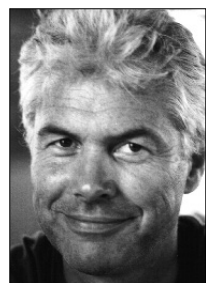


# the need for a Trade Union Freedom Bill

In 2005 both the TUC and Labour Party Conferences passed resolutions calling for the repeal of anti-trade union laws and the



introduction of a Trade Union Freedom Bill.

“Workers and trade unions in the UK now have less rights in relation to industrial action than elsewhere in Europe. In fact they have less rights, in that respect, than they had 100 years ago. The proposed Trade Union Freedom Bill goes a very

little way to rectify this international and historical embarrassment. The Bill is a necessary step to bring British trade union law into the 21st century and to begin to protect the modern interests of workers.”

*John Henty QC, Chair, IER*

So what's it all about? Despite how the media portray it, this Bill is not about going back to the 1970s. This Bill is a very small step in the direction of introducing a balance of power in the workplace and giving unions some of the

freedoms enjoyed throughout Europe and enshrined in international law.

Why now?

## Laws for the 21st century

In recent years, the UK labour market has changed. Privatisation, outsourcing and restructuring of companies and services has become widespread. Our framework of law has failed to develop at the same pace and is now in need of urgent modernisation.

During that period of industrial change, employers like those at Gate Gourmet have adopted increasingly aggressive cost-cutting tactics to win subcontracted work from profitable transnational companies. And Gate Gourmet is only one case. There have been too many examples of employers cutting pay, slashing pensions and announcing mass redundancies in the name of competition. Under existing legislation, unions feel powerless to protect the interests of those workers they seek to represent.

## Trade Disputes Act 1906

But there is a second reason why the time is right to call for a Trade Union Freedom Bill. 2006 is the 100th anniversary of the introduction of the Trade Disputes Act of 1906. That Act protected unions against sequestration of funds and imprisonment. It was introduced following public outcry at the way unions were being attacked simply for protecting the interests of their members.

In 1893 Hull dockers were defeated after a seven-week strike when several thousand labourers under military and police protection were brought in to break the strike. On the railways, a push for higher wages for railway workers between 1899 and 1901 led to the railway workers' union being found liable for action taken by its officers during the strike and fined £23,000. Two weeks later, the judiciary decided that unions could also be fined for conspiracy to injure commercial interests when butchers in Belfast persuaded a customer not to buy meat from a company employing non-union labour.

The 1906 Act reversed many of these judge-made laws. It effectively allowed workers to strike and to support others on strike.

It is ironic that unions had greater freedoms 100 years ago than they do now, despite the UK ratifying international treaties requiring the guarantee of the right to strike. The supervisory bodies of those treaties have held that the UK's restrictions on the right to strike are incompatible with international law. And in November 2004 the UK's Joint Committee on Human Rights agreed that UK laws are failing to meet our international obligations.

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# Free unions! Fair rights!

## **The basic aspects of the Bill include:**

### ***The abolition of restrictive balloting procedures***

Current balloting rules are so complex that they are almost impossible to follow and all too often end in unions being brought before the courts on minor technical challenges. According to the ILO, the very complexity of UK balloting laws is inconsistent with the right to strike guaranteed in ILO Convention 87.

The Bill makes a modest but highly significant change to prevent court action for trivial, technical, accidental breaches of the balloting provisions. If the accidental breach (such as including or omitting people from the ballot) could have no effect on the outcome of the ballot, it should be ignored. This parallels electoral law, which rules out a challenge to an election unless it can be shown that the alleged irregularity would have changed the result of the election.

Another proposed change is the removal of the bar on industrial action where there has been a 'prior call'. A recent case highlighted the fact that a union cannot rectify a prior unofficial call to take industrial action by repudiating the call and then conducting a proper ballot and serving the requisite notices. The Bill will change that situation.

### ***The abolition of restrictive industrial action notice procedures***

As with balloting rules, the notice requirements unions have to provide to employers are far too restrictive and open

to legal challenge. The prescriptive four stages currently required and the detailed description of who and how many are to be balloted are not compatible with the modern world of work. In the fast moving, flexible labour market of today, it is impossible for unions to maintain accurate records of member addresses and work location details.

The Bill suggests a simple notification of at least 7 days notice. Such notices should specify the class or category of workers to be called on (using the union's categorisation), the nature of the action (ie. whether a strike or action short of a strike and whether continuous or discontinuous), and when it is to start or (if interrupted, re-start). The duty to provide the simplified strike notice would apply also to solidarity action.

