LOGOS OF SUBMITTING ORGANIZATIONS?

Date

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SPECIFIC INSTANCE: IKEA GROUP VIOLATIONS OF THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

To the National Contact Point:

UNI Global union seeks the assistance of the Netherlands NCP in a Specific Instance under the OECD Guidelines for Multinational Enterprises involving conduct by the IKEA Group, a multinational enterprise with headquarters in the Netherlands. UNI is joined in this Specific Instance by the North American trade union United Food & Commercial Workers (UFCW), the commercial section of the Netherlands central labour federation FNV, the Mandate trade union of Ireland, and the SITESE trade union of Portugal.

I. INTRODUCTION

A. Submitters

UNI Global Union is among the largest of the global union federations, representing more than 20 million workers in more than 150 countries. UNI has negotiated Global Framework Agreements with several major multinational companies including, in the retail sector, Carrefour, H&M, and Inditex Group. UNI-affiliated unions represent tens of thousands of IKEA workers worldwide.

UNI affiliate UFCW is the largest union in the United States representing retail sector workers. Among its 1.3 million members, the UFCW represents hundreds of thousands of employees in supermarkets, department stores, fashion outlets and other retail workplaces.

The FNV is the principal central labour organisation in the Netherlands, with 17 affiliated unions representing more than one million workers, a majority of trade union members in the country. The FNV commercial division is affiliated with UNI.

Affiliated with UNI, Mandate Trade Union is the principal trade union for commerce, representing over 40,000 retail, administrative and distributive workers in Ireland.

Affiliated with UNI, SITESE is the Portuguese Services, Technical and Commercial Workers Union representing workers in those sectors.

B. IKEA

IKEA is the world's largest retailer of home furnishings and related products. It is also perhaps the most brand-identifiable in public eye, its gigantic blue-and-yellow stores rising like secular Taj Mahals along highways near major metropolitan centres around the world. *Forbes* magazine values the IKEA brand alone as worth $14.5 Billion as of May 2018.[1]

IKEA has 403 stores and nearly 200,000 employees in more than 30 countries around the globe. Total revenues for 2016-17 (most recently reported) amounted to €38.3 Billion. In the United States, the company operates over 40 stores employing 15,000 workers – second only to Germany with number of stores and employees. These two countries together comprise almost 30 percent of IKEA's sales, stores and employees worldwide.[2]

In Sweden, trade unions represent all non-management hourly and white-collar IKEA employees in a constructive, mutually respectful and beneficial workplace relationship. The same is true in other Scandinavian countries, too. Likewise, German trade unions represent all the non-management IKEA employees at its stores in Germany with normal labour relations characterized by social dialogue. The same is true for IKEA and employees in the Netherlands and other northern European countries. Indeed, most IKEA employees in the entire world bargain collectively through unions – with important exceptions documented in this Specific Instance.[3]

IKEA was founded as a Swedish company and still promotes a Swedish brand identity. It features Swedish meatball and other Swedish food in its in-store specialty shops. Its iconic blue and yellow logo reflects the colours of the Swedish flag. However, IKEA has been incorporated in the Netherlands since the 1980s in the form of two nonprofit foundations: Stichting Ingka Foundation and Stichting IKEA Foundation, both related to Ingka Holding BV, another Netherlands-chartered company. [4]

II. JURISDICTION OF THE NETHERLANDS NCP

[1] See "The World's Most Valuable Brands," *Forbes* magazine, at http://www.forbes.com/companies/ikea/.

[2] These data and more information are available at the IKEA website at http://www.ikea.com.

[3] For an overview of IKEA's labor relations in different countries and regions, see the report (annexed to this Specific Instance) by Professor John Logan of the University of California.

A. The Netherlands as the *Locus* of Violation

At the outset, we want to make clear why the Netherlands NCP is the appropriate body to treat this submission. The Implementation Procedures of the OECD Guidelines say (at paragraph 23), "Generally, issues will be dealt with by the NCP of the country in which the issues have arisen." Local IKEA management's conduct in the United States, as well as in Ireland and Portugal, is the backdrop to this case. But the issue that has arisen is failure of due diligence by IKEA global management in the Netherlands.[4] The Netherlands is the *locus* of the violation of the Guidelines, making this the appropriate NCP to take up the submission.

In the United States, IKEA management undertook an aggressive, vitriolic, fear-mongering anti-union campaign of interference with workers' organising rights. The U.S. labour law system permits open interference with employees' organising efforts in violation of the OECD Guidelines. Management's conduct violated the Guidelines' Chapter IV on human rights, Chapter V on employment and industrial relations, and the Guidelines' due diligence requirements.

In Ireland and Portugal, as discussed below, management's violations of workers' rights took different forms than those in the United States. But IKEA's actions in those European countries were no less serious in undermining workers' rights and contravening the same OECD Guidelines.

Management's anti-union campaign in the United States and its anti-union conduct in Ireland and Portugal disregarded the long-standing position of the OECD reflected in the following decision by the Committee on Investment:

> [I]n specific instances, active efforts may have been undertaken to discourage organising activities of employees. The Committee regrets that such situations continue to exist or arise and takes the present opportunity to stress again the provisions of the Guidelines as these apply to the question of employee representation. The Committee has therefore reaffirmed the view already expressed in both the 1979 and 1984 Review Reports that the thrust of the Guidelines in this area is towards management adopting a positive approach towards the activities of trade unions and an open attitude towards organisational activities of workers in the framework of national rules and practices.[5]

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[4] IKEA's global headquarters – including headquarters for global labor relations – is located in Leiden, on the banks of the Maresingel canal, close to Leiden Centraal railway station.

[5] See DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS COMMITTEE ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISE, THE OECD DECLARATION AND DECISIONS ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES: 1991 REVIEW (at http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAFFE/IME/RD%282000%293&docLanguage=En.

In this submission, we will provide specific details of how IKEA's conduct is contrary to the Guidelines themselves and contrary to the recommended "positive approach" and "open attitude" under the Guidelines. We want to emphasize that the "framework of national rules and practices" in no way exculpates management's actions. In the United States, nothing in labour law and practice requires poisonous anti-union campaigns like the one that IKEA managers launched against workers' organising efforts. Indeed, a "positive approach" and "open attitude" are entirely lawful, and widely practiced by many employers in the United States when workers engage in trade union formation. In Ireland and Portugal, management cannot even raise the excuse, as in the United States, that national labour law allows such interference with workers' rights.

B. Failure of Due Diligence

The exercise of jurisdiction by the Netherlands NCP is supported by a "due diligence" analysis which we urge the NCP to apply. Due diligence has become a centrepiece of companies' obligations under the OECD Guidelines, reflected most recently in adoption of the May 30, 2018 OECD *Due Diligence Guidance for Responsible Business Conduct.*

Due diligence starts with firms' responsibility to "identify and assess" potential adverse impacts in their operations.[6] IKEA global management were informed early, often, and thoroughly of their American management's anti-union actions and freedom of association violations (see Part VII below for more information on this point). Unions representing employees in Ireland and Portugal also notified IKEA global management about the obstacles they faced in exercising rights to freedom of association and collective bargaining.

In breach of its due diligence obligations to "stop the activities that are causing an adverse impact" on workers' rights under the Guidelines,[7] global management failed to act to compel IKEA's U.S. management to halt its interference with workers' organising rights, as well as the company's anti-union conduct in Ireland and Portugal. As just mentioned, we will provide more detail on the company's conduct later in this submission. The important thing for the NCP to consider with respect to due diligence is what IKEA global management in the Netherlands failed to do, both before and after events taking place in the U.S. and in other countries.

Contrary to the Guidelines, IKEA global management:

- Refused to act on trade unionists warnings in advance about what U.S. management would likely do to interfere with workers' organising rights; refused to act on direct reports from union representatives while U.S. management's

[6] See *Due Diligence Guidance for Responsible Business Conduct* (May 30, 2018), at 21.

