

THE UNITED STATES' GLOBAL RANKING REGARDING WORKERS' RIGHTS: COMPARING THREE COUNTRIES' POSITIONS ON THE RIGHT TO ORGANIZE AND COLLECTIVE BARGAINING

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While the United States has substantial labor law policy in place, and workers' rights are theoretically protected by statutes and case law, its global ranking according to international organizations such as the International Trade Union Confederation (ITUC) and the International Labor Organization (ILO) highlights systematic violations of rights. This paper will address the involvement of international organizations dedicated to improving labor standards globally and discuss three countries' rankings: Finland, with a low global ranking, indicating rare instances of labor law violations; Thailand, with a high global ranking; and the United States, with the same ranking as Thailand, highlighting similar labor relations violations. This paper will conclude with options for the United States to improve its global labor ranking.

GENESIS OF LABOR RIGHTS AND NONGOVERNMENTAL ORGANIZATIONS

Since World War II, labor laws have been more frequently regarded as necessary to promote and maintain labor rights.¹ The global political shift, with the downfall of fascism, allowed for the

¹ See *LABOUR LAW AND WORKER PROTECTION IN DEVELOPING COUNTRIES* 71 (Tzehainesh Teklè ed., 2010).

notion that “a rule of law based on human rights is becoming a means of legitimizing power and a label of democracy.”² The International Confederation of Free Trade Unions (ICFTU) was formed in 1949 after disagreements between Western and Communist led unions; the new organization was spearheaded by the United States’ American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) and Britain’s Trades Union Congress (TUC).³ In December 2004, at the ICFTU’s 18th World Congress, its Final Resolution urged global partners to “fight for a different form of globali[zation] in order to achieve decent and freely chosen work, [equal pay], . . . safe workplaces, . . . [and] respect of . . . workers’ rights. . . .”⁴ In November 2006, the International Trade Union Confederation (ITUC) was created through a merger of the ICFTU and the World Confederation of Labour (WCL), a small organization formed in 1920 to represent Christian labor unions in western Europe and Latin America.⁵

ITUC AND ILO

The ITUC is a global organization whose primary mission is to promote and defend “workers’ rights and interests, through international cooperation between trade unions, global campaigning, and advocacy within the major global institutions.”⁶ “It is governed by [a quarterly] world congress[], a General Council, and an Executive Bureau.”⁷ The ITUC also works closely with the Global Union Federations, the Trade Union Advisory Committee, and several United Nations specialized agencies, such as the International Labour Organization (ILO). Its objective is to defend trade unionists where fundamental human rights and labor rights are violated, as these rights can have a cumulative effect on

² *Id.*

³ *International Confederation of Free Trade Unions*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/International-Confederation-of-Free-Trade-Unions> (last visited May 4, 2018).

⁴ Int’l Confederation of Free Trade Unions, Final Res. 18GA/E/6.2, *Globalisation, Decent Work and Sustainable Development*, at 1 (2004), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---wcsd/documents/event/wcms_080296.pdf.

⁵ *About Us*, INT’L TRADE UNION CONFEDERATION – ASIA PAC., <https://www.ituc-ap.org/aboutus/>, (last visited Mar. 24, 2019); *World Confederation of Labour*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/World-Confederation-of-Labour> (last visited May 4, 2018).

⁶ *About Us*, INT’L TRADE UNION CONFEDERATION, <https://www.ituc-csi.org/about-us> (last visited May 4, 2018).

⁷ *Id.*

working people.⁸

The ILO, created in 1919 with the Treaty of Versailles,⁹ is a branch of the United Nations which develops labor standards, called “conventions,” negotiating between trade unions, governments, and companies, for standards addressing maximum hours, maternal protections, child labor, and freedom of association.¹⁰ Its main objectives are to promote rights at work, encourage decent employment opportunities, enhance social protection, and strengthen dialogue between governments, employers, and workers on work-related issues.¹¹ In 1998, the ILO mandated the Declaration on Fundamental Principles and Rights at Work, where member states agreed to respect and promote those conventions, legally binding international treaties, put forth by the ILO.¹² Even where member states have not ratified the conventions, the ILO membership binds member states “to promote and to realize” standards protecting fundamental labor rights, which fall within the spectrum of human rights.¹³

In September 2016, in collaboration with the ILO and supported by the ITUC’s General Secretary Sharon Burrow, Sweden’s Prime Minister Stefan Löfven launched the Global Deal, a global initiative aimed at generating a “dialogue between the social partners and . . . governments . . . to improve employment conditions and productivity.”¹⁴ This implementation builds on “established initiatives and projects,” encouraging cooperation between parties and improving existing processes.¹⁵ “The Global Deal is about ensuring that more people around the world have secure and good jobs, and about a more equal distribution of our economic resources. . . . [t]his is a prerequisite for globalization to

⁸ *Id.*

⁹ *Brief History and Timeline*, INT’L LABOUR ORG., <http://www.ilo.org/washington/ilo-and-the-united-states/brief-history-and-timeline/lang--en/index.htm> (last visited May 4, 2018).

¹⁰ ROBERT J. FLANAGAN & WILLIAM B. GOULD IV, INTERNATIONAL LABOR STANDARDS: GLOBALIZATION, TRADE, AND PUBLIC POLICY 2 (2003).

¹¹ See INT’L LABOUR ORG., *supra* note 9.

¹² *Id.*

¹³ Kevin Kolben, *Labor Rights as Human Rights?*, 50 VA. J. INT’L L. 449, 454 (2010).

¹⁴ *Prime Minister Stefan Löfven, Along With OECD and ILO, Launches Global Deal in New York*, GOV’T OF SWED., <http://www.government.se/articles/2016/09/prime-minister-stefan-lofven-along-with-oecd-and-ilo-launches-global-deal-in-new-york/> (last visited May 4, 2018).

¹⁵ *Id.*

be a positive force,”¹⁶ Prime Minister Löfven announced.¹⁷

INTERNATIONAL LABOR STANDARDS

The ILO has eight fundamental conventions, stemming from various conventions from 1930 – 2011, addressing the issues of forced labor (1930, 1957), freedom of association (1948), discrimination in employment and occupation (1951, 1958), and child labor (1973, 1999).¹⁸ “As of February 2002, about one-third of the member countries had ratified all eight core conventions.”¹⁹ Even where the ITUC has ranked The World’s Ten Worst Countries for Workers, those ten countries have ratified, at a minimum, six fundamental conventions.²⁰ Yet, the United States is one of four countries which has ratified only two conventions, child labor (C182 1999) and forced labor (C105 1991), failing to ratify conventions addressing freedom of association, discrimination, and right to organize and collective bargaining, issues which are heavily legislated.²¹ In 2002, over 180 total conventions had been adopted, and ratification of conventions by member countries varied from a low of 1 to a high of 160.²² With the most recent Convention, Domestic Workers Convention in 2011(C189), the ILO listed 189 Conventions adopted: currently

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See FLANAGAN & GOULD IV, *supra* note 10, at 18.

