

II. Wage Rates in Russia Are Not Determined by Free Bargaining Between Labor and Management

A. Summary of Comment

Workers in the Russian Federation are unable to effectively negotiate wages and other working conditions due to weaknesses in organized labor, *de facto* lack of job mobility, and the inability to obtain redress for violations of labor laws. Both the government and enterprises are guilty of substantial wage arrearages, trapping millions of workers in their current jobs and reducing them to poverty. Indeed, the new proposed labor code threatens to further weaken legal protections and the ability of labor to negotiate with management on an equal footing.

B. The Department's Standard

An important element in the Department's consideration of market economy status has been the legal rights available to workers to freely bargain for their wages, as well as the *de facto* ability of workers to meaningfully exercise such rights. The right to form and belong to trade unions, including the right to strike, has been guaranteed in each of the countries that the Department has found to have transitioned to market economy status.¹ The Department in each case has also examined whether workers have been able to exercise these rights. The Department has considered the mechanisms by which labor and management negotiate wage rates and other worker rights, including whether unions are in reality subject to government control or influence.² For example, a common arrangement in Eastern Europe was the so-called "tripartite arrangement," which involved labor as an equal participant with management and the government in collective bargaining to determine wages. These negotiated agreements, which covered the minimum wage rate, wage rates in the public sector, or particular industry sectors,

¹ See Poland NME Memo at 30, Slovakia NME Memo at 6; Czech NME Memo at 6; Hungary NME Memo at 2, 7; Latvia NME Memo at 7.

² See *id.*

were generally binding. Another important consideration has been whether there were any government restrictions on labor mobility.³

C. Workers in Russia Cannot Freely Negotiate Wage Rates and Other Conditions of Employment

It is clear that workers in the Russian Federation do not have the ability to freely negotiate wages or the terms of employment. Russian workers are accorded certain rights and protections, but many of these rights are not enforced and are in danger of being revoked. For example, Russia's constitution guarantees the right to form and belong to trade unions, and approximately 60 percent of Russian workers belong to a union.⁴ Organized labor remains weak, however, in large measure due to the position of the Federation of Independent Trade Unions of Russia (FNPR), the largest labor organization in Russia.⁵ The FNPR is the successor to the Soviet-era unions and currently dominates the labor movement.⁶ The FNPR continues to benefit from Soviet-era relationships, such as a government policy favoring FNPR unions and ties that exist between many union officials and enterprise managers. As a consequence, as the Department has recently recognized, the formation of independent unions to bargain on behalf of workers and to advocate for workers' rights has been suppressed, including through the use by the government and FNPR of tactics such as union busting and intimidation.⁷

Another manifestation of the absence of meaningful labor protection is that, although Russia is a member of the International Labor Organization and has ratified the core ILO

³ See, e.g., Poland NME Memo at 32, Czech NME Memo at 6; Latvia NME Memo at 8.

⁴ See *Nations in Transit 2001*, Freedom House, at 318, available at <http://www.216.119.117.183/research/nattransit/htm> ("Nations in Transit").

⁵ See *id.*

⁶ See DOC Guide at Ch. 7, "Labor".

⁷ See *id.*

conventions, adherence to ILO principles is largely illusory.⁸ This is evident from the fact that, although the Russian Government's Labor Inspectorate itself found a massive number of violations of labor laws –over 1 million in the first nine months of 2000 – little has been done to address this abrogation of worker rights.⁹ The ILO has also recognized Russia's weak adherence to international standards, stating in its "Programme of Cooperation" (at Ch. II) that the "main directions" that "should shape {the ILO and Russian Federation's} future joint activities" include "the promotion and realization of international labour standards, fundamental principles and rights at work" and "the strengthening of tripartism {i.e., government, enterprises, and labor}, and of social dialogue." These activities are necessary because, according to the ILO, "a distinctive feature of the transition period in Russia is the lack of development of organizational forms for social partnership {to implement} policies based on balanced interests of the society, of the wage-earners and of the employers." Further, the Russian Government has not created "solid mechanisms for collective bargaining and efficient regulations applicable to social and labour relations."¹⁰

In addition to overt violations of labor laws, Russian workers have limited opportunities to change jobs due to the need to obtain residency permits and register with local authorities, as well as due to severe housing shortages in many cities, that effectively prevent relocation.¹¹

⁸ See *Programme of Cooperation Between the International Labour Organization and the Russian Federation for the Period 2000-2001*, International Labor Organization, at Sec. III.1, available at <http://www.ilo.ru/en/cp/ru/index/htm> ("ILO Programme of Cooperation").

