

AN IER RESPONSE

Picketing and the Trade Union Bill

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Picketing and the Trade Union Bill

This Supplementary Submission adds to our Submission of 20 November 2015 by identifying some points in relation to human rights and the provision of the Bill dealing with picketing, clause 9. We noted that during the Second Reading debate on the Trade Union Bill, the Conservative David Davis MP identified that the picketing provisions of the Bill violated the right to freedom of association, having previously described them as reminiscent of Franco's Spain.¹ Here we attempt to give more detail as to such violations.

The government amended clause 9 slightly in relation to picketing earlier this month but:

- trade unions will still be required to appoint a picket supervisor, and supply that supervisor with a letter of authorisation which confers no authority on him or her but merely states that the union authorises the picketing;
- 'the picket supervisor must wear a badge, armband or other item that readily identifies the picket supervisor as such';
- either the union or the supervisor must take reasonable steps to tell the police the picket supervisor's name and how he or she can be contacted and where the picketing is to take place; and
- the picket supervisor 'must', if asked, as soon as reasonably practicably, show the letter of authorisation to the employer or someone on its behalf.

Failure to comply with any of these obligations will mean that the union loses legal protection for the picketing. In consequence an injunction can be granted to stop the picketing or damages can be claimed subsequently to cover any losses caused by the picketing.

We draw to the Joint Committee's attention the following issues:

1 Assuming the name and contact details of the picket supervisor (and it will be easy to obtain the address and other personal details from the supervisor's name and phone number) are given to the police, what will happen to that information? The information will presumably be recorded on a police database without – in the Bill – any limit of duration of retention. There is no apparent reason that the information should not be recorded on other databases (such as Special Branch files).

2 Moreover, there are no apparent restrictions on the sharing of that information

¹ In the debate on the Second Reading, 14 September 2015, col 799 he said: 'I am particularly offended by the idea that a picket organiser needs to give his name to the police force.... This is a serious restriction of freedom of association. There is all the difference in the world between 500,000 people clogging up London and half a dozen pickets shivering around a brazier while trying to maintain a strike.'

between police forces and other State bodies, or between the police and employers. The Bill imposes no limit on the uses which may be made of such information. The lack of protection against such recording, retention, transmission and use appears to breach the guarantees in European Convention on Human Rights, Article 8.

3 If the trade union supplies the supervisor's name to the police, there appears to be a risk (perhaps an obvious risk) of trade unions being required to act as intelligence gathering agencies on behalf of the police and the security service. Such a role is not compatible with the government's obligations under Article 8, which contains safeguards against State surveillance?

4 If trade unions are being required to act in breach of Article 8 by acting as State agents, the unions in question may be exposed to the risk of litigation by those members whose Convention rights the union is required to violate. To say that this would be a cruel irony is to state the obvious. It would also attack the essence of freedom of association protected by Article 11.

5 The compilation of a police database of picket supervisors would not appear to be compatible with the letter and spirit of the Employment Relations Act 1999 (Blacklists) Regulations 2010, SI 2010/493, which are designed to stop the compiling of lists of trade union activists. The exception that the list is 'required or authorised' by statute would not apply here. The requirement for protection against blacklisting (whether by the State or employers) of trade union activists is inherent in Article 11 (freedom of association and trade union rights) and the Bill therefore fails to provide an adequate guarantee of that protection.

6 The picket supervisor's armband will usually enable the employer to identify the supervisor as a union activist amongst the workforce, and a request to see the letter of authority will permit a close-up encounter in cases of doubt. The identification of picket supervisors by employers is therefore envisaged by the Bill, yet the Bill does not prohibit the employer recording the picket supervisors it has thus identified. This creates a tension with the Blacklisting Regulations (above) and raises an issue of lack of compatibility with Article 11 (freedom of association and trade union rights).

7 If the supervisor forgets his or her armband or letter of authority, or is unavailable through sickness or arrest, the picketing will become unlawful and the union and the remaining pickets will be liable to face an injunction or a claim for damages unless and until another armband and letter of authority can be provided, or another fully equipped supervisor appointed. This would appear to be a breach of Article 11 (freedom of assembly and freedom of association and trade union rights).

8 The above matters may have a chilling effect on those who might otherwise volunteer as picket supervisors and hence represent an incursion on freedom of assembly under Article 11 since, without a picket supervisor, the picket will be unlawful. 9 These and the other consequences of the Bill on peaceful pickets identified above go far beyond what is required of other peaceful assemblies in the UK. Thus the Bill appears to discriminate against trade unions and trade union activity, in breach of Article 14 taken with Article 11.

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