

**Committee of Experts on the Application
of Conventions and Recommendations
(CEACR)**

Observations 2016

Regional file by country -

NORTH AMERICA

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Observation 2016

The Committee notes the observations of the Canadian Labour Congress (CLC) received on 1 September 2016, concerning issues examined in the present observation. The Committee also notes the observations received on 1 September 2014 and 1 September 2016 from the International Organisation of Employers (IOE), which are of a general nature.

Article 2 of the Convention. Right to organize of certain categories of workers. Province of Alberta. Recalling that it previously expressed its concern at the denial of the right to organize of agricultural workers in Alberta, the Committee notes with **interest** the adoption of the Enhanced Protection for Farm and Ranch Workers Act in 2015. The Act amends the Labour Relations Code to remove the exclusion of agricultural workers from employee status. The Government indicates that the labour relations component of the Act will be proclaimed once further technical discussions occur with unions, workers and employers, in order to identify any specific provisions in the Code that should apply to the agricultural sector and that such discussions are ongoing. Recalling that it previously expressed its concern at the denial of the right to organize of architects, dentists, land surveyors, lawyers, doctors, engineers, domestic workers, nursing personnel and higher educational staff in Alberta, the Committee notes the Government's statement that the Provincial Government intends to review the Labour Relations Code in 2016–17, including a review of these exclusions. It also indicates that it is in the process of reviewing the Post-secondary Learning Act, with the intention of extending full associational and collective bargaining rights to academic staff at Alberta's post-secondary institutions. **The Committee requests the Government to continue to provide information on the outcome of the technical discussions with respect to the application of the Labour Relations Code to agricultural workers, as well as on the outcome of the review of the Labour Relations Code and the Post-secondary Learning Act with respect to the other categories of workers identified above.**

Province of Ontario. (i) Agricultural workers. The Committee once again notes that the Provincial Government does not envisage amending the Agricultural Employees Protection Act, which, as the Committee previously noted, gives agricultural employees the right to form or join an employees' association, but maintains the exclusion of those workers from the Labour Relations Act and does not provide a right to a statutory collective bargaining regime. It notes the Government's statement that it does not have any statistics on the number of workers represented by an employee association or trade union, if any, under the Act.

(ii) Architects, dentists, land surveyors, lawyers, doctors, engineers, domestic workers, principals and vice-principals in educational establishments and community workers. The Committee notes the Government's statement that the exclusions of coverage of the Labour Relations Act will be considered by the ongoing review of Ontario's labour and employment legislation, which began in 2015.

Other provinces. In addition, the Committee recalls that for many years it has been expressing its concern at the denial of the right to organize to broad categories of workers in the following provinces: New Brunswick (domestic workers); Nova Scotia (architects, dentists, land surveyors, lawyers, doctors, engineers); Prince Edward Island (architects, dentists, land surveyors, lawyers, doctors, engineers); and Saskatchewan (architects, dentists, land surveyors, lawyers, doctors, engineers, domestic workers). In this respect, it notes an absence of information in the Government's report, in reply to its previous request, on measures taken or envisaged.

The Committee requests the Government to take measures to ensure that all the provincial governments concerned take the necessary measures to guarantee that all the categories of workers mentioned above enjoy the right to establish and join organizations of their own choosing, as well as other rights recognized in the Convention. The Committee requests the Government to provide information on the measures taken in this respect.

Article 3. Right of organizations to freely organize their activities and to formulate their programmes. The Committee previously noted the conclusions and recommendations of the Committee on Freedom of Association with respect to Case No. 2654 (356th Report, paragraphs 361–384) which called upon the provincial authorities to review and amend the Public Service Essential Services Act and the Act to amend the Trade Union Act of the province of Saskatchewan, and it requested information on developments in this respect.

The Committee notes with **satisfaction** the information provided by the Government that in 2015 the Supreme Court of Canada established, in a trilogy of cases, that the scope of constitutional protection of workers' rights under section 2(d) of the Constitution (concerning freedom of association) protects the right of employees to join a trade union of their choosing that is independent of management; engage in a meaningful process of collective bargaining, which requires good faith labour–management dialogue; and engage in strike action, within certain limits.

Province of Saskatchewan. The Committee notes that the Court found, in this respect, the Public Service Essential Services Act to be unconstitutional. It notes with **satisfaction** that the Provincial Government of Saskatchewan subsequently adopted, in 2016, amendments to the Act, and that these amendments were in accordance with the Committee's previous request.

The Committee is raising other matters in a request addressed directly to the Government.

