



## **Unite the union response to the Equalities and Human Rights Commission Human Rights Inquiry**

**This response is submitted by Unite the Union. Unite is the UK's largest trade union with 2 million members across the private and public sectors. The union's members work in a range of industries including manufacturing, financial services, print, media, construction, transport and local government, education, health and not for profit sectors.**

### **Executive Summary**

- Unite the union appreciates the opportunity to respond to the inquiry by the fledgling Equalities and Human Rights Commission into human rights in the UK.
- Unite will focus in this response on collective rights. Unite maintains that there has been insufficient attention given to the fundamental importance of such rights to underpin social justice. This is not to detract from other rights and we note the terms of reference for the inquiry.
- We note the Commission's priorities include that it "aims to use its work to put forward a compelling case for the need to put human rights at the heart of British culture and to show how human rights reflect essential values of fairness, respect, equality, dignity and autonomy".
- The Canadian Supreme Court has assessed evidence and adjudged that the exercise of collective rights "reaffirms the values of dignity, personal autonomy, equality and democracy". The exercise of collective rights also fights poverty for working people, children and pensioners.
- Unite the union believes that undermining collective rights undermines the fight against poverty and "essential values of fairness, respect, equality, dignity" and democracy.

## Sources of Collective Human Rights

1. Fundamental collective human rights and freedoms are:
  - a) **freedom of association** – the right to form and to join a trade union to promote the interests of the members
  - b) **the right to collective bargaining** – this follows from the freedom of association in that it is the essence of a trade union to engage in free collective bargaining to promote the interests of the members
  - c) **the right to strike** – this follows on from collective bargaining rights in that bargaining for workers with business is ineffective without the ability to withdraw labour as a last resort.
2. “No restrictions shall be placed on the exercise of these rights other than such as are ... necessary” to quote Article 11 (2) of European Convention on Human Rights and Fundamental Freedoms (ECHR).
3. The ECHR should be considered in conjunction with other international instruments which the UK has signed or cooperated in, such as:
  - a) the European Social Charter<sup>1</sup>, signed at Turin on 18 October 1961, to which, express reference is made in Article 136 of the Nice Treaty of the European Community
  - b) Convention No 87 concerning Freedom of Association and Protection of the Right to Organise and Convention No 98 on The Right to Organise and Bargain Collectively by the International Labour Organisation<sup>2</sup> and
  - c) instruments developed by EU Member States such as:
    - i) the Community Charter of the Fundamental Social Rights of Workers adopted at the meeting of the European Council held in Strasbourg on 9 December 1989, which is also referred to in Article 136 EC, and
    - ii) the Charter of Fundamental Rights of the European Union proclaimed in Nice on 7 December 2000.

These instruments relate the question of forming trade unions with the importance of collective bargaining and industrial action.

4. Article 11 ECHR does not specifically mention the right to collective bargaining and the right to strike, but the general view is that such rights are inherent in the freedom to associate under Article 11 as explained

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<sup>1</sup> See [http://www.coe.int/T/E/Human\\_Rights/Esc/](http://www.coe.int/T/E/Human_Rights/Esc/) The Charter was revised in 1996 and signed by the UK in November 1997

<sup>2</sup> International labour standards can be found at: <http://www.ilo.org/ilolex/english/subjectE.htm#s09>

above. Although there is no express recognition of the right to strike in ILO Convention 87, the ILO Committee of Experts has held that the 'right to strike is one of the essential means through which workers and their organisations may promote and defend their economic and social interests'. Unfortunately, in a case brought by UNISON the Strasbourg court refused to give full recognition to the right to strike as an incident of the right to freedom of association.

### **Criticisms of the UK**

5. It is a matter of shame for the UK that there are numerous and regular criticisms of the UK's laws that undermine fundamental human collective rights and freedoms by international bodies.

