Rowntree Foundation, the population with less than half the average income had more than trebled from 6% to 21% between 1977 and 1990.

It is not just incomes which have diverged. Every other measure of the quality of life in Britain shows growing inequality. For example, the Government's Office for National Statistics reports that in the 1980s life expectancy for men in the lower social classes (IV and V) fell from 69.8 years to 69.7 years, while that of men in the upper social classes (I and II) rose from 74 years to 74.9 years. This may not sound a lot. But it is a matter of shame that life expectancy of the poor is actually falling for the first time in 100 years whereas the life expectancy of the rich goes on rising.

Of course, the anti-union laws are not solely to blame. But in removing protection for living standards these laws play their part. Unemployment is the other key factor. In February 1998 unemployment stood at 1,380,000 (official figure: those on Jobseeker's Allowance) or 2,670,000 (as calculated before 1979), or 4,240,000 (calculated by the Government's Labour Force Survey as those without a job who would like to work), or 7,000,000 (calculated by the Rowntree Foundation as those who do not work but would like to). Research in the Cambridge Journal of Economics in January 1998 shows that within the OECD countries only the USA has a higher rate of non-employment than the UK.

More indirect effects are also obvious. The disempowerment of unions by legal means has played its part in enabling the demolition of traditional home industries such as coal, iron and steel, shipbuilding and repair, heavy engineering, textiles and so on. These industries have been moved to locations abroad. This has often been to countries with cheaper labour but sometimes it has been to countries with higher investment and greater efficiency such as those in the European Union.

Researchers Deakin and Wilkinson have written:

"The inherent contradictions of the low labour standard route to economic progress are only too evident from the experience of the USA and UK in recent years, where deregulationary policies have been furthest advanced but where, during the same period, the balance of payments on the trade accounts progressively worsened, the manufacturing base shrank considerably and income inequality, unemployment and poverty all increased. The political stability achieved by these systems in the 1980s has been explained by the contribution made by the growing number of those in low-paid and insecure employment to the 'contentment' of a more secure and still-affluent majority. But this is a very precarious equilibrium which is increasingly threatened by

the instability which results from the exclusion of a large and growing proportion of the population from participation in economic and social progress".

The weakening of the labour movement has also undermined the ability of working people to resist other encroachments such as attacks on the National Health Service, education, social services and so on.

Is Britain alone in having anti-union laws imposed on it?

There is nothing unique about Britain's anti-union laws. Both New Zealand and Ireland took a leaf out of Mrs Thatcher's book and introduced similar anti-union laws. The fall of the Labour Government in Australia in 1996 gave the opportunity there for anti-union laws. Many other non-English speaking countries have followed a similar route.

Of course, some countries have anti-union laws even more repressive than Britain's. And in yet other countries employers and the state are not restricted by the niceties of law at all. In such countries (like the Philippines or Guatamala) merely to be an ordinary union member on a picket line is to risk murder or abduction by employers' "goons" who are untouched by the law.

Though the means may differ across the world, the effect is the same: employers seek through the law or through its absence to diminish the power of unions and hence of working people. There has been a wave of repression against unions.

The extent of this repression has differed from country to country. In European countries other than the UK for example, the role of unions has not been so overtly under attack. Within the European Union, some member states have resisted the economic argument for paring down workers' rights. The EU has acknowledged that workers rights should receive at least minimal protection so as to limit the extent that inefficient employers can undercut efficient employers within the European market. Politically, this has helped to secure union support for the EU project and has helped to promote the idea that Works Councils are an acceptable substitute for collective bargaining. It should not be thought however, that EU laws will benefit unions in Britain in the same way as those laws have promoted such things as health and safety. The EU has declared itself most unlikely to introduce any laws to protect trade unions and trade unionism. It is even considering a European law to ban strikes which interrupt trade between member countries.

What does international law have to say about the UK's anti-union laws?

Britain was prepared to bomb Iraq for refusal to comply with UN resolutions.

The New Labour Government has a policy that British trade and aid should be linked to the human rights records of foreign countries. In the circumstances it is particularly appropriate to consider the UK's own obligations under international law.

There are essentially three sources of international law that are relevant here. The first is, of course, the United Nations. It has a Declaration of Universal Human Rights (1948) which by Article 23(4) states:

"Everyone has the right to form and join trade unions for the protection of his interests."

Article 8 of the International Covenant on Economic, Social and Cultural Rights (1961) and Article 22 of the International Covenant on Civil and Political Rights (1961) both say the same. Britain is signed up to and bound by all these laws.

