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Commentary



Suspension of Employment Contracts during Cutbacks: *FITH v. Honduras*

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Introduction

On 22 April 2014, the Independent Workers' Federation of Honduras (FITH) filed a complaint against the government of Honduras to the Committee on Freedom of Association (CFA) of the ILO alleging anti-union discrimination as well as an attempt by police and military personnel to break into the FITH head office.

According to FITH, from 1 April to 29 July 2014, the employment contracts of 1,972 workers at the Ministry of Infrastructure and Housing were suspended. These contracts included those of fifty-five officials and delegates of the Union of Public Workers and Employees at the Ministry of Public Works, Transport and Housing. FITH also alleges that police and military personnel attempted during an audit to break into the FITH head office to seize documentation belonging to the union.¹

The government of Honduras sent its observations to the CFA on 30 September 2014, asserting that in the dismissals union members were not hit any harder than other workers. It explained that the state apparatus was reengineered to tackle the financial crisis, that a number of institutions were abolished and that others were merged or regrouped. In the ministries that employed temporary staff, the competent body was asked to suspend

¹ CFA Case no. 3077 (Honduras), 374th Report of the Committee on Freedom of Association, GB 323rd Session, Geneva, 12–27 March 2015, 111–112.

individual employment contracts in accordance with related law and international treaties. By 30 July 2014, most of the workers whose contracts had been suspended had resumed their work.²

The CFA concluded that the suspension of the contracts was a general measure affecting thousands of workers, whether union members or not. Regarding the allegations concerning an attempt by police and military personnel to break into the head FITH office, the CFA invited the complainant organization to provide more detailed information.³

Analysis

A consultancy study conducted in 2014 established that in January 2014 the Ministry of Infrastructure and Public Services (INSEP) had a total of 4,679 employees. Just over 78 percent of those employees were concentrated in three departments, the Directorate-General for Highways, the Central Activities Unit, and the Directorate-General for Transport, most of them on daily contracts. On the basis of the study, INSEP submitted a request to the Ministry of Labour and Social Security (STSS) to suspend the 1,972 individual employment contracts. The suspension was effective from 1 April to 29 July 2014. According to the government, almost everyone suspended could return to work after this period.⁴

The CFA noted that, according to the government of Honduras, the financial crisis was the reason the contracts were suspended. The measure was a general one affecting thousands of workers, whether union members or not, and therefore does not entail anti-union discrimination. If, nevertheless, problems in the employment sphere were present, the situation is outside CFA competence. The CFA emphasized the importance of dialogue between and consultation of the public authorities and the most representative occupational organizations of the sector involved. The CFA can only assess restructuring measures insofar as they might have given rise to acts of discrimination or interference against trade unions.

The CFA regretted that the government did not consult or try to reach an agreement with the trade union organizations. It cannot be concluded from the government information submitted to the CFA that such a consultation took place. The CFA therefore requested the government, in the future, to

² Ibid., 112.

³ Ibid., 112–113.

⁴ Ibid., 112.

respect the principles of consultation of trade union organizations on matters that affect the interests of their members and to consult them in particular in regard to the consequences of programs for any restructuring of employment or rationalization of working conditions for salaried employees.⁵

The CFA also regretted the vagueness and lack of precision of the allegations concerning an attempt by police and military personnel to break into the FITH head office and invites FITH to submit more detailed related information.

On this basis, the CFA asked the ILO governing body (GB) to approve the following recommendations: the CFA requests the government to respect, in the future, the principle of consultation of trade union organizations on matters that affect the interests of their members and invites the complainant organization to provide more detailed information about the attempt by police and military personnel to break into the FITH head office.⁶

In its 345th session, the GB examined the case.⁷ The government of Honduras submitted further information on 30 April 2015 in response to the recommendations. First, it emphasized again that the suspension of contracts was temporary and necessary and that INSEP maintains ongoing communication with trade union organizations on matters that affect the interests of their members. In regard to the attempted break-in, the government stated that anti-union persecution is not a state policy. It does not know about an attempt by police and military personnel to break into the complainants' head office. Given the vagueness of the complaint, the government—like CFA—invited the union to provide more detailed information.

The CFA observed that FITH has not provided any such information. In these circumstances and because it has not received information from either the government or the complainant since 2015, the CFA considers this case closed.⁸

Conclusions

The Committee of Freedom of Association is a standing committee of the ILO, set up in 1951 for the purpose of examining complaints of violations of freedom of association, regardless of whether the country concerned has ratified the relevant Conventions. Complaints may be brought against a member State

⁵ Ibid., 112–113.

⁶ Ibid., 113.

⁷ CFA Case no. 3077 (Honduras), 399th Report of the Committee on Freedom of Association, GB 345th Session, Geneva June 2022, 9.

⁸ Ibid., 9.

by employers' and workers' organizations. In the case described, the complaint was filed by the Independent Workers' Federation of Honduras against the government of Honduras. Honduras has ratified the Freedom of Association and Protection of the Right to Organise Convention (Convention No. 87) and the Right to Organise and Collective Bargaining Convention (Convention No. 98).

The CFA establishes the facts in dialogue with the government concerned. If the CFA finds that a violation has occurred, it issues a report through the Governing Body and makes recommendations on how the situation could be remedied. Governments are subsequently requested to report on the implementation of its recommendations. In the current case, the CFA made two recommendations in 2015, one to the government of Honduras and one to the union. Their follow-up was examined in 2022.

The CFA does not formulate general conclusions concerning the trade union situation in a country, but evaluates specific allegations regarding compliance with Conventions Nos. 87 and 98. Entirely in line with the vision of the ILO, the object of the CFA is not to criticize governments, but to engage in a dialogue to promote compliance with the principles of freedom of association and to strive for consensus and mutual understanding.⁹ That means that the CFA *requests* the Honduran government to respect the principle of consultation of trade unions, in particular with regard to the consequences of restructuring programs, the main target of this complaint.

To ensure that the CFA receives a complaint, certain conditions have to be met. One is that the allegation in the complaint is set out clearly and supported with evidence.¹⁰ In the CFA's view, FITH's allegations of a break-in were vague and unsubstantiated. FITH stated only that "in the context of an audit" of the Ministry of Labour and Social Security "involving the High Court of Auditors," police and military personnel attempted to break into the FITH head office to seize "all the documentation belonging to the union."¹¹ FITH did not respond to the CFA's recommendation or the Honduran government's invitation to provide more detailed information. That led the CFA in 2022 to the decision to close the case.

9 The Rules of the game, 114, https://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_672549/lang-en/index.htm, last visited 13 March 2023.

10 Ibid., 115.

11 CFA Case no. 3077 (Honduras), 374th Report of the Committee on Freedom of Association, GB 323rd Session, Geneva 12–27 March 2015, 112.

It remains unclear why the labor contracts could be reinstated after the 1 April to 29 July 2014 period, given the need for cutbacks, but the CFA does not step outside its mandate: it only assesses possible discrimination against union members in the measures taken.