¹⁹ *Id.*

²⁰ See INT’L TRADE UNION CONFEDERATION, 2018 ITUC GLOBAL RIGHTS INDEX: THE WORLD’S WORST COUNTRIES FOR WORKERS 22–27 (2018), <https://www.ituc-csi.org/IMG/pdf/ituc-global-rights-index-2018-en-final-2.pdf> [hereinafter GLOBAL RIGHTS INDEX 2018]; see also *Ratifications of Fundamental Conventions by Country*, INT’L LABOUR ORG., http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:10011:0::NO::P10011_DISPLAY_BY,P10011_CONVENTION_TYPE_CODE:1,F (last visited June 28, 2018) (according to 2018 ITUC Global Rights Index, The World’s Ten Worst Countries for Workers and their ratified fundamental conventions are: Algeria (8); Bangladesh (7); Cambodia (8); Colombia (8); Egypt (8); Guatemala (8); Kazakhstan (8); The Philippines (8); Saudi Arabia (6); and Turkey (8)).

²¹ See *Ratifications of Fundamental Conventions by Country*, INT’L LABOUR ORG., http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:10011:0::NO::P10011_DISPLAY_BY,P10011_CONVENTION_TYPE_CODE:1,F (last visited June 28, 2018); See also *Up-to-Date Conventions and Protocols Not Ratified by United States*, INT’L LABOUR ORG., http://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210_COUNTRY_ID:102871 (last visited May 4, 2018).

²² FLANAGAN & GOULD IV, *supra* note 10, at 17–18.

twenty-five countries have ratified C189.²³

ITUC GLOBAL RIGHTS INDEX RANKING

The ITUC Global Rights Index ranks countries on a scale of 1 – 5 “depending on their compliance with collective labo[r] rights.”²⁴ “The level of economic development, size or location of the country is not [factored into the ranking].”²⁵ A high ranking indicates that “workers in th[at] country have no right to their collective voice due to government failure to guarantee rights.”²⁶

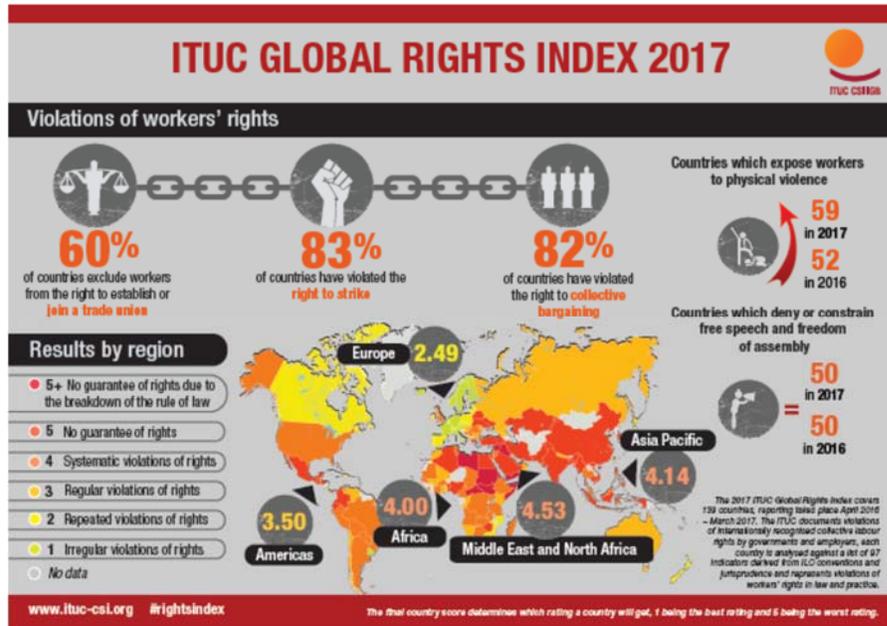
The following graphic illustrates the global rankings of member countries by region, demonstrating specifically statistics of worker violence, denial of freedoms, and union membership-related prohibitions:

²³ See *Ratifications of C189 – Domestic Workers Convention, 2011 (No. 189)*, INT’L LABOUR ORG., https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:2551460 (last visited Mar. 25, 2019); *Up-to-Date Conventions and Recommendations*, INT’L LABOUR ORG., <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12020:0::NO> (last visited May 4, 2018).

²⁴ See INT’L TRADE UNION CONFEDERATION, *supra* note 21, at 48.

²⁵ *Id.*

²⁶ *Id.*



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A. How the ITUC Establishes Global Rights Index Ranking

The 2017 ITUC Global Rights Index “provides insight into workers’ rights violations [worldwide], . . . [including] arrests and violence against trade unionists. . . .” Where countries’ respect for trade unions is positive, its level of equality and justice in society

²⁷ *Bangladesh Among Top Worst Countries in ITUC Global Rights Index 2017*, THE DAILY STAR (Bangl.), <https://www.thedailystar.net/world/south-asia/bangladesh/top-worst-countries-workers-trade-bangladesh-rights-ituc-global-index-2017-1423972> (last updated June 22, 2017).

is equally positive.²⁸

The ITUC has created four steps for determining the ranking of a country.²⁹ First, the ITUC documents violations of known labor rights, contacting national unions in participating countries asking them to report the violations.³⁰ The ITUC contacts those unions directly to confirm the reported violation incidents.³¹ Next, the ITUC utilizes the confirmed information and drafts a summary which is accessible on the ITUC website.³² The summary of each country is compared to the list of indicators created by the ILO, giving one point for each corresponding violation.³³ The final calculated score is the sum of all the points derived from the indicator list, thus, a high score equates to multiple violations.³⁴

B. C098 – The Right to Organize and Collective Bargaining Convention

In 1949, the ILO ratified C098, the right to organize and collective bargaining.³⁵ This Convention is comprised of sixteen articles, Article 1 stating that “[w]orkers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.”³⁶ The Convention further addresses the rationale for the protections, stating in Article 2 that “acts which are designed to promote the establishment of workers’ organi[zations] under the domination of employers or employers’ organi[zations] . . . shall be deemed to constitute acts of interference within the meaning of this Article.”³⁷ Of the three countries highlighted here, Thailand and the United States have

²⁸ INT’L TRADE UNION CONFEDERATION, THE 2017 ITUC GLOBAL RIGHTS INDEX: THE WORLD’S WORST COUNTRIES FOR WORKERS 9 (2017), https://www.ituc-csi.org/IMG/pdf/survey_ra_2017_eng-1.pdf.

²⁹ See *The ITUC Global Rights Index in 4 Steps*, INT’L TRADE UNION CONFEDERATION, https://survey.ituc-csi.org/IMG/pdf/the_ituc_global_rights_index_in_4_steps.pdf (last visited May 4, 2018).

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ See *C098 – Right to Organise and Collective Bargaining Convention*, INT’L LABOUR ORG., http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C098 (last visited May 4, 2018).

