

The Denial of Public Sector Collective Bargaining Rights In the State of North Carolina Assessment and Report Executive Summary

International Commission for Labor Rights



International Worker Justice Campaign
UE Local 150

The Denial of Collective Bargaining Rights in North Carolina

In the Fall of 2005, at the request of the United Electrical, Radio, and Machine Workers Union (UE), an international delegation of experienced jurists undertook an investigation into the working conditions of public sector workers in North Carolina as a result of North Carolina's legal prohibition of collective bargaining rights for its public sector workforce.

The well respected delegation of lawyers were from the International Commission for Labor Rights (ICLR), an international network of legal experts on international labor standards, worker and trade union rights, and human rights under the conventions of the United Nation's International Labor Organization (ILO) and other international bodies.



The International Commission for Labor Rights was formed in Geneva in 2001 by the International Centre for Trade Union Rights (ICTUR) and the International Association of Democratic Lawyers (IADL) to provide assistance to workers and trade unions who seek to enforce internationally and locally established labor law.

After nearly a week in North Carolina participating in meetings with workers, providing workshops on collective bargaining structures in countries around the world, site visits to local workplaces and communities, independent research, and a statewide public hearing conducted by UE Local 150 in Raleigh, North Carolina on November 4, 2006, the ICLR was able to make a thorough assessment of the impact the lack of collective bargaining rights has on the public sector in this state.

The ICLR's investigation was undertaken independently of the official complaint filed by UE with the International Labor Organization in December of 2005. However, the ICLR findings were to be shared with the ILO when their report was completed.

On June 14, 2006, ICLR Executive Director Ashwini Sukanthar traveled to North Carolina to present the final Findings Report from their investigation to members, leaders, and supporters of

UE Local 150 at their Political Action Day Breakfast, held that day in downtown Raleigh. Nearly 40 copies of the report were then distributed to members of the North Carolina General Assembly as UE 150 conducted visits to senators and representatives in the legislature as a part of their Political Action Day activities.

To follow is the Executive Summary of the ICLR Findings Report, “The Denial of Public Sector Collective Bargaining Rights in the State of North Carolina (USA)”. Copies of the full report may be requested by contacting the International Worker Justice Campaign (IWJC) at (919) 593-7558 or by emailing abinta@nc.rr.com. Or copies of the report may be downloaded in pdf format from the UE 150 Website at www.ue150.org.

Ashaki Binta
Coordinator
International Worker Justice Campaign
UE Local 150

EXECUTIVE SUMMARY

Introduction

The International Commission for Labor Rights (ICLR) undertook an analysis of North Carolina's obligation to respect the collective bargaining rights of public workers under domestic and international law. The report also reflects findings of fact from a four-day on-site assessment, spanning from October 31 to November 4, 2005.

Definitions

“Collective bargaining” is the process by which an employer and a union negotiate the terms and conditions of employment: wages, hours, working conditions, grievance procedures. Examples of collective bargaining in the public sector would include:

- * between a school board and a teachers' union
- * between a city council and a union representing municipal sanitation workers
- * between the administrators of a state hospital and a nurses' union



UE Attorney Joseph Cohen with ICLR Executive Director Ashwini Sukanthar and Barrister Claude Melancon of Quebec.

Collective bargaining in the public sector does not provide public workers with privileged access to lawmakers, and does not result in public workers having any greater say in the legislative process than other citizens.

The Issue



William Nuesome, president, Cherry Hospital Chapter, UE Local 150

The assessment focused on determining whether a state law in North Carolina, NCGS § 95-98, violated internationally-recognized labor and human rights norms. The law states that collective bargaining agreements in the public sector in North Carolina shall be "illegal, unlawful, void and of no effect."

Federal courts in the United States have determined that the law does not violate the First Amendment of the US Constitution, since their interpretation of the guarantee of freedom of association was that it would not cover collective bargaining. (The United States Supreme Court has not yet ruled on the

issue). US Courts also justified different treatment for public workers and private-sector workers, asserting that the former could seek the remedy of approaching the legislature like any other citizens appealing to their representatives. That is to say, as long as public workers and private-sector workers have equal rights as subjects of the state, then it is acceptable to grant public workers diminished rights as employees of the state, when compared to private-sector workers in their employment relationships. Therefore, an analysis regarding the applicability and relevance of international law was particularly important.

