



April 2, 2012

Juan Somavia
Director General
International Labour Organization
4 route des Morillons
CH-1211 Geneve 22
Switzerland

Re: Complaint for Filing with Committee on Freedom of Association

MARY KAY HENRY
International President

ELISEO MEDINA
International Secretary-Treasurer

MITCH ACKERMAN
Executive Vice President

KIRK ADAMS
Executive Vice President

GERRY HUDSON
Executive Vice President

EILEEN KIRLIN
Executive Vice President

VALARIE LONG
Executive Vice President

TOM WOODRUFF
Executive Vice President

Dear Director Somavia:

Enclosed for filing with the Committee on Freedom of Association please find the Complaint of the Service Employees International Union, CTW, CLC and its affiliate, the Southern Regional Joint Board of Workers United (jointly "SEIU") against the Government of the United States of America.

The complaint addresses the failure of the government of the United States to ensure that the State of Alabama adequately respects the rights of trade unions and workers set forth in ILO Conventions 87 and 98. The complaint is directed, specifically, to a law recently passed by the Alabama legislature and signed into law in June 2011, the Beason-Hammon Alabama Taxpayer and Citizen Protection Act (henceforth, "H.B. 56"), which imposes heavy penalties on immigrants living and working in the state without valid visas or residency status. H.B. 56 criminalizes attempts by some immigrants to associate for purposes of mutual aid and protection in their workplace by joining a labor organization or otherwise.

This complaint documents the current and anticipated cost to trade unions of: 1) general denials of equal protection and access to justice to undocumented immigrants; 2) the climate of fear produced by this law, which extends its impact beyond undocumented immigrant workers to workers who are from racial minority groups – including many who are legal residents and citizens; and 3) provisions that have a direct and demonstrable impact on trade union activities such as new organizing, representation of existing members, and enforcement of individual and collective contractual agreements on behalf of workers.

We believe that the U.S. government's inability to act promptly and decisively to put in place a national policy related to immigration – attentive to international guarantees related to individual workers' rights as well as to the rights of trade unions with immigrant members – has given the space to individual states to enact laws that are in flagrant violation of international norms. The fact that the violations in this case are the work of an individual State does not insulate the U.S. from responsibility. Furthermore, the efforts of the executive branch of the U.S. government to challenge the law are simply insufficient to protect these workers and our trade union now, or into the future, without a deeper commitment to federal legislative reform.

We request that the Committee direct copies of all communication in this matter to Judith A. Scott, SEIU General Counsel and Orrin Baird, SEIU Associate General Counsel at 1800 Massachusetts Ave., NW, Washington, DC 20036.

SERVICE EMPLOYEES
INTERNATIONAL UNION
CTW, CLC

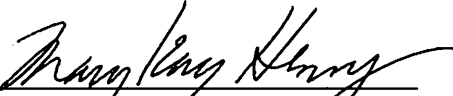
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Juan Somavia
March 29, 2012
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Thank you for your prompt attention to this matter.

Very truly yours,


Mary K. Henry, International President
Service Employees International Union


Eliseo Medina , International Secretary-Treasurer
Service Employees International Union

Enclosure

MKH/smt

cc: Judy A. Scott, General Counsel – SEIU
Orrin Baird, Associate General Counsel - SEIU

Complaint submitted to the ILO Committee on Freedom of Association
by
Service Employees International Union (SEIU)
against
The Government of the United States of America

Introduction

This complaint is filed against the government of the United States of America (U.S.), by the Services Employees International Union (SEIU) and its affiliate, the Southern Regional Joint Board of Workers United (“Joint Board”). SEIU is a national union with more than 2.1 million members in the sectors of health care, property services, and public services; its affiliate, Workers United, represents 150,000 workers, with 1105 under the Joint Board in the state of Alabama. Through its membership in the Joint Board in Alabama, as well as through its interest in workers' rights and dignity in the U.S. more broadly, SEIU has a substantial stake in the outcome of this complaint.

