

February 24, 2003

The Director-General
International Labour Organization
CH_1211 Geneva 22
Switzerland

Dear Sir:

Warmest greetings!

In behalf of the Toyota Motor Philippines Corporation Workers' Association (TMPCWA), an Independent Labor Union which is not affiliated to any National and International Trade Union Center, I respectfully submit a complaint to the Committee on Freedom of Association to your office.

This concerns the violations of the Philippine government and Toyota Motor Philippines Corporation of the two ILO conventions (87 & 98) to which Philippine Government is a party.

We hope that your good office would give preferential attention to our case. Thank you.

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**COMPLAINT TO THE
COMMITTEE ON FREEDOM OF ASSOCIATION
INTERNATIONAL LABOR OFFICE BY
TOYOTA MOTOR PHILIPPINES CORPORATION
WORKERS ASSOCIATION
AGAINST THE PHILIPPINE GOVERNMENT AND
TOYOTA MOTOR PHILIPPINES CORPORATION
IN THEIR VIOLATIONS OF CONVENTION Nos. 87
AND 98**

I. BRIEF DESCRIPTION OF THE ASSOCIATION

Toyota Motor Philippines Corporation Workers' Association (TMPCWA for brevity) is a legitimate labor organization duly registered with the Department of Labor and Employment (DOLE).

It is an independent labor union comprising rank-and-file workers of Toyota Motors Philippines Corporation (Toyota Corporation for brevity) assigned at (2) plant sites in Bicutan, Paranaque, Metro Manila and Sta. Rosa, Laguna.

II. STATEMENT OF FACTS

On February 4, 1999, TMPCWA filed a petition for certification election seeking to be certified as the sole and exclusive bargaining agent of all rank-and-file employees of Toyota Corporation working at Bicutan and Sta. Rosa plants.

This petition, however, was vigorously opposed by Toyota Corporation when it filed its Position Paper with Motion to Dismiss. On May 4, 1999, Med-Arbiter Lameyra of Department of Labor and Employment-National Capital Region (DOLE-NCR) conditionally dismissed the petition. TMPCWA immediately filed an appeal before the Secretary of the Department of Labor and Employment. Pursuant to a decision dated June 25, 1999 granting the appeal, the Department of Labor and Employment, through Undersecretary Rosalinda D. Baldoz ordered the conduct of a certification election.

Amid several attempts of Toyota Motor Philippines Corporation to stop the holding of certification election, the latter was finally conducted on March 8, 2000.

The results of the election turned out to be in favor of TMPCWA. Out of the one thousand one hundred ten (1,110) employees, one thousand sixty three (1,063) cast their votes, with one hundred (105) votes being challenged. Five hundred three (503) votes were in favor of the worker's union while four hundred forty votes were against the workers' union.

The latter union then filed a motion to certify the union as the sole and exclusive bargaining agent of all the rank-and-file employees of Toyota Motor Philippines Corporation.

But Toyota Motor Philippines Corporation did not accept the results of the election. In order to frustrate the efforts of the union to be certified as the sole and exclusive bargaining agent of all rank and file employees, it insisted to open the 105 segregated and challenged votes for purposes of determining the majority of the valid votes cast. This was notwithstanding the fact that these 105 challenged and segregated ballots were cast by employees occupying position levels 5 and upwards and considered as supervisory employees. As a matter of fact, Toyota Motor Philippines Corporation was very much aware of the decision of the Supreme Court in the case of Toyota Motor Phils. Corp. versus Toyota Motor Phils. Corp. Labor Union and the Secretary of Labor and Employment, G.R. No. 121084, February 19, 1997 (First Division).

Nonetheless, on May 12, 2000. Med-Arbiter Lameyra rendered judgment declaring challenged voters as ineligible and excluding their votes from the totality of the votes cast. Accordingly, TMPCWA was declared to have obtained the majority of the votes cast and was hereby certified as the bargaining agent of the rank and file employees of the company. The Toyota Corporation appealed from the decision of Med-Arbiter Lameyra certifying TMPCWA as the sole and exclusive bargaining agent. However, the Secretary of Labor denied the appeal in an Order dated October 19, 2000.

Accordingly, TMPCWA submitted its CBA proposal to the Toyota Corporation. However, they refused to negotiate. A follow-up letter was made demanding CBA negotiations but to no avail.

Meanwhile, Toyota Corporation filed a Motion for Reconsideration from the decision of the Secretary of Labor denying its appeal. To the great surprise of the union members, the Office of the Secretary of Labor then issued an Order requiring the parties to attend a clarificatory hearing on February 21, 2001 before the Bureau of Labor Relations regarding the certification of the TMPCWA as the sole and exclusive bargaining agent.

