Employee Relations & the Law

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Essay Question 8

Student number 1121320

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1 Introduction

Unions may be very influential when first taking industrial action. London has experienced almost a standstill on two occasions this fall due to two 24 hours strikes by the London Underground Union.

The background for this was, not surprisingly, the unions' claim for a pay raise. The London Underground proposed an increase of three percent to its employees. But, the unions claimed a 5.7 per cent increase, something which the London Underground thought was unheard and refused to reopen the negotiations.

These strikes have had an estimated cost of 120 million in lost productivity for the London economy. Although the London Underground only serves the capital itself, it has huge impact on the whole island. The London subway system carries more passengers every day than the joint work of all the major lines in England. By going on strike, the London Underground union to a large extent hindered London's international business and thereby crippled Britain.

The strikes resulted in that the current major in London, Ken Livingston, promised the London Undeground's employees a pay increase when he takes over the subway next year. The unions then cancelled the strike (Webster 2002).

The whole of Europe experience a vast number of strikes in the industry in the period 1968-1974. The period is therefore called "The Wave of Struggle". The UK was of course no exception and the unions were so strong, or the situation was so bad, that the Labour government under prime minister Wilson, made in 1974 a social contract with the unions, a manifesto that

basically stated asked the union to "play nice" since the UK economy was dire straits. The situation was so serious, that the UK had to apply for a loan from the USA to keep its industry running.

When the Thatcher government took the power in 1979, they wanted to reduce the unions' power so that they could not affect the industry in that large extent has they had previously done during this "wave of struggle". This resulted in a number of changes to legislations regarding the unions.

I will in this essay look at different changes in industrial relations legislation in Britain since 1979 and give a discussion what they have had to say for the trade unions' ability to take industrial action.

2 Industrial Relations Legislation 1979-1993

During the years of the Thatcher government, seven separate acts were passed, both to create statuary immunity for the employers and for making it harder for the unions to take industrial action legally (IDS 1995, 2). It have been argued that all trade union legislations between 1979 and 1993 have been issued to cripple the trade unions and hinder them from functioning effectively by enforcing the unions to adopt a more traditional bureaucratic organisational hierarchy. In addition, the acts were to give the unions several legal constraints, making it harder for them to take industrial action (Miller 1986, 301).

The first employment act under the Thatcher government came in 1980 and contained a number of changes that had an impact on the trade unions.

First of all, the act introduced changes to the ballot issue. It became more extensive for the unions because all workers that they believed to be

affected by a strike, had to participate in the ballot. That is, all workers, that the union believed could be taken out in strike, had to participate in the ballot. The ballot had to be written, a show of hands was not good enough. This presented a timing problem, as the time was often crucial for the effect of an strike in response to the current state of the negotiations between management and the union officials (Simpson 1986, 190-1).

Secondary picketing was another of the important elements of the 1980 Act. Secondary picketing was made unlawful and this took away a great weapon for the trade unions. Secondary action was for workers to do industrial action at a different employer's grounds in order to increase the pressure of the employer involved in the dispute. Secondary action was often a sympathetic gesture, a demonstration of support for the workers involved in the dispute. It became highly unpopular among the politicians and the government wanted to get rid of it because it spread the disputes and difficulties over the industry and community at large (Simpson 1986, 183-184).

The same year came also the Social Security Act 1980 that basically made the financial situation for strikers less beneficial as compared to earlier years. The conservative government would not "finance strikes" as they put it, and thus cut the social benefits of striking workers. The striking workers then became more dependent on funds from their family or union support. It was in the government's belief that it was just fair that the union helped share the burden of striking, non producing workers that was put on society (Ewing 1991, 107-108).

In 1982 there came amendments to the Employment Protection (Consolidation) Act (EPCA) from 1978. The amendments contributed to giving

the employers greater power. The employer could now dismiss all workers involved in a strike. This was in itself a very powerful weapon for the employer, especially in workplaces with unskilled labour and no shortage of unemployed labour in the area. If the workers went on strike over some dispute with management, the employer could simply fire the striking workers and hire new labour from the streets to replace the previous workers (Ewing 1991, 44).

