European Social Charter | Charte sociale européenne

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

27 February2014

Case Document No. 6

***Bedriftsforbundet* v. Norway**
Complaint No. 103/2013

ADDITIONAL SUBMISSIONS FROM *BEDRIFTSFORBUNDET* ON ADMISSIBILITY

Registered at the Secretariat on 10 February 2014

KVALE

Council of Europe
Secretary General
Directorate General of Human Rights and Legal Affairs
Directorate of Monitoring
F-67075 Strasbourg Cedex
France

Kvale Advokatfirma DA
Fridtjof Nansens plass 4
Postboks 1752 Vika
N-0122 Oslo

Tel +47 22 47 97 00
Fax +47 21 05 85 85
post@kvale.no
www.kvale.no

NO 947 996 053 MVA

Oslo, 10 February 2014
Our ref.: aks/25685/501

In charge:
Nicolay Skarning

COLLECTIVE COMPLAINT NO. 103/2013: BEDRIFTSFORBUNDET VS. NORWAY

Reference is made to complaint no. 103/2013. The complainant, Bedriftsforbundet, hereby submits further evidences in the case against Norway. Especially we mentions that at document from the Norwegian Government to the ILO 2December 1976 expressly stated that all dock worker should be members of The Norwegian Transport Workers' Union. Hence this has been part of an active policy from the part of the Norwegian Government since 1974 (year of ratification of ILO 137 – ref attachment 1) which doesn't seem to have changed afterwards.

1. ADMISSIBILITY

Concerning the admissibility of the complaint, we refer you to the letter from the CEO at Bedriftsforbundet, confirming the number of members of the organization. The final members count is 3996 member companies in January 2014. The Auditor of Bedriftsforbundet is notified about the letter.

Attachment 1: Letter from Lars-Erik Sletner/Bedriftsforbundet dated 6 February 2014

2. CLOSED SHOP SYSTEM

As previously described, the Norwegian government is obliged to report to the ILO about the number of registered dock workers in Norwegian ports. The registration is made through the labour union "Norsk Transportarbeiderforbund" (The Norwegian Transport Workers' Union).

Enclosed are reports from Norway to the ILO in the period 1976-2007, in English. In the report from 1976, as mentioned before, the Norwegian Government reports that *"Dock work offices have been established in the ports. These offices have exclusive right to all dock work in the port. All regular dockworkers must be registered at the office and member of the worker's organisation" (our underline).* This clearly proves from 1974 (ratification year), a closed shop system existed in the ports and was supported by the Norwegian Government. Subsequent reports do not give any basis to consider that the system is deviated from by the Norwegian government. When the Norwegian Ministry of Employment, with the Attorney General asked for rejection of the complaint on 7 November 2013, they were aware of the report to the ILO from 1976. In fact the Ministry has written the report themselves. We therefore find their submissions to the ECSR of 7 November 2013 worrying.

Attachment 2: Reports to the ILO 1976-2007

We also enclose a statement from the Ship- and Terminal Operators Association in Oslo, confirming that 100 % of the dockworkers in Oslo are organized in The Norwegian Transport Workers' Union, and the way this has happened.

Attachment 3: Letter from the Ship- and Terminal Operators Association in Oslo, dated 29 January 2014

We finally enclose the evidences of the case, earlier sent in Norwegian, translated to English by a government certified translator. This includes documents sent to the Norwegian Parliament.

Attachment 4: Translated documents (proofs of closed shop)

Yours sincerely
KVALE ADVOKATFIRMA DA

Nicolay Skarning
Attorney, partner
Right of audience to the Norwegian Supreme Court
Member of the Norwegian Bar Association
www.kvale.no
Oslo, Norway

1st report

2 DEC. 1976

Attachment 1

R E P O R T

for the period 1 July 1974 to 30 June 1976 in accordance with Article 22 of the Constitution of the International Labour Organisation, from the Government of Norway on the measures taken to give effect to the provisions of

CONVENTION (NO. 137) CONCERNING DOCK WORK, 1973,

ratification of which was registered on 21 October, 1974.

I

The Convention is applied by means of

(a) National laws and regulations:

(1) Provisional regulations concerning daily cash benefit from the unemployment insurance for dockworkers pursuant to Act concerning Unemployment Insurance, section 11, last paragraph.

(b) Collective agreements

(2) Wage rates for dockworkers along the coast from Halden to Namsos.

(3) Agreement between the Norwegian Employers' Confederation and others and the Confederation of Trade Unions in Norway and others.

(4) Wages rates for dockworkers in Oslo.

(5) Framework Agreement on a fixed wage system for dockworkers.

None of the above-mentioned Regulations and Agreements have been concluded as a result of the Convention, as most of them were entered into before ratification took place.

II

Article 1.

Paragraph 1. The terms "dockworkers" and "dock work" are not defined in a formal manner, but the special regulations applicable concerning daily cash benefit during unemployment for dockworkers, and the collective agreements, apply to all workers having dock work as their main occupation and who are regularly attached to and bound to be at the disposal of a certain office established

by an agreement between the main organisations of the employers and workers, or which are run by one of these organisations.

The task of these offices is to run all dockwork in the port. As a rule, the term dockworker in the collective agreements does not include supervisors, guards and tallymen. Nor are the craneoperators on fixed crane installations included in the term. The loading and unloading of vessels in foreign trade under 50 tons are not included in the main agreement between the organisations (Annex 2, Section 1.2) but such vessels are very rare.

No revisions has been made of the definitions of dockworkers and dockwork. As regards the problems that have arisen owing to new methods of cargo handling, an attempt has been made to solve them through the collective agreements.

Article 2.

Paragraph 1. Dock work offices have been established in the ports. These offices have exclusive right to all dock work in the port. All regular dockworkers must be registered at this office and be members of the workers' organisation. The office is responsible for an even distribution of tasks on all regular workers through job rotation.

Paragraph 2. A fixed wage system for dockworkers has been introduced in five ports, viz. Oslo, Stavanger, Sandnes, Bergen, and Trondheim. (cf. Annex 5, framework agreement for a fixed wage system for dockworkers).

In the other ports the individual worker is guaranteed a minimum wage through collective agreements, the employer paying an increment to the actually earned income if this should drop under a certain computed minimum. Cf. Annex 2 point IV, agreement on the rationalisation of dockwork, and the guarantees for maintaining opportunities of earning for those remaining in the occupation. The agreement has been made applicable for the whole country.

In other respects reference is made to the provisions concerning daily cash benefit during unemployment for dockworkers, these provisions apply in 50 ports all over the country. According to these provisions, daily cash benefit may be granted for weeks during which the individual workers' computed earning from work does not exceed five-sixths of a fixed normal income. At present this fixed normal income amounts to Nkr 720 per week.

The rates for the daily cash benefit are computed pursuant to ordinary provisions laid down in Chapter 4 of the National Insurance Act. The number of benefit days is computed according to the following table:

Computed weekly income in per cent of normal income		Benefit days per week
from	to	
0	16,6 per cent	6
16,7	33,3 per cent	5
33,4	49,9 per cent	4
50,0	66,6 per cent	3
66,7^	83,2 per cent	2
83,3		0

As a amount of the daily cash benefit depends on the actual earning of the insured person during the last or the three last completed calendar years before an application for benefit is submitted, the minimum income which every dockworker is guaranteed, will vary.

Article 3.

Paragraph 1. Registers for dockworkers are maintained by the above-mentioned dock-work offices. Most ports have only one register for all types of dock work, except the largest ports in which the registers may be subdivided into occupational categories e.g. by grouping truck-drivers as a separate unit.

Paragraphs 2 and 3. It can be pointed out that registered dockworkers have an exclusive right to all dock work which is run by the dock-work offices. Only if the

offices themselves do not have a sufficient number of registered workers, regular or others, the employer may engage manpower from other quarters.

Regular workers have a duty to report. When reporting for work, a waiting period is paid for a minimum of two hours if the worker does not obtain any assignment. This is described in the basic agreement, Annex 2, Part 2 Section 6. The circumstances relating to the time of reporting and the duty to report may vary slightly from one port to another, and may also be regulated in detail in some agreements, as for example in Annex 3 section 13, wage agreement for the Port of Oslo.

Article 4.

Paragraph 5. The responsibility for adjusting the size of the regular working force to the needs in each particular port rests upon the Board of the dock-work office.

In some of the largest ports there has been appointed a personnel committee on which this responsibility rests, cf. Annex 5. In both these organs the organisations of workers and employers are represented in equal numbers. Reference is made to Annex 2, p. 15, Agreement concerning the Rationalisation of Dock Work.

Paragraph 2. New methods for cargo handling have not entailed any problems in regard to redundant workers in Norway. The workers' and the employers' organisations have reached solutions through negotiations. In many instances a satisfactory remedy was found in the reduction of the labour force through natural decline.

Reference is made to the annexed Collective Agreements, especially Annex 2, p. 15, Agreement concerning the Rationalisation of Dock Work.

Article 6.

Vocational training:

The Directorate of Labour Inspection has during the last year in cooperation with the organisation "Vern og Velferd" (Protection and Welfare) arranged lectures and

brief courses on the subject "Safe cargo handling". Even though the main objective of these courses has not been vocational training, they nevertheless have had an effect in that direction.

In the spring of 1976 the Ministry of Local Government and Labour approved a plan for starting special vocational training courses for dockworkers under the auspices of the employment authorities. These courses will begin in the autumn of 1977.

IV

No decisions have been made by Courts of Law or other courts regarding the applications of the Convention.

V

At present there are appr. 3,000 regular dockworkers in Norway. The annual decline is appr. 5 per cent.

VI

The information above has been obtained from the workers' organisation, from the collective agreements, the Directorate of Labour Inspection, and the Directorate of Labour.

Copies of the present report will be communicated to the Confederation of Trade Unions in Norway and the Norwegian Employers' Confederation.

Attachment 2

Bedriftsforbundet

Akersgaten 41, 0158 Oslo
Telefon: 23 35 70 10
Faks: 23 35 70 11

post@bedriftsforbundet.no
www.bedriftsforbundet.no
Foretaksnr. 866 145 172 MVA

Kvale Advokatfirma DA
Postboks 1752 Vika, 0122 Oslo
Att: Attorney at law Nicolay Skarning

Oslo, the 6th of February 2014

Dear Sir

The number of members in Bedriftsforbundet has increased significantly over the last 5 years.

As well as being a business organisation, we represent Norwegian employers to authorities, employees and unions.

In January, Bedriftsforbundet had 3996 members spread across all 19 regions of Norway.

Yours sincerely

Lars-Erik Sletner
CEO
Bedriftsforbundet
Cellphone: 0047 411 07 695

Bedriftsforbundet

Bedriftsforbundet
Akersgt. 41, 0158 OSLO
Org.nr: 866 145 172 MVA

Attachment 3

05 NOV. 2007

NORWAY

REPORT

for the period ending 31 May 2007, in accordance with article 22 of the Constitution of the International Labour Organisation, from the Government of Norway, on the measures taken to give effect to the provisions of the

CONVENTION NO 137 CONCERNING DOCK WORK

ratification of which was registered on 21 October 1974.

I - IV

There have been no changes in law and/or practice since previous reports. Reference is therefore made to previous reports.

V

Concerning the request to state the numbers of registered dockworkers, The Norwegian Transport Workers' Union reports that the Union had 441 working members per the end of 2006. The workers were dispersed on 49 harbours, and were all involved in loading and unloading of ships. The members divide as follows:

The General Agreement concerning fixed salary	216 members in 22 harbours
South and North Norway Agreement	71 members in 17 harbours
The Harbour Tariff	26 members in 7 harbours
LKAB, Narvik	94 members in 1 harbour
Other harbours	34 members in 2 harbours
Sum	441 members in 49 harbours

VI

This report has been forwarded to the Norwegian Tripartite ILO Committee and we have received comments from The Confederation of Trade Unions (LO) to the report. The comments are enclosed. ok.

Oslo, October 2007

1 5 OCT. 2004

NORWAY

REPORT

for the period ending 31 May 2004, in accordance with article 22 of the Constitution of the International Labour Organisation, from the Government of Norway, on the measures taken to give effect to the provisions of the

CONVENTION NO 137 CONCERNING DOCK WORK, 1973

ratification of which was registered on 21 October 1974.

I - IV

Reference is made to previous reports.

V

We can provide the following information in addition to that given in our previous report: The Labour Inspection Authority oversees dock work on a par with other work. The Authority does not draw up special reports on dock work and does not keep a register of dockworkers.

In Norway the Convention's requirements as to registration and priority of engagement are established in collective bargaining agreements between the main organisations of workers and employers. The Norwegian Confederation of Trade Unions (LO) and the Norwegian Union of Transport Workers on the one hand, and the Confederation of Norwegian Business and Industry (NHO) and the Federation of Logistics and Transport Industries on the other, operate collective bargaining agreements for stevedoring workers. The Union of Transport Workers provided the following figures to the Directorate of Labour Inspection on 26 June 2002:

"The LO and the Norwegian Union of Transport Workers currently operate collective bargaining agreements covering 381 permanent stevedores in 33 ports. A further 111 dockworkers are permanently employed by LKAB Narvik Malmhavn. All have dock work as their full-time occupation.

At a further 10 ports the resident group of stevedores (numbering about 50) have obtained permanent employment with a terminal operator, and consequently also perform terminal assignments."

An approach dated 18 June 2004 from the Directorate to the Union of Transport Workers elicited the following information:

As of 1 January 2004, 365 dockworkers are registered members of the Norwegian Union of Transport Workers, including 103 at LKAB Narvik Malmhavn. However, the latter also includes workers carrying out assignments other than dock work. The same figures apply as were stated in 2002.

VI

The present report will be communicated to the Social Partners in Norway.

Oslo, August 2004

0 2 OCT. 2002

NORWAY

REPORT

for the period ending 31 May 2002, in accordance with article 22 of the Constitution of the International Labour Organisation, from the Government of Norway, on the measures taken to give effect to the provisions of the

CONVENTION NO 137 CONCERNING DOCK WORK, 1973

ratification of which was registered on 21 October 1974.

