

A STRANGE CASE:*
Violations of Workers' Freedom of Association in the United States
by European Multinational Corporations

Lance Compa
Cornell University

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I. Introduction

This letter is to inform you of our intent to begin accepting applications to hire permanent replacement workers on December 21, 2005, to fill our open New Richmond production positions.... If you are interested in returning to work please contact [the company] by December 19, 2005.¹

On December 12, 2005, management at the Bosch Doboy packaging equipment factory in New Richmond, Wisconsin, sent this letter to workers giving them one week to return to work or see the company hire strikebreakers to permanently replace them. Bosch workers had exercised the right to strike on November 1, 2005. Threatened with permanent replacement, employees returned to work on December 19.²

While using the threat of hiring permanent replacement workers to break a strike is legal in the United States, the International Labor Organization (ILO) Committee on Freedom of Association, the authoritative interpreter of applicable international law, has made clear that the practice is incompatible with workers' freedom of association. As the Committee framed the issue, "The right to strike is one of the essential means through

***The title is borrowed from Robert Louis Stevenson's *The Strange Case of Dr. Jekyll and Mr. Hyde*.**

¹ Letter from plant manager Mark Hanson to Bosch Doboy employees, December 12, 2005 (copy on file with Human Rights Watch).

² John Brewer, "Strike ends at Bosch Doboy; 90-plus workers agree to concessions," *Saint Paul Pioneer Press*, December 20, 2005, p. 1B.

which workers and their organisations may promote and defend their economic and social interests.... [T]his basic right is not really guaranteed when a worker who exercises it legally runs the risk of seeing his or her job taken up permanently by another worker ...”³

The New Richmond plant is owned by the German multinational firm Robert Bosch GmbH, which has more than 270,000 employees in 60 countries. With US\$50 billion in 2010 revenues, Robert Bosch was ranked number 129 on the most recent Fortune Global 500 list.⁴ Robert Bosch has emphasized its adherence to international labor standards, which include ILO rulings on freedom of association and the use of permanent replacement workers such as the one above. Bosch has made this commitment clear in writing:

Relations with associate representatives and their institutions

Within the framework of respective legal regulations - insofar as these are in harmony with the ILO Convention no. 98 - we respect the right to collective bargaining for the settlement of disputes pertaining to working conditions, and endeavor together with our partners to work together in a constructive manner marked by mutual confidence and respect.

The **UN Global Compact's** ten principles provide additional guidelines. We joined the initiative in 2004 ...

Bosch will not work with any suppliers who have demonstrably and repeatedly failed to comply with basic ILO labor standards.⁵

The decision of Bosch management to threaten to hire permanent replacement workers in Wisconsin directly violated this commitment to abide by ILO standards and runs counter to the company's practice at home in Germany.

As this report shows, the Robert Bosch example is not an isolated one. Europe-based companies that proclaim their adherence to international labor law and standards that are embodied in their home countries' domestic laws, and largely complied with, too often fail to live up to such commitments when they begin or take over operations in the United States, where the law is less protective of workers' freedom of association.

In some cases the European companies act directly contrary to ILO conventions and other international instruments, adopting practices common in the United States but anathema

³ 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).

⁴ Fortune, "Global 500," at <http://money.cnn.com/magazines/fortune/global500/2010/index.html> (accessed August 27, 2010).

⁵ See Bosch "Corporate Social Responsibility" page at <http://www.bosch.com/content/language2/html/2275.htm> (accessed September 9, 2009). The UN Global Compact's Principle 3 states: "Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining."

in Europe. In other cases they engage in threats and forms of intimidation and coercion that violate US labor law as well as international standards.

Nothing in the US labor law system prevents European corporations from complying with international norms that surpass American standards or from complying with US laws that meet international standards. Nothing prevents them from implementing voluntary corporate codes of conduct with “best practices” set higher than minimum legal standards, or from simply treating workers and their unions in the United States as respectfully as they do at home. Put another way, nothing in US labor law requires employers to aggressively campaign against workers’ organizing efforts, break strikes with permanent replacements, or otherwise fail to meet international labor standards and their own proclaimed values and codes of behavior.

European companies have a choice as to how they will conduct labor relations policy in the United States. They can implement their home-based values and practices of respect for workers’ organizing rights and acceptance of collective bargaining as a normal way of engaging with employees in their US operations, or they can convert to forms of management interference with workers’ organizing and bargaining efforts that are all too common in the United States but almost unheard of in Europe.

As demonstrated in the cases detailed in this report, some of the largest and best-known European employers in the United States have too often chosen the second option. They seem to forget their sensitivity to social responsibility concerns and much-touted public commitments to workers’ rights. They break with home-based policies that are relatively respectful of workers’ organizing efforts and collective bargaining, and that view “social dialogue” as a core element of industrial relations. Instead, they exploit the loopholes and shortcomings in US labor law that violate international human rights standards or violate US law that comports with international standards to frustrate workers’ exercise of their right to freedom of association. The European Dr. Jekyll becomes an American Mr. Hyde.⁶

A Note on Methodology

This reports documents violations of internationally recognized workers’ rights by major European-based multinational corporations in their US operations. Almost all companies reviewed are among Fortune magazine’s 2010 listing of Global 500 corporations or its listing of Europe’s largest companies; several are among the top 100 firms on such lists.⁷

We documented the corporations’ public commitments on freedom of association by taking information from the companies’ own websites and from websites of corporate social responsibility evaluation and rating organizations.

⁶ Robert Louis Stevenson’s novella *The Strange Case of Doctor Jekyll and Mr. Hyde* is the source of the title of this report.

⁷ See Fortune, “Global 500,” <http://money.cnn.com/magazines/fortune/global500/2010/> (accessed August 27, 2010).

Our research into the specific cases and practices detailed in this report draws on three main sources: 1) legal records such as NLRB decisions, court decisions, and employees' affidavits in unfair labor practice cases involving the case study companies; 2) Human Rights Watch interviews with workers who sought to exercise organizing and bargaining rights at these companies' US operations; 3) newspaper accounts and other published reports relating to the cases; and 4) direct employer responses to Human Rights Watch inquiries on the cases.

Finally, Human Rights Watch sent letters to each of the companies examined in this report in early 2009, and again shortly before publication, describing our treatment of the cases discussed in this report and seeking the companies' responses.

II. Case Studies

Deutsche Telekom and T-Mobile

Headquartered in Bonn, Deutsche Telekom (DT) is a German multinational telecommunications giant with US\$90 billion in annual revenues and 260,000 employees in 50 countries around the world. It is number 59 on the Fortune Global 500 list.⁸

More than half of the company's revenues come from outside Germany. DT's largest single foreign operation is T-Mobile USA (T-Mobile), the fourth-largest wireless communications company in the United States. Based in Bellevue, Washington, T-Mobile USA employs 36,000 US workers and has almost 30 million American subscribers to its mobile phone system.⁹ In 2008, T-Mobile became the single-source supplier of service for the Google phone.¹⁰

Public Commitments on Freedom of Association and Corporate Social Responsibility

In its 2007 *Corporate Responsibility* report, Deutsche Telekom declared:

CR as a management concept is already an integral part of Deutsche Telekom's responsible corporate policy.... Social and environmental minimum standards for staff and suppliers were already enshrined in Deutsche Telekom's Social Charter back in 2003. 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). Our Social Charter therefore governs how we deal with issues such as human rights, equal

⁸ For these and other company data, see the Deutsche Telekom Website at www.deutschetelekom.com; see Fortune, "Global 500," <http://money.cnn.com/magazines/fortune/global500/2010/index.html>.

⁹ See information at the Deutsche Telekom Website, www.deutschetelekom.com.

¹⁰ Edward C. Baig, "T-Mobile's Google phone heralds Android invasion," *USA Today*, October 16, 2008, p. 1B.

opportunities, health and safety at work as well as cooperation with unions.¹¹

Allentown, Pennsylvania

T-Mobile's major Northeast call center in Allentown, Pennsylvania employs almost 1,000 workers. It is one of the largest among the company's 35 call centers around the United States.¹²

In early 2006, concerned about issues of pay, arbitrary treatment, and physical conditions in the facility, workers sought help from the Communications Workers of America.¹³

T-Mobile had signaled its state of mind about workers' organizing in a recruiting advertisement for a human resource generalist at the Allentown location. The ad listed among "essential duties and responsibilities" assisting on "appropriate interventions for the purpose of maintaining a productive and union-free environment" and "developing and providing continuous training on ... union avoidance." The recruiting ad further requires knowledge of "principles of preventive labor relations."¹⁴

Together with CWA staff organizers, T-Mobile employees began holding pro-union signs at the point where cars exit the company's parking lot onto the public roadway and distributing pro-union flyers to co-workers driving away from work. T-Mobile management responded with surveillance and attempts to interfere with the workers' activities.

Tammy Todora, a T-Mobile employee active in the flyer distribution to co-workers, recounted what happened:

The CWA organizers explained that we had a right to do what we were doing. But then management told the company security guards to come out and watch us. If somebody slowed down to take a flyer, the guards told them to keep moving, not to slow down. If people stopped anyway and took a flyer, the guards wrote down their license number. When people saw this, they were afraid to stop for our flyers.¹⁵

¹¹ Deutsche Telekom, "Corporate Responsibility," (2007)

<http://www.deutschetelekom.com/dtag/cms/content/dt/en/32840> (accessed March 8, 2008).

