



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

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Collective Bargaining Rights Are Fundamental Human Rights-Denying Them is Illegal.

Statement of the International Commission for Labor Rights.¹

As workers in the thousands and hundreds of thousands in Wisconsin, Indiana and Ohio and around the country demonstrate to protect the right of public sector workers to collective bargaining, the political battle has overshadowed any reference to the legal rights to collective bargaining. The political battle to prevent the loss of collective bargaining is reinforced by the fact that stripping any collective bargaining rights is blatantly illegal. **Courts and agencies around the world have uniformly held the right of collective bargaining in the public sector is an essential element of the right of Freedom of Association, which is a fundamental right under both International law and the United States Constitution.**

Consider the following:

In 1948 when the whole world adopted the Universal Declaration of Human Rights, the rights of people to form and join trade unions **was recognized as a fundamental human right.** (Article 23.4).² A year later the International Labor Organization (ILO) an international agency created by the Treaty of Versailles at the end of World War I in 1919³, promulgated Conventions 87 and 98 which protect Freedom of Association and the right of Collective Bargaining. These conventions apply to workers without distinction.

¹ The International Commission for Labor Rights (ICLR) is a non-profit, non-governmental organization based in New York City, which coordinates the pro bono work of a global network of lawyers and jurists who specialize in labor and human rights. www.laborcommission.org.

² This right exists a part of the right to employment with just and favorable remuneration, and to help realize the rights articulated in Article 25 which recognizes that all persons have a right to an adequate standard of living.

³ After World War I, longtime AFL president Samuel Gompers and other labor leaders pressed for the creation of the International Labor Organization in the belief that "universal and lasting peace can be established only if it is based upon social justice" (ILO Constitution preamble). The other negotiators at the Paris Peace Conference agreed that labor peace was central to world peace, and they accepted the proposal to establish an international institution to help mitigate the poor working conditions that gave rise to social unrest. The ILO adopted a structure that included representatives of government, business, and labor, allowing it to adopt international standards that would be accepted by everyone.

In 2007, the Committee on Freedom of Association (CFA)⁴ of the International Labor Organization (ILO) ruled on a complaint brought by a US public sector union and the Global Union Federation, Public Services International, (PSI) which challenged the law of North Carolina which prohibits collective agreements in the public sector. The ruling concluded as follows:

“The Committee emphasizes that the right to bargain freely with employers, including the government in the quality of employer, with, respect to conditions of work of public employees, **constitutes an essential element in freedom of association, and trade unions should have the right, through collective bargaining... to seek to improve the living and working conditions of those whom the trade unions represent. The public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof**”.⁵

The International Covenant on Civil and Political Rights, ratified by the United States in 1992 provides in Article 22.1 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 interests.” This right is not to be restricted except in limited situations, e.g. military forces.(Article 22.2)⁶

In 2007, the Canadian Supreme Court decided the case of *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*,⁷. This case challenged legislation which nullified collective agreement protections against contracting bargaining unit work by public hospitals— which had resulted in the lay off of 11,000 workers. The court in voiding this legislation relied on the rulings and interpretations of the ILO’s Committee on Freedom of Association describing them as the ‘cornerstone of the international law on trade union freedom

⁴ This Committee accepts and rules on complaints claiming violations of Freedom of Association and Collective Bargaining.

⁵ 344th Report of the Committee on Freedom of Association, Case No. 2460 para 995 (2007).

This is not the first time that issues related to public sector unions in the United States as a whole have come before the Committee on Freedom of Association. A compendium complaint filed by the AFL-CIO in 1990 addressed federal and state employees, and restrictions on associational and collective bargaining rights. See, United States (Case No. 1557), The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the Public Services International (PSI), 26-Oct-90, Report No. 284, (*Vol. LXXV, 1992, Series B, No. 3*). The government’s response to the complaint was to interpose problems related to “federalism,” however, the Committee rejected those and stated that the “the Government [...] draw the attention of the authorities concerned [...] to the principle that all public service workers other than those engaged in the administration of the State should enjoy [collective bargaining] rights.” (para. 285(a)). Furthermore, individual states play a significant role in meeting the international legal obligations of the United States. This arises out of states’ responsibilities under the Supremacy Clause of the United States Constitution, but also develops through the ways in which state bodies have held themselves out to the international community as playing an active part in shaping and interpreting international law. Thus, it would be appropriate to pierce the federalism veil that has typically operated in terms of the United States government’s response to state-level violations of freedom of association principles.

⁶ Similar protections of the rights to form trade unions are found in Article 8 of the International Covenant on Economic Social and Cultural Rights which has been ratified by most countries in the world.

⁷ [2007] 2 S.C.R. 391. As a result of this ruling, employees received compensation in the amount of \$100 million.

and collective bargaining' ..."⁸ which as noted above finds unimpeded collective bargaining to be an essential element of the freedom of association.

In November 2008 the European Court of Human Rights issued a decision in *Demir and Baykara v. Turkey*.⁹ This decision, concurred in by all eighteen judges of the Court's Grand Chamber overturned the ruling of the Turkish courts which had nullified a public sector collective agreement. The Turkish Courts had opined that freedom of association did not include the right of collective bargaining. In rejecting this view the European Court found the right to collective bargaining was inherent in Article 11 of the *European Convention on Human Rights and Fundamental Freedoms* which protects the rights to "freedom of peaceful assembly and to freedom of association," The court relied again on the interpretations of the ILO's Committee on Freedom of Association in interpreting its analogous convention (Convention 87) to so hold.

Since the Supreme Court in *NAACP v. Alabama*, 357 U.S. 449 (1958), the right to freedom of association has been a fundamental right protected by the First Amendment of the United States. The Fourteenth Amendment requires States to protect and not interfere with First Amendment rights.

From the above ICLR submits that the right of public sector workers to form trade unions and to bargain collectively are fundamental human rights which have attained a global consensus¹⁰ also known as customary international law and are binding on all the states of the United States and to deny or restrict them would be illegal.¹¹

⁸ *Ibid.* at para. 76.

⁹ Application No. 34503/97, online: http://www.ictu.ie/download/pdf/case_of_demir_baykara_v_turkey_apr_09.pdf

¹⁰ Of particular note is that collective bargaining is protected in all European countries, e.g. Germany, England, Poland, Ireland, Norway, and Italy.

¹¹ Although from time to time various presidents have banned or unbanned collective bargaining for federal workers by various executive orders, the ICLR believes that this precedent would also apply to protect collective bargaining rights of federal employees as well.