

UNITED STATES OF AMERICA (2000-2019)

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING

REPORTING	Fulfilment of Government's reporting obligations	YES, except for the 2007 Annual Reviews (AR) and no change reports for the 2001 and 2002 ARs.	
	Involvement of Employers' and Workers' organizations in the reporting process	YES, according to the Government: Involvement of the United States Council for International Business and the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) by means of consultation and communication of a copy of Government's reports. The updated report under the 2007 AR has been communicated to the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), the Change to Win Federation, and the U.S. Council for International Business. In addition, in keeping with longstanding practice, as well as U.S. obligations under the Tripartite Consultations (International Labour Standards) Convention, 1976 (No.144), the draft report was reviewed by members of the Tripartite Advisory Panel on International Labor Standards, a subgroup of the President's Committee on the ILO.	
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations		
	Workers' organizations	<p>2009 AR: Observations by the International Trade Union Confederation (ITUC).</p> <p>2008 AR: Observations by the AFL-CIO. Observations by the ITUC.</p> <p>2007 AR: Observations by the International Confederation of Free Trade Unions (ICFTU).</p> <p>2006 AR: Observations by the AFL-CIO.</p> <p>2005 AR: Observations by the AFL-CIO. Observations by the ICFTU.</p> <p>2004 AR: Observations by the AFL-CIO.</p> <p>2003 AR: Observations by the AFL-CIO.</p> <p>2002 AR: Observations by the ICFTU. 2001 AR: Observations by the ICFTU.</p> <p>2000 AR: Observations by the ICFTU.</p>	
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	Ratification status	The United States has ratified neither the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) (C.87) nor the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) (C.98).
		Ratification intention	<p>Under consideration, since 2014, C.87 or C.98.</p> <p>2019 AR: Only when TAPILS has completed its review of a given convention, is it possible or appropriate to make precise judgements about the conformance of U.S. law and practice with that instrument.</p> <p>2016 AR: According to the Government: the President's Committee on the ILO (PC/ILO) continues to support the work of the Tripartite Advisory Panel on International Labor Standards (TAPILS) in reviewing the legal feasibility of U.S. ratification of selected ILO Conventions, including Conventions Nos 87 and 98.</p> <p>2015 AR: According to the Government: a meeting of the President's Committee on the International Labour Organization (PC/ILO), held on 15 May 2014, agreed on a set of conclusions drafted on the basis of tripartite consensus and endorsed unanimously by the PC/ILO, which will serve to guide U.S. policy on ILO issues. One of the conclusions called on the PC/ILO's Tripartite Advisory Panel on International Labor Standards (TAPILS) to intensify its work of reviewing the legal feasibility of U.S. ratification of selected ILO Conventions, including Conventions 87 and 98.</p> <p>2012-2014 AR: According to the Government: There are no current plans to pursue ratification of C.87 or C.98.</p> <p>2011 AR: According to the Government: There are no current plans to ratify C.87 or C.98.</p> <p>2009-2010 ARs: According to the Government: No change.</p> <p>2004 AR: There are no ongoing efforts to ratify C.87 and C.98. The Government made this statement in September 2003 (cf. GB.291/LILS/4 (November 2004, paragraph 13)).</p> <p>2002 AR: According to the Government: There had been no</p>

<p>Recognition of the principle and right (prospect(s), means of action, basic legal provisions)</p>		<p>development concerning ratification of C.87 and C.98 which was still under consideration (cf. GB.291/LILS/7 (November 2001, paragraph 9).</p>
	<p>Constitution</p>	<p>YES. The First Amendment to the United States Constitution, adopted in 1791, provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances”.</p>
	<p>Policy-Legislation and/or Regulations</p>	<p>• Policy: 2016 AR: The National Labor Relations Board published a final rule, 79 FR 74307 (Dec. 15, 2014) modernizing and streamlining its process for resolving representation disputes. Reporting on the first years’ experience under the new rule, data released by the NLRB’s General Counsel indicated improved efficiency in processing representation petitions and conducting elections. The General Counsel reported that under the new rule less time was required to process petitions than had been the case during the year-long period (Apr. 14, 2014-Apr. 14, 2015) preceding the new rule. 2014 AR: According to the Government: In April 2013, the U.S. Department of Education (ED) released a policy framework based on a collaboration with the Federal Mediation and Conciliation Service (FMCS), two major teachers’ unions (the American Federation of Teachers (AFT) and the National Education Association (NEA)) and the organizations representing school administrators, school boards, and major urban school systems (American Association of School Administrators (AASA), the National School Boards Association (NSBA) and the Council of the Great City Schools (CGCS)). The policy framework incorporated the following components: (i) A Culture of Shared Responsibility and Leadership; (ii) Top Talent, Prepared for Success; (iii) Continuous Growth and Professional Development; (iv) Effective Teachers and Principals, (v) A Professional Career Continuum With Competitive Compensation; (vi) Conditions for Successful Teaching and Learning; and (vii) Engaged Communities. 2000-2005 ARs: According to the Government: it is the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self- organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. This policy includes the concept that “sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and the best interests of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the process of conference and collective bargaining between employers and the representatives of their employees” (29 U.S.C. § 171(a)). Railways and airline employees are covered by the Railway Labor Act (RLA) (45 U.S.C. §§ 151- 188), and are provided protections similar to those contained in the National Labor Relations Act (NLRA). The RLA expressly recognizes that employees “have the right to organize and bargain collectively through representatives of their own choosing,” prohibits a carrier from denying “the right of its employees to join, organize, or assist in organizing the labor organization of their choice,” and makes it unlawful for an employer to interfere in any way with the organization its employees... or to influence or coerce employees in an effort to induce them to join or remain or not join or not remain members of any labor organization” (41 U.S.C. § 152). The right of employees of the United States Government, except members of the Armed Forces and certain national security agencies, to organize is governed by the Civil Service Reform Act of 1978 (CSRA) (5 U.S.C. §§ 7101-7135). The CSRA applies to almost all federal civilian employees, and provides that “each employee shall have the right to</p>

			<p>form, join, or assist any labour organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right” (5 U.S.C. § 7102). Postal workers are protected under the NLRA and provisions of the Postal Reorganization Act of 1970, as amended (39 U.S.C. §§ 1201-1209).</p> <ul style="list-style-type: none"> • Legislation: <p>2019 AR: On December 14, 2017, the National Labor Relations Board (“NLRB” or “Board”) published a Request for Information (“RFI”) in the Federal Register requesting public input regarding the Board’s 2014 Election Rule, which modified the Board’s representation-election procedures at 29 CFR parts 101 and 102. See Representation-Case Procedures, 82 Fed. Reg. 58783 (Dec. 14, 2017). The RFI sought information from interested parties regarding whether the 2014 Election Rule should be retained without change, whether it should be retained with modifications, or whether it should be rescinded. On March 16, 2018, the Board published a Federal Register notice extending the deadline for responses from March 19, 2018 to April 18, 2018. See Representation—Case Procedures, 83 Fed. Reg. 11649 (Mar. 16, 2018). As of the date of submission of this 2018 Declaration Report, the NLRB continues to review the comments received pursuant to the RFI, prior to announcing changes to the Board’s 2014 Election Rule, should any changes be forthcoming. As reported in 2016, the Department of Labor issued a rule, 81 FR 15924 (Mar. 24, 2016), revising its interpretation of reportable agreements under section 203 of the Labor Management Reporting and Disclosure Act, 29 U.S.C. 433. The rule, known as the “Persuader Rule,” would have required employers to disclose information about third-party labor relations consultants, or “persuaders,” they hire. The rule was the subject of substantial litigation and was enjoined by a federal judge before it took effect. On July 18, 2018, the Department of Labor published a final rule rescinding the Persuader Rule, based on its conclusion that “the Rule relied on an inappropriate reading” of the relevant statutory section. The Department also noted that the rule would have led to violations of attorney-client privilege. See Rescission of Rule Interpreting “Advice” Exemption in Section 203(c) of the Labor-Management Reporting and Disclosure Act, 83 Fed. Reg. 33826 (July 18, 2018).</p> <p>2018 AR: According to the Government, right-to-work legislation continues to expand in certain states. On January 7, Kentucky became the 27th state to enact a right-to-work law, and on February 6, Missouri became the 28th, while New Hampshire lawmakers defeated a right-to-work bill on February 16. In right-to-work states, unions and employers are prohibited from entering into agreements that require union membership or the payment of agency fees to offset the costs of union representation. As reported last year, a union successfully challenged a county ordinance that sought to impose right-to-work restrictions within the county in United Automobile, Aerospace and Agricultural Implement Workers of America v. Hardin County, Kentucky, 160 F. Supp. 3d 1004 (W.D. Ky. 2016). The court agreed with the argument by the union and the National Labor Relations Board (“NLRB” or “Board”) as amicus that the National Labor Relations Act (“NLRA”) preempted the right-to-work, hiring-hall, and dues-checkoff provisions of the county’s ordinance. The court held that section 14(b) of the NLRA is the only exception to NLRA preemption of the field of labor relations, and that the exception does not extend to counties or municipalities. The county appealed, and the Sixth Circuit reversed in part and affirmed in part, holding that section 14(b)’s exception to NLRA preemption included political subdivisions and that the county’s right-to-work provision was included in that exception, but that the hiring-hall and dues-checkoff provisions were preempted and unenforceable. 842 F.3d 407 (6th Cir. 2016). The NLRB published a final rule in the Federal Register on February 24, 2017, which became effective on March 6. The amendments revise and modernize the NLRB’s procedural regulations at 29 CFR Part 102, removing antiquated language such as “thereupon” from the regulations and adding new procedures in administrative proceedings. Among other things, the rule requires e-filing unless certain exceptions apply, drops a provision for serving documents by telegraph, and authorizes the agency to use fax or e-mail for service. The NLRB has also posted an updated Guide to Board Procedures to reflect the</p>
