



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

**23 July 2014**

**Case Document No. 8**

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

**SUBMISSIONS OF THE GOVERNMENT ON THE MERITS**

**Registered at the Secretariat on 15 July 2014**





## **ATTORNEY GENERAL – CIVIL AFFAIRS**

The European Committee of Social Rights  
Executive Secretary  
Council of Europe  
F-67075 Strasbourg Cedex  
France

Oslo, 15 July 2014

### **OBSERVATIONS ON THE MERITS**

#### **SUBMITTED BY**

#### **THE GOVERNMENT OF NORWAY**

represented by Pål Wennerås, advocate at the Attorney General of Civil Affairs and acting agent, Margit Tveiten, Deputy Director General at the Ministry of Foreign Affairs, and Eli Mette Jarbo, Deputy Director General at the Ministry of Labour and Social Affairs, submitted pursuant to Article 7§1 of the Additional Protocol to the European Social Charter providing for a system of collective complaints and Rule 31§1 of the Rules of the European Committee of Social Rights, in

#### **COMPLAINT No. 103/2013 Bedriftsforbundet v. Norway**

concerning a claim that Norwegian authorities have not ensured satisfactory application of Article 5 of the Revised European Social Charter.

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### 1 INTRODUCTION

1. Reference is made to the Secretariat General's letter of 20 May 2014, inviting the Government of Norway to submit observations on the merits of the complaint by 15 July 2014.

#### 1.1 Summary of the complaint

2. The complaint of 4. September 2013 (p. 1) claims that there is a "consistent and long term" closed shop practice in Norwegian ports, requiring dock workers to be members of the Norwegian Transport Workers' Union (NTF). This violates the negative right to freedom of association.
3. Furthermore, Norwegian authorities have "acknowledged and accepted the closed shop practice at all public ports in Norway" by relying on data from NTF when reporting on the number of dock workers to ILO (p. 2).
4. The employers do not support the closed shop practice, but it is made possible because "NTF is... in a dominant position vis-a vis the employers at the ports" (p. 4).
5. Finally, the consequence of the closed shops is that the collective agreements' principle of preference for employed dock workers in practice only applies to NTF members and thus excludes members of other trade unions, the corollary of which is interference with the positive right to freedom of association (p. 4).
6. It may be added for the sake of completeness that the complaint, submitted by Bedriftsforbundet on behalf of its member Holship Norge AS, have been supplemented by another complaint from Holship to the EFTA Surveillance Authority concerning the EEA rules on free movement of services and establishment.

Attachment 1: Letter from the EFTA Surveillance Authority of 28 January 2014

### 2 LAW

#### 2.1 The European Charter of Social Rights

7. Article 5 of the Charter reads as follows:

*"With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be applied as to impair, this freedom..."*

8. As observed by the European Committee of Social Rights (Confederation of Swedish Enterprise v. Sweden, Complaint No. 12/2002, decision on merits of 15 May 2003), Article 5 must be interpreted in the light of Article I, set out below:



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*“Without prejudice to the methods of implementation foreseen in these articles the relevant provisions of Article 1 to 31 of Part II of this Charter shall be implemented by*

- a laws or regulations;*
- b agreements between employers or employers’ organisations and workers’ organisations;*
- c a combination of those two methods;*
- d other appropriate means.”*

9. In *Confederation of Swedish Enterprise v. Sweden* § 27, the Committee stated that it results from the combination of these provisions that when, in order to implement undertakings accepted under Article 5, use is made of agreements concluded between employers’ organisations and workers’ organisations, in accordance with Article I.b, States should ensure that these agreements do not run counter to obligations entered into, either through the rules that such agreements contain or through the procedures for their implementation.
10. Furthermore, the commitment made by the Parties thus implies that “in the event of contractual provisions likely to lead to such an outcome, and whatever the implementation procedures for these provisions, the relevant authority, whether legislative, regulatory or judicial, is to intervene, either to bring about their repeal or to rule out their implementation” (*Confederation of Swedish Enterprise v. Sweden* § 28).
11. Finally, the freedom guaranteed by Article 5 of the Charter implies that the exercise of a worker’s right to join a trade union is the result of a choice and it is therefore not to be decided by the worker “under the influence of constraints that rules out the exercise of this freedom” (*Confederation of Swedish Enterprise v. Sweden* § 29).

### 2.2 ILO Convention No. 137

12. ILO Convention No. 137 concerning the Social Repercussions of New Methods of Cargo Handling in Docks (1973) acknowledges that changes in cargo-handling “involve considerable repercussions on the level of employment in ports and on the conditions of work and life of dock workers, and that measures should be adopted to prevent or reduce the problems consequent thereon” (preamble § 5).
13. The main provisions in the Convention are set out below:

#### *“Article 1*

- 1. This Convention applies to persons who are regularly available for work as dockworkers and who depend on their work as such for their main annual income.*
- 2. For the purposes of this Convention the terms dockworkers and dock work mean persons and activities defined as such by national law or practice. The organisations of employers and workers concerned shall be consulted on or otherwise participate in the establishment and revision of such definitions...*

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### Article 2

1. *It shall be national policy to encourage all concerned to provide permanent or regular employment for dock workers in so far as practicable.*
2. *In any case, dock workers shall be assured minimum periods of employment or a minimum income, in a manner and to an extent depending on the economic and social situation of the country and port concerned.*

### Article 3

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 determined by national law or practice.*

(...)

### Article 7

*The provisions of this Convention shall, except in so far as they are otherwise made effective by means of collective agreements, arbitration awards or in such other manner as may be consistent with national practice, be given effect by national laws or regulations."*

## 2.3 National law

### 2.3.1 The Constitution

14. Following amendment in 2014, freedom of association – both its positive and negative aspect – is guaranteed by Article 101§1 of the Norwegian Constitution (Grunnloven):

*"§101*

*Everyone has a right to form, join or withdraw from associations, including trade unions and political parties."*

15. It follows from the travaux préparatoires that Article 101§1 codifies existing law:

*"Establishment of the freedom of association and association in the Constitution will not alter the current legal situation in Norway, and it may be assumed that a provision including it in the Constitution will have limited significance in practice. This is due to the fact that freedom of organisation and association is presently protected through practice, international human rights conventions and the criminal code. Codification in the constitution of the freedom of organisation and*

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*association will primarily make these rights clearer and more visible in the Norwegian legal order.”<sup>1</sup>*

16. It should be added that its inclusion in the Constitution elevates the freedom of association to rank among the most fundamental rights in the Norwegian legal order.

### 2.3.2 The Human Rights Act

17. Freedom of association is in addition protected by the Human Rights Act of 21 May 1999 No. 30 (Menneskerettsloven), which incorporates certain international human rights conventions into the national legal order. Reference is made to the Supreme Court judgment in *Olderdalen Ambulanse* (2001):

*“Workers freedom of association is protected by Article 11 of the ECHR [European Convention on human rights], Article 8 of the United Nation’s Convention on Economic, Social and Cultural Rights and Article 22 of the United Nation’s Convention on Civil and Political rights. I also find it prudent to mention ILO Convention nr. 98 (1949) ... The three first mentioned conventions, pursuant to the Human Right Act of 21 May 1999 No. 30, take effect as domestic law.”<sup>2</sup>*

18. Furthermore, Article 3 of the Act grants the incorporated conventions precedence over other domestic laws in case of conflict.

### 2.3.3 The Working Environment Act

19. Freedom of association is also enshrined in the Working Environment Act (Arbeidsmiljøloven).
20. Article 55A§1 of the former Working Environment Act of 4 February 1977 No. 4 contained the following provision:

*“§ 55A Appointment*

*The employer shall not in announcement for new employees or in another manner require the applicants to give information on their views on political or religious questions, or on whether they are members of trade unions...”*

21. The Supreme Court held in the *Olderdalen Ambulanse* case (2001) that Article 55A§1 protects the positive right to freedom of association:

*“Olderdalen Ambulance AS has not directly required information about Mo’s and Dalvik’s possible membership in such [trade union] organisations, but the condition imposed with regard to employment is in my opinion unlawful. The condition is clearly contradictory to the purpose of Article 55A§1. It is suited to acquire information concerning whether a job seeker is organized or not, and I consider the condition as a circumvention of the prohibitions laid down in that provision of law”.<sup>3</sup>*

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<sup>1</sup> Document 16 (2011-2012) p. 165.