³⁶ *Id.*

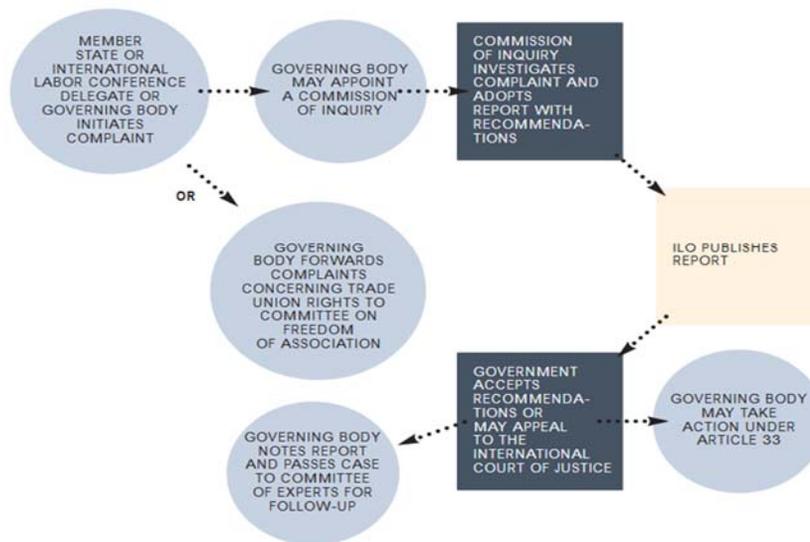
³⁷ *Id.*

chosen not to ratify this Convention; Finland ratified it in 1951.³⁸

In 1951, the ILO formed the Committee on Freedom of Association (CFA), as a response to the ratification of C098, in order to examine violation complaints filed against member states' employers or labor groups.³⁹ Within the CFA are "an independent chairperson and three representatives [one] each [from] government[], employer[], and workers."⁴⁰ Since its inception, the CFA has examined over 3,000 cases, with more than sixty countries implementing the recommendations and reporting "positive developments" in labor relations in those compliant countries.⁴¹

The following flowchart demonstrates the complaint process:

The Complaints procedure



³⁸ See *Ratifications of C098 – Right to Organise and Collective Bargaining Convention*, INT'L LABOUR ORG., http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312243 (last visited May 4, 2018).

³⁹ *Committee on Freedom of Association*, INT'L LABOUR ORG., <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-on-freedom-of-association/lang-en/index.htm> (last visited May 4, 2018).

⁴⁰ *Id.*

⁴¹ *Id.*

FINLAND – GLOBAL RANKING: 1

Finland is ranked as having irregular violations of rights, according to the ITUC Global Index.⁴³ The most recent complaint brought before the ILO was in February 1963.⁴⁴ The ITUC affiliates are the Confederation of Unions for Professional and Managerial Staff in Finland, the Finnish Confederation of Professionals and the Suomen Ammattiliittojen Keskusjärjestö.⁴⁵ With regard to the ILO's conventions, Finland has ratified all eight fundamental conventions, all four priority governance conventions, and ratified ninety out of 177 technical conventions.⁴⁶ “Almost 75% of Finns are members of a trade union. . . . rank[ing] Fin[land's] unions . . . among[] the most effective in the world.”⁴⁷

In Finland, an important function of trade unions is to protect union members' rights and benefits, which include “employment security and quality of work life,” as well as “run unemployment funds and . . . [supply] . . . unemployment benefits.”⁴⁸ Once a worker is a member of a Finnish trade union, she must pay a tax deductible fee.⁴⁹ Most worksites have a shop steward, the union

⁴² *The Complaints Procedure*, INT'L LABOUR ORG., http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/image/wcms_088451.pdf (last visited Apr. 3, 2019).

⁴³ See *Finland*, INT'L TRADE UNION CONFEDERATION, <https://survey.ituc-csi.org/Finland.html> (last visited May 4, 2018).

⁴⁴ See *Definitive Report – Report No 73*, INT'L LABOUR ORG., http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMP_LAINT_TEXT_ID:2898663 (last visited May 4, 2018).

⁴⁵ See *List of Affiliated Organisations*, INT'L TRADE UNION CONFEDERATION, https://www.ituc-csi.org/IMG/pdf/18_07_10_list_of_affiliates_ac.pdf (last visited Mar. 24, 2018); *id.*

⁴⁶ See *Ratifications for Finland*, INT'L LABOUR ORG., http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUN_TRY_ID:102625 (last visited May 4, 2018).

⁴⁷ *Trade Unions & Employee Representation in Finland*, EXPAT FINLAND, <https://www.expat-finland.com/employment/unions.html> (last visited May 4, 2018).

⁴⁸ *Id.*

⁴⁹ *Working Conditions in Finland*, INTERNATIONS, <https://www.internations.org/finland-expats/guide/working-in-finland-16122/working-conditions-in-finland-3> (last visited June 29, 2018).

contact for union employees, who will answer workplace questions.⁵⁰ With regard to equality in the workplace, Finland prides itself on being ahead of other European countries on this issue; “the majority of women with children work” and Finland continues to work toward eliminating the salary gap.⁵¹

Finland’s model of industrial relations is one of social corporatism: “unions and employer organizations work together on labo[r] policy issues.”⁵² Finnish construction workers, for example, “are organized by a single union, the Rakennusliitto,” where union density is nearly 80 percent. The Rakennusliitto collaborates with the employers’ association, and other construction firms, creating a “social partner” relationship.⁵³ Finnish unions rely on their shop stewards, the on-site worker representatives, to monitor and influence employers.⁵⁴ This network of stewards is critical to enforcing the bargaining agreement, and when employers are not compliant, boycotts may be called.⁵⁵ Boycotts are permitted by Finnish law, to pressure companies who are not negotiating with workers, and “Finnish law [does] allow[] unions to defend extended [collective bargaining agreements],” even where the workers are not union members.⁵⁶

There is no minimum wage in Finland, as collective agreements determine pay, and most employees belong to a union.⁵⁷ There are set industry wage minimums which encapsulate the entire sector of work; these minimums are regulated by the government.⁵⁸ In a situation where there is no union, the employer must pay wages that are “normal and reasonable,” and that pay may not be lower than those found in a collective agreement.⁵⁹ Additionally, Finnish employers are obligated to arrange for and pay for “occupational

⁵⁰ *Id.*

⁵¹ *Id.* (“The Finnish Non-Discrimination Act was introduced in 2004 and updated in 2015[,] . . . promot[ing] . . . equality in all areas of society, [particularly in] the workplace.”).

⁵² Nathan Lillie & Markku Sippola, *National Unions and Transnational Workers: The Case of Olkiluoto 3, Finland*, 25(2) WORK, EMP. & SOC’Y, 292, 297 (2011).

⁵³ *Id.*

⁵⁴ *Id.* at 298.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Wages, Terms & Conditions of Employment*, EXPAT FINLAND, https://www.expatsfinland.com/employment/wages_conditions.html (last visited May 4, 2018).