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		<p>Basic legal provisions</p>	<p>(i) The First Amendment to the United States Constitution, 1791; (ii) the National Labor Relations Act (NLRA) (29 U.S.C. §§ 151-187) (1935); (iii) the Labor-Management Relations Act (1947); (iv) the Labor-Management Reporting and Disclosure Act (1959); (v) the Civil Service Reform Act (1978); (vi) the Norris-LaGuardia Act (1932); (vii) The Railway Labor Act (1926); (viii) the Postal Reorganization Act (1970); (ix) the Congressional Accountability Act (1995); and (ix) the Presidential and Executive Office Accountability Act (1996).</p>
		<p>Judicial decisions</p>	<p>2019 AR: On June 8, 2018, in <i>Colorado Fire Sprinkler, Inc. v. NLRB</i>, 891 F.3d 1031 (2018), the D.C. Circuit held that pre-hire agreements in the construction industry can't be converted to traditional union-employer contract relationships without clear evidence the employees wanted the outcome. Under section 9(a) of the NLRA, a union that obtains the support of the majority of the employees in a unit will become the recognized representative of those employees. But, in the building and construction industries, section 8(f) of the NLRA allows employers and unions to enter into a pre-hire agreement in which the business and union agree in advance that a particular union will represent employees. The D.C. Circuit's decision rejected the holding of <i>Staunton Fuel & Material</i>, 335 NLRB 717 (2001), which held that the presumption that bargaining relationships in the construction industry are established under section 8(f) is overcome, and a 9(a) relationship is established, where language in the parties' collective-bargaining agreement indicates that the union requested and was granted recognition as the majority or 9(a) representative of the unit employees, based on the union having shown, or having offered to show, evidence of majority support. However, other federal courts of appeals have held to the contrary. See <i>NLRB v. Triple C Maintenance, Inc.</i>, 219 F.3d 1147 (10th Cir. 2000); <i>Sheet Metal Workers Local 19 v. Herre Bros., Inc.</i>, 201 F.3d 231 (3d Cir. 1999).</p> <p>On April 26, 2018, in <i>Casino Pauma v. NLRB</i>, 888 F.3d 1066 (9th Cir. 2018), the 9th Circuit ruled that federal labor law applies to American Indian-owned casinos on tribal land. The decision upheld a 2015 ruling by the NLRB, which found that it had jurisdiction over an organizing drive the union UNITE HERE had at Casino Pauma in 2013. <i>Casino Pauma</i>, 363 NLRB No. 60 (Dec. 3, 2015). The court found that the National Labor Relations Act ("NLRA") was ambiguous as to its application to tribal employers, but the NLRB's determination that such employers are covered was a "reasonably defensible" interpretation of the NLRA.</p> <p>On February 26, 2018, the Supreme Court heard arguments in <i>Janus v. AFSCME</i>. In <i>Rauner v. AFSCME</i>, the governor of Illinois sued the American Federation of State, County, and Municipal Employees and 24 other labor organizations representing state employees, seeking a declaration that a state law permitting unions to collect a proportionate share of collective bargaining costs from non-members was unconstitutional. 2015 WL 2385698, No. 15 C 1235 (N.D. Ill. May 19, 2015). The district court dismissed the complaint on the ground that the claim was foreclosed by <i>Abood v. Detroit Board of Education</i>, 431 U.S. 209 (1977), which permitted public sector unions to collect a percentage of full union dues from non-members. In <i>Janus v. AFSCME</i>, 851 F.3d 746 (7th Cir. 2017), the Seventh Circuit affirmed. On June 27, 2018, the Supreme Court held that requiring non-members to pay union fees in the public sector violated the First Amendment, thus overturning <i>Abood</i>. 2018 WL 3129785, 138 S.Ct. 2448 (2018).</p> <p>In <i>The Boeing Company</i>, 365 NLRB No. 154 (2017), the Board established new standards governing workplace policies. Under the Board's new test, when evaluating a facially neutral policy, rule or handbook provision that, when reasonably interpreted, would potentially interfere with the exercise of NLRA rights, the Board will evaluate two things: (1) the nature and extent of the potential impact on NLRA rights, and (2) legitimate justifications associated with the rule. In <i>Boeing</i>, the Board overruled <i>Lutheran Heritage Village-Livonia</i>, 343 NLRB 646 (2004), which articulated the Board's previous standard, i.e., that facially neutral workplace rules, policies</p>

			<p>and employee handbook provisions unlawfully interfere with employee’s rights under the NLRA if the rules would be “reasonably construed” by an employee to prohibit the exercise of those rights.</p> <p>2018 AR: According to the Government, in Saint Xavier University, 365 NLRB No. 54 (Apr. 6, 2017), the Board held that it would assert jurisdiction over nonteaching employees at religious institutions and organizations unless the workers perform a specific role in fulfilling the employer’s religious mission. In another 2017 decision regarding collective bargaining rights in the university setting, Yale University, Case 01-RC-183014 (Jan. 25, 2017), an NLRB Regional Director ordered that graduate students in nine academic departments at Yale University could unionize as individual bargaining units. The decision was based on the NLRB’s decision in Specialty Healthcare & Rehabilitation Center of Mobile, 357 NLRB 934 (2011), which found that smaller bargaining units are appropriate if the workers included constitute a readily identifiable group sharing a community of interest. Yale argued that the smallest appropriate unit was all teaching fellows, university-wide. Yale graduate students in eight departments voted to join UNITE HERE Local 33 on February 23, which led Yale to challenge the election results, as well as the Board’s decision permitting individual bargaining units. See docket at https://www.nlr.gov/case/01-RC183014. While Yale’s challenge was pending review, the Board overruled Specialty Healthcare in PCC Structurals, Inc., 365 NLRB No. 160 (December 15, 2017), and reinstated the traditional community-of-interest standard for determining an appropriate bargaining unit in union representation cases. Under Specialty Healthcare, if a union petitioned for an election among a particular group of employees, those employees shared a community of interest among themselves, and the employer took the position that the smallest appropriate unit had to include employees excluded from the proposed unit, the Board would not find the petitioned-for unit inappropriate unless the employer proved that the excluded employees shared an “overwhelming” community of interest with the petitioned-for group. In PCC Structurals, the Board abandoned the “overwhelming” community-of-interest standard in favor of a traditional community-of-interest standard, which permits the Board to evaluate the interests of all employees—both those within and those outside the petitioned-for unit—without regard to whether these groups share an “overwhelming” community of interests. Subsequent to the decision in PCC Structurals, the Union, UNITE HERE Local 33, withdrew its petition to represent Yale’s graduate students. On December 14, 2017, the Board refined its standard for determining joint-employer status in Hy-Brand Industrial Contractors, Ltd. and Brandt Construction Co., as a single employer and/or joint employers, 365 NLRB No. 156 (2017). Under the Board’s newly-articulated test, in all future and pending cases, two or more entities will be deemed joint employers under the National Labor Relations Act (“NLRA”) if there is proof that one entity has exercised control over essential employment. The Government further indicates that Each year, the NLRB General Counsel responds to and discusses concerns raised by the American Bar Association’s Labor and Employment Law Section about the agency’s case handling procedures and issues of current interest. The General Counsel addresses these concerns at the section’s annual meeting. In connection with the meeting, the General Counsel prepares a publicly-available memorandum, which provides various statistics about the Board’s caseload and addresses particular issues arising under the NLRA, 29 U.S.C. §§ 141-186. The 2017 memorandum, GC 17-02 (referred to herein as General Counsel’s 2017 Report), dated March 10, 2017, is available at the Board’s website. See https://www.nlr.gov/reportsguidance/general-counsel-memos. The General Counsel will be meeting with the Labor and Employment Law Section from February 25-28, 2018.</p> <p>2015 AR: According to the Government: On June 30, 2014, the U.S. Supreme Court held that the First Amendment of the Constitution prohibits the collection of an agency fee from home health care providers in Illinois who do not wish to join or support a union. <i>Harris v. Quinn</i>, 134 S.Ct. 2618 (2014). Illinois is one of</p>