This was just what happened in London two years after the act was introduced. Rupert Murdock was building a new production plant for his new paper the "London Post" in the London dock lands in 1985. The negotiations with the trade unions of working agreements for the workers to work in the new plant and also for existing Murdock employees at other sites to move to this new place Wapping went into a halt. The unions took out all workers in strike against Murdock. He replied by firing all 5500 workers since they were in breach of contract according to civil law, and hired new staff to replace the former paper plant workers (Ewing 1991, 1-2).

Furthermore, the 1982 amendments had several points that made it even easier for the employer. First of all, the employer would earlier lose his immunity if he re-engaged a dismissed worker. Now, the employer could re-engage a worker within three months after the dismissal without losing their immunity (Mesher & Sutcliffe 1986, 254).

Another piece of the old legislation required the employer to dismiss all workers that were striking, even if some employees had returned to work and only some unionists were still on strike. This changed in the 1982 amendments, so that the employer could re-engage the workers that had come back to work voluntarily before the strike had been called off. This had great

impact on the unions, and caused more problems than it first might seem. Firstly, it was crucial that all striking workers got the warning, that if they did not return to work they would get dismissed. Secondly, and maybe more importantly, what would happen in reality, was that the ones still on strike would be the activists, the members of the union with the greatest opposition to the management. Therefore, this became a great weapon for the employer, since he now could get rid of the trouble makers only without dismissing the rest of the workforce, giving the best from both worlds, seen from the management's point of view (Ewing 1991, 45).

In addition to this, the employer was given an additional beneficial piece of legislation in the 1982 amendments. The employer could now choose to dismiss only one group of the workers. This was a significant contribution to the employer, since he now could fire a lot of the striking workers to signal that he did not give in to the trade union's pressure, but at the same time, he could keep the production going in the rest of the company. This made the down time significantly shorter for the company before they got installed new staff for the dismissed workers, because production could continue almost as normal in big parts of the firm (Ewing 1991, 46).

The Employment Act of 1982 imposed another constraints to the unions. This was that if the union members were indirectly hindering the supply of goods or services because the ones supplying this was non union members, the union lost its immunity and could be sued by the employer (Simpson 1986, 188).

Another element of the act that empowered employers to sue the unions to a great extent, was that the unions were held liable for damages caused by

their members when taking industrial action (Wedderburn 2000, 27). This law had a huge impact on trade unions, as company financial claims were heavy blows to the union organisation. The union was only liable for acts authorised or endorsed by a responsible person, that is a person with in the union that had the union authority to act on the union's behalf, e.g. a shop steward (Simpson 1986, 173).

With this liability, there came also another law that put limits to the financial claims of the employer. A limit was set of how much money the employer could sue the union for. This was to reduce the chance of the unions going bankrupt because of financial claims from the firms. Furthermore, the 1982 Employment Act gave the union some protected property that financial claims could enforce money from. These properties included the union's political fund, if any, and the union repositories for paying sickness, accident, death, superannuation and the like (Simpson 1986, 174-175).

Maybe the biggest issue in the 1984 Trade Union Act was the one of ballots. First of all, almost any action by the union without a ballot was considered unlawful (Simpson 1986, 183). The only action by the union that was not unlawful without a ballot was the threat of going to strike (Simpson 1986, 189). The unions were required to do secret ballots for electing their members, mastering political funds and before calling any industrial action (Miller 1986, 298-299). An industrial action without a ballot was considered unlawful and the unions therefore had to spend valuable time collecting the ballots.

The TUA of 1984 did not put any requirements on the employer to cooperate in conducting the ballots, not even a note of letting the union officials in on the company premises to hand out the ballot fliers to the workers

were included in the act. The 1980 Employment on the other hand, did include a request for employers to provide facilities for the ballot to be conducted. However this law has two important restrictions. The union has to be recognised by the firm and the company needs to employ more than twenty workers (Ewing 1986, 311).

