In this Issue

The duration of working time has periodically been the focus of bitter conflict between employers and trade unions from the mid 19th century onwards. Historically, the process has been driven by workforce demands for shorter working hours and more holidays. Indeed the 20th century saw progressive reductions in standard weekly working hours and increases in holiday entitlement across western Europe. In recent years, the focus of negotiation over working time has been as much, if not more so, on the flexibility with which hours can be arranged as on their duration. The first feature examines new developments in France and Germany – where normal annual working hours are amongst the lowest in the industrialised world – and where employers are now pressing to reverse the long-established trend and increase normal working hours. The second article is an edited version of a feature on the 2003 survey of Employment Tribunal applicants originally prepared for the European Industrial Relations Observatory as part of IRRU’s contribution in its role as UK national centre. It is followed by reports of new research projects which are getting underway within IRRU. The third article summarises the core argument of a newly published book on European integration and industrial relations.

More as well as flexible hours?

Jim Arrowsmith

The longstanding complaint of British trade unions that their members work the longest hours in Europe is suddenly looking suspect. This has little to do with falling hours in the UK. Instead, it reflects a number of trends that have put working time firmly at the top of the European industrial relations agenda and placed even the most powerful trade unions on the defensive. Leading employers are no longer satisfied, it seems, with more flexible hours, but want longer hours too.

Two recent developments sum up the problem for unions. First, the 2004 accession of 10 new member states to the EU, most of them post-communist countries lacking well-developed collective-bargaining structures, has dramatically changed the overall working-time picture. Most have actual and basic working hours in excess of the UK, let alone countries like France and Germany where the 35-hour week is a reality for many employees. Second, the relatively
low levels of wages and labour market regulation in the new member states adds them to the list of attractive alternative investment sites to multinational companies headquartered in ‘old Europe’. Workers in Germany, where labour costs are generally highest, are particularly under pressure.

Last summer a number of flagship German companies in the metalworking sector, still the powerful engine of the economy, effectively forced a longer working week in return for reassurances that jobs will not be exported. The employers association, Gesamtmetall, said it was aware of around 100 employers signing ‘supplementary agreements’ at company level to extend working hours. This company-level concession bargaining is a radical departure for the sector, where the industry union, IG Metall achieved major gains over working time in the 1980s and 90s through sector-wide, multi-employer bargaining.

The German metalworking union was amongst the first in Europe to secure a general 35-hour week. Following six weeks of strikes and lockouts, the deal reached in 1984 required that the new working week be phased in up to 1995. But 2003 marked a key turning point in the metalworking union’s victories over working time. First came IG Metall’s defeat in a campaign to harmonise the standard work week in the eastern Länder regions (the old East Germany) with a cut from 38 to 35 hours. Metalworking employers held out against a four-week strike, inflicting on IG Metall its first defeat in 50 years. Then came the signing of a sector ‘pilot agreement’ in Baden-Württemburg in February 2004. A wave of strikes secured a wage deal acceptable to the union but at the price of further shifting working-time bargaining to company level. Under the agreement’s terms, up to 50% of employees could work up to 40 hours a week – paid at basic rather than overtime rates. This would be negotiated with the company’s works council, and not necessarily involve the union directly. It is this opportunity that companies have been quick to seize.

Germany is not alone in seeing such an apparent change in the tide over hours. In France, which introduced the 35-hour week by law from 2000, there was controversy in July 2004 when employees at Bosch’s engine plant at Venissieux voted almost unanimously to work an extra hour a week, without compensation, to stop their jobs being transferred to the Czech Republic. Nicolas Sarkozy, the then French economy minister, accused the company of ‘extortion’ and said that ‘working more without earning more is not something that will happen in France’. However, the government also plans to relax the 35-hour law by enabling companies to more easily pay for longer hours.

But what factors have led so rapidly to such a reversal in union power? First and foremost, the internationalisation of product and investment markets occurring across the globe. Within Europe, the closer integration of the EU’s economies has heightened competitive pressures for firms, both in financial and productivity terms, encouraging them to loosen their ties to national sector-level agreements. Though multi-employer bargaining remains useful for matters such as basic pay, in responding to pressures to improve efficiency individual firms have felt it necessary to customise work organisation and working time to their own particular requirements.