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			<p>26 states that require public-sector workers – such as firefighters, police officers and teachers – to pay partial dues, often known as “agency fees,” to the unions that negotiate their contracts and represent them in grievances. The Court determined that, while states can choose whether to allow unions to collect fees from non-union members on the ground that the collective agreements with the employer would still benefit non-union members, the Illinois Public Labor Relations Act, which permitted union security agreements, violated the First Amendment’s free speech and associational rights. The Court decided that a contract between the State of Illinois and Medicaid-funded home care workers cannot require the covered workers to pay a “fair-share fee” that covers the costs of benefits they receive from union representation. This “fair-share fee” (union dues) covers the costs of the union’s activities – collecting bargaining, implementing and enforcing the contract including making sure people are paid the right amounts, representing employees at grievance hearings, etc. In recent years, the National Labor Relations Board (Board or NLRB) has emphasized that a proposed bargaining unit that contains a readily identifiable group of employees who share a community of interest will not be rejected simply because there are other employees who could have been included in the proposed unit. In August 2013, the U.S. Court of Appeals for the Sixth Circuit affirmed³³ a Board denial of an employer attempt to enlarge the proposed bargaining unit of certified nursing assistants to include other non-supervisory, non-professional service and maintenance employees.³⁴ Clarifying its existing standard, the Board held that to succeed in opposing what is otherwise an appropriate unit, it is not enough to show that there is a more appropriate unit; rather, the employer must demonstrate that the excluded employees “share an overwhelming community of interest with the included employees.”³⁵ Although the Board’s decision in Specialty Healthcare concerned employees in non-acute healthcare services, the holding has been extended to other industries. First, noted in our 2013 annual report, the NLRB continues to find employer policies constraining employees’ electronic communications, when reasonably construed to prohibit concerted activity protected by Section 7 of the National Labor Relations Act (NLRA), are unlawful. In Dish Network Corp., the Board found an employer’s social media policy violated Section 7 for prohibiting “disparaging or defamatory comments” directed towards the company.³⁷ In Kroger Company, the employer’s handbook required employees publishing work-related information online to include a disclaimer representing all views as their own.³⁸ The Board held that this rule, among others, was overly broad, potentially chilling activities protected under the NLRA.</p> <p>2014 AR: According to the Government: In 2012, the National Labor Relations Board (NLRB) issued several decisions that recognize and enforce freedom of association rights for workers using the internet to engage in concerted activity protected by Section 7 of the National Labor Relations Act (NLRA), such as organizing for collective bargaining. In Hispanics United of Buffalo, Inc., issued in December 2012, the NLRB held that comments made on social media websites such as Facebook can constitute protected, concerted activity. Similarly, in Costco Wholesale Corp. and Karl Knauz Motors, Inc., issued in September 2012, the Board held that company policies regarding employees’ electronic postings that could be reasonably construed to prohibit concerted activity protected by Section 7 are unlawful. In August 2011 the NLRB issued a final rule that required covered employers to post a notice describing employees’ rights under the NLRA and provided that an employer that failed or refused to post the notice would violate section 8(a)(1) of the NLRA. However, in May 2013, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) ruled in National Association of Manufacturers that the rule was invalid as inconsistent with section 8(c) of the Act, which reflects the U.S. Constitution’s First Amendment free speech guarantee as applied to activity covered by the NLRA. In September 2013, the D.C. Circuit denied the NLRB’s petition for a rehearing and en banc consideration of this case. The rule was also struck down by</p>
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	<p>Exercise of the principle and right</p>	<p>At national level (enterprise, sector/industry, national)</p>	<table border="1"> <tr> <td data-bbox="762 1615 938 1816"> <p>For Employers</p> </td> <td data-bbox="938 1615 1474 1816"> <p>2003-2005 ARs: No Government’s authorization is required to establish an employers’ organization or to conclude collective agreements. The exercise of freedom of association and the right to collective bargaining is recognized at enterprise, sector/industry, national (and international) levels for all categories of employers.</p> </td> </tr> <tr> <td data-bbox="762 1816 938 2069"> <p>For Workers</p> </td> <td data-bbox="938 1816 1474 2069"> <p>2012 AR: The Final Rule, 76 Fed. Reg. 54006, by the NLRB requiring NLRA-covered employers to post notices informing their employees of their NLRA rights will contribute to employees’ exercise of their rights as it is fundamental that the employees know both their basic rights and where they can go to seek help in understanding those rights, and that notice of the right of self-organization, to form, join, or assist labor</p> </td> </tr> </table>	<p>For Employers</p>	<p>2003-2005 ARs: No Government’s authorization is required to establish an employers’ organization or to conclude collective agreements. The exercise of freedom of association and the right to collective bargaining is recognized at enterprise, sector/industry, national (and international) levels for all categories of employers.</p>	<p>For Workers</p>	<p>2012 AR: The Final Rule, 76 Fed. Reg. 54006, by the NLRB requiring NLRA-covered employers to post notices informing their employees of their NLRA rights will contribute to employees’ exercise of their rights as it is fundamental that the employees know both their basic rights and where they can go to seek help in understanding those rights, and that notice of the right of self-organization, to form, join, or assist labor</p>
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			<p>organizations, to bargain collectively, to engage in other concerted activities, and to refrain from such activities, and of the Board’s role in protecting those statutory rights is necessary to effectuate the provisions of the NLRA.</p> <p>2003-2005 ARs: No Government’s authorization is required to establish a workers’ organization, or to conclude collective agreements.</p> <p>The exercise of freedom of association and the right to collective bargaining is recognized at enterprise, sector/industry, national (and international) levels for the following categories of workers: (i) medical professionals; (ii) teachers; (iii) agricultural workers; (iv) workers engaged in domestic work; (v) workers in export processing zones (EPZs) or enterprises/industries with EPZs status; (vi) migrant workers; (vii) workers of all ages; and (viii) workers in the informal economy.</p> <p>All workers in the public service can exercise freedom of association, but not the right to collective bargaining.</p>
		<p>Special attention to particular situations</p>	<p>2018 AR: According to the Government, the employment status of individuals providing driver services for the public’s local transportation needs continues to receive particular attention. Additionally, both Uber and Lyft are facing class action lawsuits from their drivers, who claim that they are employees entitled to minimum wage, overtime, and other benefits. See, e.g., Hood v. Uber Techs., Inc., M.D.N.C., No. 16-996. The Government further indicates that the digital media industry has experienced a recent increase in labor organizing, with the Writers Guild of America East (WGAE) and the NewsGuild-CWA both engaged in campaigns to organize digital newsrooms. In August 2016, editorial staff at subscription-based legal news website Law360 chose the NewsGuild of New York as their collective bargaining representative in an election conducted by the NLRB. In November 2016, digital journalists at Fusion Media Group voted to accept WGAE as their collective bargaining representative. In February 2017, MTV agreed to voluntarily recognize WGAE as the collective bargaining representative for its digital editorial employees. In March 2017, Thrillist’s management recognized WGAE after its editorial, video, and distribution staff voted to join the union, and Slate’s editorial staff chose WGAE as its collective bargaining representative as well. Digital newsrooms at the Intercept, Gizmodo Media Group, theRoot, Salon, Vice Media, ThinkProgress, and Gawker Media have recently organized as well. On January 30, 2017, Huffington Post staff approved their first collective bargaining agreement.</p> <p>2016 AR: : According to the Government, the employment status of individuals providing driver services for the public’s local transportation needs has received particular attention, generating several lawsuits and legislative action in at least one city and a handful of states. For example, in Seattle, WA the city council passed an ordinance that allows drivers working for companies such as Uber and Lyft to form a union.</p> <p>2015 AR: According to the Government: On March 26, 2014, the NLRB director for Region 13 determined that student football players</p>

			<p>receiving football grant-in-aid scholarships qualify as employees under the NLRA.³⁹ An election was held, but the University requested that the Board review and reverse the decision; the votes will not be counted until the NLRB reviews the case. The NLRB invited the filing of amicus briefs until July 31, 2014, but has not yet set a date for resolution of the case. If upheld, it will mark the first application of the NLRA to student athletes. As previously reported, on August 1, 2013, the NLRB announced that it signed a Letter of Agreement with Mexico’s Ministry of Foreign Affairs designed to strengthen collaboration between the NLRB and the Mexican Embassy in Washington, D.C., as well as NLRB Regional Offices and Mexican Consulates nationwide, in their efforts to provide Mexican workers, their employers, and Mexican business owners in the United States with information, guidance, and access to education regarding their rights and responsibilities under the NLRA. Under the framework of this agreement, NLRB regional offices have signed local agreements to strengthen cooperation and collaboration with Mexican consulates in Chicago and Los Angeles.</p>
		<p>Information/ Data collection and dissemination</p>	<p>2018 AR: According to the Government, the Department of Labor’s Bureau of Labor Statistics fielded the Contingent Worker Supplement to the Current Population Survey in May 2017. Data from the supplement will provide information on the characteristics of workers in contingent jobs—that is, jobs that are structured to last only a limited period of time—as well as information about workers in several alternative employment arrangements (such as independent contractors, on-call workers, temporary help agency workers, and workers provided by contract companies). The supplement has not been fielded since 2005, and, since then, there have been no reliable and comparable statistics to show how the number and characteristics of these workers have changed over time. While the supplement questionnaire is largely the same as that used in 2005, four questions were added to collect information on new types of work that have emerged since the last collection. These new questions ask about short, in-person or online paid jobs or tasks that workers find through companies that match them to customers by using a website or mobile app. The supplement data will allow researchers and policy makers to evaluate how the number and characteristics of different types of workers has evolved over time. Policy makers can use these data to inform the design of regulations for different types of workers. The Government further indicates that the Federal Labor Relations Authority (“FLRA”) issued an updated Guide to Arbitration under the Federal Service Labor-Management Relations Statute on September 30, 2016, in an effort to support the FLRA’s 2015-2018 Strategic Plan to carry out the FLRA’s mission of promoting stable, constructive federal-sector labor-management relations by providing leadership and guidance. The updated Guide takes into account the hundreds of decisions that the FLRA has issued since it regained its quorum in 2013. It is available on the FLRA’s website at https://www.flra.gov/system/files/webfm/Authority/AR%20Forms,%20Guide,%20Other/Arbitration%20Guide.pdf</p>