I - II

Reference is made to previous reports.

III

Dock work and dockworkers are subject to supervision by the Labour Inspection Authority. The Working Environment Act with appurtenant regulations provides the legal basis empowering the Labour Inspection Authority's inspectors at the various regional and divisional offices to require employers to ensure a satisfactory working environment. However, no specific strategy exists for supervision of dockworkers.

On a general basis we can inform you that inspections are planned with a basis in risk assessments, such that industries and undertakings with a high frequency of accidents are inspected more often than industries and undertakings facing smaller working environment problems. The local labour inspections decide their inspection priorities within their geographical jurisdictions.

Moreover, the Norwegian Ship Control supervises ships' loading and unloading installations, ladders, gangways etc., that are part of the ship's equipment, to ensure that they are in proper condition. Regulations require the Labour Inspection Authority and the Ship Control to collaborate and coordinate their supervisory activity, see Annex no.1 and no. 2 to the Dock Work Regulations, order no. 527 (unchanged since 1995).

IV

The enclosed ruling of 26 February 2001 from the Labour Court of Norway concerns interpretation of a collective pay agreement (Framework Agreement on a Fixed-Wage System established by the Confederation of Norwegian Business and Industry and the

National Association of Port and Terminal Operators) in the area covered by the Convention.

The ruling was to the effect that loading and unloading of the ships "Karmsund" and "Sunnmøre" at Spjelkavik Quay shall be performed by dockworkers engaged by the administration at the Port of Ålesund.

V

Registration of dockworkers, cf. Article 3 of the Convention:

In all public ports, a pool of permanent dockworkers has a contractually agreed pre-emptive right to perform loading and unloading work. In the largest ports registration takes place when dockworkers are engaged by a loading and unloading office on a permanent basis. The loading and unloading office hires out the dockworkers to shipping agents and other port users. Collective wage agreements require shipping agents bound by such agreements to employ dockworkers from the loading and unloading office when ships call at port.

In smaller ports registration is taken care of by provisions in the collective wage agreement to the effect that the local trade union association of dockworkers and the local port users shall jointly determine the size of the permanent pool of dockworkers. Workers in the permanent pool have a contractually agreed pre-emptive right to perform loading and unloading work. When ships call at port the shipping agents contact a loading and unloading office to engage the required number of workers from the permanent pool.

VI

The present report will be communicated to the Confederation of Trade Unions in Norway and the Confederation of Norwegian Business and Industry.

Oslo, September 2002

NORWAY

15 SEP. 1997

REPORT

for the period ending 30 June 1997, in accordance with article 22 of the Constitution of the International Labour Organisation, from the Government of Norway, on the measures taken to give effect to the provisions of the

CONVENTION NO 137 CONCERNING DOCK WORK, 1973

ratification of which was registered on 21 October 1974.

I - II

New regulations on dock work (order no. 527) of 10 November 1994 went into force on 1 September 1995. They replace previous regulations on dock installations (order no. 120) and regulations on safety measures in connection with loading and unloading ships (order no. 133). The regulations on dock work contain requirements as to workplaces, rescue equipment, performance of work and training of employees.

Re article 1

Section 1 of the regulations on dock work set out their scope of application.

Re article 2

By virtue of Act no. 2 of 6 January 1995 a new section 58 A was incorporated in the Working Environment Act. The amendment, which went into effect on 1 February 1995, deals with temporary employment contracts and applies within the Convention's area of application. See enclosure.

Re article 6

Sections 30, 31 and 32 of the regulations on dock work address matters regulated in Article 6.

III - V

Reference is made to previous report.

VI

The present report will be communicated to the Confederation of Trade Unions in Norway and the Confederation of Norwegian Business and Industry.

Oslo, September 1997

C.137

NORWAY

16 NOV. 1992

R E P O R T

for the period 1 July 1988 to 30 June 1992, made by the Government of Norway, in accordance with article 22 of the Constitution of the International Labour Organisation, on the measures taken to give effect to the provisions of the

DOCK WORK CONVENTION 1973 (no 137)

ratification of which was registered on 21 October 1974.

I

Reference is made to the previous report.

II

Article 1

Reference is made to the previous report.

Article 2

Reference is made to the previous report.

As from 1 October 1990, dock work is covered by an act which imposes on employers an obligation to pay full wages even in the case of temporary lay-offs (after a certain period of cover by the unemployment insurance), and the ordinary rules for unemployment benefit.

Articles 3 - 6:

Reference is made to the previous report.

III

Reference is made to the previous report.

IV

Reference is made to the previous report.

V

Reference is made to the previous report.

VI

This report will be communicated to the Confederation of Norwegian Business and Industry and to the Confederation of Trade Unions in Norway.

C.137

16 JAN 1989

4.01.1989

R E P O R T

for the period July 1st 1984 to June 30th 1988, made by the Government of Norway, in accordance with article 22 of the Constitution of the International Labour Organisation, on the measures taken to give effect to the provisions of the

DOCK WORK CONVENTION, 1973 (No. 137).

ratification of which was registered on October 21st 1974.

a) Act no. 4 of 4 February 1977 relating to worker protection and working environment

Act no. 12 of 17 June 1966 concerning national insurance, chapter 4, benefit during unemployment.

b) Framework agreement for the ports of Oslo, Stavanger, Sandnes, Bergen, Trondheim. Drammen, Skien, Porsgrunn, Kristiansand S, Halden, Fredrikstad, Moss and Sarpsborg relating to a fixed-wage system for loading and unloading workers (dockworkers).

Collective wage agreement between the main employers' and workers' organizations.

Agreement on rationalization in regard to loading and unloading work (dock work) including inter alia a minimum-wage guarantee.

Article 1

Paragraph 2:

The concepts "dock work" and "dockworker" have not been formally defined by the authorities, but follow from agreements and practice arrived at between employers at the port and the workers' organizations associated with the occupational group which is traditionally engaged in loading and unloading ships at the port. In practice "dock work" is limited to the work of loading and unloading of a ship and handling the ship's cargo while the ship is in port. Dockworkers have right of preference to this work, in accordance with their collective wage agreement. A "dockworker" is a worker whose main activity is "dock work", as defined above, and who is attached to a specific office or administrative agency established by agreement between the parties.

The collective agreements on "dock work" are as a rule confined to loading and unloading workers. Other workers are

not included - e.g. terminal workers, forklift truck drivers etc., supervisors, tallymen and crane operators. However, under the terms of the agreement, the employers' organization undertakes to utilize loading and unloading workers in other dock work to the greatest extent possible.

Article 2

Paragraph 1:

Reference is made to the previous report.

The administative body established by agreement between the employer and worker organizations is permitted to lease loading and unloading workers for assignments in the port, enabling dockworkers to become permanent employees of the administrative body. Leasing of labour is as a rule prohibited in Norway.

In the event of unemployment, dockworkers are assisted in finding work by the public employment service, which also provides support for retraining and training if necessary.

Paragraph 2:

At major ports, workers attached to the administrative body receive fixed pay. Workers at other ports are covered by minimum pay guarantees set out in collective agreements. Special rules for unemployment benefit for dockworkers ensure these workers are accorded better rights to unemployment benefit in the event of lay-offs than are available to other workers.

Article 3

Paragraph 1:

Dockworkers are registered with an administrative body established pursuant to collective pay agreement.

Paragraph 2 & 3:

Registered dockworkers have priority of engagement for dock work pursuant to collective agreement. This work is allocated by the administrative body by agreement between the parties. Only if this administrative body lacks the required number of workers can employers engage workers from elsewhere. Moreover, under the terms of the agreement the employers' organization undertakes to utilize loading and unloading workers in other dock work to the greatest possible extent.

Article 4

Paragraph 1:

Under the collective wage agreement, a personnel committee with an equal number of representatives from the organizations and the employer are required to assess continually the size of the labour force in relation to the needs of the port, and regulate the labour force accordingly.

Paragraph 2:

Workers who are laid off or given notice are ensured reasonable income by way of unemployment benefit and are assisted by the public job placement service. See also the special rules referred to under Article 2, paragraph 1.

Article 5

Reference is made to the latest report.

Moreover, port authorities encourage improved cooperation between the parties at ports.

Article 6

The Working Environment Act with provisions covering inter alia safety, health and welfare, applies to the full for loading and unloading and other dock work. Under this Act the employer is required to provide workers with the necessary training, drills and instruction. To secure a safety service, special rules have been laid down concerning local safety delegates and working environment committees for loading and unloading work.

Where special types of work are concerned, specific rules have been laid down relating to training or requirements made of workers. This applies inter alia in connection with the use of lifting appliances and operation of forklift trucks. Furthermore, courses are now available for forklift truck operators and for personnel handling dangerous general cargo.

Furthermore, a provision concerning training is set out in the collective agreement between the parties.

III

Reference is made to the previous report.

IV

Reference is made to the previous report.

V

Reference is made to the previous report.

VI

This report will be communicated to the Norwegian Employers' Confederation and the Norwegian Trade Union Federation.

C. 137

REPORT

for the period ending 30 June 1984 in accordance with Article 22 of the Constitution of the International Labour Organisation, from the Government of Norway on the measures taken to give effect to the provisions of

CONVENTION (NO. 137) CONCERNING DOCK WORK, 1973,

ratification of which was registered on 21 October, 1974.

I-V

Reference is made to previous reports.

VI

This report will be communicated to the Confederation of Trade Unions in Norway and the Norwegian Employers' Confederation.

[illegible]

[illegible] ratification of which was registered on [illegible], 1979.

I

Act on Workers Protection and Working Environment of 4 February 1977.

II

Article 1, paragraph 2

"Regulations on protection measures at loading and unloading of ships (stevedore work)" in force has no special definition of dock worker and dock work, but in accordance with usual national practice the words are defined as follows:

Dock worker is a person who as his usual occupation carries out work with handling of goods in a harbour, both on board and on shore.

Dock work covers work carried out by dock workers, and mooring and bunkering of ships.

New methods of cargo handling have not resulted in changes of the said definitions.

The ratification of Convention No. 152 concerning Occupational Safety and Health in Dock Work was registered by the ILO on 5 December 1980. In connection with the ratification our present regulations and rules are being revised. The revision of the regulations are carried out in the Directorate for Labour Inspection. The draft regulations will be sent to the main organizations of employers and worker for

[illegible]

[illegible]

Paragraph 2

Working hours and minimum pay has been agreed upon in collective agreement and framework agreement on fixed pay system for dock workers (enclosed). Contributions to unemployment insurance are paid by workers and employers as contribution to the National Insurance Fund. The provisions cover the whole country.

./.

Article 3, paragraph 1

The Central Bureau of Statistics published every quarter of a year a statistical survey and a yearly over-all survey. The survey gives figures for each harbour, but everything is collected in one book cover.

./.

Paragraphs 2 and 3

The dock workers are engaged according to agreed upon rotation system.

Article 4, paragraph 1

Reference is made to statement under Article 3, paragraph 1.

Paragraph 2

When the number of dock workers has to be reduced, the authorities have rules for measures which can reduce the adverse effects. The measures are first unemployment insurance, then placement in other employment or retraining and change- over to other work.

[illegible]

[illegible]

[illegible]

R E P O R T

for the period ending 31 June 1978 in accordance with Article 22 of the Constitution of the International Labour Organisation, from the Government of Norway on the measures taken to give effect to the provisions of

CONVENTION (NO. 137) CONCERNING DOCK WORK, 1973,

ratification of which was registered on 21 October, 1974.

I

Act on Workers Protection and Working Environment of 4 February 1977.
Reference is further made to previous report.

II

Reference is made to previous report.

Text in APPL/DOC

The Act relating to Workers Protection and Working Environment provides that the King-in-Council may decide that there sahll be special local working environment committees or safety representatives for dock work. Special regulations in this respect are being considered.

The Worker Protection Act's general provisions for ensuring good and safe working conditions also apply in respect of dock work. Moreover, special comprehensive rules have been laid down to protect the employees against injury during dock work operations. Supervision of implementation of these rules is the responsibility of a special inspection body consisting of three permanent inspectors. The other, general, inspection bodies also participate in monitoring working conditions.

Inter alia, special supervisors have been appointed and are attached to the local labour inspection in the major ports.

Direct request 1978.

1. Safety during work:

   The code of rules for dock workers' safety primarily involve the following

   a. Regulations regarding protective measures in connection with loading and unloading ships (stevedore work).

b. Rules for testing, examining, heat treatment and marking, etc. lifting devices (loading and unloading) and implements and tools. Keeping a checkbook.

c. Guidance, Directions and Information Material relating to workers' safety and health have been prepared and sent out both to employers, supervisiors and employees. A list of these is included in the last pages of the same booklet as the regulations, cf. order no. 133a.

d. Trucks and truck-driving:
Regulations regarding trucks and truck-driving contain special requirements regarding the truck and its equipment, as well as the truckdriver's age and the training which shall lead to certification as a truck-driver.

The number of truckdrivers undergoing training is constantly increasing. Working environment committees and the Labour Inspection service are working for putting a stop to the nuisance created by exhaust fumes from trucks left with the motor running.

e. Loading and unloading of dagerous goods: Guidance No. 5, order No. 298, "Loading and Unloading Dangerous Goods" draws up specific safety requirements regarding prior notification of the dockworkers, personal protection equipment, cargo-handling and regarding the measures to be implemented in the event of leakage and mishap. Packaging and marking according to IMCO's code.

According to Section 18 of the Working Environment Act, which entered into force on 1 July, 1977, dangerous goods shall be marked inter alia with the name of the substance in question and a clear warning in Norwegian.

The requirement to the effect that dangerous cargo shall be marked in Norwegian - regardless of import from abroad, and prior to unloading - has led to difficulties in getting cargo unloaded.

Work is in progress with a view to regulating this matter.