The complaint addresses the failure of the government to ensure that the State of Alabama adequately respects the rights of trade unions and workers set forth in ILO Conventions 87 and 98. The complaint is directed, specifically, to a law recently passed by the Alabama legislature and signed into law in June 2011, the Beason-Hammon Alabama Taxpayer and Citizen Protection Act (henceforth, “H.B. 56”), which imposes heavy penalties on immigrants living and working in the state without valid visas or residency status. The legislation does not, on its face, appear to implicate core trade union rights. However, this complaint will document the current and anticipated cost to trade unions of:

- general denials of equal protection and access to justice to undocumented immigrants.
- the climate of fear produced by this law, which extends its impact beyond undocumented immigrant workers to workers who are from racial minority groups – including many who are legal residents and citizens.
- provisions that have a direct and demonstrable impact on trade union activities such as new organizing, representation of existing members, and enforcement of individual and collective contractual agreements on behalf of workers.

We believe that the U.S. government's inability to act promptly and decisively to put in place a national policy related to immigration – attentive to international guarantees related to individual workers' rights as well as to the rights of trade unions with immigrant members – has given the space to individual states to enact laws that are in flagrant violation of international norms. The fact that the violations in this case are the work of an individual state do not insulate the U.S. from responsibility. Furthermore, the efforts of the executive branch of the U.S. government to challenge the law are simply insufficient to protect these workers and our trade union union now, or into the future, without a deeper commitment to federal legislative reform.

It is also telling that the issues raised here point to the U.S. government's failure to implement any of the recommendations made by the Committee on Freedom of Association in Case No. 2227, which exposed the extreme vulnerability of undocumented immigrant workers in the U.S. who seek to organize and assert their rights.¹ It is further evidence that the government response in that case –

¹ Case No. 2227, Complaint filed against the Government of the United States of America by the American Federation of

which included a refusal to engage social partners in developing a legislative resolution to the problems identified by the Committee on Freedom of Association, and asserted that measures were already in place to protect those workers² – was inadequate in the extreme.

Competence of the Committee on Freedom of Association

The U.S. has not ratified ILO Conventions 87 and 98 of the ILO; however, as the Committee on Freedom of Association has noted in a prior case involving the U.S., it still has the authority to assess potential violations of these Conventions since the U.S. is a member of the ILO, and the Committee's mandate “stems directly from the fundamental aims and purposes set out in the ILO Constitution.”³ Therefore, we ask respectfully for attention to this case, with a strong recommendation to the U.S. that it move to ratify Conventions 87 and 98 and seek the ILO's technical assistance in bringing its legislation into compliance with international norms.

We should also note here that the complaint is being submitted prior to a resolution of litigation, filed both by the U.S. government and by private parties (including SEIU), seeking partial or total repeal of H.B. 56.⁴ While we are aware that the exhaustion of domestic remedies is not required by the Committee on Freedom of Association, we still feel it useful to share our thinking with respect to this complaint. In the first place, we are deeply concerned by the possibility of irreparable harm as a result of the delay, with respect to the interests of the union and its members in Alabama. Many undocumented workers have already fled the state, given experiences of harassment and/or fearing deportation; others are leaving because the law has left them utterly defenseless against wage theft and other forms of exploitation, since contracts (including for compensation) can no longer be enforced in courts.⁵ And, as documented in greater detail below, the union's core work has already been deeply compromised. New organizing – not only of undocumented workers, but also of Latino workers who are citizens or permanent residents of the U.S. – has become near-impossible, given workers' fear of reprisal, and their perception that the benefits of union membership have been eroded by H.B. 56. There are also fewer resources available for organizing and other activities, since more and more of the union's attention is required for member and community education on the law.

We are also seeking the Committee's attention on this issue because it seems clear that a resolution of this issue cannot be achieved through litigation. H.B. 56 is just one manifestation of a broken immigration and labor policy at the federal level, and in the absence of firm federal guidance, there can be only piecemeal reform at best. As noted in a recent report on H.B. 56 by Human Rights Watch:

“Responsibility for fixing the US immigration system ultimately lies with the US Congress and the president. The federal government has failed to take responsibility for a situation whereby American society both benefits from and disregards the rights of a large and growing group of people. But it cannot continue to permit local economies to rely on the labor of unauthorized immigrants without

Labor and Congress of Industrial Organizations (AFL-CIO) and the Confederation of Mexican Workers (CTM), 332nd Report, (Vol. LXXXVI, 2003, Series B, No. 3). The complainants alleged that the U.S. Supreme Court ruling in *Hoffman Plastic Compounds v. NLRB*, which determined that an undocumented worker terminated in violation of the National Labor Relations Act was not entitled to back pay, resulted in millions of undocumented workers losing their right to an adequate remedy for anti-union discrimination and retaliation.

