CAMPAIGN FOR
TRADE UNION FREEDOM Update
Autumn 2016

What is the future of labour law in the UK?

Recent talk has centred on reinvigorating collective bargaining – a very welcome shift in narrative and one that can be traced back to Corbyn and his team demanding fundamental changes to the world of work.

PROFESSOR KD EWING, JOHN HENDY QC AND CAROLYN JONES

For our part, we and a dozen more leading labour law academics set out in the Institute of Employment Rights' **Manifesto for Labour Law** in June, what is needed for law at the workplace to play its proper place in restoring a productive economy, creating demand, diminishing inequality and giving back to workers dignity, respect and security.

A revamped system of collective bargaining is at the heart of our proposals, but the Manifesto also deals with problems of insecurity at work, trade union autonomy and reclaiming the right to strike.

A Ministry of Labour is central and would, we believe, be welcomed by both employers and workers; employers because it provides proper planning for the skills, training and apprenticeships needed for a successful economy and workers to ensure that their 31.7 million voices and interests are heard at the cabinet table.

The restoration of collective bargaining is vital. Today only two out of ten workers have terms and conditions protected by collective bargaining – the lowest level since before the First World War. This compares badly to the eight out of ten workers covered for most of the period from the Second World War until Thatcher came to power in 1979. In Europe the average is still over 60%.

Collective bargaining provides a voice for workers and for some form of democracy at the workplace. Otherwise terms and conditions are set unilaterally by employers responding only to the market. The Living Wage is of course beneficial but workers have no input into the level at which it is set.

Collective bargaining is also vital for social justice, mitigating the inequality of power between workers and the employers. Research shows that 'collective bargaining has long been recognised as a key instrument for addressing inequality in general and wage inequality in particular'. Growing inequality is a scourge of modern society.

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For News, Articles, Blogs etc on Trade Union Freedom's; Employment Rights; Collective Bargaining; New Trade

France

From CETA To TTIP

SUPPORTERS OF free trade are in a race to keep global trade agreements on track, as political and public opposition to TTIP (Transatlantic Trade and Investment Partnership – between the EU and the USA) and CETA (Comprehensive and Economic Trade Agreement – between the EU and Canada) continues to grow.

With the notable exception of the French government which claims to be opposed to TTIP, (while extolling the virtues of CETA), their defenders and opponents are agreed on one thing: free trade deals on this scale are all linked, if one is concluded or were to fail, all the others could follow.

For the European Commission and its supporters the aim is simple: with the US trade talks seemingly kicked into the long grass, the agreement with Canada must be pushed through very quickly.

CETA is clearly a vital first step towards the implementation of TTIP, given the similarities between the two. As over 80% of American companies operating in the EU have subsidiaries in Canada, they could use the CETA provisions to take EU members states to the ISDS arbitration tribunals, without even waiting for TTIP.

At the heart of the free trade agreement with Canada, ISDS whereby companies that believe that a government's policies have caused a loss of profit can sue that government and this has already sparked debate in the TTIP negotiations.

This is a form of 'blackmail', as it allows big business to dictate the policies of elected governments.

In early 2016, a Canadian oil giant, sued the Obama administration for rejecting the cross border crude oil pipeline. The Canadians are now seeking an eye-watering $15 billion in damages.

CETA like TTIP, is all about cutting regulatory barriers to trade, it runs counter to national regulations and hands policy decisions to large corporations. Between the EU and Canada the model of 'regulatory co-operation' has the sole aim of 'facilitating' trade and investment and improving competitiveness.

With services, CETA operates on the 'negative list' principle– this means that all sectors are open to competition, except those that have been specifically excluded from 'general liberalisation'. Public services are at particular risk, once a sector is privatised it is very difficult to reverse.

Next, through the elimination of tariffs – almost 99% of customs laws will disappear under CETA – and the lowering of heath standards, CETA promises to further weaken European agriculture.

As environmental NGOs highlight, the precautionary principle is nowhere to be seen in CETA's pages, and it's no accident - it is to allow the export of hormone-treated meat or GM.

Last May, Soy Canada, the lobby group for the Canadian soy industry called on the EU to honour its CETA commitments and to explain why it was delaying the approval of three genetically modified soy products.