The employer would also be under a duty to co-operate with the union by supplying information needed to comply with notice and balloting requirements. Where the employer refuses to supply the necessary information, a subsequent application for an interim injunction to prevent industrial action should fail.

### ***Definition of a trade dispute and solidarity action***

The Conservatives restricted the definition of lawful industrial action and removed all rights of workers to take solidarity action in support of others. The blanket ban on such action has been repeatedly condemned by the ILO as a breach of Convention 87. Such solidarity is an essential element of freedom of association.

The scope of the right to strike in the UK is plainly too limited and the denial of the right to take such action, enjoyed in all European countries to a greater or lesser extent, is a blot on Britain's statute book. The International Labour Organisation have held that sympathetic strikes should be lawful, noting that sympathy strikes 'are becoming increasingly frequent because of the move towards the concentration of enterprises, the globalisation of the economy and the delocalisation of work centres'. Likewise the ILO has observed that in the UK the trend to hiving down operations to associated companies increases the need for workers to be able to take solidarity action. The contracting out of services and the diversification of employers caused by privatisation are modern-day factors requiring a modernisation of UK law.

The Bill proposes that, subject to clear limitations, one group of workers should have the freedom to take industrial action in support of another group of workers in

#### **Example: Prior call**

On Midland Mainline last year, the company wanted to run trains which had two separate sections with only one guard. *Problem:* in an emergency situation, the guard would not be able to move from one section to the other, which could be a safety disaster. So the guards exercised their legal right to refuse to work on grounds of health & safety concerns, and refused to take trains into service unless there were two guards on board.

Union head office sought to organise official industrial action on this issue, and balloted the guards. The courts ruled it illegal, because any action would be 'tainted' by previous 'unofficial' action taken by the guards – even though the supposed 'unofficial action' was in fact workers exercising their supposed legal right to refuse to work on safety grounds.

three dispute situations:

- where the employer in primary dispute and the employer subject to solidarity action are associated employers
- where a second employer is covering the work of the strikers. Here it is suggested that rather than extend the definition of solidarity action, such a situation is covered by making it a primary dispute.
- where a customer or supplier dominates the employer's trade to such an extent that it can and does interfere by insisting on a cut in terms or conditions or redundancies or other measures which the workforce is resisting (ie. Gate Gourmet).

Other proposed changes include:

- disputes about future terms and conditions under a TUPE transfer should be allowed
- Unions should no longer be liable for failing to ballot members who might feel impelled to join the industrial action even though the union had no intention of calling on them to do so.
- The restriction on the right of prison officers to take industrial action should be removed

### **Industrial action injunction**

Interim injunctions to stop industrial action are granted all too easily to employers and the decision is weighted against the union as all employers have to do is show that there is a serious issue to be tried rather than proving they have a winnable case. The Bill proposes to redress this imbalance by requiring that an injunction should not be granted unless the employer can show that it is more likely to succeed at trial than the union.

### **The right to automatic reinstatement for taking lawful industrial action**

The right to take industrial action is a fundamental human right guaranteed by numerous international treaties and many European Constitutions. Its importance in redressing the imbalance of power between the worker and the employer is obvious and much written about.

In the UK workers have no legal right to strike. Any strike action constitutes a breach of contract, entitling the employer to dismiss, discipline or sue the worker and leaves the union liable for inducing breach of contract. True the Labour Government introduced an 8 week period of protection against unfair dismissal for strikers – increased to 12 weeks under the Warwick agreement. But what if a strike lasts longer than 12 weeks? And even if you win a claim

for unfair dismissal, employers often ignore court orders to reinstate sacked workers as seen recently in the case of Jerry Hicks at Rolls Royce. Indeed according to 2005 figures, reinstatement orders are only made in 0.2 per cent of the few unfair dismissal cases that make it to tribunal.

The Bill would protect those taking lawful industrial action against being sued, sacked or otherwise penalised by the employer.

In relation to sacking or detrimental action, where the employer had dismissed, proposed to dismiss or taken any detrimental action against a striker, that action would be set aside as ineffective and unlawful unless the employer could show that the reason for termination of the worker's employment was not, to any degree, the worker's participation or proposed participation in lawful industrial action.

### **No use of replacement labour**

The proposed Bill will strengthen the law against using agency staff to break strikes, a situation at the heart of the Gate Gourmet dispute. The ILO has made it clear that it is a violation of Convention 87 for national law to permit the use of such staff to break lawful strikes.