Another thing concerning the ballots and maybe the most controversial element of the Trade Union Act 1984 was that unions were required state on their ballots that the worker, if going on a strike, would be a breach of his or her contract (Mesher & Sutcliffe 1986, 267). Without this statement the ballot was not to be considered valid. The condition was to be phrased as a question and the worker was to answer "yes" or "no" to whether he was ready to take part in a strike if so was demanded or another industrial action where no strike was involved. This statement had a huge impact on the union officials work, because it made it more difficult to convince worker to stand behind the union and go on strike if needed. It was also difficult to formulate a justification on a flier to why the worker needed to say "yes" to this question and be ready to commit a breach of his or her contract (Simpson 1986, 191).

The 1986 Wage Act did require the employer to continue to pay wages to suspended workers. However, this did not apply to striking workers, and did therefore not help the unions (Ewing 1991, 26-27).

The 1988 Employment Act also included a law that state that the trade union could no longer discipline its members for not supporting the industrial action. Together, with the hurdles regarding the conduction of the ballot itself, this made it even harder for the unions to get the support they needed among the workers (Edgar 2002).

Even though both the 1980 and 1982 Employment Acts had tightened the laws on closed shops, it was first in 1990 they were totally removed by law. The act removed any compulsory element of "closed shop" from union membership. This took away an important reason for many employees to take union membership. Previously, sometimes the only reason for employees to join a union was because they really did not have a choice. With the "closed shop" element removed from union membership, there was one less reason to be a union member, and in some cases this was enough (Noon & Blyton 2002, 297).

In 1992, all law concerning industrial action were put into they "Trade Union and Labour Relations (Consolidation) Act", TULRCA.

One requirement put on the unions in the TULR(C) Act 1992, was that when they were balloting their members, they needed to get separate approval for strike action and for industrial action short of strike. That means that they first needed to know how many of their members were in favour of a strike, and then separately, they needed to know how many members that were in favour of an industrial action against the employer, that was not a strike (IDS 1995, 8).

An amendment to the Trade Union and Labour Relations (Consolidation) Act came in 1999 and regarded the ballot. The change was that the unions no longer needed to give the management any names of persons they want to ballot (Ewing 1999, 294).

The TULRCA also stated that a union could not conduct a ballot after an industrial action in order to support it. As stated in the 1982 Employment Act, the union will receive the responsibility for an industrial action

conducted by a "responsible person", but they will not keep their immunity in tort. The problem arises when there is an unofficial industrial action that is not endorsed by the union, but the union sympathise with it and want to turn the action into an official one. This is no longer possible with the TULRC act. The union is left in a lose-lose situation, with this law, because if they do not take the responsibility for the action, the employees that conducted the industrial action stands without protection and cannot claim an unfair dismissal, and if the union do take the responsibility, they lose their immunity in tort (IDS 1995, 14).

2.1 Industrial Relations Legislation 1993-1999

After a significant number of acts that were primarily to the benefit of the employer, 1999 saw the light of a bill that was a great leap in the right direction from the workers' point of view. The bill was a great attempt to close the gap between Britain and the ILO of 87 and 98. The ILO 87 and 98 give the workers in the EU far greater protection than what has been and still is, the case in the UK (Ewing 1999, 283).

Blacklisting is the first of the important elements of the 1999 act. Employers are no longer allowed to compile lists or indexes of union members. Both making these lists and distributing them have become unlawful by this act (Ewing 1999, 285).

Another, significant development empowered by this act is the right for a worker to be accompanied by a trade union official. This applies when the employee is asked by the employer to attend a disciplinary or grievance hearing. The employee can then choose one person to accompany him to the

hearing. The person accompanying the worker can either by another worker of the employer or a trade union official. The person is not to be lawyer, if not the fellow employee or trade union official happens to be a lawyer by coincidence (Wedderburn 2000, 16). However, the law does no to apply to to negotiations between the employee and the employer regarding higher pay, shorter hours or increased overtime (Ewing 1999, 289).