[7] *Id.*, 17.

interference was taking place, and refused to act on unions' requests to remedy the violations and ensure that they would not continue in the future;

- Failed to carry out risk-based due diligence to identify, prevent and mitigate actual and potential adverse impacts on workers' freedom of association;

- Failed to avoid causing or contributing to adverse impacts on matters covered by the Guidelines (in this case, Chapter IV on human rights and Chapter V on employment and industrial relations), through their own activities and acts of omission, and to address such impacts when they occur.[8]

The Guidelines also incorporate the UN Guiding Principles on Business and Human Rights, which themselves incorporate ILO core labour standards. Weighed against the Guiding Principles' standards, IKEA global management:

- Failed to assess actual and potential impacts on workers' freedom of association;

- Failed to avoid causing or contributing to adverse impacts on workers' freedom of association;

- Failed to prevent or mitigate adverse impacts on workers' freedom of association that are directly linked to their operations;

- Failed to act upon findings of adverse impacts that were presented to them by workers' representatives and confirmed by labour law authorities in the United States.[9]

The issues here involve decisions made at company headquarters in the Netherlands. This is where the responsibility arises for management's actions in the United States, Ireland and Portugal. Netherlands management is the controlling force that should be held accountable for compliance with the Guidelines.

C. Other Due Diligence Cases before The Netherlands NCP

The NCP has taken up submissions in other cases involving Netherlands enterprises and alleged violations in other OECD member states, or in countries that have adhered to the Guidelines and established National Contact Points. There is no need to enter into detail, since the NCP has full knowledge of these cases. But we note the following articulations of the NCP's reasons for accepting the submissions, first in a case involving events in Argentina that implicated due diligence obligations of the Dutch enterprise:

[8] See OECD Guidelines and related commentary, Part II, paragraphs 10 and 11 (2011).

[9] See UN Guiding Principles on Business and Human Rights, Sections 12, 13, 15, 17, 18.

> The notification concerned the alleged non-observance of the Guidelines by the Dutch-based multinational Nidera Holding B.V. and its Argentinean subsidiary Nidera S.A. (hereafter: the Enterprise). The Enterprise's activities in which the alleged non-observance took place concerned the adoption by Nidera (the parent company) of "a policy commitment to respect human rights and follow due diligence procedures at the highest management levels of the company"...
>
> [Submitters sought] "company-wide human rights policy that includes a concrete due diligence procedure for identifying, preventing and mitigating actual and potential adverse human rights impacts throughout its global operations...
>
> The NCP considered that an offer of its good offices as requested by Notifiers would help the Enterprise and its stakeholders with its development of a human rights policy and its human rights due diligence procedure in accordance with the Guidelines.[10]

The NCP accepted another case involving the due diligence obligations of Netherlands-based firms in connection with alleged violations by a Korean enterprise. The NCP noted:

> The issues raised in the specific instance against ABP and APG [the Dutch entities] entail the alleged non-observance of specific due diligence provisions of the OECD Guidelines (version 2011). The notifying parties maintained that ABP and APG had not taken all the appropriate steps to prevent or mitigate the negative impacts of POSCO's activities on human rights and environmental rights.[11]

D. A Relevant Case at the French NCP

A case sharing many similarities with the specific instance we are filing here was decided in December 2017 by the NCP of France. The NCP based its decision on due diligence obligations of a French investor related to anti-union conduct in the United States. The French investment group Natixis Global Asset Management provided financing for a hotel project in Los Angeles, California. Local management at the hotel launched an

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[10] See *Final report of the National Contact Point for the OECD Guidelines in the Netherlands on the Specific Instance notified by CEDHA, INCASUR Foundation, SOMO and Oxfam Novib concerning Nidera Holding B.V.*, 03 February 2012.

[11] See *Final Statement, ABP/APG - Lok Shakti Abhiyan, KTNC Watch, Fair Green and Global Alliance, Forum for Environment and Development*, September 2013. A recent case did not involve events in an adhering country with an NCP, but underscored the Netherlands NCP's support for due diligence compliance. It involved due diligence obligations of Rabobank regarding the bank's implementation of its palm oil supply chain policy in Indonesia. Here the NCP said: "The NCP is of the opinion that doing so may help clarify the OECD due diligence recommendations for the financial sector regarding loans." See *Final Statement, Friends of the Earth Europe and Friends of the Earth Netherlands/Milieudefensie – Rabobank*, 15 January 2016.

aggressive campaign against workers' efforts to form a union at the hotel – much like IKEA's tactics which we will review below. This led the North American trade union Unite Here to submit a specific instance to the French NCP, not the U.S. NCP.

Although the events giving rise to the specific instance arose in the United States, the French NCP recognized that due diligence on the part of the French investor Natixis was the heart of the matter; that is, "whether adequate due diligence measures were being taken by the Natixis Group..."[12] The U.S. NCP agreed, and collaborated with its French counterpart as the case proceeded to mediation. In December 2017, the French NCP issued a final statement in the case describing a successful outcome accepted – and indeed celebrated – by all the parties.[13]

As with the case before the French NCP, the central issue in this specific instance is whether adequate due diligence measures are being taken by IKEA. For all the above-stated reasons, the Netherlands NCP is the proper body to take up this Specific Instance.

III. IKEA CONDUCT CONTRARY TO THE OECD GUIDELINES

In violation of the Guidelines' *human rights chapter*, IKEA is failing to respect fundamental rights set out in the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work.

In violation of the Guidelines *employment and industrial relations chapter*, IKEA is failing to respect the right of workers to establish or join trade unions or representative organisations of their own choosing and have trade unions and representatives of their own choosing recognized for the purpose of collective bargaining. IKEA is furthermore failing to engage in constructive negotiations with such representatives with a view to reaching agreements on terms and conditions of employment.

Contrary to obligations set forth in the OECD *Due Diligence Guidance for Responsible Business Conduct*, IKEA is failing to use its leverage to prevent country management in the United States, Ireland and Portugal from engaging in wrongful practices that violate the foregoing chapters of the OECD Guidelines.

A. In the United States

[12] See *Natixis and NGAM in the United States of America, Detailed Report from the French National Contact Point*, December 5, 2017, at file:///C:/Users/lac24/AppData/Local/Temp/2017%20NATIXIS%20NGAM%20in%20the%20US,%20Detailed%20Report%20(5%20Dec%202017).pdf (visited July 21, 2018).

[13] Id.

At IKEA's location in Stoughton, Massachusetts – where employees mounted a sustained organising effort – company management have run afoul of both U.S. labour law and the OECD Guidelines on employment and industrial relations. However, we stress that we are not relying on U.S. labour law as the basis of this submission. We are relying on the Guidelines, including their incorporation of UN Guiding Principles and ILO core labour standards.

Discussion of proceedings under U.S. law is intended to inform the NCP of the context in which violations of the Guidelines have occurred in the Netherlands because of IKEA's due diligence failures. Even though U.S. labour law authorities found that IKEA acted unlawfully, we are not asking the NCP to interpret or make judgments about the applicability of American labour law.

1. The 2015 Unfair Labour Practice proceedings

In unfair labour practice charges filed under the U.S. labour law system by the UFCW on behalf of workers in the Stoughton store, the National Labor Relations Board's regional office found merit in charges that IKEA's management unlawfully interrogated employees about their union activities and sympathies, and that the company's rules on employee conduct violated workers' right to engage in activities protected by the National Labor Relations Act.

The NLRB is scrupulous in evaluating charges and issuing complaints. Findings of merit in unfair labour practice charges are based on detailed investigations of charges by regional agents of the NLRB and evaluations by experienced labour law attorneys in the Board's regional offices. These investigations include interviewing and taking affidavits from workers who filed charges and from potential witnesses. They also involve consulting extensively with employers and offering them an opportunity to rebut any charges through written position statements and dialogue with the NLRB regional officials.

Based on these investigations and evaluations of the evidence, Board officials decide whether charges have merit. Only upon finding that charges are meritorious does the NLRB seek pre-complaint settlements or, failing settlement, issue complaints and set cases for trial before administrative law judges, normally several months in the future.

Fewer than 15 percent of unfair labour practice charges result in complaints. Even then, the NLRB makes intensive efforts to settle meritorious cases before issuing complaints, as well as efforts toward settlement before a complaint goes to trial.