¹² Sam Kennedy, "T-Mobile call center to add 450 jobs; Cell phone company will be 16th-largest employer in Lehigh and Northampton," *Allentown Morning Call*, September 15, 2005, p. A1.

¹³ Human Rights Watch interview with Tammy Todora, Allentown, Pennsylvania, February 29, 2008.

¹⁴ See "Human Resource Generalist, T-Mobile, Allentown, PA (submitted 10/17/05)," at <http://www.hrforhire.com>, accessed September 25, 2009 (copy on file with Human Rights Watch). "Preventive labor relations" is a term of art in American management discourse that means preventing workers from forming unions.

¹⁵ Human Rights Watch interview with Tammy Todora, Allentown, Pennsylvania, February 29, 2008.

The CWA filed an unfair labor practice charge against T-Mobile with the regional office of the NLRB. The regional director found that the T-Mobile guards' activity:

violated Section 8(a)(1) of the Act by interfering with the rights of employees to communicate with the Union representatives by telling individual employees who stopped their vehicles not to take the Union handbill.... [A]lso in violation of Section 8(a)(1) ... a guard stationed near the main entrance ... recorded the license plate numbers of vehicles driven by individuals who stopped to take the leaflets.¹⁶

Inside the Facility

Tammy Todora told Human Rights Watch what happened inside the workplace, too, describing typical American-style, hard-hitting, anti-union captive-audience meetings filled with dire predictions about the consequences of union organizing. T-Mobile told Human Rights Watch that it met with employees to discuss “the company’s perspectives about unionization” but emphasized that all of its communications were lawful under the NLRA.

Todora described the climate inside the facility:

The big guy [the general manager] called everybody into focus groups, about 15 or 20 people at a time, usually the day after we passed out leaflets. He was putting the fear into everyone’s head about the union, that the union would create problems, that he had an open door policy, that we didn’t need a union, that kind of thing.¹⁷

Todora added that “it looked like they trained the supervisors on going against the union. My supervisor told me, ‘Watch what you’re doing, they’re watching you.’”¹⁸

The Nationwide Memorandum

In May 2008, T-Mobile’s Human Resources department distributed a memorandum to “front-line managers only” across the country contrasting employees’ “direct, one-to-one communication” with supervisors and workers to “third party” communication with a workers’ organization, and urging managers to immediately launch concerted anti-union campaigns whenever CWA organizers attempted to communicate with T-Mobile employees.¹⁹ The memorandum was accompanied by an instruction that had ominous implications for workers’ freedom of association. Among the “Signs of Union Activity” that managers should watch for, the instruction cites:

¹⁶ Letter to CWA counsel of Dorothy L. Moore-Duncan, Regional Director, NLRB Region 4, *T-Mobile*, Case No. 4-CA 34590, June 30, 2006 (copy on file with Human Rights Watch).

¹⁷ Human Rights Watch interview with Tammy Todora, Allentown, Pennsylvania, February 29, 2008.

¹⁸ *Ibid.*

¹⁹ Memorandum from T-Mobile’s Human Resources Department to frontline managers, “For Front-line managers only. Please do not print, post or distribute,” undated (copy on file with Human Rights Watch).

- Unusual groupings or newly developing social relationships among our employees;
- Unionization activity going on among employees in nearby companies;
- Employee reports of union activity (a “condition red” indicator of problems);
- Employees engaging in group behavior;
- Employees talk a lot about “rights.”²⁰

The instruction concludes, “When these problems appear, notify your Human Resources Manager immediately.... Stay alert and if union activity is confirmed, maintain a daily diary of all related activities.”²¹

T-Mobile’s characterization of “newly developing social relationships” and “employees talk a lot about ‘rights’” as “problems” requiring immediate reporting to human resources management borders on parody. However, it is a serious reflection of management’s determination to thwart union organizing by its employees in the United States.

In letters to Human Rights Watch, Deutsche Telekom maintained “it has never been suggested that any T-Mobile manual or memorandum was in any way in violation of the NLRA.”²² The company adds that “the ILO has made it clear that the principle of freedom of association does not mean an employer must remain silent when its employees are making a decision about whether to associate with a labor organization” and “[n]ational companies, like Deutsche Telekom, who comply with National law as it now exists, should not be criticized for their compliant behavior.”²³

Deutsche Post and DHL Express

The German firm Deutsche Post World Net (DPWN) is a \$69 billion annual revenue mail, express delivery, logistics, and financial services global company with 425,000 employees in 200 countries. It is one of the world’s 10 largest employers and is number 86 on the Fortune Global 500 list.²⁴

Public Commitments on Freedom of Association and Corporate Social Responsibility

Deutsche Post adopts a public posture of deep commitment to corporate social responsibility. On its website, the company declares:

²⁰T-Mobile memorandum, “Signs of Union Activity” (undated, copy on file with Human Rights Watch).

²¹ Ibid.

²² Letter from Larry L. Myers, senior vice president, Human Resources, T-Mobile USA, to Human Rights Watch, February 23, 2009 (copy on file with Human Rights Watch).

²³ Letter from Thomas Sattelberger, member of the Board of Management, Human Resources, Deutsche Telekom AG, to Human Rights Watch, July 29, 2010 (copy on file with Human Rights Watch).

²⁴ For these and other company data, see DPWN website at www.dpwn.com (accessed July 1, 2008); see Fortune, “Global 500,” <http://money.cnn.com/magazines/fortune/global500/2010/index.html>.

Our Corporate Values are a challenge and a guide for us.... The Code of Conduct is based on international agreements and guidelines, including the Universal Declaration of Human Rights (UDHR), the conventions of the International Labor Organization (ILO) and the Global Compact of the United Nations.... The Code of Conduct has been in effect in all Group regions and divisions since the middle of 2006.²⁵

Allentown, Pennsylvania

DHL began operations at its new Allentown, Pennsylvania, sorting and shipping facility in early 2007 and employed 400-450 workers at the plant through 2008. Workers at the Allentown sorting facility began an organizing drive with assistance from the American Postal Workers Union (APWU).

Belying its claims about respect for workers' freedom of association, DHL management aggressively countered workers' organizing efforts at the new sorting facility in 2007. The company began issuing flyers and holding captive-audience meetings even before employees sought an NLRB election. Management began issuing materials in English and Spanish and brought in Spanish-speaking anti-union consultants to hold captive-audience meetings along with DHL managers. Latino workers made up about 40 percent of the hourly workforce in DHL's Allentown plant.²⁶ Latino workers interviewed for this report told Human Rights Watch that these were the first instances in which company management addressed them in Spanish.²⁷

Workers told Human Rights Watch that Allentown DHL management also launched aggressive, anti-union captive-audience meetings without any comparable opportunity for employees to receive information from union representatives inside the workplace during breaks or other times when such communication would not affect operations.

DHL worker Mayra Caravasi recounted her impression of the captive-audience meeting she attended in June 2007, saying:

The manager showed us a union card and said that giving the union our name and address meant the union was violating our privacy. She made it sound like it was illegal, what the union was doing. She told us the union was just a business trying to get our money, that the union would make everybody be part-timers paying full-time dues so that the union could get more money. She said that negotiations could last for years. People lost spirit because of what she was saying.²⁸

²⁵ See Deutsche Post World Net website at www.dpwn.com.

²⁶ Human Rights Watch interview with APWU representative Mark Dimondstein, Allentown, Pennsylvania, December 3, 2007.

²⁷ Human Rights Watch interviews with DHL Allentown workers, Allentown, Pennsylvania, December 3, 2007.

²⁸ Human Rights Watch interview with Mayra Caravasi, December 3, 2007.

DHL worker Nilsa Rodríguez added, “They [captive-audience meetings] were horrible, horrible. It was all against us who wanted the union. They said we wouldn’t get any raises because of the union. They didn’t allow time for questions. They said come up and talk to us [the managers] personally.”²⁹

Interference with Union Handbilling

“The company called the police when I was handing out union leaflets in the company parking lot,” William Molina told Human Rights Watch.³⁰ An immigrant from El Salvador, Molina held a “floor work” job at the DHL facility moving packages. Molina became active in the organizing effort, speaking with co-workers and handing out leaflets in non-work areas on non-work time, including company parking lots, as allowed under US labor law.³¹

“The real problem,” explained Molina, “was that the company did this to intimidate us and the other people, so they would think doing union stuff was reason to call the police. A lot of the employees are immigrants like me from Central America, where calling the police is very threatening. They did it again when we were out there leafleting. They just want to intimidate people. It had a big effect. A lot of people were frightened, especially the first time.”³²

The Vote and Its Aftermath

Union supporters lost the September 12-13, 2007, NLRB election 217-135. In a letter to Human Rights Watch, DHL characterized the vote as “the choice made by DHL workers at the ballot box.”³³ But an NLRB administrative law judge determined that workers’ free choice was destroyed by DHL’s interference, restraint, and coercion, and ordered a new election.

The ALJ’s findings underscore the extent of DHL’s interference with workers’ freedom of association and the effects of the company’s conduct on the NLRB election. The judge ruled that:

1. By directing employees to leave the premises where they were properly engaged in protected handbilling activity, threatening to call the police if they did not leave and by actually calling the police, and by engaging in surveillance of the protected union activity of employees, Respondent has violated Section 8(a)(1) of the Act.

