

Third Party Complaint Regarding a NIKE Contract Factory in Thailand, MSP Sportswear

Complaint

On January 5, 2005, the Garment Industry Labor Union, with support from the Centre for Labor Information Service and Training (CLIST), filed a third party complaint with the Fair Labor Association regarding MSP Sportswear, a factory located in Nakorn Ratchasima, Thailand, supplying NIKE and other companies not affiliated with the FLA. The complaint alleged, among other noncompliance issues, that three workers were dismissed for organizing a union at the factory.

The FLA initiated a Third Party Complaint at Step 2 on February 1, 2005 and notified the complainant and NIKE about its action. NIKE waived the 45-day period and requested that the process go directly to Step 3. Pursuant to Step 3, the FLA determines whether to proceed with further assessment through use of either an expert or an FLA Independent External Monitor.

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 made up by the employer. Thai law does not provide for punitive damages in cases of wrongful dismissal.

Background

In November 2003, three worker leaders at a factory in Nakorn Rachasima province, in the northeast region of Thailand, began to collect workers' signatures to support demands to end alleged verbal abuse by supervisors and inappropriate body searches by security guards. Before they had the opportunity 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 Labor Relations. The Commission on Human Rights found in favor of the workers and ordered their reinstatement, which took place in February 2004.

On October 12, 2004, workers at the factory registered the Garment Industry Labor Union with the Ministry of Labor and Social Welfare (MOLSW). A general meeting and union leadership election was held on October 23. Several days later, factory management dismissed three union leaders—including the elected President and General Secretary of the newly-formed union.

According to the letter of employment termination, the three dismissed workers were accused of serious misconduct, including instigating conflict and division among workers, distributing leaflets criticizing company management and supervisors, disseminating distorted facts about the company, and causing disturbances. The dismissed workers again filed a complaint before the National Commission on Human Rights and Labor Relations.

On December 14, a conciliator from the Welfare and Labor Protection Department of the Ministry of Labor informally organized a meeting in order to conciliate the case between management and the three

Third Party Complaints

refuse 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 they would continue to pursue reinstatement.

Remediation

In March 2005, the Thai Labor Relations Committee ruled in favor of reinstatement of the workers. 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.

Auret van Heerden, FLA President and CEO, assisted by Tanida Disyabut, FLA Regional Coordinator for South East Asia, mediated three meetings between the union and management in Bangkok. The NIKE regional compliance team observed the process. Management agreed to reinstate the three union workers with back pay and negotiated a Recognition Agreement with the Garment Industry Labor Union and CLIST.

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) was appointed by the FLA as an Ombudsperson to oversee the implementation of the agreement, including training on freedom of association for the unions, workers, supervisors and management.

From March 2005 through January 2006, Dr. Lae and the FLA facilitated meetings with all constituents every six weeks to review progress at the facility. Since one of the major concerns related to disciplinary practices, FLA and NIKE worked with the factory management to restructure grievance and disciplinary policy and procedures. In addition, the factory revised the performance evaluation system and adjusted the wage calculation system to motivate the workers to improve their performance. In an effort to improve internal communications, meetings with management and the welfare committee and safety committee are held every month instead of every three months as required by law. Management has also created a newsletter to communicate with its workforce. The factory has implemented ISO 9000 and the Thai Labour Standards to improve its management systems and is committed to implementing the Quality of Work life Standards initiated by the Industrial Council of Thailand.

Conclusion

According to Professor Lae, the case is an example of a best practice related to reinstatement because "normally, the case is closed when the union leader(s) are reinstated. However, in this case, a series of meetings to facilitate dialogue between the terminated union leaders and MSP management and the actions taken after reinstatement greatly helped labor relations at the factory."

A tangible positive result to the better labor relations is the improvement of productivity at the facility. In addition, the factory has also broadened its customer base.