

AFLCIO 1988

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THAILAND

The Government of Thailand has demonstrated through its actions that it does not respect, observe or enforce internationally recognized worker rights. The AFL-CIO urges that Thailand's GSP eligibility be terminated.

BACKGROUND

The concepts of workers receiving fair pay and decent treatment, and negotiating with their employers with the expectation of sharing the profits of an expanded export economy, appear to be alien to the government and employers in Thailand.

In a petition submitted to the U.S. Trade Representative in June 1987, the AFL-CIO presented substantial evidence that the policies and practices of the Thai government systematically ignored internationally recognized worker rights. The USTR investigated the AFL-CIO allegations and determined that the Government of Thailand was "attempting to address its worker rights problems in a number of ways." We are not as impressed by the assurances offered by government representatives, and have seen no persuasive evidence that working conditions for Thai workers have improved.

The explanations provided by the Office of the USTR are inadequate and Thailand should be investigated once again this year. Discussions held with the Government of Thailand during

the 1987 annual review have not resulted in the changes necessary for Thailand to come into compliance with provisions of the U.S. law.

FREEDOM OF ASSOCIATION

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ILO Convention No. 87 Concerning Freedom of Association, for all workers, and Convention No. 151 regarding public service workers, are especially relevant in a discussion of Thailand.

Convention No. 87 provides for the following:

- o In Article 2, that workers shall have the right to establish and join organizations of their own choosing without previous authorization;
- o In Article 3, that workers organizations shall have the right to draw up their own rules, elect their own representatives, and formulate programs without interference from public authority;
- o In Article 5, that workers organizations shall have the right to establish and join federations and international organizations.

In Convention 151:

- o Article 4 stipulates that no discrimination shall be shown toward workers who are members of public employee associations.
- o Article 5 says that public employee organizations shall be independent from public authority.
- o Article 7 declares that machinery for determination of conditions of employment should allow for consultation with public employee organizations.
- o Article 8 stipulates that dispute settlement shall be sought through negotiation and in such a manner as to ensure the confidence of the parties involved.
- o Article 9 notes that public employees shall have civil and political rights essential for the full exercise of their freedom of association.

Private Sector

Workers in the private sector seeking to organize a union face considerable obstacles in Thailand. In almost all sectors of the economy they expose themselves to sharp retaliation from employers, and they seldom can turn to the government for protection against harassment and intimidation. No system of checks and balances on the power of employers over their workers exists in Thailand. The concept of the government acting as the arbitrator and enforcing fair play is non-existent. The two ILO conventions outlined above are predicated on the notion that the existence of worker organizations within an industrial relations system is a desirable and beneficial goal for all parties, not simply one to be tolerated and minimized. In Thailand, this is not the case.

The ability, and the inclination, of employers to fire workers for their organizing activity casts an oppressive pall over all union activity. Legal recourse against employer reprisals, even after a union is legally recognized, is largely ineffective, and it is easily circumvented by employers. At most, they are sometimes required to pay small sums of severance pay to the workers dismissed for trying to organize unions.

One incident in mid-1987 in which the Thai Labor Department intervened was a highly publicized dispute between the Srikao Knitting Company in Bangkok and the workers employed by that company. The Labor Department brought the strike to an end and publicly hailed the outcome as a victory for workers. In fact,

whether the government was aware of it or not, most of the striking workers were, in fact, fired. The desire of those workers to form and join a union was thwarted by both the company and the tacit complicity of the government. The union does not exist in that workplace today.

Yod At least one union organizer was murdered under mysterious circumstances in 1987. The newly elected vice president of the Leather Tanning Workers of Thailand, Yod Plaeksawad, 32, left his house to attend a union meeting, but while standing on a street corner he was shot repeatedly by two men riding a motorbike. When no arrest had been made a month after the killing, leaders of 21 unions signed a letter to the provincial governor urging him to pursue the investigation more vigorously. Friends of the slain labor leader had warned him to go into hiding because they feared for his safety after labor and management had clashed at the tanning factory he had organized. Though the government finally arrested two police officers in connection with the murder, in April 1988, it is still not clear who may have ordered the murder; many trade unionists in Thailand believe he died because of his organizing success. The union still exists today but the tragedy of the incident is that workers remember Brother Yod as a symbol of what labor activism yields in their country.

