ECONOMIC AND SOCIAL COUNCIL

Formulating permissible restrictions for limiting employees' right to collective action

Research Report

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Fake news

Forum: *Economic and Social Council*

Issue: *Formulating permissible restrictions for limiting employees' right to collective action*

Position: *Deputy President*

Introduction

In the process of production, employees are characterised by classical economics as passive instruments. Nowadays, numerous places have acquired the viewpoint that employees should not only be motivated by money, in order to work more efficiently and put in more effort. The employee should have a good work-life balance, sufficient income for the value they add to the company, and a fulfilling job . The employer needs the company to make as much profit as possible. Finding harmony between fulfilling these two needs seems simple at first glance. However, they have to deal with a natural conflict of interests, every company has to deal with competition, and there is a power dynamic at play. The power dynamic is one of the reasons it is hard for an employee to bargain with their employer. When employees feel that bargaining with the employer is required but unfortunately not probable, taking collective action could deem to be helpful.

The power of collective action cannot be understated: it enables employees to change the power dynamic. However, while it increases the employees' chances of getting what they want, it can have a significant (negative) impact on the company's reputation, profit, and structure. So, it comes as no surprise that business owners and employers try to limit their employees' ability to take collective action.

The laws and conventions developed countries and the UN have created on the right to collective action all mention the right is allowed to be limited according to national and governmental law. However some companies have taken their limitations, in the opinion of the EU and the UN, too far. For example, Tesla does not allow their employees to be a member of a union. Various other American and Asian companies have been in the news because of similar situations.

Taking into consideration the necessary enjoyability level of jobs and the aiming prosperity of businesses, the interests of the employer and the employee should be balanced. This will be both advantageous for the global economy, perhaps achieving the UN Sustainable Development Goals. More specifically, goals eight, nine, ten, twelve, and sixteen, which cover the issues of eradicating poverty, minimizing disparities, promoting responsible consumption and production, advancing infrastructure development, and promoting peace, justice, and

sound institutions.

Figure 1: The UN SDGs [1]

Definition of Key Terms

Collective action / bargaining :

When using the term collective bargaining we refer to the process through which employees in groups, have contract wise discussions with their superiors to agree upon their workplace conditions, such as income, benefits, duties, days off, occupational health and safety regulations, methods to balance work and family, and more.

Labor relations :

The relationship between employers and employees in a business, as well as the political choices and policies that impact it, are referred to as labor relations.

Grievances :

A dissatisfaction or a strong sense that you have been mistreated, in this case in terms of workplace treatment.

Ratify :

"(especially of governments or organizations) to make an agreement official." [2]

Deregulate :

"To remove national or local government controls from a business or other activity." [3]

'Race to the bottom' :

A social-economic concept in which developing countries are deregulating to attract investment and retain their competitive advantage. This results in worsening working conditions and wages, as well as a plethora of human rights issues.

Multinational company / corporation (MNC) :

Any corporation that is registered and functions in more than one country at the same time, commonly known as a transnational corporation. In most cases, the corporation has its headquarters in one nation and has totally or partially owned subsidiaries in others. Its subsidiaries report to the corporation's main office.

General Overview

People who call out their company due to grievances or other negative situations within their work environment are referred to as whistle blower. Even though whistle blowers do an honorable job, it is not always appreciated, especially by their company. In figure 2 it is

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[1] UN Editors. (n.d.). *Sustainable Development Goals* [Illustration]. United Nations. https://www.un.org/en/sustainable-development-goals. Accessed 1 Aug. 2022.

[2] ---. "Ratify." *Dictionary.cambridge.org*, dictionary.cambridge.org/dictionary/english/ratify. Accessed 4 Aug. 2022.

[3] ---. "Deregulate." *@CambridgeWords*, 3 Aug. 2022, dictionary.cambridge.org/dictionary/english/deregulate. Accessed 4 Aug. 2022.

discernible that in most countries 50% or less of the working population is covered in such action of collective bargaining. In many countries it will cost you your job and possibly your reputation and chances at future jobs. It is a very risky way to get rid of one problematic company or situation within a company, and sometimes it will not even be effective. Since the disadvantages outweigh the advantages, we cannot rely on this method to stop those crossing the labor standards line. The best way to regulate the way in which organizations limit the employees' right to collective action is to create laws guiding the process and improvement of labor relations.