<sup>2</sup> Rt 2001 p. 248 at p. 258.

<sup>3</sup> Ibid at p. 259

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22. The Supreme Court applied the same reasoning with regard to the negative right to freedom of association in the *Norsk Folkehjelp* judgment (2001):

*“This reasoning [the abovementioned quote from Olderdalen Ambulanse] is in my opinion also valid for Norsk Folkehjelp’s clause on obligatory organisation. An obligation to be organized in a particular trade union will largely in the same manner as a condition of being non-organized be fit to compel information about whether a job seeker is or is not a member of a trade union.... Based on the foregoing, I conclude that Norsk Folkehjelp’s clause on obligatory organisation is unlawful as contradictory to Article 55A§1 of the Working Environment Act.”<sup>4</sup>*

23. The Working Environment Act has since been replaced, but the same principles have been carried over and strengthened by Articles 13-1§1, 13-2§1 and 13-4§1 of the Working Environment Act of 17 June 2005 No. 62:

*“§ 13-1 Prohibition against discrimination*

1. *Direct and indirect discrimination on the basis of political views, trade union membership or age is prohibited...*

*§ 13-2 Scope of this chapter*

1. *The provisions in this chapter shall apply to all aspects of employment, including*
- a. advertising posts, appointment, relocation and promotion,*
  - b. training and other forms of competence development,*
  - c. pay and working conditions*
  - d. Termination of employment*

*[...]*

*§13-4 Obtaining information on appointment of employees*

1. *The employer shall not when advertising for new employees or in any other manner request the applicants to provide information concerning sexual orientation, their views on political issues or whether they are members of employee organisations. Nor must the employer implement measures in order to obtain such information in any other manner.”*

24. These articles in the Working Environment Act are enforced by the Equality and Anti-Discrimination Ombud (Likestillings- og diskrimineringsombudet).

### 2.3.4 *Fundamental principles of labour law and common practice of the social partners*

25. Freedom of association has been recognised as a fundamental principle by the Norwegian social partners for more than a hundred years. Article 14 of the 1907 Industry Agreement (Verktstedsoverenskomsten) provided that “[t]he employers recognise the worker’s right to freely be or not to be member of an union, whereas the Norwegian Iron and Metal Workers Federation recognise the same right for the employers.”
26. A similar clause was in turn incorporated into the “Basic Agreement” (1935) between the Confederation of Norwegian Enterprise (NHO) and the Norwegian Federation of Trade

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<sup>4</sup> Rt 2001 p. 1413 at p. 1427-1428.

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Unions (LO), thus elevating freedom of association to a fundamental principle in the hierarchy of collective agreements.

### Attachment 2: The Basic Agreement (extract)<sup>5</sup>

27. Article 2-1§1 of the Basic Agreement and the accompanying commentary reads as follows:

#### *"§2-1 Right of organisation*

*The Confederation of Norwegian Enterprise and the Norwegian Federation of Trade Unions mutually recognise the employers and employees freedom of association."*

#### Commentary to the Basic Agreement

(...)

*"This provision [Article 2-1] previously came with an addendum to the protocol stating that it would constitute a violation of a fundamental principle of the cooperation between the central confederations if steps were taken to hinder or impede employment of workers for the reason that the employee or the enterprise are unionized or non-unionized. The addendum was removed in 1985, although this did not imply any material change. In other words, Section 2-1 affirms the positive as well as the negative freedom of association (the right to remain non-unionized)."*

28. The Supreme Court thus held as follows in the *Norsk Folkehjelp* judgment:

*"The individual worker's right to choose to be organized has long been recognized as a fundamental principle of Norwegian labour law. The Basic agreement between NHO [the Confederation of Norwegian Enterprise] and LO [the Norwegian Federation of Trade Unions] has in many years contained a specific provision concerning the right of organisation, where it is affirmed that the main organisations mutually acknowledge the employer's and employee's freedom of association. This concerns not only the positive freedom of association – the right to choose to be organized – but also the negative freedom of association – the right not to be organized..."*<sup>6</sup>

29. The Supreme Court summed up the legal situation in *Norsk Sjømannsforbund* (2008):

*"(37) The right to freedom of association is a fundamental human right. In addition to being established in several international human rights instruments, it is a common unwritten Norwegian principle of law.*

*(38) The freedom of association has a positive and negative aspect. The positive freedom of association confers a right to assemble and join unions, whereas the negative freedom of association confers a right to be non-organized and, if one wish to be organized, to choose which union one wants to be member of.*

(...)

<sup>5</sup> The English version of the Basic Agreement is the agreement for the period 2010 – 2013. The wording of § 2-1 is the same as in the running agreement for the period 2014 – 2017.

<sup>6</sup> Ibid at p. 1425.

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*(42) The unwritten Norwegian principle of freedom of association is founded primarily on common legal opinion, Parliamentary premises and practice in the labour market, and has been authoritatively confirmed by the Supreme Court's judgment in Rt 2001-1413 Norsk Folkehjelp.”*<sup>7</sup>

30. The freedom of association has subsequently been incorporated in Article 101§1 of the Norwegian Constitution, as noted in section 2.3.1 above.

### 2.4 Freedom of association and dock workers

#### 2.4.1 The origin of the collective agreements in this sector

31. Some of the first collective agreements in Norway concerned dock workers, a development which came as response to their precarious working conditions. The first agreements originated from the early part of the last century and covered individual undertakings only. These individual agreements merged into the general “Unloading and Loading Agreement for Southern Norway” and the “Unloading and Loading Agreement for Northern Norway”, respectively. These two agreements merged in 1998 and became the “Unloading and Loading Southern and Northern Norway Agreement” (the Southern and Northern Norway Agreement).
32. The parties to this agreement include the main social partners in Norway, i.e., on the one side, the Confederation of Norwegian Enterprise (NHO), NHO Logistics and Transport and affiliated shipping agents, steward undertakings, shipping companies and undertakings in so far as the aforementioned members of the NHO take over the handling or work on their behalf, and on the other side, the Norwegian Federation of Trade Unions (LO), the Norwegian Transport Worker’s Union (NTF) and concerned unloading and loading organisations. The Southern and Northern Norway Agreement, like its predecessors, consists of a wage system based on piece work.
33. The employer and worker organisations eventually recognised that it was in their common interest to establish an agreement providing a fixed wage system and thereby ensuring more stable working conditions for dock workers. This paved the way for the adoption in 1976 of the “Framework Agreement on a Fixed Wage System for Unloading and Loading Workers” (the Framework Agreement). The parties to the agreement are, like the Southern and Northern Agreement, the main social partners in Norway, i.e. NHO and NHO Logistics and Transport, on the one side, and LO and NTF, on the other side.
34. The Norwegian Labour Court (Arbeidsretten) described these collective agreements in the *Spjelkavik havn* judgment (2001):

*“The Framework Agreement was established in 1976 as an alternative to the ‘Collective Agreement for Dock Workers in Southern Norway’ – hereinafter called the Collective Agreement for Southern Norway. In 1998 the latter was amalgated with the Loading and Unloading Agreement for Southern and Northern Norway – hereinafter called the Loading and Unloading Agreement. These national agreements have all long been based on a system that assumed that the social partners in each port would set up a ‘loading and unloading operations office or*

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<sup>7</sup> Rt 2008 p. 1601.



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*administrative body’ – to which the loading and unloading operations are assigned. When a ship docks in the individual port or terminal, operators book the necessary number of dock workers as set out in detail in the agreements.”<sup>8</sup>*

35. There are in addition a few collective agreements limited to an individual port, e.g. the port of Narvik. This port is in fact subject to two competing collective agreements: The LKAB Agreement between NHO/NHO Logistics and Transport and LO/NTF; and the LKAB Agreement between NHO)/NHO Logistics and Transport and the Confederation of Vocational Unions (YS) and its affiliate organisation Parat.