Legal Framework

The ICLR determined that the distinction drawn by US courts between freedom of association and collective bargaining is not present in international law. The International Labor Organization (ILO) has stated clearly that the right to bargain freely with employers is an essential element of the right to form and join trade unions, since the primary means by which unions safeguard the interests of their members is through collective bargaining, resulting in enforceable agreements. Provisions within the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights also support the principle that protections for the right of association must be accompanied by protections for the means of promoting collective interests. International law also does not permit the exclusion of all public workers from collective bargaining; only narrowly-tailored exceptions for

“public servants engaged in the administration of the State.”

The ICLR supports the view that ILO membership requires compliance with core conventions, and that in any case the right to collective bargaining has attained the status of customary international law, binding all countries regardless of whether or not they have ratified the relevant conventions. The fact that the US has repeatedly demanded that its trading partners respect collective bargaining rights (through labor standards provisions in trade agreements), and that it has never objected to the jurisdiction of the ILO's Committee on Freedom of Association, is also consistent with the development of the principle into customary international law.



Ashaki Binta, coordinator of the IWJC, leading a Core Committee planning meeting in Charlotte. Sept. 2005

A primary argument cited by the US for not ratifying the ILO conventions related to freedom of association and collective bargaining, is that the existing legal framework in the US, at federal and state levels, offers adequate “parallel protections” for workers. The ICLR, having determined that the US was required to respect the principles enshrined in the core conventions, therefore turned its attention to determining whether the conditions of public sector workers in North Carolina did indeed indicate that alternative provisions offered adequate protections.

Findings

The ICLR found significant violations of internationally recognized labor standards in the public sector in North Carolina, which were strongly correlated to the absence of collective bargaining rights. Among these were:

Race- and gender-based discrimination in hiring, promotion, pay, the exercise of discipline, and termination:

Lacking the rational and impartial systems that should govern employers' approach to these issues – systems which are generally put in place through collective bargaining processes – employees were routinely at the mercy of the prejudices and preferences of individual supervisors.

Systematic breaches of occupational health and safety norms:

There was extensive, credible testimony from workers that basic health and safety norms were neglected in workplaces that included a psychiatric facility, a state university, and a municipal waste disposal facility. It was even more disturbing that management frequently intervened to suppress employees' attempts to have a voice in workplace health and safety issues. Management's fears were strongly indicative of a fear of collective employee voice, even in the area of health and safety,

which ought to be a site of cooperation, not only in the interests of employees, but of the general public. The impact on workers' wellbeing, and the wellbeing of the citizens of North Carolina who receive compromised services as a result of understaffing, excessive overtime, exposure to hazardous substances etc. is of great concern.

Arbitrary personnel policies:

The ICLR found that grievance procedures and complaint mechanisms that have been cited as an adequate alternative to collective bargaining are deeply flawed both on paper and in practice: workers have no entitlement to an impartial hearing, but generally have their grievance heard by a supervisor or manager; due process is frequently ignored, such that employees are accused of having broken rules that they were never informed of; there is so much scope for discretion in the exercise of discipline that workers are rendered still more vulnerable to discrimination, particularly on the grounds of race.

Recommendations

On the basis of its legal analysis and findings, the ICLR issued recommendations to the federal government, the state of North Carolina, and sub-divisions of the state. These included:

1. To the federal government, the immediate ratification of the ILO Conventions protecting freedom of association and collective bargaining;
2. To the state of North Carolina, the repeal of NCGS § 95-98
3. To state sub-divisions, the instituting of “meet and confer” measures that will at a minimum promote negotiation with workers, even if the outcomes are not enforceable. This recommendation is extremely limited, in recognition of the extent to which state sub-divisions have their hands tied by the provisions of NCGS § 95-98.

Questions for Discussion and Study:

1. From the Executive Summary, what is collective bargaining?
2. What does General Statute 95-98 exactly prohibit?
3. Why is international law important when considering the lack of collective bargaining rights in North Carolina?
4. What does international law say about collective bargaining? What international laws or covenants protect collective bargaining rights?
5. What were the key findings of the ICLR from their North Carolina investigation? Do you know of any state, county, or municipal workers who have suffered from the problems mentioned in this report? Make a list of the problems these workers face daily on their jobs.



International Worker Justice Campaign

For

Collective Bargaining Rights

PO Box 3857 Chapel Hill, NC 27515

Phone: 919-593-7558 Fax: 919-294-0073

www.ue150.org