			<p>2014 AR: According to the Government: The NLRB’s Acting General Counsel reported that in Fiscal Year (FY) 2012, 93.9 per cent of all initial union elections were conducted within 56 days of the filing of the petition; a 91 per cent settlement rate was achieved in the regional offices in meritorious unfair labor practice cases; and 97 per cent of the 37 10(j) injunction petitions litigated in federal district courts resulted in a satisfactory settlement or substantial victory. Over \$44 million was recovered on behalf of employees as backpay or other equitable reimbursements, and 1,241 employees were offered reinstatement.</p> <p>Section 10(j) of the NLRA grants the Board the discretion, upon issuance of a complaint charging the commission of any unfair labor practice, to seek appropriate injunctive relief from a district court of the United States prior to the Board’s ultimate adjudication of the merits of the complaint. In February 2013, the Acting General Counsel of the NLRB reported on the use and outcome of cases where injunctions were sought: in Fiscal Year (FY) 2012 the NLRB’s Injunction Litigation Branch (ILB) received 169 10(j) requests from Regional offices. Of those requests, the General Counsel’s office submitted 60 cases for 10(j) injunction proceedings, and 58 were authorized by the Board. Of those 58 cases, 20 were litigated to conclusion (19 wins, 1 loss), 23 cases were settled, 2 were withdrawn due to developments in the cases, and 13 cases were still pending at the end of 2013.</p> <p>The Acting General Counsel began an initiative in September 2010 to expedite 10(j) injunction requests for cases involving alleged unlawful discharges during union organizing campaigns. In FY 2012, the NLRB’s ILB received 59 requests for 10(j) relief in such cases. The Board authorized 10(j) proceedings in 21 cases. A total of 15 petitions were filed in district court seeking reinstatement of employees. Of those cases, 10 cases were won, 2 were settled, 1 was withdrawn after an adverse administrative law decision, and 2 were still pending. In addition, since 2010 and through the end of FY 2012, NLRB has settled 198 such cases. The total back pay and interest received in these settlements amounted to over \$3 million, and 482 discharged employees were offered reinstatement.</p> <p>2013 AR: According to the Government: The NLRB’s Acting General Counsel reported that in Fiscal Year (FY) 2011, 91.7 per cent of all initial elections were conducted within 56 days of the filing of the petition; a 93 per cent settlement rate was achieved in the regional offices in meritorious unfair labor practice cases; and the NLRB regional offices won 87 per cent of Board and Administrative Law Judge unfair labor practice and compliance decisions in whole or in part, recovering \$60,514,922 on behalf of employees as backpay or reimbursement of fees, dues, and fines, with 1,644 employees offered reinstatement. NLRB representatives also participated in over 600 outreach events during 2011.</p>
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		<p>At international level</p>	<p>According to the Government: There are no particular restrictions for the international affiliation of employers’ or workers’ organizations.</p>
	<p>Monitoring, enforcement and sanctions mechanisms</p>	<p>2019 AR: The FLRA implemented a new eFiling system on March 19, 2018. The new system allows parties to file appeals and other filings in arbitration, negotiability, unfair labor practice, and representation cases with the FLRA.</p> <p>2010 AR: According to the Government: During fiscal year (FY) 2008, 25,890 cases were filed with the Board, 22,497 of which alleged that employers or unions committed unfair labor practices (ULPs) and 3,158 of which were petitions to conduct secret ballot elections to determine whether employees desired to have a union as their exclusive bargaining representative in collective bargaining with their employers. Seventy-two per cent of the ULP cases were filed against employers and the majority of those alleged that the employer refused to bargain with the union. Allegations of illegal discharge or other types of discrimination against employees were the second most frequently filed charges against employers, comprising 40.3 per cent of the total charges filed. When the Board determines that unfair labor practice charges have merit, voluntary resolution is attempted prior to issuance of a complaint, which improves labor-management relations and reduces litigation. In FY 2008, 39.1 per cent of the unfair labor practice cases were found to have merit. Pre-complaint settlements and adjustments were achieved in 6,928 cases, or approximately 79 per cent of the merit cases. The NLRB General Counsel issued 1,108 complaints in unfair labor practice cases; 86 per cent of the complaints were issued against employers and 14 per cent were</p>	

		<p>against unions. In ULP cases against employers, the Board collected \$64,899,747 during FY 2008 for employees illegally discharged or otherwise discriminated against in violation of their rights under the NLRA. Additionally, the Board secured offers of reinstatement for 1,839 employees, and 80.4 per cent accepted. Unions won 60 per cent of the 1,931 representation elections conducted by the NLRB during FY 2008, resulting in unions obtaining or retaining bargaining rights for 85,247 workers. For more information on NLRB operations, see the Board’s annual report for FY 2008, which can be found at http://www.nlr.gov/publications/reports/annual_reports.aspx.</p> <p>2003 AR: According to the Government: The following measures have been implemented to promote and realize the principle and right (PR): (i) legal reform (labour law and other relevant legislation); (ii) inspection/monitoring mechanisms; (iii) penal, civil or administrative sanctions; (iv) special institutional machinery; and (v) capacity building of responsible Government officials.</p> <p>2000 AR: According to the Government: Enforcement of most provisions of the NLRA is done by the National Labor Relations Board (NLRB), an independent General Counsel, and the judicial system.</p> <p>Disputes that cannot be resolved by the parties themselves are generally resolved through the use of mediation, conciliation and arbitration.</p> <p>The FMCS has authority to help resolve bargaining disputes between federal agencies and workers’ organizations. If a federal- sector dispute cannot be resolved voluntarily, either party may request the Federal Service Impasses Panel (FSIP) to consider the matter. The Federal Labor Relations Authority (FLRA) performs functions for federal employee labour organizations similar to those performed by the NLRB for private sector employees, including resolution of complaints of unfair labour practices and disputes over the scope of collective bargaining negotiations (5 U.S.C. §§ 7104-7105).</p>
	<p>Involvement of the social partners</p>	<p>NIL.</p>
	<p>Promotional activities</p>	<p>2018 AR: According to the Government, the Department of Labor participated in Labor Rights Week from August 29 to September 4, 2016. Labor Rights Week is a collaborative effort between foreign embassies in the United States and their consulates with Department of Labor field offices to increase awareness and inform workers and employers about their rights and responsibilities under U.S. labor laws. During Labor Rights Week, these groups join forces with worker rights groups, faith-based and community organizations, and local unions to host or help sponsor informational workshops, educational sessions, and special events. The NLRB also participated. NLRB Region 16 (Fort Worth) participated in the largest number of events in the Region’s history, encompassing twelve events in four cities. NLRB staff conducted presentations involving four different Mexican consulates (Dallas, Houston, San Antonio, and Presidio), and participated in a variety of activities, including an interview of a NLRB Field Attorney by a Spanish language television station, Telemundo; attending the Labor Rights Week opening ceremonies at the Dallas, Houston, and San Antonio consulates and making presentations about the services NLRB provides to those awaiting assistance; and participating in a phone bank in order to provide one on-one assistance.</p> <p>2016 AR: In August 2016, the Federal Mediation and Conciliation Service hosted a National Labor Management Conference regarding the Future of Work where more than 1000 representatives of labor, management, government, academia, met to talk about to discuss bargaining challenges in certain sectors, innovative solutions for health care and pension and other benefits, millennials, expedited bargaining techniques, among other issues. The General Counsel of the Federal Labor Relations Authority (FLRA) conducted a series of two-day workshops on space management and labor relations. The FLRA, the Federal Mediation and Conciliation Service (FMCS), and the General Services Administration (GSA) collaborated to develop the workshops. The FLRA also reorganized its website. All content is now organized around case types, rather than around the FLRA’s office structure. The FLRA simplified the site’s navigation and pared away redundant or outdated content – reducing the number of individual pages by 30 per cent and improving clarity and ease of use for visitors. The site now provides historical and other content that was previously unavailable electronically – such as the legislative history of the governing statute, decisions by the FLRA’s predecessor-agencies, and the Foreign Service Labor Relations Board.</p> <p>2015 AR: According to the Government: In August 2013, the NLRB launched a mobile phone application providing employers, employees and their representatives with detailed information regarding their rights and obligations under the NLRA. The application also connects users directly to an NLRB representative to answer questions</p>