²⁹ Human Rights Watch interview with Nilsa Rodríguez, December 3, 2007.

³⁰ Human Rights Watch interview with William Molina, Allentown, Pennsylvania, December 3, 2007.

³¹ See *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945).

³² Human Rights Watch interview with William Molina, Allentown, Pennsylvania, December 3, 2007.

³³ Letter from Patricia Burke, Labor Relations, DHL, to Human Rights Watch, February 16, 2009 (copy on file with Human Rights Watch).

2. By threatening employees with reprisals, including more onerous working conditions and discharge, for engaging in union activities, Respondent has violated Section 8(a)(1) of the Act.
3. By reducing the work hours of, and issuing warnings and negative performance evaluations to, employees for engaging in union activities, Respondent has violated Section 8(a)(3) and (1) of the Act.
4. The above violations are unfair labor practices within the meaning of the Act.

By engaging in some of the unfair labor practices set forth above, those occurring after the petition was filed in this case, the Respondent has interfered with the holding of a free and fair election on September 12 and 13, 2007. That election is set aside and the Regional Director must hold a new election.³⁴

DHL appealed the judge's decision and his order for a new election to the NLRB in Washington, DC. This meant that DHL workers were facing delays measured in years while their freedom of association was effectively suspended. DHL's closure of the Allentown facility in January 2009 stripped away any possibility of vindicating these particular workers' rights.

Saint-Gobain

The Saint-Gobain Group is a French multinational manufacturing firm specializing in construction and automotive products: ceiling, insulation, wallboard, ceramics, pipes, plastics, insulation, reinforcements, packaging, glass, and abrasives. The company employs more than 190,000 workers in over 40 countries, including some 20,000 in the United States. With \$52 billion in annual revenues, it is number 132 on the Fortune Global 500 list. Saint-Gobain's operations in the United States are directed from its US headquarters in Valley Forge, Pennsylvania.³⁵

Public Commitments on Freedom of Association and Corporate Social Responsibility

Saint-Gobain takes pride in its sustainability and corporate social responsibility initiatives. Saint-Gobain is a member of the board of Vigeo, a French environmental and social ratings agency. In July 2003 Saint-Gobain joined the UN Global Compact, thereby committing itself to the instrument's principles of human rights and labor rights, among them Principle 3: "Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining."

³⁴ ALJ Giannasi decision, June 5, 2008.

³⁵ For these and other company data, see Saint-Gobain website at www.saint-gobain.com; see Fortune, "Global 500" at <http://money.cnn.com/magazines/fortune/global500/2010/index.html>.

In December 2008, Pierre-André de Chalendar, chief operating officer of the Saint-Gobain Group, signed the declaration of management support for human rights to coincide with the 60th anniversary of the Universal Declaration of Human Rights.³⁶

Worcester, Massachusetts

Despite its professed commitment to social responsibility, social dialogue, and respect for workers' organizing and bargaining rights, Saint-Gobain for years worked to frustrate employees' efforts to organize and bargain collectively at its industrial abrasives manufacturing plant in Worcester, Massachusetts.³⁷

Workers launched an organizing effort with the United Auto Workers (UAW) in 2000. Instead of "social dialogue" and recognition of the right to collective bargaining, Saint-Gobain management responded with an aggressive campaign against union representation and, as detailed below, with violations of employees' rights to organize and bargain collectively.

Management engaged a prominent anti-union law firm to direct its campaign against workers' organizing. The firm launched a systematic program of captive-audience meetings, one-on-one meetings between supervisors and individual employees, and volleys of letters and flyers warning of potentially dire consequences should workers choose union representation.³⁸

Despite the campaign, a majority of Saint-Gobain's 800 workers voted in favor of collective bargaining in an NLRB election in August 2001. But instead of accepting the results and entering into bargaining, management filed objections to the election, alleging that statements of support for workers' organizing by the US congressman representing the district had "upset the laboratory conditions for a fair election." The NLRB dismissed these objections and ordered the company to bargain with the workers' union.³⁹

In January 2002, management unilaterally cut more than 100 employees' work days from 8 hours to 7.5 hours, correspondingly reducing their pay. Under US labor law, reduction of hours is "precisely the type of action over which an employer must bargain with a newly certified Union."⁴⁰ More than two years later, an administrative law judge found that Saint-Gobain's unilateral move was an unfair labor practice that unlawfully interfered with, restrained, and coerced employees in the exercise of their organizing and

³⁶ See Saint-Gobain, "Saint-Gobain reiterates its support for human rights," <http://www.saint-gobain.com/en/press/news/support-human-rights> (accessed January 15, 2009).

³⁷ For a history of labor-management relations at the Worcester abrasives plant, see Bruce Cohen, "From Norton to Saint-Gobain, 1885-2006: Grinding Labor Down," *Historical Journal of Massachusetts* (Summer 2006).

³⁸ *Ibid.* Unless it crosses a line to become interference, restraint, and coercion as determined by the NLRB (and the courts in appealed cases), such activity is permissible under US labor law.

³⁹ *Saint-Gobain Abrasives, Inc. and International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, AFL-CIO, Region 9A*, Case No. 01-RC-21388, 337 NLRB No. 8 (2001).

⁴⁰ *NLRB v. Katz*, 369 U.S. 736 (1962).

bargaining rights.⁴¹ In October 2004, the NLRB upheld the ALJ's decision and ordered the company to reinstate the 8-hour day, grant back pay to employees who suffered wage losses, and to bargain with the union over working hours of affected employees.⁴²

Saint-Gobain challenged the NLRB's remedial orders. The Board then went to federal court to seek enforcement of its decision. In October 2005, almost three years after the company's unlawful conduct, the First Circuit court of appeals upheld the Board and instructed Saint-Gobain to comply with the remedial orders.⁴³

By this time it was too late for the Board and court orders to have any real effect: nine months earlier workers had voted to decertify the union. The campaign to decertify the union had been launched with involvement of the National Right to Work Committee (NRTWC). The NRTWC describes its "one belief" mission as "No one should be forced to pay tribute to a union in order to get or keep a job."⁴⁴ At Saint-Gobain, however, the NRTWC characterized its role in the decertification move not as one addressing mandatory dues payments—management had not agreed to such a provision—but as one by which "employees will be free from union monopoly control over terms and conditions of employment."⁴⁵ It focused its efforts on attacking the idea that workers would be well served by collective bargaining.

Over a year later, in March 2006, an NLRB administrative law judge ruled that Saint-Gobain had unlawfully hired temporary employees to perform bargaining unit work over a two-year period in which the union represented employees and Saint-Gobain had an obligation to bargain in good faith with the union over this issue.⁴⁶ The ALJ said:

At no time during this time period did Respondent [Saint-Gobain] give the Union advance notice of its intent to hire additional temporaries. It merely informed the Union that it hired additional temps, on numerous occasions, after the fact. Thus, Respondent presented the Union with a "fait

⁴¹ Decision of ALJ David L. Evans, *Saint-Gobain Abrasives, Inc. and International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, AFL-CIO, Region 9A*, April 27, 2004. In the same case, the ALJ found that the company did not commit an unfair labor practice by unilaterally changing employees' health insurance.

⁴² *Saint-Gobain Abrasives, Inc. and International Union of Automobile, Aerospace & Agricultural Implement Workers of America*, Case No. 01-CA-39789, 343 NLRB No. 68 (2004).

⁴³ *National Labor Relations Board, Petitioner and International Union of Automobile, Aerospace & Agricultural Implement Workers of America v. Saint-Gobain Abrasives, Inc.*, 426 F. 3d 455 (October 19, 2005).

⁴⁴ See the mission statement and related material at the website of the National Right to Work Committee, <http://www.nrtwc.org/>.

⁴⁵ National Right to Work Foundation, "Saint-Gobain Workers Throw Out Unwanted UAW Union: Foundation attorneys successfully aid workers in high-profile decertification battle," *Foundation Action*, March/April 2005, p. 4.

⁴⁶ Decision of ALJ Arthur J. Amchan, *Saint-Gobain Abrasives, Inc. and International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, AFL-CIO, Region 9A*, Case No. 01-CA-41623 (2006). The temporary workers at issue in this case were not just those hired during the strike, but throughout 2003 and 2004. As discussed, US labor law allows employers to hire replacement workers during an economic strike.

accompli.” An employer cannot implement a change and then claim that a union waived its right to bargain [over that change] by failing to do so retroactively.⁴⁷

In addition to pursuing these unfair labor practice complaints, the union sought to have the decertification election overturned. The ALJ stated unequivocally in his decision that “the company did violate labor laws” and tellingly noted that the decertification election “may not reflect an uncoerced majority of the ballots.” However, the judge refused to order a new election because the UAW went ahead with the January 2005 election instead of choosing to delay the election until a final ruling on the unfair labor practice charges, a ruling that would likely have taken years more to resolve if the company pursued appeals to the full Board and to the courts. The judge said:

Given the number of violations (each time Respondent hired additional agency temporaries), their severity, its obviousness to members of the bargaining unit and the Union’s margin of defeat, one cannot conclude that it was virtually impossible that Saint Gobain’s unfair labor practices affected the outcome of the January decertification election.