Decentralisation of bargaining has effectively allowed employers to re-examine the duration as well as flexibility of working time. Working time flexibility, through initiatives such as hours
banks, annualisation, and so forth has to date been the price paid by unions in return for shorter overall hours. Yet with increased competition, many employers are looking to lengthen working hours, especially those with capital-intensive, high-skill operations. That way they are able to fully utilise capital and labour, both extensively and intensively.

Perhaps paradoxically, another important factor compounding the move towards a longer working week has been unemployment. With unemployment in France and Germany at around one in 10, workers’ appetite to fight to maintain working time standards has diminished, especially where there is a very real threat to relocate jobs. Even in sectors where employers are less likely to move away, the apparent co-operation of ‘vanguard’ unions such as IG-Metall signals a more general policy of pragmatism over hours.

This shift is momentous. Since the first industrial revolution long term reductions in working time have been won by trade unions, often only after bitter struggle. It stands as one of the greatest achievements of the trade union movement in the 19th and 20th centuries. As the TUC said, in 1923, reduced working hours was ‘the principal advantage secured by over 60 years of trade union effort and sacrifice’, and ‘the most important achievement of industrial organization’. This was not just because of the obvious advantages it brought to workers. It was also because employers were often much less willing to concede shorter hours than pay rises, since the former were much more difficult to reverse. Therefore, it is perhaps not surprising that current trends in working hours in Germany have served to reinforce fears that the European social model, based on widespread, centralised collective bargaining and a solid welfare state, is under threat.

Yet, the scale of the current reversal on basic hours can be overstated. In Germany for example, the majority of employees do not work a 35-hour week. Most collective agreements in the west stipulate a basic week of 37.5, 38 or 39 hours, and some sectors apply a higher, 40-hour week in the east. But more importantly, actual working time is usually significantly higher. According to the German Institute for Economic Research, average weekly hours for full-time employees in the west was 44.6 hours in 2000. It seems the issue is often not so much about increasing working time, but the demarcation between the ‘basic’ working week and ‘additional hours’. In other words, where hours above the agreed norm are compensated by extra pay (or pay and time off), the issue may be as much about wages as about time at work.

Second, employers do not enjoy complete freedom with company-level collective bargaining, nor is this necessarily what they want. IRRU’s recent ESRC-funded study of changes in collective bargaining in the finance and metal sectors in Belgium, Germany, Italy and the UK (see Briefing No. 10) found evidence of increasing flexibility within multi-employer arrangements. But employers in the three continental countries were keen not to see them undermined. Where trade unions were powerful at company as well as sector level, employers could be wary of abandoning tried and tested arrangements which gave them collective protection. The pragmatic truth behind the dramatic headlines, then, is that moves to extend hours have proceeded cautiously, tailored to particular plants, and implemented by agreement.

Finally, decentralisation offers unions opportunities as well as threats. In a complex, uncertain business environment decentralisation provides openings for employees to forge more constructive relations at work. And working time is a particular area where there is scope for
‘integrative’ bargaining which focuses on win-win solutions based on sharing productivity gains. Annualisation of hours is one example of this – where staff agree to short term variability of working time in return for higher consolidated pay and less overall time at work.

Acknowledgement: this is a shorter version of an article which originally appeared in the 16 September 2004 issue of People Management

[1330 words]

**Employment tribunal applications analysed**

Paul Edwards

Employment tribunals (ETs) adjudicate disputes arising between individual employers and employees, including those around unfair dismissal and sex and race discrimination. The 2003 Survey of Employment Tribunal Applications (SETA 2003) provides information on the parties to cases reaching tribunals, together with key features of the handling of cases. The results acted as a benchmark of existing practice, ahead of the implementation in October 2004 of the new statutory minimum procedures contained in the Employment Act 2002. These require all employers and employees to follow minimum dispute resolution procedures embracing: a written statement of behaviour that may lead to dismissal or disciplinary action; in the event of such action by the employer, an invitation to the employee to meet to discuss the issue; and the right of appeal.