2. Safety representatives and working environment committees:
Sections 23 - 26 require that safety representatives be elected from employees of recognized capability at the undertaking with experience of and insight into its working conditions.

Elections of safety representatives have been carried out and the scheme functions by and large well in connection with dock work.

Working environment committees are as a rule established at docks employing 20 or more dock workers. As a rule this scheme functions well.

3. First-aid equipment:
According to section 14 - [illegible] the employer shall ensure that first-aid equipment is placed so as to be readily accessible. Cf. order No. 176 - Guidance on first-aid equipment.

As a rule, placement of this equipment has been daily carried out, but renewal and replacement have in part been neglected.

Instruction in the use of first-aid equipment takes place in part at courses arranged by the employees' own association, the AOF. (The Workers' Education Association).

4. Welfare rooms:
According to Section 14 - 8 h) and 11 of the Working Environment Act, the employer shall ensure that sanitary arrangements and welfare rooms are of satisfactory dimensions and design. Further, that the rooms are maintained in a clean and tidy condition. Cf. order No. 185 x.

With certain exceptions welfare rooms placed at the disposal of dockworkers are partly of a high standard.

III

The Ministry of Local Government and Labour. The Directorate for Labour Inspection.

IV

Reference is made to previous report.

V

At present there are approximately 2 500 regular dockworkers in Norway. The annual decline is approximately 5 per cent.

VI

This report will be communicated to the Confederation of Trade Unions in Norway and the Norwegian Employers' Confederation.

1st report

2 DEC 1976

R E P O R T

for the period 1 July 1974 to 30 June 1976 in accordance with Article 22 of the Constitution of the International Labour Organisation, from the Government of Norway on the measures taken to give effect to the provisions of

CONVENTION (NO. 137) CONCERNING DOCK WORK, 1973,

ratification of which was registered on 21 October, 1974.

I

The Convention is applied by means of

(a) National laws and regulations:

(1) Provisional regulations concerning daily cash benefit from the unemployment insurance for dockworkers pursuant to Act concerning Unemployment Insurance, section 11, last paragraph.

(b) Collective agreements

(2) Wage rates for dockworkers along the coast from Halden to Namsos.

(3) Agreement between the Norwegian Employers' Confederation and others and the Confederation of Trade Unions in Norway and others.

(4) Wages rates for dockworkers in Oslo.

(5) Framework Agreement on a fixed wage system for dockworkers.

None of the above-mentioned Regulations and Agreements have been concluded as a result of the Convention, as most of them were entered into before ratification took place.

II

Article 1.

Paragraph 1. The terms "dockworkers" and "dock work" are not defined in a formal manner, but the special regulations applicable concerning daily cash benefit during unemployment for dockworkers, and the collective agreements, apply to all workers having dock work as their main occupation and who are regularly attached to and bound to be at the disposal of a certain office established

by an agreement between the main organisations of the employers and workers, or which are run by one of these organisations.

The task of these offices is to run all dockwork in the port. As a rule, the term dockworker in the collective agreements does not include supervisors, guards and tallymen. Nor are the craneoperators on fixed crane installations included in the term. The loading and unloading of vessels in foreign trade under 50 tons are not included in the main agreement between the organisations (Annex 2, Section 1.2) but such vessels are very rare.

No revisions has been made of the definitions of dockworkers and dockwork. As regards the problems that have arisen owing to new methods of cargo handling, an attempt has been made to solve them through the collective agreements.

Article 2.

Paragraph 1. Dock work offices have been established in the ports. These offices have exclusive right to all dock work in the port. All regular dockworkers must be registered at this office and be members of the workers' organisation. The office is responsible for an even distribution of tasks on all regular workers through job rotation.

Paragraph 2. A fixed wage system for dockworkers has been introduced in five ports, viz. Oslo, Stavanger, Sandnes, Bergen, and Trondheim. (cf. Annex 5, framework agreement for a fixed wage system for dockworkers).

In the other ports the individual worker is guaranteed a minimum wage through collective agreements, the employer paying an increment to the actually earned income if this should drop under a certain computed minimum. Cf. Annex 2 point IV, agreement on the rationalisation of dockwork, and the guarantees for maintaining opportunities of earning for those remaining in the occupation. The agreement has been made applicable for the whole country.

In other respects reference is made to the provisions concerning daily cash benefit during unemployment for dockworkers, these provisions apply in 60 ports all over the country. According to these provisions, daily cash benefit may be granted for weeks during which the individual workers' computed earning from work does not exceed five-sixths of a fixed normal income. At present this fixed normal income amounts to Nkr 720 per week.

The rates for the daily cash benefit are computed pursuant to ordinary provisions laid down in Chapter 4 of the National Insurance Act. The number of benefit days is computed according to the following table:

Computed weekly income in per cent of normal income		Benefit days per week
from	to	
0	16,6 per cent	6
16,7	33,3 per cent	5
33,4	49,9 per cent	4
50,0	66,6 per cent	3
66,7^	83,2 per cent	2
83,3		0

As a amount of the daily cash benefit depends on the actual earning of the insured person during the last or the three last completed calendar years before an application for benefit is submitted, the minimum income which every dockworker is guaranteed, will vary.

Article 3.

Paragraph 1. Registers for dockworkers are maintained by the above-mentioned dock-work offices. Most ports have only one register for all types of dock work, except the largest ports in which the registers may be subdivided into occupational categories e.g. by grouping truck-drivers as a separate unit.

Paragraphs 2 and 3. It can be pointed out that registered dockworkers have an exclusive right to all dock work which is run by the dock-work offices. Only if the

offices themselves do not have a sufficient number of registered workers, regular or others, the employer may engage manpower from other quarters.

Regular workers have a duty to report. When reporting for work, a waiting period is paid for a minimum of two hours if the worker does not obtain any assignment. This is described in the basic agreement, Annex 2, Part 2 Section 6. The circumstances relating to the time of reporting and the duty to report may vary slightly from one port to another, and may also be regulated in detail in some agreements, as for example in Annex 3 section 13, wage agreement for the Port of Oslo.

Article 4.

Paragraph 5. The responsibility for adjusting the size of the regular working force to the needs in each particular port rests upon the Board of the dock-work office.

In some of the largest ports there has been appointed a personnel committee on which this responsibility rests, cf. Annex 5. In both these organs the organisations of workers and employers are represented in equal numbers. Reference is made to Annex 2, p. 15, Agreement concerning the Rationalisation of Dock Work.

Paragraph 2. New methods for cargo handling have not entailed any problems in regard to redundant workers in Norway. The workers' and the employers' organisations have reached solutions through negotiations. In many instances a satisfactory remedy was found in the reduction of the labour force through natural decline.

Reference is made to the annexed Collective Agreements, especially Annex 2, p. 15, Agreement concerning the Rationalisation of Dock Work.

Article 6.

Vocational training:

The Directorate of Labour Inspection has during the last year in cooperation with the organisation "Vern og Velferd" (Protection and Welfare) arranged lectures and

brief courses on the subject "Safe cargo handling". Even though the main objective of these courses has not been vocational training, they nevertheless have had an effect in that direction.

In the spring of 1976 the Ministry of Local Government and Labour approved a plan for starting special vocational training courses for dockworkers under the auspices of the employment authorities. These courses will begin in the autumn of 1977.

IV

No decisions have been made by Courts of Law or other courts regarding the applications of the Convention.

V

At present there are appr. 3,000 regular dockworkers in Norway. The annual decline is appr. 5 per cent.

VI

The information above has been obtained from the workers' organisation, from the collective agreements, the Directorate of Labour Inspection, and the Directorate of Labour.

Copies of the present report will be communicated to the Confederation of Trade Unions in Norway and the Norwegian Employers' Confederation.

Attachment 4

31 JAN 2014

NS

DAMPSKIBSEXPEDITØRERNES FORENING

To: Council of Europe
Committee of Social Rights
Secretariat of the Social Charter
67075 Cedex
Strasbourg
France

Oslo, January 29, 2014

Complaint no 103/2013

As managing director of Ships- and Terminal Operators Association, Oslo, Norway, and managing director of the Office of Dock Workers in Oslo, Norway, I gave witness in Drammen City Court on Wednesday, January 15, 2014.

I witnessed that in order to be hired as a dock worker in Oslo harbor you will need to be organized in the labor union "Norwegian Transport Federation of Dock Workers" (Norsk Transportarbeiderforbund) (NTF). 100 % of the permanent work force at the "Office of Dock Workers in Oslo" are members of the union NTF.

NTF is claiming to be the sole Union to register their members as dock workers via the Royal Norwegian Labor Department, and in accordance with to the ILO convention. This has been challenged, as not being in accordance with the convention. The Norwegian government has acknowledged that by mistake they have left the responsibility to register Dock workers with NTF.

The Dock workers office in Oslo will organize the preferential right of all loading and discharging of ships in Oslo harbor. Such work is shared between the registered dock workers according to a list organized by NTF. Any dock worker leaving NTF will permanently be placed at the bottom of such list, and as such be the victim of the poorest paying job at any time. In practice, the lowest paying jobs will not bring a sufficient income to make a reasonable living in Norway. As such it will be impossible to work as a non-unionized dock-worker in Oslo harbor.

Your faithfully

Oluf M. Mohn
Managing Director
Ships- and Terminal Operators Association

Ormsundveien 9
0198 Oslo

Org.no: 971 420 774

tel: +47 23 03 10 51
email: post@dampen.org

Attachment 5

Translation from Norwegian

787

REPORT

for the period from 1 July 1974 to 30 June 1976 in accordance with Article 22 of the ILO Constitution, from the Government of the Kingdom of Norway with regard to the measures that have been taken to implement the provisions of

CONVENTION (NO. 137) CONCERNING DOCK WORK, 1973,

ratification of this Convention was registered on 21 October 1974.

I

The Convention has been implemented by means of

(a) National laws and regulations:

(1) Temporary regulations concerning unemployment benefits for dock workers pursuant to Section 11, last paragraph of the Unemployment Benefits Act.

(b) Collective agreements

(2) Pay rates for dock workers along the coast from Halden to Namsos.

(3) Agreement between the Norwegian Employers' Confederation (NAF) and other parties, and the Norwegian Confederation of Trade Unions (LO) and other parties.

(4) Pay rates for dock workers in Oslo.

(5) Framework Agreement for a Fixed Pay System for Dock Workers.

None of the aforementioned regulations and agreements were enacted as a result of the Convention, since most of them were initiated or implemented prior to ratification.

II

Article 1

Paragraph 1. The terms "dock workers" and "dock work" have not been formally defined, but the special rules that apply with regard to unemployment benefits for dock workers, and to the collective agreements, apply to all of the workers that have dock work as their main employment, and who are regularly attached to and required to be available to a specific office that has been established by an agreement between the central organisations for employers and employees, or is managed by one of these organisations.

The task of these offices is to manage all of the dock work at the port. As a rule, the term dock work in the collective agreements does not encompass inspectors, guards and accountants (tallymen). Crane operators on fixed crane installations are not included in the

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

term dock work either. The loading and unloading of ships in international trade of less than 50 tonnes is not encompassed by the Basic Agreement between the organisations (Annex 2, Section 1.2), but such ships are very rare.

788

There have been no revisions of the definitions of dock workers and dock work. With regard to the problems that have arisen due to new cargo handling methods, an attempt has been made to resolve these problems through collective agreements.

Article 2

Paragraph 1. Dock work offices have been established at the ports. These offices have exclusive rights to all dock work at the port. All regular dock workers must be registered at this office and must be members of the workers' organisation. The office is responsible for a fair distribution of tasks among all of the regular workers through a job rotation system.

Paragraph 2. A fixed pay system for dock workers has been introduced at five ports, namely: Oslo, Stavanger, Sandnes, Bergen and Trondheim. (See Annex 5, framework agreement for a fixed pay system for dock workers.)

At the other ports, the individual worker is guaranteed a minimum pay through the collective agreements, since the employer pays a supplement to the actual income earned, if it falls below the defined minimum amount. See Annex 2, Item 4, Agreement on the Rationalisation of Dock Work, and guarantees for maintenance of the earning power of those who remain in the occupation. This agreement has been made applicable to the entire country.

In other contexts, reference has been made to the regulations concerning unemployment benefits for dock workers, which apply to 50 ports throughout the country. In accordance with these regulations, unemployment benefits may be paid for weeks during which the individual worker's overall earned income does not exceed five-sixths of the defined normal income. At the present time this normal income has been set at NOK 720 per week.

The amount of the unemployment benefits is determined by following the ordinary provisions established in Chapter 4 of the National Insurance Act. The number of benefit days is calculated based on the following table:

Calculated weekly income as a percentage of normal income		Benefit days per week
from	to	
0	16.6%	6
16.7	33.3%	5
33.4	49.9%	4
50.0	66.6%	3
66.7	83.2%	2
83.3		0

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

Since the amount of unemployment benefits depends on the pay level of the person insured during the previous year, or during the three previous calendar years prior to the application for benefits being submitted, the guaranteed minimum income for each individual dock worker will vary.

789

Article 3

Paragraph 1. Registers of dock workers are kept by the aforementioned dock work offices. Most ports have only a single register for all types of dock work, except for the largest ports, where the registers may be divided into occupational categories, such as by classifying forklift operators as a special group.

Paragraphs 2 and 3. It is emphasised that registered dock workers have exclusive rights to all dock work that is assigned by the dock work offices. Only if these offices do not have a sufficient number of registered workers, regular or otherwise, may the employer hire manpower from other sources.

Regular workers have an obligation to report. When they report for work, they will be paid for a minimum of two hours of wait time if not given a job. This is described in the Basic Agreement, Annex 2, Part 2, Section 6. The circumstances surrounding the reporting period and the duty to report may vary somewhat from one port to another, and it may be regulated in detail in some agreements, such as in Annex 3, Section 13 of the pay agreement for the Port of Oslo.

Article 4

Paragraph 5. The responsibility for adjusting the size of the regular work force in relation to the needs of each individual port lies with the board of the dock work office.

