

Application of International Labour Standards (LibSynd)

Committee on Freedom of Association Report

Philippines (Case No. 2252)

The Toyota Motor Philippines Corporation Workers' Association (TMPCWA)

24-Feb-03

The complainant alleges the Government's failure to secure the effective observance of Conventions Nos. 87 and 98, which led to 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 further to their participation in union activities and in particular in strike action, restrictions on the exercise of the right to strike which includes the intervention of the Secretary of Labor and Employment to put an end to the strike

Report No. 338

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Effect given to the Recommendations of the Committee and the Governing Body

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Case No. 2252 (Philippines)

304. The Committee last examined this case at its November 2004 Session [see 335th Report, paras. 162-167]. On that occasion, it urgently requested the Government to take the necessary steps to: (1) amend the national legislation so as to allow a fair, independent and speedy certification process and to provide protection against acts of employer interference; (2) amend article 263(g) of the Labor Code concerning the exercise of the right to strike; (3) take measures so that the complainant Toyota Motor Philippines Corporation Workers' Association (TMPCWA) and the Toyota Motor Philippines Corporation negotiate in good faith; (4) initiate discussions to consider the reinstatement of the 227 workers dismissed by the corporation and union officers deemed to have lost their employment status, or, if reinstatement is not possible, the payment of adequate compensation; (5) keep it informed of any measures taken to withdraw criminal charges laid against union officers; and (6) finally, noting that, in its decisions of 24 September 2003 and 28 January 2004, the Supreme Court nullified the preliminary injunction that the corporation had obtained to prevent the union from demanding collective bargaining, the Committee requested the Government to provide clarification as to whether, in the absence of an injunction preventing the TMPCWA from relying upon its earlier certification as exclusive bargaining agent, the certification was valid despite the pending legal challenge, until any appropriate court order to the contrary.

305. In a communication dated 30 August 2005, the complainant TMPCWA indicated that: (1) the Toyota Motor Philippines Corporation still refused to negotiate despite the complainant's recognition as the exclusive bargaining agent since 19 October 2000 and the abovementioned rulings by the Supreme Court favouring the commencement of negotiations, as well as the Committee's recommendations calling for negotiations in good faith to reach a collective agreement; (2) pursuant to a notice of strike filed before the

National Conciliation and Mediation Board on 4 March 2005 by the TMPCWA on the ground of the corporation's refusal to bargain, several conciliation meetings took place between 10 March and 27 July 2005, to which the corporation failed to appear, continuing to ignore the decision of the Supreme Court which favoured the starting of negotiations with the complainant; (3) instead of taking steps to ensure that the recognition of the TMPCWA became effective and that negotiations took place, the Department of Labor, in complicity with the corporation, issued an order dated 30 June 2005, to conduct a new certification ballot at the request of another union, the Toyota Motor Philippines Corporation Labor Organization (TMPCL0), which had been recently created under the dominance of the corporation; (4) the complainant lodged an appeal against the decision of the Department of Labor on 19 July 2005, but it was dismissed by the National Labor Relations Commission (NLRC) on 9 August 2005 on the ground that the complainant was seeking to delay the certification ballot; this decision did not take into account the fact that the corporation had been vigorously opposing the certification of the complainant and had refused any negotiation with it since February 1999; the complainant filed a request for reconsideration on 19 August 2005; (5) 227 TMPCWA members and officers, including its President Ed Cubelo, remained dismissed and were not included in the list of voters submitted to the Department of Labor with a view to conducting the certification ballot; (6) after having fabricated criminal charges against 18 members and leaders of the TMPCWA the corporation insisted during the criminal proceedings that those workers who had not yet paid their bail should be arrested, thus imposing a heavy financial burden on the complainant which had to shoulder every year the renewal of the bail; (7) certain TMPCWA members and their families continued to suffer harassment, including by the police; (8) on 17 July 2005 the Philippine House of Congress invited the TMPCWA to appear in the deliberations as one of the Resource persons in the ongoing hearing concerning the amendment of article 263(g) of the Labor Code. The complainant attaches numerous documents to its communication.

306. The Committee deeply regrets the fact that the Government has so far failed to communicate any follow-up information on the measures taken to give effect to the Committee's recommendations. The Committee recalls that when a State decides to become a Member of the Organization, it accepts the fundamental principles embodied in the Constitution and the Declaration of Philadelphia, including the principles of freedom of association [Digest of decisions and principles of the Freedom of Association Committee, 4th edition, 1996, para. 10]. Moreover, noting that the Philippines have ratified Conventions Nos. 87 and 98, the Committee recalls that all governments are obliged to respect fully the commitments undertaken by ratification of ILO Conventions [see Digest, op. cit., para. 11]. The Committee requests the Government to provide information without further delay on the steps taken with regard to the Committee's recommendations.

