

# Annual report of violation of trade union rights, Poland 2009

## Legislature

In 2008, in Poland there were no significant changes in trade union laws in comparison to 2007 and the last report.

However, there are some facts that need to be mentioned in our opinion.

- the act on trade unions says that a person in trade union position who conducts activities contradicting this law is a subject to punishment. Based on this provision the chairman of the board Metron company in Torun submitted to District Public Prosecutor's Office notice of an offence committed by the trade unionists acting in this company. Under the threat of strike trade unionists presented demands e.g. to change the composition of the board of directors, to make an analysis of the structure and costs of employment of specific persons and co-operating companies, to maintain the employment level and remuneration. These demands, according to the chairman were in contradiction with the act on trade unions. Both district as well as regional prosecutors rejected the case not having found the features of a criminal offence, however district court questioned the constitution compliance of article 35.2 of the act on trade unions claiming that the provision did not allow unequivocal defining what kind of activities of trade union officers might be punishable. On May 13<sup>th</sup> 2008 the Constitution Tribunal decided that the article in question did not comply with the Constitution of Poland and stressed that any legal provision of punitive character must clearly define the forbidden action, kind of sanction and persons responsible. The addressee of the punitive norm must clearly know which action might be unlawful and why, but the article in question is not precise about it. Therefore, this article may not be the basis of persecution of trade union activists, thus they cannot be held responsible and punished based on it. In reference to the employers, however, the article 35.1 of the act on trade unions remains in force and it has not been questioned so far, thus is an employer or any other person in the company hampers trade union activities on purpose he/she is a subject to punishment.
- the Codification Commission of the Labour Law appointed by the government in 2002 prepared draft changes of the Labour Code as two separate bills: individual labour code and collective labour code. Both drafts were negatively evaluated by trade union experts. The draft of the individual labour code reduces the workers rights by extending the time of waiting for 26-day paid leave, elimination of a leave-on-demand, extending the period of compulsory use of paid leave and leaving the decision to create social fund up to the employer. The institution of social labour inspection was totally eliminated. Trade unions role was marginalised by resigning from consulting trade unions in case of punishing a worker, informing trade union about dismissing a worker after the dismissal was handed in instead of before the dismissal or by limiting the participation of trade unions in

defining the principles of work organisation. The draft also imposes a change in the organisation of trade unions – regardless of its size and structure it would be a single legal entity. Presently there is a possibility of granting the legal personality to a union organisation based on the basis of its statute. Intended implementation of a new to Polish law idea of lockout is also disturbing. The clarity of the law is also subject to criticism. New nomenclature it introduces may require changes in trade unions' constitutions. Many provisions are unclear and may cause problems in interpretation and use of the proposed law.

## **Trends**

### **1. Increased discrimination against trade unions**

The employers are not afraid to block organisation of trade unions as the sanctions are not severe. In Lionbridge and Faurecia the workers who organised trade unions were almost instantly dismissed from company.

### **2. Double Standards**

Violation of trade unions rights is frequent in Polish subsidiaries of multinational corporations which conduct social dialogue with trade unions in their countries of origin or in Western Europe. This year's examples are Faurecia (France) and Alima-Gerber (owned by Nestle, Switzerland)

### **3. Monitoring**

There is a growing trend of using surveillance techniques. In case of Alima-Gerber the employer knew the details of a telephone conversation the contents of which were the basis for the disciplinary dismissal of the union leader. In Mlawa, the participants of a rally against the employer were filmed both in the company and near the Korean Embassy. In Faurecia, the pictures of dismissed workers were displayed at the gate lodge and the security was ordered not to allow those persons to enter.

### **4. Proposal of a profitable agreement**

A very frequent practice of getting rid of active trade unions is the dismissal of a trade union leader even by violating the law and preventing him/her to enter the company premises. Further, intensive action is taken to discredit that person in the eyes of the workers and to intimidate the workers, often with accusations of his acting against the interest and good name of the company. At the same time, the dismissed leader is given a proposal of a very profitable agreement (very high compensation) in exchange for resignation from legal action aimed at reinstating him/her at work. Due to lengthy legal procedures the unionist is faced with about 2 years of waiting to be reinstated even if he had been dismissed illegally. During this time he will be jobless, isolated and slandered. It can be assumed that in majority of cases the dismissed leaders accept such agreements. This method was used in Alima-Gerber and Lionbridge – but in both cases the leaders did not accept the offered agreement.