At some of the largest ports, a personnel committee that is responsible for such adaptation has been appointed, cf. Annex 5. In both of these organs, there are an equal number of representatives present from the employers' organisations and from the workers' organisations . Refer to Annex 2, p. 15, Agreement on the Rationalisation of Dock Work.

Paragraph 2. New methods for cargo handling have not entailed any problems with regard to redundant manpower in Norway. The employers' and the workers' organisations have arrived at solutions through negotiations. In many cases, a satisfactory solution was found by reducing the workforce through natural attrition.

Reference is made to the enclosed collective agreements, in particular Annex 2, p. 15, Agreement on the Rationalisation of Dock Work.

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

Article 6

Vocational training:

During the past year, the Directorate of Labour Inspection has arranged lectures and brief courses on the topic of "Safe Cargo Handling" in cooperation with the safety organisation "Vern og Velferd".

790

Even though vocational training has not been the main intent of these courses, they have nevertheless had such an effect.

In the spring of 1976, the Ministry of Local Government and Labour approved a plan to start special vocational training courses for dock workers under the supervision of the employment authorities. These courses will start in the autumn of 1977.

IV

No decisions have been made by courts or other judicial authorities with regard to the implementation of the Convention.

There are now approximately 3,000 permanently employed dock workers in Norway. There is an annual reduction of around 5%.

VI

The above information above has been taken from worker organisations, collective agreements, the Directorate of Labour Inspection, and the Directorate of Labour.

Copies of this report will be sent to the Norwegian Confederation of Trade Unions (LO) and the Norwegian Employers' Confederation (NAF).

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

Translation from Norwegian

Norwegian Parliament (Storting)
Labour and Social Affairs Committee
0026 Oslo
E-mail: arbeid-sosial@stortinget.no

Kvale Advokatfirma DA
Fridtjof Nansens plass 4
P.O. Box 1752 Vika
N-0122 Oslo

Tel. +47 22 47 97 00
Fax: +47 21 05 85 85
post@kvale.no
www.kvale.no

NO 947 996 053 VAT

Oslo, 15 December 2013
Our ref.: /17218/503

Responsible attorney:
Nicolay Skarning

CLOSED SHOPS AT NORWEGIAN PORTS – COMPLAINT AGAINST NORWAY TO THE COUNCIL OF EUROPE – INFORMATION AND QUESTION OF IMPARTIALITY

1. Introduction

Reference is made to the written question and response in the Norwegian Parliament (Storting) last week, **APPENDIX 1**, which makes it necessary to brief the Labour and Social Affairs Committee on the closed shop practice and the violation of human rights at 27 Norwegian ports. Reference is made to Section 110 c of the Constitution of Norway.

A complaint was submitted against Norway on 4 September 2013 to the Council of Europe's Committee of Social Rights by Bedriftsforbundet (Complaint 103/2013) due to membership in the Norwegian Transport Workers' Union (NTF in LO) being required in order to have permanent employment. This practice is a result of the fact that the Ministry of Labour and Norwegian Labour Inspection Authority have allowed the Norwegian Transport Workers' Union (NTF) to maintain official lists of registered dock workers, who are to have preferential rights to employment at Norwegian ports, see **APPENDIX 2**. In addition, NTF maintains the so-called rotation lists of those who have priority for the next job, so that the permanently employed dock workers will have a 28-hour week, see **APPENDIX 3**. In addition, NTF has secured co-determination with regard to who is to be employed at the Norwegian loading and unloading offices through equal representation on the personnel committees at the ports, and because of the closed shop practice they have been able to take over a great deal of the employer's managerial prerogative. This has given us inefficient ports.

Norway ratified ILO Convention 137 in 1974. This gives registered dock workers preferential rights to employment at the ports. Yet the authorities did not manage the implementation of the Act and public registration. Thus NTF has been able to establish a closed shop practice

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

for permanently employed dock workers in order to get on the lists, and this has probably been a tradition since the 1920s.

2. The closed shop practice has been confirmed by both the Norwegian Transport Workers' Union (NTF) and the Confederation of Norwegian Enterprise (NHO) for all 27 ports

The fact that membership in the Norwegian Transport Workers' Union (NTF) is required in order to have a permanent job at a Norwegian port has been confirmed by the three leading union representatives for the dock workers. The leader of the Dock Workers' Union (NTF) since 2004, Terje R. Samuelsen, said the following in an interview on his own website on 18 July 2008:

"He changed his organisation at the same time and became a member of the Norwegian Transport Workers' Union. Not that he had any choice about the matter. In the ports, you must be a member of the Transport Workers' Union in order to get a permanent job as a dock worker. That is just the way it is. Dock workers have always made sure that everything was in order. Solidarity and strength are two sides of the same coin, say the dock workers." (www.havnearbeider.no, removed by NTF now). **APPENDIX 4.**

The same was subsequently confirmed higher up at NTF. First deputy leader for many years, Lars M. Johnsen stated the following to the website E 24 on 5 August 2013, see **APPENDIX 5**:

"In order to engage in loading and unloading work at Norwegian ports, you must be registered as a dock worker at present. This is only possible through becoming a member of the LO federation, the Norwegian Transport Workers' Union." Lars M. Johnsen subsequently stated:

"It is the principle that you have to be a member of NTF that is most important to the federation..." And when asked whether he would accept any other way of dock worker registration:

"No, there are so few dock workers left, and it would only be bad for the workers," he says.

The former NTF leader from 1996–2009, Per Østvold, stated the following in Oslo District Court on 20 August 2013 during the Risavika case:

"In Norway, NTF and the authorities have agreed that registration in accordance with the ILO has taken place through employment at the loading and unloading offices, and membership in NTF," see **APPENDIX 6.**

The aforementioned statements from the three most important union representatives for Norwegian dock workers leave no doubt. One must be a member of NTF in order to get permanent employment at the ports.

True translation of facsimile certified
Oslo, 10 February 2014

GOVERNMENT AUTHORIZED TRANSLATOR · ENGELSK NORSK - NORWEGIAN ENGLISH · PETER A. ESELTINE · NORGE · OSLO

Peter Allen Eseltine
Government Authorised Translator

The Confederation of Norwegian Enterprise (NHO), which has and has had the collective wage agreements for the ports with the Norwegian Transport Workers' Union (NTF) throughout the years, has also confirmed that there is a closed shop practice with NTF, and that the Ministry of Labour and the Norwegian Labour Inspection Authority have been aware of this, see **APPENDIX 7**.

3. Closed shop practice is in violation of human rights

There is little doubt that the closed shop practice is in violation of Article 11 of the European Convention on Human Rights (ECHR) and Article 5 of the European Social Charter (ESC). In 2008, the Norwegian Supreme Court stated the following about the collective agreement tax to the Norwegian Seafarers' Union in LO (Rt 2008 p. 1601), paragraph 46:

"Both the European Court of Human Rights and the European Committee of Social Rights have come to decisions on so-called "closed shop" clauses, which can be translated as "required union membership clauses". In a plenary judgment of 13 August 1981 in the case of Young, James and Webster versus the UK (ECtHR-1976-7601), Section 13, "closed shop" is defined as an enterprise or workplace where, as a result of an agreement or arrangement between one or more trade unions and one or more employers or employers' organisations, it is a requirement in practice that a group of employees must be or become members of a specific trade union... In accordance with the practice of both enforcement bodies, "closed shop" clauses are regarded as an encroachment on the negative freedom of association."

4. The Attorney General's letter of dismissal of 7 November 2013 to the Council of Europe

With the existing evidence of a closed shop practice at the ports in Norway, in violation of both Article 11 of the European Convention on Human Rights and Article 5 of the European Social Charter, one would think that the Norwegian Attorney General would be grateful for having this likely human rights violation in Norway brought to his attention, cf. Section 110 c of the Constitution of Norway. Instead he has done everything he can to have the complaint against Norway dismissed by the Council of Europe, see **APPENDIX 8**, Section 4 in his letter (paragraph 28). I have addressed him publicly about this, see **APPENDIX 9**. Bedriftsforbundet has also requested that the Minister of Labour immediately retract his letter, see **APPENDIX 10**, to no avail.

5. Minister of Labour's provisional response in the Norwegian Parliament (Storting)

The Minister of Labour responded as mentioned to a written question from Storting representative Sveinung Rotevant (Liberal Party) concerning this matter on 9 December 2013. The response was of course prepared by the Ministry of Labour. The Minister of Labour will not retract the Attorney General's letter, and he will not investigate or take any measures against any closed shop practice at Norwegian ports (see Appendix 1). When we see that Per Østvold makes reference to cooperation with the Ministry of Labour/Norwegian

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

Labour Inspection Authority with regard to maintenance of the register (Appendix 6), and an example of this has been presented in Appendix 2, there is a question of whether the Ministry of Labour and the Norwegian Labour Inspection Authority have the independent position that is required for preparation of the case, cf. Chapter II of the Public Administration Act. Both of the agencies risk criticism by the Council of Europe for their administrative practice in this area, and they would of course like the entire case to be dismissed.

6. Conclusion – Question of principle for the Labour and Social Affairs Committee

Norway must have an active relationship to human rights, and acknowledge any errors if it is proven that the provisions have been violated. Up to now, the Norwegian authorities have done the opposite in relation to the Council of Europe. They have denied information that has been disclosed, and done all that they can to ensure that the Council of Europe does not consider the closed shop practice in Norway. This is not very confidence-inspiring, and not very consistent with Section 110 c of the Constitution of Norway.

The following questions of principle are therefore relevant for the Labour and Social Affairs Committee:

a) Should the Attorney General's letter of dismissal of 7 November 2013 be retracted?

b) Should the Ministry of Labour and the Norwegian Labour Inspection Authority be disqualified from subsequent proceedings?
c) Is the ILO Convention no. 137 from 1973 obsolete due to the development of the ports, or can it be implemented in a manner that will give additional trade unions and employers access?

d) Should the system used for the hiring of manpower services at the loading and unloading offices be discontinued, and dock workers transferred to permanent positions with the terminal operators in order to to create better workplaces and more efficient ports?

oOo

I am at the service of the committee if any further information should be desired.

Yours sincerely
Nicolay Skarning [sign.]
Nicolay Skarning
Attorney MNA, partner
Kvale Advokatfirma DA
Entitled to appear before the Supreme Court
www.kvale.no

Appendices: 1 – 10

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

Translation from Norwegian

Written question from Sveinung Rotevatn (Liberal Party) to the Minister of Labour and Social Affairs

Document no. 15:154 (2013-2014)

Submitted: 2 December 2013

Sent: 3 December 2013

Answered: 9 December 2013 by Minister of Labour and Social Affairs Robert Eriksson

Question

Sveinung Rotevatn (Liberal Party): Will the Minister ensure that the complaint against Norway is reviewed by the Council of Europe's Committee of Social Rights for the purpose of clarifying whether the freedom of association has been violated at public ports in Norway, and will he implement measures regardless of this to ensure that the organisation of Norwegian ports is in accordance with human rights?

Grounds

Norway has had a system at its public ports for a long time now in which the so-called Framework Agreement between NHO and LO ensures preferential rights to work for registered dock workers. The system is based on ILO Convention no. 137, which has not been implemented by law in Norway by, but rather through a collective wage agreement between the trade unions and employer federations. According to both Bedriftsforbundet and NHO, it has been proven that the Norwegian system has resulted in a closed shop practice with the Norwegian Transport Workers' Union in order to be eligible for a permanent job as a dock worker at the public ports. A complaint about this closed shop practice has now been submitted to the Council of Europe's Committee of Social Rights as Complaint no. 103/2013. The complaint is based on an allegation that Norway is violating Article 5 of the European Social Charter by not ensuring freedom of association at Norwegian ports, in other words the right to choose to join a trade union or choose to remain outside a trade union. The Norwegian Attorney General has requested that the case be dismissed on behalf of Norway.

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

Answer
Robert Eriksson: There is no doubt that Norwegian law safeguards both negative and positive freedom of association. The Norwegian Supreme Court has ascertained this in a number of cases. Agreements and practices in violation of the freedom of association will therefore be in violation of Norwegian law. Allegations of such violations must be handled by the ordinary courts.

Bedriftsforbundet has submitted a complaint against Norway to the Council of Europe's Committee of Social Rights for the violation of human rights. The Council of Europe has established rules for how so-called collective complaints are to be handled, and for who can submit such complaints. There are special requirements that apply to the complainant depending on whether he is acting as a special interest organisation, employee organisation or employer organisation. There are also requirements that the complainant must document that the conditions for complaint have been fulfilled. It is common procedure that the committee first decides whether the complainant is entitled to submit the complaint. The Norwegian authorities are to reply to this first, and that is what the Attorney General has done. It the complaint is accepted by the committee, the next step is the question of the freedom of association.

In his reply to the European Committee of Social Rights, the Attorney General has expressed his view that the complainant has not documented that he is entitled to complain, and that the complaint has not been well enough documented to be considered. In the reply, the Attorney General also pointed out that the committee may allow the complainant to submit new documentation.

The question of whether a case is to be considered by the European Committee of Social Rights is, as mentioned, always decided on by the committee in a special decision in advance, regardless of whether the parties have an opinion on it or not. This is a decision that I cannot and should not interfere with.

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

Translation from Norwegian

Arbeidstilsynet
NORWEGIAN LABOUR INSPECTION AUTHORITY

OUR DATE	OUR REFERENCE
17 August 2012	2010/8968 99065/2012
YOUR DATE	YOUR REFERENCE
9 May 2012	12/1343

OUR OFFICER IN CHARGE
Magnus Melhus Overå tel.: +47 980 33 716

Ministry of Labour
P.O. Box 8019 Dep
0030 Oslo

ILO – REPORTING ON RATIFIED CONVENTIONS THAT EXPIRE ON 31 MAY 2012 – ADDITIONAL INFORMATION

The Directorate of Labour Inspection refers to its input dated 14 June 2012. It was pointed out here that additional information concerning the aforementioned convention from the Norwegian Transport Workers Union would be forwarded as soon as they were received.

