

Unions Want U.N. Affiliate to Decide U.S. Labor Policy

By Doug Bandow

Summary: When unions can't win collective bargaining agreements at home, they look to U.N. agencies abroad. The AFL-CIO has a preferred legal venue—the International Labor Organization (ILO)—when Congress and the courts don't see it their way.

Organized labor won last November's electoral lottery. The unions officially spent \$105 million and received in return a promise from the new Democratic majority to push labor's redistributionist economic agenda. They are desperate to convince politicians to give them what they cannot win in the marketplace.

The impact on domestic public policy is clear. Already the House approved a minimum wage hike as part of its "first 100 hours" program and voted to ease union organizing.

But unions in the United States are also pressing their case internationally. They no longer think that improving working conditions is purely a domestic issue. Instead, they are trying to circumvent U.S. labor policies and labor law. Most notably the AFL-CIO is bent on convincing the International Labor Organization, a



Union ally Rep. Dennis Kucinich (D-OH) spoke out against the Central American Free Trade Agreement in June 2005—just two days before urging Congress to expand the International Labor Organization's access to U.S. work sites for inspections. Neither effort was successful.

United Nations-affiliated body headquartered in Geneva, to support its agenda. For some union activists, the U.S. is little more than a tin-pot dictatorship that requires international oversight by U.N. bureaucrats.

Presidential authority to negotiate new free trade agreements (FTAs) has expired, and the Bush administration faces strong opposition in Congress to pending FTAs with Peru, Columbia and South Korea. The Democrats have set as the price for approving any new accords the inclusion of international "labor standards." But this could become a vehicle that allows the International Labor Organization and other international agencies to trump U.S.

law and the Constitution.

Labor Plays International Card

Americans are accustomed to having spirited debates over employment policy. For instance, should employees of the Transportation Security Administration (TSA) be able to unionize? That's a practical policy question about dealing with government employees handling security checkpoints at the nation's airports.

While America's armed services are not unionized, city police and fire departments typically are. It's the job of U.S. policymakers to consider these issues. Whether TSA would become less competent—and travelers less secure—if TSA

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workers joined unions is a policy decision. Regular air travelers may find it hard to believe, but things could be worse. A union strike could cause chaos.

Whatever America decides, the decision should be made by the U.S. Congress and the courts appealing to the U.S. Constitution, not by appealing to international law. In fact, Congress authorized the president to say no to unions when it created TSA, but organized labor is now lobbying to change that policy. Union officials are busy working with their friends who currently run Capitol Hill.

In early January, the House voted to allow 56,000 TSA screeners to unionize. "The new House has begun the process of righting a terrible wrong," declared American Federation of Government Employees (AFGE) president John Gage.

At the Department of Defense and the Department of Homeland Security similar battles over employee unionization are being waged, and the unions appear to be winning. AFL-CIO blogger Mike Hall recently exulted that "federal courts have ruled against new personnel rules" involving both agencies.

However, U.S. labor leaders no longer are satisfied playing solely by U.S. rules. They don't accept the final outcome of the American political system.

In August 2003 AFGE, an AFL-CIO affiliate, filed a complaint with the International Labor Organization (ILO). The union charged that the U.S. government's ban on unionization "has resulted in the

exclusion by executive fiat of hundreds of thousands of federal employees from [organizing rights] and thus from the rights stemming from ILO Conventions on freedom of association and collective bargaining," according to a 2006 ILO report.

In the TSA case, the ILO's Committee on the Freedom of Association announced that it was "concerned about two issues: (1) the use of an ever-enlarged definition of work connected to national security to exclude employees that are further and further away from the type of employee considered to be 'engaged in the administration of the State'; and (2) the apparent lack of, or at least severely limited jurisdiction, to review possible excesses of authority in excluding federal employees" from union membership.

Added the ILO:

Recalling that priority should be given to collective bargaining as the means to settle disputes arising in connection with the determination of terms and conditions of employment in the public service, the Committee requests the Government to carefully review, in consultation with the workers' organizations concerned, the matters covered within the overall terms and conditions of employment of federal airport screeners which are not directly related to national security issues and to engage in collective bargaining on these matters with the screeners' freely chosen representative.

