EVIDENCE SUBMISSION

ASLEF Response – Call for Evidence – Employment Rights Bill Committee – Call for Evidence

1. The Associated Society of Locomotive Engineers and Firemen (ASLEF) is the UK's largest train driver's union representing over 22,000 members in train operating companies, freight companies as well as London Underground and light rail systems.

2. We have long campaigned for a 'New Deal for Workers' and welcomed the publication of the Labour Party's New Deal for Working People and Labour's Plan to Make Work Pay, which outlined how if in government, they would deliver a new deal. There have been many meetings and lots of work from the Labour affiliated trade unions to ensure that Labour would be able to implement the necessary changes to employment rights to begin to undo the damage of the last 14 years of Conservative led governments, whilst also updating legislation to ensure it is fit for the modern world of work and able to provide a fair deal for working people. We see the Employment Rights Bill as the first step in the journey to balancing the world of work and delivering a new deal for workers.

3. We welcome the opportunity from the committee to provide written evidence on the Bill and understand the committee's preference to look at major topics of the Bill ahead of going through the Bill line by line. As such, and to ensure that our response is not too long, we will focus primarily on the areas of the Bill that have the biggest impact on our members whilst making short comments on the aspects of the Bill of which we believe are important to also highlight although this will not form an exhaustive list of our support as we are very supportive of the Bill in its entirety.

4. Beyond the Bill we also welcome the government's announcement on the next steps and await progress on the government's review into TUPE, health and safety guidance and regulations, surveillance technologies, single worker status, collective grievances and extending the Freedom of Information Act to private companies that hold public contracts and publicly funded employers as we can see these next steps having some important implications on our members.

Repeal of 2016 Act & MSLs

5. The Trade Union Act 2016 brought in further restrictions on the ability of trade unions to organise and represent their members, imposing stringent restrictions on picketing, imposing ballot thresholds with those working in public services facing further restrictions, increasing notice periods, increasing the level of prescriptive information required to be provided to employers, members and the Certification Officer whilst also creating further areas for employers to challenge industrial action on technical matters and prolong resolving disputes.

6. Further to the 2016 Act, the previous government also introduced the Strikes (Minimum Services Levels) Act 2023. This was a further attack on trade unions and if utilised would essentially remove a worker's right to take industrial action, forcing them to cross a picket line or to face sanctions for taking action which they support and have voted for. Minimum service levels (MSLs) were introduced at a time when many unions were engaging in industrial action, particularly in the public sector, they were intended to be a tool to weaken the impact of industrial action and to force members and their unions into accepting worse terms and conditions.

7. Throughout the consultation period on the introduction of MSLs we highlighted how unfair and unworkable they would be, this was proven in January 2024 when ASLEF was approached by three employers who were looking to use the newly introduced MSLs Act. One employer took things further by asking to begin the consultation requirement ahead of issuing work notices to our members, following the announcement that this approach would lead to further strike action this employer agreed to not impose MSLs. This highlighted how the new legislation was not geared around dispute resolution in a fair and balanced way and we know that the current government understands the need for trade union legislation to encourage negotiation and dispute resolution.

8. We gladly welcomed the Labour Party's commitment to lay the Employment Rights Bill within 100 days of taking office and further welcomed the Deputy Prime Minister and Secretary of State for Business' intervention in August to write to Secretaries of State and the First Ministers of Scotland and Wales, encouraging them not to impose minimum service levels on their workforce.

9. With regards to the repeal of these two acts, Clause 48,49,52,54,56,57,58,62,65,66 & 67 deliver on the government's commitment. We are however concerned with the intention to keep an expiration date on industrial action mandates and that the consultation on creating a modern framework for industrial relations looks to further re-impose parts of the 2016 Act, particularly the re-introduction of thresholds, we have provided greater detail on these concerns in our consultation response but for the committee's benefit, we believe the use of thresholds and the continuation of expiry of mandates continues to create areas which employers can look to challenge industrial action on technical breaches of law, imposes further administrative costs for unions and does not work to encourage fair dispute resolution.

Trade Union Rights

10. Whilst we welcome the positive steps that are being taken to re-balance trade union rights, it is worth noting that despite the scaremongering from some business lobbies, Conservative politicians and right-wing media, the changes introduced by the Employment Rights Bill are not revolutionary and will work to bring us closer to the OECD average on employment and trade union regulation.