The Norwegian Transport Workers Union stated the following to the Directorate of Labour Inspection in an e-mail dated 16 August 2012:

As of 30 April 2012 the Norwegian Transport Workers Union had 413 active members at the ports, all of whom were engaged in the loading and unloading of ships. These can be broken down into agreement areas as follows:

- Framework agreement for fixed pay:	224 members in 22 ports
- South and North Norway agreement:	71 members in 18 ports
- Port tariff:	13 members in 7 ports
- LKAB, Narvik:	65 members in 1 port
- Other ports:	40 members in 3 ports
Total	413 members in 51 ports

Total number of loading and unloading workers, including terminal workers in the ports, is 580 members.

Yours sincerely
Directorate of Labour Inspection

Gry Singsaas
Head of Department, Statutes and regulations
(sign.)

Magnus Melhus Overå
Adviser, Statutes and regulations
(sign.)

This letter has been approved electronically by the Norwegian Labour Inspection Authority and has therefore no signature

POSTAL ADDRESS	E-MAIL	TELEPHONE	ORGANISATION NO.
P.O. Box 4720 Sluppen	post@arbeidstilsynet.no	+47 815 48 222	974761211
7468 Trondheim	INTERNET	FAX	
Norway	www.arbeidstilsynet.no	+47 73 19 97 01	

True translation of facsimile certified
Oslo, 10 February 2014

GOVERNMENT AUTHORIZED TRANSLATOR · ENGLISH NORWEGIAN - NORWEGIAN ENGLISH · PETER A. ESELTINE · NORWAY · OSLO

Peter Allen Eseltine
Government Authorised Translator

Translation from Norwegian

Attorney
Christopher Hansteen
post@lo.no
LO, Youngsgt. 11, 0181 Oslo
Telephone: +47 55 66 88 99/+47 23 06 10 50
Fax: +47 12 34 47 78

Case j.no.: 2010002647 – 3/LO – 232/CHHA

Date: 8 October 2010

DEFENCE REPLY

TO

THE PERMANENT ARBITRATION TRIBUNAL LO/NHO

Case no. 3/2010

Plaintiff: Confederation of Norwegian Enterprise (NHO)
P.O. Box 5250 Majorstuen
0303 OSLO

Counsel: Attorney Gerd Egede-Nissen, NHO
P.O. Box 5250 Majorstuen
0303 OSLO

Defendant: Norwegian Confederation of Trade Unions (LO)
Youngsgate 11
0181 OSLO

Counsel: Attorney Christopher Hansteen, LO
Youngsgate 11
0181 OSLO

***

Case concerns: Dispute concerning the selection of an agreement for NorSea AS, Risavika South, cf. LO/NHO Basic Agreement, Section 3-7 no. 4, cf. Section 3-10 no. 3.

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

...

type of work encompassed by the framework agreement. The requirements in Section 3-7, no. 2 of the Basic Agreement that the federation shall have unionised workers in the enterprise and that it must organise at least 10 of the employees in the collective agreement area in order for the collective wage agreement to be valid does not have any meaning in relation to the Framework Agreement, cf. the preferential rights pursuant to Section 2, no. 1, which actually require that the enterprise's own employees not perform the type of work that the collective wage agreement encompasses.

4. ILO Convention no. 137 concerning dock work

In 1974, Norway ratified ILO Convention no. 137 concerning the social repercussions of new methods of cargo handling in the ports.. In the convention, loading and unloading workers are guaranteed employment and income, for example, by ensuring that they have preferential rights to employment.

Article 3 of the convention stipulates the following:

1. Registers shall be established and maintained for all occupational categories of dock workers, in a manner to be determined by national law or practice.
2. Registered dock workers shall have priority of engagement for dock work.
3. Registered dock workers shall be required to be available for work in a manner to be determined by national law or practice.

The Directorate of Labour Inspection has previously reported annually to the Ministry of Labour and Social Inclusion about Norway's compliance with ILO Convention no. 137 concerning dock work. The report from June 2002, for example, states the following:

"At all public ports there is a group of permanent loading and unloading workers that have preferential rights to perform loading and unloading work pursuant to a collective wage agreement. At the largest ports, registration takes place by giving the permanent group of loading and unloading workers permanent employment at a loading and unloading office. The loading and unloading office hires out loading and unloading workers to shipping agents and other port users. The collective wage agreements give the shipping agents subject to the agreements an obligation to use workers from the loading and unloading office at the ship's port of call.

At the smaller ports, registration is safeguarded by the collective wage agreement stipulating that the local trade union of loading and unloading workers, and the local port users, shall jointly determine the size of the permanent group of loading and unloading workers. Workers in the permanent group have preferential rights to perform loading and unloading work pursuant to the collective wage agreement. When a ship calls, the shipping agents contact the trade union to order the required number of loading and unloading workers from the group. "

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

Norway therefore has an obligation pursuant to international law to ensure that the registered dock workers have preferential rights to load and unload ships in the public port areas. In Norway, this obligation is safeguarded through collective wage agreements that are established for loading and unloading workers, i.e. the Framework Agreement and the South and North Norway Agreement. These agreements give the loading and unloading workers preferential rights to the extent specified by the scope of provisions of the collective wage agreements. In accordance with Section 2 of the Framework Agreement and Section 1 of the South and North Norway Agreement, the Confederation of Norwegian Enterprise (NHO) has acknowledged that LO/Norwegian Transport Workers Union (NTF) are entitled to collective wage agreements with all of the NHO enterprises in public ports that are responsible for the loading and unloading of ships.

True translation of facsimile certified
Oslo, 10 February 2014

GOVERNMENT AUTHORIZED TRANSLATOR · ENGLISH NORWEGIAN - NORWEGIAN ENGLISH · PETER A. ESELTINE · NORWAY · OSLO

Peter Allen Eseltine
Government Authorised Translator

Translation from Norwegian

ROYAL MINISTRY OF LOCAL GOVERNMENT AND REGIONAL DEVELOPMENT

Norwegian Confederation of Trade Unions (LO)
Youngsgt. 11
0181 OSLO

Your ref.	Our ref.	Date
J.no. 985/98-32 ES/abn	93/5903 M2 OEV	7 January 1999

ILO CONVENTION NO. 137 CONCERNING THE SOCIAL REPERCUSSIONS OF NEW METHODS OF CARGO HANDLING IN DOCKS

We make reference to the Confederation of Trade Unions letters of 4 November 1998 and 18 December 1998, and we apologise that it has taken so long to answer your inquiry.

What is to be defined as dock work and dock workers in Convention no. 137 is left up to the individual member state to determine by national law or practice. In Norway it was not found appropriate to regulate this by law. The central government has established that the Convention be implemented by collective wage agreements.

The scope of ILO Convention no. 137 has been considered by the former Ministry of Local Government and Labour in connection with a case concerning the hiring out of manpower, see the enclosed copy of the letter of 7 June 1994 to LO. Today cases that involve the hiring out of manpower belong under the Ministry of Labour and Government Administration.

The letter from the Ministry of Local Government and Labour states that the Convention essentially applies only to public docks in a port area, and that the Convention does not apply to private docks or corporate ports. It is nevertheless emphasised that the parties must be able to agree freely on whether the Convention shall be expanded to include private docks and port areas.

Postal address
P.O. Box 8112 Dep
0032 Oslo

Office address
Akersg. 59

Telephone – switchboard
+47 22 24 90 90/+47 22 24 69 03
Org. no.
972 417 858

Working Environment and Safety Department
Fax:
+47 22 24 95 46

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

The Ministry assumes that this must be understood to mean that the Ministry of Local Government and Labour assumed in 1994 that in Norwegian practice, the Convention has only been made applicable to public docks, i.e. docks that are owned by the government. It must be up to the parties to agree, through negotiation, on a possible expansion to include privately owned docks, for example. Because the authorities have assumed that the Convention has been implemented by a collective wage agreement, in practice it will be the parties who determine the scope of the Convention in Norway though their agreements. A requirement for a collective wage agreement in this area is of course not of any special significance.

If the Confederation of Trade Unions feel a need for a more detailed interpretation of the Convention, the Ministry may possibly be of assistance in discussing this with the ILO secretariat. Due to the way in which the provisions relating to the scope of the Convention have been formulated, the ILO probably does not have much to add on precisely this point.

Yours sincerely
Øyvind Vidnes [sign.]
Øyvind Vidnes, by authority
Deputy Director General

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

Translation from Norwegian

DAGENS NÆRINGSLIV
Saturday, 14 December 2013

Wages of NOK 605,000 and 28 hours per week

ARTICLE
Working life

It has been questioned whether the loading and unloading workers in Oslo actually work as little as 28.5 hours per week on average, and earn an average NOK 605,000 per year. Accordingly, there may be grounds for a brief explanation.

The loading and unloading workers in Oslo are hired out to perform tasks at the Port of Oslo through the Oslo Loading and Unloading Office (OLLK). Like other firms that hire out manpower, the hours that OLLK can invoice to clients at the Port of Oslo are what earn revenues for the company. A temporary help agency without any hours that can be invoiced will have problems, even if the temporary workers sit and wait in the agency's offices without having anything to do. That is also the case at OLLK.

Last year OLLK invoiced a total of 48,845 hours to customers at the Port of Oslo. There is activity at the port 52 weeks a year. On average, 33 men have worked every week (33, 27). This yields 1,730 man-weeks. This means that on average there were approximately 28.2 hours of work per man per week throughout all of last year.

The corresponding number for the period up to and including week no. 47 this year is 28.4 hours per man per week.

Let us take a closer look at the wages, including holiday pay, that has been recorded as paid to each individual who worked on behalf of OLLK. In total for last year, there were 43 persons registered who received wages from OLLK. Some of them have been on the so-called "B list", that is those who are substitutes for the substitutes at OLLK. They have been assigned "random jobs", and cannot reasonably be included as part of the average wages for those who are on the "A list", which are the regular substitutes. Some of the individuals on the "A list" have been sick for parts of the year, and cannot be included in the basis for average wages due to this.

On this basis, if we take the overall payroll for 34 persons, which is reasonably close to the average number that have actually worked per week, we will find that the total payroll is approximately NOK 20.6 million. This gives average wages for these 34 individuals of NOK 605,000.

It is no more difficult than that.

Bernt Stilluf Karlsen, Board Chairman of Oslo Havn KF

True translation of facsimile certified
Oslo, 10 February 2014

GOVERNMENT AUTHORIZED TRANSLATOR · ENGLISH - NORWEGIAN · NORWEGIAN - ENGLISH · PETER A. ESELTINE · NORWAY · OSLO

Peter Allen Eseltine
Government Authorised Translator

Translation from Norwegian

Terje R. Samuelsen celebrates his 50th birthday

18 July 2008

It was an accident that led him to become a dock worker. But it proved nevertheless to be a fortunate choice. He is now the leader of the Norwegian Dock Workers' Union, and holds several international offices for dock workers. On Friday, 18 July, he will be celebrating his 50th birthday.

Actually it is a little strange that precisely he could grow up to become a rebellious trade union leader. His start was namely completely different. In cheerful Southern Norway, Christianity is strong, as we know. And Terje started out in working life as a paper boy for the Christian newspaper Vårt Land. In his younger years, Terje was in a way a transport worker for Our Lord when he cycled around Kristiansand bringing the good news out to the people.

However, he wanted to become an office worker. After lower secondary school, he went to business school for three years. Then he pursued a degree in Economics and IT. After that he embarked on his career – as a van salesman for Diplom-Is and Meierienes Fabrikker. At the age of 21 he was an ice cream salesman and organised in NNN.

Terje was a good salesman. He was eloquent already then – and cheerful. A handsome young man who sold ice cream on a stick. Everything sold like hot cakes – according to himself. And that must be why he was noticed by the marketing director at Meierienes Fabrikker. He felt that the young ice cream salesman Samuelsen was ready for a promotion. Terje was brought in from the cold and given a job as a consultant in the marketing department.

And was fired

However, that was a big mistake! Young Samuelsen was not just good and kind. Appearances can be deceiving, as we all know. And in this case, the marketing department gained a consultant with strong opinions and a special affinity for rebellious activities. Terje did not agree at all with how the marketing department was run. And he did not keep his opinions to himself then either. He let everyone know. And then of course the inevitable: Terje was fired.

Terje is a happy guy, and he took this in his stride and became a mobile phone seller. At that time it was a small but growing market. However, he eventually found out that he did not like the business. There was too much corruption and devilry. Therefore he applied for a vacant position as a cashier at the office of the Kristiansand Dock and Transport Workers' Union in 1988. He got the job. And thus he was back in the transport industry.

Port of Kristiansand

In 1988, the old local branch no. 13 in Kristiansand was led by the legendary union leader Idar Karlsen. And it was absolutely no small operation for which the union was responsible. The port of Kristiansand was a large workplace with many people. And the union was

True translation of facsimile certified
Oslo, 10 February 2014

GOVERNMENT AUTHORIZED TRANSLATOR · PETER A. ESELTINE · ENGLISH - NORWEGIAN - NORWEGIAN - ENGLISH · OSLO

Peter Allen Eseltine
Government Authorised Translator

responsible for outsourcing, payroll and accounting at the administration office, as well as everything else that was performed by such an office.

The loading and unloading workers at the ports had what was called a "monopoly" in certain circles. This is how our employer counterparts like to refer to the preferential rights to perform loading and unloading work at the ports pursuant to a collective wage agreement. If the employees have strong rights, then it is a monopoly. And employee monopolies are something negative that both the EU and the employers would like to eliminate. However, if the employers have strong rights, then it is referred to as a free market. This is how some people see it at least. We look at it somewhat differently, to say the least!