However, I conclude the [sic] in the instant case, the traditional rule should not apply [because] ... [i]n December 2004, the Union decided to go forward to an election.⁴⁸

In short, the ALJ found that Saint-Gobain’s “severe” violations could have made the election that narrowly decertified the union an unfair one, normally requiring a new election. However, he allowed the company to reap the harvest of its unlawful conduct, refusing to order a new election free of management coercion.

In its letter to Human Rights Watch, Saint-Gobain emphasized that “[t]here have been many cases in the United States where our employees have elected to be represented by a union. We respect and observe these outcomes. We work cooperatively with those unions and bargain with them in good faith.”⁴⁹ It also said, “We believe that Saint-Gobain’s actions in the two cases under consideration were appropriate and entirely consistent with our membership in the UN Global Compact, our endorsement of the OECD Guidelines and the UDHR, and our Principles of Conduct and Action.... [O]ur policy is to enable our employees to make an informed choice about union representation without fear of reprisals or recrimination from either the union or the employer. We wish to ensure that our employees consent willingly to being represented by a union that seeks to organize in one of our plants.”⁵⁰

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Letter from Gilles Colas, president and chief executive officer, Saint-Gobain, to Human Rights Watch, March 17, 2009 (copy on file with Human Rights Watch).

⁵⁰ Ibid.

Sodexo

Sodexo is a France-based Global 500 multinational corporation that specializes in food services and facilities management and employs nearly 380,000 people in 80 countries.⁵¹ Of these, over 100,000 work in North America at more than 6,000 locations. Sodexo's 2009 revenues of US\$20 billion put it in the Fortune Global 500 list at number 437. The firm's operations in the United States are run from its headquarters in Gaithersburg, Maryland, under the name Sodexo USA.⁵²

Public Commitments on Freedom of Association and Corporate Social Responsibility

In 2009, Sodexo adopted a Group Human Rights Policy in which it “commits to respect the principles of” the Universal Declaration of Human Rights, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and the UN Global Compact.⁵³ Each contains strong affirmation of workers' freedom of association. The Human Rights Policy states, “Sodexo recognizes and respects the rights of our employees to unionize, or not to unionize, as they choose.”⁵⁴

Phoenix, Arizona

Contrary to its social responsibility promises, Sodexo committed serious violations of workers' freedom of association at its commercial laundry facility in Phoenix, Arizona. Employees at Sodexo's commercial laundry facility in Phoenix began an organizing effort, based on such health, safety, and other concerns, with the Union of Needletrades, Industrial and Textile Employees (UNITE) in April 2003. They held meetings and lawfully distributed flyers and other information to coworkers. Volunteer employee leaders came forward to engage in such legal activities. By May 1, 107 workers, a “clear majority,” had signed cards joining the union and authorizing the union to bargain on their behalf.⁵⁵

In the one-month period between a majority of workers joining the union and the NLRB election, Sodexo management reacted forcefully and unlawfully to break the organizing drive with attacks that undermined workers' majority sentiment in favor of the union. In an NLRB election held May 29, 2003, 117 of 206 eligible employees voted against union

⁵¹ Formerly the Sodexo Alliance, the company dropped the “h” and changed its name to Sodexo in January 2008. See Sodexo website at www.sodexo.com. To avoid confusion, we refer to the company throughout this report as “Sodexo.”

⁵² For these and other company data, see the Sodexo website at www.sodexo.com; see Fortune, “Global 500” at <http://money.cnn.com/magazines/fortune/global500/2010/index.html>.

⁵³ Sodexo “Group Policy on Human Rights,” February 2009, http://www.sodexo.com/group_en/corporate-citizenship/commitments/human-rights/business-ethics.asp (accessed on August 27, 2010).

⁵⁴ Ibid.

⁵⁵ Decision of Administrative Law Judge Lana H. Parke, *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) (hereafter ALJ Parke decision).

representation.⁵⁶ But in the weeks before the election, Sodexo had held threat-filled captive-audience meetings and fired workers for union activity, practices that the NLRB's administrative law judge subsequently ruled unlawful in overturning the election results.

A Union Demonstration

On May 1, a group of workers who had ended their shift demonstrated support for the union with signs and placards in the reception area of management offices expressing support for organizing, an act of "protected concerted activity" for which, under US labor law, employers cannot legally retaliate against workers.

Four workers briefly left their work stations to join the May 1 union demonstration. When these workers sought to return to their jobs less than 15 minutes later, the manager told them they had lost their jobs because, in those few minutes, he had hired replacement workers.

When workers continued asking to return to their jobs, Sodexo management wrote them a letter stating, "We write about the status of your position with Commercial Linen Exchange.... As you know, by the time you offered to return to work, the Company had hired another individual to fill your former position."⁵⁷

In March 2004, the ALJ presiding over the case involving the unfair labor practice charges of discriminatory discharge of these employees found:

After a careful review of the evidence, I conclude the sorting employees offered to return to work before Respondent replaced them with new employees....

It is highly improbable, indeed logistically impossible, for [the manager] to have accomplished his asserted tasks and employed ... new workers in so short a time.... I conclude therefore that Sodexo unlawfully refused to reinstate the four sorting employees to their former positions upon their unconditional request offers to return to work and discharged [them] in violation of Section 8(a)(3) and (1) of the Act.⁵⁸

In April 2005—nearly one year after the ALJ'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.⁵⁹ Under the agreement, Sodexo reinstated three employees and paid them nearly \$8,000 in back pay. The fourth employee chose not to

⁵⁶ Ibid.

⁵⁷ Letter of June 2, 2003 from Sodexo to the dismissed employees, contained in ALJ Parke decision.

⁵⁸ ALJ Parke decision (March 3, 2004).

⁵⁹ 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.

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 voluntarily signed cards joining UNITE and authorizing the union to bargain on their behalf.⁶⁰ 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.

Sodexo told Human Rights Watch that the Phoenix events were “an exceptional and outdated set of circumstances” that should not be used to “paint a false picture of Sodexo.” However, recent developments indicate that Sodexo still resists workers’ new organizing attempts. The neutrality agreement between Sodexo and the unions covering organizing procedures at selected company locations ended in 2009.⁶¹ Since then, Sodexo has again expressed hostility toward unions and workers’ organizing efforts, and taken steps to thwart union formation.

Sodexo’s EFCA Response

In response to the introduction in the US Congress of the Employee Free Choice Act (EFCA)—a union-supported bill that would reform the National Labor Relations Act by permitting union formation when a majority of workers sign cards for union representation, without any need for NLRB elections—Sodexo held new sessions for managers on combating unionization.⁶² A Sodexo PowerPoint slide show presentation titled “Organized Labor and the Employee Free Choice Act – Are You Ready?” warned that with EFCA, “unions may attempt to engage in ‘hidden’ or ‘stealth’ campaigns” and told managers to “complete the union vulnerability checklist.” It pointed to “signs of potential organizing activity” such as “changes in employees’ behavior and attitude” and “new ‘buzz’ words such as ‘grievance,’ ‘seniority,’ or ‘just cause.’” It instructed managers to “contact the Labor Relations Team at the first sign of organizing activity” and to “send an email to USA Union Incident.”⁶³

The EFCA slide show also referred managers to Sodexo’s Employee and Labor Relations Guidelines. Chapter 7 of the Guidelines is titled “Union-Related Questions Employees Frequently Ask.” Here, Sodexo instructs managers to make the following statements to employees:

⁶⁰ 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. The settlement agreement contained a non-admission clause (not admitting liability under the NLRA); the parties noted that “the facts surrounding these cases arose in 2003, and are set forth in detail in the ALJ’s decision.

⁶¹ Human Rights Watch e-mail exchange with SEIU international representative, December 10, 2009; see also the Clean up Sodexo website, www.cleanupsodexo.org.

⁶² Steven Greenhouse, “Bill Easing Unionizing Is Under Heavy Attack,” *The New York Times*, January 9, 2009, p. A12.

⁶³ Sodexo, “Organized Labor and the Employee Free Choice Act – Are You Ready?” undated, PowerPoint presentation (copies of slides on file with Human Rights Watch).

- The union is allowed to make promises because it doesn't pay your wages. The union's promises are meaningless.
- There are some people who, for their own selfish reasons, have been putting a lot of pressure on many of you.... [T]hese people would manipulate things for their own ends.
- A union is not concerned about job security. It cares only about its security, which means your dues in the union's pocket.
- If you read the newspapers and watch the news, you know how many represented companies have closed their doors in this state and all over the country.... Nearly every labor union contract contains language that provides for the potential of layoffs.
- The company has the legal right to conduct its business and hire permanent economic replacements for every striker.... the company would do what it had to do to ensure business continuity in the event of a strike.
- You may want to ask yourself why some people have been promoting a strike when they know that employees risk being permanently replaced. Ask yourself what they have to gain.⁶⁴

Sodexo told Human Rights Watch that in instructing managers to make these statements, it was exercising freedom of opinion and expression afforded to employers under international standards and under the NLRA. The company said that it provides “truthful and accurate information” to employees instead of “false or inaccurate misrepresentations by the union representatives.”⁶⁵

With respect to its instructions to managers to tell employees that “If you read the newspapers and watch the news, you know how many represented companies have closed their doors in this state and all over the country” and “the company has the legal right to conduct its business and hire permanent economic replacements for every striker.... the company would do what it had to do to ensure business continuity in the event of a strike,” Sodexo told Human Rights Watch that the statements are presented as opinions and factually accurate answers to questions by employees.⁶⁶

Tesco PLC

UK-based Tesco is one of the world's largest retailing companies, operating in more than a dozen countries around the globe and employing 450,000 workers. With more than \$90 billion in annual sales, Tesco ranks 58th on the Fortune Global 500 list.⁶⁷

⁶⁴ Sodexo, “Employee and Labor Relations Guidelines,” 2006 (“Original Issue: Dec.12, 2006) (copy on file with Human Rights Watch).

