

How the anti-union laws and the recent judgments impact on collective rights

John Usher, United Campaign Director

In June 2009 there was a mass walkout when a subcontractor on a major construction site imposed redundancies despite there being enough alternative work on site. The walkout was unlawful on many fronts, not least the absence of a ballot. Those taking part in the action had broken their contracts to work and Total and the other employers' response was mass sackings.

But the workers remained solid. Workers walked out "in sympathy" at a dozen other sites – like East Lothian where one of the strikers explained "if we don't support them, we will be next."

Although unions were be forced to repudiate under the law, industrial reality dawned on the employers... How could they retrieve the situation, when they needed the union to negotiate with? In spite of the need to repudiate, the unions did their utmost to stay solid behind the workers. The workers got their jobs back and their justifiable concerns and the substantive dispute has been resolved – for now.

The key features in relation to the success of the action were that it was mass action and the workers stuck to their cause allowing it to all be over relatively quickly.

All this occurs against the backdrop of 4 hostile decisions of the European Court of Justice (ECJ). Rights of workers to promote their economic and social interests in the EU have been shot through.

The European Union is fundamentally a block of 27 states where businesses can move goods, capital and workers and provide services wherever they want. The EU is also supposed to have another side; "Social Europe" involving recognition of trade unions and collective rights.

The four cases – beginning with "Viking" in December 2007 – have undermined collective agreements and effectively outlawed collective action throughout the EU in many circumstances and in ways that will encourage exploitation of the law by employers. As a result of the decisions of the ECJ, at best we can defend minimum wage and terms and conditions. A race to the

bottom will gather pace...

This was of particular importance in the disputes earlier in 2009, when workers were "posted" from elsewhere in the EU. At the Staythorpe site a contractor wanted to bring Spanish workers and refuse work to UK workers. Again at East Lindsey "unlawful" industrial action in February left Italian workers bobbing about on a boat in the North Sea with the suspicion – justified as it turned out in spite of a grossly inadequate ACAS inquiry – that their conditions were worse than the national collective agreement.

It's not just construction workers who are under threat. Employers' lawyers are lining up to advise the bosses on how they can arrange things to exploit the current state of the law in the EU and the UK.

Article 11 of the European Convention on Human Rights: Lessons in human rights from Turkey

If the ECJ is the court of the EU fundamentally there to support the rights of business throughout the EU, the European Court of Human Rights (ECtHR) is there to look after "human rights and fundamental freedoms" including the right to form trade unions to *promote* members' economic and social interests (Article 11). Still it has taken until 2009 for the ECtHR to reach the conclusion that some of us have maintained for a long time:

- **That the first collective right – to form a trade union – must carry with it a right for that trade union to be effective and that must include;**
- **The right to be heard and engage in collective bargaining;**
- **And we cannot engage in effective collective bargaining, unless we can withdraw our labour and go on strike.**

This is what the workers at East Lindsey and workers at the dozen sympathetic sites know instinctively.

The ECtHR – changing its previous position –

Article:

Anti-Union Laws & The Lindsey Dispute

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decided on 12 November 2008 in "Demir" that Article 11 of the ECHR on freedom of assembly and association for trade unions, must incorporate a right to bargain collectively. And the Turkish government involved should have promoted collective bargaining, as should all governments that sign up to international human rights standards. In "Energi Yapi Yol on 21 April 2009 the ECtHR took this one step further and recognised a right to strike that UK laws do not allow.

Progressive lawyers are still considering the implications of the cases. One thing is for sure: waiting for the law is not the answer - as the Metrobus decision demonstrates. As in the early 1900's there must be protest and pressure from workers in support of their rights and fundamental freedoms as demonstrated by the brave comrades at East Lindsey and elsewhere this year.

What are the anti-union laws?

In the years before 1906 - most famously in the Taff Vale case - Judges decided that those who encouraged others to break terms of their contracts, or those who joined forces to interfere with a business's trade could be sued for any losses that followed from their actions. This had the greatest

impact on unions, their officials and members.

Protest and pressure from working people led to the Trade Disputes Act of 1906 which provided a wide immunity for unions from being sued. With a few ups and downs things remained pretty much the same until Thatcher came to power.

Throughout the 80's and into the 90's what we term the anti-union laws were enacted. The immunity was still there, but there were a number of very significant restrictions. The protection from being sued was only available when there was a ballot for action - much more damaging were the "draconian" procedural requirements for a ballot to be considered effective. Picketing was made largely ineffective under the law and secondary action was outlawed completely. All unions were forced to repudiate action that broke the Tory laws, laws that have largely remained intact under new Labour.

The restriction of "lawful" action to a dispute with your own employer, ignores one of the growing complexities of the modern labour market, referred to as the "corporate veil". Even in a group of companies, each is treated as a separate business by the law. This has made it increasingly difficult to take effective action over the decades since 1980 with the break up of businesses and privatisation.

More information:

www.unitedcampaign.org.uk info@unitedcampaign.org.uk
United Campaign, 39 Chalton Street, London, NW1 1JD
0151 702 6927