However, back to Kristiansand: The city had a more or less worker-controlled port. And the port was managed very well, thanks in particular to the capability and great authority of Idar Karlsen. When local negotiations were to be held with the shipping agents for one thing or another, for example local pay raises for the terminal workers who were members of the union, Karlsen prepared the minutes in advance. He himself knew how large their pay raise should be. "Sign here" was a common opening remark when he met local employers. And they willingly signed. They did not know any other way of doing things.

Even today, the union and the employers at the port cooperate well, and the dock workers' union has a great deal of influence. Idar Karlsen was a good teacher, Terje says. He learned his ideology from Idar. He learned the difference between right and wrong, in society and in politics. He learned to be critical, and learned about dock traditions, preferential rights pursuant to collective wage agreements, principles of port operations and much more. He was a good office man at the Union, but he was also a good union man. He learned the culture. And of course he was organised in the Norwegian Union of Employees in Commerce and Offices (HK).

Turning point

But then something happened. In 1990, Terje was involved in a traffic accident. He was injured and was on sick leave for an entire year. When he returned to the office, accounting work was not as easy any more. The solution was to change his job from being an officer worker to being a dock worker. – You can give it a try out on the dock, Idar said.

It proved to be a fortunate choice. Terje was very happy as a loading and unloading worker, and he did not want to return to the office. He already knew the dock worker community. He changed his organisation at the same time, and became a member of the Norwegian Transport Workers' Union. Not that he had any choice about the matter. In the ports you must be a member of the Transport Workers' Union in order to get a permanent job as a loading and unloading worker. That is just the way it is. The dock workers have always made sure that everything was in order. Solidarity and strength are two sides of the same coin, say the dock workers.

At this point in time, Idar Karlsen was of an age at which it was natural to think about retiring. And Terje became his successor. The succession formally took place in 1993. Terje

True translation of facsimile certified
Oslo, 10 February 2014

GOVERNMENT AUTHORIZED TRANSLATOR · PETER A. ESELTINE · NORWEGIAN - ENGLISH · NORWEGIAN - NORWEGIAN · OSLO

Peter Allen Eseltine
Government Authorised Translator

was elected as the leader of the Kristiansand Dock and Transport Workers' Union. The former accountant took over the entire show!

Norwegian Dock Workers' Union
But it did not stop there, as they say. When the Transport Workers' Union's many dock workers' unions decided to merge into a national trade union under the name of the Norwegian Dock Workers' Union in 2004, Terje was elected as the national union's first leader.

There was a long process leading up to the merger, and there were many who had doubts and anguish along the way. It was the very foundation of the Transport Workers Union that was to reorganise – unions with more than 100 years of tradition – those who established the federation in 1896 – the original owners. However, only a few voted against the merger in the end.

When we ask Terje about this today, he admits that it was difficult: – But we had fruitful discussions, he says. And he understands the fears that many had that the dock culture would disappear when the old unions were gone.

– Fortunately, I had Øyolf Berge on my team. He did a very unique job to achieve this. And in hindsight I think that everyone would admit that we did the right thing, says Terje.

Today the Norwegian Dock Workers Union is growing. It has increased to 520 active members at the ports along our coast. In addition, we have 350 retired toilers.

But do dock workers have any future in our liberal-market Europe? We have to provoke Terje by asking. And of course he gets agitated:

– Obviously we have a future! During a time of increasing environmental problems, there is political acceptance that we must invest in shipping and in ports. There will be more port operations in the future, not less. But we must of course accept that there may be fewer small ports and some more really large ports. And that is where we will be, Terje points out.

International
In addition to being the leader of the Dock Workers Union, Terje is also a member of the executive committee of the Transport Workers Union. He is the leader of the old local branch no. 13 in Kristiansand. He is the leader of the dock worker section of the Nordic Transport Workers Federation and attends the federation's board meetings. And he attends sections meetings in both the European Transport Workers Federation (ETF) and the International Transport Workers Federation (ITF).

He is also politically active. Not much, according to himself. There just is not enough time. But he is a member of SV - the Socialist Left Party. He wants to have a solid footing on the left side of the political spectrum. He has always been radical and rebellious. Those who know him, however, say that he is also kind, and that he has a good sense of humour and a

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

sparkle in his eye – and that he is an exceptionally good party animal with a great deal of stamina. And we who know him, can attest to everything!

At home he has his dearest Bente and three children ranging from 9 to 16 years of age.

– The four of them are most important, Terje points out.

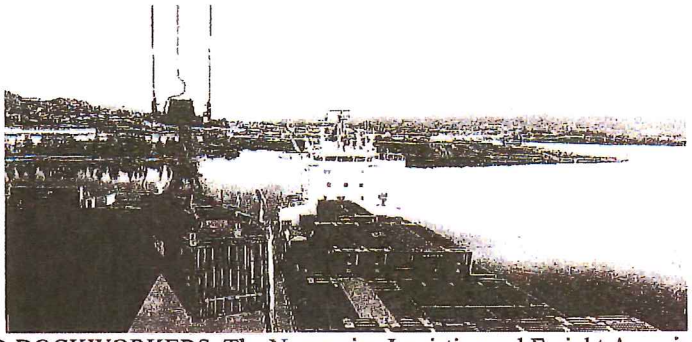
We wish him a Happy 50th!

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

Translation from Norwegian

E24



HIGHER SPEED FOR DOCKWORKERS The Norwegian Logistics and Freight Association of the NHO is demanding greater productivity from dock workers. The photo is from the Kattegat Dock at the Port of Drammen.
Photo: Port of Drammen

The Confederation of Norwegian Enterprise (NHO) is demanding more productivity from dock workers

NHO says that it can live with the dock workers' monopoly, but in exchange they demand greater productivity, after several years of significant pay raises.

JOBS **Marius Lorentzen**
Published: 6 August 2013 15:08, Updated: 6 August 2013 15:08

– We do not have anything against preferential rights in principle, as long as they do not become detrimental, says General Secretary Tom Rune Nilsen of the NHO Norwegian Logistics and Freight Association.

On Monday, E24 wrote about the Danish shipping agent Holship, which has instituted legal proceedings against the dock workers at the Port of Drammen to break up their monopoly.

The NHO federation is the dock workers' counterpart in the collective wage agreement, but increasing productivity at Norwegian ports is what is most important for the federation, not eliminating the monopoly system.

Dock workers namely have so-called preferential rights to dock work through an ILO Convention (the UN agency the International Labour Organisation). The Convention leaves it up to each individual country to define who a dock worker is. In Norway, this is done through the collective wage agreement, and the workers are therefore forced to be members of the Norwegian Transport Workers Union of the Norwegian Confederation of Trade Unions (LO), in order to work in loading and unloading at Norwegian ports.

The deputy leader of the Transport Workers Union told E24 on Monday that they are ready to start a blockade to defend this monopoly against the Danish company Holship.

True translation of facsimile certified
Oslo, 10 February 2014

GOVERNMENT AUTHORIZED TRANSLATOR · PETER A. ESELTINE · NORWAY · OSLO · ENGLISH - NORWEGIAN · NORWEGIAN - ENGLISH

Peter Allen Eseltine
Government Authorised Translator

Greater productivity demanded

Tom Rune Nilsen of the NHO Norwegian Logistics and Freight Association says that they are in a dialogue with the trade unions now in order to modernise the framework surrounding dock work.

– What we have said is that we desire more productivity from the dock workers, says Nilsen.

In an article on the federation's website in April, Nilsen compared the pay raise secured by dock workers to others in the private sector.

According to the NHO federation, the hourly pay (excluding supplements) was NOK 144.53 in 2010, while it had risen to NOK 175.76 this year, an increase of 21.5 per cent.

– The loading and unloading workers have thus had twice as much wage growth as other workers in the private sector during the last three years, Nilsen writes.

One example of what the NHO federation reacts to is the fact that all of the dock worker in Oslo can take their lunch break at the same time, so that the port grinds to a halt.

– Our dialogue concerns both the working hours and how we can use the workers, says Nilsen.

– Ships have had to wait.

One of the points that NHO would like to address is how long one has to wait before other workers can be called in, if dock workers are not on site.

Tom Rune Nilsen, Managing Director, NHO Norwegian Logistics and Freight Association
Photo: NHO

– It has happened that ships have had to stay and wait for unloading, and that is expensive, says Nilsen.

– Will you consider requesting that it be possible to register as a dock worker by means other than through membership in the Transport Workers' Union?

True translation of facsimile certified
Oslo, 10 February 2014

GOVERNMENT AUTHORIZED TRANSLATOR · PETER A. ESELTINE · NORWEGIAN - ENGLISH · ENGELSK - NORSK · OSLO

Peter Allen Eseltine
Government Authorised Translator

– We do not rule out the possibility of registering as a dock worker by other means. So far we have been met by the argument that preferential rights are linked to membership in the federation, says Nilsen.

According to the leader of the NHO Norwegian Logistics and Freight Association, the lucrative special agreements were made in the 1970s and 1980s, when the efficiency of Norwegian ports was improved significantly.

– The collective wage agreements give dock workers certain rights that make them extremely expensive. This originates from the agreements of 1970s and 1980s when the ports were made extremely efficient, and the workforce was reduced. This was accomplished by giving the dock workers additional rights. This is what we are up against now, says Nilsen.

– Productivity has increased dramatically.

The first deputy leader of the Norwegian Transport Workers Union, Lars M. Johnsen, confirms that they are in dialogue with the NHO federation regarding the organisation of work, and in his opinion the current system is far better for the employers than traditional shift work systems.

– We are in a dialogue with NHO concerning whether we can organise the work better, says Johnsen to E24.

He points out nevertheless that preferential rights are important because dock workers accept such a special work day.

Lars M. Johnsen. First deputy leader, Norwegian Transport Workers' Union
Photo: NTF

– Dock workers work all year long and all day long. They also have a home standby system, says Johnsen.

He says that due to shipping traffic, it is impossible to prepare a work programme in advance to any great degree. Therefore many workers must report for work every morning, and then go home awaiting the arrival of a ship later in the day.

– If this had been regulated as is otherwise common in working life, it would have been significantly more expensive for the ports, he says, and he believes that they would need twice as many employees with an ordinary shift work system.

Rejects the criticism

He rejects the criticism that productivity has stagnated, while the dock workers have received significant pay rises.

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

– Productivity at the ports has increased enormously. A great deal has taken place through new technology, and in Oslo the number of dock workers has declined from approximately 1,000 in the 1960s to 42 today, says Johnsen.

– The basic pay is low, but workers can increase their earnings by working at night and on weekends, he adds, and says that most dock workers earn from NOK 450,000 to 600,000 annually.

He believes for his part that the employer side has not done enough to ensure a high level of efficiency.

– If many ships arrive at the same time, for example, there is an inadequate number of people at the Port of Oslo, says Johnsen, and in his opinion there are approximately 10 per cent too few permanently employed dock workers in Oslo to accommodate the load.

The parties have agreed on a two-day meeting as early as September to see if they can agree on changes to the collective wage agreements and employment contracts.

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

Translation from Norwegian

E24

– MONOPOLY ACTIVITY: The Danish company Holship is fed up that only members of the Norwegian Transport Workers' Union can unload ships that call at Norwegian ports. The "Uranus" calls at the Kattegat Dock here in the Port of Drammen.
Photo: Port of Drammen

Legal proceedings instituted against the dock workers for monopoly activity

Dock workers are using illegal blockades to secure a monopoly at the Port of Drammen in the opinion of the Danish company, which is taking them to court.

JOBS **Marius Lorentzen, Kristin Norli**
Published: 5 August 2013 17:08, Updated: 6 August 2013 07:08

– The dock workers' monopoly at the ports is obsolete and in violation of a rational and competitive system of transport. We hope that the Government agrees, and that they will take action through the EEA Agreement, says Nicolay Skarning, a partner at the law firm of Kvale, to E24.

He is representing the Danish shipping agent Holship, which has now sued the dock workers in Drammen and the Administration Office at the Port of Drammen.

The Danish company believes that the workers are using "illegal blockades and the threats of blockades to prevent our client from establishing itself".

Refuses to sign

True translation of facsimile certified
Oslo, 10 February 2014

GOVERNMENT AUTHORIZED TRANSLATOR · ENGLISH NORWEGIAN - NORWEGIAN ENGLISH · PETER A. ESELTINE · NORWAY · OSLO

Peter Allen Eseltine
Government Authorised Translator

Holship will not sign the framework agreement that gives registered dock workers in the Norwegian Transport Workers Union a monopoly on loading and unloading work at Drammen and other Norwegian ports.

Holship believes that the system is in violation of the EEA Agreement and the Competition Act, and that the Drammen Construction Workers Federation is using illegal blockades against them.

Holship and their attorney have also submitted a complaint to the Ministry of Government Administration and Reform after the Norwegian Competition Authority did not have time to review the case.

A "monopoly activity that is detrimental to society" is what Holship's attorney calls the system, and he believes that the system is in violation of the ban on "improper exploitation of a dominant position".

– Detrimental to society

In order to engage in loading and unloading work at Norwegian ports, one must be registered as a dock worker at present. This is only possible through becoming a member of the Norwegian Transport Workers Union of the LO Federation.

Dock workers have preferential rights to dock work through the Convention of the International Labour Organisation (ILO), an agency of the UN. However it is up to each individual country to define who a dock worker is, and this has been regulated in Norway through the collective wage agreement.

Today, the Administration Office for Dock Work in Drammen organises work for the dock workers.

This enterprise is not a limited company, but it is registered as another legal entity at the Brønnøysund Register Centre for activities associated with hiring out manpower. Holship's competitors are behind this enterprise, along with the trade unions.

The Port of Drammen in itself does not have anything to do with the system and the Administration Office. Port Director Einar Olsen tells E24 that they only collect various fees and payments, and otherwise make the facilities available to ships and shipping agents.

Attorney and Partner Nicolay Skarning at Kvale
Photo: Kvale

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

Sure of victory

The Norwegian Transport Workers' Union (NTF) has for its part gone to court to be allowed to use a blockade against Holship.

