

Benchmarking freedom of association: the UK's non-compliance with international standards

by Andrew Moretta



Andrew Moretta was awarded his PhD by Liverpool University in 2019. For the IER he has written 'Access to Justice: Exposing the Myths' (2016) and, with Professor David Whyte, 'Securing International Standards of Health and Safety at Work'(2020).

This publication, like all publications of the Institute, represents not the collective views of the Institute but only the views of the authors. The responsibility of the Institute is limited to approving its publications as worthy of consideration within the labour movement. The publication is not intended as a substitute for legal advice.

ISBN
978-1-906703-47-9
February 2020

published by the
Institute of
Employment Rights
4th Floor, Jack Jones
House, 1 Islington,
Liverpool, L3 8EG

e-mail
office@ier.org.uk
www.ier.org.uk

Design and layout by
Upstream (TU)
www.upstream.coop

Printed by Rap
Spiderweb (www.rapspiderweb.com)

£8 for trade unions and
students
£30 others

**THE
INSTITUTE
OF
EMPLOYMENT
RIGHTS**

contents

introduction	2
CHAPTER ONE	
the mandate for strike action	4
CHAPTER TWO	
quorums and majorities in ballots for industrial action	12
CHAPTER THREE	
secondary action and political strikes	17
CHAPTER FOUR	
picketing	22
CHAPTER FIVE	
liability for engaging in industrial action	27
CHAPTER SIX	
the right to bargain collectively	33
conclusion	41
endnotes	43

introduction

The two inextricably linked ‘essential elements’ permitting workers to enjoy full freedom of association in the context of industrial relations are the rights to bargain collectively and to strike.¹ It was through the exercise of these collectively exercisable rights that workers in the UK were, after many hundreds of years of exploitation by the ruling classes, able in the late 19th Century and the 20th Century to secure decent terms and conditions of employment.

With full freedom of association guaranteed by the State, arguably all else eventually follows. Whether or not statutory minima are in place, fair remuneration and contractual occupational health and safety, working time and equality protections, become matters governable by collective negotiation.

Two international treaties over which the UK government had a great deal of influence – ILO Convention 87 (1948), on freedom of association and the protection of the right to organise, and Convention 98 (1949) on the application of the principles on the right to organise and to bargain collectively – provide the foundation of those key collective labour rights in international law.

Through the interpretations placed upon their provisions by the ILO Governing Body’s Committee on Freedom of Association (CFA) and the Committee of Experts on the Application of Conventions and Recommendations (CEACR), Conventions 87 and 98 have provided the common standard for the protection of freedom of association demanded of the government by subsequent regional and international treaties. The Council of Europe’s European Convention on Human Rights (ECHR) was ratified by the UK in 1950, the European Social Charter in 1962, and the United Nations International Covenant on Social Economic and Cultural Rights (UNICESCR) in 1976. The texts of all these instruments draw on Conventions 87 and 98 and their supervisory bodies continue to place very considerable reliance on these two fundamental Conventions and on ILO jurisprudence when matters relating to freedom of association are at issue.

This booklet considers the extent to which the UK upholds these treaty obligations. The first five chapters deal with the right to strike, while the sixth chapter deals with the right of workers to bargain collectively.

Want immediate access to the IER's full library of publications online?

IER
Institute of
Employment
Rights



SUBSCRIBE NOW, and also receive:

- Hard copies of new IER publications delivered to your door
- Discounted entry to IER employment conferences
- Weekly updates on developments in employment law and expert analysis delivered to your email

Visit: www.ier.org.uk/subscribe

About the Institute

The Institute of Employment Rights seeks to develop an alternative approach to labour law and industrial relations and makes a constructive contribution to the debate on the future of trade union freedoms.

We provide the research, ideas and detailed legal arguments to support working people and their unions by calling upon the wealth of experience and knowledge of our unique network of academics, lawyers and trade unionists.

The Institute is not a campaigning organisation, nor do we simply respond to the policies of the government. Our aim is to provide and promote ideas. We seek not to produce a 'consensus' view but to develop new thoughts, new ideas and a new approach to meet the demands of our times.

IER officers

President **Professor Keith Ewing**
Chair **John Hendy, QC**
Treasurer **Geoff Shears**
Director **Carolyn Jones**

For more information and a full list of IER members visit
www.ier.org.uk

The Institute of Employment Rights
4th Floor Jack Jones House
1 Islington
Liverpool, L3 8EG
Tel: 0151 207 5265
Email: **office@ier.org.uk**
Twitter: **[@ieruk](https://twitter.com/ieruk)**



Institute of Employment Rights

The Institute of Employment Rights has repeatedly highlighted the government's failure to meet its obligations in international labour law, particularly in the context of trade union rights. Despite the UK's ratification of the International Labour Organization's (ILO) fundamental principles on workers' rights over 100 years ago, the government has imposed a number of restrictions on collective action that contravene those principles.

In this publication, author Andrew Moretta provides a detailed analysis of the UK's trade union laws and their incompatibility with the labour law conventions to which the State is a signatory, including ILO principles, as well as international Charters set by Europe and the United Nations. He takes a fine-toothed comb to a wide range of restrictions on trade union activities, from the pursuit of democratic ballots for industrial action, to picketing, the protection of activists from discrimination, and collective bargaining. He examines the extent of the UK's non-compliance with international law and recommends legislative reforms necessary to bring the country in line with its obligations.

£8 for trade unions and students

£30 others