



GOVERNING BODY SUPPORT FOR THE ILO SUPERVISORY SYSTEM

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

For much of its history, the ILO supervisory system has carried out the important work of supervising the application of conventions and recommendations with the support of its tripartite constituents. Since 2012, however, the Employers' Group has embarked on a sustained and deliberate attack on this system by seeking to undermine the authority of the ILO Committee of Experts. It started as a challenge to the existence of a right to strike protected by Convention 87, a right that had been recognised to exist in principle by all ILO constituents for decades. The Employers' Group has since then challenged the Committee of Experts' well-reasoned views on a number of other conventions. Though there is no foundation for their views, the Employers' Group believe it is they, not the independent Committee of Experts, who determines what the conventions mean. Since 1926, the Committee of Experts has been mandated by the Governing Body to provide reasoned, independent observations on the implementation of conventions and recommendations in law and practice, which should stand absent a contrary view by the International Court of Justice (ICJ).

The right to strike is undoubtedly protected by ILO Convention 87. Further, the Committee of Experts relied upon well-established methods of treaty interpretation to arrive at this conclusion over 50 years ago. Indeed, those methods could only lead to that conclusion. The ITUC has prepared a detailed memorandum on the legal foundations of the right to strike which conclusively rebuts the Employers' Group's central arguments. It is available at http://www.ituc-csi.org/IMG/pdf/ituc_final_brief_on_the_right_to_strike.pdf.

Governments are understandably frustrated by the repeated breakdown of the Conference Committee on Application of Standards, first in 2012 and again in 2014. However, the Employers' Group has made clear that it will continue to disrupt the ILO supervisory system over its misplaced ideas about the right to strike and more broadly the role of the Committee of Experts. Thus, the ILO Governing Body must take decisive action immediately if the system is to be protected. In our view, the only means now available is to refer the dispute over the right to strike to the ICJ for an Advisory Opinion pursuant to Article 37.1 of the ILO Constitution.

The dispute over the interpretation of ILO Convention 87 as to the existence of the right to strike clearly meets the technical requirements for a referral to the ICJ – it concerns a question of interpretation of a convention, the ILO is authorised to request such an opinion, and it arises out of the scope of the ILO's activities. A referral can be made by the Governing Body to the ICJ on the basis of a simple majority vote. A decision by the ICJ should be definitive and put to rest any further question on the existence of the right to strike.

Therefore, we urge all governments to join the Workers Group in supporting this decision at the forthcoming session of the Governing Body in November 2014. Failure to do so will mean that governments can expect the Employers Group to return, year after year, with further, unfounded challenges to the Committee of Experts, and a forever weakened and dysfunctional supervisory system. This must be prevented.