The words "for the protection of his interests" make clear that the right of union membership is not restricted simply to the right to carry a union membership card alone. It means that the union can take action to protect the member's interests.

The UN has made clear that this includes the right to strike. In a decision of 4th December 1997 the United Nations Committee on Economic, Social and Cultural Rights considered whether the UK was fulfilling its obligations under article 8 of the International Covenant on Economic, Social and Cultural Rights. It held:

"The Committee considers that failure to incorporate the right to strike into domestic law constitutes a breach of article 8 of the Covenant ... the common law approach recognising only the freedom to strike, and the concept that strike action constitutes a fundamental breach of contract justifying dismissal, is not consistent with the right to strike. The Committee does not find satisfactory the proposal to enable employees that go on strike to have a remedy before a tribunal for unfair dismissal. Employees participating in a lawful strike should not ipso facto be regarded as having committed a breach of employment contract."

This means that the UK laws which allow workers to be sacked for taking lawful industrial action (such as at Magnet or Critchley Labels) is itself in breach of international law.

A second source of international law is one that only applies across the 36 nations (called "contracting states") of the Council of Europe. (This is different from the European Union, the Common Market, which has no laws on trade union rights.) The Council of Europe is the source of the European Convention on Human Rights and Fundamental Freedoms which is binding on the UK and becomes directly part of UK law by the Human Rights Act 1998.

The European Court of Human Rights has not gone so far as to say that "the right to join trade unions for the protection of his interests" means that member states must provide a right to strike. But it has said:

"The Court does not, however, accept the view expressed by [some] who

describe the phrase 'for the protection of his interests' as redundant. These words, clearly denoting purpose, show that the Convention safeguards freedom to protect the occupational interests of trade union members by trade union action, the conduct and development of which the Contracting States must both permit and make possible."

UK law is in breach of this. Here, the right to be a union member means little more than the right to hold a union card. In 1995 the highest UK court, the House of Lords, ruled against NUJ and RMT members. It held that, though British workers have the right to be union members, they do not have the right to be represented by their union at work. In fact it was held that they do not even have the right not to be discriminated against (by being paid lower wages) for seeking to retain the right to union representation in a derecognition situation. The Tories passed legislation to the same effect. The NUJ and RMT are appealing to the European Court.

The Council of Europe also has a Social Charter (1961). This too gives workers the right to join trade unions (under Article 5, which is binding on the UK). The Council of Europe has ruled that the UK law in the preceding paragraph is in breach of its obligations under Article 5.

But the Council of Europe's Social Charter goes further. In Article 6, it gives workers the right "to collective action ... including the right to strike". Not surprisingly, Britain's laws have been found to be in breach of article 6, in particular its laws on:

- Dismissal of strikers;
- Discrimination against workers wanting union representation;
- Ban on unions disciplining non-strikers;
- Criminal penalties for striking seafarers.

These were decisions of the Council of Europe's respected Committee of Experts. But on 15th January 1997 the Committee of Ministers of the Council of Europe endorsed these findings and made a "Recommendation" that the UK complies with its legal obligations in these respects. This is the severest diplomatic sanction.

The third source of international labour law is the International Labour Organisation. This has a number of Conventions. The most important are No. 87 and No. 98. These give even greater rights to trade unions and unionists than the other international laws. The protect trade union "autonomy" (the rights to draw up union rule-books, and to conduct their own affairs without state or employer interference), and the right to collectively bargain. In particular the right to strike is recognised. Since 1989 the ILO has consistently condemned Britain's anti-union laws, in particular the following:

- Dismissal of strikers;
- Discrimination against workers wanting union representation;
- Ban on unions disciplining non-strikers;
- Ban on unions paying off a member's fine;
- Ban on secondary industrial action (this should be permissible if the primary dispute is lawful);

- Ban on industrial action against any but the nominal employer (strikes aimed at the real controlling employer hidden behind a web of spurious companies should be permitted);
- Ban on industrial action in support of overseas workers;
- Ban on industrial action with social or political objectives;
- Ban on industrial action aimed at government, economic or social policies;
- No protection for job applicants refused because of trade union membership;
- Ending teachers' collective bargaining arrangements;
- Sacking of the GCHQ workers.