Already UK law prevents agencies supplying strike-breakers. Reg.7 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 bars an agency supplying strike-breaking workers. This does not apply if the agency does not know about the dispute. The proposed Bill will therefore extend the Regulations by imposing a duty on an employer to disclose the industrial action and by making it unlawful for them to hire strike-breaking workers.

### **The next step**

As can be seen from the above summary, the proposed Trade Union Freedom Bill is not revolutionary. The modest demands are already the norm in most of Europe. The Bill could however help give employees a better chance of securing justice at work.

#### **Example: Notice requirements**

In April 2001 action against train privatisation was at its strongest, with RMT and ASLEF calling joint strikes. Under the Tories, a law had been introduced requiring unions to hand over the names of every member they were calling out on strike to the employers. The New Labour government changed this to a requirement to supply information on the numbers in each grade and location involved in the strike. A judge granted LUL an injunction banning RMT's strike because the union had not supplied a sufficiently detailed breakdown of exactly how many staff in each grade and location would be called out on strike. He ruled that a union should supply a spreadsheet of information, grades down the side, locations across the top, number in every box of the grid. Any error in the figures would be a reason to declare a strike illegal.

*Problem 1:* On London Underground, RMT has members in dozens of grades and 400+ locations. 150 staff per week change grade and/or location. It is impossible for the union to compile the required information 100% accurately, so there will always be a pretext to ban strikes.

*Problem 2:* The law is demanding that the union gives the employer information which the employer can use to organise scabbing and help break the strike.

#### **Example: Ballot requirements**

As part of an RMT campaign on the effects of impending Tube privatisation, RMT had balloted early in 1998 and held strikes. Then after months of fruitless negotiations, the union named further strike dates in December. Justice Sullivan granted London Underground Ltd's request for an injunction banning the strikes for two reasons:

*Firstly*, that it would disrupt London! His ruling basically said that you can't go on strike if your action is going to be effective.

*Secondly*, that too much time had passed since the previous strike and another ballot would be needed.

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As we approach the centenary of the Act, the argument is that trade unions and their members once again expect parliamentary intervention to protect them against abusive employers and anti union laws.

Many unions also believe that a successful campaign around the need for a new Act would invigorate progressive forces in Parliament. It was the failure of politicians to protect the dockers, railway workers and butchers that led to the creation of the Labour Representation Committee – the forerunner of the Labour Party – in 1900. Many now believe that the time is right to ask today's politicians – which side are you on?

### Principles of the Bill

So what would the Bill contain? John Hendy QC has been working through the Institute of Employment Rights and the United Campaign for the Repeal of the Anti-Trade Union Laws on the general principles of a Bill. The TUC has made trade union freedoms the clarion call for the 2006 May day events. We are now at the drafting stage of a Bill and it is hoped it will be ready to lay before Parliament in December 2006.

As it stands, the measures proposed are modest. They redress only the gravest limitations on trade union freedom. However, some of the more oppressive aspects of the current legislation will be removed.

What the Bill must do is restore to trade unions the freedom to carry out their fundamental purpose, defined by statute as "the regulation of relations between workers and employers". That role is vital if we are to fight poverty and reduce inequality. As the DTI survey of trade union activity recently confirmed, union members earn 17.6 per cent more than non-union members. Securing fairness at work demands freedom for trade unions.

### What you can do

- Write to your MP encouraging them to sign EDM 1170
- Organise a branch meeting or weekend school around the theme of the Bill and invite speakers from the Institute or the United Campaign
- Mobilise through your union for the May Day rally in London
- Prepare for a march and lobby of Parliament in 2006

The Institute of Employment Rights and the United Campaign for the Repeal of Anti Trade Union Laws, congratulates those MPs who have signed Early Day Motion 1170 on a Trade Union Freedom Bill, and calls on all MPs to show their support for this important initiative by signing up to this campaign.

### EDM 1170: Campaign for a Trade Union Freedom Bill Tabled 30 November 2005

"That this House recognises that free and independent trade unions are a force for good in UK society and around the world, and are vital to democracy; welcomes the positive role modern unions play in providing protection for working people and winning fairness at work; notes the 1906 Trades Disputes Act granted unions the legal freedom to take industrial action; regrets that successive anti-union legislation has meant that trade union rights are now weaker than those introduced by the Trades Disputes Act; notes the overwhelming support at both the Trades Union Congress and Labour Party Conference for the Gate Gourmet workers and for improvements in union rights, including measures to simplify ballot procedures and to allow limited supportive action, following a ballot, in specific circumstances; further notes that these conferences called for legislation which conformed to International Labour Organisation Conventions ratified by the UK; and therefore welcomes the decision of the 2005 Trades Union Congress to campaign for a Trade Union Freedom Bill to mark the 100th anniversary of the 1906 Trades Disputes Act."