Based on finding of merit in charges filed in 2015, the Board's regional director issued a formal complaint regarding IKEA's interrogation of employees, as well as the company's written and on-line rules on employee conduct. The Board set the case for trial before an Administrative Law Judge (ALJ).[14]

[14] See NLRB Region 1, *IKEA North America LLC and UFCW International Union*, "Complaint and Notice of Hearing," Case No. 01-CA-138804, May 29, 2015 (attached).

In addition to the finding that management interrogated employees about their union activities and sympathies, the regional director's merit finding established that IKEA's employee policies:

- Under the guise of a "respect others" rule, violated employees' right to protest against or criticize management or the company;

- Under the guise of a "professional image" rule, violated employees' right to wear union buttons or other insignia on their uniforms that indicated their support for unions or addressed wages, hours and working conditions;

- Under the guise of an "information security" rule, violated employees' right to use company information systems on non-working time to communicate with fellow workers and with unions about wages, hours and working conditions;

- Under overreaching "confidentiality" and "privacy" rules, violated employees' right to discuss and compare their pay and other working conditions with each other.

Before the case moved to the ALJ trial stage, IKEA entered into a settlement agreement with the National Labor Relations Board on several of the merit findings.[15] The agreement contains a boilerplate non-admission clause ("the Charged Party does not admit that it has violated the National Labor Relations Act"). However, this technicality does not relieve the company of responsibility under the OECD Guidelines.

We call the NCP's attention to the commitments undertaken by IKEA pursuant to the 2015 Settlement Agreement. Note especially the numerous "WE WILL...and "WE WILL NOT..." clauses of the agreement in which IKEA promises not to engage in conduct cited in the General Counsel's complaint and to take affirmative remedial action with respect to the unfair labour practices enumerated in the complaint.

2. The 2016 election and conduct contrary to the Guidelines

When the UFCW filed an NLRB election petition on behalf of employees in the "goods flow" unit at IKEA's Stoughton, Massachusetts store in May 2016, management launched an aggressive anti-union campaign marked by intimidating actions and statements contrary to the OECD Guidelines. As shall be seen, the company also ran afoul of U.S. labour law.

The NLRB regional office conducted the election on June 27, 2016. IKEA management's conduct leading up to the elections resulted in a 26-14 vote against the union. The UFCW

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[15] See NLRB, In the Matter of IKEA U.S. East LLC, "Settlement Agreement," Case No. 01-CA-138804, September 10, 2015 (attached).

filed objections to IKEA's conduct during the election campaign and parallel unfair labour practice charges concerning management's election misconduct.[16]

IKEA's tactics in the run-up to the election in the Stoughton store included almost daily "captive-audience" meetings during work time at which management predicted dire consequences if employees vote for a union. (They are "captive" in the sense that workers must attend these meetings and listen to management's anti-union attacks under pain of discipline – they can be summarily fired for "insubordination" if they do not go to the meetings). Management also instructed employees' direct supervisors to convey the same messages in individual meetings.

Here is a summary of IKEA management's intimidating statements to employees in the captive-audience meetings.[17] Note that workers are hammered with these statements over and over in a classic psychological "repetition" strategy:

- Repeated insistence that the company has only a fixed "pie" of wages and benefits, and collective bargaining can only allocate pie slices in different amounts without changing the amount of the pie. This is a classic rhetorical effort to convince workers of the futility of union organising and collective bargaining because they can never obtain a net gain in wages and benefits.

- Repeated warnings that collective bargaining is a Las Vegas-style "gamble" that could result in employees losing current wages and benefits –with the legally-required caveat that "things could get better, things could stay the same, or things could get worse," but emphasizing the "worse."

- Constant disparagement of unions and collective bargaining agreements in IKEA supply factories and warehouses where other unions have gained representation rights. (Note: supply factories and warehouses are separate from IKEA's totally non-union retail store operations, which are controlled and managed through its tax-dodging foundation-to-foundation franchising scheme).

- Constant claims that the UFCW is a "business" and a "third party" that is only interested in taking dues payments, and suggestions that the union would give up wage and benefit demands in bargaining to get higher dues payments (a completely false and misleading argument since the amount of union dues is not a subject of collective bargaining). These statements characterizing unions as alien

[16] U.S. labour law distinguishes between "objections" to an election regarding parties' conduct that upsets the required "laboratory conditions" for an election but does not fall within the definition of "unfair labour practice" under the NLRA. For the latter, a party files unfair labour practice charges. Both forms of violation are serious offenses, either of which can result in an election being set aside and a new election ordered.

[17] See the report (annexed to this specific instance) by Professor John Logan of the University of California providing more detailed information on IKEA management's conduct, based on interview with workers and transcripts of captive-audience meetings.

bodies betray contempt for workers' *self*-organisation – the essence of trade union formation – and disdain for a union's representational role.

- Cautioning employees in a booklet sent to them shortly before the election to tell the NLRB "if you feel threatened, intimidated or harassed" – with the only possible interpretation being that it is the union that would threaten, intimidate or harass.[18]

- Repeated suggestions that only a handful of employees might vote, and a "2-1" vote in favour of union representation would force representation on all employees (without ever pointing out that NLRB election participation averages more than 95 percent of eligible employees in the thousands of elections held by the Board over many years).

- Repeated suggestions that only a handful of employees might vote to accept a contract or to strike, and that all employees would be bound by the decision of a tiny minority.

- "Buying votes" by promising three hours' pay to employees who came to vote during unscheduled work periods even if it took them only a few minutes, and by giving employees gift cards one week before the election.

- Expelling a union supporter from the meeting because he wanted to use his cellphone to photograph management's anti-union PowerPoint slides.

- Telling employees that they (the managers) were "personally offended" by employees' support for the union, with an implicit threat of adverse consequences given the managers' position of power and authority over employees.

In comparative terms, the United States is exceptional in its toleration of such systematic, vitriolic anti-union campaigns by employers, in particular the use of captive-audience meetings. Such meetings are unheard of in most countries, where forcing employees to attend meetings to hear employers' anti-union views is seen as an affront to workers' privacy, dignity, and autonomy, equivalent to requiring workers to attend meetings to hear employers' diatribes on race or religion or politics.

The *Comparative Labour Law & Policy Journal*, a leading scholarly publication, devoted a special issue to an examination of law and practice around the world on what Americans know as the captive-audience meeting. The editors asked the scholars how their countries' labour law systems would treat captive-audience meetings. Among papers from different regions and continents, the EU contributor wrote, citing the German case:

[18] IKEA "Guide to Voting," June 2016 (undated).

> [T]he employer is not entitled ... to force speeches against unionisation on his employees.... [T]here is no room for American style captive audience meeting. . . . It is also prohibited for employers to act hostile toward unions or take sides against unions . . . If the employer wants to address issues typically addressed in American captive audiences, there is virtually no chance doing so legally.[19]

IKEA management went "over the top" in captive-audience meetings in the Stoughton store. Most employers hold one or two such meetings per week in the 3-4 weeks before an NLRB election. IKEA forced employees into one- and two-hour meetings on a daily basis before the election.

In the captive-audience meetings, managers made statements that included "The pie is the pie" and however management "works out slices, the pie stays the same"; "the hours are the hours" and would not change with a union; collective bargaining would "start from scratch – everything starts at zero"; job security "could be worse"; voting for a union is a "gamble" like gambling their wages in "Vegas"; workers could be "stuck" in a union; employees joining unions at other IKEA locations is a "waste of their money"; organizing would be a "donkey ride," not a "cruise liner"; having a union would mean "rigid rules" instead of favourable treatment by management; negotiations could take "anywhere from six months to two and a half years"; voting for a union would be a personal "betrayal" of management, and so on.[20] All these statements, drummed at employees in daily captive-audience meetings, created an atmosphere of doubt, trepidation and fear that undermined workers' support for the union.

3. Post-election developments

In September 2016, the NLRB regional office issued an order for a hearing on IKEA's tactics to determine whether they so tainted the election held on June 27, 2016 that a new election was required. [21] The hearing took place in October, with witnesses for both workers and management giving testimony.

On February 7, 2017 the regional office ruled that IKEA management interfered with the workers' organising rights and destroyed the conditions necessary to a free and fair election. The board nullified the earlier election and ordered that a new election must be held.[22]

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[19] See Christopher Gyo, "Legitimacy of Captive Audiences in Germany," in "The Captive Audience", 29 *Comparative Labour Law & Policy Journal* 67 (2008), at 119.

