

CORPORATE HYPOCRISY: VIOLATIONS OF TRADE UNION RIGHTS BY EUROPEAN MULTINATIONAL COMPANIES IN THE UNITED STATES

LANCE COMPA

Senior Lecturer Labor relations, and History

IRL School Cornell University

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RESUMEN: A pesar de declarar públicamente su respeto a las normas internacionales sobre libertad sindical, muchas empresas europeas adoptan actitudes americanas en lo que respecta a la relación con los sindicatos. Amparándose en normas laborales, contravienen las normas internacionales (OIT, Naciones Unidas, OCDE) e interfieren en la actuación sindical. En este estudio se recogen algunos casos que reflejan ejemplos de una actitud antisindical solapada por parte de las empresas europeas. Por el contrario, algunas empresas europeas ubicadas en Estados Unidos han optado por respetar los derechos de organización de los trabajadores. La conclusión contiene recomendaciones para asegurar el respeto de la libertad de asociación a los trabajadores de las empresas multinacionales en los Estados Unidos, incluida la aplicación de las normas fundamentales de la OIT, los Principios Rectores de Naciones Unidas, las Directrices de la OCDE, y los Acuerdos Marco Globales.

ABSTRACT: Many European corporations adopt American management-style attitudes toward trade unions, notwithstanding their publicly-declared support for global norms on workers' freedom of association. They exploit US labor laws that violate international standards and interfere with trade union formation. Case studies examine several examples of this anti-union hypocrisy on the part of European firms. At the same time, some European companies have chosen to respect workers'

organizing rights in the United States. The conclusion contains recommendations for securing multinational companies' respect for workers' freedom of association in the United States, including application of ILO core standards, UN Guiding Principles, OECD Guidelines, and Global Framework Agreements.

PALABRAS CLAVE: normas internacionales de trabajo, libertad de asociación, derechos laborales, derechos de los trabajadores, sindicatos.

KEYWORDS: International labour standards, freedom of association, labour rights, workers' rights, trade unions.

1. INTRODUCTION

European firms invest in the United States because of its huge industrial and consumer markets, productive workers, interstate highways, access to capital, world-class universities, high-technology capacity, functioning legal system that enforces property rights and commercial contracts, political stability, and other favorable institutional structures. But other features of the American system offer a more sinister incentive.

The United States provides a hyper-flexible labor market for foreign corporations. In most countries, employers must demonstrate “just cause” to dismiss an employee. But the prevailing doctrine in US law is the “at-will” rule allowing employers to dismiss staff at any moment and for any reason – including “a good reason, a bad reason, or no reason at all” – as long as it is not a reason prohibited by law.

Here is how one prominent US law firm describes the difference:

Employment-at-will offers American employers broad freedom to cut their staff's terms and conditions of employment, work hours, employee benefits—even compensation . . . Indeed, American bosses exercise this freedom regularly. . . . These cuts are perfectly legal . . . because . . . US law imposes no doctrine of acquired employment rights that constrain employers

from unilaterally cutting employment terms, conditions, work hours, benefits and pay.¹

In addition to no law requiring just cause for dismissal or protection for acquired rights, no US law requires severance pay for dismissed workers based on their length of service. No law requires employers to provide pension benefits or health insurance. No law limits the power of companies to abruptly close workplaces. The law only requires a modest 60 days' advance notice of workplace closure, which can easily be evaded by claims of a sudden change in business conditions.

No US law limits the amount of overtime work that employers can impose on workers.

No law requires employers to provide vacation or holidays, or prohibits employers from forcing employees to cancel their vacations or to work on holidays. Only seven states have laws requiring rest breaks or meal breaks; no federal law does so. These and other deregulatory features of US labor and employment law should not be a magnet for European investors. Nor should they be imported into Europe, where a menacing "Americanization" is starting to take shape.²

In terms of workers' organizing and collective bargaining rights, the United States is also a bastion of "union-free" management philosophy. US law allows employers to unleash aggressive workplace pressure campaigns against workers' organizing efforts. Campaign tactics include mandatory "captive-audience" meetings in which workers are forced to hear anti-union speeches and see anti-union films presented by management.

Even more insidious are one-on-one meetings between supervisors and employees in which supervisors threaten workplace closure if workers form a union. All these meetings are scripted by anti-union consultants, which is a multi-billion-dollar industry in the United States.