The number of applications to ETs has roughly trebled since 1990. In the year 2003-4 it was about 115,000. The 2003 survey generated a statistically representative sample of 4,517 ET cases that were completed between March 2002 and March 2003. Separate surveys of people bringing cases (applicants) and of employers involved in cases were conducted; these were not matched to provide data from the same cases.

Key features of applicants in SETA 2003 include the following:
- the great majority were in permanent jobs. Those with permanent full-time positions were under-represented compared to the work force as a whole;
- applicants had a mean length of service with their employers of six years;
- about a quarter belonged to a trade union or staff association, a proportion similar to that among employees nationally; and
- managerial occupations were notably over-represented.

The characteristics of employers confirm the pattern of previous surveys:
- ET applications came disproportionately from manufacturing, construction, hotels and restaurants, and the transport and communication sector;
- small workplaces and small organisations were particularly over-represented; and
- for 45% of employers, the case under discussion was the only one in which they had been involved in the previous two years.

The previous, 1998, survey highlighted the fact that, in more than 35% of cases, there was no meeting to discuss the issue that led to an ET claim, no use of a written procedure, and there was no other attempt to resolve the dispute. The present results confirm that procedural formality
remains far from the norm. Written disciplinary and grievance procedures were reported by 41% of applicants (but 84% of employers). Where such procedures existed, only a fifth of applicants and half of employers said that they had been followed through all their stages. Just under half of applicants and employers reported discussion of the issue prior to its being taken to a tribunal. Of these, 57% of applicants and 81% of employers reported a formal meeting. At such meetings, about half of applicants were accompanied by a trade union or other representative.

Just over half of applicants and employers used representatives to help handle their cases. Legal professionals (solicitors) were much the most commonly used representatives, being mentioned by half of applicants who were represented; trade unions were used more rarely (by 20% of those represented). Two-thirds of represented applicants reported that all the advice received was free.

Of cases entering the ET system, only a minority reached decision at a tribunal. Applicants and employers both reported that almost half were settled through conciliation by Acas. Another one-third were withdrawn or settled privately. This left just under one-fifth that went to a tribunal, with 10% of applicants being successful and 9% unsuccessful.

Three-quarters of applicants and of employers felt that the ET hearing gave each party a fair chance to make its case. Slightly smaller proportions were satisfied with the workings of the ET. The great majority of tribunal awards were financial (rather than, for example, reinstatement of a dismissed employee). Just over half of applicants, and two-thirds of employers, were very or quite satisfied with the outcome. Of applicants dissatisfied, few mentioned reinstatement as a desired option, with an apology or proving they were right being the main ways in which they might have been more satisfied. Other research into applicant dissatisfaction highlights two themes. First, applicants brought cases out of a sense of fairness or a desire to pursue justice, with several stressing managerial incompetence and a desire for personal vindication. Second, there was some concern at the quality of representation. This included a perceived tendency for legal representatives employed on a contingency (no win, no fee) basis to press for a quick settlement and to take undue ownership of the case.

Applicants reported financial and non-financial costs of taking a case. Two-thirds said that they had incurred personal financial costs. The mean number of days spent on their case was 25. A third stated that the case had caused them stress and depression. Employers reported spending a mean of 10 days on the case. The main negative effects reported were low staff morale and increased stress levels.

Perhaps the key implication is the limited depth of procedural justice in the workplace. As the report on SETA 2003 concludes, many workplaces fall short of the proposed [new] minimum requirements particularly smaller workplaces and organisations. One might expect a ratchet effect, whereby employers experience ET cases and learn to adopt and apply formal procedures. Yet the 2003 picture of the use of such procedures is not very different from that from previous surveys. It is true that, in the aftermath of a case, employers will report improving their procedures. But other research suggests that good intentions tend to evaporate. It is also notable that applicants’ awareness of written procedures and their use was lower than that of employers. This suggests that communication about such procedures could often be improved. The fact that applicants had worked for the employer for, on average, six years suggests that cases going to tribunals reflected substantial issues of how employees felt that they were treated.
As for the ET system itself, the number of cases resolved by Acas and general satisfaction with the outcome of cases suggest that it is a useful mechanism. But it remains a system with clear costs for the parties. Some applicants can suffer considerable stress in taking an intensely personal issue through a complex legal process. A comprehensive system of workplace justice remains absent for many workers. There is considerable room for the new statutory dispute resolution procedures to have an effect.