[20] See the report (annexed to this specific instance) by Professor John Logan of the University of California providing more detailed information on IKEA management's statements in captive-audience meetings.

[21] See NLRB Region 1, *IKEA U.S. East and UFCW*, Case No. 01-RC-176529, "Order Directing Hearing and Notice of Hearing on Objections," September 21, 2016 (attached).

[22] See NLRB Region 1, *IKEA U.S. East and UFCW*, Case No. 01-RC-176529, "Decision and Direction of Second Election," February 7, 2017.

However, under normal NLRB rules, an election, including a rerun election, cannot take place if unfair labour practices charges are unresolved and lack remedy. In March of 2017, the NLRB found merit in the unfair labour practice charges arising from management's anti-union campaign tactics in relation to the June, 2016 election at Stoughton. These included the Company's maintaining an overbroad mobile device policy, enforcing the policy by prohibiting an employee from taking photos of its power point slides, and threatening employees with the futility of selecting the union as their bargaining representative. On this last point, managers insisted "the pie is the pie," thereby conveying to employees that collective bargaining is useless.[23]

The NLRB set the unfair labour practice case for trial before an Administrative Law Judge in July of 2017. It was postponed several times, including at the request of IKEA's lawyers, and was finally scheduled for January 23, 2018. It would appear that the Company's attorneys were "buying time" until President Trump installed a new majority on the 5-member National Labor Relations Board, as well as a new NLRB General Counsel, with the appointments becoming effective in December of 2017. The stalling tactic was rewarded: on January 17, 2018, the Board cancelled the trial, saying that merely posting a notice in the workplace confirming that IKEA interfered with employees' rights, with no further consequence, and as part of the direction of a new election, made for a sufficient remedy in the case.[24]

The notice would state the following:

> The election conducted on June 27, 2016, was set aside because the National Labor Relations Board found that certain conduct of the Employer interfered with the employees' exercise of a free and reasoned choice. Therefore, a new election will be held in accordance with the terms of this Notice of Second Election. All eligible voters should understand that the National Labor Relations Act, as amended, gives them the right to cast their ballots as they see fit and protects them in the exercise of this right, free from interference by any of the parties.

The NLRB has not yet posted the notice and set a date for a re-run election. And if it does, the UFCW cannot proceed to an election given the complete absence of any agreement on the part of IKEA to guarantee non-interference in the future. As noted earlier, contrary to OECD Guidelines, U.S. law allows employers to hold captive audience meetings with employee groups and one-on-one supervisor-employee meetings. In both types of meetings, employers communicate the following: predictions of dire consequences if workers vote in favour of a union; promises to use permanent

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[23] See NLRB Region 1, *IKEA U.S. East and UFCW*, Cases nos. 01-CA-178818, 01-CA-183233, "Order Consolidating Cases, Consolidated Complaint, and Notice of Hearing, March 31, 2017.

[24] See NLRB Region 1, *IKEA U.S. East and UFCW*, Cases nos. 01-CA-178818, 01-CA-183233, "Order Dismissing Charges and Withdrawing Consolidated Complaint and Notice of Hearing," January 17, 2018.

replacements if workers exercise the right to strike; insistence that workers are "gambling with their future" if they choose union representation; warnings that "things can get worse" with a union and that unions are only interested in collecting dues, and many other similar tactics and statements. Unless IKEA reaches a binding agreement with the unions to halt such conduct, there is absolutely no guarantee of a free and fair election for the future.

The NLRB's retreat in the IKEA case reflected a massive anti-labour turn by the Trump administration's new majority on the labour board and its appointment of a new NLRB General Counsel. We do not want to burden this submission by documenting all the ways in which the new Trump majority on the labour board has rolled back workers' rights. The IKEA case was just one example; others had far-reaching destructive effects, already widely documented.[25]

Again, we introduce this information about NLRB legal proceedings to underpin our conclusion that IKEA's conduct violates the OECD Guidelines – not to argue that the NCP should evaluate and adjudge the U.S. legal developments. The logic is simple: if IKEA's conduct runs afoul of U.S. labour law, which is notoriously weak compared with international standards on freedom of association, *a fortiori* it runs afoul of the OECD Guidelines, which incorporate stronger international standards.[26]

4. The striker replacement threat

IKEA management also told employees in captive-audience meetings that the company has the power under U.S. labour law to permanently replace them if they strike. This is a brazen example of a legally permitted statement under U.S. labour law – which indeed grants employers the power to hire permanent replacements to take the jobs of workers who exercise the right to strike – that runs contrary to international standards on freedom of association. The ILO Committee on Freedom of Association has ruled that the permanent striker replacement feature of U.S. labour law violates ILO Convention 87.[27] Perforce, IKEA infringes international standards by insisting that it can permanently

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[25] See, for example, Noam Scheiber, "Trump Takes Steps to Undo Obama Legacy on Labor," *The New York Times*," June 20, 2017; "Labor Board Reverses Ruling That Helped Workers Fight Chains," The New York Times, December 14, 2018; Gene Marks, "The NLRB took three big actions last week that employers will love," *The Washington Post*, December 18, 2017; Lawrence E. Dubé and Hassan A. Kanu, "Trump Appointees Usher In New Era at Labor Board," *Bloomberg BNA Daily Labor Report*, January 3, 2018 (noting "major changes in the agency's philosophy and direction").

[26] For discussion of the ways in which U.S. labour law falls short of international standards, see Human Rights Watch, *Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards* (2000), at https://www.hrw.org/reports/pdfs/u/us/uslbr008.pdf.

[27] The ILO Committee on Freedom of Association has ruled that the permanent striker replacement feature of U.S. labour law violates Convention 87.See International Labour Organisation, 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).

replace workers who strike. Coincidentally, management brought in other employees to perform the jobs of workers during the many hours they were forced into captive-audience meetings, driving home the point that they can be easily replaced if management chooses.

5. Denial of access

In another clear violation of international norms, IKEA refused to allow employees to hear from UFCW representatives inside the store (in non-work areas on non-work time) to balance management's tendentious, one-sided propaganda offensive in worksite captive-audience meetings. In a letter October 9, 2015, a top IKEA U.S. official told a UFCW supporter "we do not allow people who are not co-workers to solicit or distribute materials in our staff café...Reserving the staff café for IKEA co-workers only is one way to respect everyone's wishes."[28]

B. In Ireland

The Mandate Trade Union is the leading labour organisation for retail workers in Ireland. It represents over 40,000 workers in the commercial and services sectors of the Irish economy.

The major IKEA store in Dublin employs over 500 workers. Beginning in 2009, Mandate attempted contact with the IKEA-Ireland employees with the objective of those workers achieving trade union representation. The Mandate organizers learned that the majority of the IKEA workers were on fixed-term, part-time contracts initially of 9 months duration.

Most of the IKEA workers contacted by the union had one rate of pay set at 85 cents above the minimum wage. The workers were kept in a state of total uncertainty about their hours, the real duration of their contracts, and their employment stability in general. The IKEA employees reported to Mandate that senior store management were advising them not to align with the Union and they were genuinely frightened of management retaliation if they joined Mandate.

During the organising campaign, Mandate representatives were physically removed from the IKEA car park by IKEA security with threats to their person. IKEA security also recorded the vehicle registration of the Mandate organizers.

Given the repressive and threatening anti-union environment for the Mandate representatives (and the IKEA workers), the Union decided to suspend the direct organising campaign at the store premises. Mandate appealed to the UNI Global Union for the purpose of informing the IKEA Global Management of the Company's anti-union actions in Dublin. UNI fully advised the IKEA Global Management of the situation, and a few meetings ensued, including representatives of UNI, IKEA Global Management, IKEA Ireland Management, and Mandate.

[28] Letter from Lars Petersson, IKEA US Country Manager to Christopher DeAngelo, October 9, 2015.

As a result of these meetings, IKEA offered access to a management-selected group of anti-union workers, but refused to provide the Union with access to all of the IKEA store employees. This one-sided setup was unacceptable to the union. Mandate forwarded a draft neutrality and management non-interference agreement to IKEA-Ireland, but received absolutely no response.

