

International Labor Rights Group: Assault on Collective Bargaining in the US is Illegal

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The International Commission for Labor Rights (ICLR) sent a notice to the Wisconsin Legislature, explaining that its attempt to strip collective bargaining rights from public workers is illegal. (See http://www.nlg-laboremploy-comm.org/index.php?pr=Solidarity_Page.)

Anyone who has watched the events unfolding in Wisconsin and other states that are trying to remove collective bargaining rights from public workers has heard people protesting the loss of their “rights.” The ICLR explained to the legislature exactly what these rights are and why trying to take them away is illegal.

The ICLR is a New York based non-governmental organization that coordinates a pro bono network of labor lawyers and experts throughout the world, www.laborcommission.org. It investigates labor rights violations, and issues reports and amicus briefs on issues of labor law.

The ICLR identified the right of “freedom of association” as a fundamental right and affirmed that the right to collective bargaining is an essential element of freedom of association. These rights, which have been recognized worldwide, provide a brake on unchecked corporate or state power.

In 1935, when Congress passed the National Labor Relations Act (also known as the NLRA, or the Wagner Act), it recognized the direct relationship between the inequality of bargaining power of workers and corporations and the recurrent business depressions. That is, by depressing wage rates and the purchasing power of wage earners, the economy fell into depression. The law therefore recognized as policy of the United States the encouragement of collective bargaining.

While the NLRA covered U.S. employees in private employment, the law protecting collective bargaining in both the public and private sectors has developed since 1935 to cover all workers “without distinction.”

The opening paragraph of the ICLR statement reads:

“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.”

The ICLR statement summarizes the development of this law from the Universal Declaration of Human Rights, through the International Labor Organization’s Conventions on Freedom of Association (that is, the right to form and join unions) and on Collective Bargaining. It cites court cases from the United States and around the world. All embrace freedom of association as a fundamental right and the right to collective bargaining as an essential element of freedom of association.

Some anti-union voices argue that since federal employees presently do not have the right to bargain collectively, neither should state workers. In fact, the argument should go the other way. The law cited in the ICLR statement means that denying Federal employees collective bargaining rights – which they have had over the years when presidents have recognized them by executive order – is just as illegal as denying collective bargaining rights to state public employees. President Obama should take this opportunity to reinstate the rights of Federal employees to collective bargaining.

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