In a corporate culture imbued with strong anti-union beliefs and practices, many American employers respond to workers' organizing and bargaining efforts with such campaigns of interference, intimidation, and coercion. Unfortunately, European-based firms too often join their ranks, contrary to their stated principles.

¹ White & Case law firm, "How to Cut (or "Restructure") Employment Terms, Work Hours, Benefits and Pay Outside the United States," *HR Global Hot Topic* (December 2013).

² Eduardo Porter, "Labor Protections Ebb as Americanized Policy Spreads in Europe," *New York Times*, December 4, 2013, at B1.

Many multinational corporations based in Europe embrace the declarations and conventions of the International Labor Organization, industrial relations guidelines of the Organization for Economic Cooperation and Development, the UN Guiding Principles on Business and Human Rights, the Charter of Fundamental Rights of the European Union, and other international labor rights instruments.

Many companies also adopt corporate social responsibility programs and codes of conduct on workers' rights. They join the United Nations Global Compact, the Global Reporting Initiative, Corporate Social Responsibility (CSR) Europe and CSR forums in their own countries. They deal forthrightly with workers' representatives in trade unions and works councils. Such companies appear to hold a deep commitment to workers' human rights through their publicly declared statements and promises.

But many global firms have a blind spot on workers' freedom of association in their American operations. In a new version of American exceptionalism, European companies suggest that the United States is different and undertake US management-style campaigns against workers' organizing efforts.

But anti-union campaigns are not required under US law; they are just permitted. The fact that many American companies fiercely resist trade unions does not mean that foreign firms have to act in the same manner. Foreign multinational companies have a choice. They could consistently apply international standards in their American facilities. However, instead of standing up for their stated commitments on workers' freedom of association, many wield the power granted to them by the US labor and employment law system to exploit lower American standards in violation of international norms.

Just as distressing as interference with workers' rights by European firms in the United States is the ominous spread of US management-style anti-unionism in Europe. In September 2007, management at a Kettle Chips factory in Norwich, England engaged a US-based anti-union consulting firm to mount a vicious campaign against workers seeking collective bargaining representation with the British union Unite. The consultants held mandatory 'captive-audience' meetings for workers with anti-union speeches and videos, and trained supervisors to meet with workers to warn of possible closure, strikes and other fear-mongering messages. Swayed by these threats, workers voted against union representation.³

³ John Logan, "US Anti-Union Consultants: A Threat to the Rights of British Workers," Trades Union Congress report (2008) available at <http://www.newunionism.net/library/organizing/TUC%20-%20US%20Anti-Union%20Consultants%20-%202008.pdf> (visited December 22, 2013).

US-based anti-union consultants carried out similar campaigns in the UK against workers at Amazon UK, Virgin Atlantic, Honeywell, GE Caledonian, Eaton Corporation, Calor Gas, Silberline Ltd, FlyBe, Cable & Wireless and others. In Germany, American-style anti-union activity has taken the form of interfering with works council formation and operations.⁴

2. CASE STUDIES

2.1 Deutsche Telekom

When Deutsche Telekom joined the UN Global Compact in 2000, it said “This voluntary commitment is based not only on the values of the Global Compact but on the internationally recognized conventions, guidelines and standards of the International Labor Organization (ILO) and the Organization for Economic Cooperation and Development (OECD).”⁵

In the United States, Deutsche Telekom’s T-Mobile wireless telephone operation engaged in practices directly contrary to these international standards. T-Mobile management’s national handbook declared “We want to stay union-free.” Management routinely held mandatory captive-audience meetings call centers around the country forcing workers to listen to anti-union speeches and watch anti-union films predicting dire consequences, including possible closures, if they formed a union.

T-Mobile management distributed a memorandum to managers across the country instructing them to campaign against union organization and telling them to report any cases of “employees engaging in group behavior” and when “employees talk a lot about ‘rights’.”⁶ In some locations, management instructed employees (not

⁴ Martin Behrens and Heiner Dribbusch, “Employer Resistance to Works Councils: New Challenges for Workplace Industrial Relations?” (Paper presented at the 10th European Conference of the International Labour and Employment Relations Association (ILERA), 20-22 June 2013, Amsterdam); see also Behrens and Dribbusch, “How companies keep works councils out,” Hans Böckler Stiftung, *Magazin Mitbestimmung*, June 2012, available at http://www.boeckler.de/36196_42116.htm. (visited June 20, 2014).