### 2.4.2 The system and main provisions in the collective agreements

36. The Framework Agreement covers the largest ports (13) in Norway.

#### Attachment 3: The Framework Agreement (extract)

37. The system of booking workers, including the principle of preference for dock workers, is laid down in Article 2:

#### *“§ 2*

##### *System of work*

##### *Organization of work*

1. *On vessels of 50 DWT or above that sail from a Norwegian port to a foreign port or vice versa, loading and unloading shall be performed by dock workers. An exception is made for all loading and unloading that take place at the enterprise’s own facilities, where the enterprise’s own staff are in charge of loading and unloading.*

*(...)*

2. *The employer requests the number of men needed for handling of vessels or other work...”*

38. Article 3 of the Framework Agreement regulates administration of the ports, including provisions on employment of dock workers:

#### *“§ 3 Personnel committee/administration body*

*In the ports, a personnel committee is to be established, consisting of 3 representatives from each of the parties.*

##### *a) The committee shall*

*Deliberate and decide on:*

*Preparation of labour regulations*

*Disciplinary matters*

*Welfare issues*

*Subdivision of the working hours*

*Taking of holiday entitlement*

*Work clothes within the framework of the collective agreement*

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<sup>8</sup> ARD-2001-49.

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### *Training*

*Matters related to the working environment and safety in compliance with applicable legislation if no working environment committee has been established in the port.*

### *b) Deliberate and submit proposals for:*

*Improvements and/or changes to be undertaken in the port*

*Regulation of the port's workforce*

*Hiring of the manager and clerical staff at the administrative body described below*

*Wage issues for the manager and clerical staff*

*Matters related to appropriations*

2. *In each port an administrative body is to be established, with a board consisting of 2 representatives of the workers and 3 representatives of the employers. This body shall expedite the practical implementation of the decisions made by the personnel committee according to item a) and assess proposals submitted according to item b). The board is in charge of employment and dismissal of dock workers and staff at the body's administration."*

39. Smaller ports are regulated by the Southern and Northern Norway Agreement.

Attachment 4: The Southern and Norway Agreement (extract)

40. Article 1§2 of that Agreement contains provisions on preferential treatment of dock workers which are almost identical to the Framework Agreement:

*"§ 1*

### *Organization of work*

1. *Present practices are maintained in each location, unless otherwise provided for in specialized collective agreements.*

2. *Vessels in foreign traffic:*

*On vessels of 50 DWT or above, sailing from a Norwegian port to a foreign port or vice versa, loading and unloading work shall not be performed by the vessel's crew. Exception is made for all loading and unloading that take place at the enterprise's own facilities, where the enterprise's own staff are in charge of loading and unloading. Nor does this provision apply to vessels in foreign traffic that as part of a journey also engage in cabotage, since present practices are maintained..."*

41. Unlike the Framework Agreement, the Southern and Northern Norway Agreement does not contain specific provisions on the administration of the ports and employment of dock workers. But the Labour Court has noted that the system of joint administration is the same under these agreements.<sup>9</sup> Reference is also made to the Government's Report to ILO of 2 October 2002, third paragraph in the quote below:

Attachment 5: Report to ILO of 2 October 2002

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<sup>9</sup> See paragraph 34 above.



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“V

*Registration of dock workers, cf. Article 3 of the Convention*

*In all public ports, a pool of permanent dock workers has a contractually agreed pre-emptive right to perform loading and unloading work. In the largest ports registration takes place when dock workers are engaged by a loading and unloading office on a permanent basis. The loading and unloading office hires out the dock workers to shipping agents and other port users. Collective wage agreements require shipping agents bound by such agreements to employ dock workers 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 agreements to the effect that the local trade union association of dock workers and the local port users shall jointly determine the size of the permanent pool of dock workers. Workers in the permanent pool have a contractually agreed pre-emptive right to perform loading and unloading work. When ships call at the port the shipping agents contact a loading and unloading office to engage the required number of workers from the permanent pool.”*

### 2.4.3 The relationship between the collective agreements and ILO Convention No. 137

42. Article 2 of the Framework Agreement (and Article 1 of the Southern and Northern Agreement) implements the principle of preferential treatment of dock workers laid down in Article 3 of ILO Convention No. 137. This was underscored by the Supreme Court in the *Sola Havn* judgment:

*“The Framework Agreement with the provision in Article 2 No. 1 is a generally acknowledged collective wage agreement with a tradition in seaports. Its background is the special conditions for dock workers, who originally were casual labourers without job and wage security. The background of the provision and the development of the collective wage system for the dock workers are given in further detail in the High Court’s judgment. I would add that the provision in Section 2 No. 1 of the Framework Agreement has been considered to be part of Norway’s fulfilment of its obligations under the ILO Convention No 137 on dock work. Under Article 3 of the Convention registered dock workers shall have preferential rights to dock work.”<sup>10</sup>*

43. Norwegian authorities have for many years reported on measures implementing ILO Convention No 137 in accordance with Article 22 of the Constitution of the International Labour Organisation. The first report in 1976 erroneously indicated that dock workers coincided with organised workers, but subsequent reporting clarified the fact that a “dockworker”, to which the principle of preference applies, “is a worker whose main activity is ‘dock work’... and who is attached to a specific office or administrative agency established by the agreement between the parties”, see e.g. the 1989 Report, first paragraph below:

Attachment 6: Report to ILO of 16 January 1989

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<sup>10</sup> Rt 1997 p. 334 at p. 340.

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### *"Article 1*

#### *Paragraph 2:*

*The concepts 'dock work' and 'dock worker' have not been formally defined by the authorities, but follow from agreements and practice arrived at between employers at the port and the worker's organisations associated with the occupational group which is traditionally engaged in loading and unloading ships at the port. Dockworkers have a 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 the agreement between the parties.*

*(...)*

### *Article 2*

#### *Paragraph 1:*

*Reference is made to the previous report.*

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

*(...)*

### *Article 3*

#### *Paragraph 1:*

*Dock workers are registered with an administrative body established pursuant to collective pay agreement.*

#### *Paragraph 2 & 3:*

*Registered dock workers 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..."*

44. The process of registering dock workers and reporting to ILO were described in the Report to ILO of 15 October 2004:

#### Attachment 7: Report to ILO of 15 October 2004

*"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*

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*work. The Authority does not draw up special reports on dock work and does not keep a register of dock workers.*

*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.*

### 3 ASSESSMENT

#### 3.1 Introduction

45. The complaint claims in essence that (a) Norwegian authorities have acknowledged (b) closed shops in all Norwegian ports.
46. The first limb of that statement, by which the complaint attempts to attach responsibility for any wrongdoing to national authorities, is plainly wrong. The Kingdom of Norway has adopted a whole set of measures to ensure freedom of association in accordance with its obligations under Article 5 of the Charter (Section 3.2).
47. The Government is nevertheless compelled to take issue with the assertion of closed shops in the ports. This claim is not documented by any actual evidence and disregards several factors which render it improbable (Section 3.3).

#### 3.2 The Kingdom of Norway has fulfilled its obligations under Article 5 of the Charter

48. Article 5, read in conjunction with Article I, requires the Parties to ensure that national law does not impair the freedom of association. Where Article 5 is implemented through collective agreements, States should ensure that neither the rules of such agreements nor the procedures for their implementation run counter to the obligations they have entered into (*Confederation of Swedish Enterprise v. Sweden* § 27). If contractual provisions are likely to infringe the freedom of association, the legislative, regulatory or judicial authorities shall ensure that they are repealed or rule out their implementation (*Confederation of Swedish Enterprise v. Sweden* § 28).
49. Norway has implemented Article 5, including the negative right to freedom of association, through various sources of national law.
50. Freedom of association is protected by Article 101§1 of the Norwegian Constitution.<sup>11</sup>
51. The Human Rights Act of 21 May 1999 nr 30 incorporates inter alia Article 11 of the European Convention on human rights, Article 8 of the United Nation's Convention on Economic, Social and Cultural Rights and Article 22 of the United Nation's Convention on

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<sup>11</sup> See Section 2.3.1 above.