	<p>concerning these rights. Announcing the launch, NLRB Chairman Mark Gaston Pearce explained that “The promise of the law can only be fulfilled when employers and employees understand their rights and obligations. With this app, we are using 21st Century technology to inform and educate the public about the law and their rights.” In December 2013, the Federal Mediation and Conciliation Service (FMCS) hosted a "Partnerships that Work" summit at the White House celebrating labor-management partnerships and the virtues of union-employer negotiations. The summit brought together union, business and government leaders to showcase how effective collaboration between the parties can build long-term success for all, and featured several panels on effective collaboration. Leaders of the International Longshoremen’s Association, the United States Maritime Alliance, and the New York Shipping Association were recognized during the event working together during extended collective bargaining in 2012 to avert a work stoppage in U.S. Atlantic and Gulf Coast ports. In February 2014, the FMCS and the Department of Education cosponsored a third major conference on labor-management collaboration. This year’s conference examined how school leaders, teachers and other staff can work together to ensure college- and career-ready (CCR) standards are successfully integrated into classrooms across the country. The conference supported effective implementation of CCR standards by providing examples of collaboration and supporting teams as they created plans that reflect shared priorities. The event was also cosponsored by the following organizations: American Federation of Teachers, National Education Association, American Association of School Administrators, School Superintendents Association, National School Boards Association, Council of the Great City Schools, and Council of Chief State School Officers. In August 2014, the Federal Labor Relations Authority (FLRA) hosted a focus group at its Washington, D.C. office in order to seek the input of the federal-labor management community that it serves about the agency’s future strategic direction. The FLRA has recently launched a new strategic planning effort that will culminate in the creation of the FLRA 2015–2020 Strategic Plan.</p> <p>2014 AR: According to the Government: On June 17, 2013, the Federal Labor Relations Authority (FLRA) issued the Guide to Negotiability Under the Federal Service Labor-Management Relations Statute. The Guide addresses negotiability terms and concepts, the negotiability process, the bases for dismissing negotiability petitions, and some substantive issues that frequently arise in negotiability cases, including management rights. The guide was compiled with input from the Society of Federal Labor and Employment Relations Professionals. On May 2, 2013, the NLRB completed the largest mail ballot election in its history in determining representation by Kaiser healthcare employees. Employees cast 32,000 ballots in retaining their current bargaining representative, SEIU-United Healthcare Workers-West (SEIU-UHW), rather than switching to National Union of Healthcare Workers-California Nurses Association, AFL-CIO (NUHW-CNA). Since 2011, the Federal Mediation and Conciliation Service (FMCS) has worked in conjunction with the U.S. Department of Education (ED), two major teachers’ unions (the American Federation of Teachers (AFT) and the National Education Association (NEA)) and the organizations representing school administrators, school boards, and major urban school systems (American Association of School Administrators (AASA), the National School Boards Association (NSBA) and the Council of the Great City Schools (CGCS)) on an educational reform effort designed to elevate student achievement in public schools. The FMCS has used its expertise in labor-management cooperation to promote student achievement as a priority concern in collective bargaining in public education. At a February 2011 conference, the FMCS worked with ED, AFT, NEA, AASA, NSBA, and CGCS to put forth A New Compact for Student Success and developed 10 principles of labor-management collaboration that addressed, among other things, the way that teachers are supported, compensated, evaluated, and engaged in strategic planning and decision-making. In May 2012, the same entities hosted a second conference on labor-management collaboration to focus exclusively on Collaborating to Transform the Teaching Profession and produced a joint statement outlining seven components to transform the teaching profession: (i) A Culture of Shared Responsibility and Leadership; (ii) Top Talent, Prepared for Success; (iii) Continuous Growth and Professional Development; (iv) Effective Teachers and Principals, (v) A Professional Career Continuum With Competitive Compensation; (vi) Conditions for Successful Teaching and Learning; and (vii) Engaged Communities.</p> <p>2013 AR: According to the Government: On June 18, 2012, the NLRB launched a public webpage on Protected Concerted Activity describing the rights of employees to act together for their mutual aid and protection, even if the employees are not unionized. The webpage (www.nlr.gov/concerted-activity) provides 13 examples of recent cases involving protected concerted activity for the general public to review. The examples are placed on an interactive U.S. map, allowing review of examples of protected concerted activity cases by state. See: http://nlrb.gov/news/nlrb-launches-webpage-describing-protected-concerted-activity. NLRB representatives also participated in over 600 outreach events during 2011.</p> <p>2012 AR: According to the Government: NLRB representatives participated in over 630</p>
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		<p>outreach events during 2010.</p> <p>2010 AR: According to the Government: Public awareness raising: As part of its mission, the NLRB also engages in an extensive outreach/education campaign across its 34 regional offices to inform workers, employers, unions, and other interested stakeholders about the rights of employees and the responsibilities of employers and labor organizations under the NLRA. In FY 2008, NLRB agents participated in over 525 outreach events, providing information to over 32,000 stakeholders, including discussing the NLRA and recent case developments on radio talk shows. Most outreach events took place in educational settings such as law schools and undergraduate and high school classes. Other events involved community-based activities, bar association activities, and outreach activities to labor organizations, employer/management organizations, and government organizations. The NLRB’s General Counsel has recently emphasized “non-traditional” outreach, which has resulted in increased outreach to non-English-speaking groups at fairs, conferences, workers’ centers, immigrant welcome centers, and women’s rights centers. There were also events designed to educate union stewards and human resource employees about workers’ rights. In addition, almost two-thirds of the NLRB regional offices prepared and disseminated regional newsletters, many of which have been translated into Spanish, which have been placed on the NLRB website. The NLRB also maintains a centralized speakers’ bureau that makes available NLRB representatives to speak about the NLRA and the NLRB to a variety of organizations, including worker and employer representatives and worker advocacy groups. Finally, production of an English/Spanish video about the NLRB and union representation case processing for nationwide distribution to the public has been completed. DVDs will be sent to the regional offices for distribution and a streaming video will be placed on the NLRB website. For more information about the Board and its outreach activities go to http://www.nlr.gov/index.aspx.</p> <p>2000 AR: According to the Government: the FMCS has outreach programs that include promotion of a wider understanding, acceptance and proper use of the collective bargaining process and third-party assistance in the prevention and constructive resolution of labour-management and other disputes.</p>
	<p>Special initiatives-Progress</p>	<p>2016 AR: According to the Government, the White House convened a Summit on Worker Voice to explore ways to ensure that workers are fully sharing in the benefits of the country’s broad-based economic growth. The Summit focused on how workers can make their voices heard in the workplace in ways that are good for workers and businesses. A goal of the Summit was to energize a new generation of Americans to come together and recognize the potential power of their voice at work.</p> <p>Building on the momentum generated from the Summit, members of the administration have traveled around the country for a series of regional events, which will help tell the story of how workers, organizers, and employers are working together to create positive change in workplaces and communities throughout the country.</p> <p>2015 AR: According to the Government: On February 5, 2014, the NLRB noticed for comment proposed amendments to its election rules and regulations, which would accelerate pre-election hearings by requiring they be held within seven days rather than 14. The proposed amendments are identical in substance to the election procedure changes the NLRB adopted in December 2011. As previously reported, that final rule was invalidated by a District Court ruling that it had been adopted without a validly constituted quorum. Additionally, to facilitate communication between unions and employees preceding an election, the amendments would require employers to submit employee email addresses and phone numbers on lists of eligible voters, rather than simply names and home addresses. Finally, the amendments would allow elections to avoid being slowed by disagreement over appropriate members of a bargaining unit when the contested members comprise less than 20 percent of the proposed unit.⁴⁰ In <i>Purple Communications, Inc.</i> the Board expressed an interest in revisiting <i>Register-Guard</i>, a 2007 decision holding that employees do not possess the right to use employer email and communications systems to engage in organizing and other protected activities under the NLRA.^{41,42} Prior to Board review, the Administrative Law Judge had dismissed the employees’ argument that <i>Register-Guard</i> should be overturned given the “increased importance of email as a means of employee communication.”⁴³ Interested parties filed amicus briefs prior to June 16, 2014. On July 8, 2013, the Justice Department Civil Rights Division’s Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) entered into a Memorandum of Understanding (MOU) with the NLRB. The MOU empowers the NLRB to make referrals to the OSC when a matter indicates a violation of the anti-discrimination provisions of the Immigration and Nationality Act, a statute within the OSC’s jurisdiction. Conversely, should a matter before the OSC suggest violations of workers’ rights, the Office may refer the case to the NLRB. Greater coordination and information sharing between the two agencies helps ensure that employers do not avoid liability where an employee simply turns to the wrong agency or is</p>