The original feature is available from the European Industrial Relations Observatory on-line: http://www.eiro.eurofound.eu.int/2004/04/feature/uk0410104f.html

[1,100 words]

Research Update

New research projects

Employment Policy and Practice in Small Firms: this 3-year project is examining two key sets of linkages in employment practice. The first is that between the employment policy of a firm and how that policy is perceived by employees. Hence employees’ experience of training, skills formation, and task participation will be addressed. The second link is between employment practice and outcomes of interest to employees and to firms, including the quality of work and economic performance. The project focuses on small firms, because employment relations among such firms remain poorly understood and because they permit the relevant linkages to be addressed more directly than would be the case in large organisations.

The study is examining three sectors, food manufacture, information technology, and design. A combination of interviews, questionnaires, and measures of performance will permit the firms to benchmark their own position as well as generating research data.

Funded under the ESRC/EPSRC Advanced Institute of Management Research, the study builds on previous work on small firms by Paul Edwards and Associate Fellow Professor Monder Ram (de Montfort University). Joining them on the project are newly-appointed research fellows Chin-Ju Tsai and Sukanya Sen Gupta.

Variable payments systems and collective bargaining: Recent developments in pay determination have been characterised by two major trends: growing emphasis on systems of variable pay and decentralisation of collective bargaining to company-level and below. The study involves collaboration between research teams in 3 countries – Austria, Norway and the UK - each funded by their respective national research councils under a European Science Foundation scheme. The overall aim is to test the impact of three very different collective bargaining systems on the diffusion and operation of different types of variable pay scheme.

The study is focusing on two sectors (mechanical engineering and financial services) and involves in-depth sector and company case studies. Focusing on individual and team-based performance-related pay, the study addresses two main sets of questions. First, what are
management’s goals in introducing variable pay; what if any tensions arise between these goals; what issues and problems arise in implementation and; how are trade unions responding to new variable pay arrangements? Second, to what extent is variable pay introduced alongside or as part of collectively negotiated pay; and how far are the introduction and actual operation of variable pay schemes the subject of collective bargaining? IRRU’s UK research, which is funded by ESRC, is being undertaken by Jim Arrowsmith, Paul Marginson and newly-appointed research fellow, Molly Gray.

The impact of employment relations legislation. Linda Dickens and Mark Hall have won a contract from the Department of Trade and Industry (DTI) to undertake a review of research into the impact of employment relations legislation introduced since 1997. IRRU PhD student Aristea Koukiadaki is assisting by carrying out a comprehensive literature search for relevant publications from both academic and practitioner sources and compiling a bibliography. The final report is due to be completed in February 2005. The review will contribute to the DTI’s wider employment relations monitoring and evaluation programme, against the background of continued employer concern over the volume and impact of new legislation, government commitments to limit the regulatory burden on businesses, trade union pressure for stronger statutory protections for workers, and the prospect of further regulation emanating from the EU.

Forthcoming events

2005 Warwick-Acas Lowry lecture: Monday March 14th 2005. Focused on ‘The Changing Landscape of British Employment Relations’ to mark Acas’s 30th anniversary, the 2005 lecture will be hosted by the EEF at their head office in London, SW1. The format will involve opening presentations from Acas Chair Rita Donaghy and a roundtable including Professor William Brown (Professor of Industrial Relations, University of Cambridge), John Cridland (Deputy Director-General, CBI) and Frances O’Grady (Deputy General Secretary, TUC) followed by discussion.

Further information and an invitation can be obtained from IRRU’s research secretary, whose contact details are given on the back page.

West Midlands Employment Relations Forum 2005. Launched in 2004, the Forum is organised by Acas Midlands region and IRRU together with the West Midlands CBI, the West Midlands EEF and the Midlands TUC. It aims to help foster good employment practice across the West Midlands and to raise the profile of employment relations within the region. The Forum held three successful half-day events during its first year. These focused on age discrimination and changing pension provision; the forthcoming employee information and consultation legislation; and an employers’ perspective on employment regulation, respectively.

