

Complaint to the Swedish National Contact Point for the OECD Guidelines for Multinational Enterprises

Company concerned: AB Electrolux

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1. Summary

Swedwatch is a voluntary association and non-partisan research organisation which aims to reduce social and environmental anomalies connected with the activities of Swedish corporations in developing and low-income countries.¹ Eighty percent of Swedwatch's activities are financed by the Swedish International Development Authority (SIDA) with the remainder provided by other income. The following organisations are members of Swedwatch: the Church of Sweden, the Swedish Society for Nature Conservation (SSNC), Fair Trade Center, Latin America Groups of Sweden (LAGS), Africa Groups of Sweden (AGS) and Diakonia. With this complaint, Swedwatch requests the Swedish National Contact Point (NCP) to investigate whether or not Electrolux complies with the OECD's Guidelines for Multinational Enterprises in their actions in a case concerning their subsidiary in Thailand.

The complaint is being made to the Swedish NCP given that Electrolux Thailand is a wholly owned subsidiary of Electrolux AB, which has its headquarters in Sweden, thus allowing the Swedish NCP authority to consider the case.

This complaint is based, in part, on a report by *GoodElectronics Thailand*.² GoodElectronics Thailand is a network of labour rights groups in Thailand that aim to increase sustainability in the Thai electronics industry, with a particular focus on labour rights. GoodElectronics Thailand is a branch of the GoodElectronics Network. The GoodElectronics Network accommodates networks, organisations and individuals that are concerned about human rights, including labour rights, and sustainability issues in the global electronics supply chain. The GoodElectronics Network is hosted by the Dutch research centre SOMO in Amsterdam, the Netherlands.³ The report by GoodElectronics Thailand is based on interviews conducted with employees at the Electrolux factory in Thailand.

All sources are listed as attachments to this complaint. Other sources and references forming the base of the complaint include a translated version of Thai court proceedings, a statement by Electrolux concerning the incident in Thailand, contact with IndustriALL in Thailand, other documentation from GoodElectronics in Thailand and national legislation and international conventions and frameworks.

The framework to which the complaint refers is comprised of Thai law, the OECD Guidelines for Multinational Enterprises, the UN framework Protect Respect Remedy and the core conventions of the International Labour Organisation (ILO).

The complaint accounts for the background and significant events in the case.

These events show that Electrolux in Thailand has acted in contravention of the OECD's guidelines on four points. The company has:

1. Removed and immediately suspended the chairperson of the local trade union.

¹ <http://www.swedwatch.org/sv>.

² GoodElectronics Thailand, *Violations of Freedom of Association and Collective Bargaining at Electrolux Thailand*.

³ <http://goodelectronics.org>

2. Encircled protesting workers with barricades and prevented them from leaving the site of the factory.

3. Filed a lawsuit against eight suspended members of the local trade union in court with the aim of terminating their employment.

Furthermore, Electrolux promised that the suspended union members would be able to return to work and the company's lawsuit against the eight union members would be withdrawn at the initial meeting with the court on March 29th. This promise was however not upheld, and instead, a new hearing was scheduled for June 5th.

4. Terminated all workers who had participated in the protests.

These actions violate the guidelines in Chapters II (General Policies), IV (Human Rights), and V (Employment and Industrial Relations).

2. Background

Electrolux AB is a Swedish home electronics company with headquarters in Stockholm, Sweden. The company operates in over 50 countries, including Thailand where it employs approximately 1000.⁴ A number of events occurred at the end of 2012 and beginning of 2013 at the company's factory in the Rayong province in Thailand, which has resulted in this complaint.

The Thai National Salary Committee decided on October 10th 2012 that the daily minimum wage in the entire country should be raised to 300 Baht. In the Rayong province, where Electrolux has its factory, this constitutes an increase in the daily minimum wage of 14%, from 264 to 300 Baht. Earlier in the year, in April 2012, a salary increase from 189 to 264 Baht per day was implemented. Thus during a period of six months, the minimum wage had increased from 189 to 300 Baht per day. Previously, employees received an annual increase.

This sharp increase in the minimum wage meant that new employees not only received a better entry-level salary, but also a salary that was at the same level as employees that had worked at the factory for many years. This meant that workers with longer experience and more qualifications had, in principle, the same salary as newly-employed, inexperienced employees.

The employees at Electrolux in Thailand asked their trade union representatives to take up the issue with the company's management. Negotiations between the union and the management were held in December 2012, after which Electrolux announced that there was no financial resources to adjust salaries based on seniority.