Mandate Chief Organising Officer Brian Forbes reported that for the period from 2009 to 2011, the Union continued to seek a neutral and non-confrontational environment at IKEA's Irish operations for the purpose of achieving the exercise of genuine freedom of association rights for ***all*** of the Dublin store employees and with total respect for the Company's right to run a successful business.

Regrettably, the Company denied that possibility as evinced in its anti-union behaviour in contravention of the OECD Guidelines. IKEA Global and IKEA Ireland were put on complete notice of their quashing of organising and trade union rights, and did nothing to effectively reverse and remedy the situation.[29]

Most recently, the Mandate union sent a letter to IKEA reiterating Irish management's anti-union conduct and making it clear to the Company that IKEA's freedom of association violations in Ireland remain unresolved and without effective remedy, and that the Union is interested in achieving a solution based on a genuine management neutrality and non-interference agreement. The letter concluded:

> This letter is to advise you that IKEA's freedom of association violations in Ireland just cited remain unresolved and without effective remedy. At the UNI Global Alliance Meeting of IKEA workers held in Malmo last November, former IKEA Global Manager of Employee Relations, Mr. Albert Martens, publicly acknowledged the unsatisfactory situation pertaining in the Republic of Ireland. Unfortunately, the aforementioned situation in Ireland remains unresolved and IKEA remains viewed by the wider trade union movement as hostile to trade unions in Ireland.[30]

C. In Portugal

In 2013-2014 and again in 2017 until the present, workers at IKEA's Alfragide store in Lisbon have tried to form a trade union with the SITESE labour organisation to bargain collectively with management. In addition, they have attempted to organize a "workers committee" store level works council under Portuguese works council legislation. However, in all of these efforts, they ran up against harsh opposition from IKEA store management.

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[29] For more details on IKEA's anti-union conduct in Ireland, see the annexed report by Prof. John Logan.
[30] See (annexed) letter from John Douglas, General Secretary, Mandate Trade Union, to Nicole Pepper, Manager of Employee Relations, IKEA Global, July 20, 2018.

In all of these instances, IKEA management denied employees the right to hear from union representatives at the workplace in ways that would not interfere with operations. Management also obstructed union supporters' attempts to share information with co-workers. Managers and supervisors attacked unions generally as disruptive elements, and union advocates specifically as disgruntled employees and troublemakers.

Employees supportive of union formation also report discriminatory treatment because of their union sentiment and activity. These include being placed on undesirable work shifts to cut off communication with co-workers, and being denied training and advancement opportunities due to union support.

Management has also used video surveillance technology inside the store to monitor union supporters' movements. Management also monitored a social media blog where workers shared experiences and criticisms, and called employees into a meeting (conducted by IKEA's national HR director) to discourage workers from posting to the blog.

These and other management tactics have created a climate of fear among workers that they will suffer reprisals if they support the union. Workers are concerned about health and safety, sick leave policies, sexual harassment and other important issues, but IKEA's aggressive anti-union actions prevent them from being able to exercise organising and bargaining rights, which are supposed to be protected by ILO core standards and OECD guidelines, to deal with management on these matters.[31]

IV. RELEVANT INTERNATIONAL STANDARDS

A. OECD Guidelines and UN Guiding Principles

OECD Guidelines addressing IKEA's conduct are addressed first in Chapter IV on *Human Rights*. That chapter states:

> [E]nterprises, regardless of their size, sector, operational context, ownership and structure, should respect human rights wherever they operate. Respect for human rights is the global standard of expected conduct for enterprises independently of States' abilities and/or willingness to fulfill their human rights obligations, and does not diminish those obligations...

[31] This Specific Instance focuses on freedom of association issues arising under the Guidelines' Chapter IV on human rights, Chapter V on employment and industrial relations, and the Guidelines' due diligence requirements. However, the preparation of this submission has revealed other issues described in the annexed report by Professor John Logan of the University of California including health and safety concerns and sexual harassment concerns in IKEA's Portuguese stores. These implicate Sections V (4) (b) and (c) of the employment and industrial relations chapter. The submitters hope that a mediation process flowing from this Specific Instance might address these issues as well.

> Enterprises should, within the framework of internationally recognized human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:
>
> 1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
>
> 2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.[32]
>
> The Commentary on Chapter IV goes on to say, "It draws upon the United Nations Framework for Business and Human Rights 'Protect, Respect and Remedy' and is in line with the Guiding Principles for its Implementation."

For their part, the UN Guiding Principles state:

> The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work.

In other words, the Guidelines' Human Rights chapter incorporates the UN Guiding Principles in its Human Rights chapter, and thus incorporates ILO core labour standards, including on freedom of association and collective bargaining, as part of multinational firms' responsibility under the Guidelines.

More specifically, IKEA's actions in the United States, Ireland and Portugal run counter to the Guidelines' Chapter V on *Employment and Industrial Relations*. That chapter declares that multinational firms should:

- Respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organisations of their own choosing.

- Respect the right of workers employed by the multinational enterprise to have trade unions and representative organisations of their own choosing recognized for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment.

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[32] OECD Guidelines for Multinational Enterprises, *Commentary*, paragraph 37 (2011), at http://www.oecd.org/daf/inv/mne/48004323.pdf.

- Provide such facilities to workers' representatives as may be necessary to assist in the development of effective collective agreements.

- Promote consultation and co-operation between employers and workers and their representatives on matters of mutual concern.

B. ILO Core Labour Standards and Conventions

As noted, the OECD Guidelines incorporate ILO core labour standards into responsibilities that attach to multinational enterprises such as IKEA. Elaborating on this point, the Guidelines' commentary states:

> The International Labour Organisation (ILO) is the competent body to set and deal with international labour standards, and to promote fundamental rights at work as recognized in its 1998 Declaration on Fundamental Principles and Rights at Work....The provisions of the *Guidelines* chapter echo relevant provisions of the 1998 Declaration.... These principles and rights have been developed in the form of specific rights and obligations in ILO Conventions recognized as fundamental.[33]

This means that one must look to the 1998 Declaration and ILO conventions 87 and 98 on freedom of association and collective bargaining (i.e. "Conventions recognized as fundamental") as the relevant standards for multinational enterprises under the Guidelines. In particular, Conventions 87 and 98 lay down a firm principle of *non-interference* by governments and employers against workers' exercise of the right to freedom of association.

The ILO has taken a consistent view with regard to a worker's choice to form or join a trade union – simply put, government and employers must not interfere in that decision. The principle of non-interference was articulated as long ago as 1949, shortly after Convention No. 87 on the right to freedom of association and to organize was adopted. The ILO said at that time that the Convention 87's Article 11 "lays down an obligation for the State to take measures to prevent *any interference* with such rights without qualification, that is, interference by individuals, by organisations or by public authorities".[34]

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[33] See OECD Guidelines, *Commentary* on Chapter V, Employment and Industrial Relations, para. 52, at p. 38. The eight ILO Conventions recognized as fundamental are nos. 87 and 98 on freedom of association, 29 and 105 on forced labor, 138 and 182 on child labor, and 100 and 111 on discrimination. For more discussion, see ILO, *The International Labour Organisation's Fundamental Conventions* (2002) at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_095895.pdf.

[34] International Labour Conference, *Record of Proceedings*, 32d Sess. 306, 470 (1949) (emphasis added).

Workers, trade unions and employers have a right to freedom of expression as well as association. However, employers' expression cannot interfere with workers' right to freedom of association. These rights are to be complementary, not in conflict. Indeed, workers must be able to exercise freedom of association in "a climate free of violence, pressure, fear and threats of any kind".[35]

IKEA's conduct – the captive-audience meetings, anti-union speeches and PowerPoint presentations, restrictive employee conduct rules, constant avowals that collective bargaining is futile, threats to permanently replace strikers, interrogation about union activity and support, and other tactics – clearly interferes with workers' organising and bargaining rights by creating a climate filled with pressure, fear, and threats.

International standards also support workers' right to hear from trade union representatives inside the workplace about forming and joining a union (under conditions that do not affect workplace functioning).[36] IKEA openly disregards this standard by refusing to let employees hear from the UFCW inside stores on non-work areas and non-work time. IKEA could lawfully agree with the union to permit such access, with due regard for operational concerns. IKEA also has refused to enter into an employer neutrality and non-interference agreement with the UFCW. This too is totally permitted under U.S. law, and is in total conformity with international labour standards.