6. Unite maintains that the current inquiry should look at the evidence in relation to such criticisms and calls for action to remedy the failings. If called upon, Unite will assist further in these endeavours to ensure an extensive examination takes place.

7. Examples include in relation to ILO Conventions 87 & 98 and specifically in relation to freedom of association the United Kingdom has been found in breach of these provisions consistently since 1989 by the ILO Committee of Experts.

8. In its most recent report on Convention 87, the Committee repeated concerns about the statutory restrictions on trade union autonomy, taking exception to the inability of trade unions to exclude or expel individuals on the ground of their membership of political parties whose views may be opposed to the interests of the union. Apart from these concerns about trade union autonomy, the Committee of Experts also renewed its concerns about the tight restrictions on the right of trade unions to defend the economic and social interests of their members by taking collective action in appropriate cases. In particular, it renewed its findings that the total ban on solidarity action in British law violated the requirements of Convention 87.

9. In its most recent report on Convention 98, the Committee broke new ground by raising concerns for the first time about the new recognition procedure introduced by the Employment Relations Act 1999. Four questions in particular were raised, three of these relating to the exclusion of small businesses from the procedure; the fact that an application for recognition under the procedure can be blocked by an employer voluntarily 'recognising' a non – independent trade union; and the failure to provide adequate protection for workers from anti – union conduct by employers. The other concern raised by the Committee was that recognition can only be granted where the union can show majority support, whereas under ILO jurisprudence a trade union should be entitled to bargain on behalf of its members, even where the union does not have support from a majority of the workforce.

10. So far as the Social Charter is concerned, compliance with obligations under this treaty is reviewed by a rolling programme of scrutiny

undertaken by the Social Rights Committee of the Council of Europe. In its last report published in 2005, the Committee examined British compliance with 7 articles of the treaty, including the trade union rights provisions of article 5 (on the right to organise) and 6 (on the right to bargain and the right to strike). The cases of non conformity were said to include articles 5 and 6, in each case for several reasons.

11. In the case of article 5 (on the right to organize), three grounds of non – conformity were given. These related to (i) section 15 of the Trade Union and Labour Relations (Consolidation) Act 1992 which makes it unlawful for a trade union to indemnify an individual union member for a penalty imposed for an offence or contempt of court (ii) section 65 of the 1992 Act which severely restricts the grounds on which a trade union might lawfully discipline members represent unjustified incursions into the autonomy of trade unions; and (iii) section 174 of the 1992 Act (as amended by the Employment Relations Act 2004) which entitles a trade union to exclude members for reasons linked exclusively or mainly to the fact that they have taken part in the activities of a political party and not because they were affiliated to the party. These measures were said to constitute ‘an excessive interference by the law with trade union membership conditions’.

12. In the case of article 6(4) (on the right to strike), the non – conformity related to (i) the scope for workers to defend their interests through lawful collective action, which was said to be ‘excessively circumscribed’; (ii) the requirement to give notice to an employer of a ballot on industrial action, which was said to be ‘excessive’ in light of all the other procedural hurdles on trade unions, such as the duty to issue a fresh notice before commencing strike action; and (iii) the protection of workers against dismissal when taking industrial action was said to ‘insufficient’, apparently notwithstanding the changes to unfair dismissal introduced in 2004. In the case of the first of these grounds of non conformity, the right to strike was said to be excessively circumscribed for a number of reasons, in the case of the second the conclusion was reached notwithstanding the simplification of the procedures introduced in 2004, and in the case of the third concern was expressed that the protection against dismissal applied only where the strike was lawful, and that specific forms of legitimate industrial action were not lawful in British law.

13. In relation to the ECHR most recently the UK was found by the European Court of Human Rights (ECtHR) to be in violation of Article 11 in the case of ASLEF v UK. Proposals in the Employment Bill brought before Parliament do not go far enough to stop future applications of a similar nature succeeding before the ECtHR at tax payers expense requiring further changes to the law. Indeed an amendment in the Lords means that the situation would be worse than it is now for trade unions. (See also the reference above to criticism by the Social Rights Committee of the Council of Europe in relation to Article 5 – the right to organise).

