

# Foreign Labor Developments



## U.S. ends ILO moratorium by ratifying two conventions

TADD LINSENMAYER

On May 12, 1988, President Ronald Reagan formally ratified two conventions adopted by the International Labor Organization (ILO) in 1976. The U.S. Senate had given its nearly unanimous consent on February 1.

These two actions broke an undeclared but unyielding moratorium on ratification of ILO standards that had lasted 35 years—a moratorium which ILO advocates, particularly AFL-CIO President Lane Kirkland, argued was eroding American influence in the organization. In Senate hearings, Kirkland, along with former Labor Secretary William E. Brock and Secretary of State George P. Shultz, noted that the United States was the target of increasingly sharp criticism not only from Communist countries, but from U.S. allies as well, for failing to ratify ILO standards.

Ratification of the two new conventions still leaves the U.S. ratification record—9 ratifications out of more than 160 ILO standards—far behind most other ILO members. The U.S. action nevertheless is historic. (See exhibit 1.) Not only is this the first American ratification of ILO standards since 1953, but one of the conventions is the first nonmaritime ILO standard ever ratified by the United States.

Prior to the ratification of the new standards, all but one of the U.S. ratifications involved ILO maritime standards (the remaining ratification is a purely procedural agreement transferring the ILO from the old League of Nations to the United Nations). One of the two new ratifications is similarly in the maritime field. Approved by a Senate vote of 84 to 0, Convention No. 147 (Minimum Standards in Merchant Ships) requires ratifying countries to ensure effective safety and health condi-

tions on board ships flying their flag or ships calling at their ports.

Convention No. 144 (Tripartite Consultations), which the Senate approved by an 81 to 2 margin, is the first nonmaritime convention ever ratified. It requires governments to establish effective machinery to ensure tripartite (government, worker, employer) consultation on ILO-related issues, including reviewing the possible ratification of other ILO standards.

This requirement became a matter of considerable controversy, and led to a remarkable compromise between American worker and employer delegates to the ILO. U.S. employers have long been concerned that ratification of ILO standards might adversely affect existing U.S. labor law because of the Constitution's supremacy clause making international treaties the supreme law of the land. For that reason, they were initially opposed to the ratification of any nonmaritime standards.

What finally allowed ratification of Convention No. 144 to move ahead was an agreement on a statement of principles concerning how the United States would review other ILO standards for possible ratification. The President's Committee on the ILO, a Federal advisory committee chaired by the Secretary of Labor and including representatives of business and labor, established three fundamental ratification principles:

- Each ILO convention will be examined on its merits on a tripartite basis;
- If there are any differences between the convention and Federal law and practice, these will be dealt with in the normal legislative process; and
- There is no intention to change State law and practice by Federal action through ratification of ILO conventions, and the examination will include possible conflicts between Federal and State law that would be caused by such ratification.

These principles will apply to all ILO standards being considered for possible U.S. ratification, including several key human rights and technical standards now before a tripartite subcommittee of the President's Committee on the ILO.

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**Exhibit 1. Chronology of American participation in the ILO**

1919 .....	Samuel Gompers chairs the commission which drafts the ILO Constitution
1920 .....	U.S. Senate refuses to join the League of Nations or the ILO
1934 .....	U.S. joins the ILO
1938 .....	U.S. ratifies five ILO conventions (only two others are ratified 1938-88)
1970 .....	U.S. withholds ILO funds, charging pro-Soviet bias
1972 .....	U.S. restores ILO funds, citing progress on reforms
1975 .....	After ILO recognizes Palestine Liberation Organization, U.S. files letter of intent to withdraw
1977 .....	U.S. withdrawal takes effect
1980 .....	U.S. rejoins ILO
1988 .....	U.S. ratifies two ILO conventions, including first nonmaritime convention

American delegates to the forthcoming 1988 ILO conference, which meets in Geneva, Switzerland, June 1-22, say ratification of these two conventions should boost U.S. credibility in the organization. Edward J. Hickey Jr., longtime AFL-CIO representative in the ILO Conference Committee on the Application of Conventions and Recommendations, claims these ratifications will be particularly helpful during the 1988 conference in dealing with worker rights violations in other countries. Says Hickey, "Every time we point to problems in other countries, they point right back at our poor ratification record. Now we can show them we're doing something about it."

In spite of this optimism on worker rights issues, several other 1988 ILO conference issues may prove more difficult than those in the 1987 conference. A number of Americans who attended the 1987 conference described it as being surprisingly calm, and fear the mood may not be as "mellow" in 1988.

The 1987 conference agenda, for example, contained few issues requiring decisions. Two of the technical agenda items—those concerning employment promotion and construction safety—were before the conference for preliminary discussion. The 1988 conference, however, will have to vote on new conventions and recommendations on these issues. A third technical item in 1987 concerning ILO technical cooperation programs resulted in the adoption of noncontroversial general conclusions. This will be replaced in 1988 by two new and potentially contentious issues: proposed new standards on the rights

of indigenous and tribal populations, and principles for rural employment promotion.

The 1987 ILO conference also temporarily sidestepped a challenge to the credentials of the Polish worker delegation, an issue which delegates to the 1988 conference may have to face squarely. The 1987 challenge, filed by Western worker delegates, charged that the Polish government had neither consulted *Solidarnosc* nor included any of its members in the Polish worker delegation, in violation of the ILO Constitution. The conference avoided a vote on this challenge by adopting a compromise report calling on Poland to consult *Solidarnosc* in the future. The Polish government, however, emphatically rejected this report, and according to recent press reports has shown no willingness to work with *Solidarnosc* since then. That may spark a new challenge for credentials in 1988 and a politically charged showdown vote.

The 1988 conference may also face other potentially contentious issues involving apartheid, as well as an annual survey on Israel and the occupied territories. But whatever else happens during the conference, 1988 will surely go into the record books as an important new milestone in the history of American involvement in the ILO. □

## The landmark provisions of ratified ILO conventions

JOSEPH P. GOLDBERG

Past U.S. inaction concerning the ratification of International Labor Organization (ILO) conventions was the result of concern over whether these conventions would overshadow existing Federal and State labor laws. The avenue to ratification was eased by the establishment of the President's Committee on the ILO. (The members of the Committee are the Secretaries of Labor, State, and Commerce; the President's Assistant for National Security Affairs; and the presidents of the AFL-CIO and the U.S. Council for International Business.) Its subordinate, the Tripartite Advisory Committee on International Labor Standards, had found unanimously that both conventions are consistent with U.S. law and practice.

Convention No. 144, (concerning tripartite consultation to promote the implementation of international labor standards) had been adopted at the 1976 ILO Conference, with the support of the U.S. Government, and employer and worker delegates. It requires ratifying members to establish and maintain machinery to ensure effective

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