

“Coming Together for Human Rights”
International Union Rights, Vol. 15, Issue 2 (2008)

Coming Together for Human Rights

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Trade unionists and human rights advocates in the United States pursued separate agendas in the last half of the 20th century. Labour leaders focused their demands on recognition from employers, collective bargaining, and a greater share for workers of growing national wealth. For its part, the modern human rights movement usually saw union organising and collective bargaining as strictly economic endeavours unrelated to human rights.

In the late 1990s the parallel but separate tracks of these two movements began to converge. Trade unionists and human rights advocates started analysing American employers' anti-union tactics as violations of basic rights of association under international human rights standards, not just under US law. They decided to develop a project to re-think and re-argue American labour law on a human rights foundation.

The new human rights initiative led to publication in 2000 of Human Rights Watch's *Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards*. Based on voluminous documentary research and extensive field research, this book-length HRW report made a compelling case that the United States fails to meet international standards.

In 2005, HRW continued its programme on workers' rights in the United States with a report on violations in the US meat and poultry industry. In 2007, a massive new report on Wal-Mart's violations put that company under a human rights spotlight. In both cases, trade unions and activist communities seized on the reports as major resources in their campaigns to reform practices in those industries and companies.

Human Rights Watch was the most prominent group to take up workers' rights in the United States, but it was not alone. Amnesty International USA created a Business and Human Rights division with extensive focus on workers' rights. Oxfam International broadened its development agenda to include labour rights and standards, and its Oxfam America group created a Workers' Rights programme to take up these causes inside the United States.

On the union side, the AFL-CIO launched a broad-based 'Voice@Work' project which it characterises as a 'campaign to help US workers regain the basic human right to form unions to improve their lives'. In 2004, trade unions and allied groups created a new NGO called American Rights at Work (ARAW). ARAW launched an ambitious programme to make human rights the centrepiece of a new civil society movement for US workers' organising and bargaining rights. Together, the federation and ARAW, joined by the Change to Win coalition,

have launched a campaign for passage of the Employee Free Choice Act (EFCA) in the US Congress, legislation that would incorporate international labour rights principles into US law.

Human Rights Reporting

Employer conduct that is entirely legal under US law – captive audience meetings, one-on-one supervisor pressure, threats of permanent replacement, and much more – is vulnerable to attack in light of ILO and international human rights standards. Charging employers with violations of international human rights, not just violations of the National Labor Relations Act, throws companies on the defensive and gives more force to advocates' appeals to the court of public opinion.

In one case, the Teamsters union launched a human rights campaign against Maersk-Sealand, the giant Denmark-based international shipping company, for violating rights of association among truck drivers who carry cargo containers from ports to inland distribution centres. The union produced a human rights analysis and critique of the company's actions with detailed case studies of Maersk's labour rights violations. In 2006, the union introduced a shareholders resolution, common at American companies' annual meetings but a novelty for Maersk, calling on the company to adopt international labour rights standards as official company policy.

The Teamsters and the Service Employees International Union collaborated to present a human rights report at the July 2007 annual general meeting of First Group PLC, a UK multinational based in Aberdeen. The report detailed workers rights violations by its US subsidiary, First Student, Inc., a school bus transportation company with a record of aggressive interference with workers' organising efforts.

Some advances can be seen from human rights campaigning. The Employee Free Choice Act passed the House of Representatives in March 2007 and secured a majority in the Senate, where it stalled under threat of a veto. But the public education campaign set the stage for a renewed push after the 2008 elections. Maersk is engaged in sustained talks with the Teamsters union to find a collective bargaining solution for port truck drivers. Prompted by its UK parent company responding to human rights criticisms, First Student, Inc. has retreated from its worst forms of anti-union campaigning. Thanks to management's reduced role, workers have won a series of NLRB elections in the past year bringing thousands of new workers into the union.

Using International Instruments

The American labour movement's new interest

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in international human rights law is also reflected in increasing use of complaints to the ILO's Committee on Freedom of Association. While recognising that the Committee cannot 'enforce' its decisions, US unions are turning to the Committee for its authoritative voice and moral standing in the international community. They hope that Committee decisions can bolster movements for legislative reform to reverse anti-labour decisions by the NLRB and the courts.

Hoffman Plastic Case

In 2002, the AFL-CIO filed a CFA complaint against the Supreme Court's Hoffman Plastic decision. The Supreme Court's 5-4 ruling held that an undocumented worker, because of his immigration status, was not entitled to back pay for lost wages after he was illegally fired for union organising. The five-justice majority said that enforcing immigration law takes precedence over enforcing labour law.

