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Bil yr Undebau Llafur (Cymru)

Trade Union (Wales) Bill

Ymateb gan: GMB

Response from: GMB

Welsh Assembly Government

Trade Union (Wales) Bill

GMB Submission of Evidence to the Equality, Local Government and Communities Committee

February, 2017

1. GMB, Britain's General Union, represents approximately 25,500 members who are employed within the devolved Welsh public services sector.
Our membership is concentrated within the Local Government, Health Services, Ambulance and Fire Services Sectors, including every one of the existing 22 Unitary Authorities.
2. GMB welcomes the opportunity to respond to the evidence invitation, and this response will focus upon the proposals contained within the Trade Union (Wales) Bill to disapply the requirements of the Trade Union Act, 2016, as they relate to :-
 - i) The 40% threshold for industrial action affecting important public services.
 - ii) The publication of information on facility time and the ability to impose requirements upon public sector employers in relation to the amount of paid facility time to be afforded to Trade Union representatives.
 - iii) Restrictions on deductions of union subscriptions from wages by employers (check-off).
3. The GMB opposes the Trade Union Act and, as a Wales TUC affiliated union, we also support the evidence submitted by that organisation as part of this consultation exercise.
4. GMB is of the view that the Act will not enhance industrial relations, nor will it ensure improved rights at work should its terms be applied to devolved Welsh public services. It seeks to impose arbitrary thresholds on industrial action ballots without, at this time, permitting the mechanisms to increase participation levels. Taken together with the objective of allowing agency workers to replace those on strike, the effect will be to fundamentally undermine the right of working people to protect and better their working conditions. The measures will significantly alter the balance of influence in the workplace, and are seen by GMB as singling out the public sector as part of a wider strategy to silence the political voice of trade unions by ensuring that they have limited resources and opportunities to utilise the political process. The altering of balance has a clear potential to negatively impact upon industrial relations in Welsh public services, as the process of negotiation is most effectively practised when the stakeholders enjoy equal status.
5. The right to strike is an essential human right and an integral feature of a free and democratic society. It is unclear as to what problems the Act seeks to solve. The number of days lost to industrial action are at an historic low, yet the BIS estimates that the combined effect of the 50% turnout and the 40% Yes vote requirements will lead to something like a 65% reduction in the number of days lost overall within the UK. GMB believes, therefore, that these thresholds represent an unjustified and disproportionate restriction on the right to strike and that this will inevitably damage industrial relations within Welsh public service

areas. Furthermore, the UK already has a heavily regulated environment of industrial action law with restraints that have been repeatedly criticised by both the ILO Committee of Experts and the ESRC in the Council of Europe for failing to comply with international law. There is also an obvious risk that other forms of uncontrollable disruption may take place, leading to more working days being lost to industrial action than is currently the case.

6. GMB maintains that it should not be the role of the State to determine how a trade union should organise itself in terms of its members taking industrial action. In fact, the GMB rulebook imposes a specific threshold that must be met in order for industrial action to receive procedural consent. Also, union members are not bound to follow a call from GMB to take industrial action, nor can they be sanctioned in the event that they decide not to adhere to any such call. It is unnecessary, therefore, for any Government to increase threshold levels by arguing that it aims to protect members from the consequences of industrial action when they are able themselves to make an independent choice as to whether they engage in such action or not after a ballot has been held and a positive result achieved.
7. GMB also notes that whilst thresholds are to be applied to unions for ballots, no such equivalent condition is proposed for politicians. Abstentions are to be treated as 'no' votes, which may encourage disengagement with the democratic process. Take, for example, a dispute with 45% in favour of a strike, 25% against and 30% neutral. If all those for and against the strike vote, then it will proceed. There is a 70% turnout and a 64% majority. However, if the 25% abstain, then the outcome will mean that the 50% threshold has not been met. This type of tactical abstention vote could become a real possibility where the workforce is small and the groups have a good idea of the position.
8. The Government submits that the 40% threshold in 'important public services' is required by reason that industrial action may impact adversely upon those who use and rely upon those services. However, it is not always the case that members of the public will experience a negative effect, as there are a number of occupational roles where this is felt only by the employer. It is also traditional for trade unions to agree exemptions with employers in order to safeguard the delivery of services to the aged, infirm and other vulnerable people groups within the relevant service area. Industrial action is an important method by which employees can influence their treatment by the employer, and in public services the employer is the state. GMB rejects the proposition that industrial action should be restricted because it disrupts economic activity or the interests of the wider public.
9. The ability to unions to collectively bargain is supported by the right to organise industrial action. That right also ensures that employers take the views of the workforce seriously and practice constructive industrial relations. The social partnership model operated within Welsh public services is dependent for its efficacy upon an equality of bargaining power between the stakeholders which would be unsettled by the application of the terms of the 2016 Trade Union Act. Unions manage the expectations of their members and develop workable solutions to problems through the collective bargaining process. But, on occasions, there is a need to conduct an industrial action ballot. The ballot plays an important role as it focuses the mind of the employer on the issues and demonstrates the strength of feeling amongst the workforce. In the vast majority of cases, the holding of the ballot is sufficient to lead to engagement and settlement of the dispute.
10. GMB predicts a situation arising where by these terms will most likely lead to the escalation and lengthening of trade disputes. Employers may well be encouraged to wait and see if the