	<p>unaware of additional protections provided by a different law.⁴⁴ In a summary of activities for Fiscal Year 2013, NLRB General Counsel Richard Griffin, Jr. announced that the settlement rate for all 21,394 charges of unfair labor practices was 92.8 percent. For the 1,272 cases proceeding to litigation, the NLRB won 85.7 percent. For cases sent to the Division of Advice, the median processing time was 21 days. Finally, of the 41 cases where the Board sought 10(j) injunctions, it won 8 of the 11 litigated to conclusion.⁴⁵ Additionally, the Board conducted 1,620 elections, including 172 mail ballot elections and 14 mixed manual/mail ballot elections.</p> <p>2014 AR: According to the Government: As previously reported, the Acting General Counsel began an initiative in September 2010 to expedite 10(j) injunction requests for cases involving alleged unlawful discharges during union organizing campaigns. On August 1, 2013, the NLRB announced that it signed a nonbinding Letter of Agreement with Mexico’s Ministry of Foreign Affairs. The commitments in the letter are designed to strengthen collaboration between the NLRB and the Mexican Embassy in Washington, D.C., as well as NLRB Regional Offices and Mexican Consulates nationwide, in their efforts to provide Mexican workers, their employers, and Mexican business owners in the United States with information, guidance, and access to education regarding their rights and responsibilities under the NLRA.</p> <p>Furthermore, in 2012 the Federal Labor Relations Authority (FLRA) implemented a broad eFiling system over the course of a his first stage of the eFiling Initiative was published on February 7, 2012 and allows parties to electronically file requests for the Federal Service Impasse Panel to assist in resolving negotiation impasses, 77 Fed. Reg. 5987. This rule became effective on March 8, 2012. The second stage of the regulations was published on May 4, 2012, 77 Fed. Reg. 26430. This second stage allows parties to use the FLRA’s eFiling system to electronically file 11 types of documents in arbitration, negotiability, unfair labor practices, and representation cases before the Authority and became effective on June 4, 2012. The third and final stage was published on June 25, 2012, and allows parties to file electronically three types of documents: union representation petitions under 5 C.F.R. Part 2422; cross petitions in response to those petitions, also under 5 C.F.R. Part 2422; and unfair labor practice charges under 5 C.F.R. Part 2423, 77 Fed. Reg. 37,751. The final rule became effective on July 25, 2012. Making eFiling available is expected to improve the customer-service experience and increase efficiencies by reducing procedural filing errors and resulting processing delays.</p> <p>2013 AR: According to the Government, as previously reported, on September 30, 2010, the NLRB’s Acting General Counsel announced an initiative to expedite the processing of Section 10(j)⁴⁶ requests in cases involving alleged unlawful discharges during union organizing campaigns. On June 7, 2012, the NLRB Assistant General Counsel in the Injunction Litigation Branch, reported that the General Counsel’s office succeeded in obtaining a Section 10(j) injunction - or, more often, a settlement - in every one of the 41 recent cases in which it had sought Board authorization to seek a court injunction.⁴⁷ Of these cases, 30 percent involved discharges during union organizing campaigns. From October 2011 through March 2012, the Board acted to authorize Section 10(j) injunctions within one to 10 days of the General Counsel’s request in cases involving discharges during organizing campaigns, responding in an average of six days. In discharge cases where the employee does not seek reinstatement, injunctive relief increasingly includes requiring the employer to read aloud to employees a notice or court order barring future acts of retaliation for organizing activity. Three of the 26 union certifications issued by the NMB since its 2010 voting rule change for representation elections would not have been made under the previous rule.⁴⁸ A total of 43 elections among airline and railroad employees have been held since the change, resulting in 23 union certifications based on a majority of the votes cast in favor of union representation. Prior to 2010, the NMB required unions to win the votes of a majority of all eligible workers, in effect counting those who did not cast ballots as votes against representation. The rule change, which was supported by unions, was challenged by the airline industry in federal court, but was upheld by the U.S. Circuit Court for the District of Columbia.</p> <p>2012 AR: According to the Government: On September 30, 2010, the NLRB’s Acting General Counsel announced an initiative to expedite the processing of section 10(j)⁴⁹ requests in cases involving alleged unlawful discharges during union organizing campaigns. The new initiative, announced in a General Counsel Memorandum to the Board’s Regional Offices (Memorandum GC 10-07)⁵⁰, institutes new timelines and procedures to accelerate the review of unfair labor practice charges alleging an unlawful discharge occurring during a union organizing campaign (so-called “nip-in-the-bud” cases). The initiative requires NLRB’s regional offices to investigate charges involving discharges during union organizing campaigns and to submit a report within one week of their findings to the Acting General Counsel. A follow-up memorandum issued on December 20, 2010, provided guidance to NLRB Regional Directors on seeking appropriate</p>
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	<p>remedies in such cases (Memorandum GC 11-01).</p> <p>2011 AR: According to the Government: Pursuant to E.O. 13522, on September 20, 2010, the National Council on Federal Labor-Management Relations approved plans for six federal agencies to engage in collective bargaining over permissive topics with their unions; topics covered by permissive bargaining, also known as “b (1) bargaining,” include the numbers, types, and grades of employees and the technology, means, and methods used to perform agency work. At the state level, such initiatives include recent legislation enacted in New York (S 7451) granting child care workers the right to organize and negotiate with the state over certain working conditions. The law, which took effect October 2, 2010, codifies an executive order and grants child care workers the right to form unions and negotiate agreements with the New York Office of Children and Family Services. Such agreements may cover salaries, benefits, working conditions, and certain other items, including “the stability, funding, and operation” of child care programs. The new law covers about 50,000 child care workers who currently are represented by the Civil Service Employees Association (CSEA) and the United Federation of Teachers.</p> <p>2010 AR: According to the Government: <i>Legislative action:</i> Pub. L. No. 110-329, Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, was signed into law on September 30, 2008. Section 522 of the law prohibits the use of appropriated funds by the Department of Homeland Security (DHS) for the establishment of a human resources management system (HRMS) without collaboration with employee representatives. This provision is consistent in effect with a recent appellate court decision (i.e., <i>National Treasury Employees Union v. Chertoff</i>, 452 F.3d 839 (D.C.Cir. 2006) previously reported in the 2007 and 2009 Declaration reports, which found regulations implementing a DHS HRMS that limited collective bargaining to be improper. On January 30, 2009, President Obama signed Executive Orders (EO) 13494 and 13496. EO 13494, concerning economy in government contracting, requires Federal agencies to “treat as unallowable the costs of any activities undertaken to persuade employees – whether employees of the recipient of the Federal disbursements or of any other entity – to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of the employees’ own choosing.” EO 13496 requires Federal government contractors and their subcontractors to post in conspicuous places in and about workplaces where contracted work is performed notices to employees regarding their rights under the National Labor Relations Act. This executive order revokes EO 13201, which required posting notices of employees’ rights not to join a union and not to pay dues for activities unrelated to administration of collective bargaining agreements. The Department of Labor issued proposed regulations to implement EO 13496, 74 Fed. Reg. 38,488 (Aug. 3, 2009), and anticipates issuing the final rule in 2010.</p> <p>On February 6, 2009, President Obama signed Executive Order (EO) 13502, which states the Federal Government’s policy to encourage federal agencies to consider requiring the use of project labor agreements on federally-funded construction projects costing at least \$25 million. The EO defines “project labor agreement ‘as’ a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project...” Pursuant to the EO, federal agencies have discretion to require, on an applicable project-to-project basis, that every contractor or subcontractor used on the project negotiate or become a party to a project labor agreement. The new EO revokes EO 13202, as amended, which prohibited federal agencies from requiring that a project labor agreement be a bid specification on a federal construction project. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have issued proposed regulations to implement EO 13502, 74 Fed. Reg. 33,953 (July 14, 2009). On March 10, 2009, House Bill H.R. 1409 and Senate Bill S.560 (i.e., Employee Free Choice Act or EFCA), which would amend the National Labor Relations Act (NLRA), were introduced in the U.S. Congress. The National Labor Relations Board (NLRB or Board) enforces the NLRA, which is the primary law assuring freedom of association and collective bargaining rights to private sector workers in the United States. President Obama has expressed support for EFCA, which would address several challenges to the full exercise of the rights of freedom of association and collective bargaining. Many of these challenges were first identified in 1999 when the United States submitted its initial report on freedom of association and the effective recognition of the right to collective bargaining in accordance with the Declaration on Fundamental Principles and Rights at Work and its Follow-up. The text of the proposed legislation is available at http://edlabor.house.gov/documents/111/pdf/legislation/EmployeeFreeChoiceAct2009.pdf. On April 2, 2009, the Transportation Security Workforce Enhancement Act of 2009, H.R. 1881, was introduced in the U.S. Congress. The Act would place employees of the Transportation Security Administration (TSA) under the same personnel management system as civil service employees, providing some 42,000 airport screeners with collective</p>
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		bargaining rights. The text of the legislation is available at http://thomas.loc.gov/cgi-bin/bdquery/z?d111:H.R.1881 .	
