

in this issue:

APRIL 2007

Unionized staff at the British embassy in Washington, D.C. are claiming a victory following a recent ruling by the International Labor Organization. The ruling, which calls upon the embassy to bargain collectively with the employees' designated representative, looks to have quelled a labor rights dispute that has gripped the embassy for the past two years.

Littler Mendelson is the largest law firm in the United States devoted exclusively to representing management in employment and labor law matters.

International Employment and Labor Law

A Littler Mendelson Newsletter specifically for International Employment and Labor Law

International Labor Organization Weighs in on Dispute over Labor Rights at the British Embassy

By *Sandro Garofalo*

In what appears to have resolved a two-year old case that has caused a stir in Washington's diplomatic circles, the International Labor Organization (ILO) recently directed the British embassy to engage in collective bargaining with the union that represents its staff members and British consulates throughout the United States. The recommendations, issued by the ILO's Committee on Freedom of Association, became final upon being adopted by the governing body on March 30. In its report, the Committee concluded that the British government violated international labor standards by refusing to recognize and bargain with the International Federation of Professional and Technical Employees (IFPTE) over terms of employment for staff of the British embassy in Washington, D.C. The Committee recommendations request that the British government take "all necessary measures" to promote negotiations between the embassy and IFPTE.

For approximately 50 years, over 600 embassy staff members and consulate employees had been represented by the Association of United States Engaged Staff. The controversy began in early 2005, after the Association voted to affiliate with IFPTE, whose members include senior U.S. federal and state employees. Since the affiliation, IFPTE alleged, the British embassy has refused to recognize or bargain with its representatives, and in April 2005 the embassy implemented unilateral changes in wages and benefits for its employees. IFPTE also claimed that the embassy established a management-dominated staff representative council.

Union Claims Embassy Subject to U.S. Labor Law and International Labor Standards

IFPTE filed a complaint with the ILO, arguing that the embassy's actions violated U.S. labor law and ILO Convention Nos. 87 and 98. IFPTE argued that the embassy failed to abide by the requirements of the National Labor Relations Act (NLRA), which requires a covered employer to recognize and collectively bargain in good faith with the designated representative of its employees. Convention No. 87 affords "workers and employees ... the right to establish and ... join organizations of their own choosing..." and Convention No. 98 establishes a series of guarantees concerning the right to organize and bargain collectively.

In response to IFPTE's allegations, the United Kingdom argued that the NLRA specifically exempts federal, state and local governments from its provisions, and therefore, there is no legal framework governing the standards by which the embassy should approach its dealings with local staff. Additionally, the British government noted that U.S. labor law does not allow supervisors and employees to be included in the same bargaining unit. Over 25% of the embassy's locally engaged staff at the time held management positions.

With regard to ILO Convention Nos. 87 and 98, the British government argued that the ILO conventions do not apply to an embassy or offices overseas. Alternatively, if it was found the ILO conventions did apply to the United Kingdom's actions as an employer

in the United States, the British government argued it had not breached its obligations under the conventions.

Foreign Offices of Member States Are Subject to International Labor Standards, ILO Rules

The ILO Committee expressed doubt as to whether U.S. labor law (such as the NLRA) could be enforced against the embassy or consulate authorities. It noted that officials of an embassy are covered by sovereign immunity in the exercise of all their functions, including as employers of locally engaged staff. The Committee rejected, however, the British government's argument that it is not obligated to abide by the ILO conventions on freedom of association and collective bargaining in embassies and consulates overseas. The Committee emphasized that when a country becomes an ILO member, it accepts the fundamental principles embodied in the ILO Constitution, including the principles of freedom of association and collective bargaining. "This duty extends, in the committee's view, to the embassies and other offices, as an integral part of the public administration."

While the Committee's decision is not akin to a binding court order, union officials have said they expect the British government to obey the ruling. For its part, embassy spokespersons indicated they are reviewing the recommendations and considering their impact in advance of a meeting of the ILO governing body later this month. In the meantime, the ILO ruling is expected to bring about increased union activity among staff at embassies and consular offices of ILO member states. Already in the wake of the decision, IFPTE claims it has been approached by locally engaged staff at "a couple" of other embassies in Washington about the possibility of unionizing.

Sandro Garofalo is a Shareholder in Littler Mendelson's Minneapolis office. If you would like further information, please contact your Littler attorney at 1.888.Littler, info@littler.com, or Mr. Garofalo at sgarofalo@littler.com.