V. A SPECIAL NOTE ON THE GUIDELINES AND U.S. PRACTICE

The U.S. labour law system has found that IKEA acted unlawfully, including unlawful interference with a free and fair union representation election at the Massachusetts unit. IKEA may seek to obfuscate these findings by pointing to conduct that has not been found to violate the NLRA, perhaps even citing the "non-admission" clause in the settlement agreement discussed above.

But reliance on national law and practice is not a defence to a violation of the OECD Guidelines. Where national law fails to comply with international standards, multinational enterprises should conform to international standards as long as such conformance does not put them in outright conflict with national law. In this respect, IKEA's captive-audience meetings, the vilification campaign against the union, threats to permanently replace workers if they exercise the right to strike, denial of access for

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[35] ILO, *Freedom of Association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, Fifth (revised) edition (2006), paragraph 35.

[36] See International Labour Organisation, Committee on Freedom of Association, *Complaint against the Government of the United States,* Report No. 284, Case No. 1523 (1992) (concluding that the United States should "guarantee access of trade union representatives to workplaces, with due respect for the rights of property and management, so that trade unions can communicate with workers, in order to apprise them of the potential advantages of unionization"). Coincidentally, that ILO complaint was filed by the UFCW, the AFL-CIO, and the FIET global federation, a predecessor of UNI Global Union – three of the submitters in this case, and involved a Europe-based multinational retail enterprise (Food Lion markets).

workers to hear from union representatives in the workplace, and other conduct technically permitted by U.S. labour law still puts IKEA in violation of the Guidelines.

The OECD Guidelines make this point at the outset, in Chapter I on *Concepts and Principles*:

> [S]ome matters covered by the Guidelines may also be regulated by national law...[I]n countries where domestic laws and regulations conflict with the principles and standards of the Guidelines, enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law.[37]

The recent OECD Due Diligence Guidance re-emphasizes this point: "Due diligence can also help enterprises honour the OECD Guidelines for MNEs to the fullest extent which does not place them in violations of domestic law."[38]

IKEA would in no way violate domestic U.S. labour law by halting its captive-audience meetings and anti-union propaganda campaign, no longer threatening to permanently replace workers who exercise the right to strike, and allowing UFCW representatives inside the workplace so that workers can have an equal opportunity to hear from them as well as from management. Nor would it be violating U.S. law by entering into a neutrality and non-interference agreement with the Union.

U.S. national law and practice *permit, but do not require*, employers to interfere with workers' freedom of association. This feature of U.S. law is acknowledged by employers themselves. Indeed, the very organisation which represents U.S. employers at the International Labour Organisation, the U.S. Council for International Businesses, states:

> U.S. law and practice conflict with many of the requirements of the ILO standards, preventing U.S. ratification of some of the core labor standards....U.S. ratification of Conventions 87 and 98 would require particularly extensive revisions of longstanding principles of U.S. labor law to conform to their standards....U.S. ratification of the convention would prohibit all acts of employer and union interference in organizing, *which would eliminate employers' rights under the NLRA to oppose unions*.[39]

The USCIB's 2007 statement is based on an exhaustive analysis published in a 1984 book by Edward E. Potter, who has long served as chief legal advisor to the U.S. employer delegation to the ILO. Edward Potter's expertise in the international labour law

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[37] See OECD Guidelines Chapter I, *Concepts and Principles*, paras. 1-2, at p. 17.

[38] See OECD *Due Diligence Guidance on Responsible Business Conduct* (May 30, 2018), at 18.

[39] USCIB, "U.S. Ratification of ILO Core Labor Standards", *Issue Analysis*, April 2007 (emphasis added).

field is universally acknowledged. He noted that, with regard to workers' organising rights, the ILO standard "lays down an obligation for the state to take measures to prevent *any* interference with such rights *without qualification* that is, interference by individuals, by organizations or by public authorities."[40] But U.S. law runs counter to this standard, as Potter explained:

> U.S. law and practice is not so broad in application to prohibit any interference in organizing rights from any source...*[S]ome interference is permitted.* Section 8(c) of the [National Labor Relations] Act permits employers to oppose unions...Under the NLRA, "an employer does not commit an unfair labor practice if he makes a pre-election speech on company time and premises to his employees and denies the union's request for an opportunity to reply...or when anti-union statements are made by management representatives to individual employees at their respective work stations...[Potter added several more examples of employers' legally permitted anti-union campaign tactics against workers' organising]. *These are all forms of interference with organizing, but are lawful under the NLRA...[S]uch employer "free speech" and other acts of interference permitted under the NLRA would be illegal under Convention No. 87.*[41]

Similarly, employers in the United States often point to their private property rights to exclude union representatives from the workplace, as IKEA has done in its U.S. stores. Employers enjoy total, one-sided control of communications for hours each day. They are free to force workers into captive-audience meetings or force workers to sit down alone with supervisors to listen to anti-union speeches and watch anti-union videos. But trade unions and union advocates inside the workplace have no corresponding right to communicate with employees inside the workplace. Pro-union employees can distribute materials and speak with co-workers, but only during lunch and break periods in non-work areas.

The imbalance in workers' opportunities to hear from unions was locked into law by the U.S. Supreme Court. Deciding that private property ownership rights are superior to workers' associational rights, the Court ruled in 1992 in the well-known *Lechmere* case that workers have no right to hear from trade union advocates on employer-owned property, even in ways that do not interfere with operations. In that case, in which retail store workers sought to hear from UFCW representatives, the property in question was not even the workplace. It was merely a publicly accessible parking lot at a commercial shopping centre.[42]

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[40] See Edward E. Potter, *Freedom of Association, the Right to Organize and Collective Bargaining: The Impact on U.S. Law and Practice of Ratification of ILO Conventions No. 87 and No. 98* (1984), at 43 (emphasis in original), citing International Labour Conference, *Record of Proceedings*, 32d Sess. 306, 470 (1949).

[41] *Id.*, at 43-44 (emphasis added).

[42] See *Lechmere, Inc. v. NLRB*, 502 U.S. 527 (1992).

This does not mean that IKEA could not allow access to the workplace for employees to hear from union representatives. Indeed, some companies voluntarily agree with unions to permit access to the workplace in advance of an NLRB election, as well as agreeing to complete employer neutrality and non-interference.[43]

IKEA's invocation of property rights to deny equal opportunity for workers to hear from union representatives inside the workplace is a clear violation of ILO norms, which require "access of trade union representatives to workplaces, with due respect for the rights of property and management, so that trade unions can communicate with workers, in order to apprise them of the potential advantages of unionization."[44]

Features of U.S. law contrary to ILO norms do not give employers a free pass to violate international standards without accountability, using the excuse that they are not violating U.S. law. U.S. law *permits* employer interference with workers' organising through captive-audience meetings, predictions of terrible consequences if workers form a union, threats to permanently replace workers who strike, and other hallmarks of IKEA's anti-union campaign. U.S. law permits IKEA to deny employees the right to hear from union representatives inside the workplace. But it does not *require* any of this. Employers can abstain from such interference without running afoul of U.S. law.

In sum, we are not asking the Netherlands NCP to consider whether IKEA has violated U.S. law. The issue is whether IKEA's conduct is consistent with its obligations under the Guidelines. Multinational firms in the United States can fulfil their obligations under the Guidelines by adhering to international standards on workers' freedom of association, and they will still be in full compliance with U.S. law. Indeed, there are many examples in the retail sector in the United States where companies uphold international standards and are in full compliance with U.S. law.[45]

VI. IKEA'S RESPONSIBLE BUSINESS CONDUCT POLICY

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[43] See, for example, David Bacon, "Unions Come to Smithfield," *The American Prospect*, December 17, 2008 (noting "the union and the company agreed to an election procedure that workers and organizers felt would keep Smithfield from using the old bare-knuckle tactics. The union won the right to access the plant premises, and organizers were able to walk the halls themselves and to sit in the lunchrooms and talk with workers, explaining the potential benefits of unionization").