⁵ Deutsche Telekom, Statement on Corporate Responsibility 2007.

⁶ T-Mobile, *Memorandum* from Human Resources Department to frontline managers, on file with author, undated.

managers) to report “any union activity” to human resources managers – in effect, to spy on co-workers⁷

To help remain “union-free,” T-Mobile contracted a prominent labor relations consulting firm that specializes in breaking workers’ organizing efforts to prepare a guide and to provide related management training. Specially prepared for T-Mobile, the firm’s 150-page guide declared at the outset, ‘Preserving the union free privilege is an honor.’⁸

The guide goes on to say that T-Mobile should resist employees’ efforts to form unions to “protect them from themselves.” In short, it recommends that T-Mobile oppose workers’ freedom of association to protect its employees from each other, not honor the right as a legitimate act of self-organization to counter management’s superior power in the individual employment relationship.

Here are examples of unfair labor practices at locations around the United States. In each instance, the ‘WE WILL NOT’ header indicates that the company indeed did what it now promised not to repeat:

- WE WILL NOT remove Union literature from the employee break room or other non-work areas.⁹
- WE WILL NOT stop you from talking about unions during working time if we permit talk about other non-work topics during working time.¹⁰
- WE WILL NOT stop you from distributing literature on non-working time and in non-work areas.¹¹
- WE WILL NOT interfere with your right to solicit for a union during non-work time on our premises.¹²
- WE WILL NOT question you about your protected activities on behalf of a union (or the protected activities of others), or take actions that reasonably

⁷ T-Mobile, E-mail memorandum from Divisional Human Resources Manager, Pacific Northwest and Southwest Retail Divisions, to T-Mobile managers, May 30, 2008, on file with author.

⁸ Adams, Nash, Haskell & Sheridan, For Your Information: The Union Free Privilege, Prepared for T-Mobile (2003), on file with author.

⁹ National Labor Relation Board, Settlement Agreement, *In the matter of T-Mobile USA*, Case No. 01-CA-04668, (Oakland, Maine, 2012).

¹⁰ National Labor Relation Board, Settlement Agreement, *In the matter of T-Mobile USA*, Case No. 16-CA-066986 (Frisco, Texas, 2012).

¹¹ *Id.*

¹² National Labor Relation Board, Settlement Agreement, *In the matter of T-Mobile USA*, Case No. 17-CA-060297 (Wichita, Kansas, 2012).

create the impression that your protected union activities are under observation.¹³

- WE WILL NOT engage in surveillance of your activities on behalf of the CWA union.¹⁴
- WE WILL NOT record the license plate numbers of vehicles parked outside our facility while you are engaged in activities in support of the CWA.¹⁵

These settlement notices appear months or often years after the events, after management has delayed legal proceedings and employees have already felt the pressure of management's interference. This pressure is not overcome by a notice posted on a bulletin board, since management has already conveyed its hostility toward unions and had the desired effect of discouraging union formation.

T-Mobile's pattern of violations has continued unabated. In March 2015, a labor board judge ruled that management restrictions on employees' communications among themselves and with union representatives and government officials unlawfully interfered with their freedom of association.¹⁶ In August 2015, another judge found that the company's confidentiality policy violates federal labor law because it prohibits workers from discussing the conditions of their employment.¹⁷

Deutsche Telekom has refused to bring T-Mobile in line with its commitment to freedom of association under its corporate responsibility policy. Despite these pressures, T-Mobile workers have continued their organizing efforts with the CWA union. The union has built an alliance with the trade union of Deutsche Telekom workers in Germany, and they are mounting a political effort to influence the parent company.

In April 2015, Germany's largest trade union submitted a petition to the German Parliament to use the government's shareholder power to persuade Deutsche Telekom to enforce international labor standards at T-Mobile. The trade union pointed to repeated findings of T-Mobile's unlawful conduct by the National Labor Relations Board (NLRB).¹⁸

¹³ *Id.*

¹⁴ National Labor Relation Board, Settlement Agreement, *In the matter of T-Mobile USA*, Case No. 28-CA-086617 (Albuquerque, New Mexico, 2013).

¹⁵ *Id.*

¹⁶ *T-Mobile USA, Inc.*, NLRB ALJ, No. 28-CA-106758, March 18, 2015.

