

Dr Mark Egan
Commons Clerk of the Joint Committee on Human Rights
Committee Office
House of Commons
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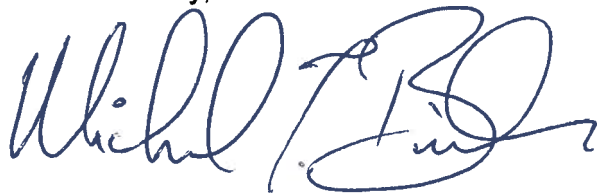
Dear Dr Egan,

Please find attached a submission to the Joint Committee on Human Rights from the United Food and Commercial Workers' International Union (UFCW) of the USA.

We would be very pleased if the Committee were to invite us to give oral evidence at one of the hearings which it proposes to hold. As we would travel from the USA to give evidence, we would be grateful if we could have sufficient advanced notice, and if at all possible would prefer a date in the second half of June.

I can be contacted directly at the email and telephone number below my signature. Alternatively, it may be more convenient for your office to liaise with our UK-based adviser, Stephen Hardwick, on 020 7936 9694 or 07515 390 549, or at stephen.hardwick@altcon.co.uk.

Yours sincerely,



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UFCW submission to the Joint Committee on Human Rights

Business and Human Rights

Introduction

The United Food and Commercial Workers' International Union (UFCW) is the largest private-sector trades union in the USA, representing 1.3 million employees in grocery retailing, food processing and meatpacking. More than half of our members are women and a significant proportion are from ethnic minorities. We seek to protect the rights of some of the lowest-paid employees in America.

The UFCW is pleased to offer a submission to the Joint Committee on Human Rights on the subject of business and human rights. Our submission focuses on the responsibility of businesses to respect human rights abroad, and on the need for effective access to remedies for breaches to these rights. We limit our evidence to issues concerning fundamental employment rights, notably freedom of association and the right to collective bargaining.

Our submission has been prompted by our experience of Tesco's operation in the USA, which in our opinion is in breach both of key conventions on human rights and of Tesco's own stated policies on human rights.

Human rights and employment

Employees are protected by two crucial human rights conventions of the International Labour Organisation: ILO Convention 87, Freedom of Association and Protection of the Right to Organise (1948); and ILO Convention 98, Right to Organise and Collective Bargaining (1949).

These two conventions allow individuals to form and join a trades union, in order collectively to represent their interests on matters related to their employment. Crucially, Article 1 of ILO Convention 98 states:

"Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment."

These conventions enshrine in international law, among the signatories to these conventions, rights for which workers have campaigned for over two centuries.

In addition, in 1998, the ILO issued a landmark Declaration on Fundamental Principles and Rights at Work¹, which states:

“...all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organisation to respect, promote and realise, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions...”²

The 1998 Declaration goes on to refer to these fundamental rights as freedom of association and the effective recognition of the right to collective bargaining, among others. The Declaration ensures that states which are members of the ILO, but which have not formally ratified the conventions, also have a legal obligation to respect the rights set out in the conventions.

Business and employment rights

The UK, as a signatory to these ILO conventions, strongly upholds the rights of employees to freedom of association, to organise and to collective bargaining. Businesses operating within UK jurisdiction must comply with the employment laws which enshrine these rights, and there is legal redress for employees and trades unions when employers breach these laws.

The USA has never ratified these two conventions, but has signed the 1998 Declaration. In theory, under US federal employment law, employees have the right to freedom of association, to organise or to collective bargaining and can claim redress or protection against anti-union discrimination. However, the practice is very different and even the United States itself acknowledged in a 1999 report that “there are aspects of this [US labor law] system that fail to fully protect the rights to organize and bargain collectively of all employees in all circumstances”.³ In fact: “Some provisions of US law openly conflict with international norms and create formidable legal obstacles to the exercise of freedom of association.”⁴ The system that is supposed to protect workers’ rights to freedom of association and collective bargaining is in reality too lengthy to be effective, with minimal sanctions for employers which breach the rules. So businesses

¹ ILO *Declaration on Fundamental Principles and Rights at Work*, issued 86th Session, Geneva, 19 June 1998

² 1998 Declaration, Preamble, paragraph 2

³ US Report for the period ending 31 December 1997 under Article 19 of the ILO Constitution on the position of national law and practice in regard to matters dealt with in Conventions 87 and 98, US Department of Labor

⁴ Compa, Lance, “Unfair Advantage: Workers’ Freedom of Association in the United States under International Human Rights Standards”, *Industrial & Labor Relations Review*, Vol. 59, Issue 2, 2006, Berkeley Press, p14

operating within the USA are able to deny employees these fundamental employment rights with impunity.

It is therefore critical that, in the absence of the worthwhile protection of federal law, employees enjoy protection for these rights through other means. Firstly, in the USA, strong trades unions, like the UFCW, have successfully campaigned to recruit employees into the union. We use our size and resources to persuade businesses to recognise the union for the purposes of collective bargaining.

