THAILAND’S STATE ENTERPRISE LABOR RELATIONS ACT: DENYING PUBLIC EMPLOYEES THE RIGHT OF ASSOCIATION AND THE RIGHT TO ORGANIZE AND BARGAIN COLLECTIVELY

Kelly A. Doelman

Abstract: On April 15, 1991, Thailand’s new legislative body enacted the State Enterprise Labor Relations Act, removing public employees from the dominion of the Labor Relations Act and dissolving the existing public labor unions. This Act has had a crippling effect on the entire Thai labor movement, which historically relied on the leadership and influence of public unions to promote private industry worker interests. This Comment argues that the State Enterprise Labor Relations Act contains many provisions which violate internationally accepted labor standards, specifically the right of association and the right to organize and bargain collectively. This Comment further asserts that the Act should be amended to conform with these standards so that it meets the needs of both the Thai government and public enterprise workers.

Before 1991, both state and private enterprise workers in Thailand organized unions under the Labor Relations Act of 1975. On February 23, 1991, a military coup acting under the name "National Peacekeeping Council" (NPKC) overthrew the democratically-elected Thai government. The new government abolished the existing Thai constitution and legislature.1 Five days later, the NPKC took its first step in altering the labor laws when it released Announcement No. 54 as an amendment to the 1975 Labor Relations Act (LRA).2 On April 15, 1991, an NPKC-selected National Legislative Assembly, under Prime Minister Anand Panyarachun, approved final changes to the existing labor laws by enacting the State Enterprise Labor Relations Act (SELRA), a separate law for state enterprise workers which dissolved labor unions at state enterprises.3 The bill passed swiftly and unanimously.4

2 The AFL–CIO Petition to the Office of the U.S. Trade Representative, Prepared by the AFL–CIO International Affairs Department (Case No. 008–CP–91), June 1991, at 106 [hereinafter AFL–CIO Petition]. Announcement No. 54 added rigorous qualification requirements and appointment procedures for advisors to employer or employee representatives. With regards to strikes, Announcement No. 54 added a secret ballot requirement.
The NPKC viewed the changes to the labor laws, particularly the enactment of SELRA, as one of the coup's major victories. One of the main goals of the coup was to end the public unions which allegedly interfered with the government's efforts to privatize. The amendment dissolved over 120 unions in more than sixty state enterprises.

The State Enterprise Labor Relations Act enacted by the NPKC contains numerous provisions which violate the internationally recognized right of association and the right to organize and bargain collectively. Many of SELRA's regulations must be changed if it is to come into compliance with internationally recognized labor standards and provide state enterprise employees with effective means to promote their social and economic interests in the workplace.

This Comment reviews the impact of SELRA on the right of association as well as the right to organize and bargain collectively. Part One examines the historical background of the Thai organized labor movement and political climate to provide the context for an analysis of SELRA. Part Two explains the internationally recognized labor standards promulgated by the International Labour Organisation (ILO) that are used to evaluate SELRA. Part Three analyzes and evaluates provisions of SELRA specifically in terms of their compatibility, or incompatibility, with the right of association, and the right to organize and bargain collectively. Finally, this Comment proposes that SELRA be amended to conform with international labor standards in order to meet the needs of both the Thai government and public enterprise workers.

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4 The National Legislative Assembly members were all appointed by the NPKC. Four labor leaders were among those appointed. The bills were passed by a margin of 223 to 4, with the four labor leaders voting against the measures. U.S. Embassy, Bangkok; FOREIGN LABOR TRENDS: THAILAND 14, 21 (1992) [hereinafter FOREIGN LABOR TRENDS].


7 Suraphol Tourn-ngern, Big Union Groups Call For ILO To Act On Thailand, BANGKOK POST, May 23, 1991, at 1.

8 See infra text accompanying notes 96–106.
PART ONE

I. OVERVIEW: REFORMATION OF THAI LABOR LAW BY THE STATE ENTERPRISE LABOR RELATIONS ACT

The State Enterprise Labor Relations Act removes state workers from the dominion of the Labor Relations Act of 1975 (LRA). In defending the enactment of SELRA, the Anand government reasoned that public employees are inherently different from private workers in both purpose and structure, due to the types of services they provide the public and because they are paid by the government. The enactment of SELRA addressed these differences.

The new SELRA regulations are a marked departure from the regulations of private enterprises under the LRA. Under SELRA, state enterprise workers can no longer form unions, but are authorized to form "associations." SELRA also regulates the formation of associations and their rights and powers in the employer-employee relationship. The new regulations govern how many members are necessary to form an association, who may act as a representative of an association, and when associations may hold meetings. SELRA also prohibits strikes by state enterprise workers.

II. HISTORY OF THAI WORKER RIGHTS: AN EVOLUTION INFLUENCED BY VOLATILE GOVERNMENTS AND SOCIAL CONDITIONS

The history of Thai labor legislation and the Thai labor movement reveals a close parallel between changes in Thai labor conditions and changes in the government. Thailand has been the subject of numerous military government takeovers and has had thirteen new Constitutions since the
inception of the constitutional monarchy in 1932. Worker dissatisfaction and labor disputes are recurring problems for every Thai administration.

A. The Early Years of Formal Labor Policy

The Thai government announced its first formal labor policy in 1932. The labor announcement was a response to the problem of unemployment stemming from a depression. The unemployment problem played a major role in the coup that ushered in the constitutional monarchy which replaced the absolute monarchy. The new government attempted to be visionary in its new labor policy, which had two goals: first, to provide job opportunities for everyone, and, second, to support the Thai people in earning their livelihoods.

Subsequent legislation gave the Thai government control over informal organizations for the first time. The legislation prohibited the formation of political parties and Chinese secret societies. Despite this control, informal organizations continued to strike.

In 1939 the Thai government enacted the Thai Workers Act. This act required that Thai nationals comprise at least fifty percent of the workforce in certain occupations. During the early years of the constitutional monarchy, the labor force consisted largely of Chinese workers. The Act was intended to end control of these occupations by Chinese workers and the problems they caused. The Thai Workers Act, however, could not prevent the

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15 *Labour Administration: Profile on Thailand*, International Labour Organisation, Asian and Pacific Regional Centre for Labour Administration 3 (1988) [hereinafter *Profile on Thailand*].
17 *Profile on Thailand*, supra note 15, at 3.
19 The secret societies were the Chinese equivalent of the Mafia. Mabry, supra note 18, at 37. They were often violent, and were viewed as the cause of strikes and general unrest. Thompson, supra note 16, at 230.
20 Although strikes were somewhat unusual in Thailand, the combination of social, political and economic distress was enough to incite worker protest, and a series of strikes began in 1932. Mabry, supra note 18, at 40. These strikes were provoked by expectations of better conditions under the new government. Thompson, supra note 16, at 239.
21 Mabry, supra note 18, at 41.
22 Id.
23 Thompson, supra note 16, at 230.
24 These Chinese workers were the primary participants of strike activity. Mabry, supra note 18, at 40-41.
Chinese community from continuing to influence the labor movement;\textsuperscript{25} nor did it put an end to strike activity.\textsuperscript{26}

In 1954, rival political factions became the impetus for the organization of new labor groups.\textsuperscript{27} Soon after political parties became legal, politicians realized the value in having the support of labor organizations. For the first time, Thai leaders became responsive to the Thai workers.\textsuperscript{28} As a result of this favored treatment, as well as the suppression of the Chinese, Thais began to supplant Chinese in the labor movement as they increasingly obtained more jobs in industry.\textsuperscript{29}

B. Favorable Legislation for Thai Workers

Legislation favorable to Thai workers soon followed. In 1955, the Interior Ministry established an official labor division.\textsuperscript{30} In 1957, Thailand enacted a new labor code that not only regulated wages, hours, and labor laws for women and children, but also permitted the formation of labor unions and federations.\textsuperscript{31} Furthermore, it gave workers the right to organize and bargain collectively,\textsuperscript{32} and legalized the right to strike. A legal strike could occur only after the parties went through the dispute settlement procedure promulgated under the code.\textsuperscript{33}

The 1957 code also established a Labor Relations Committee (LRC) to hear complaints and mediate disputes. A strike could not be instigated until a dispute had been before the LRC for at least 20 days. After that period, workers were required to give seven days notice before they could legally strike.\textsuperscript{34} The workers generally ignored the procedure for two reasons. First, the restriction on strikes left the workers without an adequate alternative to express dissatisfaction. Second, due to its past decisions, the LRC gained a

\textsuperscript{25} Id. at 43. See also, G. William Skinner, Report on the Chinese in Southeast Asia 4, 11 (1951).
\textsuperscript{26} The strikes were largely a result of disparity between rising living costs and low wages. Thompson, supra note 16, at 243.
\textsuperscript{27} Mabry, supra note 18, at 44.
\textsuperscript{28} Id. at 45.
\textsuperscript{29} Id.
\textsuperscript{30} Id.
\textsuperscript{31} Harriet (Palmer) Micocci, Labor Law and Practice in Thailand 32 (1972).
\textsuperscript{32} Mabry, supra note 18, at 46.
\textsuperscript{33} Id.
\textsuperscript{34} Id. at 47.
reputation among workers as being pro-management. Thus, despite the
new labor code, strike activity continued.

