International Labour Organization

multinational enterprises

Freedom of Association

MNEs and FoA: Cases of the ILO Committee on Freedom of Association

ACTRAV
Bureau
for Workers'
Activities

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Cases of the ILO Committee on Freedom of Association

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Introduction

Thousands of voluntary initiatives and codes of conducts have been adopted in recent years by companies - mainly multinational enterprises (MNEs) - trying to assert their corporate social responsibility (CSR) goals. These instruments often comprise the ILO's fundamental principles and rights at work, and which include ***the rights to freedom of association and collective bargaining***. However, while some of the companies have transparently and honestly tried to achieve these principles, many other initiatives have no impact whatsoever on the real life of workers and people in general.

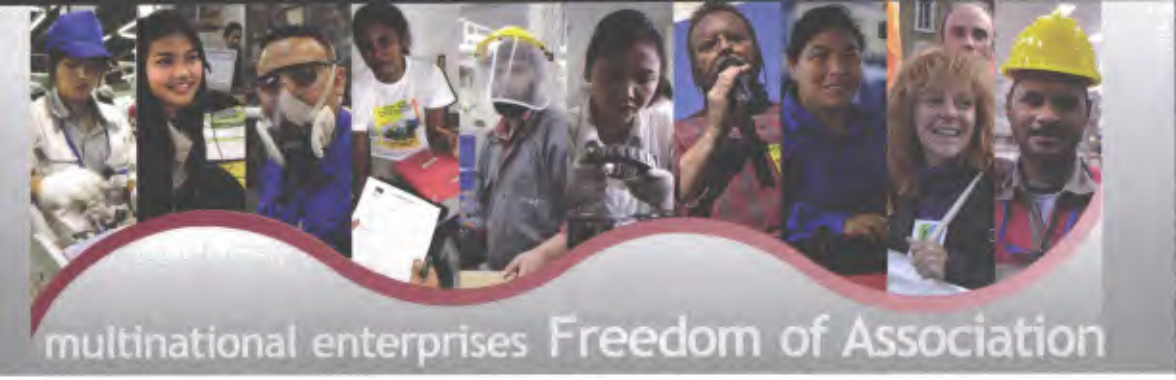
The ***ILO Declaration on Multinational Enterprises and Social Policy*** (MNE Declaration), adopted in 1977, remains the only authoritative document unanimously agreed upon by governments and workers' and employers' representatives that provides effective guidance at the company level on how enterprises should apply principles deriving from international labour standards concerning employment, training, conditions of work and life, and industrial relations.

ACTRAV has already published the booklet *The **ILO MNEs Declaration: What's in it for workers?*** to help trade unions influence the adoption and implementation of policies and principles of the MNE Declaration. However, despite its valuable contribution as a guide of good practices, in certain cases the scope of the MNE Declaration may be limited due to its "not binding" nature. Workers therefore should look further for other means at their disposal to ensure respect for these rights in MNEs; for instance, through the supervisory bodies of the ILO.

ILO member States, simply by their membership of the organization, are obliged to respect fundamental rights on ***freedom of association and collective bargaining***. The Committee on Freedom of Association (CFA) of the Governing Body of the ILO, since its creation in 1951, has examined more than 2,800 complaints from workers' organizations (as well as employers' organizations) on violations of freedom of association that occurred at the workplace, leading to recommendations that member States must implement. As a result, there have been positive developments in the field of freedom of association in the last 50 years.

A number of these complaints refer to violations which occurred in MNEs or their subsidiaries that on many occasions have had a positive outcome for workers. In other words, the complaints lodged with the Committee have helped to resolve conflicts that might otherwise have lasted for long periods.

This publication contains a selection of these cases, which in turn show the impact that the complaints filed with the Committee may have had. It provides an overview of the violations of freedom of association that originated in major MNEs,



summarizing the facts alleged by the unions, the Committee's recommendations and the subsequent result,[1] with the aim of highlighting one more time the importance of the Committee and of the international labour standards in general, for protecting the fundamental rights of workers around the world. Although not exhaustive, the principles and recommendations presented here may be applicable to all companies and all public and private employers. Likewise, we believe these cases provide for valuable trade union experiences to reflect upon.

I would like to thank Camilo Rubiano, who compiled the cases for this publication, and Anna Biondi, Deputy Director of ACTRAV, who coordinates the work related to MNEs and labour rights.

Dan Cunniah

Director - Bureau for Worker's Activities (ACTRAV)

[1] The facts, recommendations and outcome of the cases presented here were drawn from the database of cases of CFA. The figures and information on the companies mentioned were taken from Forbes magazine and the official websites of each company, and correspond to the year 2012.

Company:	TOYOTA
Industry:	Auto and truck manufacturer
Headquarters:	Japan
Employees:	317,716
Sales:	US$ 228.5 billion
Profit:	US$ 4.9 billion

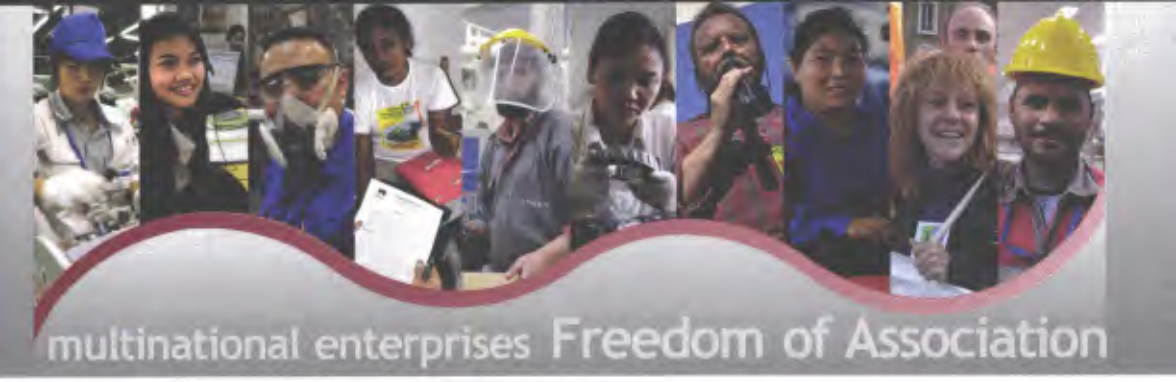
TOYOTA MOTOR CORPORATION is mainly engaged in the automobile and financial business. The company operates through three segments, namely: the Automobile segment, which is engaged in the design, manufacture and sale of automobiles, including sedans, minivans, sport-utility vehicles and trucks, as well as the related parts and accessories; the Finance segment, which is involved in the provision of financial services related to the sale of the Company's products, as well as the leasing of vehicles and equipment; and the Others segment, which is involved in the design, manufacture and sale of housing, as well as information and communication business. As of March 2011, the Company had 511 subsidiaries and 217 associated companies.