In 2005, three further events on topical employment issues are being planned the first of which is likely to address the regional skills at work agenda. Membership of the Forum is open to companies, public service organisations, trade unions and employment relations professionals within the region.

Further information on Forum activities, and on membership, is available from Georgina Sutton, Acas Midlands, Warwick House, 6 Highfield Road, Birmingham, B15 3ED (Tel 0121 452 7925) or from IRRU’s Research Secretary.
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**European Integration and Industrial Relations**

A new book* by Paul Marginson and Keith Sisson, in collaboration with Jim Arrowsmith, comprehensively analyses the impact of continuing European integration on industrial relations
institutions and outcomes. It provides an integrated treatment of industrial relations at the EU Community, sector and company levels; examines developments within national systems in the light of European integration; and analyses their interaction with the emerging EU framework. The book organises a wide-ranging body of theoretical and empirical material to sustain its core argument that the governance of industrial relations is increasingly multi-level.

Although there has been much debate about the impact of European integration on industrial relations, there has been a less than objective appreciation of the governance arrangements actually emerging. As the then Social Affairs Commissioner, Anna Diamantopoulou, contended, it is something of a ‘caricature’ to see things in terms of the ‘two extremes of social union versus a completely deregulated free-for-all’ (Financial Times, 18 February 2000). Contrary to the aspirations of some, a vertically integrated European system of industrial relations similar to the encompassing, national multi-employer structures at inter-sector and sector levels found in most of the ‘old’ member states (the EU-15), has not emerged. Nor does it appear likely. Yet, although Economic and Monetary Union (EMU) has increasingly set industrial relations systems in competition with each other - at national, sector and company levels, the dominant pattern of multi-employer bargaining amongst the EU-15 remains largely intact. Indeed there has been little apparent change in the formal institutions of industrial relations within the ‘old’ member states.

Even so, there have been significant ‘Europeanising’ developments. At the cross-sector level, a series of directives together with framework agreements between the EU-level social partners have given regulatory effect to much of the EU’s 1989 Social Charter. More recently two autonomous framework agreements have emerged from the cross-sector social dialogue. Autonomous framework agreements are starting to be concluded under the EU sector-level social dialogue too. And in several sectors both European-level and national trade unions have launched cross-border bargaining co-ordination initiatives. At company level, there are now European Works Councils in some 750 multinational companies and a minority of these have subsequently concluded joint texts of European-wide application. This emerging EU-level dimension to industrial relations provides an increasingly important frame for developments in national systems, thereby adding to the multi-level character of industrial relations governance. Moreover, the economic and market forces unleashed by European integration are also impinging on industrial relations within member states more directly. At national level, meeting and continuing to comply with the requirements of Euro-zone membership has prompted the conclusion of so-called national level social pacts amongst the majority of the ‘old’ member states concerned. Intensification of international competitive pressures within Europe’s single market, together with the need to handle widespread restructuring and rationalisation, has elevated questions of cost reduction, adaptability, flexibility and employment security up the bargaining agenda. Long-running pressures for decentralisation of bargaining towards the company level have thereby been reinforced.

The EU’s multi-level industrial relations framework reflects a history of informal and gradual development as well as deliberate institution building. It has developed, and continues to develop, relatively autonomously rather than by design, as a range of national and supranational actors respond to the challenges from new, European-level institutions and regulation and the implications of the ‘regime competition’ (between countries, and sectors and localities within them) that EMU simultaneously promotes. It cannot simply be defined in hierarchical terms,
with a supranational level or levels added on top of national systems and decisions cascading
down. The supranational nature of the EU is encouraging the development of a cross-border
dimension at the cross-sector, sector and above all company levels. Hence developments have
been ‘bottom-up’ as well as ‘top down’; and cross-national (horizontal) influences mix with
national (vertical) ones. In bringing about a measure of convergence within companies and sectors between national systems, the multi-level framework is simultaneously promoting greater
diversity between companies and sectors within national systems.