⁶⁵ Letter of Michel Landel, chief executive officer, Sodexo, to Human Rights Watch, July 27, 2010 (copy on file with Human Rights Watch).

⁶⁶ Ibid.

⁶⁷ For these and other company data, see the Tesco Website at www.tescopl.com; see Fortune, “Global 500,” <http://money.cnn.com/magazines/fortune/global500/2010/index.html>.

In 2006, Tesco announced plans to enter the US market with “Fresh & Easy” convenience stores opening in California and other southwestern states. The company declared a goal of reaching \$10 billion in sales by 2015, which would put it into the top 10 American food retailers. Some analysts project that Tesco will have 5,000 stores and \$60 billion in annual sales by 2020, making it larger than Safeway, the nation’s second-largest supermarket chain.⁶⁸

Public Commitments on Freedom of Association and Corporate Social Responsibility

In its corporate responsibility policy statement on human rights, Tesco declares, “Tesco is committed to upholding basic Human Rights and supports in full the United Nations Universal Declaration of Human Rights and the International Labour Organisation Core Conventions.” The company elaborates on the right to organize, stating, “Employees have the right to freedom of association. We recognise the right of our staff to join a recognised trade union where this is allowed within national law.”⁶⁹

In a letter to Human Rights Watch, Tesco pointed to “positive relations with trade unions around the world.”⁷⁰ Indeed, all of Tesco’s non-management employees in its UK home are represented by the Union of Shop, Distributive and Allied Workers (USDAW). However, Tesco appears to be taking a different approach to labor practices and trade unions in the United States, an approach marked by sharp resistance to workers’ organizing efforts and one that has already run afoul of US labor law.

“Union Avoidance” Executive Recruiting

At the outset of its move into the American market, Tesco signaled an intention to deviate from its declared support for international human rights norms and its commitment to “recognise the right of our staff to join a recognised trade union.”

One of the company’s first actions was to recruit an employee relations director for its new US headquarters in El Segundo, California, and a director of human resources at its massive distribution center in Riverside, California. In its recruiting advertisement, Tesco declared that it wanted an applicant for each post who “has primary responsibility for management of employee relations; maintaining non-union status and union avoidance activities.”⁷¹ One company advisor confirmed that “Tesco is aiming for a non-unionized US workforce.”⁷²

⁶⁸ Bruce Horowitz, “British invasion hits grocery stores; Fresh and Easy arrives to take on the big guys in the USA,” *USA Today*, April 7, 2008, p. 1B.

⁶⁹ See Tesco human rights policy statement at “Good Jobs” website at www.tescopl.com/plc/corporate_responsibility/good_jobs.

⁷⁰ Letter from Lucy Neville-Rolfé, executive director, Corporate and Legal Affairs, Tesco PLC, to Human Rights Watch, October 22, 2009 (copy on file with Human Rights Watch).

⁷¹ Jonathan Birchall, “Tesco job ads follow non-union line,” *Financial Times* on-line, May 26, 2006.

⁷² See “Unions threaten Tesco development,” *Convenience Store News*, undated, http://www.csnews.com/csn/news/article_display.jsp?vnu_content_id=1003527986 (accessed August 27,

San Diego, California

Shannon Hardin began work as a Fresh & Easy customer assistant for \$10 per hour in January 2008. “I got interested in the union because I thought we needed more say at work, a way to be heard on an equality level with some backing from an organization,” she explained. But the store manager told me I couldn’t talk about the union at work from the time I clocked in to the time I clocked out,” Hardin said. “It made me worry. The union said it was OK on break or lunch or like any other conversation, but management said I couldn’t do it. I was afraid I’d get fired.”⁷³

“[A top human resources manager from headquarters] came to the store and asked me why I support the union,” Hardin added. “This made me worried too, like they were targeting me. I thought this was my right and management shouldn’t be getting into my personal thoughts.”⁷⁴

On September 25, 2009, the NLRB regional office found merit in a union charge and issued a complaint against Tesco for ordering that “employees may not talk about the Union while employees are on the clock or the sales floor.”⁷⁵

Las Vegas, Nevada

In July 2009, the NLRB found merit in charges by Tesco employees and the United Food and Commercial Workers union that the company interfered with workers’ rights to communicate with one another about organizing.⁷⁶ This complaint took aim at Tesco’s company-wide no-solicitation policy in its Employee Handbook, which said:

We like to avoid workplace disruptions and conflicts among team members. So we prohibit solicitation of team members during working time for any purpose.

We also prohibit the distribution of literature during working time or on Company premises for any purpose... And keep in mind that violations of this policy could lead to discipline – they could even cost you your job.

In addition to finding merit in the unfair labor practice charge on Fresh & Easy’s no-solicitation rule, the NLRB regional director found merit in charges that Tesco management in Las Vegas interrogated its employees about their union activities, created

2010); see also Amanda Shaffer et al., *Shopping for a Market: Evaluating Tesco’s Entry into Los Angeles and the United States*, Urban & Environmental Policy Institute, Occidental College (August 1, 2007).

⁷³ Human Rights Watch interview with Shannon Hardin, San Diego, California, September 29, 2009.

⁷⁴ Ibid.

⁷⁵ The NLRB has determined that “the Section 7 right to discuss union topics ... may not be prohibited while permitting employees to discuss, during working time, virtually all other subjects.” See *Visador Co.*, 303 NLRB 1039 (1991).

⁷⁶ NLRB Region 28, Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, Cases Nos. 28-CA-22520, 28-CA 22521, July 31, 2009.

an impression among employees that management was spying on their union activities, and promised improved terms and conditions of employment if workers halted their organizing efforts.⁷⁷

Unfair Labor Practice Rulings

On June 3, 2010, ALJ William G. Kocol issued his decision in the San Diego unfair labor practice cases.⁷⁸ Crediting Shannon Hardin’s testimony, he found that Fresh & Easy management unlawfully prohibited employees from talking with each other about the union and that a store manager who told Hardin about the “no-talking” rule said that the rule “was from corporate.”⁷⁹ The ALJ also credited a co-worker’s testimony that the store manager told employees in a “team huddle” that “he had received word from corporate about the union representatives, that they would not be allowed in the store and that the employees were not allowed to *talk* about the union in the store or with each other.”⁸⁰

The ALJ ruled that Fresh & Easy violated Section 8(a)(1) of the NLRA by “prohibiting employees from talking about the union with each other while working but not prohibiting talking about other subjects.”

On February 17, 2010, ALJ Gregory Z. Myerson issued his decision in the consolidated Las Vegas unfair labor practice cases. He found that Fresh & Easy management had issued an unlawfully broad no-distribution rule, had unlawfully interrogated employees about their union activities and sympathies, and unlawfully created an impression among employees that their union activities were under surveillance by management.⁸¹

The ALJ also found that store management approached employees and told them to write statements of protest to the union about home visits by union organizers, saying “Everyone is writing a statement ... you need to write yours.” The ALJ ruled that this was “coercive in nature... [A]sking them to furnish written statements ... was really questioning them about their contacts with the Union and their support for the Union’s organizational campaign” and was “interfering with, restraining, and coercing [the employees] in the exercise of their Section 7 rights.”⁸²

The ALJ went on to find that management’s importuning “created the impression among [the employees] that their union activities were under surveillance” by Fresh & Easy. It “really left them in an untenable position,” the ALJ concluded, “believing that

⁷⁷ NLRB Region 28, Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, Cases Nos. 28-CA-22520, 28-CA 22521, July 31, 2009.

⁷⁸ Decision of ALJ William G. Kocol, *Fresh & Easy Neighborhood market, Inc. and United Food and Commercial Workers International Union*, Region 8 – Western, Cases Nos. 21-CA-38882 and 21-CA-39100, June 3, 2010.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*, emphasis in the ALJ’s decision.

⁸¹ Decision of ALJ Gregory Z. Myerson, *Fresh & Easy Neighborhood Market, Inc. and United Food and Commercial Workers International Union*, Cases. Nos. 28-CA-22520 et al. (February 17, 2010).

⁸² *Ibid.*

management was watching employees and was interested in knowing whether they had any contacts with the Union.”⁸³

Group 4 Securicor PLC

Group 4 Securicor (G4S) is a London-based \$11 billion company and the world’s largest security firm. It has operations in more than 100 countries with nearly 600,000 employees. It is the largest employer listed on the London Stock Exchange and the second-largest private employer in the world.⁸⁴

The Wackenhut Corporation is G4S’s subsidiary in the United States. Headquartered in Palm Beach Gardens, Florida, G4S Wackenhut employs more than 40,000 workers across the United States. They provide security for public buildings, nuclear power plants, chemical factories, retail businesses, gated communities, and many other facilities, as well as transportation-related security, bodyguards, and private detective services.⁸⁵

Public Commitments on Freedom of Association and Corporate Social Responsibility

On its “Social Responsibility” web page, G4S declares:

We have established global minimum standards for employee relations, which set out our commitment to principles such as the ILO Core Labour Standards and the UN Universal Declaration of Human Rights.