With the United Kingdom voting to leave Europe (Brexit), free trade fanatics have lost their leading light. Unable to hide his concern, Ed Fast, the ex-Canadian business minister who negotiated the agreement said: "The United Kingdom was a big help in getting this deal through." "With their exit from the European Union there is a big risk that the balance achieved will not hold"...In Europe, the revolt against TTIP, but more immediately against CETA is growing in a number of countries.

Slovenia has rebelled against attempts to implement the EU/Canada deal without first securing the approval of national parliaments. In Belgium, the Walloon and Brussels Mayors have already promised to vote against CETA. In Germany, the parliamentary radical left Die Linke party has initiated proceedings to recognise the unconstitutionality of CCETA.

"If a government is more concerned with protecting corporate interests than the interests of its own citizens, we are forced to take legal action, explains Klaus Ernst, leader of Die Linke. "I really hope Ceta will now be defeated, we can no longer allow further encroachments on our democracy."

Extract from L'Humanite, 21st July 2016 – Thanks to Chantal Chegrinec,

GMB takes legal action over Uber

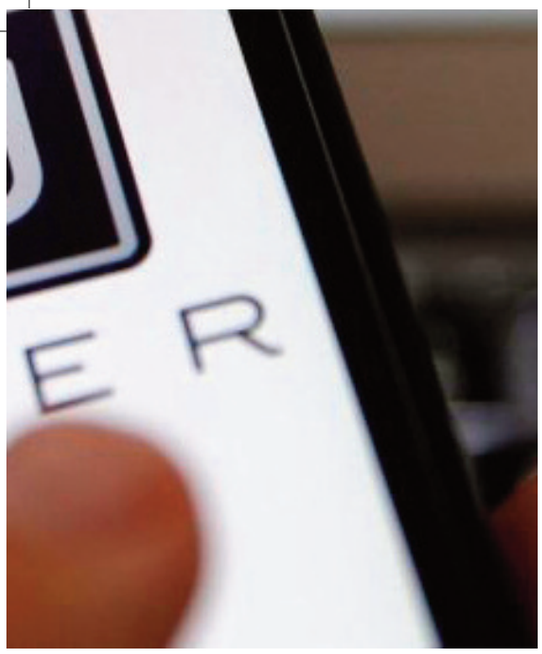
The GMB union has taken Uber (the car hire platform that connects passengers to thousands of drivers through an app on the passenger's smart phone) to an Employment Tribunal over the assertion that that Uber drivers are "partners" and are not entitled to rights at work normally afforded to workers.

GMB, has instructed Leigh Day to take legal action in the UK on behalf of members driving for Uber on the grounds that Uber is in breach of a legal duty to provide them with basic rights on pay, holidays, health and safety and on discipline and grievances. Unions in the USA have already taken legal action against Uber with mixed results.

Using an app, passengers request pick-up from any location within London (or 300 other cities worldwide). Passengers pay Uber for the journey, which then passes on a percentage of that payment to the driver.

GMB claim that Uber should conform to employment law as follows:

- **Uber should ensure that its drivers are paid the national minimum wage and that they receive their statutory entitlement to paid holiday. Currently Uber does not ensure these rights for its drivers**
- **Uber should address serious health and safety issues. Currently Uber does not ensure its drivers take rest breaks or work a maximum number of hours per**



GFTU CTUF IER **A MANIFESTO FOR LABOUR LAW** towards a comprehensive revision of workers' rights

TUC Fringe

Sunday 11 September 2016,
7pm (or end of Congress)
Regency Room, Old Ship Hotel,
Kings Road, Brighton

Ian Lavery, Shadow Cabinet Office, Minister for trade unions,
Prof Keith Ewing, John Hendy, QC,
Len McCluskey, UNITE,
Jane Carolan, Chair, Policy Committee UNISON,
Chair: Carolyn Jones, Director IER

Refreshments provided at fringe and followed by fish & chips supper at GFTU reception.

Sponsored by Morrish Solicitors and Old Square Chambers

Labour Party Fringe

Monday 26 September
12:30 in Hall 3A
Liverpool ACC

Len McCluskey, Unite; John Hendy, QC; Prof Keith Ewing; Ian Lavery MP; Andi Fox, TSSA/Labour Party NEC
Chair: Carolyn Jones, Director IER

week. GMB contend that this provides a substantial risk to all road users given that, according to Uber's CEO, there will be 42,000 Uber drivers in London in 2016.

● Uber should adhere to legal standards on discipline and grievances. Currently drivers have been suspended or 'de-activated' by Uber after having made complaints about unlawful treatment, without being given any opportunity to challenge this.