Most strike activity concerned wages and worker grievances. Politics
was also a factor, as politicians became more involved in promoting and
sponsoring the formation of new unions. The Thai government viewed the
increase of organizations and strike and lockout activity as a threat to the
peace and stability of the country and the normally cooperative spirit between
workers and employers. Coupled with the negative view that labor unions
were the politicians' pawns, the disruptive strike activity gave the new
military government a justification for banning unions in 1958.

C. The Labor Movement Without Unions

The absence of unions did not have a severe affect on the social and
economic scene in Thailand because the labor movement had already been
relatively weak. But it did mark the beginning of a fourteen-year period in
which formal labor organizations did not exist. Despite this, strikes
continued. The major issues behind the strikes were wages, poor working
conditions and the failure of the employers to follow labor laws.

I. The Labor Dispute Settlement Act of 1965: An Attempt to Deal With
Conflict in the Workplace

The Thai legislature enacted the Labor Dispute Settlement Act of 1965
to deal with conflicts and issues arising in the workplace. The Act provided
for an elected group to represent workers within each business, in lieu of the
representation workers previously received from their own organizations.
The representatives' task was to present worker grievances through a three
step mediation process. If the mediation failed, parties were advised to

35 Id.
36 Id.
37 Micocci, supra note 31, at 32; MABRY, supra note 18, at 47.
38 Micocci, supra note 31, at 32.
39 MABRY, supra note 18, at 49.
40 Id.
41 The first step was to formulate written demands and present them to the opposing party for
negotiations. Within seven days of receipt of the demand, the parties were to engage in negotiations for
up to 30 days. At the end of negotiations, if the parties still were not in agreement, as a second step, the
dispute was referred to a Labor Mediation officer of the Department of Labor for 15 to 30 days in an
attempt to reach settlement. MABRY, supra note 18, at 49–50.
accept binding arbitration. If one of the parties rejected arbitration, workers could then legally strike.\textsuperscript{42}

Ironically, the Labor Dispute Settlement Act was ineffective in resolving disputes. The Act was too complicated for workers to understand and thus they were reluctant to use the mechanism. In addition to its complexity, the procedure required workers to meet with their employer face to face. This type of direct confrontation contradicted Thai culture.\textsuperscript{43} The strike, on the other hand, provided an impersonal method of demonstrating dissatisfaction. Thus, strikes, although usually illegal, continued to be the preferred form for airing grievances.\textsuperscript{44}

2. **Announcement 103: The Right to Organize**

Workers enjoyed the formal right to organize again in 1972 when Announcement 103 authorized the formation of worker associations.\textsuperscript{45} The legislation came in response to increased strike activity. Officials felt the pressure of labor unrest. They acknowledged the existence of communication barriers between workers and management and the inadequacy of the process for alleviating job dissatisfaction. Furthermore, labor officials experienced pressure from the international community; members of the International Labour Organisation (ILO) pressured the ILO to express disapproval of Thailand's suppression of labor organizations.\textsuperscript{46}

Despite the positive steps taken with this new legislation, labor associations in Thailand possessed little freedom to organize and negotiate when compared with Western labor organizations.\textsuperscript{47} The regulations tried to

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\textsuperscript{42} Id. at 50.

\textsuperscript{43} McDorman, supra note 14, at 926; MABRY, supra note 18, at 50.

\textsuperscript{44} In fact, in the six years following the Act, there were 113 strikes. These strikes tended to be of short duration, typically less than a day, and were used primarily to draw the employer's attention to worker grievances. MABRY, supra note 18, at 50-51.

\textsuperscript{45} Id. at 53. Under Announcement 103, the requirements for the formation of associations were as follows: (1) a minimum of ten members were required for the formation of an association; (2) newly formed associations were required to register with the Department of Labor, (3) the associations could only form with members from within the enterprise or of a single occupation. The associations could not encompass employees from more than one province; and (4) national unions were prohibited. Id. at 54. See also MICOCCI, supra note 31, at 32-33.

\textsuperscript{46} MABRY, supra note 18, at 51-52. "Thailand has long been sensitive to her international image, and the increasing criticisms leveled against her by world organizations in positions to influence her access to developmental funds, forced her to reconsider her opposition to labor organizations and to develop a positive labor union policy."

\textsuperscript{47} MICOCCI, supra note 31, at 32.
keep the associations small and diverse to keep them weak.\textsuperscript{48} Furthermore, the regulations did not require employers to recognize associations as the workers' representatives. Although employers were required to hear worker demands, they were not required to negotiate with workers.\textsuperscript{49}

Announcement 103 also provided for the repeal of the Labor Dispute Settlement Act of 1965.\textsuperscript{50} This procedure for dispute settlement was replaced by a system whereby disputes went through a Mediation Officer for resolution, and if mediation failed, to the Labor Relations Committee.\textsuperscript{51}

The same problems that existed under the 1965 Act persisted under this new system guided by the LRC. Legal strikes could be delayed up to 105 days while mediation and arbitration efforts continued. Yet strike activity persisted, and even increased, during this time, reflecting the social unrest and poor economic conditions in Thailand.\textsuperscript{52}

\textbf{D. Labor Relations Act of 1975: Formation of Unions Authorized}

The outlook for worker rights grew brighter in 1975 when the Thai government enacted the Labor Relations Act.\textsuperscript{53} Resulting from yet another change in government, the LRA was an effort by the new government to speed up the dispute resolution process by reducing the waiting period required for legal strikes.\textsuperscript{54} The most prominent change made by the LRA was a provision on the formation and functioning of labor unions.\textsuperscript{55} The rights of worker associations were expanded while the old organizations transformed into unions.\textsuperscript{56}

\begin{footnotes}
\textsuperscript{48} Government and businessmen, the latter of which was comprised of many government leaders, feared that strong, active associations would hurt their profits and the economy by demands for higher wages and disruptive disputes. \textit{Mabry, supra} note 18, at 52.
\textsuperscript{49} \textit{Id.} at 54.
\textsuperscript{50} \textit{Id.} at 56.
\textsuperscript{51} \textit{Micocci, supra} note 31, at 34. The Labor Relations Committee (LRC) was comprised of nine members whose duty was to process unfair labor practices, arbitrate labor disputes and engage in fact finding missions. The LRC was headed by the Director-General of the Department of Labor and also had members of the public, namely university professors, seated on it. \textit{Mabry, supra} note 18, at 54.
\textsuperscript{52} Grievances over issues such as layoffs, bonus cuts, and poor working conditions motivated the strikes. \textit{Mabry, supra} note 18, at 56.
\textsuperscript{53} The Labor Relations Act of 1975, in amended form, is still in effect today.
\textsuperscript{54} \textit{Mabry, supra} note 18, at 62.
\textsuperscript{55} LRA, Ch. VII (Thail.).
\textsuperscript{56} The new Labor Relations Act also provides for the formation of national labor federations (Sections 103(7) and 113); the establishment of employee committees to confer with management (Section 45); and paid leave to union leaders in order to attend to union business (Section 102). Union leaders are shielded from criminal penalties for organizing strikes (Section 99). Also, employers are forbidden from
\end{footnotes}
The LRA encouraged cooperative efforts in the determination of wages, hours and conditions of employment by requiring employers and employees to enter into written agreements specifying rules and grievance procedures.\textsuperscript{57} It also condensed the old settlement procedure.\textsuperscript{58} Most unions made an effort to comply with the new procedures, but the change was difficult for workers. \textsuperscript{59} They remained predisposed to striking first and negotiating later.