– We are convinced that we will win the case against Holship, says the first deputy leader Lars M. Johnsen of the Norwegian Transport Workers Union to E24.

– Preferential rights have also been reviewed several times by the EU, through the port directives. The Commission has been forced to withdraw the proposal concerning the liberalisation of these rights, Johnsen adds.

According to the federation, the companies that are not members of NHO are trying to challenge the system, since they are not bound by the collective wage agreement.

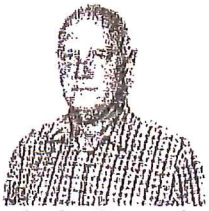
– Recently we have had problems with certain companies not accepting the collective wage agreement and the system in Norway, he says.

Johnsen explains that they cannot use strikes as a weapon, because dock workers do not work directly for the shipping agents, they work for the so-called administration offices.

– Boycotts and blockades are our means of protest. This has been reviewed by the Norwegian Supreme Court through the Sola judgment. The court found in our favour that it was a legal form of protest, says Johnsen.

The principle that one must to be a member of NTF is the most important to the federation. They do not fear that Holship will underpay their employees in Norway.

– Could you accept there being another means of becoming a dock worker now, other than being a member of your organisation?



Lars M. Johnsen. First deputy leader, Norwegian Transport Workers' Union
Photo: NTF

– No. There are so few dock workers left, and it would only be bad for the workers.

– More expensive without us

Johnsen does not care much for the attacks that have been made against the dock workers' monopoly system.

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

– The attack against dock workers in Oslo is from people who do not know how the work functions, and how risky it is. You have to be very vigilant when operating cranes and with ice-covered containers in the winter, Johnsen says.

The deputy leader of the federation says that there are just over 300 dock workers left in Norway today. According to the federation, they have relatively low basic pay, but they can earn annual wages of between NOK 450,000 and 600,000 by taking evening, night, and weekend shifts, as well as with overtime.

– Dock workers work all year long and all day long, and they have a home standby system. If this had been regulated in the ordinary manner, it would have been considerably more expensive for the ports, says the deputy leader of the Transport Workers Union.

– If we had an ordinary shift work system, I think we would have to double the number of employees we have today, says Johnsen.

The lawsuit between Holship and the dock workers and the administration office will be heard by the Drammen District Court in January of next year.

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

Translation from Norwegian

Nicolay Skarning

From: Thor Chr. Hansteen [thor.chr.hansteen@nholt.no]
Sent: 3 September 2013 15:34
To: Nicolay Skarning
Subject: Statements from the Norwegian Transport Workers' Union (NTF) concerning required membership in NTF

I make reference to the inquiry about statements on the part of NTF in connection with the main hearing at the Oslo District Court for the dispute concerning the legality of the boycott threat against Risavika Terminal AS.

According to my notes, witness Per Østvold stated the following with regard to the NTF membership requirement for loading and unloading workers:
"In Norway, NTF and the authorities have agreed that registration in accordance with the ILO has taken place through employment at the loading and unloading offices, and membership in NTF."

I am quite sure that I noted down what Østvold said verbatim.

Yours sincerely

Thor Chr. Hansteen
Assistant Director / Attorney MNA
Direct line +47 23 08 87 86 / Mobile +47 91 78 50 51
thor.chr.hansteen©nholt.no

NHO Norwegian Logistics and Freight Association
Middelthuns gate 27, P.O. Box 5489 Majorstuen, 0305 Oslo
Telephone +47 23 08 87 80 / Fax +47 23 08 87 90
nholt.no

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

Translation from Norwegian

CONFEDERATION OF NORWEGIAN ENTERPRISE

Postal address	*Address*	*Org. no.*	*Telephone*	*E-mail*
P.O. Box 5250 Majorstuen	Middelthuns gate 27	NO 955 600 436 VAT	+47 23 08 80 00	firmapost@nho.no
NO-0303 Oslo	Oslo		*Fax*	*Internet*
Norway	Norway		+47 23 08 80 01	www.nho.no

Ministry of Labour
P.O. Box 8019 Dep
0030 Oslo
Eli Mette Jarbo

Our date	21 November 2013
Your date	21 November 2013
Our reference	
Your reference	13/2908

Framework agreement for the fixed pay system for loading and unloading workers

We refer to the Ministry of Labour's letter of 22 October 2013, in which the Confederation of Norwegian Enterprise (NHO) is requested to comment on the Bedriftsforbundet's complaint of 4 September 2013, and to explain their views on how the framework agreement is practised as well as on the ILO Convention no. 137. The issues of the case are complex, and NHO therefore finds it necessary to provide more general information on the organisation of loading and unloading work, and in particular the preferential rights and the legal challenges they create.

1. Summary

The problems addressed in the Bedriftsforbundet's complaint are not limited to the Port of Drammen. At a total of 27 of Norway's largest public ports, similar collective wage agreements with preferential rights provisions have been established for loading and unloading work, cf. Section 2 below. It must accordingly be assumed that the problem concerns a significant portion of freight transport in Norway. The Confederation of Norwegian Enterprise (NHO) does not have detailed knowledge of the organisation of ports in other European countries. However, it is well-known that there have been a number of labour conflicts at ports abroad. There appears to be a broad perception among dock workers that their group has special rights.
The complaint from Bedriftsforbundet brings to light the practice of so-called "preferential rights" in relation to key obligations under international law. NHO would like to see a legal clarification in this area. NHO does not by any means desire that Norway should unnecessarily risk criticism for violation of the freedom of association. For NHO and NHO's national associations, it is a fundamental prerequisite, and a necessity for our work, that our collective wage agreements are in accordance with current law, including obligations under international law.

2. Details of preferential rights agreed on in the collective wage agreement

Preferential rights to loading and unloading work for loading and unloading workers are established in two collective wage agreements between LO/NTF on the one hand and NHO/NHO Norwegian Logistics and Freight Association on the other hand.

True translation of facsimile certified
Oslo, 10 February 2014

GOVERNMENT AUTHORIZED TRANSLATOR · PETER A. ESELTINE · NORWAY · OSLO · ENGLISH - NORWEGIAN - NORWEGIAN - ENGLISH

Peter Allen Eseltine
Government Authorised Translator

The "Framework Agreement for Fixed Pay for Loading and Unloading Work" has been made applicable to the following 13 Norwegian ports:

> Oslo, Stavanger, Bergen, Trondheim, Drammen, Skien/Porsgrunn, Kristiansand, Fredrikstad, Moss, Mo i Rana, Larvik, Ålesund and Sandnes.

The "Loading and Unloading Agreement for South and North Norway" (the South and North Norway Agreement) has been made applicable to the 14 following Norwegian ports:

> Horten, Brevik, Arendal, Haugesund, Florø, Kristiansund, Steinkjer, Sandnessjøen, Mosjøen, Bodø, Harstad, Tromsø, Hammerfest and Vardø.

In the following, "Framework Agreement" is used, but what is written applies also to the South and North Norway Agreement. What distinguishes these agreements from other collective wage agreements in the NHO system, is the fact that they impose obligations on the companies that are bound by the agreements relative to employees who are not employed by companies bound by a collective wage agreement. The employees of the companies bound by a collective wage agreement are not given any corresponding rights. On the contrary, loading and unloading workers employed in another company and organised in the Norwegian Transport Workers' Union (NTF), are given "preferential rights" to perform loading and unloading work. The key element of any requirement that such collective wage agreements shall be made applicable is to achieve such preferential rights to loading and unloading work. It has been common practice after the formation of such agreements to conduct negotiations on local adaptations such as the hourly rates, etc.

The practical organisation takes place by the establishment of so-called loading and unloading offices, administration offices, etc., which can require, pursuant to the framework agreement, that their employees are hired by other companies when they require loading and unloading when ships call. The "preferential rights" apply regardless of whether there is a need for the services or not. Several of our members perceive the system to be a type of forced commercial cooperation with the loading and unloading offices as commercial enterprises, rather than the fulfilment of collective wage agreement obligations. The hiring arrangement linked to the preferential rights, and the matters related to the constraints of the Working Environment Act on hiring, are problematised in a dispute pending before the courts. In cases where the hirer has a continuous need for such services, it is the opinion of the NHO that such hiring will probably be in violation of Section 14-12, cf. Section 1-49 of the Working Environment Act. NHO is nevertheless of the opinion that the companies must be able to hire employees on a permanent basis rather than being forced to participate in hiring arrangements that are not desirable.

As far as NHO is aware, the Norwegian Transport Workers Union (NTF) has on a number of occasions made its view known that NTF Membership is a requirement for being eligible to work as a loading and unloading worker in ports where preferential rights apply.

NHO thus does not doubt that the practice is such as stated in the complaint, and we react to the fact that the preferential rights are practised such that only workers organised in NTF, and

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

for that reason alone, shall have special rights. It is a known fact that member companies in the NHO Norwegian Logistics and Freight Association have had essentially negative experiences with how these preferential rights are practised by NTF. Preferential rights are perceived as being inflexible and unnecessarily expensive, and distorting of freight competition in favour of road transport. In addition, the companies perceive that several of NTF's members take advantage of their position resulting from preferential rights in an improper manner, through illegal blockades and inadequate quality of work. Such forms of protest place the companies in a very difficult situation, since customers and shipowners have strict efficiency requirements, and preferential rights mean that there are no others who can perform the work.

NHO and NHO's national associations do not desire any impediments to either positive or negative freedom of association. If the current practice proves to be doubtful with regard to obligations under international law, the collective wage agreements must be revised, in the opinion of NHO, so that loading and unloading work can subsequently be organised and performed in a legal manner. NHO has already stated that the parties should sit down and negotiate new collective wage agreements in this area. The Norwegian Confederation of Trade Unions (LO) has, however, not desired to do so.

From sources at the Norwegian Transport Workers Union it has been stated that the work has a foundation in international law in ILO Convention no. 137. NHO disagrees with NTF's interpretation of the scope and legal effect of this convention, but it has also observed the practice that the authorities have established by reporting to the ILO under the convention, see Section 3 below.

The organisation of work at the ports is based on circumstances from earlier times when there were public ports where many dock workers worked as day labourers. Shipping traffic was completely different than it is today, and the loading and unloading was very labour intensive. The agreement system arose when day labourers organised themselves more than 100 years ago, and long before the existence of the European Social Charter and the European Convention on Human Rights.

Up until the establishment of the Framework Agreement in 1976, loading and unloading work was performed based on hourly pay agreements, and the loading and unloading workers were responsible for the operation of the loading and unloading offices. This is still the system in the South and North Norway Agreement, which also previously applied to the Port of Drammen.

The Bedriftsforbundet's complaint brings to light the fact that the development of the law may appear to have outrun a system with historical roots.

It can also be mentioned in this context that NTF previously assumed that the Framework Agreement was reserved for public ports. During the last few years, however, they have also demanded that it apply to companies operating in private ports. Such demands raise additional legal questions, such as the relationship of the demands to the right of private ownership.

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

3. ILO Convention no. 137 and the registration of loading and unloading workers

ILO Convention no. 137, the Dock Work Convention, was adopted at the ILO labour conference in 1973, and it entered into force two years later as a result of ratification by Norway, among others. The background for the Convention was the fact that greater efficiency at the ports reduced the need for traditional labour-intensive loading and unloading work. Specialisation was perceived to be challenging, as the day labourers at the ports were rarely qualified to handle cranes, loading vehicles, etc.

Pursuant to Article 3 of the Convention, lists shall be established for *"all occupational categories of dock workers, in a manner to be determined by national law or practice"*. Pursuant to Article 3 no. 2, registered dock workers shall be given priority when work is assigned. NTF has stated that NTF and the authorities agree that registration has taken place through membership in NTF, and employment at the loading and unloading office. As far as NHO is aware, NTF's lists are used by the Norwegian Labour Inspection Authority as the basis for the reports that are submitted to the ILO.

The fact that the public authorities have been aware of this practice and have not protested must be assumed to be the reason that NTF maintains that preferential rights have been practised in a legal manner. NHO and our national associations have not, on the other hand,made any demands or encouraged member companies to give loading and unloading workers organised in NTF any special rights. NHO is therefore looking forward to a legal clarification of the problems related to the freedom of association and work at the ports.

In order to be complete, it is also pointed out that some of the background to the current case appears to be the fact that for decades, NTF and LO have ascribed a greater scope to the Convention than what has been assumed by the Norwegian authorities. As NHO perceives NTF, they appear to believe that preferential rights are a general right for which only NTF's members are eligible, even beyond the scope of the Framework Agreement and outside the scope of application for the Convention assumed by the Norwegian authorities. The latter is linked to the interpretation of what a public port is.

NHO assumes, in accordance with the Ministry's clarifications from the 1990s, that the convention only applies to traditional loading and unloading work at public ports, and not to work at private corporate ports or privately owned port terminals that provide services to ships/carriers who select this solution instead of using a public port, cf. for example, Ministry of Local Government and Labour's letter of 7 January 1999. In the opinion of NHO, loading and unloading work is limited to the work of carrying cargo into and out of ships that are docked at a public port, - which means that private ports, work at corporate docks, and ports that use their own or other employees are excluded. In the view of NHO, terminal work is not the same as loading and unloading work, since terminal activities consist of far more than just loading and unloading. For terminal workers, loading and unloading is part of many integrated work operations in a logistical value chain.

NHO also believes that there are no grounds for opinions that the ship's crew shall be prevented from performing work on cargo on or in ships. It is ultimately the captain's responsibility that cargo be loaded and unloaded responsibly. Accordingly, it must be the

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

responsibility of the crew to determine how this should take place, including who should perform the work. As far is NHO is aware, this is also the opinion of the Norwegian Shipowners' Association.

4. Future proceedings

For NHO, the most important aspect has been that our member companies do not contribute to maintenance of a practice that is doubtful or in violation of current law, including obligations under international law.

If the current practice is not in accordance with obligations under international law, it will be necessary to revise the agreements so that the loading and unloading work can be performed in a legal manner. NHO has a great deal of interest in both the future proceedings and in the final outcome of the complaint.