3. Chain of events

Following subsequent meetings in January 2013, it was decided that an information meeting would take place on January 11th, at which the company management would present the salary packages for 2013. One of the issues to be raised at the meeting concerned in what way salaries would be adjusted as a result of the increase in the minimum wage. All employees were invited to this meeting by the company management. The meeting was held at the factory and the management presented

⁴ <http://group.electrolux.com/en/employees-by-country-994/>.

the company's yearly bonus system for the employees. However, nothing was mentioned about the revision of salary levels. According to information from Electrolux, 920 employees participated in the meeting.

The chairperson of the local trade union wondered why the issue of revision of salary levels was not brought up. Following a few minutes of discussion, the chairperson was removed from the meeting venue, accused of initiating an illegal strike and thereafter informed that he had been suspended with immediate effect. The chairperson was then placed in a company car and driven away from the factory site.

When the other employees shortly thereafter were informed of the suspension of the trade union chairperson, the workers became agitated and refused to return to work until the suspension of the chairperson was rescinded. The management asked staff to return to work, however a group of employees decided to initiate a protest demonstration outside of the factory building instead. According to information from Electrolux, 98 out of the 920 employees present chose to participate in the demonstration. Shortly after the demonstration began, security guards from the security company which Electrolux uses at the factory cordoned off the area where the demonstration was being held with security line tape. The workers were not allowed to leave the cordoned-off area or even approach the tape, thus confining them outside on the premises of the factory, outside of the factory building itself.

Among the confined protestors were two pregnant women. At lunchtime, the workers were prevented from leaving the area, even in order to obtain food. Other workers not participating in the demonstration were also prevented by the security guards from approaching the cordoned-off area when trying to provide food for the confined workers.

During the afternoon, a representative from the Thai Department of Labour Protection and Welfare arrived. The workers were still being held within the cordoned-off area. Following a separate discussion of the situation with the company management, the management informed the protesting workers that theirs was an illegal strike and, given that the workers refused to return to work, their contracts were now being terminated. Among the protesting workers were eight members of the local union, who were in accordance with Thai law suspended instead of having their contracts terminated as trade union members are protected from termination in such instances. According to information from Electrolux, 90 workers were terminated and eight trade union members were suspended. Information from GoodElectronics states, however, the figures were 129 fired workers, of which eight were suspended.

Following negotiations and pressures from Swedish and international trade unions, Electrolux has agreed that the terminated workers should have the possibility to apply to be reinstated within the company. The eight union members initially received a verbal assurance that they would be allowed to return to work, but Electrolux Thailand simultaneously initiated a legal process to determine if the union members could have their employment terminated. On February 19th 2013, Electrolux Thailand filed a lawsuit against the suspended union members in a Thai court, in order to remove the suspensions and have their contracts terminated instead. An initial court hearing took place on March 29th 2013, which only resulted in delaying the hearing until June 5th.

In previous contacts between Swedwatch and Electrolux, the above information has been denied to a certain extent, but a portion of the chain of events has been confirmed by the head office. Broadly speaking, Electrolux's arguments in its defence are that the workers conducted an illegal strike and, for security reasons, they were to be held outside of the factory. According to Electrolux, the employees were requested on numerous occasions to return to work, but after several hours, their contracts were terminated. Electrolux claims that they only cordoned-off the area in order to prevent the protests from taking place within the factory itself, but that no one was prevented from leaving the factory premises.

Attempts at negotiations were made by representatives of Electrolux AB and IF Metall, who arrived in Thailand to find a solution to the situation. As described above, Electrolux subsequently agreed to offer the possibility for reinstatement of terminated employees. As of today, 14 workers have been rehired and 32 applications have been received, though, they have not yet been processed. According to information from GoodElectronics in Thailand, those workers that have been offered reinstatement have lost previous benefits obtained by seniority and all workers must now complete a trial period of employment for 119 days.

In addition, the company has still not allowed the eight suspended union members to return to work. As previously mentioned, the company has initiated a legal process against these suspended representatives of the trade union. The result of the mediation process has thus far been unsatisfactory and has not led to any significant results. In verbal agreements with IF Metall and IndustriALL in March, Electrolux has promised that the suspended union members would be able to return to work and the company's lawsuit against the eight union members would be withdrawn at the initial meeting with the court on March 29th. This promise was however not upheld, and instead, a new hearing was scheduled for June 5th. Due to this and the fact that there are diverging versions of the chain of events, as well as question marks surrounding the low number of applications and the company's delays in rehiring, it is Swedwatch's position that the NCP should consider the issue and conduct an investigation.

Swedwatch also notes that Good Electronics, which has been engaged in the case of Rayong for an extended period of time, has been, largely, ignored by Electrolux in its attempts in contacting and conducting a dialogue with the company.