Nigel Mackay, the lawyer in the employment team at Leigh Day representing GMB said: "The Uber assertion that drivers are "partners" who are not entitled to rights at work normally afforded to workers is being contested.

Uber not only pays the drivers but it also effectively controls how much passengers are charged and requires drivers to follow particular routes. As well as this, it uses a ratings system to assess drivers' performance.

We believe that it's clear from the way Uber operates that it owes the same responsibilities towards its drivers as any other employer does to its workers. In particular, its drivers should not be denied the right to minimum wage and paid leave. Uber should also take responsibility for its drivers, making sure they take regular rest breaks.

If Uber wishes to operate in this way, and to reap the substantial benefits, then it must acknowledge its responsibilities towards its drivers and the public".

The GMB expect a decision from the Employment Tribunal in October

Government

PM's policy guru proposed slashing employment rights

THERESA MAY' recently appointed policy guru George Freeman, MP has previously proposed slashing workers employment rights and cutting wages in a policy paper called 'The Innovation Economy Industrial Policy For The 21st Century' produced for the right wing Free Enterprise Group.

Freeman is head of Mrs. May's policy board. His policy paper written three years ago with Kwasi Kwarteng, MP advocated the minimum wage and public sector pay should be "regionalised".

The paper written around the same time as other proposed attacks such as the farcical 'employment rights for shares' and the Trade Union Act advocates people working in new firms should have no employment rights, possibly including maternity pay, paid leave and no minimum wage and advocated that Britain's biggest firms should pay just 10% corporation tax.

The paper also suggested: "We should exempt new firms for their first three years from employers' national insurance, business rates, corporation tax and employment legislation and that green energy subsidies could be "abolished".

Labour's Jon Ashworth, MP said: "The new Prime Minister may offer warm words about reaching out and putting working people first – but her actions show that those at the top of the Tory Party will do nothing for working people."

Who needs the Trade Union Act when you have the British judiciary?

By Simon Weller, ASLEF Assistant General Secretary

THERE MAY be many readers who have the misfortune to be subjected to the "Southern Rail Experience": an ongoing thrill ride of incompetency, penny-pinching and downright contempt for the embattled commuters of the south-east from the managers of one of the busiest rail franchises in Britain. Transport chaos that seems to have no sign of ever ending as the Government prop up the failing franchise, with supposedly independent civil servants salivating at the prospects of industrial "punch ups with train drivers".

It is within this maelstrom of decay the staff of Southern Rail have had to contend with the management imposing new Driver Only Operations (DOO) on train services that once had guards. The company cynically making the existing guards redundant and forcing them to reapply for new roles, roles that no longer have safety responsibilities in a pre-cursor to yet more casualisation and significant reductions in staffing on trains across the network.

The train drivers' union ASLEF had been attempting to come to some form of resolution with Southern management over their attempts to impose an extension to DOO. Driver Only Operation is not a new method of working, dating back to the shoestring economics of early 1980's British Rail, but is increasingly unsuited to the modern crush levels of passenger loadings and a creaking, overloaded Victorian network.

Southern wanted to increase the lengths of DOO trains from 10 coaches to 12 on Gatwick Express (a branded service running between London, Brighton and Gatwick Airport, part of the Southern franchise).

We clearly had long standing agreements related to productivity that limited the length of DOO trains to 10 coaches. ASLEF has wanted longer trains for some time to provide additional capacity and reduce the endemic overcrowding, but in our view safely operated longer trains need a guard. Southern thought otherwise and declared their intention to ignore our conditions of service books and impose the new workings without any agreement.

We responded by informing our members that we were still discussing this matter and we sent out a message that there was no agreement for normal working in excess of 10 coaches DOO and commenced a ballot for industrial action.

Fast forward to the Royal Courts of Justice where Southern argued that our members were contractually obliged to work 12 coach trains despite the incorporated conditions of service book saying otherwise and by sending a single text stating there was no agreement we had induced our members to breach their contracts. Further arguing our inducement was a "prior call" for industrial action without the protection of a valid ballot. The "industrial action" consisted of one driver causing the cancellation of one train.

If they had been unsuccessful in their argument then there would not have been much of a story, so as you can tell this did not end well.

> The court decided as we were highly unionised (ASLEF has 95% density), our members disciplined and successful in a heavily regulated industry, for us to draw attention to a lack of agreement was the same as us instructing members to break an agreement.