² Report 353, para 93

³ Case No. 2227, 332nd Report, (Vol. LXXXVI, 2003, Series B, No. 3) para. 600.

⁴ cite

⁵ Cite including to HRW report pp.27-8

providing those residents some process that would ensure that their human rights are fully respected.”⁶

We hope that intervention by the Committee can help direct the U.S. government to take the steps necessary to develop a framework that adequately protects immigrant workers, and trade unions' ability to organize and represent them.

H.B. 56

The law in question, H.B. 56, was explicitly intended to force undocumented immigrants to leave the state of Alabama. The law, as passed by the state legislature, sought to accomplish this goal through numerous draconian means. We are naturally concerned about the law in its entirety, and find it hard to isolate the parts that may affect trade union functioning more than others. Nevertheless, we focus on several provisions that are most clearly relevant to this complaint.

- Section 11(a), criminal penalties for undocumented immigrants who “apply for, solicit, or perform work.” This would affect day laborers in precarious situations, but also union members in more formal employment knowingly hired in spite of their immigration status. These workers would be exposed not only to state harassment, but also to employer coercion to accept wage theft and other forms of exploitation.
- Section 13, penalties for those who would conceal, harbor, shield or transport an undocumented immigrant. This would have direct consequences for trade unions and allies who believe that immigration status should not be a barrier to solidarity.
- Section 27, preventing courts from “enforcing a contract to which a person who is unlawfully present in the United States is a party.” This provision places in jeopardy the ability of a union to enforce contracts on behalf of their members, meaning that the status of settlement agreements and contracts setting payment for services, for example, is in doubt, and even the ability of collective bargaining agreements to cover undocumented workers – in fact if not in law – is weakened.

It should be noted here that Section 11(a) and Section 13, along with several other provisions of H.B. 56, were enjoined by courts pending the final outcome of litigation. However, the courts did not base their decision on a solid foundation of rights principles, but rather, assessed each challenged provision to determine whether federal legislative frameworks might “preempt” the state's efforts to make law in that arena. This emphasizes the fragility of the temporary victories, in the absence of a robust commitment to internationally recognized trade union rights – for all workers, without any form of discrimination whatsoever – at the federal level. Furthermore, courts have thus far refused to enjoin Section 27, meaning that undocumented workers' capacity to enter into contracts has been erased, and the capacity of trade unions to effectively enforce individual or collective agreements on their behalf is certainly in jeopardy.

From a trade union perspective, H.B. 56 is emblematic of the U.S. government's failure to respect its obligations to protect and defend the right to form and join trade unions, and to bargain collectively. It has done so through an eroded immigration policy, which permits individual states substantial leeway to develop laws that violate immigrant workers' rights to organize and protest. But the U.S. has also allowed for a fragmented and flawed labor rights framework, enabling individual states to exploit the gaps to attack trade unions' capacity to stand up for all workers.

⁶ HRW p.50

Jurisprudence of the Committee on Freedom of Association and the Policies of the ILO

Prior decisions of the Committee on Freedom of Association offer a clear lens of analysis with respect to the issues presented in this complaint, in all respects:

- the violation alleged
- the extent of the U.S. government's responsibility to provide a remedy, under the circumstances
- possible avenues forward.

In terms of the first of these, it is heartening to note that the Committee on Freedom of Association has emphasized “the importance to be attached to the basic principles set out in the Universal Declaration of Human Rights, considering that their infringement can adversely affect the free exercise of trade union rights.”⁷ In this case, the denials of equal protection to undocumented migrants in Alabama, as a result of H.B. 56, have had a more than theoretical impact on trade unions. The climate of fear has chilled efforts to organize. With undocumented workers wary of approaching law enforcement, given the very real risk of being detained and deported, H.B. 56 functions as an obstacle to efforts to seek appropriate remedies for violations of union members' rights. This implicates a core principle identified by the Committee on Freedom of Association, that safeguards of normal judicial procedure be present in both law and practice.⁸

Section 27 of H.B. 56 clearly implicates collective bargaining rights, whether it intended to do so or not. The Committee on Freedom of Association has urged that “The public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof.”⁹ Although the extent of the impact on trade unions and their ability to represent undocumented members remains uncertain, we believe that this provision of the law on its face infringes on the principle of voluntary negotiations between employers and workers organizations.