Puerto Rico

C055 - Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)

Observation 2016

The Committee requests the Government to refer to the observation made concerning the application of the above listed Conventions by the United States.

The Committee is raising other matters in a request addressed directly to the Government.

C147 - Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)

Observation 2016

The Committee requests the Government to refer to the observation made concerning the application of the above listed Conventions by the United States.

The Committee is raising other matters in a request addressed directly to the Government.

C055 - Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)

Observation 2016

The Committee notes that in its reports sent on the application of the abovementioned maritime Conventions, the Government indicates that: (i) the President's Committee meeting on the ILO (PC-ILO) called on the PC-ILO's Tripartite Advisory Panel on International Labor Standards (TAPILS), in conjunction with the US Coast Guard, to expedite and complete its review of the Maritime Labour Convention, 2006 (MLC, 2006), and to report to the PC-ILO on the feasibility of ratification; (ii) the US regulations were amended to create a new Standards of Training, Certification and Watchkeeping for Seafarers (STCW) endorsement for able seafarer deck; and (iii) the US Coast Guard adopted the Navigation and Vessel Inspection Circular (NVIC) No. 02-13 on Guidance Implementing the MLC, 2006. While noting these efforts to bring the national legislation into conformity with the MLC, 2006, and assess the feasibility of its ratification, the Committee will continue to examine the conformity of national legislation with the requirements of ratified maritime Conventions. In order to provide a comprehensive view of the issues to be addressed in relation to the application of these Conventions, the Committee considers it appropriate to examine these issues in a consolidated comment, as follows.

Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)

Article 1(1) of the Convention, read in conjunction with Articles 2, 9 and 11. Scope of application and equality of treatment for all seafarers. For many years, the Committee has been referring to the need to amend Title 46 of the United States Code (USC) §30105 which prohibits non-resident foreign seafarers working on vessels registered in the United States from claiming injury or death benefits if they are employed by a person engaged in the exploration, development or production of offshore mineral or energy resources, and the incident occurred in the territorial waters or waters overlaying the continental shelf of a foreign nation. The Committee notes that the Government indicates in its report that in this circumstance, an injured non-resident foreign seafarer must first pursue legal remedies in a court of the foreign country that asserts jurisdiction over where the incident occurred or in the country in which the seafarer is a citizen. The Government further indicates that: (i) should there be no legal remedy available in the foreign countries, the seafarer may pursue legal remedies in the United States; (ii) prior to the enactment of 46 USC §30105, United States courts would have been forced to subject the parties to the time and cost of making a forum non convenience determination; and (iii) 46 USC §30105 does not negate any responsibilities of the shipowner, it simply assists the seafarer in applying the most appropriate forum. While taking due note of this information, the Committee reiterates that, in accordance with *Article 11* of the Convention, all seafarers, irrespective of nationality, domicile or race, must enjoy equality of treatment. The Committee also recalls that it is clear from *Article 9* of the Convention that the member State concerned has to secure rapid and inexpensive settlement of disputes concerning the shipowner's liability. **The Committee therefore requests the Government, once again, to take the necessary measures to fully implement the Convention ensuring equality of treatment to all seafarers irrespective of their nationality and domicile and to secure rapid and inexpensive settlement of disputes concerning the shipowner's liability.**

Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)

Article 2(a)(i) of the Convention. Safety standards. Substantial equivalence to the requirements of Article 5(1) of Medical Examination (Seafarers) Convention, 1946 (No. 73). Medical examination. The Committee recalls its previous comments on the need to amend former legislation which compelled medical examinations of seafarers only every five years and failed to ensure substantial equivalence to the compulsory medical examination for seafarers once every two years as required by Article 5(1) of Convention No. 73. The Committee notes that the Government indicates in its report that, in 2013, the Coast Guard adopted new rule (Title 46 of the Code of Federal Regulations (CFR)) §10.301(b)(1) in the context of the implementation of the STCW, providing that medical certificates of mariners serving under the authority of an STCW endorsement are issued for a maximum period of two years unless the mariner is under the age of 18, in which case the maximum period of validity is one year. The Committee takes note with **satisfaction** of the adoption of this regulation.

The Committee is raising other matters in a request addressed directly to the Government.