[44] See ILO Committee on Freedom of Association, *Complaint against the United States,* Case No. 1523, Report No. 284 (1992).

[45] See, for example, Veronique Hyland, "Zara Workers Are Forming a Union in New York City," *The Cut* (fashion industry publication), August 1, 2016, at http://nymag.com/thecut/2016/08/zara-workers-unionize-in-new-york.html (noting that "the fashion brand's Spanish parent company Inditex didn't oppose the move. 'This is a normal consequence of our commitment regarding the rights of freedom of association worldwide,' said a spokesperson."; Daniel Massey, "Retailer H&M agrees to union deal," *Crain's Business*, May 26, 2009 (noting "the Swedish clothing giant agreed not to interfere in the campaign and to recognize the union if a majority of workers signed cards. About 70% of them signed").

A. The IWAY Claims

IKEA's conduct not only breaches its obligations under the OECD Guidelines. It also evinces a shocking hypocrisy in its failure to comply with the company's own claimed social responsibility principles requiring adherence to ILO core standards and other international norms.

IKEA's heralded "IWAY" code of conduct purports to set "minimum requirements for environmental and social & working conditions." The code states:

> The IKEA Way...is based on international conventions and declarations. It includes provisions based on the United Nations Universal Declaration of Human Rights (1948), the International Labour Organisation Declaration on Fundamental Principles and Rights at Work (1998), and the Rio Declaration on Environment and Development (1992)...[46]

IKEA's "Sustainability Strategy for 2020" is clear on international standards to which it pledges adherence, namely the ILO Declaration on Fundamental Principles and Rights at Work, the Universal Declaration of Human Rights, and the UN Guiding Principles on Business and Human Rights:

> Our vision is to create a better everyday life for the many people. We are committed to having a positive influence on people's lives across our value chain; supporting positive economic, social and environmental development, promoting equality and an placing respect for human rights at the centre of what we do by:
>
> - Continuing to use the UN Guiding Principles of Business and Human Rights [sic], working to promote its implementation across our value chain...
>
> - Using the ILO Fundamental Principles of Rights at Work [sic] to have a positive impact on people's working conditions and respect labour rights...
>
> - The UN Universal Declaration of Human Rights is a common standard for all people. At IKEA, we will have this constantly in mind, promote and observe the respect for these rights throughout the scope of our business with the guidance of the 2011 UN Guiding Principles for Business and Human Rights [sic].[47]

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[46] See IKEA "IWAY Standard" at https://www.ikea.com/ms/en_SG/pdf/IWAY_Standard_Ed_5-2.pdf.

[47] See "People and Planet Positive: IKEA Group Sustainability Strategy for 2020," at http://www.ikea.com/ms/en_US/pdf/reports-downloads/sustainability-strategy-people-and-planet-positive.pdf.

The Universal Declaration of Human Rights declares that "everyone has the right to freedom of peaceful assembly and association" and "everyone has the right to form and to join trade unions for the protection of his interests."[48] IKEA should live up to this commitment by halting its caustic anti-union campaigns in company stores and allowing workers to hear from UFCW representatives at work about trade union formation and collective bargaining.

B. "Great Relationship with the Unions" – But "Union Avoidance" Law Firms

Another marker of IKEA's failure to live up to its professed belief in workers' freedom of association and trade union rights can be seen in a recent recruiting notice for a senior human resources position. The notice was posted May 22, 2018 seeking a Human Resources manager at its global communications headquarters in Älmhult, Sweden. The notice stated that the candidate selected for this position would "reach out to the whole world" in an assignment that includes:

- Acting as a good example of IKEA leadership in ways that express the IKEA values and together with the manager's help to safeguard and promote the IKEA Culture

- Ensuring that all areas at ICOM [IKEA Communications] work with the labour relations principles and uphold local policies, procedures and laws

- Responsibility for union negotiations *and that we are maintaining a great relationship with the unions.*[49]

In the United States, however, IKEA fiercely opposes trade union organisation in its stores. No IKEA store employees in the United States exercise the right to collective bargaining with IKEA. IKEA has also departed from the norm of healthy labour relations in other European countries, particularly Ireland and Portugal, as this complaint has explained.

Underscoring the contradiction with "maintaining a great relationship with the unions" in its recent recruiting notice, IKEA has engaged the services of not one, not two, but three of the most prominent anti-union law firms in the United States. These law firms are notorious among labour advocates as "union-busters:" Ogletree Deakins, Littler Mendelson, and Jackson Lewis.

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[48] Universal Declaration of Human Rights, Articles 20, 23.

[49] See IKEA, "HR Manager Älmhult, Sweden," job recruitment posted May 22, 2018, at https://www.smartrecruiters.com/InterIKEAGroup/743999670812384-hr-manager and several other Internet job posting sites (emphasis added).

Ogletree Deakins, the firm advising IKEA at the Stoughton, Massachusetts store, touts its "extensive experience representing management in union representation campaigns" and expertise in "maintaining union-free status."[50]

A partner at the Little Mendelson firm appointed to the National Labor Relations Board in 2017 listed IKEA North America as one of his recent clients.[51] The Littler Mendelson firm brags about "serving employers as a strong counterpoint to the world's most powerful labor organizations," and emphasizes its "union prevention" methods for "maintaining a union-free workplace...by helping employers "detect early warning signs of organizing activities, and minimize the risk of organizing campaigns."[52]

Littler Mendelson also says it specializes in retail sector anti-union advice: "Littler has decades of experience counseling retail clients regarding union avoidance and performing comprehensive training for managers on union avoidance... We have tailored our union avoidance and anti- harassment and performance management training for supervisors to be directly relevant to retail clients, and are always able to modify and hone a particular program for specific retail needs."[53]

The Jackson Lewis law firm likens its anti-union campaign strategies to warfare, making a play on words of the well-known saying that "war is hell." In a promotional brochure titled "War is Hel...pful" the firm says

> Everybody knows a key element of any union avoidance strategy is to ensure your supervisors are fully trained regarding their wide ranging rights to communicate with employees about the union. But, here's an even more effective approach. Take your training to the next level with union avoidance "war games" training. War games training takes participants through a "mock" real life 100-day union organizing campaign. Participants learn about and experience first-hand the battlefield conditions of union organizing... Now more than ever, prepared and confident supervisors and managers are a vital component of your union-free strategy. Jackson Lewis attorneys in our 20 offices across the country are available to conduct "war games" training for your supervisors and managers.[54]

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[50] See Ogletree Deakins, "Traditional Labor Relations Practice Group" brochure, at https://ogletree.com/practices/~/media/e3da550c380447bc895a294bf123701b.ashx.

[51] See letter of William J. Emanuel, NLRB member, to Senator Elizabeth Warren, November 21, 2017, at https://www.warren.senate.gov/files/documents/2017_11_21_Letter_to_Senator_Warren_from_Member_Emanuel_re_Ethics_Obligations.pdf.

[52] See Littler Mendelson, "Labor-Management Relations" web page, at https://www.littler.com/practice-areas/labor-management-relations.

[53] See Littler Mendelson, "Practice Areas: Retail" web page, at https://www.littler.com/practice-areas/retail.

[54] See Jackson Lewis, "War Is Hel..pful: Union Avoidance Training," at https://www.jacksonlewis.com/resources-publication/war-helpful-union-avoidance-training.

VII. A FINAL NOTE ON IKEA'S FAILURE OF DUE DILIGENCE

For years before the 2016-17 events in Massachusetts, trade union representatives warned IKEA global management about American-style anti-union campaigns and how they violate OECD Guidelines and other international norms. The trade unionists asked management for an agreement not to permit their U.S. stores to engage in such activity. In the ensuing dialogue, IKEA played a cat-and-mouse game with the unions, hinting that global management would take steps to fulfil their due diligence obligations and halt local management's aggressive anti-union behaviour – but never delivering on these intimations.

