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Human Rights and Workers' Rights in the United States

Abstract

[Excerpt] Over the past 50 years, a comprehensive body of international law has affirmed human rights to which all workers are entitled, including the right to form unions and bargain collectively. Although the U.S. government has committed itself to protecting these rights, many American employers fail to live up to these international human rights standards for workers.

American workers routinely confront a shameful pattern of threats, harassment, spying, firings and other reprisals against worker activists and a labor law system that is failing to deter such violations.

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Comments

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Human Rights and Workers' Rights in the United States

Lance Compa

Over the past 50 years, a comprehensive body of international law has affirmed human rights to which all workers are entitled, including the right to form unions and bargain collectively. Although the U.S. government has committed itself to protecting these rights, many American employers fail to live up to these international human rights standards for workers.

American workers routinely confront a shameful pattern of threats, harassment, spying, firings and other reprisals against worker activists and a labor law system that is failing to deter such violations.

The cornerstone of the modern human rights movement, the Universal Declaration of Human Rights, was adopted Dec. 10, 1948. The Declaration, of which the United States was a principal author and sponsor, clearly states that “everyone has the right to form and join trade unions.” Dec. 10 is recognized as International Human Rights Day. This year on Dec. 10, workers worldwide will reaffirm their universal right to form unions.

The legal right to form unions and bargain collectively is firmly established in the United States. The United States has signed the Declaration as well as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which guarantee workers’ freedom of association and the right to form trade unions and bargain collectively.

The United States also is a member of the International Labor Organization (ILO), which was founded in 1919 in the belief that creating international fair labor standards would contribute

to world peace. The United States also sits on the ILO Governing Body, and U.S. government, business and labor delegations play key roles in ILO affairs. The ILO defines workers’ freedom of association as the bedrock right on which all others rest. This right includes workers’ self-organization in the workplace and collective bargaining with employers.

Human rights obligations under international law extend beyond governments to private corporations in positions of power over workers and communities. The United States is a leading member of the Organization for Economic Cooperation and Development (OECD), an international economic coordinating body. The OECD’s Guidelines for Multinational Enterprises require corporations to respect workers’ fundamental rights, beginning with the right of their employees to be represented by trade unions.

Corporations have a duty to avoid complicity in human rights violations or seizing advantage from human rights violations. The United Nations’ Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights notes:

- Corporations have the obligation to promote, secure the fulfillment of, respect, ensure respect of and protect human rights recognized in international as well as national law.
- Corporations shall ensure freedom of association and effective recognition of the right to collective bargaining.

Laws fall short

When it comes to workers' right to form unions, loophole-ridden laws, paralyzing delays and feeble enforcement have created a culture of impunity in many areas of U.S. labor law and practice. And the problem is getting worse. Each year thousands of U.S. workers are fired or suffer other reprisals for trying to organize unions. In the 1950s, workers who suffered reprisals for exercising the right to freedom of association numbered in the hundreds each year. In 1969, the number was more than 6,000. By the early 2000s, some 20,000 workers each year suffered a reprisal serious enough for the National Labor Relations Board to issue a "back pay" or other remedial order.

In many cases, employers are guilty of unlawfully firing workers to break organizing efforts, but workers regain their jobs only years later. By then their organizing drive is long dissipated.

In other cases, employers force workers into captive audience meetings and make illegal threats to close the workplace if employees choose union representation. But what is the remedy under our labor law system? The company must post a notice on a bulletin board promising not to repeat the unlawful threats. But by then, the threats have had the desired effect of intimidating workers.

Millions of workers are excluded from labor laws meant to protect workers' organizing and bargaining rights, and their number is growing. Millions of workers fully dependent on one employer, like truck drivers in the nation's ports and taxi drivers in many cities, are misclassified as "independent contractors" excluded from labor law coverage. Millions of low-level supervisors like licensed practical nurses making \$10 an hour who direct nurse's aides making \$6 an hour can be fired with total impunity for trying to form a union. Millions of farm workers in most states face the same vulnerability. Millions of public employees

in a majority of states lack the right to bargain collectively.

Violations of workers' rights are especially troubling when the United States calls on other countries to respect "core labor standards," including freedom of association. U.S. officials argue that such standards should be included in rules of the international trade system. But U.S. efforts to have other countries upgrade their labor standards falter when the United States itself fails to protect workers' right to organize.

Most people think workplace organizing and collective bargaining are just tit-for-tat conflict between two big institutions: unions seeking dues from new members and employers wanting to hold down costs and keep out "third parties." But under international human rights standards, workers are not objects in an institutional conflict between labor and management. They are self-motivating, self-defining subjects exercising basic rights.

Workers' self-organization responds to a basic human need and a basic human right to come together for better conditions on the job, where people spend half their waking lives. The organizing impulse springs from a bedrock human need for association in a common purpose to make things better, as corny as that sounds in a culture in which individualism often dominates. This fundamental right underpins congregations, political groups, civil rights organizations, civil society nongovernmental organizations and other associations. In the same way, it protects associations formed by workers to improve terms and conditions of employment.

U.S. labor law and policy must move to honor workers' rights of association, organizing and bargaining. That's why we must urge Congress to adopt the Employee Free Choice Act, an important and long-overdue measure to protect workers' rights.

Lance Compa is a senior lecturer at Cornell University's School of Industrial and Labor Relations in Ithaca, N.Y. He is author of the 2000 Human Rights Watch report Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards (republished in 2004 by Cornell University Press with a new Introduction and Conclusion).