

## **The Trade Union Bill – a symptom of the British disease that is infecting Europe?**

The Thatcher reign began it. Blairism, along with the continued effects of privatisation and fragmentation of industry effectively allowed matters to worsen. Take the Gate Gourmet dispute as a case in point. Now – with the Trade Union Bill - is there any doubt that Cameron is worse than Thatcher?

And we have the continued failure of the UK to comply with international law. For example The European Committee of Social rights repeated in January this year (in relation to the UK): “the possibilities for workers to defend their interests through collective action are excessively limited; the requirement to give notice to an employer of a ballot on industrial action is excessive: and the protection of workers against dismissal is insufficient. And for example in relation to the latter has led to the call – by unions - for the employment contract to be suspended for the duration of industrial action.

Unions are a force for good: reducing inequality, improving democracy. There is also good evidence that stronger trade union rights benefits the economy – look at the Scandinavian countries.

In 2007 the Canadian Supreme Court concluded that: "Recognizing that workers have the right to bargain collectively as part of their freedom to associate reaffirms, enhances and promotes the values of dignity, personal autonomy, equality and democracy that are inherent in the Charter [of Rights]".<sup>1</sup>

The following year the European Court of Human Rights also reversed its previous position in the case of Demir, asserting that the promotion of collective bargaining was an integral part of freedom of association (for trade unions) under Article 11 of the European Convention. The next step was taken by the Court in Enerji Yapi Yol Sen<sup>2</sup> recognising the link to the right to strike.

None of those rights are incapable of restriction, but any restriction must be “necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. But there is a problem within the context of the European Union, highlighted in the judgments of the CJEU in the cases of Viking and Laval<sup>3</sup>. In the conflict between the rights of business and the right to strike, the latter loses.

It was watching Borgen that made me think that the British reactionary disease is infecting the rest of Europe. In Britain, I would assert there has been a failure on the part of Labour and unions together to make the case that unions are a force for good.

We must do more. <https://secure.unionstogether.org.uk/page/s/protect> is a focus of the campaign to fight the Trade Union Bill. Perhaps we’ll have some success in the Lords?

John Usher, trade union legal consultant, former member Civil Justice Council & Director of Campaign for Trade Union Freedom

---

<sup>1</sup> And this year it recognised the right to strike:

<http://www.ituc-csi.org/canada-s-supreme-court-backs-right>

<sup>2</sup> <http://www.eurofound.europa.eu/observatories/eurwork/articles/echr-upholds-right-to-collective-bargaining-and-to-strike>

<sup>3</sup> 2007 <http://www.ier.org.uk/system/files/Understanding+the+Viking+and+Laval+cases.pdf>

## **Trade Union Bill**

### **1. AGENCY WORKERS**

The government plans to allow agency workers to replace striking workers. And by requiring 14 days' notice of strike action (rather than 7 as at present), employers will have more time to arrange agency workers to cover for strikes. This has been banned in the UK since 1973.

### **2. PICKETING AND PROTESTS**

Unions will have to appoint picket supervisors. They will be required to carry a letter of authorization, which must be presented upon request to the police or "to any other person who reasonably asks to see it". The supervisor's details must be given to the police and they must be identifiable by an armband or badge.

Failure to comply could result in a court injunction to stop the picket, or thousands of pounds of damages for the union. Local authorities could also have the right to issue anti-social behaviour orders to picket line participants or protesters. The government is even consulting on introducing new criminal offences and sanctions.

Unions may have to report protest plans publicly to employers and regulators 14 days in advance of any action (and will have to give 14 days' notice of any industrial action). Details required would include timings, location, the number of participants and even whether protesters plan to use "loudspeakers, props, banners, etc". If unions don't report their plans then they face significant fines.

### **3. THRESHOLDS**

In 'important public services' (fire, health, education, transport, border security and nuclear decommissioning), 50% of members must turn out to vote and 40% of the entire membership must vote in favour (that amounts to 80% of those voting, on a 50% turnout). The government argues these thresholds are aimed at boosting democracy in the workplace.

- If the government was committed to increasing democracy it would allow secure electronic and workplace strike ballots instead of arbitrary thresholds. Online voting is already used by several national membership organisations – including by the Conservative party to select their London Mayoral candidate.

### **4. REGULATING UNIONS**

The Certification Officer (who regulates unions) will be given powers to investigate unions and access membership lists even if no-one has complained about a union's activities. The regulator will also be able to impose fines of up to £20,000 on unions. The government will be able to charge unions to cover the running costs of the Certification Officer. Costs are likely to increase as the regulator has new responsibilities.

### **5. PUBLIC SECTOR FACILITY TIME**

All public sector employers will have to publish information on the cost of time off for union reps, plus a breakdown of what facility time is used for – collective bargaining, representing members in grievances or disciplinary action, or running training programmes.

Public sector employers won't be able to offer the option of paying for union membership direct through salaries anymore ("check-off").

The government will be able to further limit the time public sector employers allow union reps to spend representing members.