Furthermore, the Committee "requests the Government to keep it informed of the measures taken in this regard," since it "trusts that all necessary measures will be taken to ensure that the organizational rights of these employees are effectively guaranteed."

Gage and AFL-CIO president John Sweeney were delighted to see the U.N.-affiliated organization offer its two cents worth. They cheerfully announced that the ILO opinion "sends a powerful message to the Bush Administration that the international community rejects its attempts to limit the collective bargaining rights of government employees entrusted with protecting our nation's security." Indeed, the decision "amplifies the growing

voices heard around the country and the world that are calling on the Bush Administration to recognize internationally accepted workers' rights standards."

Targeting NLRB

TSA organizing is not the only issue unions have presented to the ILO. Last October the AFL-CIO went to the same ILO Committee on Freedom of Association complaining that decisions by the National Labor Relations Board (NLRB) expanding the definition of supervisors—who may not join unions—destroyed "workers' collective power by denying their right to form and join trade unions and to bargain collectively, in violation of the principles of freedom of association."

This issue is a bit technical. The National Labor Relations Act governs which employees are guaranteed the right to organize. The original law mandated unionization for supervisors, but "in 1947 a reactionary Congress stripped supervisors of these rights," contends the AFL-CIO. The federation complained to the ILO that the law "on its face violates the principles of freedom of association."

However, the AFL-CIO chose not challenge the six-decade-old law made by the U.S. Congress. Instead, it urged the ILO to overturn the NLRB's recent decisions.

Last October the NLRB ruled that some health care professionals are supervisors, a decision the AFL-CIO claimed was evidence of the NLRB's "ideologically driven management agenda to weaken trade unions and collective bargaining." The federation sought to re-fight the NLRB case before the ILO, arguing: "Although it has not ratified them, the United States is obligated by virtue of ILO membership to respect Conventions 87 and 98. All ILO member countries are 'bound to respect a certain number of general rules... among these principles, freedom of association has become a customary rule above the conventions.'" The AFL-CIO submitted several pages citing ILO, U.N., and regional human rights instruments to demonstrate that, "At every level, the NLRB's [decision] runs afoul of the Committee's criteria."

The AFL-CIO did not find it worthwhile to cite the First Amendment of the U.S.

Editor: Patrick J. Reilly
Publisher: Terrence Scanlon
Address: 1513 16th Street, NW
Washington, DC 20036-1480
Phone: (202) 483-6900
Email: preilly@capitalresearch.org
Website: www.capitalresearch.org

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Constitution, which provides a far more secure basis for human liberty than any number of international conventions and “customary rules.” The Constitution does not recognize a “freedom of association” that would require the government to order employers to bargain with their supervisors. In fact, real freedom of association would keep the government entirely

was passed by the U.S. Congress, signed by the U.S. president and affirmed by the U.S. Supreme Court. According to the AFL-CIO, the ILO has an oversight responsibility.

- Two years ago the United Electrical, Radio and Machine Workers of America (UE), backed by Public Services Interna-

Union activists understand that this ILO decision has no legal force, but, wrote blogger Shirah in the Daily Kos: “The bottom line is a stunning victory for the unions and a huge rebuke for the U.S. government’s position.” Labor lobbyists made much of the ILO ruling in the ensuing debate in North Carolina as they tried to influence public opinion and pressure legislators.

- The AFL-CIO has even gone so far as to urge the Committee to send a delegation to America to document the pervasive despair besetting the land.

“A direct contact mission will have the added benefit of bringing dramatic public attention to the work of the Committee on Freedom of Association in a country and a labor law community that, lamentably, know little about the ILO and the authoritative role of the Committee on Freedom of Association,” pleaded the AFL-CIO.

Never mind that U.S. immigration law was passed by the U.S. Congress, signed by the U.S. president and affirmed by the U.S. Supreme Court. According to the AFL-CIO, the International Labor Organization has an oversight responsibility.

out of the issue, leaving union bargaining up to employers and employees in a free marketplace.