We are fundamentally committed to constructive social dialogue and believe that long-term partnerships with employees and their representatives, including trade unions, can help us raise standards wherever we operate....

In Europe, we have union representation levels of 55%, compared to an industry average of 46%. In the UK, our relationship with the GMB, one of the UK’s largest unions, has continued for more than 40 years.⁸⁶

Minneapolis, Minnesota: An Organizer Fired

Richard Dieterle had 30 years of experience in the security industry when he took a position with Wackenhut in July 2007 guarding the Wells Fargo (WF) Home Mortgage center in Minneapolis, Minnesota, for \$11.00 per hour. The WF center is a campus-type property with two large buildings and two large parking lots spread over several acres.

⁸³ Ibid. On March 8, 2010, Tesco announced that it was appealing the ALJ’s decision to the NLRB in Washington, DC. See “Fresh & Easy to Appeal NLRB Ruling,” *Supermarket News*, March 8, 2010.

⁸⁴ For these and other company data, see the Group4Securicor website at www.g4s.com.

⁸⁵ For these and other US operations data, see the Group4Securicor North America website at http://www.g4s.com/home/g4s_worldwide/united_states.htm.

⁸⁶ See G4S, “Our Employees” web site at <http://www.g4s.com/home/csr/csr-people.htm> (accessed April 5, 2008).

“I got off to a good start, doing a good job making my security rounds,” Dieterle told Human Rights Watch in an interview. “They liked me because I checked out places nobody had ever gone before.”⁸⁷

Dieterle became an active union supporter and organizer. He told Human Rights Watch:

I went around asking people if they wanted to join. I gave them union cards [and] told them, “You can give it back to me or you can throw it out; it’s up to you.” I was careful about how I did it. The SEIU representatives explained that I should do it during breaks and lunch or before and after work. A big majority signed up with the union. We got to 70 percent on cards.⁸⁸

He said that in December 2007:

The SEIU reps asked me to come with them to the Wackenhut office downtown to give management a letter asking them to bargain with the union. So it was just me as the employee organizer together with the SEIU reps. When the managers came out, we told them a majority joined the union and we would like to bargain a contract.

They kicked the SEIU reps out, told them they were trespassing. They told me to wait in the lobby. Then [a management representative] came out and asked me ‘Did you collect cards during your shift?’ I said yes, but now I just came to ask for bargaining. They said they would get back to me.⁸⁹

After the bargaining request, said Dieterle, “there was not a word for two or three weeks.” He continued:

When I got downtown, [a top manager] pulled out my file and showed me six or seven “incident reports” where other employees said I had talked to them about the union. He said I was fired and gave me a pink slip and told me to sign it. At the end it said something like I promised I would not defy against the company for firing me. I told him, “You’re firing me already so why should I sign anything?” I didn’t sign it. I turned in my uniforms and went home.⁹⁰

Wackenhut challenged Dieterle’s claim for unemployment insurance benefits, saying he was terminated for cause. The Minnesota Unemployment Law Judge heard evidence in the case and issued the following ruling:

⁸⁷ Human Rights Watch interview with Richard Dieterle, Minneapolis, Minnesota, October 1, 2008.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Ibid.

Dieterle worked as a security guard for Wackenhut from July 9, 2007 to January 18, 2008, in full-time employment for a final wage rate of \$11 per hour. Dieterle sometimes spoke with co-workers about forming/joining a union. He distributed pro-union flyers or letters and would ask co-workers if they were willing to sign union cards and petitions. He did not threaten, harass, coerce, or intimidate any of his co-workers. He did not neglect his work duties. Wackenhut discharged Dieterle for conduct occurring primarily during non-work times in non-work areas. Wackenhut discharged Dieterle in retaliation for his union activities.... He was not discharged for neglecting his work duties.⁹¹

Of the NLRB proceeding on his dismissal, Dieterle told Human Rights Watch:

The union told me that the company wanted to settle the case with a payoff if I don't take reinstatement and go back to work. I told them I wanted to fight the case and get my job back. If I went back triumphant I think I could organize again. But when they explained that the company could drag it out for three or four years, I decided to take the settlement.⁹²

Wackenhut paid Richard Dieterle nearly \$7,000 in lost wages. Dieterle said, "I got \$4,888 net after taxes. They had to pay \$6,950 to get rid of me and they figure it was a bargain at the price because it killed the organizing. It was worth it for them."⁹³

In a letter to Human Rights Watch, G4S pointed to a "positive track record in the US" and says that legal cases alleging labor violations arose in a five-year union "corporate campaign" against the company, with no finding of wrongdoing on most claims.⁹⁴

Kongsberg Automotive

Kongsberg Automotive (KA) is a US\$1 billion-revenue Norwegian manufacturing firm with 50 factories in 20 countries. Employing 9,000 workers worldwide, the company produces clutch actuation, cable actuation, gear shifters, transmission control systems, stabilizing rods, couplings, electronic engine controls, specialty hoses, tubes and fittings, and other auto parts. In the United States, Kongsberg Automotive has 10 factories in a half dozen states.⁹⁵

⁹¹ Joseph Cox, Unemployment Law Judge, Notice of Decision of the Unemployment Law Judge, Richard Dieterle, Employee, Wackenhut Corporation, Employer, Document ID No. 101518911, April 15, 2008.

⁹² Human Rights Watch interview with Richard Dieterle, Minneapolis, Minnesota, October 1, 2008.

⁹³ Ibid.

⁹⁴ Letter from Jenni Myles, director of employee engagement and HR, G4S plc, to Human Rights Watch, February 20, 2009 (copy on file with Human Rights Watch).

⁹⁵ For this and other information about the company, see www.kongsbergautomotive.com.

Public Commitments on Freedom of Association and Corporate Social Responsibility

Norway is a center of European initiative on corporate social responsibility. As one analyst put it, “There is little doubt that Norwegian companies feel they have a special inclination towards taking on a social and environmental responsibility due to their embeddedness in Norwegian culture and regulatory system.”⁹⁶

Kongsberg Automotive’s principles are stated 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 Labour Organization (ILO) fundamental principles and rights at work. These principles and rights are the right to freedom of association and the elimination of child labour, forced labour and discrimination linked to employment.... KA shall and will always follow the law in the country in which it is operating.⁹⁷

Kongsberg Automotive’s Factory in Van Wert, Ohio

Kongsberg Automotive’s behavior at its factory in Van Wert, Ohio, belies the company’s stated commitment to freedom of association and collective bargaining as reflected in ILO core labor standards, OECD guidelines, and the UN Global Compact. 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.⁹⁸ Prior to Kongsberg’s purchase of the company, workers had been represented by the United Steelworkers of America (USWA) for many years and through successive collective bargaining agreements, most of them settled without conflict.

The workers’ collective agreement with Teleflex was due to expire in April 2008. When the union sat down to bargain after the change in ownership, Kongsberg Automotive demanded a “two-tier” wage system in which new employees would be paid \$9 per hour. Current employees would be “grandfathered” at their current wage level with no increases. Management also demanded cuts in pensions, health insurance, and other benefits.⁹⁹

⁹⁶ Benedicte Bull, “Corporate Social Responsibility: The Norwegian Experience,” Paper prepared for the Initiative on Ethics and Development, Inter-American Development Bank, March 19, 2003.

⁹⁷ See Kongsberg Automotive, “Code of Conduct: Guidelines With Regard to Values and Ethics,” <http://www.kongsbergautomotive.com/INVESTOR-RELATIONS/Corporate-Governance> (accessed October 8, 2008).

⁹⁸ Kirk Dougal, “Kongsberg president visits Van Wert,” *Van Wert Times Bulletin*, April 18, 2008, <http://timesbulletin.com/main.asp?Search=1&ArticleID=146548&SectionID=2&SubSectionID=&S=1> (accessed December 16, 2008).

⁹⁹ Brian Evans, “Kongsberg Automotive Lockout: 200 jobs to Mexico; Word comes through e-mail to union boss,” *Lima (Ohio) News*, April 30, 2008.

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.¹⁰⁰

Management shut the factory door on union workers but opened a side door for replacement workers to take on the jobs of locked out employees. While unheard of in Europe, 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. The “offensive lockout” was approved by the NLRB under the Reagan administration in the 1986 *Harter Equipment* decision.¹⁰¹

The Kongsberg Automotive case is a stark example of a European company claiming to uphold high labor standards but 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.¹⁰²

Confirming this view, a prominent Norwegian and comparative labor law expert explains that hiring replacement workers to take the jobs of locked-out employees is also contrary to labor relations practice in Norway. As Professor Evju explains:

Hiring replacement workers did occur in the 1920s and early 1930s but not systematically or on a large scale. Since the compromise between the dominant private sector actors in 1935, such practices have virtually disappeared. The industrial relations ethos of the post war era, still forcefully alive, is that hiring of replacement workers is unacceptable, unethical and incompatible with essential industrial relations standards.¹⁰³

KA announced in December 2008 that, due to the crisis in the automotive industry, it was shutting the Van Wert plant and moving all production to Nuevo Laredo, Mexico. The company and the union reached an agreement in “effects bargaining” on terms and

¹⁰⁰ Ibid.