ballot threshold can be attained rather than addressing the underlying issues that are causative of the dispute. The achievement of the thresholds may also raise the expectations of members and result on a hardening of the union's negotiating stance, thereby making settlement more difficult.

11. Furthermore, the six month life cycle of the ballot could incite employers to sit out a dispute and refuse to negotiate a solution in the knowledge that the union will have to incur the costs of a fresh ballot. Unions will feel compelled to bring forward action in an attempt to reach settlement, and ACAS is likely to find it harder to promote settlements between the parties. As referred to earlier, tighter scrutiny of the right to strike could turn neutral workers opinion into favouring unofficial actions which would be harder for unions, management and ACAS to resolve.
12. GMB is concerned that the revised rules on balloting will, as they relate to the period during which action may take place, levy further potential administrative and financial burdens on trade unions. GMB does not have limitless funds to spend on ballots for industrial action, and employers will only have to wait long enough to be able to outlast the union and its members. In addition, it is envisaged that financial resources will have to be expended by reference to the need to train Officers and lay activists on the new legislative provisions, the arbitrary thresholds and the new layers of bureaucracy created. This extra cost will impinge upon the capacity of unions to deliver other services to its members at a time when pressures upon job security and terms and conditions of employment are greater than at any previous time in the public sector.
13. With regard to picketing, the Act will create additional requirements that must be met in order to maintain exemption of trade union liability. The new rules indiscriminately target unions and workers who picket peacefully, as well as those who do not. No other membership organisation that demonstrates peacefully is obligated to police it or face dire consequences if it does not, even if it is impractical to do so. The right to picket is an aspect of freedom of assembly in Article 11 of the ECHR, and the recent, shameful history of blacklisting makes it even more crucial that these requirements are not applied to public sector disputes in Wales. Interestingly, in the Carr Review, ACPO stated that the current legal framework on picketing was generally effective and that no further powers were needed; just better guidance for the police.
14. Picket 'supervisors' are typically trade union members or activists who volunteer to perform that role. Trade union membership data is an aspect of private life and is sensitive information under Section 2 of the Data Protection Act 1998, as well as being protected under the relevant section of the Employment Act (Blacklisting) Regulations 2010. There are often sound reasons why an individual wants to keep their union membership secret from an employer and the police, as shown by the blacklisting scandal evident in the construction industry. In any event, there are already extensive criminal provisions against intimidation on a picket line, and no additional restrictions are required or justified.
15. The Act also creates a Ministerial power to both demand that public sector employers publish information relating to trade union facility time and one by which, via Regulations, a cap can be applied to the amount of money a public authority can spend on it and the purposes for which it can be used. Facility time is that time spent by employees who are also trade union representatives on activities involved in representing members. It typically involves representing members individually and collectively in disciplinary and grievance matters, negotiations with the employer and the facilitation of health/safety, learning and

training activities. The Government seems to think that an excessive amount from the public purse is spent on this time, but it has not provided any evidence to support the case for change. In fact, publicly available evidence suggests that the contrary is true.