Instead, the AFL-CIO claimed that “widespread public revulsion at the NLRB’s supervisor ruling in *Oakwood* creates an opportunity to correct this violation of workers’ rights through legislative amendments” to the NLRB. Although clearly the U.N. doesn’t draft U.S. legislation, the AFL-CIO asked “the Committee to lend its voice and its moral standing to support workers’ freedom of association in the United States.” The ILO should “urge Congress and the administration to amend” the NLRA.

ILO Persuasion

This was not the first time that U.S. labor unions have requested the ILO to interfere in domestic policy affairs.

- In 2002 the AFL-CIO filed a complaint before the ILO, after losing a Supreme Court case allowing the firing of an illegal immigrant for union organizing activity. The AFL-CIO complained that “this decision is a violation of the ILO Conventions 87 and 98 and the ILO’s 1998 Declaration on Fundamental Principles and Rights at Work.” The court decision “penalizes workers who exercise fundamental rights. The decision rewards the violators and punishes the victims.”

Never mind that U.S. immigration law

tional, filed an ILO complaint against the state of North Carolina. The international Commission for Labor Rights even sent an investigative delegation to document the oppression—“deplorable” in the words of the UE—of North Carolina’s public employees.

Why? Legislators representing the people of that state had decided to prohibit public sector unionization.

The ILO Committee ruled against the U.S. Constitution and the principle of federalism earlier this year. It urged the Bush Administration to uphold the ILO’s principle of freedom of association by overturning North Carolina General Statute 95-98, which prohibits collective bargaining by state employees:

The Committee requests the Government to promote the establishment of a collective bargaining framework in the public sector in North Carolina—with the participation of representatives of the state and local administration and public employees’ trade unions, and the technical assistance of the Office if so desired—and to take steps aimed at bringing the state legislation, in particular, through the repeal of NCGS 95-98, into conformity with freedom of association principles, thus ensuring effective recognition of the right of collective bargaining throughout the country’s territory. The Committee requests to be kept informed of developments in this respect.

Trade Agreements

Fortunately, the American government is not bound by ILO rulings. However, that could soon change as a result of the Bush administration’s trade compromise with Congress.

Under the expired “fast-track” legislation, which requires Congress to hold an up-or-down vote on a proposed free trade agreement, signatories are required to respect worker rights. In the past the White House has implemented this provision by urging its trading partners to fairly enforce their own laws. But the unions and majority Democrats want more, much more. To win support for any new “fast-track” trade legislation, the Bush administration has agreed to include compliance with “labor standards” in any new agreements.

House Ways and Means Committee chairman Charles Rangel (D-NY) has insisted that such standards follow ILO rules. Signatories of future FTAs will have to “adopt, maintain and enforce” five basic standards advanced by the ILO, including “freedom of association and collective bargaining” and a ban on “forced labor.” According to union leaders, America violates the first two by not mandating universal unionization, whether the

exceptions are TSA employees, supervisors or state public sector employees. Moreover, some union activists believe the forced labor provision could bar prison labor.

The new Democratic majority intends to force less developed countries to adopt rigid trade and labor rules even though this is sure to reduce their competitiveness. This will make free trade agreements less attractive for the U.S. and, ironically, it will slow the adoption of improved environment and safety standards by our trading partners. Countries typically adopt tougher labor rules as they develop and increase their national income and worker productivity. Alvaro Vargas Llosa of the free-market oriented Independent Institute says that when companies in poorer economies begin to trade with the U.S. they soon seek to formalize their status as reliable and responsible trading partners and comply with existing rules.

Moreover, if labor rules devised by U.N.-affiliated groups like the ILO are incorporated into trade pacts, the U.S., too, will be bound. Thus, these trade provisions could subject the U.S. to lawsuits filed by domestic or foreign parties based on the provisions of "international law." John Engler, the former Michigan governor who now heads the National Association of Manufacturers, told *The New York Times* in April, "Subjecting our labor system to foreign challenge is simply not something to which we can agree." Similarly, Rep. Paul Ryan (R-Wis.) told *The Washington Post* in March that "there's a possibility that our own laws could get questioned."