Collective bargaining is vitally important to employees in the USA, principally because, under federal law, there is no right to an employment contract (in the UK all employees must have a contract after 13 weeks) and there is therefore no protection against dismissal (save for specific, narrow exceptions). Therefore, employees with many years' service can be terminated without notice or compensation under the so-called "employment-at-will" doctrine. For almost all employees, only a negotiated collective agreement can guarantee legally-binding employment contracts, setting out pay and conditions of employment, with agreed notice and procedures for dismissal.

Secondly, many responsible businesses themselves recognise the rights of employees contained within the ILO conventions and voluntarily act as if these rights are in force in the USA. Trades unions, politicians, NGOs and community groups work hard to encourage businesses in the USA to operate within the framework of ILO Conventions 87 and 98. It is especially expected that international businesses based in countries which have ratified these conventions, and which operate in their home markets under these principles, will operate in the USA in the same responsible manner.

Tesco and employment rights abroad

Tesco's Human Rights Policy states:

"Tesco is committed to upholding basic Human Rights and supports in full the United Nations Universal Declaration of Human Rights and the International Labour Organisation Core Conventions."⁵

On employment rights, Tesco further states:

⁵ http://www.tescocorporate.com/plc/corporate_responsibility/good_jobs/human_rights/

“We will treat all employees fairly and honestly regardless of where they work. All staff will have a written contract of employment, with agreed terms and conditions, including notice periods on both sides.”

“Employees have the right to freedom of association and collective bargaining. We recognise the right of our staff anywhere in Tesco around the world to join a recognised trade union and bargain collectively where this is allowed within national law.”

In the UK, Tesco has been unionised since 1969. In 1998 Tesco and the retail union Usdaw signed a ground-breaking partnership agreement, the largest private-sector collective bargaining agreement in the UK.

In 2006, Tesco announced that it was entering the US grocery retail market and in 2007 it opened a chain of small neighbourhood supermarkets, called Fresh and Easy. There are now 119 stores throughout California, Arizona and Nevada, as well as a major food preparation and distribution centre.

As a company with a very public commitment to corporate responsibility and clearly-stated policies on human and employment rights, the UFCW expected Tesco to operate in the US along the same partnership lines as it does in the UK and to respect the ILO Conventions to which it is publicly committed. However, Tesco’s approach in the USA is quite the opposite, and we believe that Tesco is in breach both of the ILO Conventions and of its own stated policies on freedom of association and collective bargaining.

In 2008, the UFCW published a report, *The Two Faces of Tesco*⁶, which exposed the stark differences between Tesco’s stated policies and its behaviour in practice. Among the breaches that we highlighted in the report was the refusal by Tesco even to meet the UFCW to discuss allowing the union to organise among employees. This prevents the UFCW from talking to employees in their workplace, effectively hampering our ability openly and freely to organise within Tesco’s stores.

Tesco also advertised for an employee relations director in the following terms:

⁶ <http://www.ufcw.org/twofaces/index.cfm>

“The incumbent has primary responsibility for management of employee relations; maintaining non-union status and union avoidance activities.”⁷

And in clear contravention of its own policy, Tesco provides no written contract of employment and no written notice period for employees.

In the year since we published our report, we believe that a number of other breaches have occurred. In response to Tesco’s repeated assurances that employees are free to join a trades union if a majority of them want to, in September 2008 we successfully recruited the majority of employees in one Tesco Fresh and Easy store in Huntington Beach, California. They submitted a written request for recognition to Tesco’s US chief executive, Mr Tim Mason, who is also a member of Tesco’s corporate board in the UK. Tesco denied that request. In so doing, the company referred to US labour laws, a tactic that a *Financial Times* article described as one that “has been successfully used to block union organising efforts by Wal-Mart and other anti-union US companies”.⁸

In recent weeks, union representatives have been making house calls to Tesco employees to talk about the benefits of membership, since Tesco will not allow the UFCW access to employees at work. House calls are a common recruiting procedure when companies deny unions access to the workplace. During the first day of such calls, employees responded positively to the approach. But on subsequent days our union representatives were warned by employees to leave their property immediately, and threatened that the police would be called if they did not comply.

Following the house calls our Las Vegas union office also received a number of letters from Tesco’s Las Vegas employees, requesting the union not to contact them again. All the letters but one share the same postmark and return address: El Segundo, California – the home of Tesco’s US head office. Las Vegas is 300 miles from El Segundo.

Based upon this and other corroborating information, we believe that employees have been actively encouraged by Tesco management to write these letters, that Tesco collected them together and posted them from the same location. Moreover, we also hold the view that Tesco management had a hand in coordinating the responses of workers as the house calls progressed. In our view, this is evidence of coercion and that Tesco is actively influencing employees against involvement with our union.