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Civil and Political rights into the national legal order and Article 3 of the Act grants these conventions precedence over domestic laws.<sup>12</sup>

52. Discrimination of workers on the basis of membership or non-membership of trade unions was also unlawful under Article 55A of the Working Environment Act of 4 February 1977 nr. 4, provisions which have been carried over and further strengthened by Articles 13-1§1 and 13-2§1 of the Working Environment of 17 June 2005 nr. 62.<sup>13</sup>
53. Freedom of association has in addition for many years constituted an unwritten principle of national law, based on legal opinion, Parliamentary premises and common practice in the labour market.<sup>14</sup>
54. The aforementioned provisions in the Working Environment Act are enforced by the Equality and Anti-Discrimination Ombud and individuals may also bring claims before national courts. The effectiveness of the latter remedy is amply illustrated by the case law of Supreme Court, in particular from 2001 and onwards.<sup>15</sup>
55. The social partners have likewise for many years recognised freedom of association, and Article 2§1 of the Basic Agreement between the Confederation of Norwegian Enterprise and the Norwegian Federation of Trade Unions protects both the positive and negative aspect of that freedom.<sup>16</sup>
56. These organisations are also parties to the two main collective agreements regulating work conditions in the ports and the Basic Agreement thus form an integral part of these agreements.<sup>17</sup> It would accordingly conflict with the Basic Agreement if these agreements contained closed shop clauses. They do not.<sup>18</sup>
57. This case can accordingly, for the reasons above, be distinguished from *Confederation of Swedish Enterprise v. Sweden*.
58. The Government therefore respectfully submits that the Kingdom of Norway has adopted the requisite measures to fulfil its obligations under Article 5 of the Charter. It is simply not correct that Norwegian authorities have allowed, much less acknowledged, closed shops. The Norwegian legal order makes it perfectly clear that closed shops are prohibited and administrative or judicial relief is available for any person who has been subject to wrongdoing in this regard.
59. The Government acknowledges, however, that the alleged existence of closed shops nevertheless raises questions as to whether the freedom of association is ensured in practice, a question which is addressed below.

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<sup>12</sup> See Section 2.3.2 above.

<sup>13</sup> See Section 2.3.3 above.

<sup>14</sup> See Section 2.3.4 above.

<sup>15</sup> See Rt 2001 p. 248, Rt 2001 p. 1413 and Rt 2008 p. 1601.

<sup>16</sup> See Section 2.3.4 above.

<sup>17</sup> Ibid.

<sup>18</sup> See Section 2.4.2 above.

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### 3.3 There is no evidence of a closed shop practice

60. The complaint rests on the premise that “NTF is... in a dominant position vis-à-vis the employers in the ports” and that explains, according to the complainant, how closed shops could come about and be upheld. But there are several factors which make this assertion improbable and, in fact, erroneous.
61. First of all, it seems unlikely that the Norwegian Federation of Trade Unions, through its affiliate Norwegian Transport Workers’ Union, in a “long term and consistent” manner would infringe a whole set of national laws, fundamental principles of labour law, common practice of the social partners and, not the least, a fundamental provision in the Basic Agreement.
62. If we nevertheless accept this possibility, it is difficult to suppose that the Confederation of Norwegian Enterprise could have accepted such a clear violation of the Basic Agreement. It may be expected that such infringements would result in letters of objection to the Norwegian Federation of Trade Unions and, if to no avail, proceedings before the Labour Court. Neither has occurred.
63. Finally and perhaps most importantly, the complaint also disregards the system of joint administration in the ports. Article 3§2 of the Framework Agreement provides that the board of the administration body in the port is responsible for employing and discharging dock workers, a board consisting of a majority of employer representatives (3 of 5).<sup>19</sup> Contrary to the claim put forward in the complaint, it is thus in fact the employers’ representatives who are in a dominant position with regard to employment and discharging of dock workers. And it is of course difficult to envisage that the employers’ representatives would require applicants to be members of NTF.
64. The Southern and Northern Agreement – which governs the smaller ports – does not contain specific provisions on the procedures for employing dock workers. But the practice under this agreement is, similar to the Framework Agreement, based on joint administration. The Labour Court has thus noted that “[t]hese national agreements have all long been based on a system that assumed that the social partners in each port would set up a ‘loading and unloading operations or administrative body’...”<sup>20</sup>, and the 2002 Report to ILO likewise registered that “the local trade union association of dock workers and the local port users shall jointly determine the size of the permanent pool of dock workers.”<sup>21</sup>
65. The premise of the complaint, according to which NTF is at liberty to implement a nationwide practice of closed shops, is thus at odds with the fact that the social partners share the responsibility of administering the ports under the aforementioned collective agreements.
66. These structural features are largely left aside in the complaint, which instead dwells on media clippings reporting members of the Norwegian Transport Workers’ Union as saying that dock workers should or must be union members. “That’s just the way it is”,<sup>22</sup> one

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<sup>19</sup> See paragraph 38 above.

<sup>20</sup> Judgment of the Labour Court (ARD-2001-49), see also paragraph 34 above.

<sup>21</sup> Report to ILO of 2 October 2002, see also paragraph 41 above.

<sup>22</sup> Case Document No. 2, attachment 9 cf. translated version in Case Document No. 6, attachment 4.

## ATTORNEY GENERAL – CIVIL AFFAIRS

member are reported as saying in an interview on his 50<sup>th</sup> birthday. It is difficult for the Government to comment on such statements, not being intimate with their context and purpose. Suffice to say that it would not be surprising if affiliated persons should wish to generalise the fact that many dock workers are indeed members of NTF.

67. The Ministry of Labour and Social Affairs has nevertheless taken the complaint very seriously and it therefore requested by letter of 22 October 2013 the Main Federations to comment on the allegations and provide any information in this regard. The Norwegian Federation of Trade Unions refuted the claims in a letter to the Ministry of 20 November 2013, stating that the complaint “is based on erroneous and undocumented submissions that there is a practice at Norwegian ports requiring dock workers to be affiliated with a union...”<sup>23</sup> The Confederation of Norwegian Enterprise (NHO) stated in a letter to the Ministry of 21 November 2013 as follows: “As far as NHO is aware, the Norwegian Transport Workers Union 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...”<sup>24</sup> Apart from referring to the aforementioned statements from persons in NTF, the answer from NHO thus implied that itself lacked personal knowledge of closed shops. Hence, the Ministry could only note that neither of the two main Federations presented any evidence corroborating the complaint.
68. This brings the Government to what is missing in the complaint – namely any actual evidence documenting that an applicant for employment as a dockworker has in fact been rejected (or subsequently let go) due to lacking membership in the Transport Workers’ Union, let alone a sufficient number of instances justifying the assertion of a “long term and consistent” closed shop practice. If this had been the case, one would have expected individuals filing complaints with the authorities, e.g. the Equality and Anti-Discrimination Ombud, or bringing cases before the judiciary. The Government is not aware of any such cases, however.
69. There have in fact been reported positive statements to the contrary by non-organised dock workers, an example of which is provided below:

### Attachment 8: Interview with Mr Johan Eriksson of 5 December 2013

70. Finally, the complaint claims that closed shops have been acknowledged by the Norwegian authorities’ through its reporting to ILO on Convention No. 137. It appears that the complaint confuses two distinct issues, however.
71. It is true, as was explained in the 2004 Report to ILO referred to above,<sup>25</sup> that the Labour Inspection Authority does not draw up special reports on dock work or keep a register of dock workers, but it have instead relied on figures submitted by the parties to the collective agreements and NTF in particular. They seemed best placed to provide this information and ILO have not objected to this manner of reporting, but the Government recognises that it could have employed other or supplementary means of collecting data in order to obtain the most accurate number of employed dock workers.

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<sup>23</sup> Case document No. 7, attachment 1 cf. translated version in attachment 2.

<sup>24</sup> Case document No. 4, attachment 1 cf. translated version in Case Document No. 6, appendix 7.

<sup>25</sup> See paragraph 44 above.



## ATTORNEY GENERAL – CIVIL AFFAIRS

72. But the procedure for reporting to ILO has no relation to an acknowledgment of membership in the NTF as a precondition for gaining employment as a dock worker. While the first report to ILO in 1976 could have raised such concerns, subsequent reporting makes it clear that the notion of a “dockworker” is solely subject to objective criteria concerning the workers’ activity and attachment to an administration body set up under the collective agreements, see e.g. the 1989 Report’s definition of a dock worker:

*“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.”<sup>26</sup>*

In any case, later court rulings as referred to above in paragraph 21-30, have made it clear that Norwegian law does not allow requirements for union membership as a condition for employment.