NHO and the national associations that are affected therefore request a meeting with the Ministry at which additional documentation and further input and clarification can be provided, if desired.

Yours sincerely
Svein Oppegaard [sign.]
Svein Oppegaard
Director of Working Life Policy

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

Nicolay Skarning

From: Thor Chr. Hansteen [thor.chr.hansteen@nholt.no]
Sent: 3 September 2013 15:25
To: Nicolay Skarning
Copy: Tom Rune Nilsen
Subject: RE: Trade union membership at Norwegian ports

To Attorney Nicolay Skarning

In reference to your inquiry, I can give the following reply:

We are aware that NTF practises a requirement for membership in NTF in the manner to which reference is made in the e-mail. NHO Norwegian Logistics and Freight Association and NHO on their part stipulate no such requirements, and we on our side do not want to create any obstacles to either positive or negative freedom of association.

The system has been practised for years, and it existed prior to the establishment of the Framework Agreement for Fixed Pay in 1976. Before the Framework Agreement was established, loading and unloading work was carried out in accordance with hourly pay agreements (the former "South Norway Agreement" applied in Drammen) and the loading and unloading workers were themselves responsible for the operation of the loading and unloading office. The South Norway Agreement was established prior to the Second World War, and the organisation of the work was established prior to the European Human Rights Convention in 1950.

I hope that this provides adequate clarification for your question.

Yours sincerely

Thor Chr. Hansteen
Assistant Director / Attorney MNA
Direct line +47 23 08 87 86 / Mobile +47 91 78 50 51
thor.chr.hansteen©nholt.no

NHO Norwegian Logistics and Freight Association
Middelthuns gate 27, P.O. Box 5489 Majorstuen, 0305 Oslo
Telephone +47 23 08 87 80 / Fax +47 23 08 87 90
nholt.no

From: Nicolay Skarning [mailto:ns@kvale.no]
Sent: 3 September 2013 09:36
To: Thor Chr. Hansteen
Subject: Trade union membership at Norwegian ports

NHO Norwegian Logistics and Freight Association
Attn.: Assistant Director

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

Thor Chr Hansteen Oslo 3 August 2013

I represent Holship Norge AS, which is a member of Bedriftsforbundet. The company has been warned of a blockade against it by the Norwegian Transport Workers Union (LO), the purpose of which is to get the enterprise to sign the Framework Agreement for the ports, and thus accept the preferential rights of the dock workers. The Norwegian Transport Workers Union does not have any members at Holship Norge AS. The Norwegian Transport Workers Union has sued Holship Norge AS to have confirmed that the warning given to the company is legal. This case will probably be heard by Drammen District Court in January 2014.

If the Norwegian Transport Workers Union succeeds, there may be talk of transferring operations from Holship Norge AS to members of the Norwegian Transport Workers Union, and there will probably also be a possibility that employees can be transferred and must consider their trade union affiliation. Several of them are currently members of the Norwegian Union of General Workers (NAF), which has a collective wage agreement with Holship Norge AS, and the company pays the contractual wages to its employees.

According to the investigations I have made at the ports, today there is a practice of requiring membership in the Norwegian Transport Workers Union in order to be eligible for work, and this is referred to as a closed shop system. This has also been accepted by the authorities for many years. I make reference to the statement from the deputy leader of the Norwegian Transport Workers Union, Lars T Johnsen to the E24 website on 5 August 2013, where he states when asked:

"It is the principle that one must be a member of the Norwegian Transport Workers Union that is most important to the federation. They do not fear that Holship will underpay their employees in Norway.

– Could you accept there being another means of becoming a dock worker, other than being a member of your organisation?

– No. There are so few dock workers left, and it would only be bad for the workers."

The link to the article is here: http://e24.no/jobb/saksoeker-havnearbeidere-for-monopolvirksomhet/21113898

I contacted E24 the following day and it was confirmed that what was stated here was the fact that one must be a member of the Norwegian Transport Workers Union in order to be eligible for work at Norwegian ports.

In addition, I make reference to the interview with the leader of the Norwegian Dock Workers Union from 5 July 2008 at www.havnearbeider.no (see below), Terje R Samuelsen, in which he states in connection with his 50th Birthday interview:

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

"Terje was happy as a loading and unloading worker, and did not want to return to the office. He already knew the dock worker community. He changed his organisation at the same time, and became a member of the Norwegian Transport Workers' Union. Not that he had any choice about the matter. In the ports you must be a member of the Transport Workers Union in order to get a permanent job as a loading and unloading worker. That is just the way it is. The dock workers have always made sure that everything was in order. Solidarity and strength are two sides of the same coin, say the dock workers."

My question is whether the NHO Norwegian Logistics and Freight Association can confirm that one must be a member of the Norwegian Transport Workers Union in order to be eligible for work at Norwegian ports, and possibly how long it has been that way.

Yours sincerely

Nicolay Skarning
Attorney (S), Partner
Kvale Advokatfirma DA
www.kvale.no
Tel.: +47 22 47 97 00 / +47 906 64 191

From www.havnearbeider.no 18 July 2008

True translation of facsimile certified
Oslo, 10 February 2014

GOVERNMENT AUTHORIZED TRANSLATOR · ENGELSK NORWEGIAN - NORWEGIAN ENGLISH · PETER A. ESELTINE · NORGE · OSLO

Peter Allen Eseltine
Government Authorised Translator

Translation from Norwegian

All opinions / **Society** / **Working Life**
Follow this debate
Comment on the contribution
Nicolay Skarning
Contributions: 14
Comments:

The Attorney General misleads the Council of Europe in the port monopoly case

Published on 1 December – 1101 views Contribution

Tomorrow the Committee of Social Rights of the Council of Europe will begin consideration of complaint no. 103/2013 against Norway for its closed shop practice at the ports. However, the Attorney General has requested that the committee dismiss the complaint against Norway with the aid of legal manoeuvring.

1. Complaint against Norway submitted due to an organisational monopoly at the ports

Bedriftsforbundet[1] submitted a complaint against Norway to the Committee of Social Rights of the Council of Europe on 9 September 2013. The complaint can be found **here**. The complaint is based on the fact the fact that Bedriftsforbundet has observed that there is an organisational monopoly at public ports in Norway. An employee must be a member of the **Norwegian Transport Workers Union (NTF)** in order to be eligible for a permanent position. This practice has been confirmed by both NHO and the Norwegian Transport Workers Union. They informed **E 24**, for example, on 6 August 2013: *"one is therefore forced to be a member of the Norwegian Confederation of Trade Unions (LO's) Norwegian Transport Workers Union in order to work with loading and unloading at Norwegian ports."* This has been a long tradition, generally known and the Norwegian Transport Workers Union has only done what is expected of them, to obtain as many members as possible. The problem is the fact that the requirements for freedom of association in recent years have placed the Norwegian system under pressure. Article 11 of the **European Convention on Human Rights** and Article 5 of the **European Social Charter** require that the state ensure freedom of association, both to choose an organisation and to choose to remain outside an organisation (positive and negative freedom of association). Members in Industri Energi (LO) have also been concerned about this, see **here**.

2. The Attorney General misleads the Council of Europe's Committee of Social Rights

The **Attorney General** submitted his input to the Council of Europe on 7 November 2013. In paragraph 7 he states that **Bedriftsforbundet** is not a representative national employers' organisation This appears to be a deliberate misleading of the committee. Bedriftsforbundet, a

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

nationwide organisation with approximately 4,000 members, has during the last 20 years been a competitor of the Confederation of Norwegian Enterprise (NHO) and the Enterprise Federation of Norway (Virke), and a highly regarded commenting body for the Government on behalf of small and medium-sized enterprises in Norway. The Attorney General knows this, but he says something else to the Council of Europe in order to have the case dismissed. The end clearly justifies the means. However, it does not appear to be honourable or in accordance with Section 110 c of the Constitution of Norway: *"It is the responsibility of the authorities of the State to respect and ensure human rights."*

In addition, the Attorney General states in paragraph 17 and beyond that there is no evidence that Norway has violated Article 5 with regard to freedom of association. This is a fair argument that will be subject to the submission of evidence later on. However, the case must then be accepted for consideration.

Then the Attorney General falls for the temptation of smart legal manoeuvring again: In paragraph 24, he states that the essence of the complaint concerns an individual case from the Port of Drammen. Here he is again trying to mislead. The complaint of course applies to freedom of association at all of the ports in Norway, and the complaint has been supported by NHO on this general basis.

In paragraph 28, the Attorney General concludes that the case must be rejected due to formal deficiencies. Has the new Government authorised this? This is something that the Minister of Labour Robert Eriksson must answer.

3. Why, and is there a better way?

Why is the Attorney General resorting to smart legal manoeuvring in this case, using formal grounds and misleading information to prevent the case from being reviewed by the Council of Europe? I think the answer is simple; this case could be embarrassing for Norway. If the Council of Europe were to find that Norway has violated basic human rights, it would be more difficult to travel the world and lecture other countries about this subject.

It could have been done in another way; the Attorney General could have given thanks for the complaint, and stated that the Government of the Kingdom of Norway was looking forward to the submission of evidence. If it was proven that human rights have been violated at Norwegian ports, then he could indicate that if so, it would be rectified as quickly as possible. Such an approach would be working on the same side as human rights, not against them.

[1] I represent Bedriftsforbundet in this case.

Quote To quote you must select what you want to quote and then click this button. Well done! (1)
Inappropriate **Write a comment**
Silje Kjosbakken
Contributions:
Comments: 1

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

Human rights?

Published 2 December Comment #1

Where are the "human rights" for these workers when they lose their jobs in favour of less expensive manpower? Social dumping will be the result if you get what you want.

Quote To quote you must select what you want to quote and then click this button.
Eirik Kollerøy
Inappropriate
Contributions:
Comments: 1

Important test case

Published 2 December Comment #2

It is a basic human right to choose if one wants to join a union, and, if so, where. Today's monopoly for one specific federation under LO also has aspects related, for example, to

- the freedom of establishment,
- competition law regulations, and

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

Translation from Norwegian

All opinions / Society / Working Life
Follow this debate
Comment on the contribution
Nicolay Skarning
Contributions: 14
Comments:

NHO Norwegian Logistics and Freight Association rebuked the Attorney General today – There is a closed shop practice at Norwegian ports

Published on 5 December – 713 views Contribution

The Norwegian Attorney General is doing everything he can so that the Council of Europe does not review Bedriftsforbundet's complaint against the closed shop practice at Norwegian ports. Now he is being rebuked by the principal employers' organisation for the Norwegian ports, NHO Norwegian Logistics and Freight Association.

I dealt with the Attorney General's incorrect presentation of Bedriftsforbundet's complaint to the Council of Europe due to the closed shop practice at Norwegian ports in the newspaper **Dagsavisen on 1 December 2013**. Now NHO Norwegian Logistics and Freight Association is confirming my presentation.

NHO Norwegian Logistics and Freight Association, the principal organisation for employers at the ports, has sent a letter today (5 December)**to the Council of Europe** in which they rebuke the Attorney General's incorrect presentation of 7 November 2013. In paragraph 3 of the letter and beyond they state:

"NHO Norwegian Logistics and Freight Association is aware of the Attorney General's pleading of 7 November 2013. From our side, Bedriftsforbundet is to be regarded as a national employers' organisation and should be entitled to submit a complaint concerning inadequate fulfilment of the Charter. In our opinion the complaint is well founded. ...NHO Norwegian Logistics and Freight Association confirms that there is in practice a requirement for membership in the NHO Norwegian Transport Workers Union in order to be eligible for work at Norwegian ports, even though this has not been written anywhere... The requirement for membership in the Norwegian Transport Workers Union is practised at 27 ports..." (signed **Managing Director Tom Rune Nilsen**).

The Attorney General's presentation to the Council of Europe has thus been set aside by those who know Norwegian ports through their responsibility as employers for many years, and through collective wage agreements with the Norwegian Transport Workers Union under LO.

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

Will the Norwegian Attorney General start to relate to the facts, and start to be concerned about the lack of fulfilment of freedom of association at Norwegian ports, or can we expect even more smart legal manoeuvring with the aim of ensuring that the complaint against Norway is not reviewed by the Council of Europe at any price? If so, then he should be disqualified. We cannot have an Attorney General that works against the freedom of association in Norway.

Quote To quote you must select what you want to quote and then click this button. Well done!
Inappropriate **Write a comment**
Comment on the contribution:
Share this contribution:

- **Most liked**

True translation of facsimile certified
Oslo, 10 February 2014

Peter Allen Eseltine
Government Authorised Translator

Translation from Norwegian

Bedriftsforbundet

Akersgaten 41, 0155 Oslo
Telephone: +47 23 35 70 10
Fax: +47 23 35 70 11
post@bedriftsforbundet.no
www.bedriftsforbundet.no
Enterprise no. 866 145 172 VAT

Ministry of Labour
P.O. Box 8019 Dep
0030 Oslo

Oslo, 29 November 2013

Bedriftsforbundet demands that the Attorney General's letter to the Council of Europe be retracted.

Reference is made to the input of the Attorney General to the Committee of Social Rights of the Council of Europe of 7 November 2013 in regard to complaint no. 103/2013 concerning the closed shop practice at Norwegian ports. The request for dismissal is based on the assertion that Bedriftsforbundet, with its 4,000 members and acting as a commenting body for the Government for 20 years, is not representative. This is clearly incorrect, and must be corrected before the European Committee of Social Rights reviews the case next week. Bedriftsforbundet requests that the Attorney General's letter be retracted immediately.

Yours sincerely
Bedriftsforbundet
Lars-Erik Sletner [sign.]
Lars-Erik Sletner
Managing Director

True translation of facsimile certified
Oslo, 10 February 2014

GOVERNMENT AUTHORIZED TRANSLATOR · PETER A. ESELTINE · ENGLISH - NORWEGIAN · NORWAY · OSLO

Peter Allen Eseltine
Government Authorised Translator