## **5. Dismissal of a trade union activist due to “disclosure of confidential information” and “activities detrimental to employer”**

Many companies in Poland try to get rid of trade union activists using fabricated accusations against them. “Disclosure of company’s confidential information” and “attack on good name of the company” are most frequently used strategies. Alima-Gerber accused trade union leader of disclosing confidential information in a telephone conversation and disseminating information harmful for the company on the internet. Lionbridge accused trade union leader of writing an article entitled “Lionbridge: globalization of low wages”. In both cases the charges were not proved, and in the case of Lionbridge another person admitted to be the author of the article. In the case of BZ WBK after a number of press articles concerning harassment of a trade union leader the management accused him of “unjustified accusations of using mobbing by his superiors” and used this as the cause of losing their trust and a reason for dismissal.

## **6. Demand of trade union members list**

A common practice of employers is demanding the list of names of trade union members. The employers claim they need proof of the number of members to know the level of representativeness of the union and information about the unionists to know who should receive special protection as a trade union leader. In case when an employer demands such a list from the enterprise level organisation, there is a possibility to invoke the decision of the General Inspector of Personal Data Protection (GIODO) in reference to BZ WBK S.A. case, in which it was strictly forbidden to use such practices. The employer may only ask whether a specific person is under trade union protection. However, such a list must be disclosed at a demand from court if an employer questions the criterion of representativeness of a trade union organization. Presently there is no possibility to deny the employer access to such a list during court proceedings; therefore, by dismissing a leader and undermining the union representativeness an employer may get full access to such information. And this was the case in Faurecia Ltd. in Walbrzych.

## **Violation of trade union rights**

### **Violation of individual trade union rights**

#### **Dismissal of a trade union leader**

##### ***Alima Gerber SA. Rzeszów***

address: ul. Generała Stanisława Maczka 1, 35-234 Rzeszow

owned by: Nestle Poland (Since 2007)

In 1991 state owned company Alima was bought by American Gerber Products Company. Since January 1999 Alima-Gerber S.A. had been a part of Novartis Consumer Health (NCH). In September 2007 Alima-Gerber S.A. officially joined Nestle Group as a part of Nestlé Infant Nutrition. Trade union in Alima-Gerber was reactivated on 14 November 1989. On 8 October 2004 Jacek Kotula was elected president of the enterprise commission of NSZZ

“Solidarnosc” in Alima-Gerber. From the very start he was very active in trade union work. Only in 2008 the membership in the company increased by 52%. The shop steward was active in eliminating discrimination against women returning to work after maternity leave and discrimination of temporary workers, fought for payment of wages for overtime work, organized National Labour Inspection inspections – all actions were successful. Thanks to his activities in 2006 the Swiss newspaper Basler Zeitung published an article on wages discrimination in Polish subsidiaries of the company (production workers are paid very low)<sup>1</sup>. The union organisation in Alima-Gerber was awarded as the most active unit in the region.

The employer was less and less content with the union activity in the company. In 2008 direct attempt to dismiss the union leader was taken. On 5 September 2008 the employer informed the union of his intention to dismiss the leader of the union on disciplinary grounds due to alleged disclosure of confidential information. According to the employer Mr. Kotula talked on the phone with one of the supplying farmers and during that conversation he encouraged the farmer to negotiate higher prices. Despite the fact that the union did not agree to the dismissal motion, Mr. Kotula was fired. It must be stressed that the employer was citing an incidental telephone talk that had taken place months before the dismissal, during which commonly known facts were discussed, e.g. the fact that fruits were imported from Italy where labour costs are much higher than in Poland.

Soon after the (illegal) dismissal of the union leader the employer started to undermine workers’ support for him by slandering him and intimidating his supporters. To this end a meeting was organized in the company, production was stopped (which is a very rare thing), and the management accused Mr. Kotula of conducting a media action aimed at discrediting the company and threatened with closing the plant. At the same time the employers offered agreements to the dismissed leader to pay high compensation in return for not taking the case to court. Presently in labour court proceedings Mr. Kotula demands to be reinstated in his work and for the dismissal to be declared ineffective.