73. This brings us back to the collective agreements themselves, which lack any closed shop clauses and which in addition provide for joint decisions concerning employment of dock workers – to be more precise, by a majority of employer representatives under Article 3§2 of the Framework Agreement. Furthermore, Article 2§1 of the Basic Agreement constitutes an integral part of these agreements and that provision, as will be recalled, protects both the positive and negative aspect of the freedom of association.<sup>27</sup>
74. Having regard to all of the foregoing, the Government maintains that the first head of the complaint is unfounded as regards the alleged requirement of membership in the Transport Workers’ Union in order to gain and maintain employment as a dock worker in the ports. The principle of preference for employed dock workers is accordingly not discriminatory in practice and the second head of the complaint is thus also unfounded.

### 3.4 Conclusion

75. The Kingdom of Norway has taken the necessary measures to satisfy its obligations under Article 5 of the Charter. The freedom of association has been considerably strengthened over the last 15 years or so, most recently by its insertion into the Constitution.
76. The same sense of responsibility has been shouldered by the social partners through their common practice, provisions protecting freedom of association in the Basic Agreement and the corresponding absence of closed shop clauses in subordinate collective agreements – including those applicable to ports.
77. The right to freedom of association is enforced by the Equality and Anti-Discrimination Ombud and national courts, either of which individuals may turn to if their rights have been infringed. The Government is not aware of any complaints or judicial proceedings brought by individuals having experienced such discrimination in the ports, however. Should such cases nevertheless materialise in the future, the Government can assure that the administrative and judicial authorities will strictly enforce the right to freedom of association in compliance with inter alia Article 101§1 of the Norwegian Constitution.

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<sup>26</sup> See paragraph 43 above.

<sup>27</sup> See paragraphs 27-28 above.

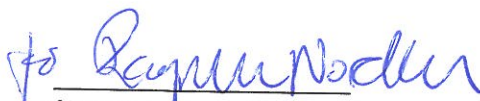
## ATTORNEY GENERAL – CIVIL AFFAIRS

78. The Government respectfully submits that the complaint should be dismissed as unfounded.

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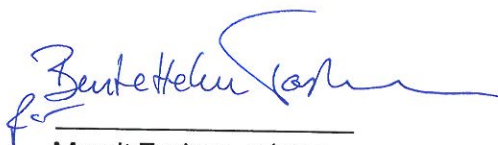
Oslo, 15 July 2014

**THE ATTORNEY GENERAL (CIVIL AFFAIRS)**

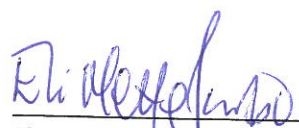


Pål Wennerås, acting agent  
attorney-at-law

Office of the Attorney General (Civil Affairs)



Margit Tveiten, *adviser*  
Deputy Director General  
Ministry of Foreign Affairs



Eli Mette Jarbo, *adviser*  
Deputy Director General  
Ministry of Labour and Social Affairs



# ATTACHMENT 1

Case handler: Munoz Rodolphe  
Tel: (+32)(0)2 286 1867  
e-mail: Rmu@eftasurv.int

Brussels, 28 January 2014  
Case No: 74535  
Event No: 696736

EFTA SURVEILLANCE  
AUTHORITY

Norwegian Mission to the EU  
Rue Archimède 17  
1000 Brussels

Dear Sir or Madam,

**Subject: Complaint against Norway concerning off load goods from ships in Drammen Port**

On 13 November 2013, the EFTA Surveillance Authority informed Norway that it had received a complaint concerning off load goods from ships in Drammen Port.

The complainant in the case is Holship Norge AS, a Danish private owned company that provides transportation services on road, sea and air. Holship uses its own workers to operate loading and unloading of goods from their ships in Drammen port.

In January 2013, *Administrasjonskontoret* called Holship to a meeting. The purpose of that meeting was, according to the complainant, to ask Holship to agree to give *Administrasjonskontoret* exclusive rights to loading and unloading operations at Drammen Port. In the same meeting Holship claims that *Administrasjonskontoret* asked them to agree to comply with the Framework Wage Agreement Specific for Dock Workers – this agreement gives *Administrasjonskontorets* workers preferential rights to the loading and unloading operation.

On 5 and 8 April 2013, Holship was subjected to a blockade by the employees of *Administrasjonskontoret*. The purpose of the blockade was to prevent Holship from using its own employees to do the loading and unloading operation, and by doing so force Holship to recognise *Administrasjonskontorets* monopoly on loading and unloading operations at Drammen Port.

According to Holship, the cost of *Administrasjonskontorets* loading and unloading operation is much higher than Holship own operation. Therefore, in order to maintain its competitiveness, Holship wants to keep using its own workforce.

The complainant claims that the current legal framework is contrary to the freedom to provide services and the freedom of establishment.

In order for the Authority to examine and assess the complaint, the Norwegian Government is invited to provide the following information:

1. Questions related to the *Administrasjonskontoret*:

1.1 What is the legal status of the *Administrasjonskontoret*?

1.2 Is Holship obliged to be a member of the *Administrasjonskontoret*?

1.3 On which basis are companies selected to be part of the *Administrasjonskontorets* board?

1.4 Is being a member of NHO a condition in order to join the *Administrasjonskontoret* board?

1.5 Can you confirm that competitors of Holship are members of the *Administrasjonskontoret*?

2. Questions related to the Framework Wage Agreement Specific for Dock Workers (*Rammeavtale om fastlønnssystem for losse- og lastearbeidere 2012-2014*):

2.1 Is the “Framework Wage Agreement Specific for Dock Workers” a collective agreement according to Norwegian law?

2.2 Is Holship bound by the Framework Wage Agreement Specific for Dock Workers?

2.2.1 If yes, please indicate the legal basis.

2.2.2 If no, which is the Norwegian Labour legislation applicable to Holship?

2.3 What is the difference in law between a collective agreement which is recognised universally applicable under the Act related to General Wage Agreement (*Allmenngjøringsloven*) and the Framework Wage Agreement Specific for Dock Workers?

3. Questions related to the ILO Convention n°137:

3.1 Can you confirm that Norway has ratified the ILO Convention n°137?

3.2 Can you explain how Norway has implemented the ILO Convention n°137? Please provide the legal texts linked to the implementation of the ILO Convention n°137 under Norwegian law?

3.3 Please explain the link between the ILO Convention n°137 and the Framework Wage Agreement Specific for Dock Workers?

4. General and EEA issues:

4.1 Is the system established in Drammen applicable to every Norwegian port?

4.2 If the activities of *Administrasjonskontoret* were to be considered a restriction to the freedom of establishment and the freedom to provide services, on which overriding requirements in the general interest would such a system be justified?

The Norwegian Government is invited to submit the above information, as well as any other information it deems relevant to the case, so that it reaches the Authority by *1 March 2014*. Please enclose copies of relevant national legislation, including English translations if available.

Yours faithfully,



Ólafur Jóhannes Einarsson

Director

Internal Market Affairs Directorate

# Basic agreement

## *2010 -2013*

### LO - NHO

with supplementary agreements

Confederation of Norwegian Enterprise  
Næringslivets Hovedorganisasjon (NHO)  
Middelthunsgt.27, 0368 Oslo

Norwegian Confederation of Trade Unions  
Landsorganisasjonen i Norge (LO)  
Youngsgt.11, 0181 Oslo.



BASIC AGREEMENT OF 2006  
PART A

**CHAPTER I**  
**PARTIES, APPLICATION AND DURATION**

**§ 1-1 Parties**

The Basic Agreement is an agreement between the Confederation of Norwegian Enterprise (NHO) including all its national and local associations and individual enterprises, and the Norwegian Confederation of Trade Unions (LO) including all its unions and associations (divisions). The Basic Agreement in no way affects or alters relations between parties to other collective agreements.

