

NATIONAL TRADE UNION CONFEDERATION.

MAURITIUS.

The absence of an explicit mention of the right to strike in any of the conventions of the ILO, and more particularly in Convention 87, should not be viewed as a deprivation of such a right. In order to give the Convention its true purport, it must be interpreted not from an Originalist standpoint but has to be given a dynamic construction. Its true intent lies in its spirit and not in its letters.

It is obvious that Government and Employers will always be on common ground with respect to any strike action manifested by workers. Whereas for both parties strike remains a threat to their economic and financial interests, workers have looked at strike as the ultimate weapon to bargain for decent work conditions.

The International Labour Organisation, as a tripartite body, has placed Government, Employer and Worker on the same pedestal. Within such a balanced structure, it should be a matter of serious concern to workers' organisations when Employers have started questioning the mandate of the Committee of Experts to interpret ILO Convention 87 to the extent of submitting that the Committee is not legally competent to hold that the right to strike is embedded in the Convention.

This Confederation wishes to submit its stand on the dispute:

- (i) That the right conferred on workers' and employers' organisations under Article 3 of Convention 87 has the same weight in each organization and that employers are free to organize the administration of their organization without interference of the other;
- (ii) The right to organize the activities of their organisations is also one that precludes any interference of one party in the affairs of the other party;
- (iii) That a Convention must be permitted to evolve with the needs, exigencies and dynamics of the world of work.
- (iv) In light of (iii) above, the word "activities" should not be construed narrowly to intentionally impair the implicit right to strike as an industrial action as would be the case with an Originalist interpretation but must be given a dynamic interpretation to permit it to adapt to such needs, exigencies and dynamics.
- (v) A number of countries, including Mauritius, have adopted the dynamic interpretation of Convention 87 in the wake of which the Legislative have translated the right under Article 3 into their labour laws so that while workers can have recourse to legally recognized strike, employers can have recourse to lock-out.
- (vi) The labour laws in Mauritius have provided clear legal procedures for workers' and employers' organisations to have recourse to strike and lock-out actions. By not recognizing the implicit element of the right to strike as claimed by employers', the latter are opening the door for the legislative to abrogate the relevant sections of the labour laws with respect to the said actions.
- (vii) This Confederation is of the view that there is no reason as to why the controversy over Convention 87 should not be submitted to the International Court of Justice for an

informed decision. The CEACR, in spite of not having the power of adjudication, is the right organ of the ILO for the interpretation and application of Conventions.

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