With these three questions dealt with over two separate injunction hearings, the courts came to a single toxic decision for members of ASLEF. As the courts ruled we were contractually obliged, had induced, had made a prior call and our ballot was now invalid (82% return from 1100 members with an 84% yes vote for strike action) and due to the prior call the whole trade dispute was annulled. This leaves our members with no way to effectively deal with the imposition of new working practices.

The court's decision was based on old employment cases, which were well known and "well-travelled"; with one cited dating back to decimalisation and the Inland Revenue.

On whether it was contractual, the court ruled simply that the management should have licence to change working practices. As the contract stated that drivers could be instructed to carry out duties they were competent to do, this overruled any incorporated agreement. At a stroke making our conditions of service books worthless, casting out over a century of collective bargaining and giving managers a green light to change agreements.

The court decided as we were highly unionised (ASLEF has 95% density), our members disciplined and successful in a heavily regulated industry, for us to draw attention to a lack of agreement was the same as us instructing members to break an agreement. This part of the ruling penalises member engagement and makes future communications during negotiations fraught with difficulty and potential legal conflict.

The court ruling that we had made a prior call ended the trade dispute over the extension of DOO within Southern, giving them the green light to introduce longer trains without the correct staffing and remove guards from existing fully staffed trains.

Who needs the Trade Union Act when you have the British Judiciary?

Ireland

Demand for referendum on CETA and TTIP

A RECENT SURVEY of voters in the Republic of Ireland want a referendum on TTIP and CETA.

The survey was commissioned by lobby group Uplift, which has campaigned against the new trade agreements. Uplift commissioned pollsters Red C to conduct a poll on public attitudes in Ireland towards aspects of both TTIP and CETA, with a random sample of 1,004 adults across the country.

Young people aged between 18 and 24 are the most sceptical of the two proposed trade agreements, and are in favour of a referendum to accept or reject them.

They are also the age group most in favour of EU standards not being changed to match US or Canadian standards.

Siobhan O' Donoghue, Uplift director said: "A referendum on TTIP and CETA would balance the power of corporations and put the decision on the future of our democracy in the hands that matter - the people."

According to the survey, 69% of adults state that they would be concerned if TTIP or CETA were to be agreed as they don't know enough about the ramifications.

The future of labour law

Continued from page 1

Recent research has also shown that extensive collective bargaining is vital for economic recovery. It increases wages, increases demand in the economy so stimulating economic activity and employment and diminishes the huge sums spent subsidising low wage employers whilst at the same time increasing tax-take.

Collective agreements set 'the rate for the job' so preventing undercutting by seeking ever cheaper (including imported) labour. Competition is stimulated instead by investment in efficiency, research and development.

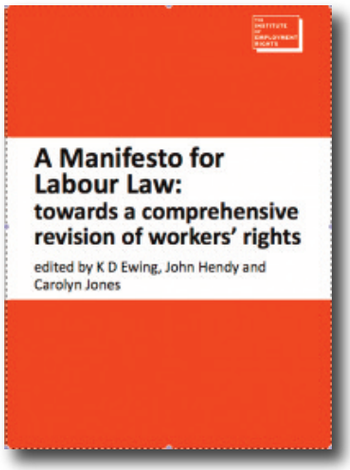
But such beneficial results cannot be achieved by confining collective bargaining to employers of more than 250 workers. Most employment is with small and medium sized employers (SMEs). To get the economic benefits, especially by the avoidance of undercutting, it is essential that all businesses in an industrial sector are bound by the same conditions.

That means sectoral collective agreements: a base agreement across an industry on which enterprise level agreements can build. Enterprise level agreements simply cannot either prevent bad employers undercutting or raise income across the working population. Wages Councils were good examples of industry-wide collectively-bargained wage-setting and would form the basic building blocks of the economy-wide Sectoral Employment Commissions proposed in our Manifesto.

These principles, overseen by the Ministry of Labour, were well understood as the antidote to recession in the 1930s. They were adopted throughout the Western World and were successful both before and for long after the war.

And, as lawyers, we should add that the commitment to collective bargaining is a legal duty on States imposed by multiple international Treaties, all of which have been ratified by the UK.

So the recent commitments to collective bargaining by Labour are to be commended. But we urge that the full measures of our Manifesto for Labour Law be adopted for the next Labour government.