These condemnations of the UK (in pages and pages of detail) have been an almost annual event at the ILO General Assemblies in June each year. Take the June 1997 report on the UK, for example. The ILO criticised the law interfering in union rulebooks by preventing unions from disciplining non-strikers. They said:

"the Committee once again ask the Government to refrain from any interference which would restrict the right of workers' organizations to draw up their constitutions and rules freely"

In relation to the ban on secondary action the ILO said:

"It would point out in this respect that workers should be able to take industrial action in relation to matters which affect them even though, in certain cases, the direct employer may not be party to the dispute. This could be the case where, for example, the structural organization of parent, subsidiary or subcontracting companies leads to a situation where the interests of the workers cannot necessarily be resolved with their direct employer, yet the undertaking of industrial action may lead to the resolution of their legitimate claims. In this regard, the Committee recalls its position that workers should be able to participate in sympathy strikes provided the initial strike they are supporting is itself lawful."

On strike dismissals, the ILO reminded the UK Government of its earlier condemnations:

"in which it noted that sanctions or redress measures were frequently inadequate when strikers were singled out through some measures taken by the employer (disciplinary action, transfer, demotion, dismissal) and that this raised a particularly serious issue in the case of dismissal if workers could only obtain damages and not their reinstatement. The Committee indicated that legislation should provide for genuine protection in this respect, otherwise the right to strike would be devoid of content."

Almost every country on earth is a member of the ILO. Each country is represented by a delegate from the Government, the employers and the trade unions. Britain was a founding member of the ILO in 1919, and a founding signatory to Conventions 87 and 98, by which it is bound. In 1998 the ILO will adopt a Declaration of Core Labour Standards which will include Conventions 87 and 98 and will bind every member country.

What laws should we have?

In the first place, contrary to what some say, we have to have labour laws. The legal system is too pervasive to be excluded. It is true that the law is essentially a mechanism for maintaining power in the hands of those who own the means of production, distribution and exchange (as true in Cuba as in the USA). It may prove to be true that human society will change so that laws are no longer necessary (as they were not for the first 150,000 years of human history). But for the moment the absence of law is likely to lead to even greater accumulation of power in the hands of those who already have it (or seize it). Recent experience in Russia tends to support this.

The need for law is as true in labour relations as in other fields. Workers in the UK need law to secure compensation for accidents, to stop discrimination at work, to stop employers changing terms and conditions without agreement, to get sick pay and maternity leave, and so on. And trade unions need law: to protect union funds from fraud, to stop ballot rigging, to protect the right to strike, and so forth.

Of course, there are some areas where it is best to exclude the law as far as possible. Legal encroachment should not be permitted to invade such matters as: trade union autonomy, the right of unions to draw up their own rulebooks, adopt their own forms of democracy, spend their funds as their members wish, and decide for themselves what activities (including strike action) they wish to pursue. Some protection for these issues can be achieved by implementing positive rights like, for example, the right to strike.

The list of things a new set of labour laws needs to deal with is very extensive. But the principles on which they should be based can be shortly stated:

- Fundamental human rights and international law;
- Equality of opportunity;
- Extending and promoting collective bargaining;
- Workplace democracy (the right of workers, through their unions, to have a say in the decisions which affect them);
- Justice and fairness.

These principles translate into a variety of trade union laws. For instance every worker should have the right:

- To union membership – with no exceptions for prison officers, police, GCHQ workers or any other category;
- Not to be blacklisted for union membership or activity, past or present;
- Not to be discriminated against on grounds of union membership or activities or using union services, for example: in seeking employment, in terms of employment or conditions or work, or in dismissal from employment;
- To be a union representative and, if so, have reasonable time off and under no circumstances to be discriminated against;
- To pay union subs by check off;
- To be represented by the union, individually or collectively, on any work issue;

- To have the benefits of any collective agreement applying to the trade in the locality, whether or not the employer is party to it, and any term in the contract of employment less favourable to be void;
- To have the right to take industrial action to promote his or her (or any other worker's) occupational, social or economic interests;
- When taking industrial action, not to be treated as in breach of contract, and to have protection against dismissal or discrimination;
- To picket any workplace.

Every trade union should have the right:

- Not to be sued for organising or encouraging industrial action;
- To discipline non-strikers in accordance with the union rulebook and the rules of natural justice;
- Not to have litigation brought against it by individuals having the benefit of government finance on any basis different from government finance available to workers to sue their employers;
- To draw up their own rule books and democratic procedures, and to spend their funds and conduct their own activities in accordance with them, free from employer and state interference, litigation or legislation;
- To represent any member or members in any workplace on any issue;
- To be recognised by and to negotiate with any employer wherever more than one employee wishes it;
- Where the union has more than one member, to have access at any reasonable time to a suitable location in an employer's premises: to consult with or report to members, to conduct ballots and elections, to recruit members, to conduct collective bargaining, to inspect for health, safety or welfare reasons or to ensure compliance with labour laws.