Case 2252
(The Philippines, 2003-2008)

The complaint was lodged in February 2003 by the *Toyota Motor Philippines Corporation Workers' Association* (TMPCWA). The complainants alleged several infringements of the right to organize and collective bargaining on the part of Toyota Motor Philippines Corporation, such as *interference in the trade union's establishment and activities, refusal to bargain collectively despite the certification of the union as the sole and exclusive bargaining agent, anti-union discrimination through the dismissal of union members, restrictions on the exercise of the right to strike.*

Though the conflict with the company started years before, the spark was when TMPCWA filed a petition for certification election in order to be recognized as the sole and exclusive bargaining agent of all the rank-and-file employees of Toyota Motor Philippines Corporation assigned to two plant sites. The petition was opposed by the enterprise and subsequently dismissed by the mediator-arbiter of the Bureau of Labour Relations. Following an appeal filed by the union, the Secretary of the Department of Labour and Employment ordered the holding of the election. Considering that the quorum and majority requirements had been met, the union filed a motion to be certified as the sole and exclusive bargaining agent of all the rank-and-file employees of Toyota Motor Philippines Corporation, and which the company opposed. However, after considering the company's opposition, the Secretary of the Department of Labour and Employment rejected the appeal and confirmed the certification.

As a result, TMPCWA submitted a proposal of collective bargaining agreement to Toyota Motor Philippines Corporation. The company did not



reply to the proposal; on the contrary, it filed a motion for reconsideration with the Secretary of the Department of Labour and Employment concerning the rejection of its appeal on the results of the certification election, whereupon the Office of the Secretary issued an order requiring the parties to attend a "clarifying" hearing. The union organized assemblies which took place from 21 to 23 February 2001, informed the company, and in exchange suggested that the workers concerned would come to work on their rest days. However, the company fired 227 union officers and members and suspended another 64 union members for 30 days. Meanwhile, the Secretary of the Department of Labour and Employment took a final decision on the certification, confirming the TMPCWA as the sole and exclusive collective bargaining agent on the two plant sites.

As a result of the dismissals and suspensions the union filed a notice of strike, which eventually took place on 28 March 2001.

In April 2001, the Secretary of the Department of Labour and Employment submitted the dispute to the National Labour Relations Commission, for compulsory arbitration. The commission declared that the actions which took place from 21 to 23 February 2001 (the assemblies) amounted to illegal strike actions because the union had failed to comply with the procedural requirements applicable to the organization of a strike. The strike organized by the union May 2001 was also declared illegal. Consequently, the enterprise implemented the decision by dismissing more than half of the union members, including all its leaders. In addition, it filed three criminal complaints against several union members and officers for the crime of grave coercion.

The Committee's recommendations

First, when addressing the issues concerning the certification process, the Committee noted that it took more than one year to organize the election and another year to have the complainant confirmed as the exclusive bargaining agent within Toyota Motor Corporation. In this respect, the Committee stated - as it did in other cases as well - that "[...] *it is not necessarily incompatible with Convention No. 98 to provide for the certification of the most representative union in a given unit as the exclusive bargaining agent for that unit. However, a number of safeguards must be provided, including a fair, independent and speedy certification process that offers adequate protection against acts of interference by employers in such matters.*"

Regarding the right to strike, the Committee also observed that the intervention of the Secretary of the Department of Labour and Employment was prompted by the strike organized on 28 March 2001, following the dismissal of the 227 workers. The Committee noted that the legality of this strike has not been questioned; indeed, a

notice had been filed by the union on 28 February 2001 and the strike started one month later. In this respect, the Committee must recall that *sanctions, such as massive dismissals in respect of strike actions, should remain proportionate to the offence or fault committed, and that no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike*. Furthermore, the Committee also recalled that it has always considered that *sanctions for strike action should be possible only where the prohibitions in question are in conformity with the principles of freedom of association*.

As a result, the Committee requested the Government (i) *to amend the relevant legislative provisions in order to establish a legislative framework allowing for a fair, independent and speedy certification process and providing adequate protection against acts of interference by employers in such matters*; (ii) *to amend the relevant provisions concerning the exercise of the right to strike*; and (iii) *to make every effort to ensure that the TMPCWA and Toyota Motor Philippines Corporation negotiate in good faith in order to reach a collective agreement*.

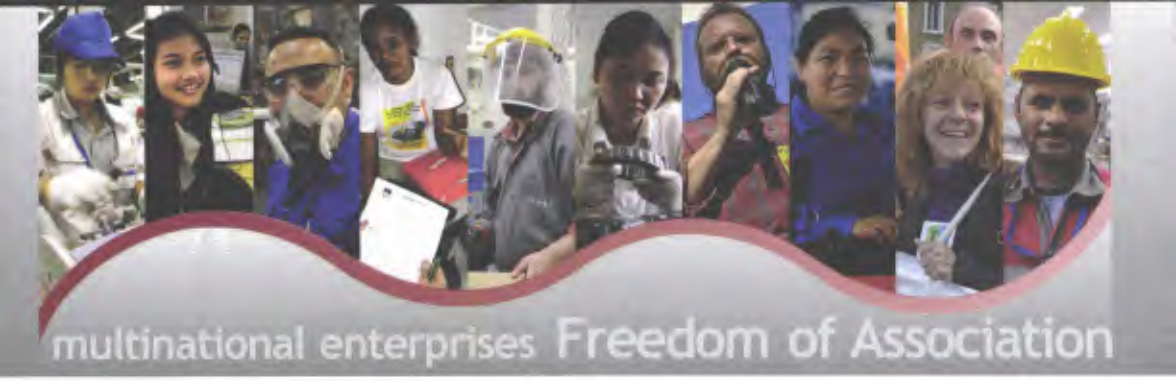
The Committee also requested the Government to initiate discussions in order to consider the possible reinstatement in their previous employment of the 227 workers dismissed by Toyota Motor Philippines Corporation, as well as of the union officers declared to have lost their employment status by the National Labour Relations Commission.

Outcome

Although not all the recommendations of the Committee were met, many of the dismissed workers obtained compensation from the company.

In addition, the Government approved a law, Act No. 9481, entitled "An Act Strengthening the Workers' Constitutional Right to Self-Organization", which guarantees a speedy certification process. The Committee noted that the law in question contained several improvements in relation to the previous legislative provisions.

Other issues were still pending before the courts at the time of the last examination of the case (June 2008).



Company:	ING GROUP
Industry:	Life and health insurance
Headquarters:	The Netherlands
Employees:	97,043
Sales:	US$ **139.0 billion**
Beneficios:	US$ **7.5 billion**

ING GROEP NV is a global financial institution mainly offering life insurance and retirement services to its customers. The company operates in more than 50 countries where in addition to its insurance products it also offers banking and investment services.

Case 2337 (Chile, 2004-2006)

The *National Trade Union of Workers of ING Seguros de Vida S.A.* (SNTISV) filed the complaint on February 2004, which referred to *anti-trade union practices and activities aimed at preventing collective bargaining*, including the failure to allocate work to the leaders of the trade union; practices used by the enterprise to obstruct the collective bargaining process; dismissal of delegates and members of the trade union; pressure applied by the enterprise to force members working at two branches to resign from the trade union; non-compliance with collective agreements, in particular, deduction of benefits arising under those agreements; the company's refusal to recognize the affiliation of workers whose labour contracts were modified by the company to the Trade Union ING AFP (Pension Fund Administrator) Santa María; and the unilateral imposition of individual agreements.

The Committee's recommendations

In this case, the Committee first expressed its concern in observing the numerous anti-trade union practices on-going within the company and requested the Government take the necessary measures to ensure that Conventions No. 87 and No. 98 were fully respected within it.