C147 - Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)

Observation 2016

The Committee notes that in its reports sent on the application of the abovementioned maritime Conventions, the Government indicates that: (i) the President's Committee meeting on the ILO (PC-ILO) called on the PC-ILO's Tripartite Advisory Panel on International Labor Standards (TAPILS), in conjunction with the US Coast Guard, to expedite and complete its review of the Maritime Labour Convention, 2006 (MLC, 2006), and to report to the PC-ILO on the feasibility of ratification; (ii) the US regulations were amended to create a new Standards of Training, Certification and Watchkeeping for Seafarers (STCW) endorsement for able seafarer deck; and (iii) the US Coast Guard adopted the Navigation and Vessel Inspection Circular (NVIC) No. 02-13 on Guidance Implementing the MLC, 2006. While noting these efforts to bring the national legislation into conformity with the MLC, 2006, and assess the feasibility of its ratification, the Committee will continue to examine the conformity of national legislation with the requirements of ratified maritime Conventions. In order to provide a comprehensive view of the issues to be addressed in relation to the application of these Conventions, the Committee considers it appropriate to examine these issues in a consolidated comment, as follows.

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The Committee is raising other matters in a request addressed directly to the Government.

United States

C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)

Observation 2016

United States

Articles 4(1), 5 and 7(1) of the Convention. Determination of types of hazardous work, monitoring mechanisms and penalties. Hazardous work in agriculture from 16 years of age. The Committee previously noted that section 213 of the Fair Labor Standards Act (FLSA) permits children aged 16 years and above to undertake, in the agricultural sector, occupations declared to be hazardous or detrimental to their health or well-being by the Secretary of Labor. The Government, referring to Paragraph 4 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190), stated that Congress considered it as safe and appropriate for children from the age of 16 years to perform work in the agricultural sector. However, the Committee noted the allegation of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) that a significant number of children under 18 years were employed in agriculture under dangerous conditions, including long hours and exposure to pesticides, with risk of serious injury. The Committee also took note of the observations of the International Organisation of Employers (IOE) and the United States Council for International Business (USCIB) that section 213 of the FLSA, which was the product of extensive consultation with the social partners, is in compliance with the text of the Convention and Paragraph 4 of Recommendation No. 190.

The Committee took note that the Department of Labor's Wage and Hour Division (WHD) continued to focus on improving the safety of children working in agriculture and protecting the greatest number of agricultural workers. In addition, the Occupational Safety and Health Administration (OSHA) increased its focus on agriculture by creating the Office of Maritime and Agriculture (OMA) in 2012, which is responsible for the planning, development and publication of safety and health regulations covering workers in the agricultural industry, as well as guidance documents on specific topics, such as ladder safety in orchards and tractor safety.

The Committee also noted the Government's detailed information concerning the intensification of its efforts to protect young agricultural workers' occupational safety and health. While welcoming such measures, the Committee reminded the Government that work in agriculture was found to be "particularly hazardous for the employment of children" by the Secretary of Labor. In this regard, according to the website of the OSHA, agriculture ranked among the most dangerous industries.

The Committee notes the Government's statement in its report that it remains firmly committed to seeking improvements in child labour safety and health, in particular in agriculture, in full compliance with the requirements of Convention No. 182. There have been numerous increases in the protections of children in both law and practice relating to agricultural work. Chief among these efforts, the WHD continues to focus on improving the safety of children working in agriculture, building upon the Agency's long history of protecting workers, especially children, in the industry. One of the WHD's key strategies is to use education and outreach to promote understanding of agricultural employers' and workers' rights and responsibilities alike. For example, the WHD provides guidance on child labour laws to youth, parents, educators and employers through its YouthRules! website, a comprehensive site providing information and resources for youth at work. The WHD provides a variety of fact sheets and e tools to employers and young workers to inform and train employers and young workers in a wide range of occupations, including agricultural occupations. In this regard, both the WHD, OSHA and the National Institute for Occupational Safety and Health (NIOSH), continue to engage in extensive outreach activities to reach young workers, such as career expositions and fairs, training seminars, and youth programmes to keep young persons under 18 safe and healthy on the job and to make them aware of their rights under the OSH Act. For example, OSHA and NIOSH have collaborated to inform young workers about the hazards of tobacco farming, providing information about green tobacco sickness as many young workers work in tobacco harvesting fields in the United States. Information on green tobacco sickness is highlighted on OSHA's primary website for agricultural operations.

With regard to enforcement, the Committee notes the Government's indication that the WHD has opened new offices, hired new inspectors to maintain an inspection force of approximately 1,000 inspectors, and increased the number of outreach and planning specialists to cover nearly all of the agency's 55 district offices. Nearly 700 WHD employees speak a language in addition to English (more than 500 WHD employees speak Spanish). WHD's multilingual employees speak nearly 50 languages.