¹⁰¹ *Harter Equipment, Inc.*, 280 NLRB 597 (1986), *aff'd*, *IUOE Local 825 v. NLRB*, 829 F.2d 458 (3d Cir. 1987).

¹⁰² See *Norway Labor Disputes Act* (1927), Sec. 6 (“Recourse shall not be had to strike, lockout or other industrial action to settle a dispute between a trade union and an employer or an employers' association respecting the regulation of terms of employment or wages or other matters relating to employment which are not covered by a collective agreement, until the time-limits fixed in §§ 29 and 36 have expired.... As long as strike, lockout or other industrial action can not be carried out, the collective agreement and the terms of employment and wages which were in force at the outbreak of the dispute shall stand, unless otherwise agreed by the parties.”).

¹⁰³ See Stein Evju, Professor of Labor Law, Department of Private Law, University of Oslo, e-mail to Human Rights Watch, October 14, 2008 (on file with Human Rights Watch). Prof. Evju adds, “On this point, for the reasons I have sketched, we have no case law that I can refer to.”

conditions of the shutdown, covering such matters as severance pay, temporary health insurance coverage, early retirement, and the like.¹⁰⁴

In a letter to Human Rights Watch, Kongsberg Automotive acknowledged that “While ‘offensive lockout’ is not prohibited by law in Norway, it is correct that it is not an acceptable or recognized measure in industrial disputes and therefore for all practical purposes non-existent.”¹⁰⁵ KA added that it is “the intention and policy of the KA Group to avoid taking such measures in industrial disputes and rather aim at solving such disputes through negotiations regardless of where in the world labor disputes may occur.”¹⁰⁶ However, KA said, “the Van Wert situation was exceptional and KA were under the circumstances left with no other option than a lockout and hiring of temporary workforce.”¹⁰⁷

Gamma Holding and National Wire Fabric

Gamma Holding is a Netherlands-based multinational manufacturer of textile products ranging from fashion textiles, sleepwear, and sailcloth to industrial textiles for conveyor belts, coated and composite products, roofing systems, filtering systems, bulletproof vests, and other uses. The company employs 6,500 workers in 42 countries and had almost a billion dollars in sales in 2008.¹⁰⁸

Public Commitments on Freedom of Association and Corporate Social Responsibility

“People are the key to Gamma Holding's success,” the company says of its working environment.¹⁰⁹ In its Code of Conduct, the company declares, “Gamma Holding recognises the employees’ right to organise themselves to protect their collective and individual interests.”¹¹⁰

Gamma Holding notes that it has signed the Code of Conduct of the Social Partners in the European Textile and Clothing Sector. Negotiated by textile companies and European trade unions in the sector, article 1 of that code cites “freedom of association and the right to negotiate” under ILO Conventions 87 and 98, stating, “The right for workers to form

¹⁰⁴ Under US labor law, unions have no right to “decision bargaining” with management over the decision to close a workplace, but is entitled to “effects bargaining” about the impact of closure. See *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981).

¹⁰⁵ Letter of Hans Peter Havdal, CEO, Kongsberg Automotive, to Human Rights Watch, August 9, 2010 (copy on file with Human Rights Watch).

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ For these and other company data, see Gamma Holding website at www.gammaholding.com.

¹⁰⁹ See “Working Environment” web page at http://www.gammaholding.com/en/HRM/Working_environment.

¹¹⁰ See Gamma Holding, “Code of Conduct,” http://www.gammaholding.com/en/Corporate_Governance/Corporate_documents_and_downloads.

and join a trade union, as well as the right for employers to organise, are recognized. Employers and workers may negotiate freely and independently.”¹¹¹

In its 2009 Annual Report, Gamma Holding says of its Code of Conduct, “Important elements of this code of conduct include employees’ right to organise 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.”¹¹²

This “human resources management” section of Gamma Holding’s Annual Report ends cryptically with the statement, “At the end of April, Filtration Technology resolved the labour dispute at National Wire Fabric in the US state of Arkansas.”¹¹³

Star City, Arkansas

What Gamma Holding did not say in its 2007 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 several other unfair labor practice charges found to be meritorious by the NLRB.

National Wire Fabric (NWF) in Star City, Arkansas, is part of Gamma Holding’s Clear Edge Filtration division, which makes metallic and synthetic wires and fabrics for the building products, 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.¹¹⁴

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.¹¹⁵

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 although, with respect to permanent replacements, it did not violate US law.

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

¹¹¹ See *A Charter by the Social Partners in the European Textile and Clothing Sector: Code of Conduct* on the European Union website at http://ec.europa.eu/employment_social/soc-dial/news/chartertextile_en.htm.

¹¹² See Gamma Holding, “2009 Annual Report,” www.gammaholding.com (accessed August 27, 2010).

¹¹³ Ibid.

¹¹⁴ Richard Massey, “Star city walkout near end of year one,” *Arkansas Democrat-Gazette*, July 5, 2006.

¹¹⁵ Ibid.

Fabric made the legal decision to continue its operations, the company, logically and legally, decided it would need to use permanent replacements.”¹¹⁶

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.¹¹⁷ Regardless of whether the claim that the company had not violated US law was accurate at the time, this statement is a clear assertion that Gamma Holding would not honor the international labor standard proscribing use of permanent replacements where US law allows the practice.

As it later developed, the NLRB found merit in charges that NWF and Gamma *did* violate US labor law. The union filed unfair labor practice charges against NWF in 2006 and 2007 alleging that management was bargaining in bad faith by trying to entice strikers to return to work with promises of supervisory positions. In January 2007, the NLRB regional director issued a complaint and set the case for trial before an administrative law judge in May 2007.¹¹⁸

In its complaint, the Board said that NWF management for several months between October 2005 and February 2006 repeatedly “bypassed the union and dealt directly with its employees by soliciting striking employees to cross the picket line and to return to work under new job titles and altered terms and conditions of employment.”¹¹⁹ In fact, no striking worker responded to the company’s unlawful offers and crossed the picket line.

Upon issuance of the Board’s complaint, workers decided to end their strike. They offered to negotiate a return to work with replacement workers removed while bargaining resumed. However, management refused to reinstate the striking workers, and insisted that replacement workers stay on the job permanently.¹²⁰

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.¹²¹ Despite the NLRB’s findings and in violation of international labor rights norms, NWF management kept in place throughout the dispute the permanent replacements it had hired to take the jobs of union members who had exercised the right to strike.

¹¹⁶ Letter from Gamma Holding 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.

¹¹⁷ 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).

¹¹⁸ 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.

¹¹⁹ *Ibid.*

¹²⁰ Human Rights Watch interview with United Steelworkers representative Shawn Gilchrist, Pittsburgh, Pennsylvania, December 17, 2008.

¹²¹ Mike 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.

Finally, faced with growing potential liability as time passed and the trial before an administrative law judge drew near, management settled the dispute and reached a contract agreement with the union under which the company offered reinstatement to all striking workers who still wanted to return to work. Twelve 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.¹²²

Siemens

Siemens is a world-renowned multinational manufacturing and services firm based in Germany. The company specializes in power generation, communications, electronics, and business services. Siemens employs 400,000 people around the world, including more than 60,000 people at hundreds of facilities in the United States. Much of Siemens' US employment stems from its 1998 acquisition of Westinghouse Electric Corp., a \$1.5 billion transaction. In 2009, the company enjoyed more than \$100 billion in revenues. It holds ranking number 40 in the Fortune Global 500.¹²³

Public Commitments on Freedom of Association and Corporate Social Responsibility

Siemens' 2007 corporate responsibility report declares:

Siemens supports the Global Compact

As an international UN initiative for corporate social responsibility, the Global Compact unites governments, businesses and civil society in an effort to improve people's lives all around the world. The Compact's Ten Principles specify the key areas on which nations, companies and social institutions must focus their efforts if this goal is to be achieved.

By joining the Global Compact in November 2003, Siemens demonstrated its willingness and sense of obligation to fully and effectively implement these Principles.¹²⁴

Siemens also sets forth "International Guidelines" as part of its corporate responsibility framework, which state:

Siemens places considerable emphasis on worldwide compliance with the guidelines published by major organizations, and we expect our suppliers

¹²² Human Rights Watch interview with United Steelworkers representative Shawn Gilchrist, Pittsburgh, Pennsylvania, December 17, 2008.

¹²³ For these and other company data, see the Siemens website at www.siemens.com; for US operations, www.usa.siemens.com; Fortune, "Global 500" at <http://money.cnn.com/magazines/fortune/global500/2010/index.html>.

¹²⁴ See Siemens, "Interim Communication on Progress Report 2007 for Global Compact," (accessed February 20, 2008), Ibid.

and business partners to do the same. The most important agreements in this regard are as follows:

- The United Nations' Universal Declaration of Human Rights (1948);
- The European Convention for the Protection of Human Rights and Fundamental Freedoms (1950);
- The International Labor Organization's (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1977);
- The ILO's Declaration on Fundamental Principles and Rights at Work (1998);
- The Organization for Economic Cooperation and Development's Guidelines for Multinational Enterprises (2000).¹²⁵

Monroe County, New York

Siemens made commitments to workers' freedom of association when it joined the Global Compact and set standards for its business partners and suppliers beginning in 2002. But when the company took over powerhouse stations providing energy services to Monroe County, New York, in January 2003, it unlawfully refused to bargain with the workers' union. Siemens management argued: 1) it was not a "successor" to the previous employer; 2) the union no longer represented a majority of workers; and 3) that the workers' jobs had substantially changed in ways that required extensive retraining and so excluded them from collective bargaining coverage.¹²⁶

It took nearly three years, during which employees' bargaining rights were nullified by Siemens' actions, before the National Labor Relations Board ruled against the company's arguments, finding Siemens liable for its violation of workers' rights. On the successorship argument, the Board upheld the finding by the administrative law judge who heard evidence in the case that "it is clear that [Siemens] is a *Burns* successor with an obligation to recognize the union and bargain with it...."¹²⁷

On the company's argument that the union no longer represented a majority of employees, the NLRB found:

¹²⁵ See Siemens, "Responsibility Framework,"

<http://w1.siemens.com/responsibility/en/framework/international.htm> (accessed November 3, 2008).