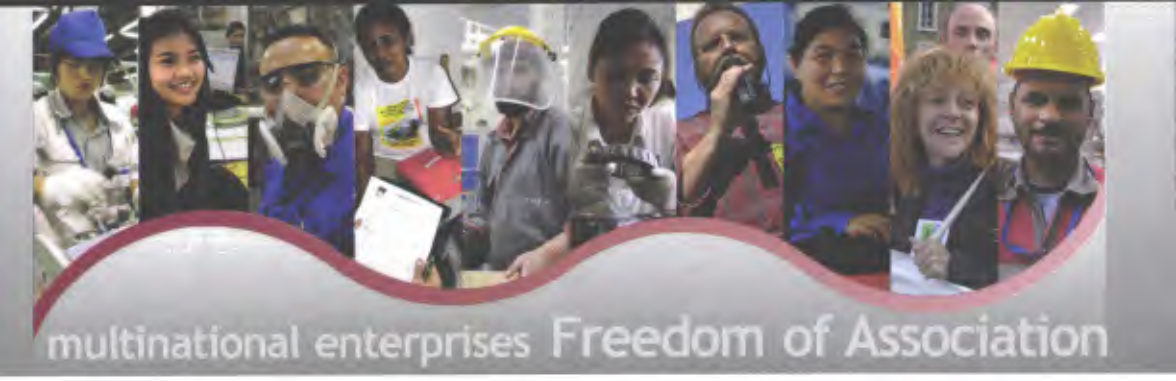
In particular, in connection to the practices employed by the company to prevent collective bargaining by workers, the Committee highlighted the principle that *while the question as to whether or not one party adopts an amenable or uncompromising attitude towards the other party is a matter for negotiation between the parties, both employers and trade unions should bargain*

in good faith making every effort to reach an agreement, and requested the Government to take measures to ensure that in the future the company respects this principle and abstain from employing anti-trade union practices.

Outcome

In 2006 the Government informed the Committee that a number of the differences that existed had been resolved. For instance, both union officials and the workers affiliated to the unions were governed by the same rules and regulations that apply to all employees of the various ING companies. Also, the benefits had been incorporated into the individual contracts and a collective agreement, dated 31 March 2005, had been signed with the members of one of the trade unions in the company.

As for the workers whose affiliation to the trade union were denied because their employment contracts were modified, given that the alleged events were verified and confirmed by the administrative and judicial authorities, the Committee requested the Government to take the necessary measures to prevent the enterprise from having recourse to anti-trade union practices in the future.



Company:	PETROBRAS
Industry:	Oil and gas operations
Headquarters:	Brazil
Employees:	81,918
Sales:	US$ 145.9 billion
Profit:	US$ 20.1 billion

PETROLEO BRASILEIRO S.A. - PETROBRAS is an integrated oil and gas company which directly or through its subsidiaries is engaged in the research, extraction, refining, processing, trade and transport of oil from wells, shale and other rocks, its derivatives, natural gas and other liquid hydrocarbons, as well as in activities related to energy, development, production, transport, distribution and commercialization of energy. The Company operates in Brazil and in other 24 countries on five continents. As of December 2011, the Company owned 132 concession contracts for 194 exploration blocks and had a number of subsidiaries, including Petrobras Quimica SA, Petrobras Distribuidora SA, Braspetro Oil Services Company and Braspetro Oil Company.

Case 1889 (Brazil, 1996-1998)

The complaint was submitted by the *Single Confederation of Workers* (CUT) in 1996.

In May 1995, the Supreme Labour Tribunal declared abusive (illegal) the strike held within the framework of the collective bargaining process in the PETROBRAS oil company and imposed the working conditions to be respected by the parties. This decision was already considered by the Committee as a violation of the right to strike, bearing in mind the circumstances of the case (300th Report, Case No. 1839, paragraph 86).

The strike went on despite the Supreme Labour Tribunal decision. As a result, the Supreme Labour Tribunal imposed on each trade union affiliated to the *Single Federation of Oil Workers* (FUP) a fine of US$ 100,000 for each day of the strike, which given the duration of the strike totalled US$ 2 million. This amount exceeded the payment capacity of the trade unions in question, preventing them from using the dues paid by their members in fulfilling their economic obligations by paying their employees and carrying out their trade union activities.

Although the National Congress approved an amnesty law absolving the trade unions from paying the above-mentioned fines, the President vetoed this law. Furthermore, the Government sent a Bill to the National Congress which amended the Act respecting strikes, in particular in regards to essential activities. This intended Bill aimed at limiting collective bargaining by authorizing the judiciary to intervene in interest disputes between employers and trade unions through the exercise of the standard-setting

power of the labour courts, by submitting such disputes to a compulsory settlement, and it expressly provided that the judicial authority could apply fines to trade unions engaging in strikes deemed as "abusive", thus further regulating the fines already imposed on the trade unions by the courts.

The Committee's recommendations

The Committee concluded that the imposition of fines for the exercise of the right to strike in the circumstances of the present case was not consistent with the principle of freedom of association. Accordingly, the Committee stated that no fine or sanction should be imposed against the unions in question and therefore requested the Government to take measures to ensure that the fines imposed on the trade unions be annulled.

Furthermore, the Committee reminded the Government that *the submission of collective interest disputes to the judicial authorities is only possible by common agreement between the parties or in the case of essential services in the strict sense of the term.*

As regards to the Bill aimed at the regulation and establishment of criteria for the imposition of fines in the event of abusive or illegal strikes, the Committee emphasized that *the imposition of sanctions, including fines, on the social partners in the case of infringement of labour legislation is not in itself a matter of objection; however, such sanctions must be proportionate to the seriousness of the infringement committed and must in no case compromise the continuation of the activities of the parties thus sanctioned.* As a result, the Committee requested of the Government that the Bill not provide for fines or sanctions in the case of legitimate strike action.

Outcome

In September 1998, the Government informed the Committee that by Act No. 9689, adopted on 14 July 1998, the fines imposed by the Supreme Labour Tribunal on the trade unions of the Single Federation of Oil Workers for their participation in strikes in PETROBRAS in 1995 were null and void.

In addition, the Bill aimed at the regulation and establishment of criteria for the imposition of fines in the event of abusive or illegal strikes was not adopted.

Company:	PROCTER & GAMBLE
Industry:	Household and personal care
Headquarters:	United States of America
Employees:	129,000
Sales:	US$ 85.14 billion
Profit:	US$ 10.100 billion

THE PROCTER & GAMBLE COMPANY (P&G) is focused on providing consumer packaged goods.

La compañía se divide en dos grandes grupos:

- *Productos para el hogar y Productos para el cuidado e higiene personal.*

Its products include very well-known brands around the world, such as Braun, Wella, Tampax, Gillette, Ace, Ariel and Pampers, which are sold in more than 180 countries primarily through mass merchandisers, grocery stores, membership club stores, drug stores and neighbourhood stores.

Case 2097 (Colombia, 2001-2002)

In 2001, the *Trade Union of Workers of Procter and Gamble Colombia* (SINTRAPROCTERG) lodged a complaint alleging numerous anti-union acts on the part of the company against union members.

The anti-union acts included: pay rises for non-unionized workers; dismissal of 25 workers in 1996 after they had joined the union; dismissal of a worker in 1998 after he had joined the union; dismissal in 1999 of a worker who had enjoyed trade union immunity after he had presented a list of demands; attempts at bribery on the union's president, vice-president and executive secretary to make them leave the company and thus weaken the union; a request to suspend the trade union immunity of the president, based on a report which accused him of sleeping during work-hours; surveillance of the union secretary by company guards; moves to concentrate union members in a single work area; disciplinary summonses of workers joining the union with a view to intimidating them; refusal to grant trade union licences; and offers of cash to unionized workers to encourage them to leave the company.