4. Relevant Provisions in the Guidelines of the OECD

Swedwatch expresses concern over the actions of Electrolux during the events at the factory in Rayong on January 11th 2013, as well as how the company has chosen to proceed with the court case. To remove and immediately suspend the chairperson for the local trade union, detain protesting workers against their will, terminate nearly a hundred employees and, moreover, conduct legal proceedings in order to terminate additional union representatives which participated in the demonstration is not compatible with OECD Guidelines for Multinational Enterprises, nor the international framework agreement which Electrolux has signed.

The following actions by Electrolux are in contravention of the OECD Guidelines:

1. Removing and immediately suspending the chairperson of the local trade union.

2. Encircling protesting workers with barricades and preventing them from leaving the site of the factory.

3. Filing a lawsuit against suspended members of the local trade union in court with the aim of terminating their employment.

Furthermore, not upholding the promise to withdraw the lawsuit on March 29th and instead schedule a new hearing for June 5th.

4. Terminating all workers who had participated in the protests.

The following provisions of the OECD Guidelines are relevant to the case:

Chapter V. Employment and Industrial Relations

The Introduction to this chapter in the OECD Guidelines refers to “applicable” law and “applicable” international labour standards. According to the commentary on Chapter V., Paragraphs 47 and 48, this is explained by meaning that, multinational enterprises may need to follow provisions on employment and industrial relations on both the national and international level, when they are active within the jurisdiction of a certain country. The International Labour Organization (ILO) is the body with the authority to determine and develop international standards on working conditions and to support fundamental rights in employment, in accordance with the 1998 Declaration on Fundamental Principles and Rights at Work.⁵ The Guidelines of the OECD should be read in the light of the relevant provisions of the 1998 Declaration and the 1977 Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, which was last revised in 2006 (The ILO Declaration on Multinational Enterprises).⁶

Chapter V., Paragraph 1. a)

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards:

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

According to the commentary on this provision, point 51, establishes that the Guidelines should reflect all the fundamental principles and rights at work, such as the right to association and the right to collective bargaining, covered by the ILO Declaration from 1998 on Fundamental Principles and Rights at Work and its Follow-Up.⁷

These fundamental rights are further regulated in the eight Core Conventions of the ILO. In this case, ILO Convention 98 the Right to Organize and Collective Bargaining Convention⁸ is of relevance. Article 1:1 establishes that employees shall be protected from anti-union activities. Furthermore, Article 1:2 p. b) explains that this concerns actions such as termination of employment or other forms of discrimination because union membership or participation in the activities of trade unions.

⁵ <http://www.ilo.org/declaration/lang--en/index.htm>.

⁶ http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf.

⁷ <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>.

⁸ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C098.

To physically remove and immediately suspend the chairperson of the local union organisation because he poses questions regarding the salaries of employees at an information meeting on salary packages, and to conduct legal proceedings against other union members participating in the demonstration in order to seek the termination of their contracts, is to be regarded as anti-union activities. The actions taken by the company obstructs the right of organization and can lead to a situation where workers at the factory decline to participate in union activities out of fear of being fired or otherwise being discriminated against by the employer.

Chapter V., Paragraph 3

Enterprises should:

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

To physically remove and immediately suspend the chairperson for the local trade union because he poses questions at an information meeting cannot be considered promoting consultation between employers and workers. The entire chain of events that followed was caused by this action and the ensuing conflict between Electrolux and the employees that followed has negatively impacted the workers due to their loss of wages. The situation could have been avoided if Electrolux had given sufficient information to the employees, answered questions at the information meeting and managed the situation through dialogue instead of physically removing the union chairperson.

According to Paragraph 55 of the ILO Declaration on Multinational Enterprises, companies should provide information contributing to meaningful dialogue, as well as provide information that gives a clear picture of the company’s financial situation – something which is decisive for negotiations between parties. The company should be able to manage employees posing questions regarding salary revisions at an information meeting concerning their salary packages through dialogue and the provision of information, rather than allowing the situation at the meeting to escalate in such a way as occurred on January 11th in Rayong.

Furthermore the decision to terminate the employment of all of the workers who participated in the demonstration does not indicate that the company follows the principle to “Promote consultation and co-operation between employers and workers...”. A written warning would have been sufficient. Even if the demonstration can be considered an illegal strike, as Electrolux claims, the termination of all participating employees’ contracts without first issuing a written warning is an altogether too far-reaching measure. This should especially be considered in light of the fact that the cause for the demonstration was the actions of the company management which were in contravention of the Guidelines of the OECD.

Chapter V., Paragraph 1. e)

Enterprises should:

“Be guided throughout their operations by the principle of equality of opportunity and treatment in employment and not discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status, unless selectivity concerning worker characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.”

According to the commentary on this provision, point 54, “other grounds” also concerns, among other things, trade union activity. The actions of the company counteract the right to organize and can lead to a situation where workers at the factory decline to participate in union activities out of fear of being fired or otherwise being discriminated against by the employer.