The new unions formed under the LRA made progress in gaining improved working conditions.\textsuperscript{60} These efforts were further assisted by federations.\textsuperscript{61} In 1976, the first major federation of unions, the Labor Council of Thailand, formed. Many of the officers of this federation were leaders of state enterprise unions. The federation represented organized labor and led campaigns on various issues, including the subsidizing of rice prices for urban workers, the extension of labor laws, and the upgrading of the Department of Labor to ministry status. The federation also assisted workers in disputes, aided the formation of unions, and often acted as a conciliator.\textsuperscript{62}

\textbf{E. Led by the Public Sector, Thai Labor Becomes Activist}

Before the military coup in 1991 and the enactment of SELRA, three percent of the industrialized work force was organized into unions, totaling 330,000 registered union members.\textsuperscript{63} The number of registered unions was 732, with 140 of these being state enterprise unions from sixty-one state enterprises.\textsuperscript{64} One-half of total union membership came from public enterprises, which made up the largest and strongest unions.\textsuperscript{65} Among these,

\begin{footnotesize}
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\item \textsuperscript{57} LRA, Ch. I (Thail.).
\item \textsuperscript{58} Strikes are illegal if the party has not communicated a written notice to negotiate issues, given a three-day waiting period for negotiations to begin (Section 16), informed the mediator and permitted the mediator five days to resolve the conflict (Sections 21 and 22). The parties can then agree to appoint an arbitrator (Section 26). Alternatively, the aggrieved party can opt to strike, but must first give a twenty-four-hour notice of intent to strike (Section 34).
\item \textsuperscript{59} MABRY, supra note 18, at 100.
\item \textsuperscript{60} The unions' functions consisted of bargaining with employers regarding wages, hours, terms and conditions; processing worker complaints; assisting in labor law enforcement; and acting as spokesperson for the working class. \textit{Id.} at 77.
\item \textsuperscript{61} Federations are national organizations comprised of many labor unions within the same trade or enterprise, or with the same interests.
\item \textsuperscript{62} MABRY, supra note 18, at 72–73.
\item \textsuperscript{63} FOREIGN LABOR TRENDS, supra note 4, at 8.
\item \textsuperscript{64} \textit{Id.}
\item \textsuperscript{65} Public and private organized labor groups worked together for improvements in wages and salary, a system of social security, privatization, industrial health and safety, and ending the exploitation of temporary workers and child labor. \textit{Id.} at 4.
\end{itemize}
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the State Enterprise Labor Relations Group was the strongest single labor organization.66

Public sector unions were the "cornerstone" of the labor movement during this time.67 They were far better organized than private sector unions, often providing funds and expertise to their private sector counterparts.68 Public sector unions also carried more clout because of their ability to affect the economy.69 In 1988, for example, the union at the Electrical Generating Authority of Thailand nearly shut down Thailand's economy over the issue of privatization.70

Not only was the strength of public sector unions important to organized workers, all Thai workers benefited from the power of these unions. The labor movement played a vital role in the human rights of all Thai citizens. Thailand is notorious for its poor working conditions, rampant with child labor, prostitution and unsafe conditions.71 The existing laws protecting workers are barely enforced, if at all.72 Human rights often conflict with the government's goal of providing low-cost labor to foreign investors. Thus, Thai workers need someone to represent their interests. The labor movement as a whole was instrumental in raising issues such as the exploitation of temporary workers and child labor, wages and safety.73 Not surprisingly, the enactment of SELRA came as a major blow to the entire labor movement.

III. NEGATIVE REACTION TO SELRA

The passage of SELRA elicited negative reactions. In Thailand itself, several judges of the Central Labor Court74 protested by resigning from their

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66 Id. at 8.
67 Philip Smucker, Labor leaders struggle to have their say, INTER PRESS SERVICE, Sept. 20, 1988, available in LEXIS, Nexis library, Intl file.
68 FOREIGN LABOR TRENDS, supra note 4, at 20.
69 Id.
70 Why EGAT is a tough nut to crack, THE FINANCIAL TIMES LIMITED, Apr. 9, 1990, available in LEXIS, Nexis library, Intl file.
71 See COUNTRY REPORTS, supra note 1, at 1008, 1011. See also FOREIGN LABOR TRENDS, supra note 4, at 24, 25.
72 COUNTRY REPORTS, supra note 1, at 1008.
73 FOREIGN LABOR TRENDS, supra note 4, at 4.
74 The Central Labor Court was established in 1979. It is tripartite in nature, composed of a chief justice and an equal number of employee and employer associates elected by trade unions and employers' associations. The court considers issues regarding disputes over rights and obligations under a contract of employment, under labor protection laws or labor relation laws, and cases arising from commission of torts which derive from labor disputes. The court also takes appeals from rulings of officials or awards
positions.Outside Thailand, the International Confederation of Free Trade Unions (ICFTU) and other international organizations condemned SELRA as a violation of worker rights. These organizations viewed the workers as "a crucial segment of society and important instruments of social change." They expressed concern over the impact the anti-union action might have on the economic and social development of Thailand. The ICFTU and five other international labor organizations filed a formal complaint with the International Labour Organisation. Upon review of the situation in Thailand, the Freedom of Association Committee of the ILO urged Thailand to repeal its legislation. The ICFTU also threatened to impose trade sanctions, asking affiliated organizations to take measures to withhold or withdraw trade from Thailand.

In the United States, the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) has filed a petition against Thailand, requesting that the United States withdraw the privileges Thailand receives under the Generalized System of Preferences (GSP). The AFL–CIO's petition contends that SELRA violates workers' rights, specifically the

made by the Labor Relations Committee of the Minister of Interior. Its decisions are appealable to Thailand's Supreme Court on questions of law. PROFILE ON THAILAND, supra note 15, at 48, 55. The judges believed the Thai military government's enactment of SELRA signaled the downfall of democracy in Thailand. Judges quit in support of unions, BANGKOK POST, Apr. 16, 1991, at 1.

The ICFTU is an international organization comprised of individual national organizations which are independent of outside authority. ICFTU provides support for local trade union movements in developing countries and strives to defend human rights, particularly freedom of association. The ICFTU has close relations with the ILO in its endeavors. VICTOR–YVES GHEBALI, THE INTERNATIONAL LABOUR ORGANISATION: A CASE STUDY ON THE EVOLUTION OF U.N. SPECIALIZED AGENCIES 31-33 (Robert Ago and Nicolas Valticos, eds., 1989).


Id.

Complaints Against Thailand, supra note 10.

Complaints Against Thailand, supra note 10, at ¶ 482.

ICFTU aims tough blow at Thailand, BANGKOK POST, July 2, 1991, at 1. One method to accomplish this is to refuse to handle cargo originating from Thailand at ports where there are ICFTU affiliates. This method was used against Malaysia in the past. Id.

In 1990, Thailand shipped $1.2 billion of exports into the United States under the GSP. Pornpimol Kanchanalak, Panel takes up request to block GSP benefits, BANGKOK POST, Aug. 7, 1991, at 1.

The GSP program authorizes the President to grant duty free treatment to eligible imports from beneficiary developing countries. Trade preferences are conditioned on the country's adherence to internationally recognized labor standards. The United States has chosen five worker rights from the ILO conventions which it considers "internationally recognized." They include: (1) the right of association; (2) the right to organize and bargain collectively; (3) prohibition of forced or compulsory labor; (4) a minimum age of employment for children; and (5) acceptable conditions of work and occupational safety and health. 19 U.S.C. § 2461, et seq. (1988).
freedom of association\textsuperscript{84} and the right to strike and bargain collectively.\textsuperscript{85} In July 1992, after reviewing the petition, the GSP Subcommittee found that Thailand was not taking adequate steps to protect free association rights.\textsuperscript{86} Since then, final review has been extended twice to allow the new government to establish itself and bring SELRA into compliance with international labor standards.\textsuperscript{87} The committee granted the extensions because the newest Thai government\textsuperscript{88} expressed a willingness to amend the labor laws governing state enterprise workers.\textsuperscript{89}

PART TWO

I. INTERNATIONALLY RECOGNIZED BASIC LABOR STANDARDS.

The complaints against Thailand allege that SELRA violates fundamental worker rights. The International Labour Organisation (ILO) promulgates standards that define these basic rights. This section examines the right of association and the right to organize and bargain collectively as defined by the ILO. It then argues that these standards should be used to evaluate SELRA.