A Manifesto for Labour Law: towards a comprehensive revision of workers' rights can be bought from the Institute of Employment Rights at www.ier.org.uk.

Byron burgers

THE OPERATION Directed against migrant employees of the fast food chain, Byron Hamburgers by Home Office Border enforcement officials on the evening of 4th July has sparked a lively discussion about the extent to which employers should be held to any sort of standard when it comes to a duty of care towards their workers.

Some see employers as hapless victims of a relentless drive by government to impose an impossible burden of immigration regulation on them which they are often in a poor position to implement. The twitter world has recorded a frisson of sympathy for bosses in this situation, regretting the fact that the management of Byron Hamburgers has come in from harsh criticism from migrant rights campaigners for the level of cooperation they provide to immigration enforcement officials.

MRN's stance on this issue goes way back to November 2008 when we published Papers Please, which reported on the impact of the regime of civil penalties which the then Labour government had beefed up and imposed on business employing migrants.

Driving mass migration

At that time, as now, the authorities were operating without any understanding of the economic and social forces which had instigated a new period of mass migration in the UK, as was occurring across the rest of the world. Blinking their eyes in bewilderment, the authorities watched as the evidence mounted up that the economy which had come into existence across the previous decades was operating as a vast magnet drawing workers across borders and into labour markets which were geared up to extracting the maximum value from the labour of people with the least rights.

The best that government could come up with was a constant rejigging of traditional approaches to immigration management, aiming to increase the scope for identity checks and the discretionary powers available to the authorities to declare different group of migrants as 'illegal'. This approach evolved

What else could Byron's have done?

The social media world was awash with attempted defences of the hamburger chain after it collaborated in the arrest of 35 of its migrant workers in July writes **Don Flynn**.

The answer is they didn't have to go along with the shabby act of entrapment of its staff, and they could have done so much more to push back against punitive, anti-worker rules.

When employers fail to do right by migrant employees

into a system which required just about everyone who ever came into contact with a migrant – employers, social security administrators, local government officials, banking staff and, in recent times, health service workers and private sector landlords – to play their role in enforcing rules which were vast in complexity and volume.

Some commentators on the current situation – notably a piece written about the Byron Hamburgers incident by the legal academic Thom Brooks - say that employers in particular have been overwhelmed by the tasks of immigration checking and that the job should be returned to Home Office officials who are properly resourced to do the job. The implication, picked up by many other contributors to the social media sphere, is that Bryon's management should be judged blameless for the results of the Home Office raid on their premises, which resulted in the arrest of 35 of their workers.

Not off the hook

We disagree both on the terms of the general proposition that employers are just another set of victims of the system, as well as the concern to let Byron's off the hook on this specific occasion.

On the general point our view is that employers have benefitted enormously from the deregulation of labour markets over the years which have been one of the main driving forces of large-scale migration. Across whole sectors of the economy – from food production and processing, hotels and restaurants, construction and health and care services, retailing and more – there is scarcely a company in the UK which has not factored in the ready availability of hundreds of thousands of workers with minimal rights to job security into its business plans. The rise of the 'gig' economy is the big story of recent years, and its birth has been nursed along by successive governments which have demanded the maximum of flexibility from its workforce.

As the expert commentator on the food production industry, Felicity Lawrence explained in her 2004 book Not on the Label, rightless and put-upon migrants inevitably appear as the mainstay of sectors which aim to manage every aspect of their supply chains to load risk down onto components and people least able to push back. It is a system that not only exploits those who are already rightless, but also strips whatever modicum of capacity for resistance from those who once thought that they had some entitlement under the law.

Tens of thousands of businesses across the UK are, like Byron Hamburgers, massively dependent on a migrant labour force as the source of their profits. But whilst they form part of a powerful pressure group on government policy on matters concerning other areas of regulation business has remained silent when it comes to issues that concern the security and welfare of the workers who are responsible for making their profits. For the best part of ten years since civil penalties were ramped up there has been no significant sign of any protest from employers that the obligation to check immigration status is not only a burden that, for small businesses in particular, is impossible to meet, but also highly invidious in that it requires them to take the harshest of actions against hardworking members of their staff.

Byron's offence

We have the Byron Hamburger incident freshly before us. The central charge here is that the management entered into a scheme designed to entrap members of its workforce by lying to them about the purpose of a special meeting held on 4 July which in reality proved to be for the purpose of allowing Home Office enforcement staff to round up staff whose papers were alleged not to be in order.