<p>CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT</p>	<p>According to the social partners</p>	<p>Employers' organizations</p>	<p>NIL.</p>
		<p>Workers' organizations</p>	<p>2007-2009 ARs: The ICFTU raised the following additional challenges: (i) The NLRA excludes many categories from private sector employees from its scope, such as agricultural and domestic workers, supervisors, and independent contractors; (ii) at federal level, in the public sector, approximately 40 per cent of all workers are still denied basic collective bargaining rights and the statutes outlaw strikes; (iii) the law allows employers to replace striking workers permanently; (iv) employers have a legal right to engage in a wide range of anti-union tactics that discourage the exercise of freedom of association; (v) the penalties are too weak to deter employers who violate labour laws from doing it again; (vi) 2005 showed a disturbing trend of employers using the bankruptcy system to declare collective bargaining agreements no longer valid.</p> <p>2006 and 2008 ARs: According to the AFL-CIO: Actions on the part of the United States (U.S.) Government during the year 2005 continue an alarming trend of weakening workers' fundamental rights of freedom of association and collective bargaining. In <i>District of Columbia National Treasury Employees Union v. Chertoff</i>, 385 F. Supp.2d 1 (D.D.C.2005), the Court opined that "collective bargaining has at least one irreducible minimum that is missing from the HR System: a binding contract." <i>Id.</i> at 17[2]. The Court's decision reveals the U.S. Government's so-called human resources management system for what it really is: a full-fledged and unprecedented assault on the fundamental rights of federal Government workers. In addition, decisions by the National Labor Relations Board (NLRB or Board) in 2005 severely curtailed workers' rights in the private sector.</p> <p>2005 AR: The AFL-CIO strongly disagreed with the draft update to the report on the PR.</p> <p>According to the AFL-CIO: (i) Legislation does not protect workers (e.g. the Homeland Security Act in 2002); (ii) other developments in 2004 threaten workers' fundamental rights, such as the National Labour Relations Board's decision to review the legality of the rules regarding majority verification and neutrality of procedures to form unions; (iii) the Department of Defense's employees are denied the right to collective bargaining under the Department of Defense Reauthorization Act, passed by Congress in 2003. According to the ICFTU: (i) Many categories of employees in the private sector are excluded from the right to freedom of association and the right to join trade unions; (ii) legal restrictions on the exercise of the PR; (iii) law also allows employers to replace striking workers permanently, and the statute of the 1978 Federal Labor Relations Act outlaws strikes for employees of the Federal Government; (iv) the U.S. Supreme Court ruled in 2002 that undocumented workers are not entitled to back pay as a remedy for unfair labour practices under the NLRA, and they are not entitled to reinstatement; (v) several restrictions have made difficult the enforcement of trade union rights on behalf of the millions of undocumented workers in the country.</p> <p>2004 AR: The AFL-CIO stated the following: (i) The often glaring discrepancies between the rights guaranteed to workers in theory under United States law, and the failure to extend these same rights in actual practice; (ii) the situation has not improved since last year, and the conditions of undocumented workers are getting worse (e.g. <i>Hoffman Plastic Compounds v. National Labour Relations Board</i>, 535 US 137 (2002).</p> <p>2000-2002 ARs: ICFTU's observations: (i) One in ten union supporters campaigning to form a union is illegally fired; lack of protection of the trade union representatives against the employers; (ii) the procedures of the National Labor Relations Board (NLRB) do not provide workers with effective redress in the face of abuses by employers; (iii) trade union representatives are denied access to the employer's property to meet employees during non-working time; (iv) the National Labor Relations Act requires the NLRB to seek injunctions in a federal court against trade unions committing certain kinds of unfair labour practices but there is no corresponding obligation when the unfair labour practices</p>

		<p>are committed by employers; (v) employers regularly challenge the results when the union wins a representation vote, regardless of the margin of victory; (vi) restrictive strikes right; (vii) there is little collective bargaining in the construction industry; (viii) should the company and the union reach an agreement during a strike, striking workers do not automatically return to work; (ix) national labour legislation does not cover agricultural or domestic workers and certain kinds of supervisory workers; (x) approximately 40 per cent of all public sector workers, nearly 7 million people, are still denied basic collective bargaining rights.</p>
	<p>According to the Government</p>	<p>2019 AR: Issues that are debated related to freedom of association and the effective recognition of collective bargaining include questions relating to the growing number of workers in the “gig economy,” right-to-work legislation, joint employment, workplace automation, and employee and independent contractor status. Additionally, lawmakers continue to consider how the federal government should change twentieth century labor and employment laws to accommodate the growing on-demand workforce.</p> <p>2016-2018 ARs : The Government indicated that the growing number of workers in the “gig economy”, declining union membership, right-to-work legislation, and competing views on legal questions relating to joint employment, employee and independent contractor status, among other issues, continue to pose challenges to collective bargaining. There is a lack of consensus among elected officials about where to set the balance between, on the one hand, the rights of employees to increased collective bargaining and more protective employment standards and, on the other hand, the need to protect the legitimate interests of business from unnecessary or harmful regulation. In 2016, West Virginia became the 26th State to enact right-to-work legislation, when its legislature overrode its governor’s veto. In right-to-work states, unions and employers are prohibited from entering into agreements that require union membership or the payment of agency fees to offset the costs of union representation.</p> <p>2015 AR: In <i>Noel Canning v. NLRB</i>, an employer successfully challenged the President’s recess appointment of three members of the NLRB in January 2012. Under the U.S. Constitution, certain governmental positions, including the Members and the General Counsel of the NLRB, may only be appointed by the President with the “advice and consent” of the Senate. Under the Recess Appointments Clause of the Constitution, however, the President “shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.” In January 2012, the President, citing his recess appointment power, appointed three members to the NLRB during a brief Senate recess. In August, 2013, the President again appointed members to the Board, though with full Senate confirmation.</p> <p>On June 26, 2014, the Supreme Court issued its opinion in <i>NLRB v. Noel Canning</i>, holding that the President’s January 2012 recess appointments of Board Members were not authorized by the Recess Appointments Clause. <i>See</i> Art. II, § 2, C1. 3. The Court held that the Senate was in session during its <i>pro forma</i> sessions because the Senate said it was in session and had retained the power to conduct business. The Court, therefore, concluded that the President lacked the authority to make the January 2012 recess appointments during the 3-day period between two <i>pro forma</i> sessions because that 3-day period was too short to constitute a recess. With only two of five Board members properly appointed between January 2012 and August 2013, the Board lacked a quorum, potentially calling into question over 700 reported and unreported NLRB decisions.</p> <p>The consequences of <i>Noel Canning</i> remain uncertain. General Counsel Richard Griffin, speaking at an American Bar Association webinar on July 9, 2014, stressed that many Board decisions will remain untouched. Often, parties will not have an interest in revisiting cases satisfactorily resolved, either through a favorable decision or acceptable settlement. The Board may also, in revisiting overturned cases, choose to confirm those earlier decisions. Finally, though decisions by the recess- appointee Board may lack precedential power, the Senate-confirmed Board may nonetheless find them persuasive.</p> <p>2012-2014 ARs: According to the Government: The challenges and difficulties described in the U.S. Government’s report for 2010 AR persist.</p> <p>2010 AR: According to the Government: The United States has an elaborate system of substantive labor law and procedures to assure the enforcement of that law and is committed to the fundamental principle of freedom of association and the effective recognition of the right to collective bargaining. Nonetheless, when the United States submitted its initial report in 1999 on freedom of association and the effective recognition of the right to collective bargaining in accordance with the Declaration on</p>

