



International Commission for Labor Rights
Critical Assistance for Working People and Trade Unions Worldwide

RIGHT TO WORK LAWS VIOLATE HUMAN RIGHTS AND LABOR LAW

Statement of the International Commission for Labor Rights

The effort in Michigan to pass “right-to-work” legislation has come to the attention of the International Commission for Labor Rights (ICLR).¹

December 10 is Human Rights Day around the world. On December 10, 1948 the Universal Declaration of Human Rights was ratified. It would be a cruel irony if the Michigan government on (or about) Human Rights day were to pass legislation which abrogates the basic human rights of Michigan workers.

The right of workers to form and join trade unions to protect their interests is a universal human right recognized in both human rights and labor law and is binding on all states. Right-to-work laws prevent unions from fulfilling their **duty** to protect the interests of the workers. Laws aimed at weakening trade unions so as to prevent them from protecting workers interests, in ICLR’s opinion, must be considered illegal. Therefore, final passage of this legislation and/or Governor Snyder signing it abrogates basic human rights and labor law.

Consider the following:

The Universal Declaration of Human Rights requires all governments to work towards achieving the rights stated in the Declaration.

Article 23 of the Universal Declaration states:

- (1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favorable remuneration ensuring for himself (and herself) and his (or her) family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his (or her) interests.**

¹ ICLR is network of over 300 labor lawyers, labor experts and jurists around the world who consider the rights of workers to be a fundamental element in promoting democracy and economic fairness.

The right of everyone to form and join trade unions is for the purpose of protection their interests.² The “protection of interests” language in the declaration has substantive meaning. Trade unions must be treated under law in a manner which enables people who join together in trade unions to be actually able to protect their interests, so as to achieve such rights as favorable remuneration and conditions of work and ensure an existence worthy of human dignity.

The Universal Declaration was the basis for two Human Rights treaties which provide more specifics to rights contained in the Declaration. These treaties are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR). **In 1992 the United States ratified the ICCPR.** The United States has signed but not ratified the ICESCR.³

The ICCPR at Article 22 reiterates that everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his (or her) interests. The only restrictions on the right are those which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. Under the ICCPR, any restrictions on trade unions must be necessary to a democratic society etc. **Necessity is a high bar.** Trade Unions are one of the major building blocks of a democratic society. As such there can be no necessity for this legislation which is aimed at weakening the ability people to protect their interests by voting for a union.

The ICESCR has similar language. Article 8 (a) ensures “the right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, **for the promotion and protection of his economic and social interests.** The ICESCR also has that high bar for restrictions on organization of trade unions.

As human rights norms have developed, so have labor rights norms which protect the rights of unions, freedom of association and collective bargaining. In 1948 and 1949 the International Labor Organization (ILO) which was founded in 1919, issued Conventions 87 and 98 respectively. These conventions protect the right to organize and to collectively bargaining. The ICCPR and ICESCR at Article 22 (3) and Article 8 (3) integrate the provisions of ILO Convention 87, into these human rights treaties. This subsection states that no State which has ratified Convention 87 may **pass legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention. Although the United States has not ratified either Conventions 87 or 98, given their**

² ICLR is aware that the Taft-Hartley amendment to the National Labor Relations Act which allowed for “right to work” laws was found constitutional, in 1949 in *Lincoln Federal Labor Union No 19129 et al v State of North Carolina*, 335 U.S. 525 (1949). However, since then no court has addressed this section of the law in light of subsequent development of human rights and labor law as well as US treaty obligations.

³ Even though the United States has not ratified the ICESCR there are two reasons why the United States is bound by its provisions. (1) under the doctrine of *pacta sunt servanda* a country which has signed a treaty is bound by its provisions until such time as it is repudiated (see Vienna Convention on the Law of Treaties) and (2) At present 160 countries have ratified this Covenant such that the provisions are customary international law and binding regardless of ratification. Customary international law is that law which is so widely accepted that the law is binding on all countries. See *Sarei v Rio Tinto* 456 F.3d 1069 (9th Cir 2006) Where the UN Convention on the Law of the Sea (UNCLOS) which was ratified by at least 149 countries was considered customary international law.

universality, they should be considered binding as customary international law. In fact, in 1998 the ILO issued the Declaration of Fundamental Principles and Rights at Work (FPRW) which gave special status to “core labor” standard which members of the ILO were bound to observe and report progress on to the ILO regardless of ratification. Conventions 87 and 98- the rights to organize and collective bargaining-are part of the core labor standards with this special status. United States membership in the ILO requires compliance with these conventions.

Therefore, reading the ILO Convention 87 together with subsection 3 of Article 22 of the ICCPR and sub section 3 of the ICESCR, no state may be allowed to pass a law which prejudices the guarantees provided for in Convention 87. Right-to-work laws prejudice workers’ rights under Convention 87 and the above described human rights instruments.

Because they are designed to eviscerate the trade unions through which workers have a right “to protect their interests”, right-to-work laws prevent workers from exercising their fundamental human and labor rights. Therefore, in ICLR’s opinion, these laws are illegal. ICLR calls upon the Michigan Legislature and Governor to comply with human and labor rights of the workers in this State and reject the right-to-work law.

Issued: December 10, 2012