

317th Report of the Committee on Freedom of Association

Introduction

1. The Committee on Freedom of Association, set up by the Governing Body at its 317th Session (May 1999), met at the International Labour Office, Geneva, on 27 and 28 May and 4 June 1999 under the chairmanship of Professor Max Rood.
2. The Committee examined a representation for the non-observance by Denmark of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1948 (No. 98), made under article 24 of the ILO Constitution by the Dansk Magisterforening (DM).
3. The Committee submits a report on this representation for the Governing Body's approval.

Case No. 1971

Definitive report

Representation against the Government of Denmark presented by

*the Association of Salaried Employees in the Air Transport Sector (ASEATS)
and the Association of Cabin Crew at Maersk Air (ACCMA)
under article 24 of the ILO Constitution alleging non-observance by Denmark
of the Freedom of Association and Protection of the Right to Organise
Convention, 1948 (No. 87), and the Right to Organise and Collective
Bargaining Convention, 1949 (No. 98)*

*Allegations: Government interference in free collective bargaining and the right
to strike through the statutory imposed extension of collective agreements and the
linking of agreements for conciliation purposes*

4. By communications dated 7 May, 1 September 1998 and 4 May 1999, the Association of Salaried Employees in the Air Transport Sector and the Association of Cabin Crew at Maersk Air, referring to article 24 of the ILO Constitution, sent the Director-General a representation alleging non-observance by the Government of Denmark of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).
5. At its June 1998 session, the Governing Body declared this representation receivable and decided to refer it to the Committee on Freedom of Association for examination (Case No. 1971) [see GB.272/8/2].
6. The Government sent its comments on this case in a communication dated 25 January 1999.
7. Denmark has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. THE COMPLAINANTS' ALLEGATIONS

8. In a communication dated 7 May 1998, the Association of Salaried Employees in the Air Transport Sector and the Association of Cabin Crew at Maersk Air allege that the Government of Denmark has violated Conventions Nos. 87 and 98 by upholding, and

Report, para. 29]. The fact that, in this particular case, the outcome of the voting was in line with the position of the complainants does not change the fact that the present legislation can give rise to restrictions on the right of majority organizations to enter into free collective bargaining in a manner contrary to Article 4 of Convention No. 98.

51. Furthermore, the Committee considers that the analogy made to industrial collective agreements is irrelevant. The particularities of the Danish system raised by the Government, such as the existence of several different collective agreements in a given enterprise, make sense only in so far as they recognize the right of these many and diverse representative sectoral unions to undertake meaningful negotiations. The argument of job-interdependency and the risks of extortion should not be such as to deny the rights of legitimate representative unions to participate in free collective bargaining.

52. Finally, the Committee notes that section 12 may also have a negative impact on the possibility of a workers' organization to exercise the right to strike in so far as it may be bound by a labour market decision to accept an overall draft settlement to which a collective agreement concerning their sector has been linked. The Committee requests the Government to review the legislation, in consultation with the social partners, so as to ensure that the view of the majority of workers in a given sector is not subordinated to the view of the majority of the entire labour market as concerns the possibility of continuing free collective bargaining of terms and conditions of employment and as concerns the possibility of undertaking industrial action.

53. As concerns the legitimacy of the statutory intervention extending for two years the collective agreements under review in the spring of 1998, including those pertaining to the complainants, the Committee takes due note of the considerations evoked by the Government to the effect that: the extension for two years corresponds to the usual term for Danish collective agreements; the transport sector, which includes the complainants in this case, is under all circumstances essential to the functioning of society and; the legislative extension also granted concessions to the workers in several essential respects.

54. The Committee must nevertheless first observe that the principal effect of this intervention has been to render impossible collective bargaining in the private sector for the period of the two years by which the collective agreements have been extended. In this regard, the Committee recalls the importance it attaches to the principle that the public authorities should refrain from any interference which would restrict or impede the lawful exercise by trade unions of their right, which the Committee regards as an essential element in freedom of association, to seek to improve the living and working conditions of those whom they represent through collective bargaining or other lawful means; and that any such interference would appear to infringe the principle that workers' and employers' organizations should have the right to organize their activities and formulate their programmes [see 243rd Report, para. 245 (Case No. 1338 (Denmark))].

55. The Committee also notes that a further effect of the Act to Renew Certain Collective Agreements has been both to terminate the industrial action which had already begun and to prohibit any further industrial action which might occur in the relevant sectors for the period by which the operation of the collective agreements were statutorily extended. In this respect, the Committee recalls that the right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of whole or part of the population) [see *Digest of decisions and principles of the Freedom of Association Committee*, 1996, 4th edition, para. 526]. While noting the Government's position that the transport sector, which includes the complainants in this case, is under

all circumstances essential to the functioning of society, the Committee must recall that it does not consider transport generally to constitute an essential service in the strict sense of the term [see *Digest*, para. 545].

56. Moreover, as concerns the Government's argument that problems began to emerge towards the end of the dispute which could not continue to be solved by granting exemptions or other emergency measures, the Committee recalls that, although it is recognized that a stoppage in services or undertakings such as transport companies might disturb the normal life of the community, it can hardly be admitted that the stoppage of such services could cause a state of acute national emergency. It has therefore considered that measures taken to mobilize workers at the time of disputes in services of this kind are such as to restrict the workers' right to strike as a means of defending their occupational and economic interests [see *Digest*, para. 530].

57. Further, as concerns the nature of the services to be provided by the complainant, the Committee notes that the Government only refers in this case to a general risk feared in respect of the vital transportation of medicine. In this respect, the Committee would recall that a minimum service may be set up in the event of a strike, the extent and duration of which might be such as to result in an acute national crisis endangering the normal living conditions of the population. Such a minimum service should be confined to operations that are strictly necessary to avoid endangering the life or normal living conditions of the whole or part of the population; in addition, the workers' organizations should be able to participate in defining such a service in the same way as employers and the public authorities [see *Digest*, para. 558]. The Committee notes with regret that no attempts appear to have been made by the Government to negotiate a minimum service for the period of the industrial action in question in such a way as to have enabled the parties to the dispute to resolve their differences through free collective bargaining rather than resorting to a statutorily imposed settlement which has bound the parties for two years.

58. Finally, the Committee notes from the list of organizations covered by the conciliator's proposed compromise that the action taken by the Government had an impact on a large number of employees (over 400,000) covered by over 500 collective agreements without any effort being made to distinguish between those sectors which might have been argued to be genuinely essential (or likely to cause an acute national crisis) and those which cannot be considered as such.

59. In the light of the preceding paragraphs, the Committee is of the view that the 1998 Act renewing certain collective agreements involved statutory intervention in the collective bargaining process contrary to the principles of free collective bargaining and the right of workers' and employers' organizations to organize their activities and to formulate their programmes. The Committee therefore urges the Government to ensure that such intervention is not repeated in the future.

60. The Committee draws the legal aspects of this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

THE COMMITTEE'S RECOMMENDATIONS

61. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee requests the Government to review section 12 of the Conciliation Act as indicated in its conclusions, in consultation with the social partners, so as to ensure that the view of the majority of workers