The union was greatly alarmed. Thus, after deciding to attend the clarificatory hearing scheduled on February 21, 2001, the Union members also agreed to hold a peaceful assembly to express their dismay on the decision of the Department of Labor to hold a clarificatory hearing.

Before the peaceful assembly on February 22, 2001, TMPCWA, in behalf of its members, filed a formal request to the Toyota management that they would join in the assembly. They had also expressed their willingness to work without overtime pay on their rest days, and consider the Sunday work as an ordinary day. After the hearing on February 21, 2001, Toyota Corporation requested for another clarificatory hearing and it was scheduled on the following days, February 22-23, 2001.

Subsequently, on March 16, 2001, 227 union officers and members were shocked to receive a decision from Toyota Corporation illegally terminating 227 union officers and members and suspending 64 union members for 30 days for participating in the assembly conducted on February 22-23, 2001. They were shocked considering that after the holding of peaceful assembly, they returned to their work without any exigency. Incidentally, the termination and suspension took place on the same day that the Secretary of Labor affirmed with finality that the TMPCWA is the sole and exclusive bargaining agent for purposes of collective bargaining negotiation.

In view of the illegal termination of 227 union officers and members and suspension of 64 members for 30 days, the Union filed a notice of strike. While the union was preparing the requirements for the holding of strike, it Conducted protest in front of Toyota's two plants. The protest intended to give the management time to retract its decision. Notwithstanding, the Toyota management did not bother as it threatened to continue dismissing more employees. Thus, the union had no other recourse but to stage a legal and peaceful strike.

Despite the fact that the union was conducting the peaceful strike, the National Labor Relations Commission, upon the request of the company, issued at 12:00 midnight of April 4, 2001 a Temporary Restraining Order (TRO) thereby providing the company the justification to disperse the striking union members.

On April 9, 2001, at 5:00 a.m., while most of the striking union members went home to visit their families, around 100 policemen and security guards violently dispersed the picket line and forcibly took all the strike paraphernalia. At the same time, busloads of scabs and managerial employees were escorted inside the plants.

A day after the violent dispersal of the striking union members, the Secretary of Labor assumed jurisdiction over the labor dispute and ordered the strikers to return to work. Though unconvinced with the decision of the Secretary of Labor, the union members complied with the order of the Secretary of Labor to return to work. The union then questioned the assumption of jurisdiction by the Secretary of Labor before the Supreme Court. Unfortunately, the Supreme Court sustained the act of the Secretary of Labor.

After the Secretary of Labor certified the labor dispute to the National Labor Relations Commission, the union requested to defer hearing on the certified cases. Unfortunately, the National Labor Relations Commission proceeded and even rendered decision without the position paper of the union.

In its decision, the National Labor Relations Commission declared the protest rally conducted on February 22 and 23, 2001 illegal including the peaceful protest action conducted on May 8 and May 23, 2001. Accordingly, it declared the termination of 227 members who participated in those assemblies legal. It also declared the Union Officers and Directors to have forfeited their employment status for having led the peaceful assemblies.

One week after the issuance of the decision, Toyota management issued a memorandum implementing the decision of the National Labor Relations Commission. As such, more than half of the membership of the union had been dismissed including the entire leadership of the union.

Not satisfied with the dismissal of 227 members and union officers and directors, Toyota management, through its officers, filed criminal complaints against several union members and officers. The members obtained their provisional liberty by posting a bail bond. The three cases of

grave coercion are still pending before the Metropolitan Trial Courts of Paranaque City.

In the meantime, Toyota management was able to secure preliminary injunction from the Court of Appeals enjoining the union to demand collective bargaining and negotiation.

III. NATURE OF THE ALLEGATIONS

The Philippine Government has ratified Freedom of Association and Protection of the Right to Organize Convention (No. 87) and Right to Organize And Collective Bargaining Convention (No. 98). Yet, the Toyota Motor Philippines Corporation Workers Association firmly believes that the Philippine Government failed to secure the effective observance within its jurisdiction of the two conventions of which it is a signatory. Worse, the Philippine Government committed acts that necessarily impaired the rights of the worker's association and collective bargaining laid down in the two conventions. Let us examine the following:

A. Undue Interference of Toyota management to Right to Self-Organization

The Philippine Constitution and labor laws provide for the right of workers to form and joins trade unions. However, in the case of the workers and employees of Toyota Corporation, this right has not been effectively exercised by them.

It took more than ten years, before the worker's union, through the Toyota Motor Philippines Workers Association was granted recognition by the Philippine Government. From the time the workers attempted to form a rank and file employees union at Toyota, the Toyota management had shown its direct and obstinate opposition by filing a petition for cancellation of the union's registration.

This undue interference from the Toyota management was in fact sanctioned by the agencies of the Philippine Government. During the second attempt of the workers to form another union which was the Toyota Motor Philippines Corporation Employees Association (TMPCEWU), it was thwarted by the Toyota Management when the Department of Labor granted its petition for cancellation of union's registration.