In November 2003, the Committee on Freedom of Association issued a decision that the Hoffman doctrine violates international legal obligations to protect workers' organising rights and recommended congressional action to bring US law 'into conformity with freedom of association principles'.

Supervisory Exclusion Case

In October 2006, the AFL-CIO filed a CFA complaint against the NLRB decision in the so-called Oakwood Trilogy, in which the NLRB announced an expanded interpretation of the definition of 'supervisor' under the National Labor Relations Act. In a March 2008 decision, the Committee said, 'certain situations found by the NLRB interpretation in the Oakwood trilogy to involve authority to 'assign' or 'responsibly direct' appear to give rise to an overly wide definition of supervisory staff that would go beyond freedom of association principles'.

North Carolina Public Employees Case

The United Electrical, Radio and Machine Workers of America (UE) began an innovative organising campaign among low-paid public sector workers in North Carolina, a state that prohibits collective bargaining by public employees.

In 2006 the UE filed an ILO complaint charging that North Carolina's ban on public worker bargaining, and the failure of the United States to take steps to protect workers' bargaining rights, violate Convention No. 87's principle that 'all workers, without distinction' should enjoy organising and bargaining rights. In April 2007, the Committee ruled in the union's favour, saying 'the Committee requests the [United States] Government to promote the establishment of a collective bargaining framework in the public sector in North Carolina ... and to take steps aimed at bringing the state legislation ... into conformity with the freedom of association principles'.

The AFL-CIO's 'Mega-Complaint'

In October 2007, the AFL-CIO filed a 'mega-complaint' arguing that the cumulative effect of NLRB decisions under the Bush administration has put the entire labour law system outside the bounds of ILO principles. The complaint pointed to dozens of NLRB decisions in recent years that diminished workers' organising rights and expanded management's anti-union arsenal. Especially telling were the 2007 'September Massacre' cases in which the Board issued a myriad of long-

delayed decisions on key issues, resolving them all in management's favour. A Committee decision is expected in November 2008.

A Progressive Critique

Some labour supporters caution against too much emphasis on a human rights argument for workers' organising in the United States. They maintain that a rights-based approach fosters individualism instead of collective worker power; that demands for 'workers' rights as human rights' interfere with calls for renewed industrial democracy; that channelling workers' activism through a legalistic rights-enhancing regime stifles militancy and direct action. These are healthy cautions that contribute to a needed debate about the role and effectiveness of human rights activism and human rights arguments in support of workers' rights. But one need not make an 'either-or' choice.

Conditions have ripened for raising the human rights platform to advance workers' rights in the United States. Human rights advocacy brings authoritativeness to labour discourse that trade unionists can never achieve. If Human Rights Watch's Unfair Advantage had been published by the AFL-CIO, it would have been dismissed as self-interested partisanship. If it had been published by an academic press written (as it was) by a researcher who had worked for many years as a union organiser and negotiator, it would have been discounted as a biased study by a pro-union partisan. But coming from Human Rights Watch, the report carried unmatched authority in light of HRW's independence and expertise in the human rights arena.

The human rights frame gives new force to trade union organising and bargaining campaigns. Here are some ways how:

- Arguing from a human rights base, labour advocates can identify violations, name violators, demand remedies, and specify recommendations for change in ways not available within the framework of US labour law.
- Workers are empowered in organising and bargaining campaigns when they are themselves convinced – and convincing the public – that they are vindicating their fundamental human rights, not just seeking a wage increase or more job benefits.
- Employers are driven into a corner by charges that they are violating workers' human rights.
- The larger society is more responsive to the notion of trade union organising as an exercise of human rights rather than economic strength.
- An international human rights foundation strengthens international strategic campaigns.

A human rights emphasis also has alliance-building effects. Human rights organisations and their supporters are a major force in civil society that historically stood apart from labour struggles. Now the human rights community is committed to promoting workers' rights. Using the human rights framework, labour advocates have found new entries into religious, civil rights, and other allies. We cannot foresee in detail how these new alliances will proceed. But the human rights argument has surely succeeded in re-framing the debate, re-defining the problems, and re-shaping solutions to protect workers' rights as human rights in the United States.

Some warn that too much emphasis on a rights-based approach fosters individualism instead of collective worker power; and that this stifles militancy and direct action. These are healthy cautions. But one need not make an 'either-or' choice