A. The International Labour Organisation Defines Standards for Labor Relations

The International Labour Organisation (ILO) was founded in 1919 with forty-two member countries, including Thailand.\textsuperscript{90} In 1945, the ILO entered into an agreement with the United Nations, and became the first specialized
agency of the United Nations.\textsuperscript{91} As of 1988, the ILO's membership had increased to 150 member countries.\textsuperscript{92}

The ILO is a tripartite organization comprised of governments and representatives of employers and workers. Its highest priority is to defend human rights and implement international labor standards.\textsuperscript{93} In addition to establishing labor standards, the ILO reviews complaints submitted by member countries and organizations.\textsuperscript{94} The Freedom of Association Committee of the Governing Body\textsuperscript{95} is set up within the ILO specifically to deal with complaints concerning violations of union rights.\textsuperscript{96}

The ILO does not have enforcement authority. Once a violation is determined, the normal course of action is to draw the violating country's attention to the ILO's concerns and make recommendations to bring the country into compliance. The opinions set forth by the Freedom of Association Committee help define the meaning of applicable conventions and provide a comparative basis for guidance when reviewing future alleged violations.\textsuperscript{97}


\textsuperscript{92} \textit{Ghebali, supra note 76, at 26.}

\textsuperscript{93} All members of the ILO have a common responsibility to work toward achieving the goals of the organization. They work together to enunciate ILO objectives and set labor standards by promulgating conventions, which provide specific guidelines of acceptable labor standards. \textit{[Report of the Director-General 149 (Eleventh Annual Asian Regional Conference – Bangkok, Nov.-Dec. 1991) International Labour Office.]} Once a convention is drafted, it is sent out to each member country for ratification. The country is then free to ratify the convention, and if it does, it is expected to comply with it. Each country is reviewed each year as to their compliance with ratified conventions. \textit{Faye Lyle, \textit{Worker Rights in U.S. Policy} 2 (1991).}

\textsuperscript{94} Typically, a country must be a member of the ILO before the Freedom of Association Committee will review allegations against it, however, when the United Nations transmits a complaint regarding a nonmember country, the Committee will review the allegations if the government concerned gives its consent and the complaint is considered suitable for review. \textit{International Labour Office, \textit{Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO} (3d ed., 1985) \S 5 [hereinafter \textit{Digest of Decisions}].}

\textsuperscript{95} The Freedom of Association Committee reflects the tripartite character of the ILO. It is composed of nine members representing government, employer and worker groups. It examines complaints made, then makes a recommendation to the Governing Body as to what action to take or if further examination by the Fact-Finding and Conciliation Commission is necessary. \textit{Id. at} 6.

\textsuperscript{96} \textit{Id. at} 1.

\textsuperscript{97} \textit{Id. at} 1 – 2.
B. The ILO Conventions

There are 171 ILO conventions, governing a variety of labor standards. While not all of these conventions have gained uniform acceptance, the right of association and the right to organize and bargain collectively, as found in ILO conventions 87 and 98, respectively, are internationally accepted. In fact, they are considered the two basic ILO instruments governing union rights. This Comment places primary concern on these rights because of their major importance to union rights.

1. The Right of Association

The right of association, as defined by ILO Convention No. 87, provides that: (1) employees and employers "shall have the right to establish and . . . to join organisations of their own choosing without previous authorization;" (2) the organizations shall have the right to make their own constitutions, elect their representatives "in full freedom", and establish an administration; and (3) the organizations have the right to join federations. Convention No. 87 also provides that the organizations "shall not be liable to be dissolved or suspended by administrative authority." Finally, Article 11 of Convention 87 specifically provides for the protection of the right to organize.

99 Freedom of Association and Protection of the Right to Organize Convention, ILO Convention No. 87 (1948). (Ratified by 99 countries as of 1991.)
100 Right to Organize and Collective Bargaining Convention, ILO Convention No. 98 (1949). (Ratified by 115 countries as of 1991.)
101 See infra text accompanying notes 116-117.
103 ILO Convention No. 87 art. 2.
104 Id. art. 3.
105 Id. art. 5.
106 Id. art. 4.
107 Article 11 states: "Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise." Other articles of Convention No. 87 express, inter alia, a prohibition on public authorities from interfering with the rights under this convention (art. 2) and a caveat that the Convention only apply to armed forces and police as determined by national law (art. 9).
2. **Right to Organize and Bargain Collectively Under ILO Convention No. 98**

Convention No. 98 concerns the right to organize and bargain collectively. Whereas the right of association defines the relationship of employer and worker organizations with the government, the right to organize and bargain collectively involves the rights of workers' organizations in dealing with their employers. Convention No. 98 provides foremost that "workers shall enjoy the adequate protection against acts of anti-union discrimination in respect of their employment." In addition, Convention No. 98 prohibits interference in the functioning of an employee organization by employer organizations. The convention encourages voluntary negotiations between employers and workers and advises each country to establish appropriate "machinery" to ensure that the right to organize is allowed. Convention No. 98 also states that it is not addressing "the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way."

II. **APPLYING CONVENTIONS NO. 87 AND 98 TO THAI LABOR LAWS.**

The use of Conventions No. 87 and No. 98 in evaluating SELRA initially appears problematic because Thailand did not ratify these conventions. However, three arguments can be made in favor of applying Conventions No. 87 and No. 98 to the evaluation of SELRA. First, the conventions are applicable because they are the principal mechanisms for protecting the freedom of association. The Governing Body of the ILO recognizes that "[c]omplaints relating to freedom of association may be presented even against States which have not ratified the Conventions on freedom of association." If a complaint can be brought against Thailand, it follows that application of the conventions is proper. Second, the

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108 LYLE, supra note 93, at 23.
109 ILO Convention No. 98, at art. 1.
110 Id. at art. 2.
111 Id. at art. 4.
112 Id. at art. 3.
113 Id. at art. 6.
115 Id., at ¶ 174, at page 330. An additional argument supporting this is that because the principle of freedom of association is expressly incorporated into the ILO constitution, it is binding on all members. LYLE, supra note 93, at 2. Since Thailand is a signatory to the ILO, it is bound to honor this principle.
conventions are binding as customary international law because of their high ratification rates and their recognition in many other international treaties and country practices.\textsuperscript{116} Finally, regardless of whether the conventions are technically binding on Thailand, they are still appropriate standards for judging SELRA due to their broad international acceptance.\textsuperscript{117}

Several practical reasons exist for Thailand to honor these fundamental rights. Thailand must be sensitive to the repercussions of ignoring internationally accepted worker rights. ICFTU information chief Luc Demaret noted, "... as part of human rights, the respect for basic trade union rights is now also increasingly used in criteria for political, economic and trade relations between countries."\textsuperscript{118} Thus, not only may its international image be tarnished, but Thailand may jeopardize trade relationships and privileges if it continues to ignore these standards.\textsuperscript{119} In addition, the threat of labor unrest from discontent workers could have a negative impact on foreign investment and growth for the country. It is to Thailand's benefit, as a developing nation, to honor the right of association and the right to organize and bargain collectively.\textsuperscript{120}

The application of Convention No. 98 in evaluating SELRA raises a further concern because Article 6 excludes the convention's application to public workers.\textsuperscript{121} Article 6, however, applies only to "public servants engaged in the administration of the State." The definition was not intended to be inclusive of all employees working in every enterprise run by the state. The language of a subsequent ILO convention enacted to remedy the ambiguity makes this apparent.\textsuperscript{122} In contrast, SELRA applies broadly to all


\textsuperscript{117} Id.

\textsuperscript{118} Union Ban Could Harm Thailand, Says Expert, \textit{Bangkok Post}, Apr. 4, 1991, at 3. See also supra note 46.

\textsuperscript{119} The imminent threat of losing GSP preferences is a prime example. See supra text accompanying notes 78–84.

\textsuperscript{120} Thailand argued that "the manner of [the principles of the ILO] must be determined with due regard to the stage of social and economic development reached by each people." Complaints Against Thailand, \textit{supra} note 10, at ¶ 451. The Freedom of Association Committee responded that these rights, "like other basic human rights, should be respected no matter what the level of development of the country." Id. at ¶ 462.

\textsuperscript{121} See supra text accompanying note 113.

\textsuperscript{122} Convention No. 151 was promulgated in recognition of the fact that "certain categories of public employees" were not covered by Convention No. 98, and that "considerable expansion of public–service activities in many countries and the need for sound labour relations between public authorities and public employees' organizations" necessitated a specific convention. \textit{Labour Relations (Public Service) Convention}, ILO Convention No. 151 (1978).
workers who are employed by the government in government-run enterprises. Not all of these enterprises are involved in what is typically considered administration of the state. Application of SELRA's restrictions to these workers raises concern.

Convention No. 87 and Convention No. 98 set forth internationally accepted basic labor standards. Because the right of association and the right to organize and bargain collectively are fundamental to labor rights in general, these conventions establish a valuable framework in which to critically analyze SELRA's effect on the inalienable rights of Thailand's public sector workers.

PART THREE

SELRA contains many provisions of law governing the activities of public workers. This section evaluates provisions of SELRA which may contravene the standards set forth by Convention No. 87 and Convention No. 98. Furthermore, it examines the justifications given by the Thai government in defense of each provision, then suggests possible solutions to bring SELRA into conformity with international standards.

I. THE RIGHT OF ASSOCIATION DENIED UNDER SELRA

Paradoxically, SELRA allows for the formation of "associations", yet violates the "right of association." The right of association, as defined by the ILO, implies the right for organizations to pursue lawful activities for the defense of their occupational interests. Many of the regulations in SELRA directly frustrate the associations' powers to pursue their occupational interests in a meaningful manner.

