

EMPLOYMENT – TRADE UNIONS 1

*Defined by s.1 TULR(C)A 1992 as an organisation (single or confederated) which either:

(a) Consists wholly or mainly of workers of one or more descriptions and whose principal purposes include the regulation of relations between workers and employers or employer's associations; **or**

(b) Consists wholly or mainly of: Constituent or affiliated organisations which have those purposes (see above slide); or Representatives of above organisations.

One of first issues was whether TU had legal personality? This is resolved by statute. S.10 TULR(C)A states that a TU is not a body corporate. However a TU can: Sue/be sued in own name; Enter into contracts in own name; Be prosecuted for offences. No legal personality and so property will be held by trustees on trust. Trustees will have to pay out property in event of judgment.

*Another are is whether they can be sued for defamation? According to **Electrical, Electronic Telecommunications and Plumbing Union v Times Newspapers**, they can not, as people are speaking as individuals.

LISTING AND CERTIFICATE OF INDEPENDENCE

*Covered by s.2 TULR(C)A. *No requirement that a TU is listed. Procedure to becoming listed: Fee, Copy of rules, List of officers, Address of head office, Details and name.

*Benefits: Evidence that TU meets statutory definition; Tax reliefs on income in the TU provident funds; Procedural benefits with passing of property when trustees change; Only a listed TU can apply for a **certificate of independence**.

*A TU to receive a certificate must be independent: *It is not under the domination/control of e'yer groups or associations; Not liable for interference by above groups because of financial/ material support, which would tend to give control. *Decision made by certification officer. Possible to appeal against refusal.

***Why such controversy over cert?** Rise of 'white-collar' staff associations, as unions were traditionally 'blue-collar'. Many have received certificates. Accused of creating more TU's instead of joining established TU's. Refused: **Blue Circle Staff Association v Certification Officer** (clearly evident that staff association had been formed by management pressure ie no independent TU). **Association of HSD (Hatfield) Employees v Certification Officer**. Refused: **Squadron Leader's Association v Certification Officer**

*Advantages of cert of i: Member has a right not to suffer detriment or be dismissed because of TU membership, activities or using TU services.

*Can negotiate a dismissal procedure that will replace statutory rights (s.110 ERA 1996) * Negotiate to remove right of e'yees to strike (s.180 TULR(C)A) *Members/officials can act as an independent advisor for purposes of a **compromise agreement** (s.203(sA) ERA 1996. * There are additional benefits if the e'yer recognises the TU for collective bargaining purposes.

RECOGNITION BY THE EmR

The employer can chose to recognise a TU. There is no need for formalities. Balance is still very much in the emr favour. One it has been recognised there are important legal consequences: Right to receive info for collective bargaining purposes; and Right to be consulted on redundancies and transfer of undertakings. Right for members/ officials to receive time off (pay) for duties/activities *Protection from detriment and dismissal.

***Voluntary recognition:** The TU must show a ET that there is a formal agreement. **NUTGW v Charles Ingram & Co Ltd** established five criteria: Question of fact & law; Recognition requires mutuality; Express or implied agreement for recognition; If implied must be clear & unequivocal acts/conduct over time; Can be partial recognition for some purposes.

***Statutory recognition:** Statutory procedure in schedule A1 of the Act. *Does not apply where e'yer employees less than 21 e'yees. *Application can be made by independent TU to **Central Arbitration Committee** (CAC) for purposes of deciding recognition for collective bargaining purposes. This is complicated procedure, so may be better for emr to enter voluntary recognition, so as not to effect workforce morale.

COLLECTIVE BARGAINING – TU steps in and bargains on behalf of the collective on an area of dispute between emr and eme. Areas covered by CB include:

*Voluntary agreement – s178 applies - Wide type of matters (inc): t & cs; Termination/suspension; Allocation of hours; Discipline; Physical condition of workplace; Pay, hours & holidays.

*statutory recognition – Only covers pay, hours and holidays.

*s.181 states that for the purposes of collective bargaining there is a duty of disclosure information: All info which relates to undertaking in e'yers possession; Material which would impede the TU in collective bargaining; Good industrial practice to disclose.

***legal effect of CB** - Governed by ss.178-179. Establishes procedures to be used in a dispute. Creates t & cs which will apply to TU members. Presumption that agreement is not legally enforceable unless made in writing & contains provision stating intention agreement is legally enforceable.

***Protection of TU** - Remember that the Trade Union can sue/ be sued. An employer can sue a Trade Union. Problem of the common law. Limited protection afforded by statute with govern strike action.

Problems of common law in INDUSTRIAL RELATIONS

*Not only breach of contract, but if TU is telling emee to go on strike, TU is committing a tort: Inducing or procuring a breach of contract; Civil conspiracy.

*Also there could be criminal offence: Criminal conspiracy. *There is a potential of illegal activities by TU and the emee.

***Statutory protection** - Statute protects TU when they are pursuing legitimate objectives. Which are limited to: "Acts done in furtherance or contemplation of a trade dispute". TU only protected if definition applies.

*a) **"Trade dispute"** - governed by s24 - by industrial relations act. Definition: a dispute between workers and employers which relates to: T&Cs/ physical conditions of workplace; Employment/ non-engagement, termination or suspension of workers; Allocation of work or duties of workers; Discipline matters; Membership/non-membership of a TU; Facilities for TU officials; Machinery for consultation or negotiations. *linked with politics/media - **BBC v Hearn/ Express Newspapers v Keys**. *b) **"in contemplation of"** - Act needs to be in contemplation of a trade dispute. It need to be imminent and not a mere possibility. *in furtherance of" - It must be done in furtherance of that trade dispute and not for another reason. That has to be a casual link, not just disruption.

***Effect of statutory protection** - S. 219 protects a trade union who is encouraging members re industrial action: Allows TU to call a strike /industrial action without being sued in tort for inducing a breach of contract; Covers strikes by workers or calls to strike/threats by TU officials; Protects those who threaten to induce a breach of contract/ threaten performance of a contract.

***BUT Restrictions on statutory protection:** S.219 does not apply to secondary action. Purpose is to strengthen TU positions. Neither does s.219 apply to forcing an employer to recognise a TU. However peaceful picketing is lawful, but you could be in breach of public order act.

***Effect of loss of statutory immunity:** TU is liable in tort to the employer. * Loses immunity under s.219.* Implications for members who take part in industrial action: dismissal. * Limitation on damages **per claim** depending on number of members – maximum £250,000.

***Must follow correct procedure, by way of secret ballot.** There is no legal requirement for a secret ballot (support of members), **but** the effect of no ballot: Industrial action authorised/endorsed by TU will not be protected by s.219. TU liable in tort; Members & public who are effected can apply for injunction to prevent strike; and Employees who strike lose protection of s.238A. This would be an **official unprotected industrial action**.

***Requirement for ballot:** For TU & members to be protected then requirements of s.226 must be met. At least 7 days before ballot reasonable steps must be taken to tells members that ballot being held, date of opening, list of e'yees and categories concerned/ workplaces. Send sample voting paper to e'yer 3 days before ballot. Appoint a **scrutineer** unless less than 50 workers. All members who TU believes will be induced to strike must be balloted. If member induced to strike but not given opportunity to vote that TU will lose statutory immunity. Separate workplace ballots and requirement that majority of workers vote in favour. At least one member of the TU must be directly affected by the dispute. Voting matters must relate to a trade dispute. So far as is reasonably practicable, voting must be done in secret. Details of votes must be given to members and employers.

***Effect of the ballot:** Lasts 4 weeks, unless extended up to 8 weeks by e'yer and TU. Industrial action which takes place afterwards will not be protected.