Being a UCU activist: Understanding the sources of rights

Our terms and conditions and other trade union rights come from hundreds of years of collective struggle. Each of the rights currently enjoyed have been fought for and defended by either the whole union movement or UCU at national, regional or local level.

Terms, conditions and employment rights are fragile and workers and unions need to defend them. Legal rights change with acts of parliament. Local agreements can be eroded by hostile employers, or fall into disuse, where local branches become inactive. The rights themselves exist, and will only continue to exist, if we use, protect and enforce them.

A hierarchy of rights

Once won, workers rights are usually formalised. This is done in a variety of ways including:

- legislation
- ACAS codes of practice
- contracts of employment
- local agreements
- management procedures
- local practice.

In general there is a hierarchy among these instruments. Although there are exceptions, rights coming from categories higher up the list tend to be more authoritative but less prescriptive than those below them. Similarly, because each level is usually regarded as a minimum, those lower down the list tend to improve upon the rights of those above them. Generally speaking it is easier to change rights derived from sources further down the list. This means that they provide both bigger opportunities for gains and are more vulnerable to erosion.

An example is your pay. The minimum wage is a right in law, paying below it is illegal even if written into a contract or agreement. However the minimum wage is set well below most teachers' wages. Most teachers will have contracts of employment that set out wages and can only be changed with their consent. Local union agreements will often increase this wage further, although because they are the subject of negotiations they do not have the same legal force as a contract.

In most colleges and universities the majority of your rights will come from negotiated local agreements. These agreements should be your first port of call when you have a query. How good these agreements are will depend largely on how well organised your branch is, or was when the agreement was made.

Most of this guide focuses on practical ways to improve your bargaining position to help you achieve better results in negotiation. However, in order to understand where these agreements fit into the broader industrial relations framework you will need to know a bit about the other potential sources of your rights in these areas.

Legislation

A number of pieces of legislation make provisions for basic rights for workers and regulate trade union activities.

The legislation sets out basic minima covering most workers in most workplaces. Where your employer fails to provide you with the legal basics you may be able to take a case to an industrial tribunal or court to enforce your rights. However, because the law is written broadly its application may vary with different circumstances.

The decisions of judges in court cases establish how laws are to be interpreted in different circumstances. However, just because a judge makes a decision does not mean it is a certainty because the circumstances in any two cases are never identical. Additionally, any judge's decision may be over turned on appeal by another judge in a higher court.

When taking a case to court the remedy is also important. Just because you win an unfair dismissal case does not necessarily mean you will get your job back. The courts have wide discretionary powers in awarding compensation.

Because of the uncertainty of the law, and because it is a lengthy, expensive and at times stressful process, it is often a frustratingly inadequate way to resolve issues at work. It is important that you speak to your regional office if you are considering taking such action.

ACAS code of practice

Where legislation is not very detailed it may provide for the Advisory, Conciliation and Arbitration Service (ACAS) to issue practical guidance.

The ACAS code of practice is not law. An employer who does not follow the code has not automatically broken the law. However the code is admissible as evidence in tribunal hearings and consequently is very persuasive.

However the code of practice does not completely clarify all issues. ACAS codes will often elaborate on circumstances or factors that need to be taken into consideration but stop

short of giving precise directions. Lay activists looking for precise answers in ACAS codes will often be quickly frustrated.

Contract of employment

When an employee agrees to work for an employer the terms and conditions under which they agree form a contract of employment. This contract of employment legally binds both parties to certain obligations and, subject to some of the problems outlined above, can be enforced in a court. In normal circumstances an employee and employer can't agree to something in a contract that is prohibited by legislation.

Because a contract of employment is between an individual and an employer, contracts may be different between individual workers. This can create unfairness and cause resentment.

A contract of employment is one of the most powerful documents regulating your terms and conditions. What a contract of employment says is therefore very important when trying to work out how to deal with a member's problem.

Except in certain circumstances a contract of employment can't be changed without the agreement of both parties, so care should be taken when negotiating and amending contracts. In particular great care should be taken when accepting a change in the way you work because this may be regarded as having agreed to a change in your contract.

Who gets the better deal out of a contract depends on the power relationship between the parties. When workers negotiate collectively they have much more power and consequently get a better deal than when they negotiate individually.

A contract usually exists in writing, however where there is no written contract, or where the written contract fails to outline important details, the contract or the clause can often be established in other ways.

Details of a contract of employment may exist in the following:

- the written contract itself
- minimum terms of contracts outlined in legislation or court decisions
- a letter of appointment
- letters from your employer
- policies, procedures and agreements that are referred to in a contract
- certain practices deemed to be agreed because the employer and employee have acted upon them in a way that would indicate agreement
- things agreed verbally between the employer and employee at the time of making the contract.

In order to establish that a contract, or a clause of a contract, exists, you must be able to prove it in some way. So while a verbal promise made in an interview legally forms a contract, you will have trouble enforcing it if you can't prove it was said.

Local agreements

Local agreements are negotiated between an employer and the union branch. The terms of the agreement deal with matters similar to those in an employment contract but apply to all the employees covered by the agreement. Because you have more power when you negotiate collectively, local agreements usually provide better and more detailed terms and conditions.

Agreements are important because they provide terms, conditions and procedures that apply fairly and equally to all employees. They often include more detailed procedures negotiated at the request of the union to deal with matters such as grievance and disciplinary procedures in a fair and consistent way.

Agreements also avoid confusion and disputes because they set down agreed procedures in advance of conflict. Employers and employees both benefit from local agreements because they clear up ambiguities or uncertainties that the legislation, ACAS codes or people's contracts may leave open. They also more readily reflect the employer's local circumstances.

Although local agreements are not enforceable by law they can generally not be changed without the consent of the other party. When one party wants to change an agreement it usually results in negotiations. How much you get from negotiations will depend on your relative bargaining strength - which is dependant on how well organised you are.

UCU highly recommends that branches negotiate written agreements on a wide range of matters but at least including:

- union recognition
- union facilities
- wages and conditions
- disciplinary and grievance procedures
- consultation over change.

Management policy and procedures

Employers have policies and procedures to deal with a wide range of business activity. Many of them will govern the way they deal with their employees. Management procedures include things like sick leave policy, recruitment policies and opening hours.

Management has the right to change their policies and procedures on most things without negotiating with the union or their employees. On some issues they may have to consult. Either way employees are vulnerable to changes in management policies.

Policies and procedures are often referred to in people's contracts of employment. Where this occurs the policy or procedure may gain the force of the contract. This gives management a lot of power to change employees' terms and conditions.

Where management notifies employees of changes to policies and procedures, employees are deemed to have agreed to them if they do not object, and continue to work for the employer. For this reason it is important to keep a close eye on management policies and procedure and actively object to changes you do not agree with.

The best way to protect yourself from unilateral management changes to policies and procedures is to negotiate agreements that cover those areas of policy and procedure.

Local practice

Where agreed local arrangements are not written into formal agreements they are called local practice. Local practice may be either written or unwritten. Local practices agreed in writing can often be found in letters, policy and procedure, memos, minutes of meetings with management, or emails. They have the same weight as an agreement but can usually be changed more easily than a written agreement.

Some local arrangements are not written down anywhere. They are simply known by everybody as 'the way it's always been done'. These arrangements imply that they have been agreed. This is the easiest form of agreement for management to change.

UCU recommends that local practice be written into formal agreements to provide you with safeguards. However if you are considering this please contact your regional office before you proceed.