

From: Bea Bruske <clcpresident@clcctc.ca>
Sent: 07 November 2023 16:03
To: NORMES, SECRETARIAT <NORMES@ilo.org>
Cc: lchang@clcctc.ca
Subject: Employers' Group Request for a Protocol on Convention 87



Dear Director General,

On behalf of the Canadian Labour Congress, which represents three million workers in Canada, I write today concerning your letter of October 11, 2023, and the request of the employers' group of the Governing Body to include a standard-setting item on the right to strike on the agenda of the 112th Session of the International Labour Conference.

The Canadian Labour Congress is firmly of the view that this request from the Employers' Group will be legally, technically and politically impossible and should be rejected by the Governing Body for the following reasons:

1. There is no existing gap in the protection and regulation of the right to strike at the international level. The right to strike is protected under ILO Convention 87 and is an intrinsic corollary of freedom of association. The supervisory bodies of the ILO have built authoritative guidance on this in the past 70 years.

Since 2012, the Employers' Group has denied this authoritative guidance. This disregard creates a situation of legal uncertainty regarding the basis that can form a starting point for a standard-setting exercise. Given the polarized and mutually exclusive positions on this fundamental issue, an authoritative and binding decision from the International Court of Justice (ICJ) would help settle the opposing views and provide a clear starting point to advance in any initiatives of a normative nature (for whatever purpose).

2. The Employers' Group calls for a protocol to be attached to Convention 87 to 'regulate' the right to strike while denying that Convention 87 protects the right to strike. ILO protocols aim at partially revising existing conventions. As such, it would be required to identify which provisions need revision or clarification by the adoption of a protocol. Yet, the employers claim the right to strike is not covered in Convention 87, to which the protocol would be attached. The request to attach a protocol on

the right to strike to Convention 87 is entirely inconsistent with ILO constitutional theory and practice and, therefore, not legally possible.

3. The Employers' Group emphasizes that standard setting is the only viable solution to the dispute. Considering the deep and fundamental disagreement underlying this dispute, it is difficult to envision the achievement of consensus or a broad majority. The Employers' Group is exercising the use of standard setting to remove the existing fundamental right to strike under Convention 87 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 unacceptable to the Canadian Labour Congress. The constitutional objective and mandate of the ILO is to protect the rights of workers, including where workers benefit from better conditions. Therefore, standard setting to undo, reverse or take away existing rights is 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' Group 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.

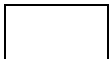
We urge you to bring our concerns regarding the Employers' Group proposal for a protocol to the attention of the ILO Governing Body at its 349th Session (October – November 2023).

Yours sincerely,

Bea Bruske
President

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