

des. Nr. 1. 1947

## Lov om boikott.

Jfr. tidligere lov 5 mai 1927 nr. 1 § 6 a og § 39 a.

**§ 1.** <sup>1</sup> Med boikott mener denne lov en oppfordring, avtale eller liknende tiltak som har til skade eller straffe noen tar sikte på å hindre eller vanskeliggjøre en persons eller virksomhet økonomiske samkvem med andre.<sup>2</sup>

<sup>1</sup> Endret ved lover 26 juni 1953 nr. 6, 11 juni 1993 nr. 65.

<sup>2</sup> Se lov 4 juni 1993 nr. 58 § 5.

**§ 2.** Boikott er rettsstridig:

- a) når den har et rettsstridig formål eller ikke kan nå sitt mål uten å føre til et rettsstridig formål;
- b) når den blir foretatt eller holdt vedlike ved rettsstridige midler eller på en annen måte som krenker rimelig forhold mellom den interesse som skal fremmes ved boikotten og den skade eller straffe som vil føre med seg;<sup>1</sup>
- c) når den vil skade vesentlige samfunnsinteresser eller virke utilbørlig, eller når den vil føre med seg;

d) når den blir foretatt uten at den som boikotten er rettet mot har fått rimelig anledning til å gjøre rede for grunnen til boikotten.

<sup>1</sup> Se dog lov 4 juni 1993 nr. 58 § 5.

**§ 3.** <sup>1</sup> Er varsel om boikott gitt, kan søksmål reises for å få avgjort om det er lovlig. Megling i forliksrådet<sup>2</sup> er ikke nødvendig i saker om lovligheten av boikott.

# On boycott and the ILO Convention no. 87

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# Capt. Charles Cunningham Boycott

(1832-1897)



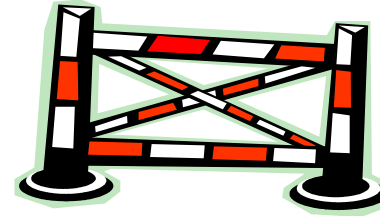
# What is boycott?

- **No universal definition**
  - Blacklisting (and "whitelisting" or "labeling")
  - Blockades
  - Pickets – picket line
  - Boycott-action
  - Boycott
  - Secondary industrial action
  - Sympathy strike
  - ....





# Various industrial tools



«work stoppage»  
«arbeidsstans»

Strike

Lockout

Blocade  
«picketing»

Blocade  
«blacklisting»

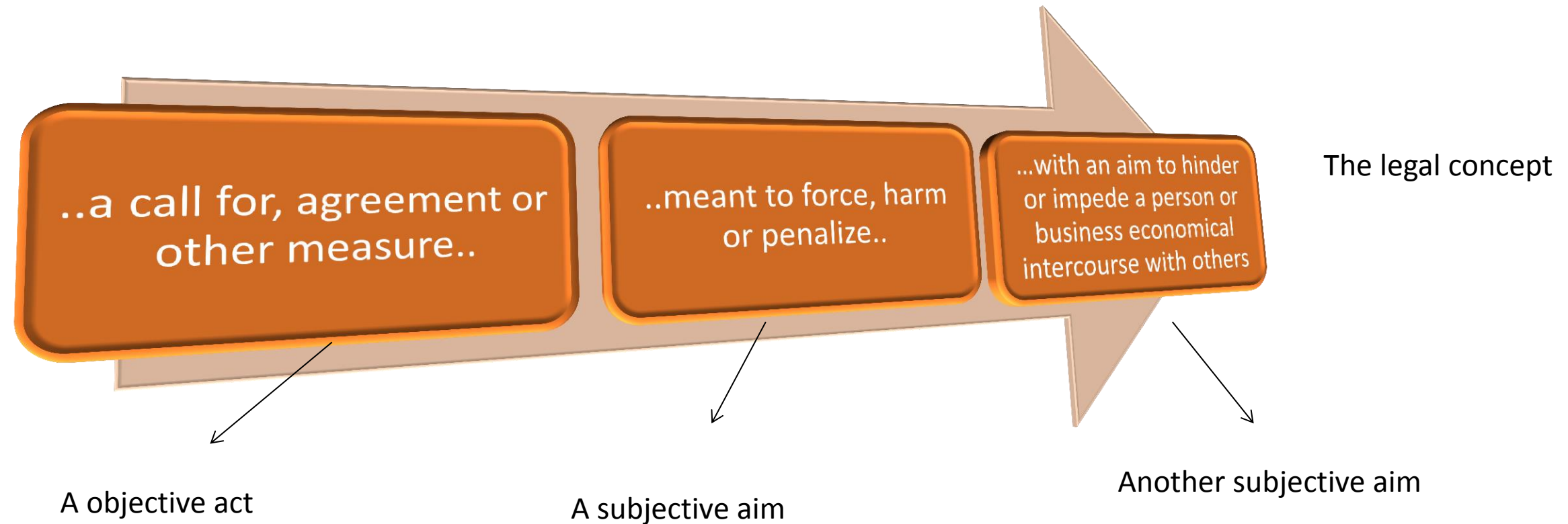
«Other industrial action»  
«Annen arbeidskamp»