Under Thai law, union officials must maintain their status as full-time workers in the plants they represent. In some cases certain labor leaders have been able to work out with their employers informal arrangements that enable them to perform their

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elected leadership duties. However, the legal requirement can be resurrected by employers at any time to dismiss union leaders who, by informal arrangement, have conducted union business during working hours. For instance, in 1985 the State Railway of Thailand dismissed two leaders of the State Railway of Thailand Workers Union for taking time off to conduct union business. A more recent example is the case of the president of the Plastic Textile Workers Union in Navankorn Industrial Park, who was dismissed in late February 1988, allegedly for missing work too often. This clearly places a restraining hand on officers of union locals.

The intent of Convention No. 87 is that workers be free to elect whomever they want, without regard to his employment status in that workplace. The existence of a law circumscribing this right, regardless of the precise manner in which it is enforced, is an infringement of the convention. By restricting workers' choice of their representatives to those in their immediate workplace, the Government of Thailand seriously undermines union organizing. In turn, the policy affects the growth of local unions and of regional and national union organizations. The requirement that leaders maintain full-time positions outside their union office in order to hold union office is an intrusion in union affairs. The argument that it is "never" enforced and thus should be ignored is specious, as the examples of the two firings cited above illustrate.

Further impediments to the formation of union structures that service the needs of their members is evident in the Thai Government's application of a provision in the Labor Relations Act (Chapter VII, Section 88): "Persons who have the right to establish a labour union must be employees working for the same employer, or employees in the same description of work, irrespective of the number of employers..." The latter provision of the law has been interpreted very narrowly. We know of only one union that has been able to incorporate workers from more than one workplace. Separate unions are normally required for each enterprise, even in heavily industrialized zones with hundreds of similar enterprises, some with only a few workers. Thus, while the law would appear to allow amalgamation of factory workers, the actuality is that a union is prevented from representing the workers at more than one workplace. The same principle establishing the right of workers to join organizations of their choosing also has been applied to the organizations themselves by the ILO Committee on Freedom of Association (Freedom of Association, Third Edition, ILO, page 96).

The law preventing the formation of such federations, combined with the requirement that a union leader remain employed in the plant whose workers he represents, effectively prevent unions from evolving to a greater level of efficiency of operations. Removing these barriers to freedom of association would move Thailand closer to fulfilling its obligations under

Convention No. 87, and also bring it into compliance with the standard set forth in the Trade Act.

Public Sector

Civil servants (including public school teachers) and local government employees are denied the right to organize. The 1975 Labor Relations Act, Section 4, specifically exempts public servants at all levels from coverage, and language recognizing the right of civil servants to organize a union is conspicuously absent in the 1975 Civil Service Act. In establishing a convention specifically addressing public employees, the ILO "intended to complement the Right to Organize and Collective Bargaining Convention (No. 98) by laying down certain provisions concerning, in particular, protection against anti-union discrimination and the determination of terms and conditions of employment for the public service as a whole." There was no intention of diluting or contradicting "the basic right of association guaranteed to all workers by virtue of Convention No. 87." (Freedom of Association, Third Edition, ILO, page 44).

The exclusion of civil service workers in Thailand from the rights of Convention 87 is a denial that should not be overlooked by the investigating team of the Office of the USTR. An entire body of ILO rulings comprising some 23 cases on the rights of public sector employees to form and join organizations of their own choosing is summarized in the publication just cited (page 45).