A. The Right to Strike Denied Under SELRA

The right to strike is generally considered a vital part of the right of association. It is one of the essential means through which workers and their organizations promote and defend their economic and social interests. The strike is extremely important to Thai workers. They rely heavily on the strike as a mechanism to achieve gains, yet it is denied under SELRA.

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123 See infra notes 126–130 and accompanying text.
124 DIGEST OF DECISIONS, supra note 94, at ¶ 345.
125 Id. at ¶¶ 362, 363.
Section 19 of SELRA states, "Regardless of whatever the case may be, staff are not allowed to strike or do anything which is in the nature of a strike." Although this prohibition existed for public workers under the LRA,\(^\footnote{\textit{LRA}, § 23.}\) the ability to call "extraordinary meetings" amounted to a \textit{de facto} strike, which was never deemed illegal.\(^\footnote{\textit{COUNTRY REPORTS, supra note 1, at 1009.}}\) Section 28 of SELRA precludes this alternative.

1. \textit{SELRA Imposes Limitations on the Right to Strike}

Strikes are not sanctioned by the right of association unconditionally. Three conditions exist whereby a strike ceases to be a protected right: (1) if a strike becomes violent,\(^\footnote{\textit{DIGEST OF DECISIONS, supra note 94, at \S 367.}}\) (2) if it involves purely political motivations,\(^\footnote{\textit{Id. at \S 372.}}\) or (3) if it would interrupt essential services, thereby endangering the life, safety and health of the public.\(^\footnote{\textit{Id. at \S 394.}}\)

Several justifications support Thailand's ban on strikes by public sector employees. First, a separate rule for public sector employees is necessary because they provide vital services to the public. The realistic concern exists that interruptions in essential services by a strike would harm the public.\(^\footnote{\textit{Letter from Thomas Cadogan, Labor Reporting Officer, American Embassy, Bangkok, Oct. 22, 1992.}}\) Furthermore, the structure and purpose of state enterprises differs from that of private enterprises since state enterprises receive tax subsidies and tax exemptions and operate as government-sanctioned monopolies.\(^\footnote{\textit{Complaints Against Thailand, supra note 10, at \S 452.}}\) Therefore, since they can have direct repercussions on the public, strikes by public sector employees are an inappropriate means of expressing worker dissatisfaction.

2. \textit{Public Employees Denied the Right to Strike}

SELRA prohibits the right to strike by all public employees and this broad inclusion of every employee of every state-run enterprise simply cannot be justified. The Freedom of Association Committee previously stated that it is "not appropriate for all state-owned undertakings to be treated on the same basis with respect to limitations of the right to strike."\(^\footnote{\textit{DIGEST OF DECISIONS, supra note 94, at \S 395.}}\) The
Committee calls for the country's legislature to draw a distinct line between essential¹³⁴ and non-essential services.¹³⁵ SELRA's extensive coverage includes less essential services which should not be denied the right to strike: ports, education, transportation, fuel and energy, and telecommunications;¹³⁶ in addition to more crucial services, such as those provided by hospitals and waterworks.¹³⁷ SELRA must be amended to recognize the differing purposes of various state-run enterprises.

Even with respect to essential services, the restriction on strikes cannot be justified unless other guarantees are made to protect worker interests. The most common safeguards include a corresponding restriction on the employers' right of lockouts and "adequate, impartial and speedy conciliation and arbitration proceedings."¹³⁸ Such offsets do not exist in SELRA.

3. Sanctions for Violating SELRA are Oppressive

The penalties for participating in an illegal strike under SELRA are up to one year in prison or a fine of up to 20,000 baht¹³⁹ or both, which is doubled if a person "incites, or aids and abets" a strike.¹⁴⁰ This penalty is double that for illegal strikes under the LRA.¹⁴¹ The Committee previously established standards suggesting that sanctions should be proportionate to the offense involved and that a worker should not be imprisoned for engaging in a peaceful strike.¹⁴² The sanctions promulgated by SELRA are particularly harsh and are incompatible with internationally recognized labor standards.

4. The Right to Strike Must be Restored

The right to strike must be returned to state enterprise workers. Due to the nature of services provided by the workers, however, this right should be

¹³⁴ Essential services are those which immediately affect the health and safety of the public. These examples illustrate the Committee's idea of essential services: hospitals, waterworks and air traffic controllers are essential; transport services, banking, teaching, and the supply and distribution of food are not essential. Id. at ¶¶ 402–412.
¹³⁵ Id. at ¶ 395.
¹³⁶ Arguments that these services affect the health and safety of the public are, of course, foreseeable. When the need for these services is balanced against the importance of the power to strike for union effectiveness, however, the right to strike cannot be denied.
¹³⁷ COUNTRY REPORTS, supra note 1, at 1010.
¹³⁸ Id.
¹³⁹ Minimum wage is 100 baht per day (roughly four U.S. dollars).
¹⁴⁰ SELRA § 45.
¹⁴¹ Labor Relations Act §§ 139, 140.
¹⁴² Complaints Against Thailand, supra note 10, at ¶ 477.
limited. The government must revise its list of essential services and give all non-essential service workers a right to strike equivalent to that of private workers. The distinction between the two types of workers is compatible with that set forth by the Freedom of Association Committee. For essential services, there are two alternatives to replace the unlimited strike: allowing a mini-version of a strike and/or implementing a system of mandatory interest arbitration.

a. **Mini-Strikes as an Alternative Weapon to the Unlimited Strike**

Often strikes have been used as a way to draw the attention of an employer to worker grievances. Thus, a smaller version of a strike still may be effective. This could be accomplished by establishing a set number of employees allowed to strike within each essential service, thereby keeping enough workers to continue providing for the needs of the public. Alternatively, the government could set a time limit on the duration of strikes after which it would be illegal and the employees could be ordered back to work. Effectively, at a minimum, a one day strike would allow workers to make their grievance known without seriously disrupting services.

b. **Education of Thai Workers in Dispute Resolution Required**

A small version of a strike would not give employees the leverage that a holdout would. A mini-strike would need to be supplemented with a procedure by which employees and management could engage in fair bargaining and dispute resolution. Mandatory interest arbitration has been considered as an acceptable alternative to the strike, when it is adequate, impartial, and speedy.\(^\text{143}\) In theory, this mandatory arbitration avoids violations of the right of association and the right to collectively bargain. Using a system of dispute resolution in Thailand, though, leads to concerns about effectiveness. Thai workers have been reluctant to use such a process in the past due to the inherent complexity and the perceived management bias associated with the method.

Several steps can be taken to make the arbitration system effective. To avoid the same problems of the past, the government should sponsor educational programs, preferably run by neutral international organizations, to

\(^{143}\) See Arvid Anderson and Loren A. Krause, *Article: Interest Arbitration: The Alternative to the Strike*, 58 FORDHAM L. REVIEW 153 (1987) for full discussion of mandatory interest arbitration as it has been applied to American public workers.
teach union representatives how to effectively use the arbitration process to promote worker interests. In addition, arbitrators should be a neutral and approved by both parties. In cases where much is at stake and the parties are extremely hostile, it may be appropriate for a neutral international organization, such as the ILO, to be employed as arbitrator.

Although mandatory arbitration may be necessary in handling workers' interests, specific grievances should be brought before an impartial judiciary. The system of labor courts set up under the LRA should be open to state enterprise workers. The tripartite character of the labor courts would then provide an impartial and adequate mechanism to hear grievances.

c. Realistic Sanctions Needed

The sanctions for illegal strikes should be reduced to be proportionate to the seriousness of the offense. A peaceful strike should be sanctioned minimally, whereas a violent strike should justify harsher punishment. At a minimum, sanctions should be reduced to match those under the LRA.

B. SELRA's Registration and Membership Requirements for the Formation of Associations are in Violation of Convention No. 87

Article 2 of Convention No. 87 provides that workers "shall have the right to establish . . . and join organizations of their own choosing without previous authorization." This standard is intended to provide workers with the choice of whom they would like to associate with and have as their representative body. Section 21 of SELRA states, "Each state enterprise shall have only one State Enterprise Staff Association." In addition, Section 22 of SELRA requires that at least thirty percent of the enterprise's employees be members of the association. This is a significant change from the LRA. Under the LRA, a union can be formed with a minimum of ten members and there is no limit on the number of unions which can exist within an enterprise.144

Under SELRA, the Registrar accepts applicants for the enterprise's association on a first-come, first-served basis.145 Thus, the first organization to meet all the requirements, including the thirty percent membership

144 Labor Relations Act of 1975, Chapter VII, § 89 (Thailand).
145 The Registrar is defined in SELRA as "the person appointed by the Minister [of Interior] to perform in accordance with this Act." SELRA § 4(2).
requirement, becomes the representative for that enterprise. An order by
the Registrar refusing to accept an application for registration may be
appealed to the Minister of Interior. Once the first applicant is registered,
however, there is no procedure allowing an enterprise's employees to
challenge the association.