⁵⁸ *See id.*

⁵⁹ *Id.*

healthcare for . . . employees,” even if it is one employee.⁶⁰ Employers may provide in-house clinics if they wish.⁶¹

Disagreements regarding sections of the collective agreement are to be negotiated at the workplace, as most agreements contain a grievance procedure protocol.⁶² Dispute resolution between employee and employer begins with the aggrieved employee asking the shop steward for assistance.⁶³ If negotiations between employees and employer cannot be resolved, the negotiations continue between employer and shop steward; if no solution is reached, negotiations then occur between employer and the union.⁶⁴ The highest level of resolution exists with the Labour Court.⁶⁵

A. *Finnish Labor Law and Labour Court*

The first Collective Agreements Act was passed in Finland in 1924.⁶⁶ After World War II ended, the Finnish government enacted further legislation concerning labor relations and disputes, passing the Labour Court Act in 1946.⁶⁷ Thereafter, the Act on Collective Agreements for State Civil Servants and the Act on Collective Agreements for Local Government Officials were passed in 1970.⁶⁸ The establishment of the Labour Court was initially developed because traditional courts were deemed “too slow” and “considered not to have the . . . expertise” necessary to settle labor disputes “arising out of collective agreements.”⁶⁹ Once the Labour Court began operating, Finnish collective agreements were concluding quite successfully with employer and employee

⁶⁰ *Id.*

⁶¹ See *Employer Obligations in Finland*, EXPAT FINLAND, https://www.expatsfinland.com/entrepreneurship/employer_information.html#healthcare (last visited Mar. 25, 2019).

⁶² *Trade Unions & Employee Representation in Finland*, EXPAT FINLAND, <https://www.expatsfinland.com/employment/unions.html#dispute> (last visited Mar. 25, 2019).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Establishment*, LABOUR COURT, <http://www.tyotuomioistuin.fi/en/index/labourcourtnew.html> (last visited May 4, 2018).

⁶⁷ *Id.*

⁶⁸ ACT ON THE LABOUR COURT (646/1974) (Fin.), <https://www.finlex.fi/fi/laki/kaannokset/1974/en19740646.pdf> [hereinafter ACT ON THE LABOUR COURT].

⁶⁹ LABOUR COURT, *supra* note 68.

associations.⁷⁰ The most recent version of the Act on the Labour Court was enacted in 1974, with amended civil servants' collective agreements and the judicial procedure being adopted as recently as 2012.⁷¹

The Finnish Labour Court consists of a president and vice president, with fourteen additional members.⁷² While “[t]hese members are not required to have a law degree, they must [at a minimum demonstrate] knowledge of labo[r] relations. . . .”⁷³ The Court operates on a “tripartism” principle, equalizing the government, employer, and employee positions.⁷⁴ “Most cases are heard and tried [by] panels,” with a chairman, two employer representatives, and two employee representatives; the chairman is permitted to rule on simple cases not requiring witnesses.⁷⁵

B. Illustrative Case – *Olkiluoto 3*

Olkiluoto 3 is a “nuclear power plant construction site in Finland. . . . being built by [French and German companies] employing mostly posted [(non-Finnish)] migrants from transnational subcontractors. . . .”⁷⁶ The construction of the plant began in 2005, and while the project was slated to be completed by 2009, several setbacks have postponed the completion until May 2019.⁷⁷ With the genesis of the project, secrecy and confidentiality shrouded the plans, “despite [a] Nordic tradition[] of transparency.”⁷⁸ At the onset, about one third of the 3,400 construction workers were Finnish, yet as costs rose and delays occurred, subcontractors began incorporating cheaper labor, recruiting migrant workers from other countries.⁷⁹ Eventually, these subcontractors successfully contested the utilization of Finnish union workers for the site, creating a deregulated space

⁷⁰ *Id.*

⁷¹ ACT ON THE LABOUR COURT, *supra* note 70.

⁷² *Composition*, LABOUR COURT, <https://www.tyotuomioistuin.fi/en/index/labourcourtnew/jasenet.html> (last visited Mar. 25, 2019).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Lillie & Sippola, *supra* note 54, at 292.

⁷⁷ World Nuclear News, *Olkiluoto 3*, <http://www.world-nuclear-news.org/C-Olkiluoto-3-EPR-parties-agree-settlement-12031801.html> (last visited May 2, 2018).

⁷⁸ Lillie and Sippola, *supra* note 54, at 294.

⁷⁹ *Id.* at 299.

within Finland.⁸⁰ While Finnish labor unions' objective is to ensure working conditions are at established norms and posted workers' pay is at the Finnish union rates,⁸¹ the unions do not make additional efforts to recruit migrant workers, leaving foreigners nearly entirely unrepresented.⁸²

At Olkiluoto 3, however, the migrant workers were able to self-organize.⁸³ With Finnish unions having significant power within Finnish labor activities, having the ability to use secondary boycotts and to extend collective agreements for its own workers, the presence of the migrant workers posed a threat to the Finnish union members, resulting in boycotts by Rakennusliito.⁸⁴ The conflict continued, as Rakennusliito's attempts at boycotting and organizing foreign workers did not outweigh the several problems inherent in a transnational workforce: communication barriers, leadership roles for the migrant workers, financial loss at investing in temporary workers.⁸⁵ The circumstances at Olkiluoto 3 seem to indicate that temporary workers, ineligible for nation-state union membership, disrupt conventional union employment, ultimately delaying project completion and accruing costs beyond original expectations.

Finland prides itself on having strong union representation for nearly all of its workers: the Rakennusliito is considered one of the strongest unions in Europe, with "broad legal rights," significant "financial and organizational resources, and good political access."⁸⁶ Where recent EU labor politics have resulted in open labor markets, possibly hampering union regulation, Finnish unions nevertheless provide "labor rights information and 'monitor[] . . . conditions," even where foreign workers are present and unrepresented by a union.⁸⁷ With its ratification of C098 and its laws protecting union membership and boycotts, Finland is an exemplary model of a low ITUC Global Ranking.

⁸⁰ *Id.* at 292.

⁸¹ *Id.* at 297.

⁸² *Id.*

⁸³ *Id.* at 304.

⁸⁴ Lillie & Sippola, *supra* note 54, at 293, 300, 305.

⁸⁵ *See id.* at 304–05.

⁸⁶ *Id.* at 294.

⁸⁷ *Id.* at 296–97.

THAILAND – GLOBAL RANKING: 4

According to the ITUC, Thailand scores a ranking of four, the same as the United States.⁸⁸ While Thailand was once categorized as a low-income country, over the last four decades it has demonstrated “strong growth and . . . poverty reduction,” now ranking as an upper-income country.⁸⁹ Thailand is the twelfth largest automobile producer in the world, employing approximately 525,000 workers in its auto parts factories.⁹⁰ The fishing industry is prolific in Thailand, employing some two to four million migrant workers.⁹¹ With Thailand’s current government structure as a dictatorship, a breeding ground for human rights violations, the government restricts basic freedoms, including the right to peaceful assembly and association.⁹² While the Thai Constitution contains provisions to protect workers’ rights, Thailand has adopted only six of the eight ILO Fundamental Conventions, one of four priority governances, and twelve of 177 technical conventions.⁹³ Only 1.5% of the estimated 40 million Thai workers belong to unions.⁹⁴ Through the National Council for Peace and Order (NCPO), created after the May 2014 military coup, the Prime Minister, who is also the NCPO Chairman, enforces the Martial Law Act of 1914, exercising unbridled control over judicial and legislative matters.⁹⁵

⁸⁸ GLOBAL RIGHTS INDEX 2018, *supra* note 21, at 10.

⁸⁹ *The World Bank in Thailand: Overview*, THE WORLD BANK, <http://www.worldbank.org/en/country/thailand/overview> (last updated Sept. 2018).