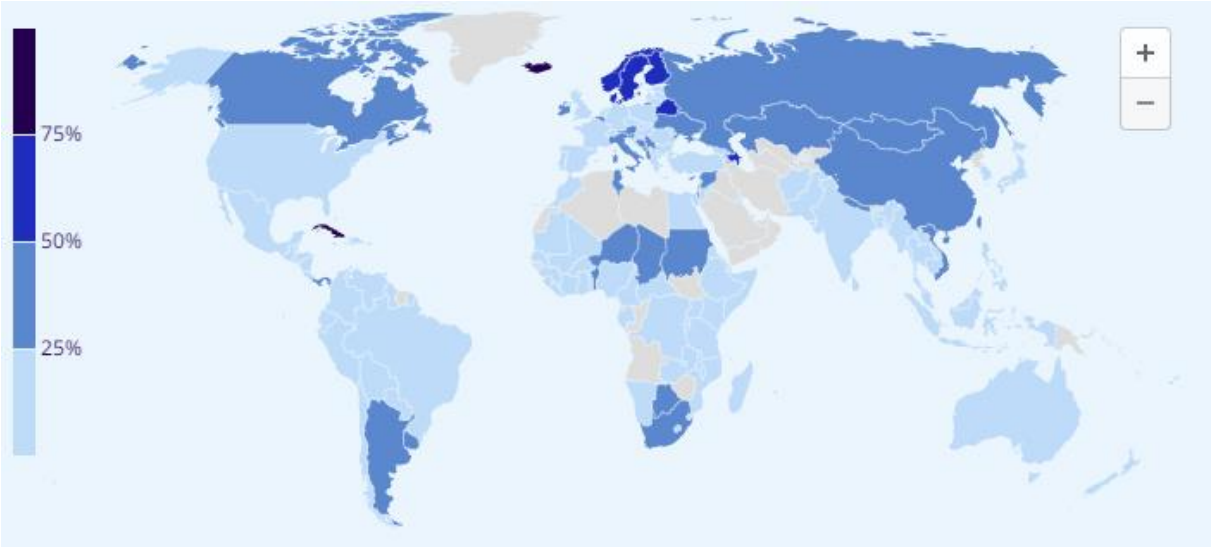

Figure 2: Collective bargaining coverage rates around the world [4]

International rules

All UN and International Labor Organization (ILO) members are subjected to some kind of rule which expresses that their employees' should have the right to collective bargaining. Two notable agreements on this subject from the ILO are: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR), and from the UN the Universal Declaration of Human Rights. However, they all state the right is allowed to be limited by national or governmental law. It is not clarified how it is allowed to be limited, which allows countries for whom it is in their interest to neglect labor standards to neglect the labor standards. The problem that arises is that not everyone is able to safely exercise their right. It allows space for exploitation, contemporary slavery, other forms of forced labour, and the worst forms of child labour.

The UN has criticized the World Trade Organization (WTO) for not having jurisdiction on labor standards. The WTO was supposed to have jurisdiction on labor standards, however member states could not come to an agreement, which resulted in a compromise. The member states never succeeded to edit it to include labor standards.

History of labor unions

Labor unions, or trade unions, started appearing at first in the US, UK, and continental Europe. It took some time for them to evolve into what are now also called industrial unions.

[4] ILO Department of Statistics. "Collective Bargaining." *ILOSTAT*, 5 May 2022, ilostat.ilo.org/topics/collective-bargaining/. Accessed 5 Aug. 2022.

The US right-to-work law weakened collective bargaining and political activities of unions in their country by depriving them of funds. The right-to-work law entails that, in the states where the law is activated, contracts that require employees to join a union, and pay a members fee, are prohibited. The US federal law requires unions to represent all workers, regardless of whether they pay union dues. The right-to-work law encourages free riders, benefiting from union services at no cost to them, which increases the costs of operating and maintaining a union organization.[5] The race to the bottom of developing countries also contributed to weakening collective bargaining in their respective industries. This is because it was no use arguing about higher wages if the company could move the production process to a developing country with inexpensive staff for a more affordable production.