	<p>Fundamental Principles and Rights at Work and its Follow-up, the report noted several challenges that some workers faced to the exercise of their organizational and collective bargaining rights. The concerns about labor-management relations identified in the 1999 report remain relevant today because there has been no significant revision of U.S. labor laws since it was issued. Representation elections, for example, remain highly adversarial, making it difficult in many cases for positive collective bargaining relations and agreements to emerge. Agriculture workers, domestic service workers, independent contractors, and supervisors continue not to be covered by the NLRA. See, e.g., ILO Committee of Freedom Association (CFA) Case No. 2524 (requesting that the United States “take all necessary steps ... to ensure that the [NLRA] exclusion ... of supervisory staff ... is limited to those workers genuinely representing the interests of employers). The collective bargaining and strike rights of public sector workers are also subject to varying degrees of protection. See, e.g., ILO CFA Case No. 2292 (requesting that the United States carefully review “matters covered within the overall terms and conditions of employment of federal airport screeners which are not directly related to national security issues and to engage in collective bargaining on these matters”). Union representatives continue to have limited access to employees in the workplace, particularly when compared to employers’ access. The ILO Committee on Freedom of Association (CFA) has noted this problem and requested that the United States “guarantee access of trade union representatives to workplaces, with due respect for the rights of property and management, so that trade unions can communicate with workers.” ILO CFA Case No. 1523. It remains the case under U.S. labor law that an employer is permitted to hire replacement workers during a strike in order to continue business operations and, if the strike is an economic strike (as distinguished from an unfair labor practice strike), the employer is not required to displace the replacement workers in order to reemploy the returning strikers. This provision of United States labor law has been criticized as detrimental to the exercise of fundamental rights of freedom of association and to meaningful collective bargaining and was the subject of ILO CFA Case No. 1543.</p> <p>U.S. law continues to treat allegations of serious employer and union illegal conduct differently. In cases involving alleged serious unlawful acts by workers’ organizations that could threaten businesses and rapidly lead to irreparable damage to employers, the NLRA requires the NLRB to seek temporary injunctions under section 10(l) if it reasonably believes the allegations to be true. In cases of alleged serious unlawful employer conduct that could lead quickly to irreparable damage to workers’ exercise of their rights to freedom of association and collective bargaining, the NLRA provides that the NLRB <i>may</i> seek a temporary injunction under section 10(j) if it has reasonable cause to believe the allegations. The ILO CFA considered a case against the United States addressing this disparity between the obligation of the NLRB under section 10(l) and the discretion given to the NLRB under section 10(j), and requested that the United States “ensure that, within the context of the application of the NLRA, workers and employers will be treated on a fully equal basis, in particular with respect to unfair labor practices.” ILO CFA Case No. 1523. The remedies available under the NLRA also do not include compensatory or punitive damages, causing some to question whether existing remedies are sufficient to deter unfair labor practices by some employers. See Dunlop Commission Report, cited in the United States’ 1999 Report. EFCA would address these issues.</p> <p>In addition, the length of time it takes to resolve some disputes under the NLRA can undermine the right to organize and meaningful collective bargaining. The NLRB’s most recent annual report indicates that the median length of time it takes from the filing of charges to the issuance of a complaint in an unfair labor practice case is 98 days; the median length of time from the issuance of a complaint to entry of an administrative law judge’s decision was an additional 213 days. The median length of time from the filing of charges to the issuance of a full NLRB decision was 559 days. NLRB 2008 Annual Report, Table 23, available at http://www.nlr.gov/publications/reports/annual_reports.aspx. Such delays increase the likelihood that unfair labor practices which result in the defeat of organizing efforts or prevent reaching first contracts can never be remedied effectively, thereby deterring the exercise of protected rights.</p> <p>In summary, it must be acknowledged that some aspects of the U.S. labor law system could be improved to more fully protect the rights to organize and bargain collectively of all employees in all circumstances. It must further be acknowledged that to ensure respect, promote, and realize the right to organize and bargain collectively, it is essential to reexamine any system of labor laws from time to time to assure that the system continues to protect these fundamental rights. The President and the U.S. Congress regularly assess the state of U.S. legislation, and the Congress amends existing laws or enacts new laws when necessary. As part of these ongoing efforts, for example, the Congress is actively considering legislation, such as the Employee Free Choice Act, that would address many of the concerns discussed above.</p>
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<p>TECHNICAL COOPERATION</p>	<p>Request</p>	<p>2012-2018 ARs: According to the Government: To the extent that the ILO might be able to recommend relevant forms of tripartite technical cooperation, the United States would welcome such proposals.</p> <p>2011 AR: The Government reiterated that to the extent that the ILO might be able to recommend relevant forms of tripartite technical cooperation, the United States would welcome such proposals.</p> <p>2010 AR: According to the Government: Federal legislation and practice appear to be in general conformance with ILO Conventions 87 and 98, though the challenges identified above persist and no recent in-depth tripartite analysis has been performed regarding these Conventions. To the extent that the ILO might be able to recommend relevant forms of tripartite technical cooperation, the United States would welcome such proposals.</p> <p>2003 AR: According to the AFL-CIO: Priority needs for technical cooperation to facilitate the realization of the PR in the United States exist in the following areas: (1) assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the principle; (2) strengthening data collection and capacity for statistical analysis; (3) legal reform; and (4) capacity building of responsible Government institutions.</p> <p>2000 AR: According to the Government: To the extent that the ILO might be able to recommend relevant forms of tripartite technical cooperation, the United States would be interested in any such proposals.</p>
	<p>Offer</p>	<p>NIL.</p>
<p>EXPERT-ADVISERS’ OBSERVATIONS-RECOMMENDATIONS</p>		<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) were concerned that the Government of United States (and three other governments) had indicated the current impossibility to ratify C.87 and C.98 without further justification (cf. paragraphs 12 and 29 of the 2008 Annual Review Introduction – ILO: GB.301/3). They also noted that restrictions on the rights of certain categories of workers in United States, such as workers in the public service and agricultural workers, to organize, were not compatible with the realization of this principle and right (cf. paragraphs 29 and 38 of the 2008 Annual Review Introduction – ILO: GB.301/3).</p> <p>2007 AR: The ILO Declaration Expert-Advisers (IDEAs) listed the United States among the four countries in which 52 per cent of the total labour force of ILO member States lives and which have not yet ratified C.87 and C.98. This leaves many millions of workers and employers without the protection offered by these instruments in international law, even if the governments concerned may consider that their law and practice are sufficient (cf. paragraph 32 of the 2007 Annual Review Introduction – ILO: GB.298/3).</p> <p>2005 AR: The ILO Declaration Expert-Advisers listed the United States among the countries where some efforts were being made in terms of research, advocacy, activities, social dialogue, national policy formulation, labour law reform, preventive, enforcement and sanctions mechanisms and/or ratification (paragraph 13 of the 2005 AR Introduction). They also considered that the example of regular and constructive contributions by AFL-CIO should be expanded upon, in particular among other national workers’ organizations, as well as employers’ organizations (cf. paragraph 190 of the 2005 Annual Review Introduction – ILO: GB.292/4).</p>
<p>GOVERNING BODY OBSERVATIONS/RECOMMENDATIONS</p>		<p>2015 AR: At its March 2014 Session, the Governing Body invited the Director-General to: (a) take into account its guidance on key issues and priorities with regard to assisting member States in their efforts to respect, promote and realize fundamental principles and rights at work; and (b) take account of this goal in the Office’s resource mobilization initiatives.</p> <p>2013 AR: At its November 2012 Session, the Governing Body requested the Director-General to take full account of the ILO Plan of Action on Fundamental Principles and Rights at Work (2012-2016) and</p>

	<p>allocate the necessary resources for its implementation. This plan of action is anchored in the universal nature of the fundamental principles and rights at work (FPRW), their inseparable, interrelated and mutually reinforcing qualities and the reaffirmation of their particular importance, both as human rights and enabling conditions. It reflects an integrated approach, which addresses both the linkages among the categories of FPRW and between them, and the other ILO strategic objectives in order to enhance their synergy, efficiency and impact. In this regard, freedom of association and the effective recognition of the right to collective bargaining are particularly emphasized as enabling rights for the achievement of all these strategic objectives.</p> <p>2011 AR: At its March 2010 Session, the Governing Body decided that the recurrent item on the agenda of the 101st Session (2012) of the International Labour Conference should address the ILO strategic objective of promoting and realizing fundamental principles and rights.</p> <p>2009 AR: During its March 2009 Session, the Governing Body included the Review of the follow-up to the 1998 ILO Declaration on Fundamental Principles and Rights at Work on the agenda of the 99th Session (2010) of the International Labour Conference.</p>
<p>INTERNATIONAL LABOUR CONFERENCE RESOLUTION</p>	<p>2013 AR: In June 2012, following the recurrent item discussion on fundamental principles and rights at work, under the ILO declaration on Social Justice for a Fair Globalization, 2008 and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, 1998, the International Labour Conference adopted the Resolution concerning the recurrent discussion on fundamental principles and rights at work. This resolution includes a framework for action for the effective and universal respect, promotion and realization of the FPRW for the period 2012-16. It calls for the Director- General to prepare a plan of action incorporating the priorities laid out in this framework for action for the consideration of the Governing Body at its 316th Session in November 2012.</p> <p>2011 AR: Following a tripartite debate at the Committee on the 1998 Declaration, the 99th Session (2010) of the International Labour Conference adopted a Resolution on the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work ON 15 June 2010. The text appended to this Resolution supersedes the Annex to the ILO Declaration on Fundamental Principles and Rights at Work, and is entitled “Annex to the 1998 Declaration (Revised)”. In particular, the Resolution “[notes] the progress achieved by Members in respecting, promoting and realizing fundamental principles and rights at work and the need to support this progress by maintaining a follow-up procedure. For further information, see pages 3-5 of the following link: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_143164.pdf.</p>