

Study shows opposition to US workers' right to organize has "no parallel in the western industrial world"

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Human Rights Watch (HRW), a US-based organization that monitors rights abuses in some 70 countries, recently issued a 217-page report on the extraordinary obstacles American workers face in trying to exercise the right to organize. The study, entitled *Unfair Advantage: Workers' Freedom of Association in the United States Under International Human Rights Standards*, states that in the US "workers' rights violations are widespread and growing."

The report examines a cross-section of workers' efforts to form and join trade unions and other associations, to bargain collectively and to strike. It paints a devastating picture of corporate and government suppression of these efforts and illegal retaliation against those involved in attempts to organize.

The tone of the report is harsh and its authors express considerable shock at the extent of the problem in the country that claims to be the apex of democracy and freedom. The authors' viewpoint is reformist; they offer themselves as an advisory committee to the government and American corporations. Contained in their recommendations is the warning that the US is damaging its position in political and trade relations by its double standard on "core labor rights."

Human Rights Watch points out that Washington insists on a "rights-based linkage to trade," in other words, that labor rights are a prerequisite for commercial dealings with the US. However "many developing countries charge that US proposals for a working group on labor rights at the World Trade Organization (WTO) are motivated by protectionism, not by a concern for workers' rights." The message is clear: that abuses in the US give further credence to these arguments.

Whatever the political agenda of the authors, the material presented is significant and revealing. American workers are struggling to defend and raise their living standards, but they face an industrial arena in which the employer is virtually an absolute ruler and they have, in practice, few if any rights. "A culture of near-impunity" exists, says the HRW report, in the corporate world in regard to the suppression of workers' rights. Government regulations are routinely flouted. The study notes that "In the 1950s, for example, workers who suffered reprisals for exercising the right to freedom of association numbered in the hundreds each year.... By the 1990s more than 20,000 workers each year were victims of discrimination leading to a back-pay order by the NLRB [National Labor Relations Board]—23,580 in 1998."

A "business-friendly" government in Washington has worked hand in hand with the employers. The report notes: "Congress has hobbled the NLRB over the years by failing to keep staffing and funding levels in line with the growing volume of cases, especially unfair labor practice cases. The number of cases filed each year has tripled since the 1950s, but the NLRB's staffing level has fallen from nearly 3,000 full-time employees in 1980 to fewer than 2,000 in 1998, only slightly more than staffing levels

in 1950."

Employers appeal decisions for years, and if they are eventually forced to reinstate a given worker, the penalties are barely a slap on the wrist. In one case cited by the HRW report, "a worker fired for five years received \$1,305 back pay and \$493 interest. Many employers have come to view remedies like back pay for workers fired for union activity as a routine cost of doing business, well worth it to get rid of organizing leaders and derail workers' organizing efforts."

The investigation takes up individual case studies and concludes with an examination of the legal obstacles facing workers in their efforts to organize. This section opens with a quote from NLRB researcher, Charles Morris: "By the 1990s ... one of every eighteen employees involved in union election campaigns was subjected to discharge or other discrimination to discourage union representation." The report's authors cite the comment of Prof. Theodore St. Antoine, former dean of the University of Michigan School of Law and president of the National Academy of Arbitrators, that "the intensity of opposition to unionization which is exhibited by American employers has no parallel in the western industrial world."

Selected studies involve workers in the service industry, food processing, manufacturing, migrant agriculture and the contingency labor market. Violations were recorded in small facilities, as well as large corporations, such as the Marriott Corporation and Microsoft.

One case involved Cabana Potato Chips in Detroit, Michigan, where workers were not employed directly by the company, but by a shifting series of temporary employment agencies, all operating out of the Cabana plant office. As temps, workers did not accrue seniority or pension benefits. They were ineligible for bank loans and could not collect unemployment insurance. Furthermore, of the 120 workers making between \$5.50 and \$7.25 an hour in 1998, a significant portion were former welfare recipients in Michigan's "Work-First" mandatory welfare-to-work program.

An organizing drive began in September 1998. By the time of the election date in January 1999, management intimidation, including threats of plant closure and worker replacement, had dissolved a solid majority in support of union representation. A key feature of the company's campaign against the union was the Michigan law that those enrolled in the Work-First program could lose their food stamps, medical insurance, child care subsidies and other benefits received if they went on strike.

New York City and Los Angeles garment workers—100,000 strong—increasingly face sweatshop conditions. "Most sweatshop workers," the report's authors write, "are so burdened by the need to make it through another day that forming a union is beyond their energies." The fear of deportation by immigrant workers also prevents efforts to organize an industry in which two-thirds of workplaces violate minimum wage and

overtime laws. In 1995, in El Monte, California, 72 workers from Thailand were found to be living in conditions of brutal slavery, working 17 hours a day for 70 cents an hour, living and working under armed guard.

Agricultural workers are also excluded from coverage under the National Labor Relations Act (NLRA) because they are not considered “employees.” In the case of the Washington state apple picking industry, the 50,000 apple pickers are composed largely of immigrant workers from Mexico who average \$15,000 a year in pay. Although the Supreme Court of Washington has recognized the right of agricultural workers to join unions, workers who are victimized for doing so can only seek redress through private lawsuits at their own expense.