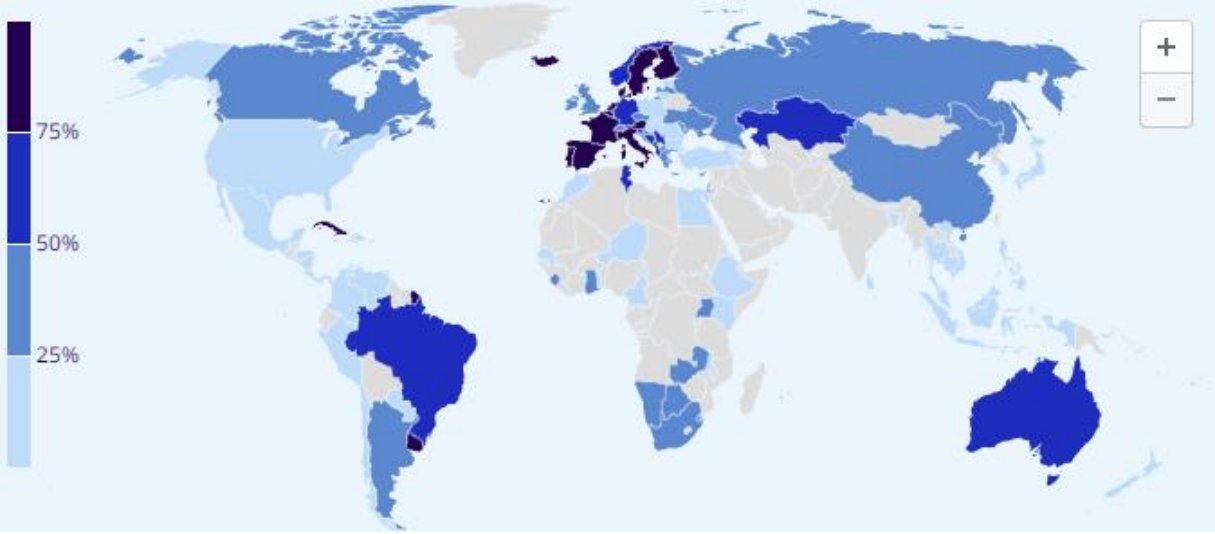

Figure 3: Trade union density around the world [6]

The role of multinationals

Currently every country is fighting hard to attract, preferably, multinational companies to boost their economy. The fight is even harsher for developing countries than for already developed countries. The 'race to the bottom' demonstrates this very well. An example of the consequences of the race to the bottom is the Rana Plaza disaster in Bangladesh in 2013. On the back of low wages and cheap costs to set up shop, Bangladesh had become the world's second-biggest garment manufacturing center. The Rana Plaza building in Dhaka was a garment factory that violated several building codes of local laws. Nevertheless, enforcement of these codes was lax, resulting in a collapse that killed a thousand workers.[7]

In such a situation it is clear that financial arguments are interfering with human rights in the

[5] Kenton, Will, and Michael J. Boyle. "What Is the Right-To-Work Law?" *Investopedia*, 2019, www.investopedia.com/terms/r/righttowork-law.asp. Accessed 4 Aug. 2022.
[6] ---. "Union Membership." *ILOSTAT*, 5 May 2022, ilostat.ilo.org/topics/union-membership/. Accessed 3 Aug. 2022.
[7] Chen, James, and Robert C. Kelly. "What Is the Race to the Bottom?" *Investopedia*, 30 Dec. 2020, www.investopedia.com/terms/r/race-bottom.asp#:%7E:text=Example%20of%20a%20Race%20to%20the%20Bottom&text=According%20to%20recent%20research%2C%20low. Accessed 3 Aug. 2022.

form of core labor standards. It is discernible that law needs to interfere to guide the serving of the interests of the employers in a way that it does not compromise the workers' rights and labor standards. It is difficult to guess what economic consequences this interference would have on a developing country. On one hand, every WTO member will have to change their approach to labor standards which means their competitive advantage compared to each other would not suffer. Of course there are all kinds of factors which could influence this. On the other hand, however, it might cost the developing countries way more than they can afford, and influence the local and worldwide purchasing power.