¹⁷ *T-Mobile USA Inc.*, NLRB ALJ, No. 01-CA-142030, August 3, 2015).

¹⁸ Communications Workers of America (CWA), "T-Mobile US Law Breaking to Become Focus of German Government Investigation," e-Newsletter, April 23, 2015.

In August 2015, members of the US House of Representatives demanded that Deutsche Telekom take "swift and immediate action" to halt violations at T-Mobile. They also cited findings by labor law authorities that T-Mobile management acted in violation of US labor law as well as international standards.¹⁹

2.2 Sodexo

In 2003 the French company Sodexo joined the UN Global Compact, committing itself under GC Principle 3 to uphold workers' rights to freedom of association and collective bargaining. For its suppliers, Sodexo insists on compliance with 'a formal code of conduct based on ILO (International Labor Organization) standards . . . including Freedom of Association.'²⁰

Despite its claims of adherence to international standards on workers' freedom of association, Sodexo repeatedly launched aggressive campaigns against employees' efforts to form unions and bargain collectively. Some company campaign tactics are legal under US law, such as holding captive audience meetings in which workers must sit through managers' diatribes against trade unions, or requiring front-line supervisors to carry management's anti-union message into one-on-one conversations with employees, or warning workers that they can be permanently replaced if they exercise the right to strike for improved wages and conditions. In many instances, however, Sodexo crossed the line to unlawful anti-union behavior through unfair labor practices that coerce employees in the exercise of organizing and bargaining rights.

Employees at Sodexo's commercial laundry facility in Phoenix began an organizing effort with the UNITE union in April 2003. They held meetings and lawfully distributed flyers and other information to each other. Volunteer employee leaders came forward to engage in such lawful activities. Workers signed cards joining the union and authorizing the union to bargain on their behalf.

Sodexo management reacted forcefully to break the organizing drive. In an NLRB election held May 29, 2003, 117 of 206 eligible employees voted against union representation. But this result came after a series of management attacks that undermined workers' majority sentiment in favor of the union.

On May 1, a group of workers who had ended their shift lawfully and peacefully demonstrated their support for the union, a classic act of 'protected concerted activity' under US labor law. Four workers briefly left their work stations to join the union

¹⁹ Communications Workers of America (CWA), "House Democrats Demand Action on T-Mobile Labor Law Violations," e-Newsletter, August 6, 2015.

²⁰ Sodexo Corporate Citizenship Report (2007), on file with author.

demonstration. This is “protected concerted activity” under US labor law, which prohibits employers from taking reprisals against workers because of such activity. When these workers sought to return to their jobs less than fifteen minutes later, the manager told them they had lost their jobs because in those few minutes, he had hired replacement workers.

Several months later, the administrative judge presiding over the unfair labor practice charges of discriminatory discharge of these employees said, “I conclude that Sodexo unlawfully refused to reinstate the four sorting employees . . . By refusing to permit [them] to return to work, Sodexo discharged them in violation of Section 8(a)(3) of the Act.”²¹

The judge found that Sodexo’s conduct had “pernicious” effects on workers’ organizing rights:

Sodexo refused to return [the fired employees] to work and discharged them for engaging in a protected work stoppage during the course of a protected employee demonstration. . . . The discharge of visibly active union adherents has an especially pernicious effect on other employees. Awareness of Sodexo’s motivation in refusing employment was general, and many employees discussed with union representatives their concern over coworkers having been “fired.” The evidence thus establishes pervasive impact or dissemination of the unlawful conduct . . . In these circumstances, Sodexo’s unfair labor practices are unremedied, their consequences are ongoing, the possibility of erasing their effects is slight, and the holding of a fair election is improbable.

In April 2005—nearly one year after the judge’s decision and two years after a majority of workers joined the union and requested bargaining—the NLRB approved a settlement agreement between Sodexo and UNITE.²² Under the agreement, Sodexo reinstated three employees and paid them nearly \$8,000 in back pay. The fourth employee chose not to return to work and received \$12,000 in back pay. Sodexo also agreed to have a neutral third party verify whether a majority of workers had

²¹ See decision of Lana H. Parke, Administrative Law Judge, *The Commercial Linen Exchange, a Division of the Sodexo Corporation, and Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC (UNITE)*, Case Nos. 28-CA-18708, 28-CA-18807, 28-CA-18948, 28-RC-6175 (March 3, 2004).