⁹ See *Russian Federation: Annual Survey of Violations of Trade Union Rights*, International Confederation of Free Trade Unions (Jan. 12, 2001), available at <http://www.icftu.org/displaydocument.asp?Index=991213853&Language=EN>; ("ICFTU Survey"); Nations in Transit at 317. These violations included 25,000 violations of collective agreements, 63,000 violations of working hours regulations, and 148,000 violations of pay legislation.

¹⁰ ILO Programme of Cooperation at Sec. I.

¹¹ See DOC Guide at Ch. 7, "Labor."

Thus, in a country where wage arrearages are a chronic problem (\$1.14 billion in June 2001¹²), millions of formerly middle-class workers have been reduced to poverty because they have very little power to effect a change in their circumstances. In fact, collective actions for non-payment of wages are not recognized as strikes and, therefore, participants in such actions are not protected from termination.¹³

Finally, a proposed Labor Code under consideration by the government threatens to erode workers' rights even further. Debate has been highly contentious within the government and mass protests in opposition to the proposed bill occurred in 2000.¹⁴ The government proposal includes provisions that would prevent trade unions from reaching agreements with management on hours, training, health and safety rules and revision of working conditions, and from pressuring employers to sanction managers who violated workers' rights.¹⁵ The ILO, which as noted above has encouraged labor legislation reform in Russia, has criticized the proposal.¹⁶ Wages and working conditions in Russia are not determined by free and fair negotiations between labor and management, and pending legislation threatens to make the situation worse.

In contrast to the current situation in Russia, worker rights had been much more firmly established in other transition countries at the time of the Department's market economy status reviews. For example, wage rates in the Czech Republic, Slovakia, Hungary and Latvia were all determined through tripartite arrangements of collective bargaining among trade unions,

¹² See id.

¹³ See 2000 Country Reports on Economic Policy and Trade Practices, U.S. Department of State (Mar. 2001), at 10, available at <http://www.state.gov/e/eb/rls/rpts/eptp/2000> ("State Dept. Country Report"), at 10.

¹⁴ See ICFTU Survey at 1.

¹⁵ See id.

¹⁶ See ICFTU Survey at 2-3 (ILO criticisms concerning settlement of industrial disputes and conduct of strikes).

enterprise associations and government.¹⁷ The governments' role in those countries was largely confined to macroeconomic concerns or mediation between labor and management, and thus workers had a substantial role in negotiating their wages.¹⁸ In addition, workers in these countries, as well as in Poland, had greater opportunity to change jobs or relocate, since they were not hampered by registration or permit requirements, or effectively tied to their current jobs in the hopes of eventually receiving past wages, as is the case in Russia.¹⁹

In sum, Russian workers do not have an adequate voice in negotiating fair wage rates, guaranteeing that they receive basic protections, or creating the conditions for market-based labor mobility. Even though the law requires employers to negotiate with unions, in practice, as the U.S. Department of State has recognized, the law is frequently ignored or employers refuse to implement agreements.²⁰ Russia's progress in the areas of worker rights is substantially behind that evidenced in the transition countries whose NME status the Department has previously revoked, despite the fact that Russia has had more time to rewrite its laws and adjust labor-management-government relations.

¹⁷ See Slovakia NME Memo at 5-7; Czech NME Memo at 5-6; Hungary NME Memo at 7-8; and Latvia NME Memo at 7-8.

¹⁸ See, e.g., Hungary NME Memo at 7; Latvia NME Memo at 7.

¹⁹ See *id.*, Poland NME Memo at 32; DOC Guide at Ch. 7, "Labor."

²⁰ See State Dept. Country Report at 10.