Chapter 2. General Policies, Paragraph A 5

Enterprises should:

“Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to human rights, environmental, health, safety, labour, taxation, financial incentives, or other issues.”

Electrolux decided to suspend, not terminate, members of the local trade union who participated in the demonstration. This is in accordance with Thai law. That the company now wishes to conduct legal proceedings with the aim of firing these members is a clear example of trying to find exceptions to the laws concerning employment in the country.

Chapter IV. Human Rights, Paragraph 1.

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

“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.”

According to the commentary on Chapter IV, Paragraph 39, it is stated that, in all circumstances and independent of which country or environment is operative, internationally accepted human rights should be respected. Included in these, are the Universal Declaration on Human Rights.⁹ According to Article 9, no person shall be arbitrarily detained or arrested. During the demonstration, the workers were detained and prevented from leaving the premises, through the use of cordons and security guards, which is to be considered arbitrary detention and therefore a violation of the workers’ human rights. If the company has an alternate version of events, this should be examined through an investigation.

Chapter 1. Paragraph 2.

“Obeying domestic laws is the first obligation of enterprises. The *Guidelines* are not a substitute for nor should they be considered to override domestic law and regulation. While the *Guidelines* extend beyond the law in many cases, they should not and are not intended to place an enterprise in situations where it faces conflicting requirements. However, in 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.”

Irrespective of whether or not Electrolux followed Thai law in this case, it is evident that its actions are not in accordance with the OECD Guidelines. Multinational enterprises are expected to aim to adhere to these principles as long as domestic laws are not being violated. In this case, there are no provisions in Thai law which would lead to Electrolux committing a crime through adherence to the OECD Guidelines.

5. Analysis and Conclusions

It can be concluded that Electrolux subsidiary in Thailand has acted in contravention with the OECD Guidelines in several areas, in connection with the demonstration on January 11th 2013 at the company’s factory in Rayong, Thailand. Electrolux has subsequently continued to oppose members of the local trade union by pursuing a legal process against them. Swedwatch welcomes the fact that Electrolux has offered the dismissed workers reemployment. However, the process is subjected to conditions (the workers must apply for reinstatement, there is information to the effect that they lose previous benefits and that they

⁹ <http://www.fn.se/PageFiles/7177/Allmanforklaringomdemanskligarattigheterna.pdf>.

must guarantee that they will not engage in illegal strikes) and the company's processing of the 32 applications that it has received has been drawn out and slow. There is also a lack of clarity surrounding the diverging views on routines and policies between the parent company and its subsidiary. On certain occasions, the Electrolux head office has released information or made promises that were then shown to be incorrect, or broken. This should be clarified.

Centrally-determined minimum wages in South Asia and Southeast Asia are, as a rule, far below that which is defined as a liveable wage in the UN's Declaration on Human Rights and the Conventions of the ILO. Many rights organizations and consumers in the West have demanded liveable wages and better working conditions in the chain of production over the last few years. The heavy pressure to keep prices low creates sharp competition between countries in Southeast and South Asia, which increases risks for the repression of the right to organise and collective bargaining. In light of this systemic risk factor, the actions of Electrolux become even more important, regarding its conduct in negotiations, its approach to trade unions and its dialogue with employees.

The scenario in Thailand, where salary negotiations deteriorate and the company unleashes confrontational action against union representatives and employees are thus in violation of the OECD Guidelines and other international standards, which advocate consultation and cooperation between parties. A long-term, transparent process of dialogue between employers and employees, where the latter have the right to collective bargaining is advocated by all international frameworks today, as the only sustainable way from a short-term "race to the bottom".

It is our hope that the NCP can intervene in situations such as this one. Several companies can receive guidance from the NCP's ruling on how to act in similar situations, when international guidelines set a higher standard than national legislation.

Swedwatch also believes that, in line with the UN's Guiding Principles for Business and Human Rights¹⁰, the NCP fills an important function as a complaint mechanism and should be utilised. This case can provide guidance for interpreting the guidelines and, in such a way, contribute to the aims and success of the guidelines themselves.

6. Recommendations

Swedwatch recommends that Electrolux takes the following actions with the aim of complying with the Guidelines of the OECD:

1. Withdraw the lawsuit against the suspended members of the trade union and allow them to return to work;
2. Establish clear guidelines and mechanisms for the management of complaints and inquiries from employees;
3. Carry through on the verbal decision to offer the terminated employees reemployment and ensure that their reemployment does not lead to conditions worse than their previous employment;
4. Implement centralised ethical policies and guidelines for negotiation routines throughout the entire organisation through internal training activities.
5. Electrolux should improve its follow up of the global framework in Thailand in order to thereafter, as far as possible, comply with the contents of the OECD Guidelines.

¹⁰ http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.