²² NLRB, *Supplemental Order, The Commercial Linen Exchange, a Division of the Sodexo Corporation, and Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC (UNITE)*, Case Nos. 28-CA-18708 et. al., April 7, 2005.

voluntarily signed cards joining the union and authorizing the union to bargain on their behalf.²³ On that basis, the third party determined that a majority of workers had chosen representation, and the company and union proceeded to reach a collective bargaining agreement.

2.3 Kongsberg Automotive

Kongsberg Automotive (KA) is a Norwegian manufacturing firm with 50 factories in 19 countries, including several facilities in the United States. Kongsberg Automotive stated its principles in a Code of Conduct adopted in December 2005, which says:

KA has based its principles on the OECD Guidelines for multinational enterprises, which give an extensive overview of rules to follow. Correspondingly, KA will promote the International Labor Organization (ILO) fundamental principles and rights at work. These principles and rights are the right to freedom of association and the elimination of child labor, forced labor and discrimination linked to employment. . . . KA shall and will always follow the law in the country in which it is operating. In some instances, the KA rules may be more comprehensive than the local law/rules, and if not in conflict with the law, the KA principles are valid.²⁴

Kongsberg Automotive's behavior at its factory in Van Wert, Ohio contradicted the company's stated commitment to freedom of association and collective bargaining. In January 2008, KA bought the former Teleflex factory in Van Wert, a small city in rural western Ohio near the Indiana border. With over 300 workers, the plant was one of the largest local employers. The average wage of the hourly workforce was \$15.00 per hour. For many years and through successive collective bargaining agreements, most of them settled without conflict, workers had been represented by the United Steelworkers of America (USWA).

When the union sat down to bargain with their new owner, Kongsberg Automotive shocked them with demands for a "two-tier" wage system in which new employees would be paid \$9 per hour. Current employees would be 'grandfathered' at

²³ NLRB, *Joint Motion to Vacate ALJ's Decision and to Remand to the Regional Director and Exhibit A, Settlement Stipulation, The Commercial Linen Exchange, a Division of the Sodexo Corporation, and Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC (UNITE)*, Case Nos. 28-CA-18708, March 22, 2005.

²⁴ Kongsberg Automotive, Code of Conduct: Guidelines With Regard to Values and Ethics (2008), on file with author.

their current wage level, with no increases. Management also demanded cuts in pensions, health insurance and other benefits.

When their contract expired in early April 2008, workers offered to stay on the job and continue negotiating while a federal mediator helped the parties reach a settlement. KA rejected this offer and responded with a lockout of all union-represented employees. Then the company hired temporary replacement workers to take on the jobs of locked out employees. US labor law allows employers to engage in such ‘offensive lockouts,’ as they are called – locking out union workers, then hiring replacements to force union capitulation to company demands.²⁵

The Kongsberg Automotive case was a stark example of a foreign multinational company claiming to uphold high labor standards exploiting features of US labor law that are inconsistent with higher standards of practice at home. In Norway, as in Europe generally, when a company and a union reach the expiration date of a contract without a settlement, the contract continues in effect while the parties engage in a lengthy mediation process to achieve a peaceful accord.²⁶

A prominent Norwegian and comparative labor law expert explained that in Norway, “[B]y virtue of statute law provisions a collective agreement has ‘continued effect.’ It does not lapse on the expiry of its ordinary period of validity but remains in force as a binding contract with full effect until the expiry of the time limits ensuing from the rules on notice and mediation mentioned above.”²⁷

Hiring replacement workers to take the jobs of locked-out employees is also contrary to labor relations practice in Norway. As Professor Evju explained, “hiring of replacement workers is unacceptable, unethical and incompatible with essential industrial relations standards.”²⁸

The lockout continued into late 2008 as the plant continued operating with replacement workers. For workers, the danger loomed that the lockout would last for over one year and KA might move to get rid of the union altogether. The one-year cut-off was significant because US labor law permits employers to claim, after a year-

²⁵ The NLRB approved the “offensive lockout” in 1986 in *Harter Equipment, Inc.*, 280 NLRB 597 (1986).

²⁶ Norway labor *Disputes Act* (1927), Sec. 6.

²⁷ Stein Evju, “The right to strike in Norwegian labor law,” *Arbeidsrett* 5:79 (2008).