RIGHT TO ORGANIZE AND BARGAIN COLLECTIVELY

ILO Convention No. 98 Concerning the Right to Organize and Bargain Collectively addresses the issue through the following major articles:

o Article 1 provides that workers shall enjoy protection against acts of anti-union discrimination such as: a) making employment conditional on not joining a union or on giving up membership; b) loss of employment due to participation in union activities.

o Article 2 provides protection against any acts of interference by employers' organizations which are designed to dominate or control by financial or other means.

The restrictions discussed above on the right to organize also have their impact on the exercise of the right to bargain. As a direct result of weakened organizations, most bargaining on wages has a very minimal goal -- to win wage increases pegged to the legal minimum wage. And Thai workers saw their influence wane in this important area in 1987 when the number of labor members on the tripartite Minimum Wage Committee was reduced.

Of course, many employers frequently fail to pay even the minimum wage (approximately \$2.90 per day in Bangkok in April 1988; lower elsewhere). A survey conducted by the National Statistical Office five months after the adoption of a new minimum wage level yielded data indicating that 32% of workers in Thailand had not received the 4.3% increase required by law.

A stifling structural inhibition on collective bargaining is the statutory requirement that collective bargaining agreements cover only one enterprise. Separate contracts, for example, are required for each factory or workplace, no matter how small. The

Thai government's failure to allow administrative practices to advance beyond this cumbersome system is indicative of a government policy that is designed to keep unions divided and mired in inefficiency. It is also in direct violation of the judgement reached in a case that came before the ILO, on which the Committee on Freedom of Association ruled: "federations and confederations should be able to conclude collective agreements." (Freedom of Association, Third Edition, ILO, p. 108)

Collective bargaining is further hampered by the far-reaching anti-strike provisions of the labor law. The ban on strikes covers not only civil servants but employees of state-owned enterprises. The latter category of establishments includes workers in virtually every sector of the economy: mining, manufacturing (canning, textiles, glass bottles, paper, jute, sugar, to name several), hotels, transportation, utilities, petroleum refining and distribution, tobacco, and highway construction. The limitations with regard to the right to strike that certain essential civil servants endure should not be applied to workers in state-owned enterprises without distinguishing between those who are genuinely essential (as defined by the ILO) and those who are not. (Freedom of Association, Third Edition, ILO, p. 78)

When a labor dispute in a state enterprise cannot be settled by negotiation or conciliation, it must under Thai law be referred to a government-appointed committee for compulsory arbitration. A system that reverts to compulsory arbitration,

and one that is weighted in favor of the public authority, is one that workers and observers necessarily must find prejudicial.

Under Thailand's restrictive labor legislation, the government has wide discretionary power to declare almost any strike illegal. It can order an end to any strike that, in its opinion, "may affect the economy of the country or cause hardship to the public or endanger the security of the country or be against the public order." This authority was invoked, for instance, in the summer of 1987 to end two strikes, including the one at Srikao. Altogether, only ten work stoppages occurred in Thailand in 1987 -- a clear indication of the proscription against strikes built into government policy and practice.

The right to bargain, as well as to organize, is also undermined by a growing practice of forcing employees, especially new ones, to sign individual work contracts. These contracts have the effect of taking the employee outside a union's jurisdiction and depriving him of legal benefits and protections, such as severance pay and sick leave. Almost 40% of Firestone's 800 employees, for instance, are now contract employees with the status of casual workers. Workers moreover have no recourse to alter their status inasmuch as they have signed the individual contracts "willingly" (in order to start work).

CHILD LABOR

The two most significant elements in ILO Convention No. 138 Concerning Minimum Age for Employment are the emphasis on the

establishment of a national policy to ensure the abolition of child labor (in Article 1) and the formulation of a national law to develop measures ensuring effective enforcement of the convention's provisions (in Article 9). ILO standards for the admission of children to employment allow for countries to set their own minimums, but the standards establish age 14 as the absolute minimum.

