

## ISSUE BRIEF

*The FLA is a multi-stakeholder organization combining the efforts of businesses, universities, and civil-society organizations to improve conditions for workers around the world. Occasionally, the FLA publishes briefs on current issues in the global supply chain. We intend for these briefs to provide an overview of the various perspectives on a given issue. At all times, the FLA expects its business affiliates to comply with all legal requirements, as well as the provisions of its Workplace Code of Conduct.*

### **LIMITATIONS ON COLLECTIVE BARGAINING RIGHTS IN TURKEY**

**April 2015**

#### **THE ISSUE:**

How should brands respond to industry threshold requirements in Turkey that restrict workers' collective bargaining rights and conflict with the FLA Code and international norms?

#### **BARRIERS TO COLLECTIVE BARGAINING**

Despite Turkey's ratification of ILO Core Conventions 87 and 98<sup>1</sup> ensuring the fundamental rights of freedom of association and collective bargaining, government regulations in Turkey place burdensome requirements on workers seeking to organize, raising barriers to workers' ability to exercise these rights.

Among its more problematic restrictions, the current legislation requires a union to meet a double membership threshold in order to negotiate a collective bargaining agreement (CBA) on behalf of workers in a given factory. The two thresholds require that:

1. A union must represent more than 40 percent of the workforce of a single employer or factory group (or more than half of the workers in a single factory), and
2. The union must also represent a certain percentage of workers within the entire industry sector.

Unions affiliated with the three largest union confederations in Turkey<sup>2</sup> must represent more than one percent of the industry to negotiate and sign a CBA; for those not affiliated with the three confederations, the threshold rises to three percent. These restrictions apply regardless of the size of the factory or factories in question, or the size of the workforce the union is attempting to organize.

For FLA affiliates sourcing apparel and footwear from Turkey, the applicable sector ("Textiles, Ready-Made Clothing, and Leather") includes more than one million workers registered with the Social Security Administration, making it practically impossible for many unions to reach the one or three percent thresholds even when they represent the majority of the workers in a given factory.

Of the 13 unions currently registered in Turkey in the "Textile, Ready-Made Clothing, and Leather" industry, only three<sup>3</sup> exceed the industry threshold required for them to negotiate and sign a CBA with an employer. The remaining ten unions, then, are blocked from participating in CBA negotiations, which is a violation of the FLA Workplace Code of Conduct's recognition of workers' collective bargaining rights.

#### **THE GOVERNING ELEMENT OF THE FLA CODE: FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING\***

"Employers shall recognize and respect the right of employees to freedom of association and collective bargaining."

\* <http://www.fairlabor.org/our-work/labor-standards>

1 Convention Concerning Freedom of Association and Protection of the Right to Organize, and Convention Concerning the Application of the Principles of the Right to Organize and to Bargain Collectively.

2 The Confederation of Progressive Trade Unions of Turkey (DISK), the Confederation of Turkish Real Trade Unions (HAKIS), and the Confederation of Turkish Trade Unions (TURKIS).

3 Oz Iplik Is, Teksif, and Tekstil

Workers look to collective bargaining as their channel to improve workplace conditions; when a union is blocked from bargaining collectively it becomes largely irrelevant to workers.

## CONSEQUENCES AND RELATED BARRIERS

According to the Ethical Trading Initiative (ETI), only one percent of factories in Turkey were operating under a CBA as of 2013.<sup>4</sup> In the absence of real collective bargaining, workers' ability to advocate for themselves suffers, and systemic supply chain issues worsen. For example, in its 2014 report on working conditions in Turkey, the Clean Clothes Campaign (CCC) found garment workers earning less than the legal minimum wage, overtime hours beyond the legal limit, overtime not paid at a premium rate, and an overall wage environment that makes it difficult for many workers to meet their basic needs.<sup>5</sup>

Furthermore, in Turkey, workers are not legally permitted to go on strike except during the negotiation of a CBA – another way the “industry threshold” limit stands as a barrier to workers' rights. In some cases, factory management may encourage unions to compete to reach the threshold limits, with the result that no one union can gain enough membership to negotiate with an employer. And while it is illegal in Turkey to fire a worker for being a member of a union, companies may pay a fine as punishment, with no requirement to reinstate the terminated worker.

Lack of protection against unlawful termination can further block unions from reaching the collective bargaining threshold, as many workers – especially temporary workers, migrant workers, or others with precarious status – may fear to join any union at all. As a representative from one of the union confederations has explained, “it is very difficult for unions to ... obtain a sufficient number of members due to the high membership threshold and the fear of dismissal on the side of the workers due to their affiliation with unions.”<sup>6</sup>

4 <http://www.ethicaltrade.org/sites/default/files/resources/FoA%20in%20company%20supply%20chains.pdf>

5 <http://www.cleanclothes.org/resources/publications/stitched-up-1>

6 [http://www.todayszaman.com/anasayfa\\_turkey-progress-report-says-workers-cant-collectively-determine-wages\\_362011.html](http://www.todayszaman.com/anasayfa_turkey-progress-report-says-workers-cant-collectively-determine-wages_362011.html)

## FLA REFLECTIONS

Unfortunately, the legal situation in Turkey presents a scenario in which factories are protected by local law when they refuse to negotiate with their workers, if the workers' union is not large enough to meet the industry threshold. The final resolution of this issue for workers will only come when the government changes this law, whether on its own, or at the urging of brands, workers, civil society, and other stakeholders.

In the meantime, refusals by suppliers to negotiate with workers fall afoul of the FLA Workplace Code of Conduct and ILO norms, and FLA affiliates cannot look the other way when workers' collective bargaining rights are violated. When faced with collective-bargaining restrictions that run counter to the FLA Workplace Code, affiliates' support for collective bargaining may require creative or collaborative implementation.

For example, in a recent case, the FLA has worked together with two of its affiliated brands, Nike and adidas, to help workers in those brands' Turkish supplier factory negotiate an agreement with factory management – despite the workers' union (DeriTek) being unable to reach the industry threshold. The affected brands heard from workers that this restriction had compromised their right to collective bargaining, and so the brands used their leverage to convince factory management to enter into a negotiation process with DeriTek anyway.

The resulting agreement remains imperfect, as it cannot be considered a formal “collective bargaining agreement” in the strictest sense. As a signed documentation of negotiations between an employer and a workers' union, however, it remains legally binding, though under a different name. (Suggested names determined through the negotiation process include: “team contracts,” “protocols,” or “mutual agreements.”)

The FLA encourages all brands sourcing from Turkey to strongly communicate to suppliers their support for workers to bargain collectively with their factory or employer -- even if they are unable to reach the industry threshold. As demonstrated at the factory supplying for Nike and adidas, whenever factory management is willing to negotiate in good faith with workers, unions can still secure legally binding agreements that function like CBAs, though under another name.