⁷ “Tesco job ads follow non-union line” *Financial Times* 26.5.06

⁸ “Tesco faces US union challenge”, *Financial Times*, September 18, 2008, http://www.ft.com/cms/s/0/7bc7d2a4-85ae-11dd-a1ac-0000779fd18c.html?nclclick_check=1

Moreover, in a recent staff meeting with representatives from all Tesco's Fresh and Easy stores in Nevada, senior Tesco managers spoke against the UFCW. The references included a statement that Tesco does not need a "third party" interfering in its business, and the firm opinion that, while the UFCW is not permitted on Tesco property, it was "despicable" that the union would attempt to contact people at home.

The UFCW has also received reports that Tesco is establishing "employee advocates" in its stores, which, in our view, is not an uncommon union avoidance technique. In a recent employer survey published by the London School of Economics, the most common reason given for establishing such employee consultation was precisely to avoid unionisation.⁹

Furthermore, in a Notice to Interested Parties in relation to the establishment of a pension plan for US employees, Tesco seems to exclude union workers in its stores from pension benefits.¹⁰ The effect of the inclusion of this language serves as a deterrent to workers who may wish to join the union and is, in the view of UFCW, a breach of US labour law.¹¹

These are just a few examples of Tesco's anti-union activities in the USA, which we believe are in breach of the ILO Conventions to which Tesco is publicly committed. We have more examples, and we also know of many other examples in other countries where Tesco operates.

We believe that Tesco's anti-union activities not only undermine the employment rights of employees, but also undermine the reputation of one of Britain's largest companies. For nearly three years, the UFCW has sought constructive engagement with Tesco, within the terms of Tesco's own stated policies of engagement. We are drawing the Joint Committee's attention to Tesco's behaviour to expose how a major company can, in its home market, garner plaudits for its corporate responsibility approach, and yet away from its home environment ride roughshod over the very policies it publicly espouses without being held to account.

⁹ "... the most significant reason to implement [non-union employee representation] arrangements was the desire by employers to avoid active trade union presence in their workplaces - six of the nine companies in the study suggested that this was the main reason for their establishment", Gollan, Paul J., "Faces of non-union representation in the UK: management strategies, processes and practice", LSE Research Online, 2008.

¹⁰ Clause 8 of Tesco Fresh and Easy's Notice to Interested Parties regarding the Fresh and Easy 401(k) pension plan states: "The employees eligible to participate under this plan are all employees who have completed 90 days of service except union employees, leased employees, non-resident aliens with no US income, and Ex-patriot Employees".

¹¹ In the case *Dallas Morning News*, 285 NLRB 807, 808 (1987), it was held that "clauses in benefit plans that automatically exclude employees in a collective-bargaining unit violate the [National Labor Relations] Act where they suggest that employees will necessarily lose existing benefits if they join a union and that coverage under such plans could not be gained through collective bargaining."

Access to remedies

In the UK, employees may take a case to an employment tribunal if an employer infringes their employment rights, and tribunals have considerable power to award compensation to employees and issue notices of other remedies to offending companies. In the USA, the National Labor Relations Board and its regional offices fulfil a similar function, although their remit is much more tightly drawn. Extending and protecting employment rights from employer abuse in the USA is a matter for US democratic and legal processes and not for the Joint Committee on Human Rights, and we do not wish to draw a British Parliamentary Committee into US domestic politics. In this submission, we therefore focus on some potential remedies in the UK, which we hope could extend employment rights under the ILO Conventions to employees of UK-based companies wherever they are.

We would welcome the establishment of a Human Rights Ombudsman in the UK, to which complaints could be made about breaches of human rights by UK-based companies, including when they operate abroad. Such an ombudsman could hear a complaint and require a company to account publicly for its actions. While we would prefer that an ombudsman would be equipped with the power to direct a company to remedy its actions, we also believe that the public exposure and negative publicity surrounding such cases would itself encourage companies to desist from acting irresponsibly in breaching human rights abroad.

We would also like to see the Government encourage the corporate practice of appointing independent, non-executive directors to corporate responsibility boards, which set policy and monitor performance against corporate responsibility objectives, including on human rights, whether in the UK or abroad. Tesco's corporate responsibility committee currently comprises 16 Tesco employees and it is chaired by the company's executive director of corporate and legal affairs. There are no independent board members and therefore no external monitoring of policy and practice. In comparison, six out of the FTSE's ten largest UK firms have corporate responsibility committees comprised largely or entirely of independent non-executive directors. Shell's committee, for instance, comprises three independent non-executive board members, one of whom is a former chairman of the Confederation of Dutch Trades Unions.

Conclusion

We believe that UK-based companies which are bound in the UK by ILO Conventions on employment rights should uphold these rights when they operate abroad, even where the local employment law does not require this. Tesco, which publicly states its commitment to the ILO Conventions, is in our view in breach of these conventions in the USA, at least in spirit, if not also in the letter. Multinational companies have an important role to play in spreading good practice internationally, to improve the employment conditions of employees where the local law does not provide these protections. We would like to see greater scrutiny of UK-based companies in the UK on how they operate abroad, and we would welcome the establishment of a Human Rights Ombudsman, and the appointment of independent, non-executive directors to company corporate responsibility committees.

United Food and Commercial Workers' International Union

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