16. It is often common ground between employers, trade unions and other organisations that facility time brings benefits to workplace industrial relations, including the reduction in the number of cases proceeding to an employment tribunal, lower absenteeism, and turnover rates and higher productivity levels. Union activists in the public sector tend to contribute up to 100,000 unpaid hours of their own time throughout the UK, and provide a major and valuable resource to both their members and employers. Indeed, in 2009 the CBI, Director General freely concluded that 'union representatives have lots to give to their fellow employees and those organisations that employ them'. These proposals would hinder trade unions in preventing disputes arising in the first place and then to deal with them effectively and avoid escalation. It cannot be in the interests of the successful tripartite approach to industrial relations in Wales for these proposals to be introduced.
17. The net effect of these powers will be to undermine the ability of unions to represent their members at the workplace. They will also interfere with the Welsh Assembly Government and public service bodies' autonomy to manage devolved services and how they engage with their employees and trade unions. The powers, in several cases, may also impinge upon contracts of employment and collective agreements which have been entered into voluntarily and stood the test of time. It is a grave concern that the Government wishes to provide itself with a reserve power to intervene in agreements reached consensually by other parties, and it cannot be in the interests of positive industrial relations in Welsh public services for those powers to be enforced here.
18. The proposal to prohibit public sector employers from deducting trade union subscriptions from the wages of workers who rescinded following the acceptance of a House of Lords amendment. The effect of that amendment is to allow check-off to continue on condition that the trade union makes a payment to the employer in respect of the workers' remittance and that there is an option for the worker to pay subscriptions by other means.
19. The concerns regarding the effect of any prohibition upon employees on lower pay, primarily the prospect of them ceasing to be trade union members, or having to pay extra bank charges connected with direct debit payments have, therefore, been removed, but GMB remain opposed to the intrusion into voluntary arrangements agreed between employers and their recognised unions.
20. The concept of 'reasonable payments' having to be made by the relevant union will cause an additional financial burden given the fact that several employers who presently provide the deduction facility make no associated charge. The administrative and cost burden falling upon employers is minimal, as developments in technology have both simplified the process and the amount of staff time needed to operate the check-off system. At a time when unions will have to incur extra costs arising out of the need to familiarise full-time and lay representations with the other elements of the legislation, any further financial charges will dilute the extent to which unions can invest resources into workplace representation.
21. It is also significant to note that many employers provide a deduction service for employees who wish to contribute part of their salaries to other organisations, yet the Government is content for that service to remain without any cost implications for the recipients. This serves to confirm the view that the Act seeks to single-out public sector trade unions as part

of its overall strategy to neuter the resistance to their austerity-driven and spending cuts agenda in public services. Such differential treatment is both unfair and unjustified and intended to hamper the ability of trade unions to represent the interests of their members.

22. The GMB also regrets the fact that no full Impact Assessment was conducted in respect of the Trade Union Bill. On the three areas that were subject to an IA, the Government's own Regulatory Policy Committee deemed the measures to be 'not fit for purpose'. The assessment of the Bill concluded that there were no 'adverse equality impacts on any protected group'. That statement completely failed to understand that, in the UK, 73% of trade union members working in defined 'important public services' are women (from TUC research). For example, in the public health services, women account for 78% of all staff and 80% of union members. From a Welsh standpoint, there is a very real danger that the very progressive measures taken to reduce and eliminate gender equality in public services will be damaged if the relevant terms of the Act were to be implemented in Wales.
23. In summary, GMB believes that the Act's powers represent an unprecedented attack upon the freedom of assembly and protest, as well as making it much more difficult for union members to exercise their workplace rights and entitlements. The consequences would be to significantly weaken the social partnership model that operates in Welsh public services to the detriment of employers, trade unions and service users alike. The relationships that have been built up have been firm and productive, and helped overcome many of the serious challenges posed by the climate of austerity. Brexit will require public services in Wales to react to a myriad of problems that are unparalleled in the post-war period, and the Trade Union Act would have the effect, if implemented, of increasing the barriers to providing effective and efficient services and the well-being needs of those who both supply and receive them.

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14 February 2017