Research by the AFL-CIO has provided numerous examples of how the factory system in Thailand exploits the labor of children unmercifully. These stories combined with reporting from other sources, many of which were submitted with the AFL-CIO case in 1987, indicate the continuing pervasiveness of the problem. In 1988, the laws remain inadequate and they are unenforced.

By law, no child under twelve years old may be employed, but many are. Those aged twelve to fifteen are legally permitted to work in stores, perform "light" work, and work in other situations at the discretion of the Labor Department. Yet according to one estimate, which is thought to be low by some demographic experts, at least 100,000 children ages twelve to fifteen work in hazardous factory jobs in the Bangkok area alone. Some of these situations involve the manufacture of fireworks.

Other children do repetitive manual labor in hundreds of factories in the textile, garment, plastic, leather, toy and candy industries. Most come from rural areas, "leased" by their parents for two or three years in return for payments, frequently ranging from \$100 to \$250, paid to the parents in cash at the

outset. Small irregular allowances may be paid directly to the child, but generally no such obligation or regulation of payments is involved in this modern system of indentured servitude.

Children usually live on the work site 24 hours per day, seven days per week. They are commonly prohibited from leaving the work site at any time, and sometimes they are forbidden to see their parents. The story of Baulee, a thirteen-year-old girl working in a garment factory in Bangkok, has been documented by the AFL-CIO. For \$27 per month, she works from 9 a.m. to at least 9 p.m. six days per week, and sometimes on Sunday also. She receives no overtime pay.

The story of Baulee is not unusual; it is typical of what many thousands of children performing "light" work suffer each day. The availability of a labor pool such as this is tantamount to slave labor.

The facts as we present them are not in dispute. The systematic involuntary servitude perpetrated on these children has been documented by Thailand's own Department of Labor and by the private Children Rights Protection Center in Bangkok, among others. What is in dispute is the adequacy and the sincerity of the government's intentions to eliminate this child abuse. The AFL-CIO believes that the Thai government, however it protests otherwise, is unwilling to enforce even its existing laws to promote constructive change.

Employers who violate the minimal prohibitions against child labor face no penalties under the labor code. Children as the

plaintiffs must prosecute their employers under criminal statutes, a much more difficult procedure. With penalty fines very low, violators can afford to pay up when occasionally obliged to do so, and continue their previous practice, with the legal charade considered a cost of doing business.

Talk of amending labor laws to protect children is welcome. But Thai Government claims of intentions to enact reforms within 1988 seem optimistic at best. The legislative process is usually two to three years in duration, perhaps longer for controversial issues like this one. Moreover, Parliament was dissolved in May, and the process must start all over again.

**INFORMATION CONCERNING THE REPORT BY THE UNITED STATES
TRADE REPRESENTATIVE'S OFFICE ON THAILAND'S LABOR
POLICIES**

The investigation conducted by the Office of the USTR produced no conclusive evidence that the Government of Thailand is any more prepared to address the problems of worker rights this year than it was before the AFL-CIO filed its complaint in 1987. The following points offer a response to the USTR's justification for requalifying Thailand as a beneficiary country under GSP.

USTR states:

Labor standards are generally observed by medium and large sized factories in the formal sector. Outside this area, in the informal sector, standards can deteriorate significantly... The Thai government is

striving to improve its control of practices in this area.

Response:

The informal sector employs the overwhelming majority of workers in developing countries. The Thai Government claim that it is striving to improve practices in this area is itself an admission that conditions are not what they should be. Expressions of the Thai Government's good intentions do not constitute evidence that improvements are actually underway.

USTR states:

The Government of Thailand is attempting to address a number of problems that predate the annual review. However, the government appears to have limited resources to devote to enforcement of labor standards generally.

Response:

Because no government has unlimited funds for enforcement of standards, regarding labor rights or anything else, this is non-responsive. Either a government sees labor standards and their enforcement as a high priority and devotes adequate funds to the problem, or it relegates it to a lower level with resources inadequate to bring about change. In Thailand's case, the evidence suggests the latter is true. The U.S. law regarding GSP eligibility does not exempt countries whose governments are unwilling to devote adequate public resources to solve worker rights problems.