A similar situation occurred in MZK in Konin where Jerzy Andrzejewski, leader of “Solidarnosc” trade union was dismissed.

***Lionbridge Poland Ltd.***

address: Jutrzenki 183, 02-231 Warsaw

owned by: Lionbridge Technologies, Inc., Waltham, Massachusetts, USA

Lionbridge is a multinational corporation specializing in translation and has offices in Europe, USA, India and China. At the end of January 2008 the employer was informed that a trade union organization had been established – the National Federation of Employees (KFP), which was very active right from the start. During short history of KFP existence in Warsaw

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<sup>1</sup> Basler Zeitung 2006 “Novartis-Arbeiter kritisieren Lohnpolitik Mit dem EU-Beitritt sind in Polen die Lebenskosten gestiegen - das macht vielen Mühe “ Thomas Poser 06.10.2006

office the union succeeded in making the employer pay long overdue wages for overtime work and payments from the social fund, which the employer did not want to pay previously.

On 12 February 2008 the employer informed the union about the decision to dismiss on disciplinary grounds the union leader Jakub G. due to “disclosure of confidential information, transfer of company documents outside of the company, acting against the interest of the employer by presenting false information on the internet”. The employer accused Jakub G. of publishing an article on the internet about Lionbridge.

The union did not agree to dismiss the leader as there was no proof that the article was written by Jakub G. (the article was anonymous). Moreover, there was no confidential information in it, everything was easily accessible, even on the website of Lionbridge. The company, however, dismissed the leader instantly on disciplinary grounds without notice.

Jakub G. took the case to labour court demanding to be reinstated on the same conditions and paid for the entire time of being unemployed. Until now there were three court sessions in this case.

Also, in the same case the report of the National Labour Inspection was issued, in which the NLI confirmed that Jakub G. was dismissed illegally.

### ***Bank BZ WBK SA***

address: BZ WBK SA dept. Ruda Slaska, ul Niedurnego 44, 41-709 Ruda Slaska  
owned by : AIB Group Headquarters, Bankcentre, Ballsbridge, Dublin 4, Ireland

BZ WBK is a part of AIB Ireland, the union is present there since 1998. Since 2006 Dariusz Gojowczyk has been the deputy shop steward of trade union and the social labour inspector in the company. He has been employed as personal client advisor since 1997 in the First Branch of BZ WBK SA in Ruda Slaska

Dariusz Gojowczyk was an active leader in BZ WBK. He initiated inspection of NLI in Wroclaw after which the court ordered payments of several million PLN of health benefits for work in hazardous conditions (computer monitors without protection) to all employees who were entitled to it, not only those who sued the company. In 2006, he was involved in organizing social labour inspection in the entire bank BZ WBK S.A. He also co-organized the inspection action of NLI of working time in many banks.<sup>2</sup>

Since the beginning of his activity on behalf of trade union members the employer engaged in mobbing-like practices, e.g. written unjustified reprimand, later revoked by the court, and trying to dismiss him. Finally, on 2 January 2007 the employer, despite negative opinion of the union, handed Mr. Gojowczyk the dismissal on the grounds of absence at work, not fulfilling the sales plan and distrust due to accusing the superiors of mobbing. One must note

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<sup>2</sup> PIP (2006) Przestrzeganie przepisów prawa pracy w bankach w 2005 r.

<http://www.pip.gov.pl/html/pl/doc/99030013.pdf> oraz PIP (2006) Przestrzeganie przepisów prawa pracy w tym bezpieczeństwa i higieny pracy w bankach w 2005r. Załącznik nr 29 [http://www.pip.gov.pl/html/pl/sprawozd/05/zal\\_29\\_05.pdf](http://www.pip.gov.pl/html/pl/sprawozd/05/zal_29_05.pdf)

that the absence and failed sales were due to sick leaves after two accidents at work. Court proceedings have not been closed so far in this case, Mr. Gojowczyk remains unemployed.