The drivers of these developments are not only the so-called traditional methods of legal
enactment and collective bargaining, but increasingly also newer regulatory processes. These
include the co-ordination and benchmarking which are integral to the ‘open method of co-
ordination’ (OMC) which originated with the European Employment Strategy, but which has
spread to other policy fields including industrial relations. The result is a shift in regulatory
output from ‘hard’ to ‘soft’ forms. There is also a great deal of informal networking, learning and
cross-fertilisation across borders.

Like the EU polity’s multi-level governance system, the trajectory of this multi-level industrial
relations framework is uncertain. It is by definition a system ‘in the making’ and there is no pre-
assumed end point for developments. Political science argues that the EU cannot be placed on a
continuum between ‘loose inter-governmentalism’ and the ‘superstate’. Similarly it would be
wrong to situate the industrial relations framework between ‘Europeanisation’ and
‘Americanisation’. Indeed the book identifies competing tendencies towards ‘Europeanisation’,
‘Americanisation’ and ‘Re-nationalisation’ of industrial relations. Complexity, uncertainty and
instability look set to be the defining characteristics for the foreseeable future, with considerable
scope for policy makers and practitioners to exert influence on future directions. Amongst the
more imponderable ingredients is the impact of the EU’s 2004 enlargement; whether it will
extend or unravel the multi-level industrial relations framework that has emerged.

* European Integration and Industrial Relations: multi-level governance in the making is

[910 words]

**Developments in European Works Councils**

A new comparative study for the European Industrial Relations Observatory, compiled by Mark
Hall and Paul Marginson, reviews key developments concerning European Works Councils
(EWCs) since 2002. The starting points for the study are two developments which have
significant implications for the operation of EWCs. In April 2004, the European Commission
launched consultations with EU-level social partner bodies on measures to enhance the
effectiveness of EWCs, including the possible revision of the EU’s 1994 EWCs Directive. In
May 2004, EU enlargement extended the geographical reach of the EWCs Directive from 18 to
28 countries, ie the 25 EU Member States plus the further three countries that belong to the
European Economic Area (Iceland, Liechtenstein and Norway).

Reviewing developments across 24 of the 28 EEA countries, the study examines the incidence of
EWC agreements and their renegotiation, the influence of EWCs on the handling of transnational
restructuring, legal cases involving EWCs, the impact of EU enlargement on EWCs, and the debate about how best to enhance the effectiveness of EWCs, including the possible revision of the EWCs Directive.

The study is available on-line from the European Industrial Relations Observatory: http://www.eiro.eurofound.eu.int/2004/11/study/tn0411101s.html

ABOUT IRRU
IRRU embraces the research activities of the industrial relations community in Warwick University’s Business School (WBS). There are currently 19 academic staff. Our work combines long-term fundamental research and short-term commissioned projects. In both instances, we maintain the independence and integrity of the work, which have been the hallmark of IRRU since its establishment in 1970. We aim thereby to improve the quality of data and analysis available to industrial relations policy-making by government, employers and trade unions. Current funded research projects include: employment practice in multinational companies in organisational context; the impact of inward investment on employment practice in central eastern Europe; trade union organisation at international, national and local levels within multinational companies; stakeholder involvement in managing diversity; evolving practice in the employment of disabled people; women’s organisation in trade unions; employee consultation practice in the UK; variable payments systems and collective bargaining; and the organisational roots of productivity in medium-sized enterprises.


IRRU is the UK National Centre for the European Industrial Relations Observatory (EIRO). EIRO collects, analyses and disseminates high-quality and up-to-date information on industrial relations developments in Europe. IRRU provides a range of inputs including regular features which analyse current developments in policy and practice, in briefs which report key UK developments and contributions to comparative studies which provide a cross-country perspective of a particular topic. EIRO’s database, including IRRU’s input, is publicly accessible on-line at: http://www.eiro.eurofound.eu.int

FURTHER INFORMATION
Information on our current research programme and projects, and on recent papers and publications, is available from IRRU’s website: http://users.wbs.warwick.ac.uk/group/IRRU

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