

U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises



Final Statement

Specific Instance between the Federation of Free Workers
and Janssen (a division of Johnson & Johnson (Philippines),
Inc.

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I. Introduction

This Final Statement concludes consideration by the United States National Contact Point (U.S. NCP) for the OECD Guidelines for Multinational Enterprises of the Specific Instance submitted by the Federation of Free Workers (FFW) on May 14, 2013. The U.S. NCP's review of this Specific Instance is concluded as conditions are not satisfactory to proceed to mediation.

II. Context and Background on the U.S. NCP

The OECD Guidelines for Multinational Enterprises (MNEs) are voluntary, non-binding recommendations for responsible business conduct in a global context. The Guidelines are addressed to MNEs operating in or from the territories of governments adhering to the OECD's Declaration on International Investment and Multinational Enterprises, of which the Guidelines form one part. Adhering governments have committed to a) encouraging their MNEs to follow the Guidelines in their global operations and b) appointing a National Contact Point (NCP) to assist parties in seeking a consensual resolution to issues that may arise under the Guidelines.

As a part of its function, the U.S. NCP receives concerns raised, in the form of a Specific Instance, about the business conduct of an MNE operating in or from the United States. It handles such issues in accordance with procedures it has adopted for this purpose, which are available on this public website: <http://www.state.gov/e/eb/oecd/usncp/links/rls/index.htm>. In such circumstances, the NCP's primary function is to assist affected parties, when appropriate, in their efforts to reach a satisfactory and consensual resolution to matters raised under the Guidelines. The NCP's role is to take up issues that are amenable to a consensual resolution under the Guidelines and, where appropriate, make recommendations as to how the enterprise might make its business practices more consistent with the Guidelines. Consistent with the voluntary nature of the Guidelines, the NCP does not make a determination whether a "violation" of the Guidelines has occurred, nor does the NCP have legal authority to adjudicate disputes submitted under this process.

III. Initial Assessment

The process leading up to completing the Specific Instance includes the Initial Assessment, which determines whether the issues raised merit further examination. The Initial Assessment does not determine whether the company has acted consistently with the Guidelines. Per the OECD Guideline procedures, the Initial Assessment is made based on:

- Identity of the party and its interest in the matter
- Whether the issue is material and substantiated
- Likely link between the enterprise's activities and the issue raised
- Relevance of applicable law and procedures, including court rulings
- Treatment of similar issues in other domestic or international proceedings
- Contribution of the specific issue to the purposes and effectiveness of the Guidelines

IV. The Specific Instance

On May 14, 2013, the Office of the U.S. NCP received a letter and Specific Instance dated May 2 from the Federation of Free Workers (FFW), a Philippines-based trade union confederation. The Specific Instance addressed alleged labor violations related to Janssen's operations in the Philippines. Janssen is a division of Johnson & Johnson (Philippines), Inc., a corporation incorporated in the Philippines and a wholly-owned subsidiary of Johnson & Johnson (J&J), incorporated in the United States and with extensive commercial activities around the world.

FFW claimed that managers at Janssen's sales office in Paranaque City, the Philippines, set unreasonable sales performance benchmarks which they used as a pretext to dismiss certain workers. While Janssen maintains the workers were dismissed because they failed to meet the performance benchmarks, FFW claims the workers were dismissed for engaging in unionizing activities. FFW further alleged that Janssen dismissed certain other union leaders for other reasons unrelated to their jobs. FFW contended these actions were inconsistent with the principles in Chapter V (employment and industrial relations), specifically paragraphs 1.a., 1.b., 2.b., 2.c., and 8. FFW's Specific Instance filing requested that Janssen: (1) respect the rights of workers to self-organize; (2) reinstate the dismissed union officers (four in total) to their former positions; and; (3) implement a fair and reasonable means to measure employee performance.

The NCP spoke with U.S.-based J&J officials by telephone on May 16, to inform them of the filing, and followed up with an official written notification to officials at J&J corporate headquarters on May 28. On June 6, the NCP received Janssen's formal response. Janssen disputed FFW's characterization of its managers' actions. In support of its position, Janssen provided copies of official documents from the Philippines Office of the Voluntary Arbitrator and the Philippines National Labor Relations Commission relating to the dismissal of two of the union officials. These documents respectively stated that "the complaint was dismissed for lack of merit" and that the "respondents acted within legal bounds before coming up with the decision of terminating her employment."