11. We welcome the introduction of Clause 45, whilst on the railways union density is high and workers tend to have good exposure and knowledge of their rights to join a union, in part aided by all the scare stories in the right-wing press, this can be lost in sectors with lower trade union density. As such Clause 45 takes a step towards educating workers about their trade union rights, an area where the education system can fail those entering the world of work as they can leave school or higher education without having learnt much about trade unions and their importance.

12. With the high trade union density on the railways, comes an understanding from both workers and employers on the importance of collective bargaining and working with each other and negotiating. This can be lost in sectors and workplaces with low union density where employers can be hostile towards efforts from within and without their workforce to collectively organise. Clause 46 takes steps to ensure that there is a process for agreeing to a trade union's request for access to a workplace and that there is remedy for a hostile employer attempting to block access. Whilst this is welcome, we hold concerns that employers with whom access rights have been negotiated inclusive of those who already recognise a union, may see the new bar set by statutory access agreements and decide to opt for these terms or look to downgrade current agreements, consideration should be given as to how to avoid this situation arising. Further to this, the terms bar access rights, if the union is accessing a workplace to organise industrial action (70ZA (6)), this could potentially be used by hostile employers to block access through claims that the union is looking to organise industrial action. Again there is a concern that if an employer looks to downgrade access arrangements and opt for the statutory level it could bar unions access when approaching a dispute.

13. Another consideration to be made under Clause 46 is the inclusion of 'listed' trade unions, this could enable a dependent union to access a workplace and be used to thwart an independent union from gaining access by the dependent union gaining access via the statutory regime, an amendment to the Bill's wording could change 70ZA (2) to clarify that it applies to independent trade unions as defined by those with a certificate of independence from the Certification Officer.

Protection From Harassment

14. Clauses 15,16 & 17 take really important steps to address the harassment that workers can receive whilst carrying out their duties. Clauses 15 and 17 t ensure that employers have a duty to take **all** reasonable steps to prevent sexual harassment, this should create a greater balance for workers to be able to address sexual harassment in the workplace. It must be noted that the railways are male dominated, particularly in the driving grade and sexual harassment can occur and further discourage women from joining the workforce, these clauses coupled with the Workers Protection (amendment of Equality Act 2010) Act 2023 will enable workers and unions to address and challenge sexual harassment in the workplace and ensure that employers are meeting their legal obligations.

15. Clause 16 outlines that an employer must not permit a third party to harass an employee, this clause could have a real impact on addressing the harassment that railway workers and other workers in public facing roles can experience.

16. Whilst our members are not technically in passenger facing roles, they do interact with passengers and can experience third party harassment whilst carrying out their duties, whether this be through a cab window, whilst changing ends at a station, using a taxi service to / from a depot, whilst walking through a station as part of their duties or whilst riding another service to move along the network. Recently we have seen increases in harassment on areas of the railway with particular news attention being given to the incidents on Scotrail services between Balloch and Glasgow.

17. A recent survey of our membership has revealed incidences where these new clauses and the new Workers Protection Act will enable action to be taken and should encourage employers to have policies and procedures in place which should reduce the chance of such harassment happening in the future. To illustrate the reality that our members can face, some of the responses from the survey are highlighted below

    "Day in, day out I am made to feel uncomfortable at the very least, in some form. There is a distinct lack of respect for train crew and it's only getting worse."

    Other members have reported receiving sexual harassment from passengers with the following being directed at drivers:

    "If I sit there darling' you can sit on my knee and drive using my stick"

    "You're just a stupid slag who's taken a man's job get back home where you belong"

    "Doing a Mans job must mean you get none at home, let me get in there with you""

    "I had my window open initially, they looked at me and said "oh, I'd love to get you pregnant" and then spat at me."

18. We welcome the opportunity that these clauses will present to address these situations and enable unions to work with employers to ensure that they have the correct policies, procedures and staffing levels in place to ensure that they are meeting their duties as introduced by the Bill.

Equality

Equality Action Plans

19. Most public sector employers have an equality duty which stipulates that they must have due regard to certain equality considerations when exercising their

function, we believe this is important duty for promoting a positive environment that fosters good relations between the workforce and further encourages workforces, particularly in the public sector to be reflective of the communities that they serve. We have called for private sector companies which provide public functions such as private operators on the railways providing public transport[1], to have this duty extended to them. The previous Conservative led governments were not supportive of this view and we welcome the positive steps that the Labour government has taken to bring operators into public ownership and ultimately create Great British Railways to begin extending this duty to those that will come into public ownership.