**§ 1-2 Scope of Application**

The Basic Agreement is the first part of all collective agreements for workers that have been or may be concluded by the organisations named in the heading and/or their members, and which are not covered by other Basic Agreements. Part B of the Basic Agreement applies to industrial and craft enterprises in the same way as the former agreement on production committees. It is the intention that NHO and LO and the interested employer and employee associations may at any time enter into negotiations aimed at making Part B of the Basic Agreement applicable or at adapting the rules in Part B to other commercial sectors than industry and crafts.

**§ 1-3 Duration**

This agreement, which enters into force on 1 January 2010, shall remain in force until 31 December 2013, and thereafter for a further two years at a time unless terminated by one of the parties in writing with 6 - six - months' notice.

**CHAPTER II**  
**FREEDOM OF ASSOCIATION. OBLIGATION TO REFRAIN FROM**  
**INDUSTRIAL ACTION. THE RIGHT TO NEGOTIATE AND**  
**TO TAKE LEGAL ACTION**

**§ 2-1 Freedom of Association**

The Confederation of Norwegian Enterprise (NHO) and the Norwegian Confederation of Trade Unions (LO) mutually recognize the freedom of association of employers and employees.

A well-organised working life is a source of strength for the employee and employer organisations and for the community as a whole. By virtue of the broad interests they represent, LO and NHO safeguard the general interests of the whole community.

For LO and NHO to fulfil their roles, it is important that they have wide support. The democratic rights of the associations are laid down in the Basic Agreement and the Act relating to labour disputes. A central principle of national and international law in the field of labour law, is that employees and employers are given the right to form associations and make collective agreements to safeguard their interests.

To ensure organised employees and employers wide support enabling them to fulfil their functions as central actors in society, it is of decisive importance, in negotiation and conflict situations, to show respect for the interests of the organisations and that neither party acts in a manner that will weaken the position of the other.

**§ 2-2 Obligation to refrain from industrial action**

No stoppages or other industrial action must take place where a collective agreement is in force. If a dispute arises concerning interpretation of a collective agreement, or demands based on a collective agreement, it shall be settled by the Labour Court if the parties fail to reach agreement according to the rules in § 2-3 below.

## **Comments on the BASIC AGREEMENT 2014–2017**

(...)

### **About Chapter II**

#### **The freedom of association, the peace obligation, the right to bargain and appeals**

##### **About Section 2-1 The freedom of association**

The provision affirms the right to free organization or the freedom of association, which has now become a more common designation. The provision implies that harassment of someone on the basis of their membership of a trade union constitutes a violation of collective agreements. Similarly, it is a violation of collective agreements to establish obstacles to the employment of unionized workers or to provide less favourable conditions to unionized workers in industry. Discrimination on the basis of membership of trade unions is also a contravention of Section 13-1 of the Working Environment Act.

The freedom of association includes the right to join a union, participate in the union's activities, accept elected office, recruit members, exert general democratic influence etc. The freedom of association also includes the right to collective bargaining and industrial action. Through a number of international conventions, the freedom of association also enjoys protection under international law, see ILO Conventions no. 89 and 98, the European Convention on Human Rights (ECHR), the European Social Charter (ESC) and two UN conventions from 1966. Through the Human Rights Act of 21 May 1999, the ECHR and the two UN conventions have been incorporated in domestic Norwegian law. Encroachments on the freedom of association, including the right to industrial action, can only be decided by law and in extraordinary situations to maintain socially essential functions ("essential services etc.").

This provision previously came with an addendum to the protocol stating that it would constitute a violation of a fundamental principle of the cooperation between the central confederations if steps were taken to hinder or impede employment of workers for the reason that the employee or the enterprise are unionized or non-unionized. The addendum was removed in 1985, although this did not imply any material change. In other words, Section 2-1 affirms the positive as well as the negative freedom of association (the right to remain non-unionized)."

The statement of objectives on the importance of the freedom of association in the three final paragraphs of this section has its background in the goal of reinforcing the positions of the organizations in working life, including limitation of the "free-rider problem". It should not be worthwhile to remain non-unionized, either for employees or for enterprises. This implies that non-unionized workers should not be given preferential treatment, for example by receiving wage supplements before unionized workers in the same group, cf. Labour Court of Norway verdict 1958-23.

During an official dispute, the parties have an obligation to respect each other's interests. Non-unionized workers should therefore not in any way be rewarded or granted advantages because formally speaking they are not part of the conflict. If the non-unionized workers or others cannot be rationally employed because of the conflict, this provides a valid reason for (conditional) leave, cf. Section 7-1. Concerns for maintaining a fully appropriate working environment may also constitute a

## Attachment 2

reason for work stoppage and leave. The intention to safeguard concerns for the competitiveness of organized enterprises is reflected in Sections 3-1 no. 3 and 3-6 no. 3.

A number of key verdicts have been made on the freedom of association. We refer to Supreme Court judgment 2001-1431 (the Mine Clearing Judgment); Supreme Court judgment 2001-248 (the Ambulance Judgment); Supreme Court judgment 1997-580 (the OFS Judgment); and Labour Court of Norway judgments 1933-177, 1932-178 and 1937-125.

Supreme Court judgment 2008-1601 (the Collective Agreement Fee Judgment) shows that a collective agreement fee may give rise to challenges with regard to the negative freedom of association. The Norwegian Seamen's Union had established provisions in their collective agreement enjoining the employers to deduct a fee equal to the trade union membership fee from the wages of non-unionized workers. The judgment establishes that a collective agreement fee in principle is legally permitted and in conformity with the freedom of association, but with the requirement that this fee should not exceed an amount equal to the union's cost of protecting the non-unionized workers. The union is also required to document its use of the collective agreement fee collected. The judgment cannot be interpreted as saying that a collective agreement fee alone constitutes a breach of the negative freedom of association – see also the judgment by the European Court of Human Rights of 13 May 2007 (the Evaldsson judgment).

Labour Court of Norway judgment 2009-12 concerned the issue of differential treatment on the basis of organizational affiliation, in that members of one organization are granted wage supplements before those of another. The Labour Court concluded that this constituted a breach of the loyalty principle in Section 2-1, 4<sup>th</sup> paragraph, of the Basic Agreement, stating that during bargaining rounds, the parties shall show respect for each other's interests and not act in ways that harm the other party's interests. The case also raises issues pertaining to the legal principle of inalterability in collective agreements, but this is not discussed in the judgment.

The European Court of Human Rights judgment of 11 January 2006 also deserves mention. The judgment states that "closed shop" (provisions of exclusivity) will be in contravention of Article 1 of the European Convention on Human Rights.

(...)

**FRAMEWORK AGREEMENT  
ON A FIXED-WAGE SYSTEM  
FOR  
DOCK WORKERS  
2012–2014**

**between**

**The Confederation of Norwegian Enterprise and  
NHO Logistics and Transport  
of the one part**

**and**

**The Norwegian Confederation of Trade Unions and  
Norwegian Transport Workers' Union  
of the other part**



## § 2

### Organization of work

1. On vessels of 50 DWT or above that sail from a Norwegian port to a foreign port or vice versa, loading and unloading shall be performed by dock workers. An exception is made for all loading and unloading that take place at the enterprise's own facilities, where the enterprise's own staff are in charge of loading and unloading.

**Addendum to the protocol:**

On a question from the Norwegian Transport Workers' Union (NTF), the representatives of HTL declared that they would not abet violations of provisions pertaining to loading and unloading included in collective agreements with unions affiliated to the ITF.

2. The employer requests the number of men needed for handling of vessels or other work.

Note

The parties agree that Section 2, paragraph 2.1, of the Framework Agreement shall be interpreted as saying that at least one man shall be assigned, irrespective of need.

The workers undertake to perform the work assignments that the administrative body commits to. Achievement of quick and efficient handling shall be sought. At least one man shall be assigned to each handling operation - cf. protocols of 4, 20 and 21 January 1977. (See enclosure).

3. The assigning party/employer has the right to assign, de-assign and relocate workers during the course of the work process.
4. For work at terminals, work and rest periods will be the same as those applicable at the assigning party's terminal.
5. The parties underscore that in each and every port, the local employers are obligated, as far as practically possible, to assign the permanent dock workers with handling of goods, terminal work, operation of cranes and machinery, and rigging.