Even foreign migrant workers who enter the US with H-2A visas, which ostensibly guarantee a legal wage, free standardized housing and access to free legal services, are subject to blacklisting by the growers, and therefore are reluctant to pursue claims. The vast majority of these workers do not speak English, which adds to their burdens.

The HRW study reveals that the most pervasive legalized assault on the right to organize takes place among the ever-growing number of temporary workers. Some 40 million workers—one-third of the US labor force—now find employment as part-time, temporary, day labor, on-call labor and other forms of contingent labor. They form a vast pool of workers excluded from protection under current laws.

It is not a matter, as the report has it, that labor laws covering the right to freedom of association have not caught up with the new paradigm of the employment relationship. Rather, these new forms of employment relations are both the outcome of changes in the economy and the two decades of attacks on the working class, which have marginalized large numbers of workers. Whether nonstandard working relations are voluntary or involuntary, wages are generally lower and benefits are not guaranteed or protected by law. “Either they are not ‘employees’ as defined in labor laws,” observes the report, “or the proprietor of the place where they work is not their ‘employer’ under the law.”

HRW points out that exclusion from labor law protection affects poorly-paid workers as well as workers apparently at the top end of the labor market:

The report cites that by 1997, New York state’s workfare program (WEP) participants, made up 75 percent of the labor in the New York City Parks Department and almost a third of workers in the city sanitation department. WEP workers are pitted against the unionized city labor force and are used to eliminate decent jobs and depress wages. It is a documented fact that welfare recipients are recruited to serve as strikebreakers.

At the opposite end of the spectrum, companies like Microsoft employ thousands of “perma-temps,” whose services are purchased through agencies. Over a third of the high-tech workers at Microsoft’s campus in Redmond, Washington are temporary. The term “perma-temp” describes long-term “temporary” workers, often working on the same team as full-time employees (FTEs). Perma-temps are paid \$25-35 per hour; they pay \$300 a month for medical benefits and are excluded from any coverage under the Fair Labor Standards and therefore are not entitled to overtime pay. FTEs have health insurance, pension plans, paid vacations and own company stock.

One worker, who has been a perma-temp since 1996, was interviewed: “It’s an unbelievable erosion of what I expected from a company like Microsoft. We do the same work, but for second-class status—no health, no pension, no vacation, no stock. We’re in the orange ghetto,” referring to the orange ID cards of the temps versus the blue cards of the FTEs. Some perma-temps told HRW that positions can be eliminated with only a few days’ notice.

The concluding section deals with the legal obstacles to exercising the right to freedom of association in the US and focuses on what the report

terms as “defenseless workers.” Over one million people are employed as domestic workers, such as maids, cooks, babysitters, cleaners and gardeners, performing “devalued household tasks ... often correspondingly devalued.” Most are immigrant and female and many work “off the books.” Cases have come to light of extreme exploitation with “working conditions equivalent to indentured servitude” and physical and sexual abuse. Most European countries have established laws to regulate pay and working conditions through collective bargaining for domestic workers. Not so the US.

The concluding paragraphs of the report deal with two major anti-strike laws: the ban on solidarity strikes or so-called secondary boycotts and the permanent striker-replacement doctrine. The Supreme Court sanctioned the permanent replacement of strikers in 1938. President Ronald Reagan’s firing and replacement of striking air traffic controllers in 1981 set a pattern for government-backed union-busting over the next two decades by Phelps Dodge, International Paper, Oregon Steel, Greyhound Corporation, Caterpillar Corporation and other corporations. “The United States is almost alone in the world in allowing permanent replacement of workers who exercise the right to strike,” the study notes.

During these and other bitter strikes legal sanctions, labor frame-ups and police and scab violence were used to break the resistance of workers to wage-cutting, speedup and other take-away demands. However, these struggles could not have been defeated without the treacherous role of the AFL-CIO bureaucracy. Not mentioned in the report is the increasingly corporatist policy pursued by the AFL-CIO in this period and the ever closer ties the union leadership established with corporate management and the government.

HRW cites the devastating decline in trade union membership since the 1950s at which time 30 percent of the total workforce was organized, including nearly 40 percent of the private sector. By 1999 the figures had fallen to 13.4 percent and 9.4 percent, respectively. This collapse cannot simply be explained by the hostility of the government and the employers. After years of labor-management collaboration, rampant corruption and suppression of rank-and-file democracy, the official trade unions have rightly become discredited in the eyes of tens of millions of workers. The notion, suggested by the HRW report, that the present trade unions offer workers any genuine protection from the employers, is a myth.

Despite all the weaknesses of the study, the picture that emerges helps put flesh and blood on the American economic miracle of the 1990s. Indeed a good part of the boom in profits and stock market prices in recent years has resulted, as a critical reading of this report indicates, from the systematic lowering of living standards and the widespread suppression of workers’ rights. This is the “miracle” which the US holds up as a model and which is the envy of every one of its economic rivals in Europe and Asia.

See Also:

Clinton lectures the world on labor standards—but what is the state of workers’ rights in America?

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