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Speech in the CAS on the Trade Union Act

Monday 6 June 2016

New Zealand unions speak out against the Trade Union Act

*As part of the Committee on the Application of Standards’ consideration of the UK Trade Union Act 2016, Jeff Sissons from the New Zealand Council of Trade Unions (NZCTU) made the following speech.*

Thank you, Madame Chair. I speak on behalf of the workers of New Zealand, Australia, Canada, the United States of America, Tonga and Fiji.

I would like to follow my colleague’s comment on voting thresholds with comments on the mode of voting for industrial action in the United Kingdom.

Since 1984, a mandate for strike action must be sought by secret postal ballot. Since 1996 this has been at the union’s cost.

Postal ballots are administratively complex and rely on accurate member records. Turnout relies on members noticing the ballot, filling it out and reposting it. These lead to a longer voting period and significant cost. An example provided by a UK union shows direct mailing costs associated with a postal ballot of 225,000 members were almost £200,000.

The Trade Union Act significantly increases the requisite frequency of balloting. A fresh mandate vote is required every six months and if strike action does not occur within a month of a successful ballot.

The difficulty, delay and cost of postal balloting combine with the new threshold requirements and the ability of employers to seek injunctive relief to halt strike action or to use agency workers to replace striking workers. Workers must thread a smaller and smaller eye of the needle to exercise their right to strike.

Professor Ralph Darlington notes that “the UK laws on industrial action are widely regarded as some of the strictest in Europe.” The United Kingdom is an outlier even among the so-called ‘Anglo’ countries.

In Australia, protected action ballots may be either through secret workplace or postal ballot. The cost of the ballot is met by the state if the union asks the Australian Electoral Commission to undertake the balloting.

In Canada a secret ballot is generally required for strike action. Requirements vary by province but the mode of voting is not usually prescribed.

In New Zealand, unions must undertake secret balloting for strike action. The mode of balloting is not prescribed other than that it must be in accordance with union rules.

In the United States, no ballot is required in law to authorise strike action though unions commonly use them in practice

The Committee of Experts and Committee on Freedom of Association have been clear that procedural rules which substantially attenuate the right to strike may violate Convention 87. In the 1994 General Survey at paragraph 170 the Committee of Experts comment that in relation to member authorisation for industrial action that:

“…the ballot method, the quorum and the majority required should not be such that the exercise of the right to strike becomes very difficult, or even impossible in practice.”

Similarly the Committee on Freedom of Association has commented at paragraph 547 in the most recent Digest of Principles on Freedom of Association that:

“547. The conditions that have to be fulfilled under the law in order to render a strike lawful should be reasonable and in any event not such as to place a substantial limitation on the means of action open to trade union organizations.”

Even the British Parliament appears to have had some second thoughts on the cumulative unfairness of these provisions. In debate on the Trade Union Act, Members of the House of Lords voted by a large majority (320 votes to 181) to require an independent review into the use of electronic voting in industrial action ballots and a subsequent strategy to roll-out electronic voting. The Government subsequently introduced weakening amendments to ensure the Government would be under no obligation to act following the review, other than to publish a response. No timeframe for either completion of the review or Government response were included in the Act.

Other changes in the Trade Union Act were justified by the UK Government under the aegis of ensuring democratic participation in trade union processes. If the Government is serious about ensuring trade union democracy, they will loosen these strictures. We call on the UK Government to work with its social partners to permit electronic and workplace voting as soon as possible.