

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. 335

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

Case No. 2252 (Philippines)

162. The Committee examined this case at its November 2003 session [see 332nd Report, paras. 848-890]. On that occasion, it requested the Government to amend the national legislation so as to allow for a fair, independent and speedy certification process and to provide protection against acts of interference by employers, and to pursue measures to amend the Labor Code, in particular article 263(g) concerning the exercise of the right to strike. The Committee trusted that the Government would ensure that the Toyota Motor Philippines Corporation Workers' Association (TMPCWA) and the Toyota Philippines Corporation negotiate in good faith to reach a collective agreement. Further, the Committee requested the Government to initiate discussions to consider the reinstatement of the 227 workers dismissed by the corporation and the union officers who were deemed to have lost their employment status or, if reinstatement was not possible, the payment of adequate compensation. The Committee requested the Government to keep it informed in all these respects as well as of any measures taken to withdraw the criminal charges laid against union officers. Finally, the Committee requested the Government to consider accepting a consultative mission in relation to this case.

163. In a communication dated 13 February 2004, the complainant organization alleges that the corporation continued to refuse to negotiate with the union, despite a decision of the Supreme Court dated 24 September 2003 setting aside the Court of Appeal's preliminary injunction preventing the union from demanding collective bargaining. In fact, the corporation had filed a request to the Supreme Court to have the injunction reinstated, interfered in the establishment of another union at the company, and continued pressure through the ongoing criminal cases. The complainant stated that the Government took no actions in relation to the Supreme Court's decision. In a communication dated 10 June 2004, the complainant organization reiterated that the Government had taken no concrete actions in relation to the Committee's recommendations and enclosed copies of the decisions of the Supreme Court dated 24 September 2003 and 28 January 2004, as well as certain correspondence from the National Conciliation and Mediation Board and from the corporation, in which it maintained its position that no legal decision as to the substance of the matter had been reached.

164. In its communication dated 18 May 2004, the Government stated that by nullifying the preliminary injunction previously issued by the Court of Appeal, the Supreme Court had simply dissolved the temporary relief granted to the corporation and the main issue concerning the legitimacy of the union's certification by the Secretary of Labor and Employment as exclusive bargaining agent remained unresolved. Only duly certified unions may bring complaints

before the National Labor Relations Commission, or file notices of intention to strike. Thus, unless and until a final judgement is issued by the appropriate court on the merits of the case, the Department of Labor and Employment cannot be accused of inaction. In its communication dated 8 July 2004, the Government provided further information by way of the Supreme Court's decisions of 24 September 2003 and 28 January 2004.

165. The Committee regrets that the Government has chosen not to provide any follow-up information in relation to its earlier recommendations and has limited its reply to responding to the complainant organization's later allegations concerning the decisions of the Supreme Court. The Committee notes that its recommendations were independent of those decisions and urgently requests 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; (3) take measures so that TMPCWA and the Toyota Philippines Corporation negotiate in good faith; and (4) initiate discussions to consider the reinstatement of the 227 workers dismissed or, if reinstatement is not possible, the payment of adequate compensation. The Committee requests to be kept informed in this regard.

166. In relation to the decisions of the Supreme Court, the Committee notes that the 24 September 2003 decision nullifies the preliminary injunction that the corporation had obtained to prevent the union from demanding collective bargaining. The Supreme Court's decision of 28 January denies the corporation's motion for reconsideration "with finality", thus confirming its earlier decision. The Committee further notes the Government's statements that these decisions do not affect the substance of the case and until such time as the court determines that the certification process was correct and the TMPCWA can be considered to be the exclusive bargaining agent at the company, the Department of Labor and Employment cannot be accused of inaction.

167. The Committee requests the Government to provide clarification as to whether, in the absence of an injunction preventing the TMPCWA from relying upon its earlier certification by the Secretary of Labor and Education as exclusive bargaining agent, the certification is valid despite the pending legal challenge, until any appropriate court order to the contrary.