*Sponsoring MP – Lloyd, Tony*

*Signatories at 8 April 2006:*

Abbott, Diane; Anderson, David; Anderson, Janet; Austin, Ian; Austin, John; Banks, Gordon; Barlow, Celia; Berry, Roger; Betts, Clive; Borrow, David S; Brown, Lyn; Brown, Nicholas; Burden, Richard; Campbell, Ronnie; Caton, Martin; Challen, Colin; Chaytor, David; Clapham, Michael; Clark, Katy; Clelland, David; Cohen, Harry; Connarty, Michael; Cook, Frank; Corbyn, Jeremy; Cousins, Jim; Crausby, David; Creagh, Mary; Cruddas, Jon; Cryer, Ann; Cummings, John; Cunningham, Jim; Davidson, Ian; Dean, Janet; Devine, Jim; Dismore, Andrew; Dobbin, Jim; Dobson, Frank; Donohoe, Brian H; Doran, Frank; Drew, David; Dunwoody, Gwyneth; Durkan, Mark; Eagle, Angela; Ellman, Louise; Engel, Natascha; Ennis, Jeff; Etherington, Bill; Farrelly, Paul; Flynn, Paul; Francis, Hywel; Galloway, George; Gerrard, Neil; Gibson, Ian; Gilroy, Linda; Godsiff, Roger; Griffith, Nia; Hamilton, David; Hancock, Mike; Havard, Dai; Hemming, John; Hepburn, Stephen; Heyes, David; Hillier, Meg; Hoey, Kate; Hopkins, Kelvin; Howarth, George; Hoyle, Lindsay; Humble, Joan; Iddon, Brian; Illsley, Eric; Jackson, Glenda; James, Sian C; Jenkins, Brian; Jones, Helen; Jones, Lynne; Keen, Alan; Kilfoyle, Peter; Law, Peter; Lepper, David; Llwyd, Elfyn; Love, Andrew; Mackinlay, Andrew; Mallaber, Judy; Marris, Rob; Marsden, Gordon; Marshall, David; McCafferty, Chris; McCarthy-Fry, Sarah; McDonnell, John; McGovern, Jim; McKechin, Ann; Meacher, Michael; Meale, Alan; Miller, Andrew; Mitchell, Austin; Moffat, Anne; Moffatt, Laura; Morgan, Julie; Mudie, George; O'Hara, Edward; Olner, Bill; Osborne, Sandra; Pope, Greg; Prentice, Gordon; Price, Adam; Prosser, Gwyn; Purchase, Ken; Riordan, Linda; Ruddock, Joan; Sarwar, Mohammad; Sheridan, Jim; Short, Clare; Simpson, Alan; Singh, Marsha; Skinner, Dennis; Southworth, Helen; Stoate, Howard; Strang, Gavin; Taylor, David; Thornberry, Emily; Todd, Mark; Trickett, Jon; Turner, Desmond; Ussher, Kitty; Vis, Rudi; Walley, Joan; Wareing, Robert N; Williams, Betty; Williams, Hywel; Wood, Mike

Two conferences from the Institute of Employment Rights:

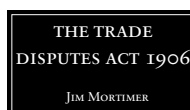
#### 1) 1906-2006: from the Trade Disputes Act to a Trade Union Freedom Bill

Wednesday 10 May, London

#### 2) Campaign for a Trade Union Freedom Bill

Wednesday 29 November, London

see [www.ier.org.uk](http://www.ier.org.uk) for further information or contact the IER on 020 7498 6919  
[office@ier.org.uk](mailto:office@ier.org.uk)



"The 1906 Act fell short of modern good international standards but it was certainly better than the existing British law affecting strikes and other forms of industrial action."

This is an excellent publication which we hope will inspire others to join us in celebrating and learning from this landmark in trade union history.

#### HOW TO ORDER *The Trade Disputes Act 1906* by Jim Mortimer; 20pp; ISBN 0 89547562 2 3; A5; April 2005

Please send a cheque (made payable to "IER") to the Institute of Employment Rights at 177 Abbeville Road, London SW4 9RL. The cost of the book to trade unions and trade unionists is £5 and there are substantial reductions for bulk orders – contact the office for details. (Price includes UK postage)