The Employment Relation Act 1999 has also a protection from dismissal upon strike. If the worker is dismissed because he took protected industrial action, the worker will be regarded as unfairly dismissed. Protected industrial action means that the action must be supported by a valid ballot as stated in the Trade Union Act 1984 (Wedderburn 2000, 18). However, this protection does not apply to other workers than the trade union officials themselves. The unions as whole, are therefore not any closer to getting the "right to strike" to be a legal action (Ewing 1999, 292).

Ten different aspects to the balloting law has been amended in the 1999 act. One of these aspects is that a ballot is no longer invalidated because the union failed to notify the employer of the result of the ballot. On the other side, the union is required to both give the employer information about the coming strike so that the employer can make necessary preparations, e.g. notifying the customers of the company of the coming disruption of work. The unions were also now required to give the employer a certain amount of time notice before the initiation of the strike (Ewing 1999, 294-295).

However, the unions did not have to give the names of the employees they wished to ballot. This was a good change from the Trade Union and Labour Relations (Consolidation) Act 1992, since this act stated that the employer

could force the union into court in order to give up names of the persons involved in the ballot. After the 1999 act, this changed and the union was only required to give up details and numbers to the employer (Wedderburn 2000, 17).

The 1999 act also introduced a scheme of obligatory recognition of trade unions. All companies that have more than 21 employees at the day of request for recognition by the union, must recognise the union, if they do not already have recognised a union at their company (Wedderburn 2000, 33). Therefore, there is now place in business now, where the unions can lawfully be excluded (Ewing 1999, 290).

3 Conclusion

The trade unions way of operation got a drastical change after 1979 when Thatcher took power. The conservative government passed seven separate acts in their reign, and the general tendency was clear: it became more and more difficult for workers to take industrial action (Mesher & Sutcliffe 1986, 243).

When assessing the unions' ability to take industrial action, there is one outstanding point, that industrial action is unlawful. Basically every industrial action except the refusal to work longer hours than what is stated in the employment contract, is a breach of contract (Ewing 1991, 9-14).

So by participating in industrial action, the individual worker must be ready to face unemployment if his or her employer chooses do to dismiss the workers as a reaction to the strike. The 1980 and 1982 Employment Acts give the employer full right to not only fire the workers that are striking, but

also to strategically select the workers that are to be fired. This way, the employer may keep the business going while seeking new staff. Furthermore, the legislations introduced in the 1980s forced a more bureaucratic mode of operation on the union, making it into a slower moving organism (Miller 1986, 301). The acts passed in the 1980s also made the process of taking industrial action more time consuming for the unions, making industrial action a less powerful action since it lost its timing.

Together with the National Minimum Wage Act 1998 and Working Time Regulation, The Employment Relation Act 1999 must be seen as a positive regulatory (Wedderburn 2000, 12). The 1999 act made it an unfair dismissal to fire a person because the worker participated in a lawful strike. However, when this only applies to the union officials and not all the workers, the law is nothing more than a small step in the right direction, the basic principles remain the same. This may not come as any surprise, as it is what the current (1999) Labour government promised, to not reverse the fundamental legislation introduced in the Thatcher period (Wedderburn 2000, 28).

Regardless of all the legislation that has been made in the 90s to protect the individual worker, the bottom line is that the individual worker in today's Britain is almost without protection of any kind, and most ironic of all, taking industrial action is unlawful. Collective bargaining have been the way workers have negotiated better deals with employers in Britain, but as long as the workers' only real weapon, industrial action is an unlawful one, how can this system work? Or as Lord Wright put it:

> The right of workmen to strike is an essential element in the principle of collective bargaining

But without a lawful right to strike, how can there be collective bargaining? (Ewing 1991, 41).

The bottom line is that the union's ability to take industrial power have in general been weakened by the industrial legislations after 1979, and it is not likely that there will be drastic changes to the union's current state since the Labour party will not attempt to reverse the conservative party's legislations during the 1979-1993 period, regardless of advancements in new industrial legislation like the National Minimum Wage Act 1998 and the Employment Relation Act 1999.

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