Major Parties Involved

China

China has been known for incidents of forced labour and modern slavery with for example the Uyghurs. A lot of cheap production for big companies happens in China. China is one of the countries in which it is dangerous to speak up, since it might cost your freedom or even your life. They censor almost all information that comes out about what is going on inside the country, which makes it difficult to get a good picture of their labor standards scenario. It is widely known outside of China that the Uyghurs are put to forced labor with intentionally low labor standards. This already violates two of the core labor standards of the ILO.

United States (US)

Even though they are western countries as well, work culture in the US together with the UK was never approved of in continental European culture. In the US and the UK the only responsibility of companies is to make profit and increase the worth of their shares. Which means the shareholders and the top managers need to make as much money as possible. A popular business model to fulfill their task is to decrease the costs of the production process, with that of the wages of their (lowest) staff. Marketing is very important to companies in the US. This causes companies, for example Tesla, to prohibit their employees from joining a union to protect the company's image. It becomes unsafe for employees to blow the whistle if something is wrong within the company or because of grievances. In the opinion of continental European countries a company should keep in mind the interests of all the stakeholders, which includes their employees.

Bangladesh

Bangladesh, the world's second-biggest garment manufacturing center, is one of the developing countries the 'race to the bottom' phenomenon describes. They successfully attracted multinationals and smaller companies to their country for cheap production. The readymade fashion industry is the biggest contributor to their GDP. Labor standards are not being respected in this industry in Bangladesh, the Rana Plaza disaster of 2013 shows the size of the consequences of the 'race to the bottom' tactic. The World Bank estimates the government effectiveness of Bangladesh -0.8 on a scale of -2,5 to 2,5. And Bangladesh scores 16.8 on corruption, in which scale 0 means completely corrupt and 100 completely pure. This would mean Bangladesh is quite a corrupt country which would need a lot of support if it wants or needs to adapt changes to their labor standards approach. Bangladesh can be seen as an example of the situation in developing countries, for example in Qatar labor standards are treated the same way and they had a public scandal as well with forced labor to build a FIFA stadium.

Qatar

At the end of the year 2022 the FIFA World Cup will be held in Qatar. This is the first time the tournament will take place in an Asian country, and Qatar is preparing to impress.

However good the end result might be, the way they organized their preparations made a terrible impression. Amnesty International found eight ways in which the (migrant) workers building for example the stadium were exploited: expensive recruitment fees, appalling living conditions, lies about salary, delayed salaries, cannot leave the stadium or camp, cannot leave the country or change jobs, they are threatened, and kept in forced labor. In contrast the FIFA and the construction companies and sponsors will likely make enormous financial gains during the tournament. Qatar signed a contract with the ILO to improve the situation once the news about the workers' situation came out, to improve the labor standards. At the moment Qatar has made progress on the subject of workers being able to switch jobs or leave the country. Nevertheless most of the labor standards problems remain unsolved because of weak implementation and enforcement of some of the reforms introduced in recent years. [8]

EU

The EU Charter of Fundamental Rights mentions the same as for example the ICCPR and ICESCR on labor standards. The EU consists of mainly well developed countries. They value human rights and a large part of their members are countries where trade unions originate from. Most EU countries have the financial freedom to adapt some changes in their approach to labor standards in their own country and in subsidiaries of their multinationals. The EU is against the way some (American) companies are limiting employees' freedom of association.

International Labor Organization (ILO)

The International Labor Organization (ILO) is a specialized agency of the United Nations. Not every UN member is a member of the ILO. The ILO has eight fundamental conventions which centre on: freedom of association, right to collective bargaining, the prohibition of all forms of forced labour, elimination of the worst forms of child labour, and non-discrimination in employment. Almost all of their members have ratified all eight of them. The ILO annually reviews the progress each country has made on the subject of labor standards.