**Industrial Disputes Act**  
(Arbeidstvistloven)  
Tjenestetvistloven

«Boycott»

**The Boycot act**

# The boycott concept in Norwegian law



# A boycott is deemed unlawful when:

- a) the **purpose** of the action is **unlawful** and when the action can only achieve its purpose by an **unlawful act**;
- b) it is carried out or maintained with **unlawful means**, or in an unnecessary inflammatory or offensive way, or with untrue or misleading information;
- c) it will hurt **substantial public interest** or be deemed **excessive**, or when there is no **reasonable balance** between the interest the boycott aims to protect and the damage the boycott will lead to;
- d) it is carried out without proper **notice** to the person the boycott is aimed at, or if there has not been given an **adequate reasoning** for the boycott to the person the boycott is aimed at and those that the call to boycott is directed.

Legal review regarding

**PURPOSE**

**MEANS**

**PROPORTIONALITY**

# But..

..is the right to strike protected by ILO con no. 87?

If so: consequences for interpreting the Boycott Act?

## ILO Con no. 87

### Freedom of Association and Protection of the Right to Organise Convention



- **Article 3(1)**

- Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

- **Article 10**

- In this Convention the term organisation means any organisation of workers or of employers for furthering and defending the interests of workers or of employers

- No explicit reference to the "right to strike"

- "Case law"?

- CFA

- Application Committee

- International Labour Conference 2012



# "Case law" - ILO Digest

## Protection of the "right to strike"

### Purpose of a strike

- **526.** Conflict of interests
- **527-531.** "Political" aims
- **532.** Sympathy strike

### Means - Industrial tools

- **545.** Regarding various types of strike action denied to workers (wild-cat strikes, tools-down, go-slow, working to rule and sit-down strikes), the Committee considers that these restrictions may be justified only if the strike ceases to be peaceful.



**Work stoppage**  
**("arbeidsnedleggelse")**  
– in some form

# CFA on "sympathy strikes"

**534.** A general prohibition of sympathy strikes could lead to abuse and workers should be able to take such action provided the initial strike they are supporting is itself lawful.

**Partial work stoppage  
("betinget sympatistreik")?**



**518.** The boycott is a very special form of action which, in some cases, may involve a trade union whose members continue their work and are not directly involved in the dispute with the employer against whom the boycott is imposed. In these circumstances, the prohibition of boycotts by law does not necessarily appear to involve an interference with trade union rights.

## CFA on "pickets" = "blokada" in Norwegian?

**648.** The action of pickets organized in accordance with the law should not be subject to interference by the public authorities.

**649.** The prohibition of strike pickets is justified only if the strike ceases to be peaceful.

**650.** The Committee has considered legitimate a legal provision that prohibited pickets from disturbing public order and threatening workers who continued work.

**651.** Taking part in picketing and firmly but peacefully inciting other workers to keep away from their workplace cannot be considered unlawful. The case is different, however, when picketing is accompanied by violence or coercion of nonstrikers in an attempt to interfere with their freedom to work; such acts constitute criminal offences in many countries.

**652.** The exercise of the right to strike should respect the freedom to work of non-strikers, as established by the legislation, as well as the right of the management to enter the premises of the enterprise.

**653.** The requirement that strike pickets can only be set up near an enterprise does not infringe the principles of freedom of association.

# CFA on "secondary boycott clauses"

- **915.** As regards the legislative ban on including secondary boycott clauses in collective agreements, the Committee has considered that restrictions on such clauses should not be included in the legislation.
- Chapter 15: Subjects covered by collective bargaining

# CFA on "blacklisting"

- **803.** All practices involving the blacklisting of trade union officials or members constitute a serious threat to the free exercise of trade union rights and, in general, governments should take stringent measures to combat such practices.





# Conclucions?

- The right to strike – in a general sense – is protected by ILO 87 case law
  - **But then**: Not legally binding
  - **However**: ECtHR "comparative method"
- Boycott – in the form of blacklisting, pickets and the right to include "secondary boycott clauses" in collective agreements – have a certain protection
- Boycott – in the form of sympathy strike:
  - A general prohibition is at odds with ILO 87
  - A partial work stoppage in sympathy of others, may be restricted by law

**"That's  
all  
folks!"**