The Committee's recommendations

Following the complaint filed by SINTRAPROCTERG, the Committee on Freedom of Association requested the Government to submit its observations on the anti-union acts denounced by the union.

Outcome

By mid-2001, SINTRAPROCTERG informed that it had reached a conciliation settlement with *Procter and Gamble Industrial Colombia Ltd.* concerning the complaint submitted to the Committee.

Company:	BARRICK GOLD
Industry:	Mining
Headquarters:	Canada
Employees:	16,000
Sales:	US$ 14.3 billion
Profit:	US$ 4.5 billion

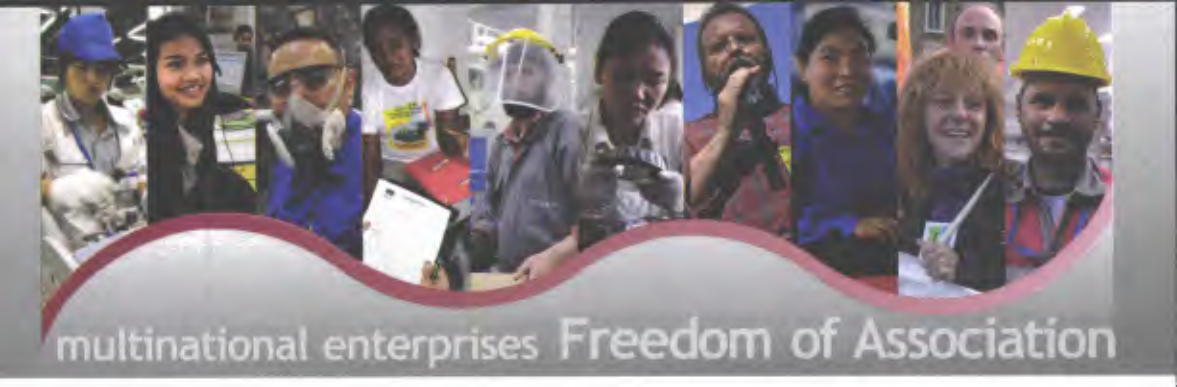
BARRICK GOLD CORPORATION is engaged in the production and sale of gold, as well as other related activities such as exploration and mine development. The company also holds interests in oil and gas properties located in Canada. Its activities are organized into seven primary units: four regional gold businesses, a global copper business, an oil and gas business, and a capital projects business. The company sells its gold and copper production worldwide.

Case 2786 (Dominican Republic, 2010-2011)

The complaint was filed in May 2010. Several anti-union acts were reported to the Committee, among them the refusal to register the *Trade Union of Workers of the Enterprise Barrick Gold*.

The union was founded in April 2010, and to that effect deposited the documentation required for trade union registration. However, the trade union was refused registration because, in the view of the General Labour Director (and following an investigation allegedly carried out by the latter into the payroll of the Minera Pueblo Viejo (Barrick Gold) enterprise), a number of the founding members of the trade union were not workers of the enterprise, while others belonged to sectors other than the mining sector, including construction and metalwork.

In fact, the complainant organization highlighted that the founders of the trade union had been recruited by other companies to provide services for Barrick Gold through subcontracting; a method used by a great many enterprises in order to avoid obligations and compliance with labour rights. However, all the workers had work cards in which it was recorded that they were working for a subcontractor which was providing services for Barrick Gold; therefore they worked in and for Barrick Gold.



The Committee's recommendations

After examining the complaint, the Committee recalled the Government that it had freely ratified Convention No. 87, and that it is obliged to guarantee that the provisions of the Convention are respected. Accordingly, the Committee requested the Government to register the *Trade Union of Workers of the Enterprise Barrick Gold*.

Outcome

At the time of the following examination of the case, the Committee noted that the General Labour Director attended a meeting with trade union officers and lawyers to discuss and take note on the observations of the Committee.

As a result, the *United Trade Union of Workers of the Enterprise Minera Pueblo Viejo Cotuí (Barrick Gold)* was registered under No. 10-2010 by the Ministry of Labour on 25 June 2010, and the complaint was resolved.

Company:	BBVA
Industry:	Banking services
Headquarters:	Spain
Employees:	110,645
Sales:	US$ 46.75 billion
Profit:	US$ 3.9 billion

BANCO BILBAO VIZCAYA ARGENTARIA S.A. (BBVA) is an international financial group with a presence in 32 countries. Its activities are focused on banking, pension and insurance services in Spain, Portugal, Mexico and South America. In the USA and Puerto Rico its operations are only focused on the banking business. BBVA is a parent company of Grupo Banco Bilbao Vizcaya Argentaria, which comprises entities such as BBVA Banco Frances SA, BBVA Capital Finance SA, BBVA Senior Finance SAU and BBVA International Limited, among others.

Case 2612 (Colombia, 2007- 2008)

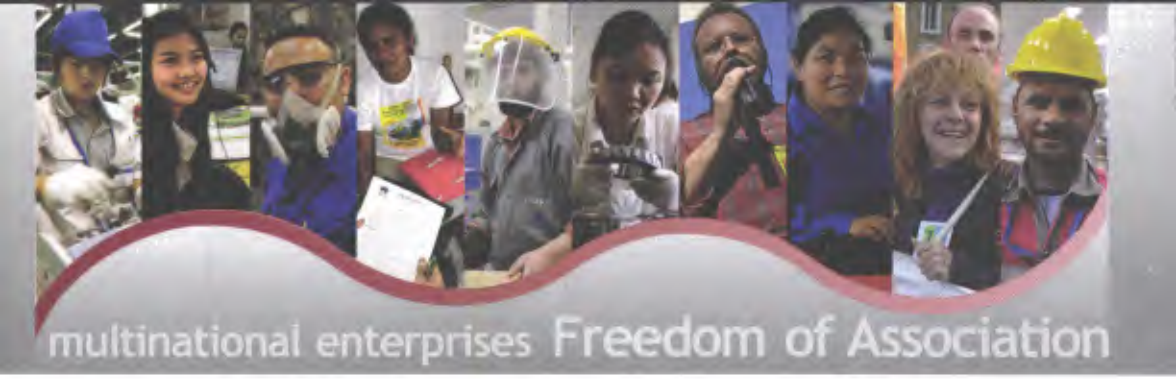
The complaint was filed by the *National Union of Workers of Banco Bilbao Vizcaya Argentaria Colombia* (SINTRABBVA) and the *National Union of Bank Employees* (UNEB), respectively, which consisted in a number of *anti-union activities* at the national branch of the *BBVA*.

Both unions alleged that at the time of the merger in 2006 between BBVA and another financial entity, the *Banco Granahorrar*, all the employees of the latter were pressured into signing the collective accord in exchange for continuity of employment at the bank. However, the conditions of the accord were less favourable than those of the collective agreement in force at BBVA.

At the same time, the BBVA workers were also pressured into accepting the collective accord, despite they being covered by the collective agreement. Nevertheless, the workers were exposed to constant pressure, harassment and deceit to withdraw from the collective agreement and sign the collective accord, which implied relinquishing the benefit of employment stability.