## **The response by the UK Government**

14. In this context it is also a matter of record that the UK consistently says:

a) that fundamental human rights and freedoms are not “fundamental” (see UK submissions in the Viking case made to the ECJ 10 January 2007) and

b) that the rights are merely aspirational (see for example European Social Rights Committee Report 2004)

15. This flies in the face of common sense and logic, especially when the UK Government makes no attempt to aspire to these rights and freedoms.

16. Unite the union also believes it is a matter of shame for the UK that at the EU Summit in June 2007, it was agreed that the Charter of Fundamental Rights will be legally binding in the Union, but the UK insisted on an “opt out”. Twenty five countries agree that fundamental rights are just that – they are prepared to be subject to scrutiny.

## **Recent decisions of the ECJ**

17. The Viking case (in respect of which judgment was given on 11 December 2007) referred to above is one of four decisions by the European Court of Justice giving precedence for business rights cross border (even at the expense of business in the host Member State) over collective rights and even when those collective rights are enshrined in the constitution of a member state. This is an issue that must be addressed. Unite maintains that any body with an obligation to uphold and promote human rights and fundamental freedoms should support the need to reverse this situation. Again Unite will respond to any request for further information and evidence.

## **Other evidence of the importance of collective rights**

18. The Supreme Court of Canada was referred to in the Executive Summary. In June 2007 the Court said: “Recognizing that workers have the right to bargain collectively as part of their freedom to associate reaffirms the values of dignity, personal autonomy, equality and democracy that are inherent in the *[Canadian] Charter [of Rights]*.”<sup>3</sup>

19. It is also recognised that “Countries with strong collective bargaining institutions, including trade unions and employers’ organizations, also have better income distribution. They enjoy more equitable and socially sustainable integration. Attempts to erode and weaken these institutions have been short-sighted and may even delay adjustment processes.” Susan Hayter, Integration Department, ILO<sup>4</sup>.

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<sup>3</sup> See *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27

<sup>4</sup> <http://www.ilo.org/public/english/dialogue/actrav/publ/128/9.pdf>

20. Unite can also draw attention to the 2002, report by the Managing Director for Human Development at the World Bank, Zafiris Tzannatos, produced a report entitled: "Unions and Collective Bargaining - Economic Effects in a Global Environment"<sup>5</sup>. This was an in depth report that reviewed more than a thousand studies on the effects of unions and collective bargaining. It found that coordinated collective bargaining tended to be associated with lower and less persistent unemployment, lower earnings inequality, and fewer and shorter strikes.

### **Conclusion**

21. Unite the union recognises the importance of human rights in the UK in the 21<sup>st</sup> century. However, the failure to refer specifically to collective rights and to be robust in their defence is seriously undermining other rights, the fight against poverty and "essential values of fairness, respect, equality, dignity" and democracy.

22. Unite will continue to supply evidence to the inquiry, if called upon to do so and looks forward to its findings, including a comprehensive section specifically devoted to collective rights.

23. Unite also looks forward to the Commission developing its defence and promotion of collective rights in the future.

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<sup>5</sup> Co-written with Toke Aidt of Cambridge University - ISBN 0-8213-5080-3 - [http://www-wds.worldbank.org/external/default/main?pagePK=64193027&piPK=64187937&theSitePK=523679&menuPK=64187510&searchMenuPK=64187283&theSitePK=523679&entityID=000094946\\_02083104140023&searchMenuPK=64187283&theSitePK=523679](http://www-wds.worldbank.org/external/default/main?pagePK=64193027&piPK=64187937&theSitePK=523679&menuPK=64187510&searchMenuPK=64187283&theSitePK=523679&entityID=000094946_02083104140023&searchMenuPK=64187283&theSitePK=523679)