USTR states:

The Interior Ministry has introduced legislation to upgrade the Department of Labor to a ministry, and will continue promoting this legislation until it is eventually passed.

Response:

The AFL-CIO is not persuaded that the elevation of the Department of Labor to ministry status constitutes an alteration in the status of worker rights. Moreover, with the dissolution of Parliament, this legislation is dead.

USTR states:

The Prime Minister's Office has asked the tripartite National Labor Development Advisory Board to review Thai labor federation concerns regarding the labor relations consequences (trade union rights) of the legal distinction between permanent and temporary workers.

Response:

This is a reference to a practice documented by the AFL-CIO and discussed above in which workers are forced by their employers to sign individual work contracts. We do not feel that a tripartite body reviewing the matter will seriously alter the practice. It is part of the larger problem whose solution involves improved enforcement and economic sanctions against violators.

USTR states:

Thailand established the national occupational safety and health center in 1983 to promote voluntary compliance with health and safety laws. By 1990 it will open three regional centers to supplement the national headquarters in Bangkok.

Response:

While we admire the optimism and confidence shown by the Thai government and USTR in the willingness of Thai employers voluntarily to comply with health and safety laws, it is not clear that such a national center in Bangkok has anything to do with the actual situation of most (or any) workplaces. Without stringent standards, and substantial penalties for violations, we do not expect -- and we have not yet seen -- improvements in the workplace. Our 1987 complaint was (and our current complaint is) based on the contemporary state of safety and health, without regard for the existence of a national center and the benefits that might stem from it sometime in the future.

USTR states:

Various Thai Government bodies, including the National Youth Bureau and Department of Public Welfare and Labor, have intensified their efforts to increase public awareness of the problem of child labor as a crucial first-step towards reaching a solution. These efforts include conducting studies of the problem, hosting seminars and conferences, and developing innovative educational materials. The government has adopted a proposal to assist school children in the 38 poorest provinces to overcome the economic barriers to remaining in school by providing money for uniforms, meals, transportation, etc. The Interior Ministry has also increased coordination of inspections conducted by three separate inspection services and the Labor Department has designated child labor problems for priority attention in 1988.

Response:

The AFL-CIO does not believe that a program of public awareness is sufficient to address the problem of child labor, which we outlined more fully in our 1987 submission. Nor do we believe

that conducting studies or hosting conferences is a substitute for action. Violators who insist on ignoring such fundamental laws must be made to feel the economic consequences of their abuses.

USTR states:

The Thai Ministry of Interior is preparing to seek parliamentary passage in 1988 of a new Labor Protection Law. The 170 section Labor Protection Law that has been drafted over the past three years would consolidate existing labor protection laws under one bill...The Thai Government is also considering, as an interim measure, issuance of a Ministerial Notification that carries the force of law that will serve to implement the proposed consolidated Labor Protection Law until it is approved by Parliament.

Response:

The USTR response did not include the most up-to-date information that was available at the time of its writing. Two weeks earlier, on March 16, 1988, the U.S. Deputy Chief of Mission and the U.S. Labor Attache in Bangkok met with the Deputy Minister of the Thai Interior Ministry and the Director-General of the Thai Department of Labor. The Deputy Minister indicated that a ministerial notification was unlikely due to sensitivity about the government's appearing to by-pass the Thai legislature. Thus, by the time the USTR's response was written, the meeting had already transpired and there was no longer any serious expectation that the promised legal measures would be effected before the legislature passed the Labor Protection Law. Although the Deputy Minister was optimistic that such a law would be enacted before the end of the year, the Thai bureaucratic process

does not work that quickly unless the government assigns the matter top priority, which it does not yet seem inclined to do. Certainly, now that Parliament has been dissolved, the slim basis for such optimism has faded completely.