The Committee's recommendations

At the time of the examination of the case, while recalling that *the principles of collective bargaining must be respected taking into account the provisions of Article 4 of Convention No. 98 and that collective accords should not be used to undermine the position of the trade unions*, the Committee requested the Government to keep it informed with regard to the pending investigations before the labour directorate.



Outcome

As a follow-up of the recommendation, the Government informed the Committee that the labour directorate instigated an administrative inquiry into the *Banco Bilbao Vizcaya Argentaria* (BBVA), in connection with the possible violation of article 39 of the Political Constitution and of ILO Convention No. 98, by undertaking a general campaign to induce employees to sign up to a collective accord and adopting measures against anyone who decided to join the trade union.

The case before the Committee is still pending on the final outcome of the investigation.

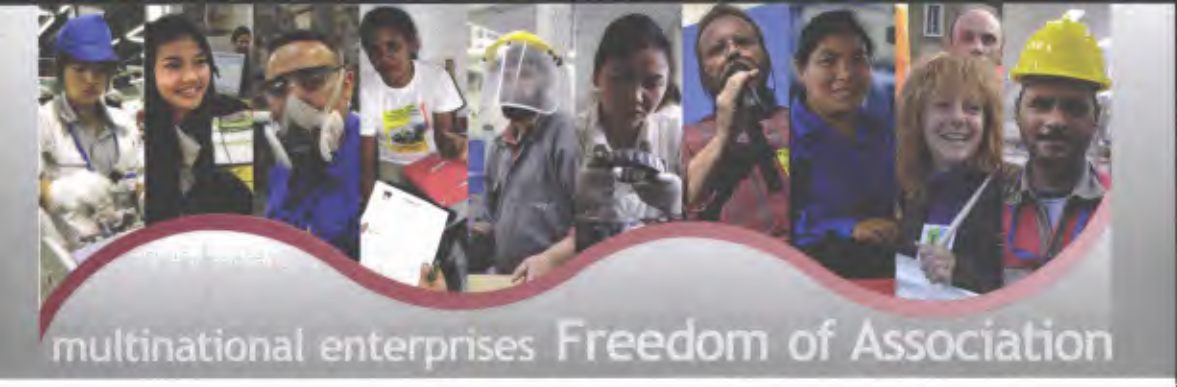
Company:	UNILEVER
Industry:	Food processing and consumer goods
Headquarters:	The Netherlands
Employees:	165,000
Sales:	US$ 60.2 billion
Profit:	US$ 5.5 billion

UNILEVER NV (NV) and PLC, together with their group companies, operate as the Unilever Group. The Company is a supplier of fast moving consumer goods with operations in more than 100 countries and sales in 180. Its products include savoury, dressings and spread, ice cream and beverages, personal care, and home care, which are commercialized under brands such as Axe/Lynx, Blue Band, Dove, Becel/Flora, Heartbrand, Hellmann's, Knorr, Lipton, Lux, Omo, Rexona and Sunsilk.

Case 2470 (Brazil, 2005-2010)

In December 2005, the *Single Central Organization of Workers of Brazil* (CUT) and the *Unified Trade Union of Chemical Industry Workers - Vinhedo Region* filed a complaint alleging the non-compliance by *IGL Industrial Ltd*, part of the transnational economic group UNILEVER, with *the guarantees relating to freedom of association provided for in Conventions No. 87 and No. 98.*

The trade unions denounced that for a long time the company had systematically engaged in authoritarian practices and avoided social dialogue, as can be seen from the long list of disputes that it has had with the workers during that time. These included making threatening telephone calls to workers and filming the demonstrations so as to identify the workers involved and put pressure on them; the infiltration of the workers' meetings and prohibition for union officials to access the industrial plant; setting up its own form of workers' representation in the workplace, parallel to the trade union, through a body known as the Working Group on Improving the Environment, which was sponsored by the management of IGL Industrial Ltd and was at its beck and call but acting as an enterprise trade union, while at the same time that UNILEVER refused to recognize the National Trade Union Committee of UNILEVER Brazil, which encompassed all the representative trade unions from all plants in the country; and later a campaign to get employees to leave the union, which began in January 2005 with the distribution of forms of resignation from the union and culminated in March 2005 with the setting up of a toll-free telephone line, which inter alia provided company employees with the option of requesting their resignation from the Union.



The Committee's recommendations

After the examination of the complaint, the Committee first requested the Government to carry out an investigation into the allegations of various anti-union practices carried out by the company and to send detailed information in that regard. In addition, the Committee adopted specific recommendations on a number of issues. For instance, the Committee recalled that *the accompaniment by security guards when accessing an enterprise may be considered a necessary measure in certain circumstances; however, such a procedure should not result in any interference in internal trade union affairs or in the capacity of trade union representatives to communicate freely with workers in order to apprise them of the potential advantages of unionization.*

With regard to the establishment by the company of its own form of workers' representation in the workplace, parallel to the union, the Committee recalled that *in themselves the discussion forums and communication programmes promoted by the company do not constitute a violation of freedom of association*; however, these should not be used to the detriment of trade unions, which are *the only body that can guarantee independence both in its establishment and its operation.*

Also, the Committee considered that *the distribution of resignation forms and the setting up of a toll-free telephone line providing information on how to resign from the union to constitute interference in the internal affairs of the union.*

Outcome

Following the recommendation of the Committee, the Government first reported that the Ministry of Labour was carrying out investigations into the allegations made in the present case and it was awaiting the conclusion and the measures adopted by the Ministry in this connection.

Afterwards, on July 2008, the Government informed the Committee that UNILEVER was ordered to respect the rights of the union movement. The Labour Judge of the Third Labour Court of Jundiaí approved in its entirety the public civil judgement which had been examined by the Ministry of Labour, and ordered that *UNILEVER immediately desist from practices aimed at influencing workers in their decisions to join or leave a union, or to persuade them not to carry out union activities.* In addition, the Judge stated that *failure to comply with the decision will result in the imposition by the court of a fine of 100,000 Brazilian real for any instance of non-compliance with any of the specific obligations to refrain from anti-union action.*

Also, in its communication of 9 February 2009, the Government indicated that the Ministry of Labour and UNILEVER had reached an agreement, approved by the courts, whose terms reaffirmed the principles set out in the ILO Declaration on Fundamental Principles and Rights at Work, particularly those concerning respect for freedom of association and the right to collective bargaining. The agreement provided for a fine, to be determined by the court, in case of anti-union acts committed by UNILEVER.

Company:	ALLIANZ
Industry:	Insurance
Headquarters:	Germany
Employees:	146,436
Sales:	US$ 134.4 billion
Profit::	US$ 3.3 billion

ALLIANZ SE is a financial services provider which operates in business segments such as insurance, asset management, both for private and corporate clients. The company operates in approximately 70 countries with major operations in Europe. As of December 2010, it had a total of 986 fully consolidated entities, including four Special Purpose Entities, 17 joint ventures and 125 associated entities.