***Faurecia Walbrzych, Faurecia Grojec, Faurecia Gorzow Wlkp.***

address: Faurecia Walbrzych Ltd. ul Jachimowicza 3, 58-306 Walbrzych, Faurecia Grojec Ltd. ul. Spółdzielcza 4, 05-600 Grojec, Faurecia Gorzow Wlkp. ul. Szczecinska 31, 66-400 Gorzow Wielkopolski

owned by: Faurecia Group, 2, rue Hennape 92735 Nanterre cedex France

Faurecia is one of the biggest producers of car components (e.g. car chairs), in Poland the group has four factories in Grojec, Walbrzych, Gorzow Wielkopolski and Legnica.

In 2007 and 2008 in Faurecia factories there was a visible trend of immediate dismissing trade unionists at any attempt of organizing a union.

For instance, in Faurecia Walbrzych Ltd. a “Solidarnosc” trade union organisation was established, the employer was informed about this fact on 4 July 2007. All the leaders were instantly dismissed and their pictures were displayed at the entrance lobby of the factory so the security could stop them at the gates. The same happened in Faurecia factories in Grojec and Gorzow Wielkopolski, where the unionists only handed out leaflets about newly established trade union after work hours and outside the factory, they were sacked.

A similar case happened in RD Precision Poland Ltd. in Mielec –shop steward Pawel Ochalik and his deputy Robert Szypula were dismissed; however, they were reinstated after intervention from regional union structures.

**Violation of collective trade union rights**

**Dismissals for strike, replacing striking workers with new employees**

***Dong Yang & LG Electronics – Special Economic Zone***

Special Economic Zone in Mlawa, Dong Yang Electronics Ltd, LG Electronics, Korea

Dong Yang Electronics and LG Electronics existing in the Special Economic Zone in Mlawa are covered by the supra-company trade union organisation with headquarters in LG Electronics.

Since March 2008 the union in Dong Yang was in collective dispute with the management with wages demands. Negotiations and mediation were fruitless, and the trade union decided to go on strike.

On 6-7 August 2008 strike referendum was held but the strike was not accepted, according to the leaders of the union the workers were intimidated (during the referendum the managers were making lists of persons voting, and at one moment there were more employer’s representatives than workers in the work site). Another referendum outside the company was organized, and representatives of the employers were also invited. As the result, the referendum univocally approved the strike.

The strike took place between 16 October and 25 November 2008. The employer, citing the first referendum recognized the strike as illegal.<sup>3</sup>

The workers were proposed 5% increase in wages for those who would not join the strike, proper amendments for work contracts were prepared.<sup>4</sup>

During the strike the employer replaced striking workers with about 80 new employees on fixed-term contracts. The employer suspended negotiations and refused to talk with the union as long as the shop steward, Mr. Edward Judziak, would represent the union. About 200 workers were dismissed, including three trade union leaders (these 3 on disciplinary grounds). Most of the members of the supra-company trade unions were employed in Dong Yang, thus the employer got rid of the trade union leaders and the majority of trade union members in Special Economic Zone in Mlawa.

Two demonstrations took place during the strike, at the gates of the company and near Korean Embassy in Warsaw. Participating workers were filmed.

The employer refused to reinstate the workers, he only declared that some of them may be reinstated at his will. Neither the leaders nor employees were reinstated, and court proceedings have not been closed so far.

#### ***ELDROB Poultry Plant in Swiebodzin***

Address: ul. Poznanska 56, 66-200 Swiebodzin

ELDROB is a part of INDYKPOL S.A., one of the biggest poultry companies in Poland.

In May 2008 the management of the company decided to close two departments and dismiss 223 out of 370 workers, including 120 members of trade union. The enterprise commission of trade unions received information on redundancies after a collective dispute was opened and negotiations started in April 2008 on improvement of working conditions and increase of wages. The management offered to the members of "Solidarnosc" that they would not be dismissed provided that they resign from trade union membership. Redundancies were initiated in plants where "Solidarnosc" is present. Trade union leaders are of the opinion that this is a revenge for opening a collective dispute. On 8 August 2008 about 400 trade union members participated in a demonstration organised at the gate of Rolmex in Warsaw, the biggest shareholder of INDYKPOL S.A., where they handed in a petition calling for return to negotiations.

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<sup>3</sup> Polish law does not forbid second strike referendum.

<sup>4</sup> Quote: „the employer will pay a bonus of 5.4% of the contract wage, which is 62.10 PLN monthly, on condition that the worker will not participate in possible strike action organized by trade unions: dated 1 July 2008.