

Forced Labor of Public Employees in the United States: A Note from the 2002 International Labor Conference

By Paul Germanotta

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Something unusual occurred in Geneva at the 90th session of the annual Conference of the International Labor Organization (ILO), in June 2002. For the first time ever, the case of a violation of an ILO convention by the Government of the United States was taken up by the Conference Committee on the Application of Standards.

This was unusual, in part, because the U.S. Government has ratified so few conventions. (The U.S. has only ratified 14 of the 184 ILO Conventions and 2 of the 8 conventions the ILO has identified as fundamental to the rights of human beings at work.) It is only by ratifying conventions that a member government incurs obligations that are subject to scrutiny under the regular system of supervision of the ILO.

The U.S. was hauled before the conference committee, so to speak, because for the first time in decades, the ILO Committee of Experts made a formal "observation" that the U.S. Government was in noncompliance with one of the few conventions it has ratified: Convention 105, the Abolition of Forced Labor Convention (1957), ratified by the United States in September 1991.¹

Under Article 1(d) of Convention 105, a ratifying government "undertakes to suppress and not to make use of any form of forced or compulsory labor as a punishment for having par-

ticipated in strikes."² In practice, this means that it is a violation of the convention if workers strike unlawfully (defying an injunction, back-to-work order, no-strike ordinance or statute, and so on) and are then penalized for their strike action, and the penalty results in some form of obligatory work or service (for example, a sentence of community service or a work assignment while serving a jail term).

The strike action would have to be action protected under international law. Under ILO principles, for example, strikes by public service workers may be restricted or prohibited, but only to employees who "exercise authority in the name of the State," or in essential services "in the strict sense of the term" (that is, "where the interruption would endanger the life, personal safety, or health of the whole or part of the population"). Even then, guarantees (for example, jointly determined conciliation and arbitration procedures) must be provided to compensate for the restriction on strikes, or else the restriction is not valid.³

Under Article 2 of Convention 105, each government that ratifies the convention must "take effective measures to secure the immediate and complete abolition of forced or compulsory labor as specified in Article 1 of this Convention."

Violation of Forced Labor Convention

In its observation against the U.S. Government, the committee of experts focused its attention, in part, upon a North Carolina statute. It noted that, under article 12, section 95-98.1 of the North Carolina General Statutes, strikes by all public employees are declared illegal and against the public policy of the State.

Under section 95-99, any violation of the provisions of article 12 is a Class 1 misdemeanor. A person convicted of a Class 1 misdemeanor in North Carolina may be sentenced to “community punishment” and, upon a second conviction, to “active punishment,” that is, involving a sentence of imprisonment. Under state corrections law and regulations, these sentences can involve involuntary work assignments.

The committee found that “the sweeping provisions of the North Carolina General Statutes are contrary to Article 1(d) of the Convention,” and it called on the U.S. government to take “the necessary measures to bring the above-mentioned provisions of the North Carolina General Statutes into conformity with the Convention,” and to “report on action taken to this end.” The committee further requested the government to undertake “a general review of legislation and practice at the level of the states in the light of Article 1(d) of the Convention,” and to “report on the findings.”

When this observation was taken up at the June conference, the government representative (from the U.S. Department of Labor) took a defiant stance. She disputed the observation and denied there was any violation of the convention under law or practice

(that is, the way the law is applied to U.S. workers) in the U.S.⁴

She acknowledged that participation in a strike by public employees in North Carolina was, indeed, classified as a Class 1 misdemeanor. She claimed, however, that a first-time offender under the law in question was sentenced to “community punishment,” which by law could not involve any jail or prison time. She also claimed that community punishment, in most cases, only required the payment of a fine.

However, the issue was not whether striking workers could be given jail time, but whether they could receive a punishment for strike activity that resulted in an obligation to perform work or services. The claim that in North Carolina community punishment, in most cases, only requires the payment of a fine was unsubstantiated and appears to be erroneous.