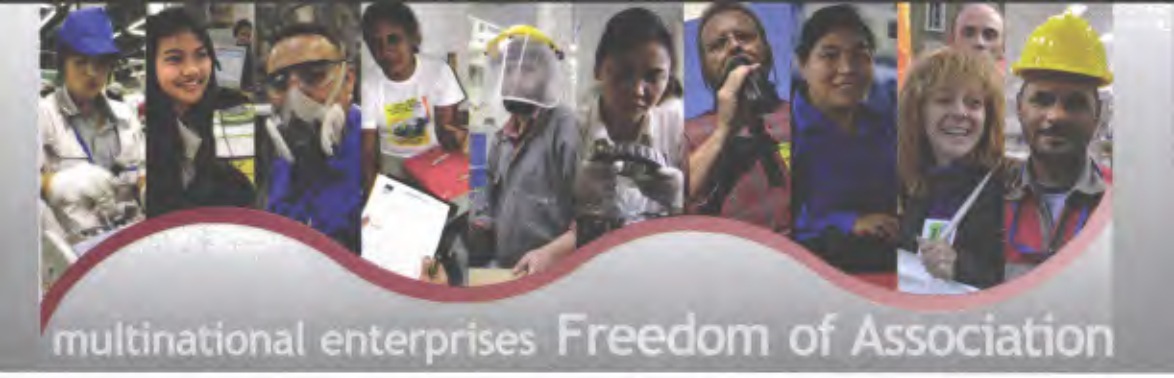
Case 2679
(México, 2008-2009)

The complaint was filed at the end of 2008 by the *Union of General Insurance Sales Agents in the State of Jalisco* (SAVSGEJ). SAVSGEJ denounced that since its establishment it had been subjected to *violations of its trade union rights*, in particular the dismissal of and pressures against trade union officials and members employed by *Allianz México S.A.* and other insurance companies.

The complaint also referred to a procedure for cancelling the union's registration, which was in their view wrongly approved because there was no provision for such a procedure in the Federal Labour Law, and which was having an effect on the union since other insurance agents were afraid to join.

In its reply to the Committee, the Government indicated that the workers mentioned in the complaint were independent insurance agents who had concluded more than one commercial contract with a number of insurance companies and may therefore carry on their activities without restrictions, other than those specified in the contracts themselves. Therefore, they were not dismissed.

As regards the claim presented by a number of insurance companies requesting cancellation of the union's registration, the Government stated that it would pay close attention to any decision of the judicial authorities requiring adjustment in the interest of compliance with the principles of freedom of association.



The Committee's recommendations

The Committee expected that the judicial authorities would give a ruling quickly on the claims made by the dismissed union officials and members in connection with the alleged unjustified and anti-union dismissals (or, to use the Government's term, terminations of a commercial contractual relationship), and requested the Government to keep it informed of the results of those claims.

With regard to the request of cancellation of the union's registration, the Committee recalled that *Convention No. 87 applies to all workers, with the sole possible exception of the armed forces and police*, and requested the Government to monitor closely issues relating to the observance of the SAVSGEJ rights.

Outcome

In October 2010, the Government reported that the request submitted by several insurance companies seeking the cancellation of the registration of the insurance sales agents' trade union was declared inadmissible by a judge of first instance. Subsequently, in February 2012, the Government informed the Committee that the judicial authorities confirmed the validity of SAVSGEJ registration.

As to the claims on the dismissal of trade union officials, some of the legal cases were decided in favour of the trade unionists in the first instance; however, a definitive decision was still pending the last time the Committee examined the case (November 2012).

Company:	BRIDGESTONE
Industry:	Auto and truck parts
Headquarters:	Japan
Employees:	139,822
Sales:	US$ 39.3 billion
Profit:	US$ 1.3 billion

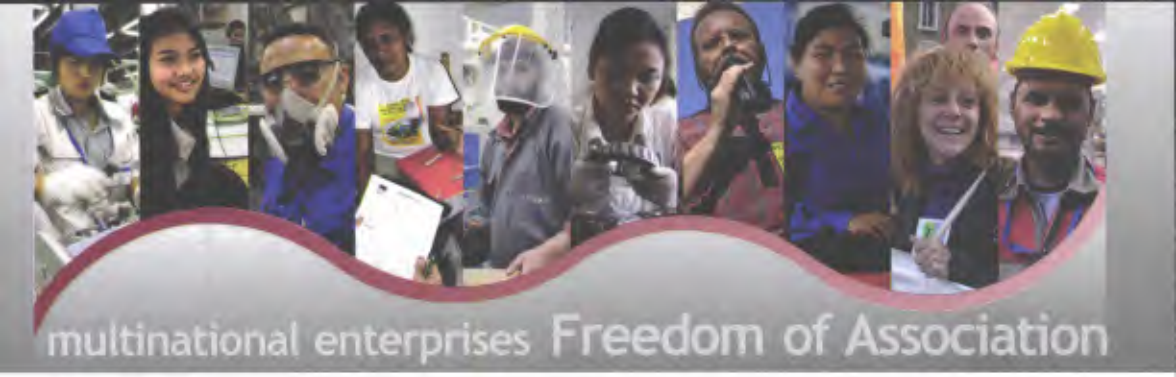
BRIDGESTONE CORP. is a manufacturing company widely known for its tire related business, which sells tires and tubes for passenger automobiles, trucks, buses, construction and mine vehicles, industrial vehicles, agricultural machinery, aircrafts and motorcycles. Other segment of the company provides automobile related parts, urethane foams, electronic precision parts, industrial material related products, construction related products, sports products such as golf balls and golf clubs, bicycles, as well as financial services.

Case 2329 (Turkey, 2004-2007)

The complaint referred that the *Petroleum, Chemical and Rubber Industry Workers' Union of Turkey* (LASTIK-IS), on behalf of some 4,000 workers, had been negotiating for a new agreement covering the years 2004-05 with GOODYEAR, BRIDGESTONE and PIRELLI, the three multinationals dominating the sector.

During the negotiations, LASTIK-IS observed that the employers had neither good will nor intention to reach an agreement, always trying to coerce the union to agree to their unacceptable demands after having taken a guarantee from the Government that it would use its authority to ban an eventual strike. Under these circumstances, considering that these demands could not be accepted, the Executive Committee of LASTIK-IS, which had made every effort to solve the dispute, decided to go on strike at the three multinationals beginning at the PIRELLI plant on 22 March 2004.

However, the Government used its right to "suspend" the strike at the three companies by a Decree published in the Official Journal dated 21 March 2004, which claimed that the strike in the tyre industry was going to be a *threat to national security*.



Company:	GOODYEAR
Industry:	Autopartes
Headquarters:	EE.UU.
Employees:	73.000
Sales:	22.770 millones de US$
Profit:	300 millones de US$

THE GOODYEAR TIRE & RUBBER COMPANY together with subsidiaries and joint ventures, develops, manufactures, markets and distributes tires for a range of applications. It manufactures its products in 53 facilities in 22 countries. The company also manufactures and markets rubber-related chemicals for various applications.

The Committee's recommendations

The Committee noted that as a result of the mediation efforts of the Minister of Labour and Social Security and the Official Mediator designated for the resolution of the dispute, the parties reached a consensus to conclude a collective agreement one day after they were convened to consultations. However, the Committee expressed its regret that this was not the first case which related to allegations that the Council of Ministers decided to suspend a strike on grounds of national security, without any apparent relationship between the industries in question. In this regard the Committee highlighted that *a decision to suspend a strike for a reasonable period so as to allow the parties to seek a negotiated solution through mediation or conciliation efforts, does not in itself constitute a violation of freedom of association principles.* However, *the automobile manufacturing does not constitute an essential service in the strict sense of the term and considers that tyre manufacturing is part of the automobile industry and that workers in this industry should enjoy the right to strike without undue impediments.*

As a result, the Committee requested the Government to take all necessary measures with a view to modifying the Collective Labour Agreement, Strike and Lockout Act, so that responsibility for suspending a strike on the grounds of national security does not lie with the Government, but with an independent body and which has the confidence of all parties concerned.