307. With respect to the complainant's allegations concerning the issuing of an order by the Department of Labor authorizing a new certification ballot at the request of a trade union established under the dominance of the corporation, and the absence of any measures on behalf of the Department of Labor to remedy the employer's persistent refusal to recognize and negotiate with the complainant, the Committee observes from the text of the Order that:

[While it] may be admitted that there is a pending issue before the Court of Appeals between intervenor [the TMPCWA] and management with regard to the decision of the Secretary of Labor dated 19 October 2000, certifying herein intervenor as the sole and exclusive bargaining agent of the employees" ...

"[in] granting the petition, it does not necessarily mean that this Office is defiant of the order of the Secretary of Labor or the Court of Appeals. On the contrary, granting the instant petition and ordering the conduct of certification election would be more in harmony with the Secretary's

recognition of the desire of the majority of the employees to conduct a certification election, and their need to be represented by a labor union in the negotiating table. It must be emphasized that the Secretary of Labor certified intervenor as the bargaining agent of the employees due to the fact that it was the sentiment of the majority of the employees at that time. ... In the instant case, more than majority of the employees have already expressed their desire to conduct another certification election. ... Under these present circumstances, it would appear that there was a shift in allegiance on the part of the employees. ... We opine that the most democratic method and the best forum to ascertain the true will of the employees is in a certification election where the employees would be given the chance to choose their collective bargaining agent through secret ballot. After all, ordering the conduct of the certification election would be more in consonance with the State's policy to promote and emphasize the primacy of free collective bargaining and free trade unionism considering that the employees have long been deprived of their bargaining representation, as well as the benefits of a collective bargaining agreement. Such order to conduct the certification election would also not be considered an open defiance of any order of the Court of Appeals. Unless and until restrained by the Court, this Office will not shirk from its obligation of accepting, hearing and resolving petitions for certification election."

308. The Committee deplores the fact that in granting this order, the Department of Labor did not give consideration to the employer's consistent refusal to recognize the TMPCWA and the influence that such a stance might have had on the workers' choice of the organization representing them. The Committee recalls from the previous examination of this case that it took more than one year to organize the election for the certification of the TMPCWA and another year to have the complainant confirmed as the exclusive bargaining agent within Toyota Motor Philippines Corporation, due to the various petitions, appeals and motions filed by the corporation with the labour authorities and, in particular, with the Secretary of the Department of Labor who has the final say on the matter [see 332nd Report, para. 878]. Moreover, ever since its certification, the TMPCWA has been unable to engage in collective bargaining with the corporation due to further legal action taken by the corporation before the courts. The Government has indicated in a previous communication that as long as these cases are pending, the legitimacy of the certification of the TMPCWA by the Secretary of Labor and Employment remained unresolved and the Department of Labor could not be accused of inaction [see 335th Report, para. 164]. The Committee observes that while the legal challenges pending before the Courts are considered as preventing the TMPCWA from exercising its functions as representative union, they have not been considered as preventing the Department of Labor from authorizing a new certification ballot in the abovementioned order.

309. The Committee trusts that the proceedings which have been pending for quite some time before the courts with regard to the certification of the TMPCWA will be concluded soon and requests the Government to keep it informed of the final decision as soon as it is handed down. The Committee also requests the Government to institute an independent inquiry into the allegations of employer interference, in particular, the creation of a new union under the dominance of the corporation, and if such allegations are found to be true, to take the necessary remedial action. The Committee trusts that before moving forward with a new ballot for certification, the Government will await the outcome of the Court proceedings concerning TMPCWA's certification as well as the outcome of the independent judicial inquiry into the allegations of employer interference. The Committee further reiterates its previous request to the Government to amend the national legislation so as to allow a fair, independent and speedy certification process providing adequate protection against acts of employer interference.

310. Observing that the employer's refusal to recognize and negotiate with the TMPCWA dates as far back as 1999, and that the Government has not

communicated any information on efforts to ensure that negotiations in good faith take place despite the corporation's persistent refusal to recognize and negotiate with the TMPCWA, the Committee once again recalls that the principle that both employers and trade unions should negotiate in good faith and make efforts to reach an agreement means that any unjustified delay in the holding of negotiations should be avoided and once again urges the Government to provide information on efforts made to promote negotiations in good faith between the TMPCWA and the Toyota Motor Philippines Corporation.

311. With regard to the 227 dismissed members and officers including the President of the TMPCWA Ed Cubelo, the Committee once again urges the Government to indicate the measures taken to initiate discussions to consider the reinstatement of the 227 workers dismissed or, if reinstatement is not possible, the payment of adequate compensation.

312. With regard to the penal proceedings concerning 18 trade union members and officers, the Committee once again urges the Government to inform it of developments in the proceedings and of any measures taken to withdraw the criminal charges. The Committee also requests the Government to provide its observations on allegations of harassment, including by the police.

313. With regard to the amendment of article 263(g) of the Labor Code, the Committee notes with interest that the complainant was invited to appear before the House of Congress as one of the Resource persons in the ongoing hearing concerning the amendment of this article. The Committee requests the Government to provide information on developments in this respect.

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