The limitation of a single association and the thirty percent membership
requirement are facial violations of the right of association. Section 21
effectively denies individual workers a choice between organizations.
There is no guarantee that the registered association will be representative of
the workers it purports to represent. The Freedom of Association Committee
attacked Section 22, stating "such a high numerical requirement represents a
restriction on the creation of worker's organizations in large undertakings." The Committee also expressed concern over the ability of minority groups to
represent their own interests. Moreover, in practice, the requirements have
caused internal turmoil between the dissolved previous unions. They have
been left to compete for the single position of the representative body within
their enterprise. Such disharmony further weakens the effectiveness of the
labor organizations.

The Thai government, formed by the coup, explained that by enacting
the requirement of one association, it intended to promote solidarity among
the employees, thereby increasing their bargaining power. In the past, the
existence of several unions made it difficult for all employees to be
represented, thereby complicating the negotiation process. The
government's concerns over the negotiating process are valid, but procedural

146 SELRA § 26.
147 Complaints Against Thailand, supra note 10, at ¶ 471.
148 Id. at ¶ 472.
149 Id. SELRA also excludes non-Thai nationals from eligibility for membership in an association
(SELRA § 23). The Freedom of Association Committee has ruled that nationality, along with race,
religion, political beliefs, etc., is not a valid basis for discrimination and impedes upon a
worker's right to form and join a representative organization. Id. at ¶ 473. If non-nationals are not
satisfied with the choice of organizations, they cannot form their own representative group. Although the
discriminatory effect of this requirement is a violation of ILO standards, it is not a change from the
previous law. Section 88 of the Labor Relations Act also requires union members to be of Thai
nationality. However, the requirement is still discriminatory and there is no valid justification for this
requirement. It should be abolished.
150 FOREIGN LABOR TRENDS, supra note 4, at 23.
151 Complaints Against Thailand, supra note 10, at ¶ 453.
safeguards must be added to SELRA if the requirement of one association per enterprise is to remain.152

Safeguards are needed to ensure that the interests of all employees are adequately represented. SELRA should require that the association be chosen by a majority vote in an election. A membership quota is necessary to guarantee that the majority is represented. The question is whether thirty percent is a reasonable quota, since it leaves open the possibility that seventy percent of the workers could be unrepresented. Alternatively, a higher percentage might make it impossible for workers to reach the requisite number. Thus, if an association is formed with thirty percent of the employees, it should be subject to immediate challenge and replacement if a larger majority is formed within the first one or two months thereafter. Additionally, SELRA should limit the terms of associations and require regularly scheduled elections. Such safeguards would provide public employees the right to establish and join the organization of their choosing and to replace an association with which they are dissatisfied. They would further ensure that the association makes it a priority to represent all workers as best it can.

C. No Choice at All: Thai Government Maintains Control over Functions of Associations

The control the Registrar maintains over the functioning of the associations raises concerns with respect to Article 3 of Convention No. 87. Article 3 provides the right of an organization to draw up its own constitution and elect its own representatives "in full freedom," and to organize its own administration and activities. It further restricts public authorities from interfering with these rights. In contrast, Section 25(9) of SELRA requires that the articles of an association make certain stipulations, which ultimately give the Registrar the power to insist on the specific number of committee members and limit the terms they serve. Section 26 of SELRA further empowers the Registrar to screen applicants to ensure they "are not in conflict with peace and order and good public morality", yet has no definition of these concepts as a guide. The Registrar can also dissolve an association if it has "committed an act that was contrary to the law or peace and order or good

152 The Thai government defends its requirements by noting that by April 1992, 37 associations already had been registered. GSP Review, supra note 86, at 3. However, the statistics do not reveal the nature of the representation and whether a majority of the workers are satisfied with the associations.
public morality or was a danger to the economy or stability of the country" and it can remove individual committee members for the same reason.153

The power the Registrar has over both the representative committee members and the functioning of the association directly interferes with state enterprise workers' autonomy. The right to elect is rendered meaningless if public authorities can immediately remove those elected. Nevertheless, these provisions were promulgated by the Thai government to ensure honest and qualified representatives and to prevent political activities adverse to governmental policies. The same precautions have been taken in recent amendments to the LRA which put strict requirements on who may represent a union in collective bargaining.154 To a certain extent, the Thai government has a valid concern about the caliber of negotiations and union leadership, considering past difficulties with the dispute settlement procedures and politicians' influence on union leadership positions.

1. Thailand Defends its Restrictive Labor Laws

Politicization of the union movement is a major concern of government leaders and the public. Newspapers reported that public union members played controversial roles in politics and involved themselves in corruption scandals.155 In its answer to the AFL-CIO's GSP complaint, the Thai government illustrated the political corruption with an example of a series of strikes staged during 1988–1990. The strikes were in opposition to plans to privatize a port operation. The government alleges these were politically motivated and that the leaders were offered rewards by certain political groups.156

The labor movement's reaction to the government's efforts to privatize state enterprises is a prime example of the political role that organized labor plays in Thailand. Labor leaders and government leaders, before and after the coup, disagreed about this issue. The government's plan to privatize sparked

153 SELRA §§ 39, 40.
154 The advisor who represents the association for purposes of collective bargaining must be a Thai national, must never have been insolvent or addicted to drugs, must not be immoral, never sentenced to imprisonment, must be an executive member of a national employer or labor center or have completed a government course on labor, must believe in monarchical democracy, and must not give advice contrary to legal provisions, good conduct of labor relations or social harmony. Complaints Against Thailand, supra note 10 at § 481.
155 Thais in Bid to Regain Right to Strike, supra note 5.
unrest as labor leaders viewed it as an attempt to undercut their power.\textsuperscript{157} Additionally, since the strength of the Thai labor movement rested in public unions, the unions naturally sought to prevent privatization.\textsuperscript{158} Labor leaders feared that once privatized, management sympathetic to the union movement would be replaced by hostile employers.\textsuperscript{159}

On the other side, the government began to feel that the necessary privatization would be impossible given the strength of the unions. The government also feared economic disaster would result if something was not done about union interference. State enterprises were losing money and Thailand needed to privatize in order to raise capital to provide essential services and improved infrastructure (such as roads and pollution control) to the growing industrial center of Bangkok and the outlying areas.\textsuperscript{160} The coup and the drastic amendments to the labor laws through Announcement 54 and SELRA were a direct response to this predicament.\textsuperscript{161}

Since the enactment of SELRA, the progress towards privatization has been slow.\textsuperscript{162} Moreover, the Thai government has not since raised the labor movement's resistance to privatization as a justification for maintaining SELRA.\textsuperscript{163} The strict requirements on advisors and the Registrar's strong control over them aim at preventing labor leaders from succumbing to the undue influence of politics. The government and the public do not want the old unions re-established for fear they will once again become a tool in the hands of politicians and other interest groups.\textsuperscript{164} SELRA, however, should be restructured to address this problem without removing adequate protections on worker rights.

2. Reform of SELRA is Necessary for Compliance With ILO Standards

The authorization of the powers of the Registrar in SELRA is unacceptably incompatible with Article 3 of Convention No. 87. Even if the Registrar's powers have not been exercised in a manner which impinges on workers' rights, the potential for abuse is great. These powers should be

\begin{itemize}
  \item \textsuperscript{157} Smucker, \textit{supra} note 67.
  \item \textsuperscript{158} FOREIGN LABOR TRENDS, \textit{supra} note 4, at 28.
  \item \textsuperscript{159} Id.
  \item \textsuperscript{160} \textit{Why Egat is a Tough Nut to Crack}, THE FINANCIAL TIMES LIMITED, Apr. 9, 1990, \textit{available in LEXIS}, Nexis library, Omni file.
  \item \textsuperscript{161} Magnier, \textit{supra} note 6.
  \item \textsuperscript{162} FOREIGN LABOR TRENDS, \textit{supra} note 4, at 28.
  \item \textsuperscript{163} Letter from Thomas Cadogan, \textit{supra} note 131.
  \item \textsuperscript{164} Id.
\end{itemize}
abolished or given stricter guidelines. State enterprise workers should be allowed to function "in full freedom" and trusted to elect qualified persons who will best represent their interests. In addition, there are alternate ways to control political corruption by labor leaders.

a. *New Thai Government Proposes Solution to Restore Rights*

The new Thai political leaders have expressed a willingness to revive the unions. Interior Minister Chavalit recently released a policy proposal to allow labor unions in state enterprises once again.\textsuperscript{165} In making this proposal, the government and Chavalit expressed that this restoration must be accompanied by assurances from worker representatives that unions will not become "political pressure groups." Such conditions placed on labor organizations raise problems of incompatibility with the right of association. Although purely political motivations should not be the focus of union activities, it is difficult to distinguish between what is purely political and what is political yet in furtherance of workers' occupation, economic and social interests. The Freedom of Association Committee expressed this concern:

> If trade unions are prohibited in general terms from engaging in any political activities, this may raise difficulties by reason of the fact that the interpretation given to the relevant provisions may, in practice, change at any moment and considerably restrict the possibility of action of the organizations.\textsuperscript{166}

Demonstrations for democracy might be deemed political, but it is questionable whether opposition by state enterprise workers to privatization is purely political, when it is clear this would affect their occupational status. The Committee recommends that a judicial authority police union abuses on a case-by-case basis, rather than imposing a blanket ban on all political activity.\textsuperscript{167} A judicial approach should be implemented to deal with alleged abuses in a fair manner. Furthermore, Thailand should be proactive in preventing political abuse.