Company:	PIRELLI
Industry:	Auto and truck parts
Headquarters:	Italy
Employees:	34,259
Sales:	US$ 7.9 billion
Profit:	US$ 0.6 billion

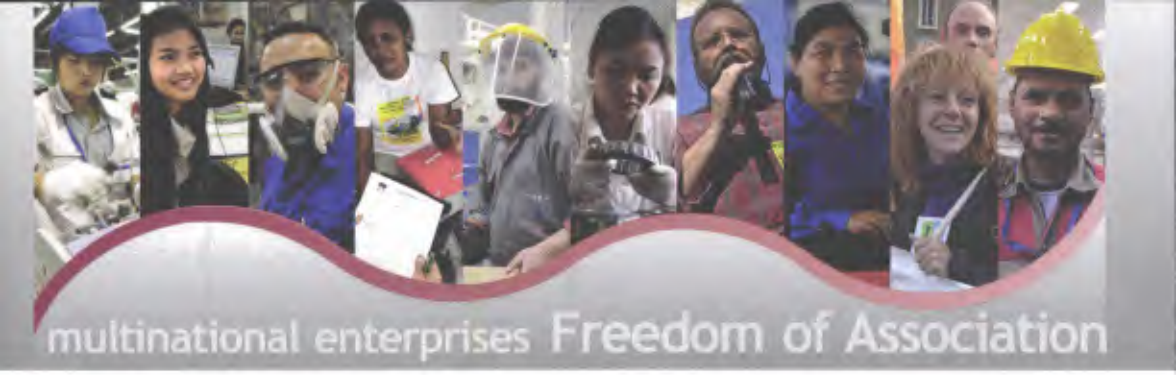
PIRELLI & C. SpA es una compañía global que opera en el sector de los neumáticos. La fabricación de sus productos se concentra en 20 plantas en 11 países, mientras que su red comercial se extiende a más de 160 países.

Otro sector de la compañía, Pirelli & C. Ambiente, está involucrado en el campo de la energía fotovoltaica y de residuos, con el objetivo de transformar los residuos en combustibles alternativos.

Outcome

In a communication dated 3 February 2006, the Government informed the Committee that within the context of the on-going work to amend the Collective Agreements, Strikes and Lockouts Act, the Ministry of Labour and Social Security had adopted the following position: when taking a decision to suspend a strike under section 33 of the Act, the Council of Ministers should first seek the opinion of the High Board of Arbitration, rather than of the Council of State, as was considered appropriate previously.

Despite the good will of the Government, the amendment is still pending.



Company:	BASF
Industry:	Chemicals
Headquarters:	Germany
Employees:	108,576
Sales:	US$ 95.2 billion
Profit:	US$ 8.0 billion

BASF SE is a chemical company that diversifies its activities into six business segments, namely: Chemicals: providing basic products including nitric acid and methanol, ethylene and butadiene and intermediates, among others; Plastics: providing engineering plastics, polyamides and polyurethane solutions, among others; Performance Products: providing products for the coatings and paints industry, cosmetics, detergents and cleaners industry, vitamins and enzymes, products for the paper industry and performance chemicals, among others; Functional Solutions: which develops coating products, catalysts and concrete admixtures, among others; Agricultural Solutions, providing active ingredients and formulations for the improvement of crop health and yields; and the Oil & Gas business segment, which is engaged in the exploration and production of crude oil and natural gas and trading. The company operates in more than 160 countries.

Case 1437 (United States of America, 1988)

The *American Federation of Labour and Congress of Industrial Organisations* (AFL-CIO) presented a complaint of violations of trade union rights against the Government at the beginning of 1988, and referred to the *anti-union conduct* of the German-based multinational BASF in 4 of its plants in the United States, including: *attempts to destroy the union through changes in classifications or status of positions or through subcontracting of work to remove workers from the bargaining unit or replace them with non-bargaining unit employees who are without trade union representation; discrimination against union leaders and activists; the unilateral decision of the company at several locations not to honour provisions in collective bargaining agreements and clear past practice which provide for the payment of employees for reasonable time for union work, including activities related to the preparation and processing of grievances, a common practice in the United States which had previously been upheld by the NLRB and the courts.*

The complaint also referred to the inadequacy of United States labour legislation in safeguarding the principles of freedom of association in certain situations, such as when a company is determined to destroy a union which represents its employees or to frustrate an attempt by workers in an unorganised plant to join a union.

The Committee's recommendations

At the time of the examination of the case, the Committee noted that the use of subcontractors as a means of weakening or eliminating the union was linked to the general allegation of discrimination against union leaders and activists, since BASF has singled out for subcontracting the one department from which the union's leaders and negotiating team came. In the Committee's opinion, given that this measure was apparently not linked to economic necessity, this might give rise to a violation of the principle *that no one should be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities*.

The Committee also considered that subcontracting accompanied by the dismissal of union leaders can constitute an act of *anti-union discrimination*, just as dismissal, compulsory retirement, downgrading, transfers or blacklisting.

Accordingly, the Committee requested the Government to ensure that the national industrial relations machinery would hear this grievance speedily and impartially.

Company:	McDONALD'S
Industry:	Food and restaurants
Headquarters:	United States of America
Employees:	423,000
Sales:	US$ 27.0 billion
Profit:	US$ 5.5 billion

McDONALD'S CORPORATION franchises and operates the McDonald's fast-food restaurants around the world. As of 2007 the company had 33,000 restaurants in 119 countries.

Case 2388
(Ukraine, 2004-2008)

In the complaint trade unions alleged *interference by the Ukrainian authorities and employers of various enterprises in trade union internal affairs, dismissals, intimidation, harassment and physical assaults on trade union activists and members, denial of facilities for workers' representatives and attempts to dissolve trade unions*, to the detriment of the Confederation of Free Trade Unions of Ukraine (CFTUU) the Federation of Trade Unions of Ukraine (FPU), and their affiliates.

Among the violations, the unions denounced an anti-union campaign against the trade union of MCDONALD'S, organized by the management of MCDONALD'S UKRAINE LTD. in July 2004. The administration had tried to dissuade workers from becoming trade union members by intimidating them. Also, the deputy chairperson of the union was not certified (his qualification was not confirmed), although during his almost four years of employment he had been regularly promoted.

The Government, meanwhile, referred that in the course of its investigation into the allegations involving the trade union of MCDONALD'S UKRAINE LTD., the state labour inspectorate of the City of Kiev did not establish the existence of any documents to confirm that a trade union organization had been set up and legally registered at the establishment in question.

The Committee's recommendations

The Committee noted from the Government's reply that it limited its inquiry to the verification of a registered union in MCDONALD'S in Kiev, but that apparently no investigation was carried out to examine whether the management carried out anti-union acts and whether these acts may have resulted in the non-establishment of a union.

The Committee recalled that *the right of workers to establish and join organizations of their own choosing cannot be said to exist unless such freedom is fully established and respected in law and in fact*. As a result, it requested the government to carry out an independent investigation into the allegations of an anti-union campaign carried out by the management of MCDONALD'S and, if it was found that workers were indeed harassed and intimidated in an attempt to dissuade them from becoming members of a union, to take suitable measures to redress the situation and to ensure that workers may effectively exercise their fundamental right to organize.