⁹⁰ Tula Connell, *Thai Unions Coordinate, Collaborate for Success*, SOLIDARITY CTR., (Jan. 23, 2018), <https://www.solidaritycenter.org/thai-unions-coordinate-collaborate-success/>.

⁹¹ *See Thailand*, SOLIDARITY CTR., <https://www.solidaritycenter.org/where-we-work/asia/thailand/> (last visited Mar. 25, 2019) [hereinafter WHERE WE WORK].

⁹² *Thailand 2017/2018*, AMNESTY INT’L, <https://www.amnesty.org/en/countries/asia-and-the-pacific/thailand/report-thailand/> (last visited May 4, 2018).

⁹³ *See Ratifications for Thailand*, INT’L LABOUR ORG., http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRTY_ID:102843 (last visited Mar. 25).

⁹⁴ WHERE WE WORK, *supra* note 93.

⁹⁵ *See Thailand: Junta Entrenched 3 Years After Coup: Empty Promises to Respect Rights, Restore Democracy*, HUMAN RIGHTS WATCH (May 21, 2017), <https://www.hrw.org/news/2017/05/21/thailand-junta-entrenched-3-years-after-coup>.

A. *Thai Labor Protection Act*

Thailand has a similar law to the United States' National Labor Relations Act called the Thai Labor Protection Act (LPA), most recently revised in 2018.⁹⁶ The LPA provides regulations for working hours as well as minimum pay standards.⁹⁷ It further defines "employer" as, "a person who agrees to accept an employee for work by paying wage,"⁹⁸ and "employee" as, "a person who agrees to work for an employer in return for wages regardless of the name used."⁹⁹ Chapters three and four of the Act address employment of women and young workers.¹⁰⁰ Chapter six discusses the Wage Committee, comprised of the Secretary of the Ministry of Labour and Social Welfare and several government representatives, responsible for fixing the Basic Minimum Wage Rate.¹⁰¹ Chapter twelve, Lodgment and Consideration of Complaints, states that if an employer violates the regulations pursuant to the Act, an employee may "lodge a complaint . . . [with] the Labour Inspector" in the employee's region to request enforcement of the entitlement, to which the Inspector is to "investigate . . . and make an order within sixty days from . . . receipt of the complaint."¹⁰² Penalty Provisions, addressed in Chapter 16, state that "any employer who violates [certain sections of the Act] shall be [punished by] imprisonment, . . . or a fine, . . . or both."¹⁰³

There are several rights restrictions with regard to labor in Thailand. Affiliation between state entity unions and private sector labor organizations is not permitted.¹⁰⁴ State entities may

⁹⁶ See Komson Suntheeraporn, *Latest Changes to the Thai Labour Protection Act*, DLA PIPER (Dec. 20, 2018), <https://www.dlapiper.com/en/china/insights/publications/2018/12/latest-changes-to-the-thai-labour-protection-act/>; Robert Virasin, *What Does the Thai Labor Law Say About Work-day, Overtime, and Leave?*, SIAM LEGAL, <https://www.siam-legal.com/thailand-law/what-do-the-thai-labor-law-tells-about-workday-overtime-and-leave/> (last visited Mar. 25, 2019).

⁹⁷ Virasin, *supra* note 99.

⁹⁸ Labour Protection Act B.E. 2541 (Thai), http://www.labour.go.th/en/attachments/article/18/Labour_Protection_Act_BE2541.pdf.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Survey of Violations of Trade Union Rights: Thailand*, INT'L TRADE UNION

only have one union, and the law states that the union members must be workers of the same employer.¹⁰⁵ Under the new Thai regime, “any gathering of more than five people [may] be banned,”¹⁰⁶ thus the right to strike has been severely restricted. Further, employees considered “public servants” are prohibited from striking, as the State Enterprise Labour Relations Act (SELRA) does not permit “strikes and lock-outs within state enterprises.”¹⁰⁷ The dissemination of information through media is also restricted, as the NCPO bars any broadcasting that “could cause disorder or that is critical of the coup regime.”¹⁰⁸

B. CFA Complaints

The most recent ILO complaint against Thailand for serious violations of trade union rights was filed in October 2015 by IndustriALL,¹⁰⁹ the global organization “established to organize and build the collective power of working people around the world. . . .”¹¹⁰ The complaint, Case No. 3164,¹¹¹ alleged that the Thai government “fail[s] to protect its . . . 39 million workers . . . “ and urges ratification of ILO Convention 87, freedom of association, and Convention 98, the right to organize and bargain collectively.¹¹² IndustriAll listed eighteen cases, primarily related to automobile companies violating workers’ rights,¹¹³ and called on Thai officials to “ensure that . . . employers comply with all orders for remediation and compensation and that workers’ fundamental

CONFEDERATION, <https://survey.ituc-csi.org/Thailand.html#tabs-2> (last updated Mar. 30, 2011).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ See *IndustriALL Files ILO Complaint Against Thai Government*, INDUSTRIALL GLOBAL UNION (July 10, 2015), <http://www.industriall-union.org/industriall-files-ilo-complaint-against-thai-government> [hereinafter INDUSTRIALL FILES COMPLAINT].

¹¹⁰ *Statutes of IndustriALL Global Union*, INDUSTRIALL GLOBAL UNION, <http://www.industriall-union.org/about-us/statutes-of-industriall-global-union> (last visited Mar. 26, 2019).

¹¹¹ See *Report in Which the Committee Requests to be Kept Informed of Development—Report No 380*, INT’L LABOUR ORG., http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMP_LAINT_TEXT_ID:3302068 (last visited Mar. 26, 2019) [hereinafter ILO COMPLAINT].

¹¹² INDUSTRIALL FILES COMPLAINT, *supra* note 112.

¹¹³ See ILO COMPLAINT, *supra* note 114.

rights are respected.”¹¹⁴ In response to the complaint, Thai officials contested IndustriALL’s allegations, providing its own observations.¹¹⁵ The CFA’s conclusions recommended that the Thai government revise its Labor Protection Act to align with the ILO’s principles of freedom of association and collective bargaining, “to ensure that all issues raised by the Committee . . . are properly addressed.”¹¹⁶

C. Illustrative Case – Yamashita Rubber and Y-Tec

Japanese-owned automobile parts manufacturer Yamashita Rubber, with approximately 2,000 employees, has two plants in Thailand.¹¹⁷ In December 2016, workers did not receive a bonus as promised, and in response they made use of their fundamental right of freedom of association and registered with the Prachinburi Automobile Part Workers Union, recruiting seven workers as union bargaining representatives.¹¹⁸ Yamashita promptly moved the union members to the night shift and asked for resignations from nearly one hundred workers, accusing them of “destroying the working relationship;” management ultimately forced the resignation of thirty-two members.¹¹⁹ The union filed a complaint with the Labor Relations Committee, who subsequently ruled in the workers’ favor, ordering the reinstatement of the workers, yet Yamashita filed an appeal and demoted the union president to a lower wage position.¹²⁰ IndustriALL submitted a letter in October 2017 to Mr. Usui, the President and Representative Director of Yamashita Rubber, requesting his assistance in intervening at the two Thai plants “to end discrimination of trade union members and establish a genuine dialogue with the union.”¹²¹ This recent example of union sabotage highlights not only the lack of

¹¹⁴ *Id.*

¹¹⁵ *See id.*

¹¹⁶ *Id.*

¹¹⁷ *Thailand: Auto Parts Maker Y-TEC Fires Workers for Unionizing*, INDUSTRIALL GLOBAL UNION (Oct. 10, 2017), <http://www.industrialunion.org/thailand-auto-parts-maker-y-tec-fires-workers-for-unionizing>.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ Letter from Valter Sanches, Gen. Sec’y, IndustriALL, to Takeyoshi Usui, President Chief Managing Officer & Representative Dir., Yamashita Rubber (Oct. 10, 2017), http://www.industrialunion.org/sites/default/files/uploads/documents/2017/THAILAND/industrial_all_on_yamashita_rubber_to_intervene_at_y-tec_in_thailand_10-10-2017.pdf.

protection of labor rights, but the reinforcement of anti-labor conduct by foreign companies.