\textsuperscript{165} *State Enterprise Workers Seek Meeting With Chavalit*, BANGKOK POST, Oct. 21, 1992, at 2.
\textsuperscript{166} DIGEST OF DECISIONS, *supra* note 94, at ¶ 354.
\textsuperscript{167} *Id.*
b. A Solution to Meet Needs of Both the Thai Government and State Enterprise Employees

The existing requirements for labor representatives and the proposed restrictions on political activities give the government excessive control over association leaders and restrict workers' freedom to elect their representative. The Thai government needs to compromise if it wants to solve the problems of political corruption. So far, it has only addressed the problem through restrictions on worker organizations; this negative response is not sufficient. A Thai newspaper keenly stated the problem: "ignoring their [union members] demands for too long opens the way for manipulation of the labor movement by political groups or the military . . . ."168 The Thai government must be willing to give the labor movement a voice in government policy that directly affects labor.169 This is what union leaders have been seeking all along, but have been denied over and over again.170 The government may be resistant to giving organized labor groups this type of power, especially since unions officially represent only three percent of industrial workers. Those not affiliated with unions, however, are being represented by unions and are receiving benefits from the progress made by unions. In any event, giving unions a direct voice in the policy-making process would help circumvent subversive political influences and make labor representatives publicly accountable.

D. Distinction Between Associations and Unions Have Crippling Effect on Labor Movement

Article 5 of Convention No. 87 specifically provides the right to establish and join federations. SELRA does not contain a provision for the formation or prohibition of federations. It does not appear possible, however, for state enterprise associations to join federations comprised of private

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169 Policies which deserve input from labor include: social security, safety in the workplace, maximum hours, and wages. Labor representatives do sit on the National Wage Committee, however this representation was lowered from five worker representatives to three under the new laws. Amorn, *supra* note 3.
170 Labor representatives have asked for weekly meetings with the ministers in the Prime Minister's office. They have expressed a desire for a forum like the "joint public-private sector consultative committee" as a means for workers to impact policy making. Smucker, *supra* note 67. Recently, labor leaders were denied their request to participate in amending SELRA to resolve the issues the prohibition of unions have raised. *Revision of State Firm Laws Urged*, BANGKOK POST, Jan. 8, 1993, at 3.
workers because sections 5 and 113 of the Labor Relations Act require that federations under that act may only consist of trade unions registered thereunder. Thus, the implications of the absence of a provision for federations are unclear. The Thai government claims this silence means associations are free to form federations of their own.\textsuperscript{171} The government also points out that some associations continue their affiliation with international federations.\textsuperscript{172} The actual problem, however, is the distinction drawn between the two labor groups and its impact on the entire labor movement because public unions have not been able to confederate with private unions.

State enterprise workers at one time comprised one-half of total union membership, which made their unions the much larger than private sector unions.\textsuperscript{173} The abolition of state enterprise unions thus heavily impacted the entire labor movement, which was already small in numbers.\textsuperscript{174} Furthermore, private unions can no longer rely on the assistance they previously received from public sector unions.\textsuperscript{175} The distinction drawn between the two groups creates an obstacle to unity and cohesion within the labor movement, which is necessary to push forward on issues such as wages and better working conditions.

A further distinction between the private and public labor groups was made several months after SELRA was enacted. A ruling by the Juridical Council said that state enterprise employees are not "workers" since they are not defined as such under SELRA. Therefore, the Interior Minister overturned the election of three state enterprise workers to serve on the Prime Minister's advisory council on labor development. This further reduced the public unions' clout.\textsuperscript{176}

The governance of the private and public sectors by different laws may be justified for certain circumstances.\textsuperscript{177} Nonetheless, the nominal differences should not prevent employees from working together to promote

\textsuperscript{171} Statement of Government, supra note 156, at 7.
\textsuperscript{172} For instance, the newly established associations of three electricity-generating state enterprises have continued membership with Public Services International (PSI) federation. Complaints Against Thailand, supra note 10, at ¶1454.
\textsuperscript{173} FOREIGN LABOR TRENDS, supra note 4, at 8.
\textsuperscript{174} "The dissolution of State Enterprise unions may have had a muting effect on the organization of new unions. Only 43 new unions organized in 1991, against 142 in 1990." Id. at 8.
\textsuperscript{175} See supra text accompanying note 68.
\textsuperscript{176} issarapong Snub For State Firm Unionists, BANGKOK POST, Sep. 17, 1991, at 3.
\textsuperscript{177} Interest bargaining over financial matters, see infra text accompanying note 191, and limiting the right to strike in essential services, see supra text accompanying note 130, are examples of circumstances where different treatment under labor laws is valid.
their common interests. A law is needed that provides state enterprise associations equal status and the same privileges as private unions. They should be allowed to confederate to work together for common goals.

E. Restrictions on Meetings Under SELRA are Incompatible With Convention 87

In addition to providing the right to elect representatives and run their administrations in full freedom, Article 3 of Convention No. 87 also provides for the right to engage in union-related activities. Section 28 of SELRA provides, "A general meeting, regardless of what the case may be, can only be held on a day that is a government holiday or a traditional public holiday." This requirement forecloses the alternative to the strike which was used under the Labor Relations Act, i.e., calling "extraordinary meetings" which took workers off the job for days and had the same effect as a strike in getting the employer's attention. Despite the absence of this method, the requirement itself is a bar to the effectiveness of associations, since it is difficult to organize a meeting and have full participation outside the workplace. According to the Freedom of Association Committee, an organization should have the right to hold meetings on work premises without prior approval and without interference.

It is a valid concern that association meetings could interfere with worker responsibilities and productivity, but there are other ways to limit such effects. For instance, if SELRA limits the length of meetings, both employers and employees could be accommodated by allowing the meeting at the workplace, but ensuring that they do not interfere with the job. Also, if employees are not paid for time spent in these meetings, employees will be self-policing. Thus, the government's concern can be easily remedied without violating minimum labor standards.

F. Dissolution of the Unions

Article 4 of Convention No. 87 provides that "workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority." This standard is based on the principle of due

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178 Hold meetings for its members, or engage in collective bargaining, for example.
179 COUNTRY REPORTS, supra note 1, at 1009.
180 Complaints Against Thailand, supra note 10, at ¶ 475. See also DIGEST OF DECISIONS, supra note 94, at ¶ 142.
process and the belief that an organization should have an opportunity to defend its case through a judicial process with the right to appeal a decree of dissolution. Furthermore, the Freedom of Association Committee suggested that dissolution of a trade union should occur only in extreme circumstances. SELRA's Section 55 mandates, "All the trade unions of state enterprises that were set up under the laws governing labor relations shall cease to exist, except for operations to liquidate them." Labor leaders were not given the opportunity to plead their case before SELRA was enacted. The unilateral nature of the legislation was an unfair infringement on the rights of the organized labor movement.

III. RIGHT TO ORGANIZE AND BARGAIN COLLECTIVELY DENIED UNDER SELRA

The infringements on the right of association discussed above pertain to employees' relations with the government. The right to organize and bargain collectively, on the other hand, addresses the employer-employee relationship. In the case of public sector employees, the government is the employer. The right to organize and bargain collectively nevertheless applies in this context, treating the government's role simply as employer.

Two aspects of SELRA appear incompatible with the right to organize and bargain collectively, as defined by the ILO Convention No. 98. First, SELRA fails to provide adequate protection against anti-union bias on the part of employers. Second, the mechanism established for negotiations over worker concerns and grievances is inadequate. These defects should be cured in order to bring SELRA into compliance with basic labor standards.