World Trade Organization (WTO)

The World Trade Organization does not have any jurisdiction on labor standards at the moment. Among other bodies the UN has called for the WTO "to ensure that human rights principles and obligations are fully integrated in future negotiations in the World Trade Organization". In the UN Charter it says that "the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail." However, not all members of the WTO are a member of the UN, for example Taiwan.

Without consensus the WTO is unlikely to incorporate new jurisdiction. The 'race to the bottom' of many developing countries is the reason that it would be in their interest for the WTO to not implement jurisdiction on labor standards. This makes it difficult to achieve the change the UN and many others would like to see.

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[8] Amnesty International. "Reality Check: Migrant Workers' Rights in Qatar." *Amnesty International*, 5 Aug. 2022, www.amnesty.org/en/latest/campaigns/2019/02/reality-check-migrant-workers-rights-with-two-years-to-qatar-2022-world-cup/. Accessed 16 Aug. 2022.

Timeline of Events

1919 The ILO is established

1933 The concept 'race to the bottom' received formal recognition by the US Supreme court.

1947 The Taft-Hartley Act was passed, creating the US right-to-work laws

1948 Universal Declaration of Human Rights adopted by the UN

1966 December, the ILO ICCPR comes into force

1976 January, the ILO ICESCR comes into force

2009 First allegations of Qatar forced labour in preparation for the 2022 World Cup

2013 Rana Plaza disaster

2017 ILO and Qatar sign agreement promising to tackle widespread labour exploitation and *"align its laws and practices with international labour standards"*

Relevant Documents

- **Information on labour standard problematics**

  This webpage shows multiple articles explaining labor standard problematics in different nations.

- **International Covenant on Civil and Political Rights (ICCPR)**

  This is one of the most widely accepted conventions on labor standards of the ILO.

- **Resolution concerning decent work in global supply chains**

  A resolution of the ILO attempting to combine economic growth with sufficient labor standards in developing countries. It emphasizes the responsibilities of developed countries on this matter.

- **Resolution concerning a fair deal for migrant workers in a global economy**

  Migrant workers often need to fill the tough jobs, which the local population does not

want to do. Their employers have an automatic advantage over them since the migrant worker needs a job and money urgently. However, the migrant workers generally do not specialize in a certain field. This makes it difficult for them to get a high or average paid job. This resolution tries to ensure that they do have a chance at a fair deal and good labor standards.

Possible Solutions

The ultimate goal is to formulate permissible restrictions keeping in mind the core labor standards of the ILO and to incorporate this in the jurisdiction of the WTO. This could, if done correctly, change the worldwide labor standards positively. However, there is a fine line between limiting the right so far it becomes nearly impossible to exercise and not limiting enough so that developing economies would collapse if it was accepted by the WTO. Not limiting enough would mean the WTO is unlikely to accept the policy.

Since most developing countries are very dependent on the WTO for their economic well-being, creating a policy which the WTO would accept would force them to adapt their approach to labor standards. To ensure there are no loopholes to be taken advantage of, the restrictions on the right need to be formulated precisely.

One option to restrict the right is to require a deadlock in the negotiations before collective action is taken. Furthermore, a different approach is to formulate precisely what parts and exercises are not to be limited or punished and to what extent they are allowed.

Either way, in order to be able to bring any changes to their labor standards approach developing countries will need more economic security. It might be impossible to grant the country itself this money because of, for example, extensive corruption. However, it is a possibility to force companies to put more money aside for improving working conditions and wages in the company they let produce their products. For this to work, the company and factory would need to work together more closely to make sure the money lands in the right place.

One option to get access to more money to spend on employee wages and working conditions is to change the profit culture. For example limiting the amount of bonuses and the amount of money within the bonuses managers can give themselves.

One way or another, something needs to be done as soon as possible to ensure more sustainable and responsible consumption and a more definite end to forced labor and exploitation. Because this urgent matter has been pressing for too long.

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