Moreover, the WHD further strengthened its protection of young workers by making full use of the regulatory tools available to it, including the new "hot goods" provision and the Child Labor Enhanced Penalty Program, which have enabled the WHD to impose increased penalties on violators of child labour law. For example, during the reporting period, the WHD imposed penalties of \$40,000 and \$56,000 on manufacturers in Ohio and Indiana for child labour violations that had resulted in severe injuries to young workers. In December 2015, the WHD assessed a \$63,000 penalty against an Ohio chicken processing facility for violating child labour laws when a 17 year-old was severely injured operating and cleaning hazardous poultry processing equipment. The WHD assessed a nearly \$2 million penalty on a Utah pecan grower for child labour violations in April 2015.

The Committee further notes the Government's statement that the health and safety of all agricultural workers, including children, is further protected through the Environmental Protection Agency's Worker Protection Standard (WPS) (40 C.F.R. Part 170), which protects over 2 million agricultural workers (people involved in the production of agricultural plants) and pesticide handlers (people who mix, load, or apply crop pesticides) who work at over 600,000 agricultural establishments (farms, forests, nurseries and greenhouses) from occupational exposure and provides information about avoiding pesticide exposure, what to do in the event of an accidental exposure, and when to stay out of a pesticide-treated area. The Government points out that although previously, there was no federal minimum age for handling agricultural pesticides, this standard has been revised to provide increased protections for workers which take effect in January 2017. In this regard, the Committee notes with interest that, under the revised standard children under 18 are prohibited from handling agricultural pesticides.

The Committee finally notes the Government's information regarding the youth surveys conducted by the US Department of Agriculture's National Agricultural Statistics Service (NASS), which developed a surveillance system to track and assess the magnitude and characteristics of non-fatal injuries to youth on US farming operations. Two types of youth surveys are conducted by NASS for NIOSH, one of which is the Childhood Agricultural Injury Survey (CAIS), which is representative of all farms in the country.

The most recent CAIS collected data for youth and youth injuries that occurred during the 2014 calendar year. For 2014, there were an estimated 892,000 youth under 18 years of age living on (household youth) or hired to work on US farms. Of this total, there were 744,000 household youth under 18 years of age, of which 376,000 (50.5 per cent) were reported to have performed work on the farm during the year. The remaining 148,000 youth were hired to work on these farms. Combining household workers with hired workers resulted in an estimated 524,000 youth under 18 years of age who worked on farms in 2014, down from 854,000 working youth under 18 years of age in 2001. The 2014 CAIS indicates that there were an estimated 10,400 injuries to all youth under 18 years of age on US farms, with 64 per cent of injuries occurring to household youth. An estimated 30 per cent of these injuries were work-related.

The Committee notes the Government's statement that the overall number of injuries to youth under 18 years of age on farms decreased by 63 per cent between 1998 and 2014 (28,100 to 10,400), with work-related injuries decreasing by 70 per cent over the same period. An examination of the combined CAIS estimates from all six years of the survey (2001, 2004, 2006, 2009, 2012 and 2014) finds an estimated 34,000 working youth suffered injuries on US farms, of which 3,600 were under the age of 10 years, 13,900 were between the ages of 10 and 15 years, and 8,400 injuries were youth between 16 and 17 years of age. Lacerations and fractures were the most common types of injuries reported in 2014.

The Committee takes due note of the various awareness-raising, educational, inspection and enforcement initiatives taken by the Government to protect the health and safety of young persons working in agriculture and to reduce the number of their work-related injuries on farms. However, the Committee further notes that despite the various government initiatives and programmes to better protect the health and safety of children working in the agricultural industry, a number of children under 18 years still suffer injuries, some serious, while engaged in farm work. In this regard, the Committee recalls that work which, by its nature or the circumstances in which it is carried out was likely to harm the health, safety or morals of children, constitutes one of the worst forms of child labour and, therefore, member States are required to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. While *Article 4(1)* of the Convention allows the types of hazardous work to be determined by national laws or regulations or the

United States

competent authority, after consultation with the social partners, the Committee notes that in practice, the agricultural sector, which is not on the list of hazardous types of work, remains an industry that is particularly hazardous to young persons. ***The Committee accordingly encourages the Government to continue taking effective and time-bound measures to ensure that children under 18 years of age only be permitted to perform work in agriculture on the condition that their health and safety are protected and that they receive adequate specific instruction. It requests the Government to pursue its efforts to strengthen the capacity of the institutions responsible for the monitoring of child labour in agriculture, to protect child agricultural workers from hazardous work. The Committee also requests the Government to continue providing detailed statistical information on child labour in agriculture, including the number of work-related injuries of children working in agriculture, as well as the extent and nature of child labour violations detected, investigations carried out, prosecutions, convictions and penalties applied.***

United States Virgin Islands

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