

The Director-General
International Labour Organization
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CH-1211 Geneva 22
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3 November 2023

Dear Director General,

We make reference to your letter of 11 October 2023 concerning the request of the Employers' group to urgently include a standard-setting item on the right to strike on the agenda of the 112th Session of the International Labour Conference.

For the following reasons, New Zealand Council of Trade Unions, finds that the request of the Employer's group will be legally, technically and politically impossible and therefore should be rejected by the Governing Body;

Firstly, there is no gap in the protection and regulation of the right to strike at the international level. The right to strike is protected under Convention 87 of the ILO and is an intrinsic corollary of freedom of association. The supervisory bodies of the ILO have built up an authoritative guidance in that regard over the past 70 years. This is however since 2012 strongly denied by the Employers' group. In such a situation, it is clear that there is no legal certainty as to what would be the basis and starting point for any standard setting exercise. In view of the totally opposite and mutually exclusive views on this fundamental issue, any initiative of a normative nature (for whatever purpose), will be impossible to move forward without first having settled these opposite views, through an authoritative and binding decision of the ICJ.

Secondly, the Employers' group calls for a Protocol to be attached to C87 to 'regulate' the right to strike while at the same time denying that C87 protects the right to strike. However, Protocols in the ILO have been introduced to deal in a flexible manner with partially revising certain provisions of existing Conventions. Therefore, it would be necessary to identify which provisions of C87 would need to be revised or clarified by the adoption of a protocol. If however according to Employers the right to strike is not in any way

addressed in Convention 87 to which the proposed Protocol would be attached, then it would neither be logical nor consistent with ILO's constitutional theory and practice to link such a Protocol to C87. The request of the Employers' group is therefore legally impossible.

Thirdly, the Employers' group continues to emphasize that the only viable solution to the dispute is standard setting. However, taking into account the fundamental disagreement underlying the dispute, it is difficult to understand how to ever achieve such consensus or broad majority. The Employers' group, want to use the proposal of standard setting to take away the existing fundamental right to strike under C87 while forcing the ILO's constituents to discuss the renegotiation of this fundamental principle and right at work as if it never existed. This is wrong and unacceptable. Our (your union) will never accept this. The constitutional objective and mandate of the ILO is to protect the rights of workers including where workers enjoy more favorable conditions. Therefore standard setting to undo, reverse

or take away existing rights enjoyed by and relied upon by all workers will be contrary to the objective and mandate of the ILO's constitution and institutional purpose.

In conclusion, we reiterate that for all the above reasons, the Employers' proposal is fundamentally flawed and must be rejected. The only viable way to resolve the outstanding dispute on the right to strike and provide for legal certainty is to refer it, at long last, to the ICJ for an authoritative and binding decision.

We urge you to bring our concerns on this proposal of the Employers' group to the attention of the ILO Governing Body at its 349th session (October-November 2023).

Yours sincerely,

Richard Wagstaff

A handwritten signature in black ink, appearing to read 'Wagstaff', with a stylized, cursive script.

NZCTU President