According to the latest statistical report of the North Carolina Sentencing and Policy Advisory Commission, there were 166,618 misdemeanor convictions in that state in FY 2000/01 (July 1, 2000 through June 30, 2001). Most of those convictions (83%), regardless of offense class or prior conviction level, resulted in the imposition of a community punishment.

According to the *Compendium of Community Corrections Programs in North Carolina*, a fine is, indeed, a community punishment and may be imposed for most crimes in North Carolina. However, so is community service work. The compendium states that community service work “is a community punishment” and is used as a sanction “at every stage of the criminal justice system.” Community service work “requires the offender to

work for free for public and nonprofit agencies.” This is forced labor.

According to North Carolina corrections program data, in FY 2000-2001 more than 73,000 convicted offenders were assigned to the Community Service Work Program. The report does not include a breakdown of this figure for first-time offenders or by the nature of the offense, but it is certain to include a number of misdemeanor convictions.

However, whether it does or doesn’t is immaterial. The law specifically permits the imposition upon first-time offenders of community service work as a sentence of community punishment, and this includes all public service workers in North Carolina who, as a first offense, are convicted of the Class 1 misdemeanor of going on strike. On that basis alone, the law is in violation of Convention 105 and will have to be amended or repealed.

Ironically, in November 2001, at the very moment the committee of experts was reviewing the dubious claims in the government’s compliance report that everything in the U.S. was hunky dory, 228 striking public schoolteachers and secretaries in Middletown Township, New Jersey were being thrown into county jail for defying a judge’s back-to-work order.

Notably, in interviews reported by the *Philadelphia Inquirer* on December 8, 2001, a day after the jailed strikers were released, it was disclosed that during their incarceration “some were assigned duties such as laundry and mess duty.” This account, indicative of a clear violation of the convention, has somehow been overlooked by the government or else just doesn’t fit in with its rosy view of things.

Next Steps for Labor Rights Advocates

The government is required to file its next compliance report with the ILO by the summer of 2003, taking into account the March 2002 observation of the committee of experts and the discussion during the June 2002 conference, as well as any other information that, in the meantime, is brought to light.

Judging by the intransigence shown by the government so far and the half-hearted nature of its past reviews of U.S. law and the practical experience of U.S. workers, the ILO's supervision of U.S. compliance with Article 1(d) of Convention 105 is going to be a drawn-out process.

For this reason, however, it is also unlikely that the committee of experts will be able to gain a true perspective on the scale of compliance problems under Article 1(d) of the convention that may exist in the United States, unless it has direct help from U.S. workers and their unions or associations.

Once they document violations, the ILO supervisory committees are persistent and unyielding in their peculiar technique of "coaxing" governments into remedial measures. They have to be, to compensate—more often than not unsuccessfully—for their lack of coercive enforcement powers.

In this case, the committee of experts would be aided by any information, in any form, about the practical experiences of striking workers, in the public or private sector, who have been penalized for illegal strike action that would be legal by ILO standards and who, as a consequence of that penalty, have been made to perform some type of work or service involuntarily.

People with access to such information can submit it to the ILO through three, not mutually exclusive, pathways: the International Affairs Department of the AFL-CIO, the Solicitor's Office of the U.S. Department of Labor, or directly to the International Labor Office, (International Labor Standards Department, International Labor Office, 4 route des Morillons, 1211 Geneva, Switzerland. Fax: 011 41 22 799 6771 Email: <normes@ilo.org>).

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Endnotes:

- 1 In fact, two observations were made, the other involving Convention 182. The full text of both observations can be read at: www.ilo.org/ilolex/english/iloquery.htm. This essay concerns one aspect of the observation under Convention 105.
- 2 The full text of the convention can be viewed at: www.ilo.org/ilolex/english/convdisp1.htm.
- 3 A very good discussion of ILO principles on the right to strike, and on the limits to that right, can be found at: Bernard Gernigon et al. *ILO Principles Concerning the Right to Strike*. (Geneva: International Labor Office, 2000).
- 4 The full summary of the conference discussion can be read in the conference committee's report at: www.ilo.org/public/english/standards/relm/ilc/ilc90/pdf/pr-28p2.pdf (pages 58-60).