Unions naturally downplay such concerns. "At the end of the day, no American change in U.S. labor laws is going to come through a bilateral trade agreement with Peru," said Thea Lee, the AFL-CIO's chief economist, to the *International Trade Reporter* in March. "But putting these provisions into a bilateral agreement does put additional pressure on the United States government."

But Rep. Sander Levin (D-Mich.), chairman of the Ways and Means Committee's subcommittee on trade, revealed a much more ambitious agenda to *The New York Times*: "We believe that putting worker

rights into trade agreements is a critical piece of shaping globalization in the world today."

If that's the real intention of the unions, then international treaties will shape law in the U.S. as well as in foreign countries, creating potentially significant new legal obligations for America. So far, the U.S.

civilian deaths caused by the Colombian military in an attack on guerrillas who had sabotaged Occidental's pipeline.

- Another suit pushed by Columbian labor activists claims that a subsidiary of the U.S. mining company Drummond Ltd. hired a death squad to kill workers. It is

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Who Makes U.S. Law?

"Although some members of Congress are widely expected to contest any such changes as undermining U.S. sovereignty, the United States has already accepted such obligations," says Susan Aaronson of George Washington University. "A trade compromise may provide impetus to meet these longstanding commitments."

Even now foreign labor activists are using America's judicial system against American companies. Beginning in the 1980s, litigants began to cite the Alien Tort Statute, passed in 1789, to sue repressive foreign governments for violating the "law of nature." They are now suing U.S. companies in U.S. courts for allegedly violating the human rights of foreign workers in foreign countries.

For instance:

- Nigerian villagers are suing Chevron, alleging that it is complicit in the Nigerian military's killing of demonstrators outside a Chevron subsidiary's refinery. In August a federal judge said the villagers can go to trial in San Francisco.

- Occidental Petroleum is being sued for

being tried in Alabama.

- A case from Guatemala blames Del Monte for the alleged kidnapping of workers by thugs hired by a subsidiary.

How far have things gone? Canadian and Mexican unions joined U.S. unions in filing a complaint against the state of North Carolina for barring public sector unionization. In this case, North Carolina was charged with violating the rules of the North American Agreement on Labor Cooperation (NAALC), created to implement NAFTA. North Carolina prohibits collective bargaining by public sector employees, but NAALC says its principles require collective bargaining. A formal complaint was filed in Mexico City with the Mexican National Administrative Office (NAO), a branch of the country's labor ministry.

The foreign unions launched a full-scale attack on American democratic and federalist principles:

[T]he U.S. government has refused to address the ILO recommendations and has failed to take any steps to ensure that the state of North Carolina integrate the labor principles protected under the NAALC into its legislation. Instead, it has repeatedly stated that its federal political system prevents the federal government from intervening in the states' internal legislation. The U.S. government

has used this argument to avoid compliance with its international commitments as a party to NAFTA and the NAALC, the United Nations (UN), the Organization of American States (OAS) and the ILO.

Of course, Americans can agree to disagree about unionization by TSA employees or North Carolina state workers. But who gets to make labor law—U.S. citizens or U.N. bureaucrats?

The ILO's Committee on Freedom of Association boasts that it has handled more than 2,300 cases over a half century. The ILO has a role to play when it draws attention to the policies of countries where workers have no rights, where unions are forbidden, strikes are banned, courts are subservient, speech is controlled, and elections are rigged.

But that isn't the case in the United States. Indeed, the Democratic victories

in 2006 show the political power of the U.S. labor movement. It's one thing to be oppressed. But U.S. labor unions have only been on the losing side of a political fight. It's too bad that the ILO and, more importantly, the AFL-CIO, can't tell the difference.

The labor federation apparently believes workers have nowhere to turn but to the ILO. In 2000 the AFL-CIO's website formally lauded the ILO: "Corporations continue to compete by exploitation—playing nations against one another—lowering wages, scrapping regulations, loosening environmental restrictions and creating a race to the bottom. Workers are unable to buy the goods and services they produce." This is an America few Americans would recognize.