It is not true to say that Byron's management were obliged by law to provide this level of cooperation. By the accounts they had provided to the media they say that they had discharged all their obligations under immigration law to check documents and keep them on file. Furnished with this defence they were quite entitled to tell immigration officers that they had done what was required of them and any further action would have to be taken on the sole initiative of the Home Office itself.

Chaotic

We can understand why Home Office Immigration and Enforcement would be dismayed by this response. As we explained in a recent blog on this very subject, much of the activity of this department in this area have been found to be at best chaotic, and at worst unlawful. This was certainly a viewpoint expressed by the Chief Inspector for Borders and Immigration when he delivered a report to government on the conduct of raids of workplaces back in 2014.

Back in 2010 we were able to assist the Trades Union Congress in the drafting of a report on workplace checks on immigration status which was published as a guide for people involved in negotiations with employers as to best practice in dealing with this issue.

It makes the case for business who have migrants in their staff teams to acknowledge a duty of care to people who are often in a position of being traduced by the impossible demands of immigration regulation and the ever-renewed ambitions of politicians to return to 'toughness' as the hallmark of their work. It might just be time to take this little pamphlet down from whatever shelves it has been deposited on and see whenever it is still a useful approach to determining good practice from the downright awful, as we have seen in the case of Byron Hamburgers.

Don Flynn is Director of the Migrants' Rights Network (MRN)

Originally published by the Migrants' Rights Network

Davey Hopper

DAVEY HOPPER died suddenly of a heart attack on Saturday 16th July, just a week after presiding over the Durham Miners Gala, which under his leadership has grown into becoming the largest celebration of a mining community in Europe.

Hopper was born and brought up in the mining community and he fought and worked hard for it for all his life becoming the General Secretary of the Durham miners

Davey Hopper was born on 8th April, 1943, the son of Timothy and Barbara, in a small colliery house directly opposite Wearmouth Colliery, Sunderland where his father worked as a miner. On leaving school, despite the possibilities of jobs in the flourishing shipyards and engineering works, Hopper chose to go down the pits.

His first job, aged only 15 was stone picking on the surface screens, a job he hated. From then he took on a series of jobs underground that were both dangerous and strenuous, eventually moving into working on drilling in the development drifts and then on high coal reserves under the North Sea.

In January 1972, the miners went out on strike for seven weeks for higher pay. Hopper, with the encouragement of his father, who was a union safety rep, became more involved with the National Union of Mineworkers. He was particularly influenced by the history of the Labour and Socialist movement becoming increasingly more militant, which often brought him into conflict with the then leaders of the union.

In 1982, Hopper was elected to the NEC, and in 1984 as secretary to the Wearmouth Lodge was instrumental in leading the miners out on strike against pit closures. The ending of the strike saw him being elected as General Secretary of the NUM (Durham Area). Hopper along with Dave Guy, the newly elected president formed a formidable partnership as they opposed all the subsequent pit closures and changes in working conditions. The last Durham mine closed in 1992, but they continued to battle on, winning a major case which saw £1.7 billion compensation being paid to miners suffering from the industrial disease, vibration white finger.

A staunch Socialist, Hopper left the Labour Party when Tony Blair went to war over Iraq, he bitterly criticised New Labour during his Gala speeches and gave full hearted backing to Jeremy Corbyn in his battles over the leadership.

He married his first wife Barbara in December 1962 and they had four children, she died after 31 years together. Years later on one of his trips to Cuba, a country to which he gave much support, he married Maria in 2006, becoming step father to her two children.

The Durham Gala and the compensation paid to miners for industrial diseases will be seen as his greatest achievement. He was a staunch supporter of the Campaign for Trade Union Freedom and spoke at the Campaign's 'Eve of Gala' rally's. Paying tribute to him, Unite General Secretary, Len McCluskey said: "He was wise, humble, a gentleman, rooted in the mining community".

Peta Steel

Campaign for Trade Union Freedom

The Campaign for Trade Union Freedom is sponsored by 28 national trade union organisations and over 200 branches, trades councils and individuals and financed solely by supporters fees from trade union bodies and individuals. By becoming a supporter you or your organisation show your agreement with the call to repeal the anti-trade union laws, and aid the Campaign's fight. Please make cheques payable to Campaign, for Trade Union Freedom and send to the CTUF, 4th Floor, 1 Islington, Liverpool, L3 8EG Donations gratefully received.

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