Every employer should have the right:

- To hire contractors which recognise unions and/or observe the collective agreements applicable in the trade or locality.

This new set of trade union laws would need to be enforced by a variety of means, including fines, damages and injunctions. More imaginative means such as invalidating employer action (such as dismissal, or a change to terms and conditions) should also be used. Furthermore grants, subsidies, tax relief, privileges, licences, etc for employers should be made dependent on compliance with the law.

The UK's employers are only part of the target. It is vital that having implemented the international law provisions into UK law, legislation is then passed to ensure that goods, services and capital are not imported from (or to) countries which are in breach of the same international laws. This can be achieved by a variety of measures. "Social labelling" and "Codes of Conduct" – requiring retailers, wholesalers, importers and producers to specify that goods and services were made and transported by workers whose employment met all the international law standards is one step. Commitment to a "social clause" in the World Trade Organisation which would require all international trade to comply with ILO standards is another. Opposition to the Multinational

Agreement on Investment which seeks to subvert national and international labour standards is yet another measure.

Of particular importance is the need to strengthen and defend the ILO and its 1998 Declaration of Core Labour Standards. It seems so obvious that international labour laws should be respected the world over so as to prevent good standards being undercut by bad, that it is sometimes overlooked that some developing countries are trying to protect what they regard as the competitive advantage of their low pay and bad conditions. But even the OECD rejects this economic analysis:

"... concerns expressed by certain developing countries that core standards would negatively affect their economic performance or their international competitive position are unfounded; indeed, it is theoretically possible that the observance of core standards would strengthen the long-term economic performance of all countries".

What is the New Labour Government proposing?

The New Labour Government did not create the anti-union laws. On taking office they announced that they would revoke the ban on GCHQ workers being in unions (although the ban on industrial action at GCHQ remains). They are proposing to introduce a right to recognition (though it is controversial and may not be as beneficial to the unions as hoped). Restrictions on check-off of union subscriptions are to be removed (though slowly). Labour will also introduce a national minimum wage (at an as yet unknown level).

The promise of full employment rights from day one was withdrawn by the Labour Party, despite the universal support of all trade unions and the TUC for this measure.

Labour is proposing that strikers will have the right to make unfair dismissal claims if sacked. But as Mr. Blair made clear in an article which is quoted at more length below:

"Under our proposals ... there would be nothing to prevent the employer dismissing people, and still no power to force their reinstatement. What there would be is merely the right to present a claim."

But what use is that? Refusal to work in accordance with the contract of employment will still be regarded as a fundamental breach. This will surely exonerate the employer. This is precisely the proposal the UN declared did not fulfil the UK's international law obligation (see above).

But on the key issue of the anti-union laws, Labour has made its position absolutely clear. On 31st March 1997 Tony Blair wrote in Murdoch's *Times* newspaper:

"It was claimed ... That employers will not be able to dismiss people on strike. Untrue. That employees will get full employment rights from their first day. Wrong.

"Let me state the position clearly, so that no one is in any doubt. The essen-

tial elements of the trade union legislation of the 1980s will remain. There will be no return to secondary action, flying pickets, strikes without ballots, the closed shop and all the rest.

"The changes that we do propose would leave British law the most restrictive on trade unions in the western world.

"... As for union recognition, we have rejected the TUC proposals, which were for wider rights of representation."

Labour's policy has not altered since coming into power. On 3rd February 1998, Jack Straw, Home Secretary, announced that the absolute prohibition on prison officers taking industrial action (imposed by the Conservatives in the Criminal Justice and Public Order Act 1994) would not be removed. Mr. Blair's assurance to the Prison Officers' Association before the election that prison officers would be given the same rights as other workers, counted for nothing. This denial of the right to strike breaks the international laws binding the UK mentioned above.

Labour's recognition law proposal will include a further invasion of the right to strike by outlawing industrial action aimed at securing recognition.

The Labour Government's continued and unashamed flouting of the international laws which bind it, particularly the UN Declaration and Conventions, seems especially hypocritical in 1998. Robin Cook, Foreign Secretary, has toured the world at the bidding of President Clinton threatening to bomb Iraq (with anticipated "collateral" damage – ie. killing of innocent civilians) for Iraq's refusal to comply with UN resolutions. But note the distinction. Iraq was to be bombed for non-compliance with a mere resolution of the UN Security Council. The UK, on the other hand, remains in defiance of the fundamental human rights guaranteed by the UN Declaration and Covenants. The UK government is not subject to any international penalty.