²⁸ See Stein Evju, Professor of labor Law, Department of Private Law, University of Oslo, e-mail to author, October 14, 2008. Prof. Evju adds, ‘On this point, for the reasons I have sketched, we have no case law that I can refer to.’

long lockout, that the union no longer enjoys majority support among active workers and to withdraw recognition on that basis.²⁹

The dispute at Kongsberg Automotive's Van Wert, Ohio facility never reached the one-year mark. Instead, after nine months, with workers still locked out and no progress in negotiations, KA announced in December 2008 that it was shutting the Van Wert plant and moving all production to Nuevo Laredo, Mexico.

The fact that some features of US labor law allow employers to violate workers' rights under international human rights standards does not justify Kongsberg Automotive's exploitation of the "offensive lockout" which is incompatible with international standards and with practices in its home country. US law did not require KA to act in this fashion. It permits such anti-union tactics, but Kongsberg Automotive had the choice whether to take advantage of these features of US labor law or to act in accordance with its principles.

Kongsberg Automotive said that where its principles are more comprehensive than local legislation, and they do not conflict with local legislation, KA will apply its principles. Indeed, without violating US law, the company could have acted in a manner consistent with its promise to "promote the International Labor Organisation (ILO) fundamental principles and rights at work," and its invocation of the UN Global Compact in requirements for suppliers. Instead, Kongsberg Automotive's choice to adopt US management-style anti-union strategies and tactics betrayed this promise and its claims of social responsibility and the values and guidelines of its Code of Conduct.

2.4 Gamma Holding

Gamma Holding is a Netherlands-based multinational manufacturer of textile products ranging from fashion textiles, sleepwear, and sailcloth to industrial textiles for conveyer belts, coated and composite products, roofing systems, filtering systems, bulletproof vests, and other uses. The company employs 7,000 workers in 42 countries, including in the United States.

Gamma Holding's code of conduct said, "Gamma Holding recognizes the employees' right to organize themselves to protect their collective and individual interests." The company noted that it has signed the Code of Conduct of the Social Partners in the European Textile and Clothing Sector. Negotiated by textile

²⁹ See *NLRB v. Curtin Matheson*, 494 US 775 (1990); *Allentown Mack Sales v. NLRB*, 522 US 359 (1998).

companies and European trade unions in the sector, article 1 of that code cited “freedom of association and the right to negotiate” under ILO Conventions 87 and 98, stating: “The right for workers to form and join a trade union, as well as the right for employers to organize, are recognized. Employers and workers may negotiate freely and independently.”³⁰

In its 2007 Annual Report, Gamma Holding said that “Important elements of this code of conduct include employees’ right to organize and the prohibition of any form of discrimination” and that the company “applies these business principles not only in Europe, but also in all of the countries in which the group is active.” The “human resources management” section of Gamma Holding’s 2007 Annual Report ended cryptically with the statement, “At the end of April, Filtration Technology resolved the labor dispute at National Wire Fabric in the US state of Arkansas.”

What Gamma Holding did not say in its Annual Report was that the labor dispute in Arkansas was the longest strike in the history of that state, one marked by the company’s use of permanent replacement workers, bad-faith bargaining, and a myriad of unfair labor practice charges found to be meritorious by the NLRB.

National Wire Fabric (NWF) in Star City, Arkansas, was part of Gamma Holding’s business division making equipment for the construction, pulp and paper, and corrugator industries. Gamma Holding acquired the NWF facility in 2001. Local 1671 of the United Steelworkers union represented 56 hourly employees at the plant.

In July 2005, after months of negotiations on a new contract and despite intervention by the Federal Mediation and Conciliation Service, NWF workers exercised their right to strike. NWF management was demanding cuts in vacations and health insurance and contract “flexibility” that would destroy seniority rights and other protections built up over years of negotiations.³¹

Concessionary demands by management do not come within the scope of ILO conventions 87 and 98. However, these international norms require good-faith bargaining and condemn the use of permanent replacement workers against lawful strikers. Gamma Holding violated both these international standards.

³⁰ European Union, “A Charter by the Social Partners in the European Textile and Clothing Sector: Code of Conduct” (2007). . Available at http://ec.europa.eu/employment_social/soc-dial/news/chartertextile_en.htm. (Accessed 20 October 2009).

³¹ R. Massey, “Star City walkout near end of year one,” *Arkansas Democrat-Gazette*, July 5, 2006.

