Global Workplace Law & Policy

Collective rights and union strategies in a digitalized world

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On 18 and 19 March 2019 the XVIIth annual Conference in Commemoration of Professor Marco Biagi took place in Modena, Italy. The conference is an interdisciplinary classic in the study of comparative labour law, labour markets and industrial relations. It is organized by the Marco Biagi Foundation at the University of Modena and Reggio Emilia.

The general theme of the conference was chosen to be the "collective dimensions of employment relations" with a look into organizational and regulatory challenges we are currently facing. I was honoured to preside one of the parallel sessions focusing on "Collective Rights and Trade Union Strategies in the Digital Age: Theoretical Foundations and Global Trends". Four interesting papers were presented.

An analysis from employment to collective relations

Antonio Aloisi (European University Institute, Florence, Italy) presented a paper on non-standard workers and collective rights, co-authored with Elena Gramano (University of Frankfurt, Germany). Legal challenges, practical difficulties, and successful responses. He undertook his discussion departing from the rise of digital work, and in particularly with the gig economy, the rise of non-standard forms of employment (NSFE). Some critical issues were identified, such as the issue of dealing with traditional categories in labour law, but also an updated conceptualisation of NSFE as there is no universal definition of it. We understand it to be fixed term work, part-time work, temporary work, as well as self-employment with a vulnerable subset such as economically dependent work. In a platform work context, employment relationships may concern workers and clients relationships, which create different patterns of work and also different risks. The binary divide between employment and self-employment comes under pressure, from the view that labour rights are human rights. Without distinction whatsoever. So the claim is that collective rights must be recognized, no matter what form of work. However, we see that not only labour law needs revision, but also competition law may work as an impediment of the exercise of those collective rights. Anti-trust rules may stand in the way of collectively set working conditions for self-employed workers. Also these (economic) laws should be revised in order to understand self-employed labour not merely as an undertaking. That would also give leeway to alternative solutions for voice and representation for workers, either through institutionalized unions, or through other collective movements and means.

Pablo Arellano presented a paper co-authored with Christopher Land-Kazlauskas (both from the ILO's Geneva Office) on the freedom of association and collective bargaining in a fragmented

labour market. One of the starting points is that the main functions of the employment relationship refer to the giving of voice to workers. In other words, the discussion in rethinking the (individual) employment relationship is linked to collective rights, and vice versa. Furthermore, digitalization is quite closely linked with the issue of non-standard forms of employment (NSFE), as referred to above. However, NSFE's relate to a big umbrella. For example, it may even encompass the informal economy (60 percent of the global labour market). Arellano pointed at ILO Recommendation 204 including the right to freedom of association and collective bargaining for workers even if they are not having a formal contract. That implies that the ILO's fundamental rights are open and inclusive, irrespective of a particular form of work. That also has the effect of allowing collective strategies under anti-trust law. It does not make sense to allow unionism, without the right to negotiate or bargain collectively.

Tammy Katsabian from the Hebrew University of Jerusalem, Israel, presented a paper on Unions and Collective Action in the Internet Age. The internet age is making it more challenging for workers to follow the traditional ways of organizing. Traditional ways to organize, such as in the U.K., may require too long and bureaucratic processes for becoming a recognized trade union. In contrast to that, the internet offers a lot of flexibility, which makes it even more difficult and perhaps less attractive to follow the traditional former pathways. Katsabian wonders whether we do not need to look at strategies for workers that are based on the internet architecture or the internet logic. That could be a case for platform based workers. But that leaves new questions: what is the formal bargaining unit? Not every worker offering services through a platform has a similar skill or a similar interest. So there is a very different context for those workers doing work through the same platform. Furthermore, workers may be isolated and the question is whether the absence of physical mobilization may enable the creation of solidarity. Based on an online survey among platform workers, Katsabian argues that platform based workers want to unionize, but seem to wish doing so in a more complex way, in forms that keep flexibility and independence. So, in this analysis, workers may either go through formal trade unions' strategies, dealing with the formalities or using the classical functions of unionism, such as lobbying, servicing, financing, … Or workers may use flexible ways of organization, such as through platform based cooperatives, even social media activities, but with difficulties as it may be not well structured and rather flexible or chaotic in nature. In any case, there would be a need for protection of the law. A third way, however, could run, according to Tammy, along the lines of the Canadian or US model: a thin model of freedom of association, based on a limited version of unionization, more sensitive to individual approaches and the flexible nature of the internet age.

Nikita Lyutov from Kutafin Moscow State Law University, Russia, focused in his paper on the application of ILO standards on freedom of association in the post-Soviet countries. He showed a variety of approaches. The system of collective labour law with very powerful trade unions in the sovjet era made unions, not in a 'western' sense, function as quasi intermediaries between the state and workers. It could be wondered whether this might be an idea that would be helpful for future strategies nowadays. He also pointed at the fact that trade union culture and mentality are very deeply rooted in historical national structures and these aspects are also important conditions for success.

A synthesis for collective actors

It is clear that the "collective dimensions of employment relations" is, in a context of digitalization, a well-chosen topic of debate as it is full of challenges and questions. Through the session mentioned above, some major points of attention arise.

First, there is the changing legal approach to the (individual) **employment relationship**. The understanding is that digitally driven work processes, using platform work as an example, give new concerns due to the rise of non-standard forms of employment. The increasing variety in legal structures and workforce diversity has an evident impact on the collective dimension. The individual and collective dimensions of labour law are connected.

Second, in the collective labour law dimension, the legal understanding of the **freedom of association** may require revision. The rights of workers to organize and bargain collectively should be recognized, regardless of the status of employment. It means that, based on the idea that we deal with a fundamental right, also self-employed persons enjoy the right to freedom of association and collective bargaining. This is already a recognized principle, as is made clear by the ILO committee on freedom of association. But it has not yet been implemented fully or understood throughout the world of internet and the platform economy.

Third, it is important to pay attention to the **role of the government**. There is the link with competition law. This body of rules should be broadened up to the labour law debate. The anti-trust authorities are certainly a relevant party to involve in the bargaining context and new deals should be made here. Cross-overs between labour law and competition law are not only worth examining, but become increasingly necessary. Furthermore, the government may be an important party too as legislator. Not only a political environment, but also a legal infrastructure is of crucial importance to develop and promote collective rights in the context of new forms of work in the digital world.

A fourth finding concerns the more practical **implementation of collective rights** in a digital context, particularly the platform economy. Here we get a lot of questions. How to organize workers regardless of their status? Is there sufficient ground for solidarity? How to engage in collective action? Two main streams seem coming through. Either traditional unionism takes new forms of work on board and deal with new structures to address them, or new ways of organizing start to arise, based on experiences of the internet, and the use of apps, social media and the like. It is evident that a culture and a willingness to act collectively is a precondition for this. There is also a question of impact, as these activities must be able to lead to certain effects and results. But there are more questions, such as what bargaining partners will become apparent and how the traditional relationship between worker and employer in this context can still apply. It seems that also here, collective relations may need new reflection and rethinking.

This entry was posted on Tuesday, March 19th, 2019 at 5:10 pm and is filed under Labor Law, Trade Union
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