Outcome

In 2007, the Government reported to the Committee that the Territorial State Labour Inspectorate did not find any evidence of existence of a trade union organization at the enterprise. However, a work council had been set up and its members were elected by a general assembly of workers.

In this respect the case was closed due to a lack of new information from the trade unions.

Company:	ALCOA
Industry:	Aluminium
Headquarters:	United States of America
Employees:	61,000
Sales:	US$ 24.95 billion
Profit:	US$ 0.6 billion

ALCOA INC. is engaged in the production and management of primary aluminium, fabricated aluminium, and alumina combined, through its participation in technology, mining, refining, smelting, fabricating, and recycling. Its products are used worldwide in aircraft, automobiles, commercial transportation, packaging, building and construction, oil and gas, defence, consumer electronics, and industrial applications. The company operates in 31 countries.

Case 2393 (Mexico, 2004-2006)

The complaint was filed by the *Trade Union of Employees of the Electrical Component Manufacturing Company of Mexico S.A. of C.V.* (STEMCEM).

The union denounced several violations of the right to freedom of association, including: *the refusal by the authorities to register the organization despite the fact that it has complied with legal requirements*; *the existence of a clause in the collective agreement of the MACOELMEX enterprise, owned by ALCOA, with another trade union which made membership of the latter union a condition for hiring workers and required the company to dismiss workers who renounced membership or who were expelled from that trade union*; and *the dismissal of workers and trade union members during the process of establishing the complainant trade union, threats and intimidation by the company and acts of violence by members of the other existing trade union.*

The union mentioned that as a consequence of the exclusion clause six workers were fired previous to the creation of STEMCEM, while 16 others were fired after its creation when they showed interest in becoming members of the trade union. In addition, MACOELMEX fired four out of five trade union officials.

For these reasons, STEMCEM filed a lawsuit before the courts in 2002, but the case was still pending at the time of filing the complaint with the Committee (2004).

The Committee's recommendations

Finding that the facts dated from 2002 and that the case was still pending before the courts, the Committee deplored this delay of several years, emphasizing that *justice delayed is justice denied.*

In regard to allegations concerning the "exclusion" clause in collective contracts which made membership of a union a condition for obtaining permanent employment and required the company to dismiss employees who are expelled from the union, the Committee recalled that *no individual shall be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities, whether past or present,* and that *pursuant to the principle contained in Convention No. 98, article 2, employers shall abstain from any pressure or threat against workers engaging in trade union activities and that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure and threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected.*

Accordingly, the Committee requested the Government that it ensure that reparation is forthcoming for the anti-union conduct and, specifically, that the dismissed workers be reinstated and, if this were not legally possible, that they be fully compensated without loss of benefits and that such compensation shall include penalties that represent sufficiently dissuasive sanctions against the employer for such anti-union conduct.

Outcome

The Committee is waiting to receive information on its recommendations.

Information resources

Tripartite declaration of principles concerning multinational enterprises and social policy (MNE Declaration)

Available at:

http://www.ilo.org/empent/Publications/WCMS_094386/lang—en/index.htm

The ILO MNEs Declaration: What's in it for Workers?

Available at:

http://www.ilo.org/actrav/what/pubs/WCMS_152797/lang—en/index.htm

Freedom of association - Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO

Available at:

http://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_090632/lang—en/index.htm

NORMLEX: Information System on International Labour Standards

Available at:

http://www.ilo.org/dyn/normlex/en/f?p=1000:1:0::NO:::

ACTRAV

As the main link between the International Labour Office and workers, the Bureau for Workers' Activities (ACTRAV) coordinates all the activities of the International.

Labour Office related to workers and their organizations, both at headquarters and in the field.

ACTRAV's mission is to maintain close relations with the trade union movement throughout the various countries of the world, to provide trade unions with the support of the International Labour Office in endeavours that strengthen their influence by promoting activities which defend and advance the rights of workers.

Thanks to its close ties with trade union organizations across the world, its presence in the field in various regions, and its training activities, ACTRAV is at the centre of a vast network for information on the trade union movement. This information is placed at the service of the International Labour Office and its constituents and of the public at large through the media, universities, and NGOs.

Whether it is the situation regarding industrial accidents, the arrest of a trade unionist, labour law issues, and so on, ACTRAV will be able to put you in touch with the persons who are most knowledgeable about the matter and who can help you.

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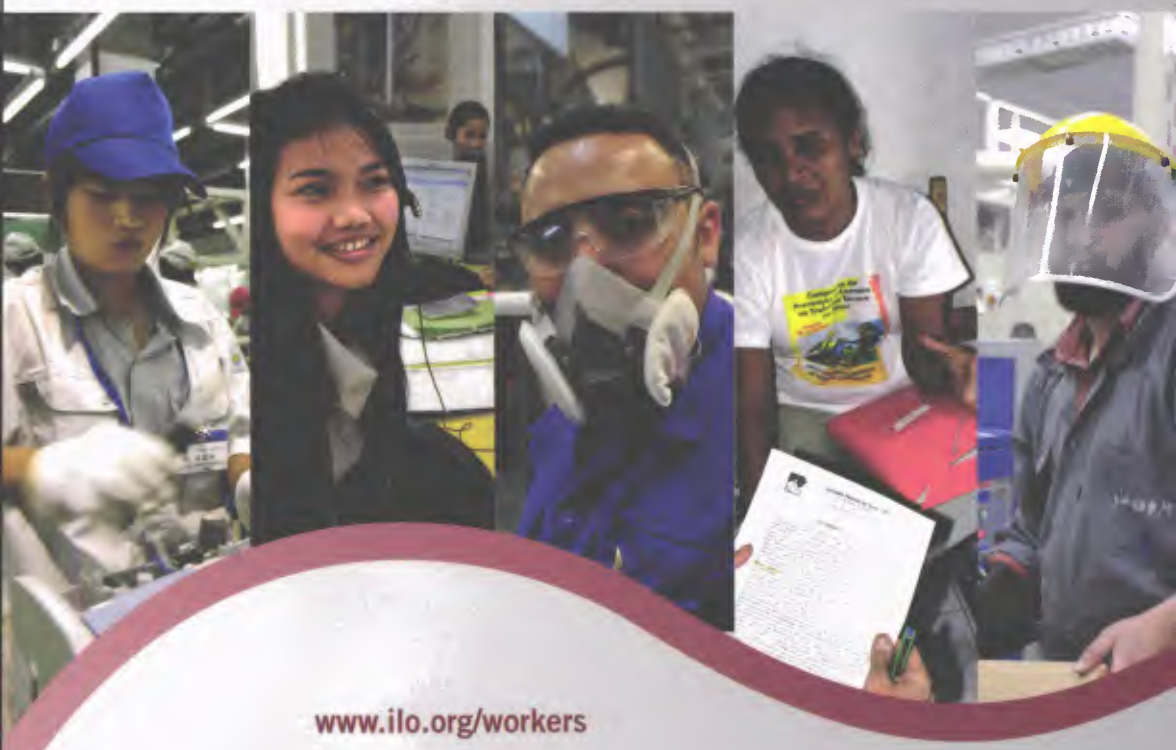

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