

UK Legal News Analysis

Industrial Relations Reform Proposals Impractical

LNB News 15/10/2010 81

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Jurisdiction
European Union; UK

Related Cases

Demir and another v Turkey (App no 34503/97) [2008] ECHR 34503/97

Related Digests

CBI Wants Law on Strikes Tightened as Strife Looms, LNB News 04/10/2010 2; Press Release: CBI Unveils Package of Measures to Avoid Strikes, LNB News 05/10/2010 23; Unions Warn of Unrest in Face of Sweeping Pension Cuts, LNB News 06/10/2010 21

Abstract

The CBI recently called for a package of reforms to employment relations legislation aimed at the better management of strike action. Diana Bentley talks to Richard Arthur, Head of Trade Union Law at Thompsons Solicitors, and Nicholas Lakeland, Employment Law partner of London city firm Silverman Sherliker, about the report's proposals

Analysis

Britain's leading employer group, the CBI, has released a report ("Keeping the wheels turning: modernising the legal framework of industrial relations") outlining its suggestions for the reform of employment relations legislation to tighten the controls on strike action.

The report has come about following CBI fears that the government measures to reduce the national deficit will prompt strike action. According to CBI Deputy-Director John Cridland, the proposals should help ensure strike action is the last resort. The report calls for a wide range of changes including an increase in the notice period for industrial action from seven to 14 days after the ballot takes place and that ballot mandates be limited to the original dispute. It also suggests the test for a legitimate strike be the support of 40 per cent of balloted members as well as a simple majority of those voting, that only paid-up members should be able to vote and that employers be able to use agency temps to cover for striking workers.

"The European Court of Human Rights (ECtHR) in 2008 in *Demir and another v Turkey* rewrote the law on Article 11 of the Convention of Human Rights," says Richard Arthur. "The cases that have followed also confirm Article 11 protects the right to strike and standards in the UK must be consistent with this law. The International Labour Organization has also on numerous occasions criticised UK law on industrial action."

Arthur reports he has a case pending before the ECtHR which challenges UK law on its non-compliance with Article 11. "There is no mention of all of this in the CBI report. Also, the various measures the CBI are suggesting--like the use of agency workers--are measures already condemned by the ILO." Many of the suggested measures he argues, would not only be illegal but would be irresponsible or impractical. "The idea

that unions should conduct annual audits of members is not feasible--it's not like employers keeping records of employees." Nicholas Lakeland also says practical considerations may frustrate some proposed measures: "The proposal on using agency workers could undermine strikes but they could only be used when largely unskilled workers were striking."

Both Arthur and Lakeland are unsure of what may come of the proposals--not only given the legal challenges they may face but also the political hurdles that may be involved. Lakeland believes the CBI may be trying to take advantage of the new political forces in the country. But he says: "All of these proposals are intended to make striking harder. Things may change if more strikes take place but there may not be great support from the government for these proposals presently since it has its hands full handling the national deficit."

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