America's Choices

Whether TSA workers should organize, who counts as a supervisor, and whether

North Carolina should allow its state employees to unionize—these issues should be decided in the U.S. by Americans—not by an unaccountable bureaucracy an ocean away.

If ILO staffers come calling, Americans should welcome them warmly and inform them that the U.S. is a free country in which liberty runs both ways. Workers can choose to unionize. They also can choose not to unionize. Ultimately those choices will be decided by Americans in America.

Doug Bandow is Vice President of Policy for Citizen Outreach and the author of Leviathan Unchained: Washington's Bipartisan Big Government Consensus (forthcoming, Xulon Press). He is a former Special Assistant to President Ronald Reagan.

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Labor Notes

General Motors, Chrysler Contracts Spell Trouble for Unions

United Auto Workers (UAW) members approved contracts last month with Chrysler and General Motors, the latter following a two-day strike. Although the automakers made concessions, the contracts reflect the weakened position of the UAW. A new class of workers who perform “non-core functions” will receive lower pay and fewer benefits than the typical assembly worker, as will all new workers. Chrysler and GM will transfer most retiree health insurance costs to a trust called a Voluntary Employee Beneficiary Association, controlled by the UAW. Next month’s issue of *Labor Watch* will look closely at these trusts and the risk they pose to retirees’ benefits.

NLRB Restricts Card Check Elections

Even while labor union leaders pin their hopes for increased workplace organizing on card check elections, National Labor Relations Board rulings in two cases involving the United Auto Workers have placed new restrictions on the organizing tactic. The NLRB reduced the period until workers could challenge successful card check campaigns from six months to 45 days, if at least 30 percent of employees sign a petition supporting the challenge. The shortened period is important, because if a union reaches a contract with an employer before a challenge is launched, opponents must wait three years to oust the bargaining unit.

Edwards Struggles for Union Endorsements, Clinton Backs Off Free Trade

Former Sen. John Edwards was dealt a serious blow to his presidential campaign last month, when the Service Employees International Union (SEIU) decided not to endorse a single candidate, and UNITE HERE signaled its likelihood to follow suit. Edwards’ campaign depends heavily on union support and funding. The decision allows state SEIU chapters to endorse top-contenders Sen. Hillary Clinton and Sen. Barrack Obama, even though Edwards has already locked up SEIU support in California and eight other states. The decision is likely to most benefit Clinton, according to Investor’s Business Daily, who is leading in the polls and fundraising for the Democratic nomination. Battling union distrust because of President Bill Clinton’s support for free trade, Sen. Clinton has called for reassessments of trade agreements including NAFTA every five years.

Homeland Security Monitors Union Membership

An agreement between the Department of Homeland Security and the European Union allows the transfer of private information about an airline passenger’s “racial or ethnic origin, political opinions, religious or philosophical beliefs [and] trade union membership” when lives are in danger. Why the concern about union membership? That’s the question asked by outraged leaders of the AFL-CIO, who “categorically reject the notion that union membership has any bearing” on the threat posed by individuals. They have urged Homeland Security Secretary Michael Chertoff to ensure that the Department will not collect data on Americans’ union affiliations.

Unions Seek to Organize Child Care Workers

As this issue of *Labor Watch* went to press, home-based child care providers in Maine awaited the results of an election to join the Maine State Employees Association, an affiliate of the Service Employees International Union. Three other states—Illinois, Oregon and Washington—have approved union contracts for child-care providers, and at least seven other states have allowed providers to unionize.

SEIU Makes Point With Young Activists

In a rally last month outside the White House to protest President Bush’s pending veto of the State Children’s Health Insurance Program (SCHIP) reauthorization, the Service Employees International Union turned to non-members to make its point. Young children, wearing SEIU t-shirts and holding “no veto” signs, picketed outside the White House gates. Meanwhile, the AFL-CIO and MoveOn.org are purchasing television advertisements to punish more than 20 Republican U.S. House members who voted against the SCHIP funding.