UNITED STATES – GLOBAL RANKING: 4

The ITUC has concluded that the United States demonstrates systematic violations of labor rights, thus earning it a Global Ranking of four.¹²² Regarding ILO ratification of conventions, the U.S. has ratified only two of the eight fundamental conventions, only one of the four governance conventions, and eleven of the 177 technical conventions.¹²³ The most recent convention, C189, Domestic Workers Convention, has not been ratified by the U.S.; the last convention to be ratified by the U.S. was C176, Safety and Health in Mines, ratified in February 2001.¹²⁴ While the U.S. Department of Labor states that the labor laws and practices “meet or exceed many ILO conventions,”¹²⁵ the ILO’s standards for the rights to organize, collectively bargain, strike, and treatment of women and children workers vary significantly from the legal standards set forth in U.S. labor laws.¹²⁶

A. *U.S Labor Law - NLRA*

The National Labor Relations Act (NLRA), enacted in 1935, regulates “the rights of U.S. employees and . . . employers in the private sector, including . . . [the] right[] to organize and bargain collectively, and [it] defines . . . unfair labor practices, procedures for union representation and elections, and judicial review.”¹²⁷ Amending the NLRA in 1947 with the Taft-Hartley Act, Congress further defined “unfair labor practices of unions and clarif[ied] . . . rights of employees to refrain from joining unions.”¹²⁸ The National

¹²² See *Survey of Violations of Trade Union Rights: USA*, INT’L TRADE UNION CONFEDERATION, <https://survey.ituc-csi.org/USA.html#tabs-2> (last visited May 4, 2018).

¹²³ *Ratifications for United States*, INT’L LABOUR ORG., http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102871 (last visited May 4, 2018).

¹²⁴ *Id.*; *Up-to-Date Conventions and Protocols Not Ratified by United States*, INT’L LABOUR ORG., https://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210_COUNTRY_ID:102871 (last visited Mar. 26, 2019).

¹²⁵ David Weissbrodt & Matthew Mason, *Compliance of the United States with International Labor Law*, 98 MINN. L. REV. 1842, 1843 (2014).

¹²⁶ *Id.* at 1846.

¹²⁷ *Id.* at 1844–45.

¹²⁸ *Id.* at 1845.

Labor Relations Board, the administrative agency which oversees the enforcement of the NLRA, is a quasi-judicial body comprised of five members, appointed to five-year terms by the President and confirmed by the Senate, with one member's term expiring in one year.¹²⁹

B. Labor Statistics

According to the Bureau of Labor Statistics, as of 2017 the union membership rate was 10.7%, translating into 14.8 million workers, an increase of 262,000 from the previous year.¹³⁰ Public sector workers (34.4%) were unionized at five times the rate of private sector workers (6.5%), with “workers in protected service occupations and in education . . . and library [positions]” at the highest unionized rate.¹³¹ There were slightly more men than women in a union, 11.4% as compared to 10.0%, and African Americans had the highest union membership of any ethnic group.¹³² Nonunion workers generally brought home 80% of what union workers earned on a median weekly basis.¹³³ Among the states, New York has the highest union membership rate, at 23.8%, and South Carolina has the lowest, at 2.6%.¹³⁴ As of 2012, “national unionization rates [were] at their lowest since the Great Depression.”¹³⁵

Why does the United States have such a low percentage of unionized workers? Most Americans look positively on unions, and non-unionized workers say they would like to be in a union.¹³⁶ Looking to the public sector, “employees are more than five times as likely to be unionized as [the private sector employees].”¹³⁷ Where municipalities across the country are facing strained budgets and even bankruptcy, organized labor critics blame

¹²⁹ *Who We Are*, NAT'L LAB. REL. BOARD, www.nlr.gov/who-we-are (last visited May 4, 2018).

¹³⁰ Press Release, Bureau of Labor Statistics, *Union Members – 2017* (Jan. 19, 2018), https://www.bls.gov/news.release/archives/union2_01192018.pdf.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Chris Tilly, *It's Anti-American to Be Anti-Union*, HUFFPOST (Aug. 30, 2012), https://www.huffingtonpost.com/chris-tilly/anti-american-to-be-anti-union_b_1843039.html.

¹³⁶ *Id.*

¹³⁷ *Id.*

excessive public employee pay and pensions, even where public employee wages are lower than their private sector counterpart.¹³⁸ American politics may be the most critical component of the union/employer discord: where big businesses can afford to influence traditionally conservative politicians, unions have a similar power for the common worker by contributing to their left-leaning counterparts.¹³⁹ Thus, while Americans may view unions positively, big businesses, having the ability to bankroll politicians, and ultimately legislation, seem to be orchestrating the existence of unions.¹⁴⁰

C. *U.S. Labor Law vs. International Standards*

The ITUC ranking highlights gaping problems in the U.S.'s labor rights protections. The findings show that the law allows for anti-union discrimination in the workplace, and even after a secret ballot election is conducted, and workers have overwhelmingly voted for a union, employers can delay the organization by filing appeals with the National Labor Relations Board.¹⁴¹ While the United States' labor law policy seems on paper to protect workers, it is clear that the U.S.' interpretation of workers' rights to organize and bargain collectively varies drastically from the ILO's convention C098; "[a]s a result, ILO standards provide greater protection of the right to organize than the analogous U.S. provisions."¹⁴² For example, "the NLRA provides workers the right to form, join, or assist labor organizations;" however, this right does not extend to federal employees, agricultural workers, independent contractors, or managers.¹⁴³ By contrast, the ILO standards provide greater protections, as those protections incorporate nearly all public employees as well as managers and supervisors.¹⁴⁴ Where the ILO Convention C098 allows for "freedom from employer and rival union interference in pursuing [union] activities, . . . U.S. labor law imposes [significant] limitations on union campaigning, solicitation, distribution of

¹³⁸ *Id.*

¹³⁹ *See id.*

¹⁴⁰ *See id.* Mr. Tilly specifically refers to Proposition 32 in California, as "designed to bar unions from political spending while building in loopholes that would allow corporate and wealthy donors to keep funds flowing." *Id.*

¹⁴¹ *See* INT'L TRADE UNION CONFEDERATION, *supra* note 125.