¹²⁶ The company's position is recounted in NLRB Decision and Order, *Siemens Building Technologies, Inc. and International Union of Operating Engineers, Local 832*, 345 NLRB 1108 (September 30, 2005) and NLRB Decision and Order, *Siemens Building Technologies, Inc. and International Union of Operating Engineers, Local 832*, Case No. 3-CA-24624, 346 NLRB 53 (December 14, 2005). See also Siemens letter to Human Rights Watch stating its positions, February 11, 2008.

¹²⁷ Decision of ALJ Martin J. Linsky, *Siemens Building Technologies, Inc. and International Union of Operating Engineers, Local 832*, Cases 3-CA 24050 and 3-CA-24304, February 25, 2004, upheld in NLRB, *Siemens Building Technologies, Inc. and International Union of Operating Engineers, Local 832*, 345 NLRB 1108 (September 30, 2005). "Burns" is a reference to *NLRB v. Burns International Security Services, Inc.*, 406 U.S. 272 (1972), which established the rule that when a successor employer retains a majority of the prior employers' union-represented employees, the successor has an obligation to bargain with the union.

[Siemens] did not show that the Union had lost actual majority support ... [Siemens] decided not to recognize or bargain with the Union for reasons other than a good-faith reasonable doubt of the Union's majority status ... [Siemens] relied on employees' failure to object when they were told ... that [Siemens] would be "non-union" ... [W]e accord little weight to that silence ... The fact that the employees took "non-union" jobs does not establish that they no longer wanted union representation.¹²⁸

On the issue of whether employees' jobs had substantially changed, the NLRB upheld the Administrative Law Judge's findings that:

"[T]here was no change in job skills for the regular full-time building operators ... they received very minimal formal and informal training ... [Management's] assertions ... that the job skills and tasks of the building operators are very different are contradicted by the testimony of the employees with firsthand knowledge of the operations ... "¹²⁹

In its letter to Human Rights Watch, Siemens acknowledged that it was found to have acted unlawfully, but said that it "fully adhered to the NLRB order" upholding the findings and entered into bargaining with the union.¹³⁰ In the end, bargaining failed to lead to an agreement and the union disclaimed representation. "That delay made people lose heart," Joe Agnello told Human Rights Watch. Agnello was the union representative at the bargaining table with Siemens once the company acceded to the NLRB's order. "All that time with nothing happening, it made it look like the union wasn't able to do anything."¹³¹

III. Recommendations

To European Multinational Companies Operating in the United States:

1. Create rigorous internal "due diligence" systems to continuously monitor and evaluate the labor relations performance of all US operations. Where a US acquisition is contemplated, apply the same due diligence system to the record of the company to be acquired, and where such review shows evidence of violations of workers' right to organize and bargain collectively, take such measures as are necessary to change

¹²⁸ NLRB Decision and Order, *Siemens Building Technologies, Inc. and International Union of Operating Engineers, Local 832*, 345 NLRB 1108 (September 30, 2005).

¹²⁹ Decision of ALJ C. Richard Miserendino, *Siemens Building Technologies, Inc. and International Union of Operating Engineers, Local 832*, Case No. 3-CA-24624 (August 25, 2004) and NLRB Decision and Order, *Siemens Building Technologies, Inc. and International Union of Operating Engineers, Local 832*, Case No. 3-CA-24624, 346 NLRB 53 (December 14, 2005).

¹³⁰ Letter from Daniel W. Hislip, associate general counsel, Siemens Building Technologies, Inc., to Human Rights Watch, February 11, 2009 (copy on file with Human Rights Watch).

¹³¹ Human Rights Watch interview with Joe Agnello, Rochester, New York, February 16, 2009.

management policies and behavior and to hold US management accountable for any further violations.

2. 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.

3. In the same way, declare and disseminate the company's position that where US labor law falls below the international standards that the company applies in its European ILO-compliant operations, the company will comply with the higher standard.

4. Develop internal management training and implementation systems to ensure that US managers understand and implement freedom of association policies that comport with international standards.

5. Negotiate international framework agreements with appropriate global unions embodying freedom of association principles and policies with effective oversight and enforcement mechanisms.

6. In the United States, consider working with union representatives toward sectoral or industry-level framework agreements (or separate undertakings if a framework agreement is not in place) to better guarantee workers' exercise of their organizing and bargaining rights. Such agreements should create mechanisms along the lines of those used in European works councils that:

- allow workers and unions to initiate claims that management is violating guarantees of freedom of association with rapid, transparent, and effective methods of investigating, resolving, and remediating such claims;
- provide for independent, neutral, and expeditious monitoring and dispute resolution;
- establish transparent, accessible forums for workers with claims to have their voices heard while maintaining their pay and job security if they lose time from work to avail themselves of the mechanism;
- allow workers to have information and assistance from union representatives at the workplace in accordance with ILO standards on access;
- Ensure that any negotiated ground rules and mechanisms to ensure greater respect for workers' freedom of association do not replace, interfere with, or waive workers' right to turn to the NLRB or other government authorities for enforcement of labor laws.

To the US Government:

1. The Senate should ratify ILO Conventions 87 and 98 on workers' freedom of association (these conventions were submitted to the Senate in 1949, making them the

longest unratified international instruments on the treaty calendar of the Senate Foreign Relations Committee).¹³²

2. Congress should adopt labor law reforms to bring the United States into full compliance with international human rights standards on workers' freedom of association, including:

- Adopt reforms to the National Labor Relations Act to address widespread employer interference with workers' freedom of association rights;¹³³
- Reform the National Labor Relations Act to prohibit the permanent replacement of workers who exercise the right to strike;
- Allow workers to receive information from union advocates in non-work areas on non-work time within the workplace;
- Require proportional access under similar conditions for union representatives where employers require workers to attend meetings to persuade them against union organizing;
- Where the NLRB's investigation finds merit in a worker's claim of discriminatory discharge in the context of a union organizing drive, provide for immediate reinstatement while the case continues to be litigated; only such an interim reinstatement remedy can overcome the impact on individual workers who are dismissed and on workers' exercise of their freedom of association rights;
- Apply new, stronger, more dissuasive sanctions against companies that violate workers' rights.

To the European Commission and European Governments:

1. Develop systematic means of scrutinizing EU-based firms operating abroad, including in the United States, with respect to their freedom of association policies and behavior. To begin, require that European firms operating abroad produce a public annual report on workers' rights in their facilities in countries outside the European Union. For example, in the United States this shall include information on any unfair labor practice cases or representation proceedings under the National Labor Relations Act. Such scrutiny should also invite communications from and participation in public hearings by trade unions, NGOs, and other interested parties on behavior by European firms abroad [in non-EU countries].

2. Adopt EU legislation requiring that European firms operating abroad, including in the United States, conform their behavior to international standards on freedom of association as reflected in the Universal Declaration of Human Rights; UN covenants on civil and political rights and on economic, social, and cultural rights; ILO core labor standards; principles of the UN Global Compact; OECD Guidelines for Multinational

¹³² Steve Charnovitz, "The ILO Convention on Freedom of Association and its Future in the United States," *American Journal of International Law*, Vol. 102, No. 1; George Washington University Law School Public Law Research Paper No. 409, May 2008.

¹³³ Human Rights Watch, *The Employee Free Choice Act: A Human Rights Imperative*, January 2009, <http://www.hrw.org/en/reports/2009/01/27/united-states-employee-free-choice-act>.

Enterprises; and European human rights treaties and other international instruments, wherever such instruments set forth standards higher than US labor law or labor laws of other countries in which European firms operate.

3. Adopt EU rules incorporating the recommendations above to European firms regarding due diligence, public commitments, dissemination of policies, training and implementation systems, and the development of framework agreements regarding workers' right to freedom of association.

To the Organization for Economic Cooperation and Development (OECD):

Human Rights Watch recommends that the OECD develop a robust complaint and enforcement system to hold multinational corporations accountable for violations of the OECD Guidelines for Multinational Enterprises. Such a system should be marked by:

- Easily accessible complaint mechanisms available to workers and trade unions;
- Transparent and expeditious procedures that move rapidly to resolution;
- A full range of tools for National Contact Points to effectively implement the guidelines, including recourse to mediation, use of public hearings, field missions, special investigations, and other methods that will allow affected workers to tell their stories first-hand in their own voices and their own words;
- Guarantees of no reprisals and right to representation in the process for workers and trade unions who turn to the OECD Guidelines enforcement mechanism;
- Effective enforcement, including such measures as reinstatement, backpay and other remedies for individual workers and, for unions, union recognition with good faith bargaining.