

National Lawyers Guild

Labor & Employment Committee

PRESS RELEASE

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TAKING AWAY PUBLIC WORKERS' RIGHT TO BARGAIN ISN'T JUST WRONG—IT'S ILLEGAL

For the last month the nation has been watching the drama in Wisconsin, Indiana, Ohio and over a dozen other states as anti-worker legislators try to strip public workers of the rights they have won over the past fifty years. But one question is almost never asked: do these states actually *have* the legal right to deprive their employees of the right to bargain collectively?

The answer is clearly NO. Workers' rights to freedom of association and collective bargaining arise from the 1919 Constitution of the International Labor Organization (ILO), a United Nations agency of which the United States is a founding member. The ILO elaborated these rights in 1949 in ILO Conventions 87 and 98, and declared that they were "fundamental" human rights in 1998. In 1948, when the countries of the world adopted the Universal Declaration of Human Rights, they recognized the rights of people to form and join trade unions as a fundamental human right. As the ILO held in 2007, in a case involving North Carolina's laws against collective bargaining, these conventions apply to all workers, both public and private sector, without distinction. The International Covenant on Civil and Political Rights, ratified by the United States in 1992, likewise provides 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 applies to all workers except in very limited situations, *e.g.* the armed forces.

Courts and agencies around the world have held the right of collective bargaining in the public sector is an essential element of the freedom of association, which is a fundamental right under both international law and the First Amendment of the United States Constitution.

- In 2007, the ILO held that North Carolina's prohibition against public sector collective bargaining violated international law.
- That same year the Canadian Supreme Court held that the right to collective bargaining is not only an essential element of the freedom of association, but serves the values of "human dignity, liberty and autonomy of workers" by extending the principles of democracy and the rule of law to the workplace.
- The European Court of Human Rights reached the same result in overturning a Turkish court's ruling that had nullified a public sector collective bargaining agreement.

As the recent maneuvers of the Wisconsin Governor and state legislature demonstrate, this fight has nothing to do with budgets, or even wages, and everything to do with power. The politicians who are trying to deprive public workers of their job rights also want to limit their power outside the workplace. As Dean

Hubbard, National Co-Chair of the National Lawyers Guild's Labor and Employment Committee has said:

These attempts to strip collective bargaining rights from public employees are "ground zero" for democracy in America. Getting rid of collective bargaining and permanently weakening unions would leave all working people, not just union workers, completely defenseless and at the mercy of the rich. . . . We are at a defining moment in our history where we are being shown that America as a nation cannot be free if any of her people are not free.

This is not the first time that politicians have used this sort of attack to divide and weaken workers. As the Rev. William Barber, president of the North Carolina state chapter of the NAACP, has reminded us, that was what brought about North Carolina's anti-union law in 1959:

In Wisconsin and other states, they are fighting to hold on to their collective bargaining rights. It is shameful that ever since 1959, because [of] racist ideology and Jim Crow mentality, which feared that whites, blacks and brown people would come together in the framework of a strong union movement and work for civil rights and justice, that North Carolina banned collective bargaining in the public sector.¹

This battle is about the fundamental right to choose who will speak for you: a decision that workers, not their employer, should be the ones to make. That is a right that the law bars their employer from taking from them.

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For additional materials and analysis:

National Lawyers Guild Labor and Employment Committee <<http://nlglaboremploy-comm.org/Wisconsin.php>>

¹ "N.C. protesters want union presence," The Sun News (February 22, 2011)

<http://www.thesunnews.com/2011/02/22/1996123/nc-protesters-want-unionpresence.html>.