When members of the United Steelworkers exercised the right to strike, Gamma Holding's NWF management hired permanent replacements to take their jobs. Explaining the move in a letter to union officials, Gamma Holding's CEO said, "Once National Wire Fabric made the legal decision to continue its operations, the company, logically and legally, decided it would need to use permanent replacements."³² For almost two years, the company maintained production with permanent replacement workers despite the ILO's decision that the use of permanent replacements violates workers' freedom of association.³³

In January 2007, the NLRB found merit in the union's charge that NWF and Gamma violated US labor law by bargaining in bad faith, and scheduled a trial for May 2007.³⁴ However, management defied the NLRB's findings, refused to reinstate the striking workers, and insisted that replacement workers stay on the job permanently.

The strike at National Wire Fabric lasted nearly five more months until May 2007. At 22 months, it was the longest strike in the history of Arkansas.³⁵ Despite the NLRB's findings and in violation of international labor rights norms, NWF management kept in place throughout the dispute permanent replacements in the jobs of union members who had exercised the right to strike.

Finally, faced with growing potential liability as time passed and the trial before an administrative law judge drew near, management settled the dispute, offered reinstatement to all striking workers who still wanted to return to work, and reached a contract with the union. Only 12 of the original 56 strikers chose to return to work. The rest took early retirement and severance pay packages or moved to jobs with other employers.

³² Letter from Gamma CEO Meint Veninga to Neil Kearney, General Secretary, International Textile, Garment and Leather Workers' Federation, cited in Richard Massey, "Factory in Star City broke law, union says Strikebreakers offered promotions, it claims," *Arkansas Democrat-Gazette*, March 13, 2006.

³³ International Labor Organization, Committee on Freedom of Association, Complaint against the Government of the United States presented by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), para. 92, Report No. 278, Case No. 1543 (1991).

³⁴ NLRB Region 26, *National Wire Fabric, Inc. and United Steelworkers Local 1671*, Complaint and Notice of Hearing, Case No. 26-CA-22394, January 29, 2007.

³⁵ M. Linn, "Star City firm's strike finally ends; Union workers back on job at National Wire Fabric after 22 months," *Arkansas Democrat-Gazette*, May 22, 2007.

3. SOME POSITIVE DEVELOPMENTS

Some foreign companies have found their way to a respectful policy on workers' trade union organizing in the United States. But it often requires workers' building alliances and bringing the pressure of a public campaign to bear on management's behavior. One example involves First Group, Ltd., the UK's largest private transport company, and its American subsidiary First Student, Inc.

First Student is the largest private school bus transportation contractor in the United States, serving hundreds of local school districts who choose to contract out with private firms for student transportation between their homes and schools. First Student entered the US market in the late 1990s when it bought a US-based school bus contractor.

American management launched a typically aggressive anti-union campaign whenever school bus drivers and mechanics sought to form a trade union. This, despite First Group's public affirmations of support for international labor standards and its positive relationship with trade unions at home.

Based in Aberdeen, Scotland, First Group's domestic workforce was represented by the Transport and General Workers Union (T&G). Under pressure from the T&G, First Group had adopted a corporate social responsibility policy that referenced international human and labor rights. Top company management made declarations at Annual General Meetings (AGMs – annual shareholders' meetings) pledging full support for ILO core labor standards and ILO conventions on freedom of association.

But in the United States, First Student management failed to apply these principles. Instead, they launched aggressive, threat-filled anti-union campaigns wherever workers tried to organize, contrary to international standards and to UK management's policy and often in violation of the NLRA.

The Teamsters union took the lead helping First Student workers in their organizing efforts. Working closely with the T&G, the Teamsters used the firm's own proclaimed corporate responsibility statements to achieve an effective neutrality agreement that led to substantial union organizing gains.

A key part of the Teamster campaign to organize the bus drivers at First Student was to convince the parent company to honor its corporate responsibility policy in the United States. Working closely with the T&G, the Teamsters engaged in an extensive campaign that included meetings, public forums and other activities involving financial backers of the company, members of Parliament and others. The activities took place in both the United States and England and helped to focus attention on

problems with First Student's operations in the United States, including management's failure to live up to the company's corporate responsibility policy.