Janssen stated that it respected the right of its employees to organize, recognized FFW as a valid and active union, and has entered into collective bargaining agreements with FFW. Janssen further noted that the current collective bargaining agreement with FFW contained many union security clauses and a commitment by the company not to discriminate against any employee because of their membership in the union. Janssen stated it respected and abided by these terms and all other clauses of its collective bargaining agreement.

Janssen stated it dismissed the union president due to poor performance and because he misled Janssen managers and falsified documents to cover up for not returning from overseas for a company meeting. The parties took the case to the Voluntary Arbitrator who concluded that the union president's poor performance and fraudulent conduct were both sufficient justifications for Janssen to terminate the individual for lawful cause. FFW has filed a petition for review with the Philippines Court of Appeals, which is pending.

FFW further alleged that Janssen dismissed the union treasurer after she refused sexual advances from her supervisor. Janssen contended it dismissed the individual after discovering evidence that she liquidated company cash advances under false pretenses, including by falsifying expense reports. A Philippines Labor Arbiter ruled in favor of Janssen. After FFW's appeal, the National Labor Relations Commission's Fifth Division affirmed the Arbiter's decision and denied the individual's motion for reconsideration. The individual has filed a petition for review with the Philippines Court of Appeals that has yet to be resolved.

FFW alleged that Janssen forced the union vice president and union press relations officer to resign due to poor performance, based on performance

standards to which FFW objected. Janssen responded that the Voluntary Arbitrator that reviewed this case did not give weight to FFW's assertion that Janssen forced the two to resign as part of a scheme to ease out union members. Janssen stated that the two employees voluntarily resigned rather than have Janssen dismiss them for cause of poor performance, which could have a negative effect on the individuals' employment record. Janssen also noted that the two individuals did not file affidavits in support of FFW's submission to the Voluntary Arbitrator.

On August 26th, Janssen submitted that 54 out of 109 employees were unionized (49.54%). When the Performance Improvement Plan (PIP), the performance plan established by Janssen to help employees improve their performance within a specified period, was implemented in 2010 and 2011, 23 employees were placed under PIP while nine of those 23 (39.13%) were FFW members. Of these nine:

- 1 was terminated due to fraud, disobedience to lawful orders of employer and habitual neglect of duties (poor sales performance for more than three years)
- 1 was terminated for fraud while undergoing PIP
- 3 passed the PIP and remained with the company
- 2 voluntarily resigned after failing PIP
- 1 voluntarily resigned while undergoing PIP
- 1 was not dismissed but was given an extension of PIP (due to pregnancy and the agreement with the union to impose a moratorium on PIP). She continues to be a union member/officer

On FFW's assertion that Janssen set unreasonable sales performance standards, the Philippine Voluntary Arbitrator examined the issue in the context of the union President's case. It noted that in a separate and earlier case before the Philippines Supreme Court:

“The Court warned that ‘it is dangerous’ for the Supreme Court and even the Court of Appeals ‘to look into the wisdom of a management prerogative.’ Accordingly, it reiterated the settled and established rule that labor laws discourage interference with an employer's judgment in the conduct of his business. Even as the law is solicitous of the welfare of employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. As long as the company's exercise of the same is in good faith to advance its interest and not for the purpose of defeating or

circumventing the rights of employees under the laws or valid agreements, such exercise will be upheld.”

V. Decision and Conclusion

The NCP determines that the issues raised in the Specific Instance do not merit further examination and declines to offer good offices to seek a mediated resolution between FFW and Janssen.

FFW provided insufficient substantiation to support its allegation that Janssen’s dismissal of the union officials was an effort to deny workers’ right to freedom of association. Further, Philippine arbitrators have determined Janssen had justification for dismissing or seeking the resignation of the employees identified by FFW and found no evidence of company retaliation because of the union officials’ positions or activities. In addition, the same allegations have been considered and decided, in some cases several times, by multiple levels of the Philippine court and labor arbitration system, who found no evidence of company retaliation because of the union officials’ positions or activities.

While court and arbitral decisions alone do not necessarily preclude the involvement of the NCP, in the absence of stronger substantiated concerns that Janssen policies or practices may be inconsistent with the cited paragraphs of Chapter V of the Guidelines, the NCP concludes that its involvement would not further the effectiveness of the Guidelines.

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