

Third Party Complaint Regarding a Facility Contracting for Nike in Thailand

*Please note: Due to FLA's policy regarding third party complaints, we have withheld the name of the factory that was the subject of this complaint. More information about this factory is available in the factory tracking chart, which is posted on the FLA's website.

Overview

The third party complaint involved the dismissal of three workers who were organizing the Garment Industry Labor Union at a factory in Thailand producing athletic clothing for Nike. A Thai solidarity group, the Centre for Labor Information Service and Training (CLIST), supported by the Clean Clothes Campaign, lodged a third party complaint with the FLA. The Thai Labor Relations Committee ordered the reinstatement of the workers. FLA convened three meetings in Bangkok at which factory management agreed to a Recognition Agreement with CLIST and the Garment Industry Labor Union. That agreement is being overseen by an Ombudsperson (Prof. Lae) appointed by the FLA and includes training on freedom of association for the unions, workers, supervisors, and management.

Legal Context

Thailand's 1975 Labor Relations Act recognizes the right of private sector workers to organize and bargain collectively, and prohibits anti-union discrimination by employers. Ten workers in the same factory or industry can apply to form a union, which must be registered with the Ministry of Labor and Social Welfare (MOLSW). Workers can be legally fired for any reason provided they receive severance pay, even if they are union leaders, a provision that lends itself to abuse. Members of the bilateral Worker-Employer Welfare Committees are protected from dismissal under the 1998 Labor Protection Act, but even in such cases reinstatement for unfair dismissals is a very lengthy process. It is reported that employers frequently dismiss workers who try to form trade unions. In some cases, they are dismissed while awaiting registration, while in others they are dismissed ostensibly for non-union reasons alleged by the employer. Thai law does not provide for punitive damages in cases of wrongful dismissal.

Background

In November 2003, three worker leaders at the subject factory in Nakorn Rachasima province, in the northeast region of Thailand, began to collect signatures from workers in support of a demand to management for improved working conditions, which included cessation of verbal harassment by supervisors and body searches by security guards. At the time the complaint was filed, the factory employed 400 workers, of whom 350 were women, and produced athletic clothing -- short and long-sleeve t-shirts -- for Nike. Before they had a chance to submit the demand to management, two of the workers were dismissed. The workers filed a complaint before the National Commission on Human Rights and the Commission ordered management to reinstate the two workers in February 2004.

On October 12, 2004, three worker leaders successfully organized a group of 11 workers, meeting the necessary threshold to set up a union and registering the union as the Garment Industry Labor Union. The union held its first general meeting, attended by 12 members, on October 23, 2004. Among other actions, the union appointed workers to leadership positions. Management dismissed three union leaders -- including the President and Secretary General -- on October 29, 2005, before the MOLSW had given official recognition to the union executives.

According to the letter of employment termination, the three dismissed workers were charged with committing several serious acts of misconduct, such as instigating conflict and division among workers, as well as between workers and the company, distributing leaflets criticizing company management and supervisors, disseminating distorted facts about the company, causing disturbances and instigating workers to disrespect supervisors, and using aggressive and sarcastic verbal and physical expression against other workers and supervisors which negatively affected the work of the management and annoyed other workers. The dismissed workers filed a complaint before the National Commission on Human Rights and the Labor Relations Committee. On December 14, a conciliator from the Welfare and Labor Protection Department of the Ministry of Labor organized an informal meeting in order to mediate the case between management and the three dismissed workers. Nike and FLA representatives also observed the meeting. Management refused to reinstate the workers, and offered them severance pay in the form of ten months' salary. All three workers refused to accept the severance and stated that they would continue to pursue reinstatement. In March 2005, the Thai Labor Relations Committee voted in favor of reinstatement of the workers.

FLA Involvement

The FLA became involved when the CLIST, a Thai organization that supported

the union activists, filed a third party complaint in January 2005. The FLA deemed the complaint to be receivable and following the procedures, sought to ascertain whether the Participating Company concerned was aware of the issue and taking the necessary steps to resolve it. After discussions with Nike, the FLA decided to wait while the Thai Labor Relations Committee considered the case and only step in if the governmental process stalled or failed.

As noted above, the Labor Relations Committee found in favor of the workers and ordered their reinstatement. Nike worked with factory management to draft a remediation plan involving not only reinstatement and payment of back wages but also the establishment of a factory environment favorable to the exercise of freedom of association. Given the history of tension between the parties Nike asked the FLA to mediate the process. Assisted by the FLA Regional Coordinator for Southeast Asia and the Nike compliance team, the FLA's President and CEO convened three meetings in Bangkok at which factory management agreed to reinstate the three workers with back pay and negotiated a Recognition Agreement between the company and the Garment Industry Labor Union. An Ombudsperson appointed by the FLA has overseen the remediation process and the implementation of the agreement, and provided training on freedom of association for the unions, workers, supervisors, and management. The Ombudsperson is Professor Lae Dilokvidharat, Director of the Labor and Management Center of Chulalongkorn University's Faculty of Arts, and Chairman of the Joint Consultation Committee of the Electricity Generating Authority of Thailand (EGAT), whose union is one of the strongest in the country.

On-going Remediation

The FLA coordinated an initial meeting on August 24, 2005, between factory management, Nike representatives, and the ombudsperson to discuss specific details of the remediation plan, including curriculum, date, location, budget, and trainer to ensure that there is a clear understanding about the company's policies and procedures and Thai labor law. The training modules were designed and sessions were held in September 2005. The FLA will facilitate a meeting among all parties every six weeks to review progress and discuss any problems that may arise at the facility.

Since one of the major concerns at the subject factory relates to disciplinary practices, the FLA provided guidelines on grievance and disciplinary procedures to management who have restructured their policy and procedures to provide clear and fair grievance and disciplinary mechanisms to the workforce. It also revised the performance evaluation system to prevent any discrimination against workers by supervisors. In an effort to improve internal communications, management is holding meetings with the existing welfare committee and safety committee every month and has also created a newsletter to communicate with its workforce.