In weeks before the June 2016 union election in Massachusetts, union representatives repeatedly told IKEA global management about the aggressive anti-union conduct of store managers and supervisors. Here is an example:

> IKEA managers in Stoughton have held meetings with workers every single day since the 25th of May. From my email on Saturday and yesterday's conversation you are aware of the theme of "losing what you have in bargaining". In addition to that they have talked about strikes and told workers that they will be permanently replaced if they strike. Stoughton management are pulling together small groups and are creating fear.
>
> Following our exchange and your assurances it really is a bad surprise to me what's happening. It definitely feels like managers are expanding the talking points they have received to express their own opinion in order to frighten workers.
>
> From my point of view this clearly violates your co-worker principles and it certainly does not sit within the assurances you have given.
>
> Unless this behavior by local managers is immediately and explicitly corrected so that workers understand clearly that they were misinformed and that they are invited to actively participate in the vote without fear from losing anything or being threatened with dismissal we must expect that UFCW will file a ULP case with the NLRB.

In a follow-up e-mail the same day, UNI told IKEA global management:

> Stoughton management have held obligatory meetings every day since May 25 on the union election. Co-workers were told that if they did not attend or left the meeting earlier they would be disciplined and dismissed as those meetings were obligatory.

> Co-workers were shown a PowerPoint presentation which compared the choice to vote for a union with choosing where to go for your dream summer vacation.
>
> As mentioned previously management suggest that there was a risk that co-workers would lose existing benefits such as healthcare or paid vacation. Finally the presentation ended with a union-free IKEA being shown as your vacation paradise while the choice to have union representation was illustrated with a donkey with a stick in its mouth next to a small wooden hut.
>
> Since the same presentation was used in all meetings this is obviously something that was approved by higher level management.
>
> Albert, there is so much that is wrong with the process in Stoughton that I do not even know where to begin. Threats of dismissal for not attending a captive-audience meeting aimed at bashing the union, threats about the loss of existing benefits and thus the creation of a climate of uncertainty and fear are straight out of the US anti-union handbook.
> It certainly is clear to me that IKEA global management is having difficulties ensuring that the assurances you gave about free and fair elections are actually abided by.
>
> This is risking to turn really nasty which is what we tried to avoid by agreeing a process and language together. I have informed the UNI IKEA Alliance Steering Committee of the latest developments and we are in consultation about possible steps.
>
> I very much hope that you will be able put a stop to this immediately and that together with Lars Peterson you will be able to correct the information clearly and explicitly.[55]

In breach of its due diligence obligations, IKEA global management failed to act on this information. Indeed, throughout the entire course of workers' efforts to form a union at the Stoughton store, IKEA failed to carry out risk-based due diligence to identify actual and potential adverse impacts on workers' freedom of association; failed to avoid causing or contributing to adverse impacts on workers' freedom of association; and failed to prevent or mitigate adverse impacts on workers' freedom of association that are directly linked to their operations. IKEA's failure is contrary to the requirement articulated in the most recent OECD Guidance that "where an enterprise is causing or contributing to an adverse impact on RBC issues, it should always stop the activities that are causing or contributing to the impact."[56]

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[55] E-mails from Alke Boessiger, Head of Commerce Department, UNI Global Union to Albert Martens, IKEA Global Manager of Co-Worker Relations, both June 1, 2016.

[56] See OECD *Due Diligence Guidance for Responsible Business Conduct* (May 30, 2018), at 17.

VIII. CONCLUSION: NCP GOOD OFFICES

IKEA's actions in the Massachusetts anti-union campaign and the company's conduct with respect to workers' rights in Ireland and Portugal, and the failure of due diligence by global management in the Netherlands, are contrary to the recommendations contained in the Guidelines and are the antithesis of a "positive approach" and "open attitude" toward workers' exercise of the right to freedom of association promoted by the OECD Guidelines.[57] The issues raised here are bona fide and merit further consideration by the NCP.

We now seek the good offices of the Netherlands NCP to bring together UNI, the UFCW, and other signatory trade unions with IKEA global management in a mediation process that can resolve these conflicts and create conditions for employees to exercise their right to freedom of association and collective bargaining in a climate free of fear and intimidation in all three countries mentioned: Ireland, Portugal, and the United States.

In place of the ineffective remedies available in the U.S. labour law system, a truly effective remedy would be a genuine and binding agreement on the part of the company not to interfere in the representation process with anti-union captive-audience meetings, threats of permanent replacement and other tactics used to thwart workers' organising rights in the 2016 election. Again, such agreements are perfectly legal and permitted in the United States, and indeed are often made by responsible employers exercising due diligence.[58] The future agreement would need to make reference to effective remedies in the case of non-compliance.

We have provided a copy of this Specific Instance to IKEA global management and understand that you will as a matter of course convey it to IKEA as well. See below for the names and contact information of IKEA officials to begin communication with the company.

Thank you for your consideration in this matter.

Yours truly,

Christy Hoffman, General Secretary
UNI Global Union

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[57] See *supra*, note 6.

[58] For extensive discussion on this point, see James J. Brudney, "Neutrality Agreements and Card Check Recognition: Prospects for Changing labour Relations Paradigms," *Working Paper*, American Constitution Society for Law and Policy, February 2007, at https://www.acslaw.org/sites/default/files/Brudney_-_Prospects_for_Changing_Labor_Relations_Paradigms.pdf; Adrienne E. Eaton & Jill Kriesky, "Employer Motivations for Negotiating Neutrality and Card Check Agreements," in *Justice on the Job: Perspectives on the Erosion of Collective Bargaining in the United State,* R. Block et al., eds. (Upjohn Press, 2006).

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IKEA in the USA

Information for the Swedish Commercial Workers Unions, HK Handels and Unionen

In the United States, IKEA operates 43 stores employing approximately 15,000 workers – the most in any country, other than Germany. Several years ago, the employees of the Goods Flow Department at the IKEA store in Stoughton, Massachusetts asked to have the United Food and Commercial Workers (UFCW) represent them for collective bargaining purposes.

In May 2015, the National Labor Relations Board (NLRB), the federal administrative agency responsible for compliance with the National Labor Relations Act (NLRA), issued a legal complaint against IKEA for having broken that law. The complaint indicated that IKEA had:

- Interrogated employees who expressed interest in authorizing the UFCW to represent them
- Repressed their right to protest or criticize IKEA management
- Prohibited their right to wear union buttons or other insignia
- Prohibited their right to use IKEA information systems on non-working time to communicate with one another about the union
- Repressed their right to discuss and compare their pay and working conditions with one another

Before the trial, IKEA entered into a settlement agreement with the NLRB on September 10, 2015. This settlement was posted in the Stoughton workplace, but also included a non-admissions clause from IKEA, where they refused to admit they broke the law.

In May of 2016, after IKEA's Global Labor Relations Director assured the UNI Global Union that they would remain neutral, the UFCW filed an NLRB representation election petition on behalf of IKEA's Stoughton workers. In response, IKEA USA management launched an aggressive anti-union campaign.

The election was set for June 27, 2016 by the NLRB. In the five weeks leading up to the vote, IKEA held more than 25 meetings with workers, each lasting up to two hours, in which management told them there would be dire consequences if they voted to join the UFCW. IKEA required its workers to attend these meetings and listen to the anti-union message under threat of discipline or discharge. The UFCW was not permitted to come on the work premises and present any response or rebuttal.

Continued on the next page

Unsurprisingly, the anti-union messaging and meetings had a chilling effect and the vote to unionize failed. But on February 7, 2017, the NLRB invalidated the results, finding that IKEA had made a free and fair election impossible by using the following illegal tactics:

- Said collective bargaining would be useless for employees
- Prohibited an employee from photographing anti-union presentation slides that were shown in captive audience meetings
- Offered three hours' worth of pay to off-duty employees to ensure they could vote in the election

On March 7, 2017, the NLRB found that until the damage from IKEA's interference is remedied legally, specifically citing the false statements about collective bargaining being useless to workers, a new election could not move forward fairly at the Goods Flow Department at the Stoughton store.

On March 31, 2017, the NLRB issued yet another legal complaint against IKEA for making these false statements about collective bargaining and for prohibiting a Stoughton employee from taking pictures of the anti-union presentation slides. IKEA will be tried in September of 2017 on these charges.

IKEA's anti-union actions in the U.S. not only violated U.S. law and its pledge to the UNI Global Union, but also the principles on which IKEA has built its reputation upon. IKEA workers in the United States who wish to organize a union should be able to do so without the anti-union interference the Company practiced in Stoughton. IKEA can and should do much better by its employees in the United States.