In cases when the assigning party needs extra manpower in addition to the party's permanent employees, these will be requested from the administrative body, and on the condition that workers possessing the right skills and efficiency can be provided at the right price.

This does not mean that dock workers are given preferential access to such work. However, the parties will continue their efforts to ensure that such work in the future will be undertaken by a group of dock workers.

6. In their employment of terminal workers and forklift and machine operators, the employers will under otherwise equal conditions give preference to dock workers for such positions.

Mandatory training as a dock worker shall take place in accordance with the addendum to the protocol below.

7. Assignment for work on the next day shall take place no later than at the end of regular working hours. Necessary routines for alerting in this context are to be established locally. Deployment shall be undertaken in such a manner as to achieve an optimally efficient utilization of the workforce.

**Addendum to the protocol:**

## **Training**

The parties agree that training/education of new employees is of considerably higher importance than previously.

For new employment, possession of a class B driving licence and a forklift driver's licence for forklifts above 10 tonnes must be a minimum requirement.

Those who are members of the permanent group of dock workers and possess a class B driving licence shall be provided with the opportunity to obtain a forklift driver's licence for forklifts above 10 tonnes.

Following detailed discussions, the parties have agreed that there should be a "basic package" for all employees.

The basic package shall be mandatory and contain the following:

1. Hooking and signalling, including training in the use of chains
2. Hazardous goods (labelling, handling, safety etc.)
3. First aid and firefighting
4. Securing and strapping of cargo

All training courses shall result in a course certificate, including a final examination as required.

In ports where special training in addition to the basic package is required, opportunities for such training are to be provided.

Special/supplementary training may include:

- Crane operation
- Tugmaster (truck/terminal tractor)
- Heavy forklifts with a variety of equipment
- Machine operators
- ADR
- Specialized machinery/equipment etc.

As regards the training described above, most larger locations will have options for training courses in the subjects listed under the basic package as well as for specialized training courses.

In smaller locations, it must be reckoned upon that those who are to undergo training must do so in locations other than their own port.

The time spent on training/supplementary education shall be remunerated at the applicable rate for daily working hours.

The parties agree that there should be a "basic package" for all employees, occasional workers and others who are employed by the shipping agents and undertake loading and unloading work within the working area of the crane when the crane is operating.

For temporary employees with short-term labour contracts, for example substitute workers during summer, local mentoring schemes are to be established to ensure the aspects related to safety included in this provision. It is presumed that the local mentoring schemes comply with the requirements defined by the Labour Inspection Authority.

Shipping agents and terminal operators who are bound by this collective agreement undertake to ensure that those of their own staff members who perform loading and unloading work within the working area of the crane when the crane is operating are provided with training that complies with the statutory safety requirements applicable to these employees.

### **§ 3**

#### **Personnel committee/administrative body**

In the ports, a *personnel committee* is to be established, consisting of 3 representatives from each of the parties.

a) The committee shall

*Deliberate and decide on:*

Preparation of labour regulations

Disciplinary matters

Welfare issues

Subdivision of the working hours

Taking of holiday entitlement

Work clothes within the framework of the collective agreement

Training

Matters related to the working environment and safety in compliance with applicable legislation if no working environment committee has been established in the port.

b) *Deliberate and submit proposals for:*

Improvements and/or changes to be undertaken in the port

Regulation of the port's workforce

Hiring of the manager and clerical staff at the administrative body described below

Wage issues for the manager and clerical staff

Matters related to appropriations

2. In each port an administrative body is to be established, with a board consisting of 2 representatives of the workers and 3 representatives of the employers. This body shall expedite the practical implementation of the decisions made by the personnel committee according to item a) and assess proposals submitted according to item b). The board is in charge of employment and dismissal of dock workers and staff at the body's administration.

The manager is responsible for day-to-day management of the office. He is responsible to the board and participates in the board meetings, but without voting rights.

3. As regards regulation of the port's workforce, the personnel committee shall be provided with statistics showing:

Number of hours worked, loading and unloading (days, nights, weekends)

Hours worked, terminal work

Waiting time

### Attachment 3

Sickness absence  
Hours worked, occasional workers  
Tonnage, cargo volume  
Arriving vessels

If the personnel committee fails to agree on regulation of the workforce, negotiations between the central confederations are to be initiated. If these negotiations fail to reach agreement, the matter is referred back to the administrative body for a final decision.

**COLLECTIVE AGREEMENT FOR DOCK WORKERS  
FOR  
SOUTHERN AND NORTHERN NORWAY  
2012–2014**

**COLLECTIVE AGREEMENT**

**between**

**The Confederation of Norwegian Enterprise  
NHO Logistics and Transport  
and affiliated shipping agents, cargo handlers, ship owners and enterprises  
to the extent that the abovementioned members of NHO  
undertake handling or work on their behalf**

**of the one part**

**and**

**The Norwegian Confederation of Trade Unions and  
the Norwegian Transport Workers' Union  
and the dock workers' unions concerned  
of the other part**

**PART I: BASIC AGREEMENT NCTU/NCE**

**PART II: GENERAL PROVISIONS IN THE COLLECTIVE AGREEMENT**

**PART III: ATTACHMENTS TO THE COLLECTIVE AGREEMENT**

**PART II**  
**GENERAL PROVISIONS**  
**COLLECTIVE AGREEMENT FOR DOCK WORKERS**  
**FOR**  
**SOUTHERN AND NORTHERN NORWAY**

Applicable everywhere, unless otherwise decided by the Special Collective Agreements.

**§ 1**  
**Organization of work**

1. Present practices are maintained in each location, unless otherwise provided for in specialized collective agreements.
2. **Vessels in foreign traffic:**  
On vessels of 50 DWT or above, sailing from a Norwegian port to a foreign port or vice versa, loading and unloading work shall not be performed by the vessel's crew. Exception is made for all loading and unloading that take place at the enterprise's own facilities, where the enterprise's own staff are in charge of loading and unloading. Nor does this provision apply to vessels in foreign traffic that as part of a journey also engage in cabotage, since present practices are maintained.  
**Addendum to the protocol:**  
On an enquiry from the Norwegian Transport Workers' Union (NTF), the representatives of the Norwegian Logistics and Freight Association (LTL) declared that they would not abet violations of provisions pertaining to loading and unloading included in collective agreements for unions affiliated to the ITF.
3. The workers undertake to perform the work assignments that the administrative body commits to.
4. The assigning party/employer has the right to assign, de-assign and relocate workers during the course of the work process.
5. Assignment for work on the next day shall take place no later than at the end of regular working hours. Necessary routines for alerting in this context are to be established locally. Deployment shall be undertaken in such a manner as to achieve an optimally efficient utilization of the workforce
6. For work at terminals, work and rest periods will be the same as those applicable at the assigning party's terminal.
7. **Off-duty periods:**  
N.A.F and the chairman of RAF (the ship owners' association) declare that they would advise their members to use off-duty periods for loading and unloading work to the least possible extent in locations where there is an opportunity to obtain regular dock workers, and will help in achieving this.

#### Attachment 4

If the above request for the cooperation of the two employers' associations fails to produce results that are satisfactory for the members of the Norwegian Transport Workers' Union, the NCTU in collaboration with the Norwegian Transport Workers' Union and the Norwegian Seamen's Union upon the expiry of the collective agreements of the latter will seek to enforce the demands of the Norwegian Transport Workers' Union regarding loading and unloading work on board vessels.

01 00 2007

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

ATTACHMENT 6

1

18 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 administrative 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.



15 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. *U*

Oslo, August 2004

## – Ingen organisasjonstvang her

I Ålesund skjønner ikke Johan Eriksson alt oppstyret om at man må være medlem i Transportarbeiderforbundet for være havnearbeider i Norge. Han har jobbet som havnearbeider siden 1999 uten å være organisert.

Roy Ervin Solstad - res@lomeia.no

Tweet 1

Liker 96

Skriv ut

Tips en venn

Publisert 05.12.2013

Det har vært stor strid rundt havnearbeiderne og deres rettigheter denne høsten. Utenfor Stavanger boikottes Risavika Terminal fordi selskapet ikke vil inngå en tariffavtale der registrerte havnearbeidere får fortrinnsrett til lasting og lossing. I Drammen har Bedriftsforbundet klaget inn Norge for Europarådet fordi de mener at Norge bryter menneskerettighetene om fri organisasjonsrett, da de påstår at man må være medlem i Transportarbeiderforbundet for å kunne jobbe som havnearbeider, og i Oslo er det åpen konflikt mellom arbeidsgiverne og arbeidstakerne.