20. Clause 26 will ensure that employers with 250 employees or more will be obliged to produce equality action plans, whilst not as far reaching as the equality duty, these action plans should go some way in addressing the gender pay gap, we particularly welcome the requirement for the employer to outline the support that they are offering employees going through the menopause. We have been working with employers on the railways through our 'menopause in the workplace' campaign[2] and had found that some employers, particularly due to the gender imbalance of the workforce had not truly considered how to support their staff. Clause 26 should help to ensure that employers have policies in place that encourage a more balanced workforce.

21. Further to the above point, in Clause 26 under 78A (3) it is made explicitly clear that a matter is related to gender equality if it is related to advancing equality of opportunity between male and female employees, we can see particular value of this within the railway industry and into the driving grade. We hope that, through the advancement of equality of opportunity employers will look to encourage greater representation across grades on the railways inclusive of those in the driving grade, where currently women make up on average 8% of the driving grade. This should ensure that, as part of the action plans, employers have recruitment and career progression strategies that truly look to ensure that the workforce are representative of the communities that they serve.

<u>Facilities for equality reps</u>

22. We welcome clauses 50 and 51 as we have encountered barriers blocking our equality reps being granted release to carry out their duties. This was particularly the case during our national pay dispute as employers looked to frustrate union activity and since equality reps had no statutory footing, they could have release refused or rescinded at short notice, ultimately harming efforts which should be collaborative to ensure that the railway workforce is truly representative of the communities that it is serving.

23. Whilst we welcome these new facilities, we do note that the current draft of the Bill does not provide facilities time for the reps to 'negotiate', only to consult with employers on matters relating to equality in the workplace, there may be

[1] https://aslef.org.uk/system/files/2022-01/ASLEF%20Diversity%20Report%202019%20FINAL.pdf

[2] https://aslef.org.uk/campaign/menopause-workplace

instances where it would be appropriate for the equality rep to be involved with negotiations which cover policies that impact on equality in the workplace and we think an amendment to encapsulate negotiation as well as consultation will ensure that equality can be a two way relationship between the employer and the workforce / union.

Flexible working

24. Clause 7 adds further strength to the process for refusing a request for flexible working, whilst the change is not drastic it should ensure the process is more robust to ensure that a refusal is genuine.

Day One Rights

25. We strongly welcome the extension of day one rights to parental & bereavement leave and unfair dismissal as afforded by Clauses 11,12,13,14,19,20,21,22. It is not fair for a worker to be subjected to an up to two year wait period to gain access to equal rights afforded to colleagues. As we saw between September 2022 and September 2024 with four Prime Ministers, four Chancellors and a change of government, a lot can happen in two years, which can have an impact on the economy and rights at work, current legislation would leave workers with less than two years' service vulnerable to dismissal during times of political and economic change.

26. We note however that the government is consulting on introducing statutory probation periods as part of their next steps document, to alleviate fears from business around ensuring that workers have day one rights. We are not supportive of a statutory probation period and are concerned that the government's preference for 9 months exceeds the average utilised presently of 3 – 6 months. On the railways we often see employers utilise probationary periods of 6 months, this is inclusive of the fact that new drivers will also have to go through a training process where they must continually meet the targets and achieve the standards to progress to pass as competent. We are concerned as to how the 'lighter-touch' process for employers to dismiss employees will be designed and will engage with the government as they progress their proposals.

Enforcement

27. We believe it is sensible for the enforcement to be handled by a single body in the guise of the Fair Work Agency (FWA), this should create greater efficiency and enable the agency to spot and deal with problem employers that repeatedly breach their employment rights obligations.

28. However, to be truly effective the FWA will require the appropriate level of funding and resourcing to enable it to create a level playing field for businesses that comply with employment and trade union legislation.

29. Due to underfunding and the precarious economic situation of the last 4 years the employment tribunal service has also been underfunded and struggling with the scale of cases, it is important that this is recognised as the Secretary of State moves forward with the creation of the FWA.

30. We also welcome the commitment under Clause 75 to create an Advisory Board in a similar vain to the Social Partnership model that is used in Wales.

31. The introduction of a three year strategy for labour market enforcement should assist with the enforcement process by enabling the Secretary of State to set out the likely scale and nature of non-compliance and how enforcement functions will be exercised, the requirement under 76 (4) will also ensure that any revisions have input from the Advisory Board. Further to this Clause 77 should provide greater insight into how successful the work of FWA has been and highlight areas that need improvement to ensure that the FWA is capable.

Mick Whelan
ASLEF
General Secretary
77 St John Street
London
EC1M 4NN

04/12/2024