The Committee has staunchly defended the application of the rights set forth in Conventions 87 and 98 to undocumented migrant workers, dating back to 2001, when Case 2121 was filed by the General Union of Workers (UGT) against the government of Spain.¹⁰ It addressed the indirect impact on undocumented workers' trade union rights in Case 2227, filed by the AFL-CIO and CTM against the government of the U.S., and noted above. That decision highlighted the subtle ways in which these rights can be violated through the intersection of immigration law and labor law – as happens in the case of H.B. 56 also – and underscored the obligation of the U.S. to identify an adequate remedy.

It is worth emphasizing that the U.S. government has raised two types of arguments to justify its failure to act on the basis of the Committee's recommendations, and neither has been deemed sufficient. With respect to a complaint filed in 1990, dealing with infringements of the trade union rights of public sector workers in the U.S., the government's primary response was that, given the federal structure of the nation, the federal government had limited jurisdiction to regulate collective bargaining in public services at state and local levels.¹¹ The Committee responded that, “Whilst fully aware of the complex

⁷ Digest of Decisions, para 30

⁸ Digest of Decisions, para 107

⁹ Digest of Decisions, para 881

¹⁰ Digest of Decisions, para 214: “With regard to the denial of the right to organize to migrant workers in an irregular situation, the Committee recalled that all workers, with the sole exception of the armed forces and the police, are covered by Convention No. 87, and it therefore requested the Government to take the terms of Article 2 of Convention No. 87 into account in the legislation in question.”

¹¹ Case No. 1557, Complaint filed against the Government of the United States of America by the American Federation of

issues involved in that respect, and of the significant impact this may have for all the parties concerned, the Committee recalls that the central issue here is whether the principles of freedom of association are complied with, in law and in fact, and not whether these rights are guaranteed through national or local legislation.”¹² In its response in Case 2227, cited above, addressing the rights of undocumented immigrant workers, the U.S. government cited the separation of powers and the independence of the judiciary, noting that the issue had been addressed by the U.S. Supreme Court, and it was not the role of the executive to override it. The Committee on Freedom of Association, however, pointed out that while it was not being called upon to “alter the effects of the Supreme Court decision,” or to “judge the validity of the majority of the Court in *Hoffman*, which is based upon complex internal legal issues and precedents,”¹³ it did have an obligation to determine whether the decision resulting in denying workers their fundamental associational rights, and to urge the government to remedy it.

In terms of a way forward, the Committee did not choose to impose a strategy on the government, in Case 2227. We do not ask the Committee to do so in this instance. Nevertheless, we would highlight the recommendations repeatedly made, in other cases, which have “emphasized the importance that should be attached to full and frank consultation taking place on any questions or proposed legislation affecting trade union rights.”¹⁴ There was no such consultation when the state of Alabama passed H.B. 56. But we ask that the Committee recommend that the U.S. government engage urgently in consultation with a view to prioritizing legislative reform.

Conclusion

In brief, we believe that the U.S. government is in violation of Conventions 87 and 98, for creating and perpetuating a broken federal legislative framework with respect to immigration and labor. It is this framework that is to blame for laws such as H.B. 56, passed by the state of Alabama, which violate fundamental workers' and trade union rights, and the only means of stopping the proliferation of such laws, at the level of the individual states, is for the federal government to take prompt and robust measures.

We ask the Committee on Freedom of Association to urge the U.S. government to begin the process of engaging with social partners – particularly national trade unions – at the earliest available opportunity, in order to initiate critical legislative reform, in a way that respects and promotes the rights in Conventions 87 and 98.

Labor and Congress of Industrial Organizations (AFL-CIO) and Public Services International, (Vol.LXXVI, 1993, Series B, No.3) para. 274

¹² Case No. 1557, Vol. LXXVI, para. 277

¹³ Case No. 2227, 332nd Report, (Vol. LXXXVI, 2003, Series B, No. 3) para 603

¹⁴ Digest of Decisions, para. 1074