### Ikke presset

Nå har også Venstres stortingsrepresentant Sveinung Rotevatn sendt skriftlig spørsmål til arbeidsminister Robert Eriksson om regjeringen kommer til å sette inn tiltak for at folk kan jobbe i havnene uten å være organiserte.

Skal man tro Johan Eriksson fra Østersund i Sverige, så trengs det ingen tiltak overhodet. Han har jobbet i havner langs hele kysten i snart 15 år, uten å være organisert.

– Jeg har jobbet som registrert havnearbeider hele tiden, uten å være organisert i noe forbund. Jeg har heller ikke opplevd noe press for å organisere meg, påpeker 36-åringen som etter mange år i Norge snakker bedre norsk enn Fredrik Skavlan gjør på TV på fredagskveldene.

Media beskriver en en virkelighet jeg ikke kjenner meg igjen i.

Johan Eriksson, uorganisert havnearbeider

### Myte

For fem år siden flyttet han til Ålesund, og har vært ansatt i Ålesund Losse- og Lastearbeiderforening siden i fjor. Selv ikke der hvor lederen, Bjørn Steffensen, sitter som nestleder i Norsk Havnearbeiderforening, har han vært utsatt for press.

– Det var aldri noe prat om å organisere seg der jeg jobbet tidligere, og da var det heller aldri noe tema for min del. Her i Ålesund har jeg skjønnet at det er større interesse for å organisere seg, men det ble heller aldri nevnt at jeg måtte melde meg inn for å få jobb her, sier han.

Det bekrefter også foreningslederen Bjørn Steffensen.

– Det er en myte at man må være medlem i Transportarbeiderforbundet for å få jobb i norske havner, men det har vært en god gammel tradisjon å være organisert. Det skyldes at det har vært mange figter på havnene, og det har bidratt til høy organisasjonsgrad, poengterer han. Steffensen anslår at fire-fem havnearbeidere er uorganisert i Ålesund, og at halvparten av terminalarbeiderne heller ikke er medlemmer.

### Provosert

Det er nettopp den erfaringen 36-åringen fra Sverige har.

– Jeg blir litt provosert når jeg leser det som står om havnearbeiderne i media. Det er mye som er galt, og kritikken er ubegrunnet og rent oppspinn. Media beskriver en en virkelighet jeg ikke kjenner meg igjen i, påpeker Eriksson.

Minst like provosert er Bjørn Steffensen.

– Det blir påstått at vi tjener så godt, men lønna vår er 330.000 kroner i året, inkludert feriepenger. Alt over det skyldes at vi er ute i all slags vær, døgnet rundt og mer enn annenhver helg hele året. Dette er egentlig en dårlig betalt dritjobb, freser Steffensen.

For hans svenske uorganiserte kollega kan bråket rundt havnearbeiderne medføre at han etter snart 15 år forlater «posten» som uorganisert havnearbeider.

– Du skal ikke se bort fra at jeg melder meg inn. Jeg har hørt mye prat og diskusjoner her på jobben, og da blir man jo mer engasjert. Å melde seg kan være en grei måte å støtte opp om foreningen, avslutter Johan Eriksson.

### FAKTA

#### Spørsmålet fra Venstre

«Vil statsråden syte for at klagen mot Noreg vert handsama i Europarådets sosialrettskomité med det føremål å avklare om det ligg føre brot på organisasjonsfridomen ved norske offentlege hamner, og vil han uavhengig av dette setje inn tiltak for å sikre at organiseringa ved norske hamner er i tråd med menneskerettane?»

#### Begrunnelse

• Noreg har gjennom lang tid hatt ei ordning ved offentlege hamner der den såkalla Rammeavtalen mellom NHO og LO sikrar fortrinnsrett til arbeid for registrerte hamnearbeidarar. Systemet byggjer på ILO-konvensjon nr. 137, som ikkje er innført i Noreg ved lov, men gjennom partane i arbeidslivet ved tariffavtale. Ifølgje både Bedriftsforbundet og NHO har det vist seg at det norske systemet har ført til ei organisasjonsplikt i Norsk Transportarbeidarforbund for å få fast jobb som hamnearbeidar ved dei offentlege hamnene. Denne organisasjonsplikta er no klaga inn for Europarådets sosialrettskomité som klage nr. 103/2013. Klagen byggjer på ein påstand om at Noreg bryt Den europeiske sosialpakta artikkel 5 ved ikkje å sikre organisasjonsfridomen ved dei norske hamnene, det vil seie retten til sjølv å velje fagforeining eller velje å stå utanfor fagforeiningar. Den norske regjeringsadvokaten har på Noregs vegner bede om at saka vert avvist.»

• Her kan du lese klagen fra Bedriftsforbundet.

## **“No enforced unionization here”**

**Johan Eriksson in Ålesund fails to understand all the clamour regarding the need to be a member of the Norwegian Transport Workers' Union to be able to be employed as a dock worker in Norway. He has been employed as a dock worker since 1999, without being unionized.**

Roy Elvin Solstad – [res@lomedial.no](mailto:res@lomedial.no)

Published 5 December 2013

This autumn a debate has raged around the dock workers and their rights. Outside Stavanger, the Risavika Terminal is being picketed because the enterprise is unwilling to sign a collective agreement that gives registered dock workers preferential access to loading and unloading work. In Drammen, the Bedriftsforbundet (the association of small and medium-sized enterprises) has lodged a complaint against Norway in the Council of Europe, because they find that Norway is violating human rights of free association, claiming that only members of the Norwegian Transport Workers' Union are permitted to be employed as dock workers, and in Oslo there is open conflict between the employers and employees.

### **Not pressured**

Now, the Liberal Party MP Sveinung Rotevatn has also sent a written question to Robert Eriksson, Minister of Labour, asking whether the Government will take steps to ensure that people can work in the ports without being unionized.

If we can believe Johan Eriksson from Östersund in Sweden, no such steps whatsoever are required. He has been working for 15 years in ports along the coast without a union membership.

“I have worked as a registered dock worker all the time, without membership of any union. Nor have I been exposed to any pressure to join a union,” the 36-year-old points out, who after many years in Norway speaks better Norwegian than Fredrik Skavlan on his Friday-night talk show on TV.

### **Myth**

Five years ago he moved to Ålesund, where he has been employed by the Ålesund Association of Dock Workers since last year. Not even there, where the manager Bjørn Steffensen is also deputy chairman of the Dockers' Union Norway, has he been exposed to any pressure.

“In the place where I used to work there was never any talk about joining the union, and nor was this relevant from my point of view. I have seen that here in Ålesund there is a greater interest in unionization, but there was never any mention of me having to join the union in order to be employed,” he says.

This is confirmed by Bjørn Steffensen, the union chairman.

“It's a myth that membership of the Norwegian Transport Workers' Union is required in order to be employed in Norwegian ports, but there is a long-standing tradition for unionization. This is because we have had a lot of fights in the ports, and this has helped increase the unionization rate,” he emphasizes.

### **Aggravated**

That's exactly the experience of our 36-year-old Swede.

## Attachment 8

"I'm aggravated when I read what's written about the dock workers in the media. Much of it is wrong, the criticism is unfounded and pure fiction. The media is describing a reality that I cannot recognize," Eriksson points out.

Bjørn Steffensen is at least as aggravated.

"It is claimed that we earn such high wages, but our annual pay is 330 000 kroner, the holiday allowance included. Everything beyond that comes because we are out in all kinds of weather, all year round and more than every other weekend all year. This is in fact a poorly paid, shitty job," Steffensen sputters.

For his Swedish non-unionized colleague, all the hubbub around the dock workers may mean that after soon 15 years he will leave his "post" as a non-unionized dock worker.

"We cannot exclude the possibility that I will join. I have heard a lot of talk and discussions here at work, and this has made me more involved. Joining may perhaps be a good way to support the union," Johan Eriksson concludes.