In 2008, First Student rectified its conduct. The company adopted a strong neutrality policy with an effective enforcement mechanism. Since then, more than 30,000 bus drivers in First Student locations around the United States have chosen union representation in secret-ballot elections conducted by the NLRB. In 2011 the company and the union negotiated a nationwide master collective agreement setting basic conditions of employment for all workers and guaranteeing freedom of association.³⁶

In another example, US management at an IKEA supplier factory in Virginia first launched an aggressive anti-union campaign when the plant's 300 workers tried to form a union in 2009. Management's tactics included captive-audience meetings, one-on-one supervisor pressure sessions, and anti-union films and videos. Working with the BWI, UNI and IndustriALL global unions, along with Swedish unions, the workers and their Machinists union (IAM) built an international support alliance invoking ILO standards.³⁷

Under the pressure of the global alliance and its demands for adherence to international labor standards, IKEA's top leadership instructed its American management to halt the anti-union campaigning. In 2011, workers won an NLRB election by a 3-1 margin. In 2012, protected by the same application of international standards, hundreds more workers at three IKEA distribution centres in Maryland, New Jersey, and Georgia joined them, voting by a solid majority in NLRB elections in favor of IAM representation.³⁸

4. CONCLUSION

States and communities in the United States are eager to lure foreign direct investment by multinational firms to build factories and create jobs. But instead of implementing positive workplace policies that reflect their commitments to international labor standards at home and in most other countries where they do business, many companies take advantage of substandard US labor laws to interfere with workers' freedom of association.

³⁶ R. Gray, "Teamsters, First Student Sign 'Historic Agreement' for School Bus Driver Labor," *School Transportation News*, June 6, 2011.

³⁷ S. Pfeifer, "Workers at IKEA factory OK union," *Los Angeles Times* July 29, 2011.

³⁸ B. Vail, "Machinists Rapidly Unionizing Ikea Warehouses: 3 Down, 2 to Go," *Working In These Times*, December 10, 2012.

To stop such abuses, European firms should apply the highest standards of industrial relations and workplace conditions in all their operations, wherever they are located. One specific measure would be to have EU works council directives apply to European firms in their US operations. This would give American employees to have the same rights to information and consultation as their European counterparts. Similarly, American companies operating in Europe should accept participation of US employee representatives in works council meetings and consultations in Europe.

European multinational companies can create internal “due diligence” systems of continuous monitoring and evaluation of the labor relations record of their US operations. They should declare publicly, post on the company website, disseminate to all US managers and employees, and post conspicuously in all US workplaces (in English and in all languages spoken by non-English speaking workers) the company’s commitment to international human rights standards on workers’ freedom of association in the United States.

At the same time, European firms should declare that where US labor law falls below international standards, the company will comply with the higher standard. They should also develop internal management training and implementation systems to ensure that US managers understand and put into effect the company’s freedom of association policies.

National and international governing institutions can also play a role. For example, the European Commission and European Governments should develop systematic means of scrutinizing EU-based firms in the United States with respect to their freedom of association policies and behavior. The EU can go even further, adopting legislation requiring that European firms operating in the United States conform their behavior to international standards on freedom of association. The ILO and the OECD should apply complaint and enforcement systems to hold multinational corporations accountable for violations of the ILO Tripartite Declaration and the OECD Guidelines for Multinational Enterprises.

Foreign governments and international are not the only bodies that should halt employers’ interference with workers’ freedom of association. The United States needs to act, too. The US government should adopt labor law reforms to bring the United States into full compliance with international human rights standards on workers’ freedom of association. It should also submit ILO Conventions 87 and 98 on workers’ freedom of association to the United States Senate for ratification. The United States has ratified only 14 ILO conventions out of 189 total, and only two of the eight

“core” conventions (no. 105 on forced labor and no. 182 on worst forms of child labor).

The EU and the US should back up a commitment to a strong social dimension by establishing a permanent secretariat or observatory to monitor and report on labor developments in the United States and Europe. Such a body can:

- review and evaluate each other’s multinational companies’ internal systems of due diligence, communication and management of the firm’s social performance;
- conduct an annual Labor Information Audit on the state of labor rights and labor standards in firms investing in each (noting, for example, whether firms have been found in violation of national labor laws or international labor standards);
- conduct investigations and issue findings and recommendations when workers’ rights under international labor standards are violated.

Lance Compa
Senior Lecturer Labor relations, and History
IRL School Cornell University
Lac24@cornell.edu