¹⁴² Weissbrodt & Mason, *supra* note 128, at 1847.

¹⁴³ *Id.* at 1847–48.

¹⁴⁴ *Id.* at 1848.

union material, and access to company property.”¹⁴⁵ Because of these limitations, the imbalance of power between U.S. employers and unions violates ILO standards, highlighting the substantial advantage employers have over manipulating union organization.¹⁴⁶

American labor groups, such as the AFL-CIO, have been more involved in recent years in utilizing the ILO’s complaint mechanisms.¹⁴⁷ In response to the National Labor Relations Board’s seemingly “anti-union” stance, in 2003 the AFL-CIO created a nonprofit group called American Rights at Work (ARAW), whose objective is to highlight deficiencies in U.S. labor law, specifically with organizing rights.¹⁴⁸ ARAW advocates for more “worker-friendly decisions” from the NLRB and stricter penalties for NLRA violations, using human rights language in their verbiage, and has even filed complaints with the ILO’s Committee on Freedom for Association.¹⁴⁹

Unlike Finland, where the construct of the worker/employer relations is collaborative and the government promotes union strength to minimize employer/employee discord, the United States’ structure is less collaborative and more hierarchical, where the “highest bidder” controls union presence. This hierarchy explains how the United States is more similarly ranked with Thailand, where the dictatorship ultimately controls labor policy.

D. CFA Complaints

Case No. 2292, filed August 14, 2003, involved the American Federation of Government Employees, representing nearly 600,000 workers, “alleg[ing] serious violations of the right to bargain collectively” by the Bush administration.¹⁵⁰ The complaint asserts that, while American federal law provides working persons in the United States the right to join, or refuse to join, a labor

¹⁴⁵ *Id.* at 1851.

¹⁴⁶ *Id.* at 1852.

¹⁴⁷ Kevin Kolben, *Labor Rights as Human Rights?*, 50 VA. J. INT’L L. 449, 463 (2010).

¹⁴⁸ *Id.* at 464.

¹⁴⁹ *Id.* at 463–64.

¹⁵⁰ *Report in Which the Committee Requests to be Kept Informed of Development—Report No 343*, INT’L LABOUR ORG., http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:70006:0::NO::P70006_COMPLAINT_TEXT_ID,P70006_PARAGRAPH_NO:2908140 (last visited Mar. 26, 2019) [hereinafter *Report No 343*].

union, the Federal Service Labor-Management Relations Statute (FSLMRS) restricts the scope of federal workers to collectively bargain by “excluding wages and other monetary issues and . . . protect[ing] . . . management rights.”¹⁵¹ “The FSLMRS also authorizes the President . . . to issue an order excluding otherwise covered federal agencies . . . ‘if the President determines that the agency . . . ’ in question falls under intelligence, counter-intelligence, or national security. “The current administration has continued the trend of ‘infringement and interference in the right to bargain collectively’ undertaken by predecessor administrations.”¹⁵²

Agencies affected by the order included the U.S. Attorneys’ offices, federal government positions which had exercised their rights to collectively bargain for nearly thirty years, and airport screeners, employed by the Transportation Security Administration.¹⁵³ While the government employee unions appreciate the importance of national security, particularly in the wake of the September 11, 2001, attack on U.S. soil, they asserted that “equally important is the protection of the rights of the federal employees who are ultimately responsible for assuring national security, . . . [as] decisions which affect them safeguard the public interest.”¹⁵⁴ In its reply, the U.S. Government began by reminding the ILO that it “ha[d] not ratified Conventions Nos. 87, 98, or 151,” and had no obligation to do so nor to incorporate those provisions into U.S. labor law.¹⁵⁵ The ILO Committee’s recommendations included prioritizing collective bargaining as a means to settle labor disputes “arising in connection with . . . public service [employment]” and requested that the U.S. Government review the specific “terms and conditions of employment of federal airport screeners” whose positions are not directly related to national security, allowing for those federal employees to engage in collective bargaining.¹⁵⁶ The TSA workers were ultimately allowed to vote for a union, whom they chose to be the American Federation of Government Employees (AFGE), in 2011, nearly eight years after the initial ILO complaint was filed.¹⁵⁷

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Report No 343, supra* note 153.

¹⁵⁷ *See Screeners for T.S.A. Select Union*, N.Y. TIMES (June 23, 2011), <https://www.nytimes.com/2011/06/24/business/24labor.html>.

In November 2009, the AFL-CIO filed a Complaint, Case No. 2741, with the ILO, on behalf of Transport Workers Union of America and Transport Workers Union of Greater New York, Local 100, alleging that “state legislation bars all strikes in the public sector, imposes excessive penalties on illegal strikes, and severely restricts the right to bargain collectively of transport workers in the public sector through compulsory arbitration.”¹⁵⁸ Specifically, the AFL-CIO cited Article 14 of the New York Civil Service Law, commonly known as the “Taylor Law,” which “bars all strikes in the public sector through a blanket prohibition on strikes . . . “ infringing on, among others, ILO Convention 98, both facially and as applied.¹⁵⁹ The Government, replying to the AFL-CIO’s complaint, stated that “[t]he regulation of labo[r] relations . . . respects the constitutionally-mandated distribution of power among . . . national, state, and local governments,” deferring to the NLRA’s exclusion of “state and local government employers from the scope of the law. . . .”¹⁶⁰ The Committee concluded that the strike restrictions outlined in the “Taylor Law” were “not in conformity with the principles of freedom of association,” and “request[ed] the Government . . . take steps aimed at bringing the law into conformity with freedom of association principles. . . .”¹⁶¹ The Committee’s recommendations included amending the “Taylor Law” to align it with freedom of association principles and encouraging the Government to ratify ILO Convention 98, thereby promoting the full respect for freedom of association principles throughout the country.¹⁶²

Another issue addressed by the ITUC is the workers who are excluded from the NLRA: independent contractors, public sector workers, domestic workers, and agricultural workers.¹⁶³ Specifically, undocumented workers are not allowed to collect

¹⁵⁸ *Report in Which the Committee Requests to be Kept informed of Development—Report No 362*, INT’L LABOUR ORG., http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMP_LAINT_TEXT_ID:2912150 (last visited May 4, 2018) [hereinafter *Report No 362*].

¹⁵⁹ *Id.* As of the end of the New York State Legislative Session in 2018, the Governor and Legislature enacted changes to the Taylor Law to help unions fortify for the impending restrictions from the U.S. Supreme Court decision in *Janus v. AFSCME Council 31*. *Taylor Law Changes Are Big Win for CSEA*, CSEA, <https://cseany.org/taylor-law-win> (last visited Mar. 26, 2019).