B. REFUSAL TO BARGAIN COLLECTIVELY

Despite the finality of the decision certifying the Toyota Motor Philippine Corporation Worker's Association as the sole and exclusive bargaining agent of the rank and file employees, the Toyota management refused and still refuses to negotiate with the union in order to forge a collective bargaining agreement. The Toyota management was able to secure an order from the Court of Appeals enjoining the union to demand a collective bargaining and negotiation.

C. ANTI-UNION DISCRIMINATION

Under the convention, the workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. Such protection shall apply more particularly in respect of acts-calculated to cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Unfortunately, the members of Toyota Motor Philippines Corporation Workers Association failed to receive such protection from the Government. When Toyota Management illegally dismissed union leaders and members after they attended the clarificatory hearings called by the Bureau of Labor Relations on February 22-23, 2001, the Department of Labor and Employment, through the National Labor Relations Commission sustained the action of Toyota Management.

D. RESTRICTIONS OF THE RIGHT OF ASSEMBLY

The right to peaceful demonstrations is one of the essential aspects of trade union right. And the government is duty bound to uphold this right granted to the workers in order to defend their occupational interests. Sad to state, this right of the workers particularly the members of Toyota Motors Philippines Corporation Workers' Association has been blatantly violated by the Toyota Management. Worse, the Philippine Government did nothing about it and even upheld the decision of the management when it dismissed union members who participated in the peaceful demonstrations.

As previously discussed, the Union held protest actions from February 21-22, and 23, 2001 in front of the Office of the Bureau of Labor Relations

to show great concern on the Bureau's decision to hold a clarificatory hearing regarding the certification of the TMPCWA as the sole and exclusive bargaining agent.

The Toyota Management had been notified prior to the holding of these peaceful demonstrations. Yet, it declared these actions as constituting work stoppage and prejudicial to the interest of the company. As a consequence, the Toyota Management terminated them. Unfortunately, instead of declaring the termination illegal, the Philippine Government through National Labor Relations Commission declared otherwise.

E. IMPAIRMENT OF THE RIGHT TO STRIKE

While the Philippine Government has recognize the right of the workers to strike, the exercise of these right, to the mind of Toyota Workers' Association became very difficult and ultimately lost its effectiveness.

When Toyota Management terminated 227 union officers and members and suspended for 30 days 64 union members for participating in the peaceful assembly on February 21-23, 2001, the Union did not have any other recourse but to stage a strike. The union staged a strike after complying with all the requirements provided by law.

The first act carried out by the Toyota Management to impair the right of strike was when it filed a petition for injunction with prayer for a Temporary Restraining Order (TRO) from the National Labor Relations Commission. It claimed, albeit erroneous, that the union workers were committing the prohibited and unlawful activities during the strike.

Despite insufficient evidence proffered by the Toyota Management, the National Labor Relations Commission granted the petition and issued a Temporary Restraining Order, thereby giving them with the aid of the policemen legal justification to disperse the striking union members.

The right to strike as a legitimate weapon of Toyota Workers Union had been effectively diminished when the Office of the Secretary of Labor assumed jurisdiction over the labor dispute notwithstanding that Toyota industry is not indispensable to national interest. Pursuant to its decision, all the striking workers were directed to return to work, otherwise, they would face the consequence of dismissal.

The decision of the Office of the Secretary of Labor, in effect, allowed the Toyota Management to commit further union busting against the Toyota Motor Philippines Workers Union by engaging in selective acceptance of returning strikers. When the strikers complied with the order of the Secretary of Labor and returned to work on April 16, 2001, some 227 workers who were earlier dismissed for participating in the peaceful assembly were not accepted by the management.

The final blow suffered by the union in the exercise of their right to strike took place when some of the union members have been charged with the crime of grave coercion. The filing of criminal complaint against the union members is indeed a clear infringement of their right to freedom of association. The Union believes that they should not be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike.

IV. CONCLUSION

From the foregoing, it would clearly appear that the Philippine Government has failed to secure the effective application of Conventions Nos. 87 and 98. Thus, the Toyota Motor Philippine Worker's Association has left no other recourse but to bring the case to your organization to give strong recommendations to the Philippine Government and Toyota Motors Philippines, Inc. to take following courses of actions:

1. Reinstatement of 223 illegally dismissed workers with full backwages and without loss of seniority rights.
2. Recognize the Toyota Motors Philippines Corporation Workers' Association (TMPCWA) as the sole and exclusive bargaining agent of all rank-and-file workers and start the process of collective bargaining negotiation.
3. Cause the withdrawal of criminal cases filed against some union members.

RESPECTFULLY SUBMITTED
Manila, Philippines, February 24, 2003.

ED CUBELO
President