A. Protection Against Anti-Union Bias Inadequate

Article 1 of Convention No. 98 provides for protection against acts of anti-union discrimination, particularly employment conditioned upon

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181 Complaints Against Thailand, supra note 10, at ¶ 469.
182 To the contrary, union leaders were told union rights and activities would not be restricted. Id. at ¶ 445.
183 The Freedom of Association Committee also found fault with Section 55 of SELRA which provides for the disposition of the former unions' property after its dissolution. Id. at ¶ 470. Under Section 55, if union assets are left over after liquidation, and there is no union rule governing the distribution of the property, then the remaining assets shall be transferred to the Thai Red Cross. In reality, this default provision has not caused problems, but it should still be eliminated.
nonmembership and dismissals of workers who are members or participate in union activities. Section 20 of SELRA provides:

Management is not allowed to terminate the employment of, or transfer, staff for the reason that the staff has taken steps to request for the establishment of an association, or to participate as a member or committee member of an association . . . .

SELRA does not, however, provide protection for those who are discriminated against in the hiring process based on their union activity. Thus, workers who have a reputation of involvement in union activities in the past may be effectively shut out from obtaining work in a state enterprise, and the discrimination would be legal. Section 20 of SELRA also fails to provide any guarantee that the fundamental right against discrimination will be honored or that an aggrieved party will be able to seek redress. In contrast, Chapter IX of the LRA sets forth explicit rules against unfair treatment and their enforcement. Protective language similar to that of the LRA should be incorporated into SELRA as well.

B. Inadequate Negotiating Machinery

Article 3 of Convention No. 98 requires that "[m]achinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organize . . . ." In addition, Article 4 calls for measures "to encourage and promote the full development and utilization of machinery for voluntary negotiations . . . ." SELRA has established Activities Relations Committees (ARCs),\(^\text{185}\) one for each state enterprise, to deal with all collective bargaining efforts and to hear worker grievances, such as discrimination cases.\(^\text{186}\) The association elects its representatives to the ARC, but if no association exists within the enterprise, the government and the employer will appoint the representative. The role of these committees is limited. They may hear worker complaints and proposals to improve working.

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184 Sections 121 through 123 of the LRA prohibit an employer from terminating an employee based on union membership or activities; obstructing employees from becoming a member or causing them to resign; obstructing labor union or federation business; and coercing or threatening against union membership. Sections 124 through 127 sets forth the process of filing a complaint with the Labor Relations Committee, and provides for possible ensuing criminal prosecutions for violations.

185 The ARCs are composed of a member of the state enterprise's board directors and an equal number of representatives from management and employees. SELRA § 14.

186 SELRA, Ch. 2, §§ 14–18.
conditions. If proposals require negotiation of fiscal matters, however, the deliberations of the ARC must be submitted for approval to the national State Enterprise Labor Relations Committee (SELRC).\footnote{SELRA § 18.} Thus, issues of wages and financial benefits ultimately lie with the SELRC for all final decisions. This has a profound negative effect on the autonomy of the state employees and "is contrary to the promotion of voluntary negotiation of workers' terms and conditions of employment . . . ."\footnote{Complaints Against Thailand, \textit{supra} note 10, at ¶ 478.}

The composition of the SELRC also raises serious concerns over the effectiveness of the bargaining mechanism established by SELRA.\footnote{The SELRC's 21 members are as follows: Five government officials (Minister of Interior, Permanent Secretaries of Ministries of Finance and Interior, the Comptroller-General, and Director-General of Department of Labor); five "experts" appointed by the government; five representatives of selected by state enterprise management; five workers' representatives, and the Chief of the Office serving the committee. SELRA § 6.} Because it is heavily weighted to the side of employers, the committee is not a suitable forum for equitable collective bargaining efforts.\footnote{Complaints Against Thailand, \textit{supra} note 10, at ¶ 479; GSP Review, \textit{supra} note 86, at 6.} In addition, the composition of the committee allows the potential for collusion against employee interests. Moreover, workers are reluctant to utilize a system they perceive as biased. These factors diminish the effectiveness of the ARCs and the SELRC in promoting worker interests.

Thailand asserts that it established the system to allow for more involvement by workers and to provide a speedier process. Furthermore, in dealing with government-run enterprises, decisions affecting its budget require government approval. The two-tiered process of the ARC and SELRC is shorter than the previous process and actually allows for more participation on a higher level.\footnote{Complaints Against Thailand, \textit{supra} note 10, at ¶ 457.} Under the LRA, any demands or complaints having financial implications could not be decided by the LRCs, but had to be submitted to the Ministry of Finance for consideration. At least under SELRA, a committee which includes worker representatives makes the final decision. The presence of worker representatives on the SELRC does not, however, in reality, give workers any more power than under the old system.

While the system under SELRA is not adequate to effectively and fairly address worker interests or hear grievances, the ARCs appear to be a fair avenue for workers to bring their concerns. The ARCs could also effectively engage in interest arbitration, but because many of the concerns

\textit{Complaints Against Thailand, \textit{supra} note 10, at ¶ 478.}
raised by workers will most likely affect the government's budget, the ARCs will not be effective until the SERLC is changed. One solution to change the composition of the SELRC is to give the employee representation equal weight against the government. SELRA should also include guidelines specifying which issues must be reviewed by the SELRC. The list should be short and narrowly defined, leaving ARCs as much discretion as possible. A final alternative would be to abolish the SELRC altogether and, instead, submit decisions reached by the ARCs directly to the Ministry of Finance for approval.

The grievance process provided in SELRA also needs to be amended because of the potential for abuse within the SELRC. The Thai government states that if employees are dissatisfied with a decision made by SELRC, they can take their case to the courts of law. There is, however, no specific provision for this in SELRA. The right to resort to the labor courts must be explicitly provided for in SELRA in order to ensure employees know what recourse they have after receiving an unfavorable decision by SELRC. In cases not involving fiscal matters, appeals from the ARCs should go directly to the courts. The present system does not adequately ensure that employees have an adequate, impartial and speedy mechanism to protect and promote their economic and social interests.

Thailand has also supported its mechanism for collective bargaining by citing bargaining victories already won by state enterprise workers. In February 1992, the SELRC agreed to give state enterprise workers a wage increase of twenty to twenty-three percent, when only a sixteen percent increase was requested. These statistics do not, however, prove the effectiveness of collective bargaining. To the contrary, the generous wage increase appears suspect, and may have been granted, regardless of negotiation efforts, in anticipation of the review by the GSP Subcommittee on labor conditions in Thailand. Indeed, the GSP Subcommittee viewed this increase as favorable in its review of the SELRC.

CONCLUSION

Before SELRA, public unions played a vital role in the organized labor movement. Despite their small numbers, public unions possessed the strength

\[192\text{ Id. See supra note 74.} \]
\[193\text{ GSP Review, supra note 86, at 6.} \]
\[194\text{ Id.} \]
and clout to securing basic economic and social provisions for all workers. The enactment of SELRA effectively put an end to their momentum.

Thailand's state enterprise workers will continue to pursue social and economic conditions despite SELRA's impingements on their rights to organize. Nevertheless, the problems created by SELRA must be resolved. At a minimum, state enterprise workers should be granted rights equal to their private counterparts organized under the LRA. More importantly, SELRA must be amended to comply with internationally accepted basic labor standards as they are espoused by ILO Conventions No. 87 and 98.

Strong reasons exist for Thailand to honor these conventions. First, although perhaps not technically binding, the Freedom of Association Committee of the ILO has found Thailand to be in violation of these widely accepted labor standards. As a member of the ILO, Thailand should not ignore these fundamental standards.

In addition, there are strong economic reasons for Thailand to amend SELRA. Labor unrest will continue to be a serious concern for Thailand as it undergoes the growing pains of becoming an industrialized nation.195 The threat of labor unrest could have a negative impact on foreign investment and growth for the country. Thailand must adapt its labor policies in order to avoid negative economic consequences. Compliance with internationally recognized labor standards will not only enable Thailand to escape conflict, but it will also send a message to the world that Thailand it is poised to become an industrialized nation.196

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195 Thai Boom Leaves Poor Behind, AGENCE FRANCE PRESSE, Jan. 11, 1993.
196 At the time of publication, the Thai government had proposed a bill which would allow one labor union to be set up within each state enterprise. All state enterprise unions would be allowed to form a single labor federation. This proposal will be brought before the United States to avoid trade sanctions under the GSP program. Labour Official To Brief US On Workers' Rights, BANGKOK POST, Mar. 18, 1993, available in LEXIS, Nexis library, Omni file.