¹⁶⁰ *Report No 362*, *supra* note 161.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *See* INT’L TRADE UNION CONFEDERATION, *supra* note 125.

backpay, or to be reinstated as a remedy for unfair labor practices under the NLRA,¹⁶⁴ putting nearly 8 million unauthorized immigrants¹⁶⁵ at risk for labor rights violations. This issue has been addressed in more recent NLRB decisions, where “conditional reinstatement” could provide a viable resolution to undocumented workers’ complaints of labor rights violations.¹⁶⁶

*E. Illustrative Case – Hoffman Plastics Compounds, Inc., v. NLRB*¹⁶⁷

In May 1988, Hoffman Plastics hired José Castro after he presented seemingly legitimate documentation of his ability to work in the United States.¹⁶⁸ Six months later, the AFL-CIO began campaigning at Hoffman’s production plant, resulting in several employees, including Castro, supporting the campaign.¹⁶⁹ The following month, in January 1989, those employees were laid off.¹⁷⁰ The NLRB found that Hoffman “unlawfully selected” union-supporting employees for layoff “in violation of § 8(a)(3) of the [NLRA],” ordering Hoffman to “cease and desist from further [NLRA violations], post a notice . . . regarding the remedial order, and offer reinstatement and backpay to the . . . affected employees.”¹⁷¹ Hoffman initially agreed to the Board’s ruling, yet upon learning of Castro’s unlawfully gained employment, “the [Administrative Law Judge] found the Board precluded from awarding . . . backpay or reinstatement . . . “ holding that “such relief would be contrary to *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883 (1984). . . .”¹⁷² However, the Board reversed that ruling, awarding Castro backpay plus interest.¹⁷³

¹⁶⁴ *Id.*

¹⁶⁵ See Jens Manuel Krogstad et al., *5 Facts About Illegal Immigration in the U.S.*, PEW RES. CTR. (Nov. 28, 2018), <http://www.pewresearch.org/fact-tank/2017/04/27/5-facts-about-illegal-immigration-in-the-u-s/>.

¹⁶⁶ See Steven M. Swirsky, *NLRB Reiterates Its Position that Undocumented Workers are Entitled to “Conditional Reinstatement” in Unfair Labor Practice Cases*, MGMT. MEMO (May 20, 2015), <https://www.managementmemo.com/2015/05/20/nlr-reiterates-its-position-that-undocumented-workers-are-entitled-to-conditional-reinstatement-in-unfair-labor-practice-cases/>.

¹⁶⁷ See *Hoffman Plastics Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002).

¹⁶⁸ *Id.* at 140.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.* at 141.

¹⁷³ *Hoffman Plastics Compounds, Inc.*, 535 U.S. at 141–42.

The Supreme Court, granting certiorari after a denial of petition to the D.C. Court of Appeals, reversed the Board's backpay award, finding that, while Hoffman had committed several NLRA violations, the affected employees "had committed serious criminal acts."¹⁷⁴ The Supreme Court therefore held that "allowing the Board to award backpay to illegal aliens would unduly trench upon explicit statutory prohibitions critical to federal immigration policy, as expressed in the [Immigration Reform and Control Act]."¹⁷⁵ Justices Breyer, Stevens, Souter, and Ginsburg dissented, noting that the Board's "limited backpay order will *not* interfere with the implementation of immigration policy. Rather, it reasonably helps to deter unlawful activity that *both* labor laws *and* immigration laws seek to prevent."¹⁷⁶ It is with this Supreme Court ruling that the ILO's CFA recommendation in November 2003 was for the United States to amend its legislation, as the backpay and reinstatement restrictions "ma[k]e it difficult to enforce trade union rights" for undocumented workers. The United States has yet to implement the recommendations.¹⁷⁷

CONCLUSION

If the United States and Thai governments applied stricter enforcement of work pay and work conditions to ALL worker categories, especially positions vulnerable to exploitation (agriculture in the United States and fishing in Thailand), their repeated and systematic violations categorizations would improve. As human rights and labor rights also overlap in several respects, this stricter enforcement would also trigger an improvement in human rights. In 2016, the United Nations reported that with growing corporate power comes weaker labor rights.¹⁷⁸ "Most of

¹⁷⁴ *Id.* at 142–43.

¹⁷⁵ *Id.* at 151.

¹⁷⁶ *Id.* at 153 (Breyer, Stevens, Souter, and Ginsburg, JJ., dissenting).

¹⁷⁷ See INT'L TRADE UNION CONFEDERATION, *supra* note 124. See also *Lucas v. Jerusalem Café, LLC*, 721 F.3d 927 (8th Cir. 2013) (The Eighth Circuit held that undocumented workers are allowed to sue for backpay, opining that "[b]ecause the FLSA gives the workers a right to sue the employers and obtain a real remedy for a statutory wrong, the workers have both Article III and prudential standing to recover damages from the employers").

¹⁷⁸ *Labour Rights Are Human Rights: UN Report*, INDUSTRIALL GLOBAL UNION (Oct. 19, 2016), <http://www.industriall-union.org/labour-rights-are-human-rights-un-report>.

the world's workers are excluded from legal frameworks, and have no collective bargaining cover or union protection."¹⁷⁹ The United States has the ability to, and should, improve its global ranking regarding workers' rights and protections. At the fore should be recognition and ratification of all eight ILO fundamental conventions, or, at a minimum, ratifying C098, demonstrating the United States' commitment to fair treatment of all workers. As a global leader, the United States is often the example for other countries to follow, and sweeping ratification would send a message to the world community that labor rights for all workers must be a global imperative.

Stricter enforcement of the NLRA and Thai Labor Protection Act provisions concerning unfair labor practices would encourage employers to respect workers' rights already in place. Vulnerable workers, marginalized in American and Thai society, are more susceptible to unfair labor practices due to the imbalance of power, and generally will not report violations for fear of loss of employment. Including more types of workers and enforcing regulations currently in place would allow workers to gain more control over work conditions, union membership, and collective bargaining.

Backpay as a remedy for terminating employment of undocumented workers should be included as a provision in labor policy. If, as in *Hoffman Plastics*, the violating employer is required by law to repay undocumented workers, the result would be self-regulating; requiring backpay incentivizes employers to be more selective in their hiring practices. While reinstatement for undocumented workers may run afoul of immigration policy, where workers may qualify for work visas, reinstatement should be a possible remedy for wrongful termination, particularly within the realm of union membership.

By continuing this trend of employing vulnerable people for work that is near slave labor, the United States and Thailand perpetuate mistreatment of desperate people, and companies profit from this desperation, receiving little to no consequence for this conduct. This mistreatment reaches beyond labor law violations and becomes human rights violations. With Finland, much like their Nordic brethren, the emphasis on workers' rights protection over whether the worker is native or foreign, ensures that even where posted workers are present, like at the Olkiluoto

¹⁷⁹ *Id.*

3 site, the influence of the unions nevertheless ensures adequate pay and safe work conditions. From the three countries highlighted here, where a country is worker-centric, the labor violations are few.

Does the United States even consider their high ITUC ranking an issue in need of repair? It would not seem so. As the rich become richer, corporations continue to extend their global reach, and the treatment of employees in an employer-dominated world is of little import. Particularly in the U.S., companies look to manufacture and produce goods and services in countries with similar labor policies, perpetuating global labor rights violations and poverty: why buy the American cow when you can get the Indian/Bangladeshi/Chinese milk for (almost) free? Where the only consequences to implementing changes are more regulations and decreased revenue, what is the incentive to change? For the U.S., it will take politicians ready to represent their constituents to reign in big business, and to reverse the trend to enforce and encourage workers' rights and pay.