The hypocrisy continues. On 20th February 1998 Employment Minister Andrew Smith told the EU:

"We also support a new ILO Declaration of Core Standards".

Yet this Declaration of Core Labour Standards include ILO Conventions 87 and 98 (see above) which the ILO has repeatedly held Britain to be violating.

The Labour Government's justification for refusing to repeal its internationally condemned anti-union laws and restore union rights, is that (to quote Mr. Blair again):

"The future of the workplace lies in partnership between workforce and management, not conflict".

But partnership implies equality. There cannot be equality in a situation where one partner is hamstrung by laws specifically introduced to cut down its power and to increase the power of the other partner.

Any textbook on industrial relations or labour history takes as a given that there is an imbalance of power between the worker and the employer. That is the elementary premise which has led every civilised nation on earth to accept the international laws referred to above. Only where workers can exert power

collectively can the playing field be levelled. Britain's anti-union laws keep the pitch at a permanent tilt. Until this is corrected it is hypocrisy to talk of "partnership between workforce and management".

There is another reason for the Government's unashamed commitment to a legal regime which makes Britain an international law breaker. The fact is that the Government are, at heart, just as committed as the Tory Governments to the disastrous economic policy of increasing the imbalance of power between capital and labour. Labour is just as committed too, to the inevitable consequence of this policy: a widening gulf in the quality of life between rich and poor.

What is to be done about the anti-union laws?

The first task of the trade union and labour movement is to reveal the truth about these laws. They are fundamentally unjust and unfair. They are damaging the economy. They are contrary to international law.

It needs to be brought home to our people that basic union rights are not just the demands of a sectional interest group, they are fundamental human rights which are not merely recognised but declared as such by every civilised country in the world.

It is time that the labour movement made clear that it has a different agenda to that of the New Labour Government – or indeed any Government. One hundred years ago the historians of the trade union movement, Sidney and Beatrice Webb, wrote the classic definition of a trade union:

"A Trade Union, as we understand the term, is a continuous association of wage earners for the purpose of maintaining or improving the condition of their working lives."

The Blair government has a whole set of other agendas as the removal of educational grants from working class kids, the attempt to remove benefits from single parents and the increased prescription charges show. These are not the objectives of trade unions.

In order for unions to fulfil the purpose of maintaining and improving the conditions of members' working lives, unions have to have the legal freedom to operate. That means that they must demand that the anti-union laws are repealed.

No doubt pressing the demand for repeal will draw contempt, criticism and scare stories from the press. But the arguments in favour of repeal and replacement are formidable and irrefutable. Furthermore, the movement has its own culture, history, images, and analysis which are as persuasive as anything the media can create.

More importantly still, if the movement does not go on the offensive with its ideas and vision, there is left a void which is filled only by the ideas and vision of its enemies.

The demand for replacement of the anti-union laws must be pressed

whether or not it is approved of by Mr. Murdoch and his media empire which has such a formidable influence on Mr. Blair. There is no reason for the labour movement to feel that it should not make demands of the Labour Government. That is its job! And why should the Labour Government feel embarrassed? They are more than anxious to demonstrate the point made above, namely that their agenda is very different to that of the labour movement and that they will not be dictated to by the unions.

The labour movement should pursue a campaign for repeal and replacement with enthusiasm and energy. The movement has faced worse laws before and overturned them. Those familiar with labour history will know of the incredible achievements of getting the Trade Disputes Act 1906 onto the statute book and getting the Industrial Relations Act 1971 off it.

The objectives of **Reclaim our Rights – Repeal the Anti-Union Laws** are modest. Many unions support these aims. The task is to commit the entire trade union and labour movement, through the TUC, to these goals; and for the TUC to lead the campaign, as it did in 1970s, to achieve these objectives.

In order to achieve this branches, regions and national unions should pass a motion to commit themselves to support the objectives of **Reclaim our Rights – Repeal the Anti-Union Laws** which are:

- To secure the repeal of all the anti-trade union laws;
- To secure the introduction of new laws which enshrine instead the rights of workers, without penalisation, to take industrial action (including solidarity action), to be represented by their unions, and for their unions to have the right to have their own constitutions free from state and employer interference, so fulfilling the UK's international law obligations under the ILO Conventions and the Social Charter of the Council of Europe;
- To support workers and unions penalised or threatened by the anti-union laws.