



International Labor Rights Forum

2001 S Street NW, Suite 420, Washington, DC 20009

Board of Directors

Bill Fletcher
President
John Cavanagh
Vice President
Christopher Townsend
Secretary
Cameron Duncan
Treasurer
Bama Athreya
Executive Director

Arturo Alcalde Justiniani
May Chen
Lance Compa
Joe Curnow
Eric Dirnbach
Ken Grossinger
Sarita Gupta
Mark Harrison
Yvette Pena-Lopez
Katie Quan
Jeff Rechenbach
Carol Rosenblatt
Omar Salazar
Kailash Satyarthi
Rep. Jan Schakowsky
Jill Tucker
Yvette Pena Lopez
Ken Grossinger

Advisory Council

Peggy Billings
Robin Broad
Anita Chan
Audrey Chapman
Steve Charnovitz
Sarah Cleveland
Terry Collingsworth
Keith Geiger
Jim Hightower
John H. Hovis
Kjeld Jakobsen
Somsak Kosaisook
Atherton Martin
Mughtar Pakpahan
Senator Bernie Sanders
Peter Weiss
Robert White

Ray Marshall
President Emeritus
Bishop Jesse DeWitt
President Emeritus

From: Brian Campbell, Director of Policy and Legal Programs,
International Labor Rights Forum

Phone: (202) 347-4100 ext.

Fax: (202) 347-4885

Email: brian.campbell@ilrf.org

Petition for Review of Dole's failure to adhere to OECD General Guidelines

October 11, 2010

ATTN:

U.S. National Contact Point

Bureau of Economic, Energy and Business Affairs

U.S. Department of State

2201 C St. NW

Washington DC 20520

Email: usncp@state.gov

I. Summary of Complaint and Request

Dole Philippines, Inc., a wholly owned subsidiary of Dole Foods Company, Inc., has been engaged in systematic violations of its workers' rights to freedom of association beginning in 2006 continuing to today. From 2001 to 2005, the union enjoyed growing support among the workers and a collaborative relationship with Dole management. Beginning during the 2005 union election campaign and the subsequent CBA negotiations in 2006 – 2007, Dole implemented policies and practices intended to undermine the union leadership. Since the Philippine government ordered a resolution to the contentious CBA negotiations in 2007, Dole management hastened efforts to undermine the union. Though AK-NAFLU-KMU leadership won another resounding victory in 2008 and quickly negotiated and agreed to new contract terms with Dole management, Dole management continues to work with a splinter group of workers to undermine the union, eventually culminating in February 2010 with the illegal recognition of UR-Dole/Gales Group as representatives of the workers over the democratically-elected AK-NAFLU-KMU leaders.

Dole has violated General OECD Guidelines for responsible business conduct in employment and industrial relations for its: failure to respect the employees' right to be represented by trade unions; discrimination against employees on grounds of political opinion; failure to facilitate and enable collective bargaining negotiations; policy of non-cooperation with employees; and failure to respect the human rights of those affected by their activities consistent with the host

government's international obligations and commitments.¹ It is urgent that before the union certification election is held, measures must be in place to ensure free and fair elections. The upcoming union certification will be held on February 11, 2011.

This case is being filed by the International Labor Rights Forum (ILRF), a non-profit advocacy organization dedicated to achieving just and humane treatment for workers worldwide, which is retained as representatives of the AK-NAFLU-KMU, the democratically elected union of the hourly employees of Dole. The petitioners respectfully request the NCP to examine this complaint, and offer their good offices to assist the parties to ensure the workers' right to freedom of association is respected and protected at Dole's plantation and facilities in the Philippines. Specifically, the petitioners would like the NCP (1) to assist with election monitoring by working in collaboration with the Philippine Commission on Human Rights, and other agencies, to ensure that the workers on the Dole plantation in Polomolok have the opportunity to freely and fairly elect the leaders of their own choosing; (2) to take immediate action to submit the parties to mediation where the NCP will provide very clear guidance on what constitutes acceptable procedures for selection of a mediator, terms, issues to be mediated, and a timeline, in order to address the fundamental violations that have made free and fair union elections impossible including Dole's use of a labor cooperative system; and (3) to issue a public written determination regarding Dole's compliance with the OECD Guidelines and recommendations for Dole's obligations under the OECD Guidelines.

II. Parties

Complainant Amado Kadena-National Federation of Labor Unions-Kilusang Mayo Uno (hereinafter AK-NAFLU-KMU or "the Union") is a legally organized and registered union. AK-NAFLU-KMU, led by President Jose Teruel, was first elected by the hourly employees of Dole to represent them in 2001. JT began working in the fields at Dole in the Philippines in 1985, where for more than 25 years he has planted and harvested pineapples and applied pesticides to Dole's crops alongside thousands of fellow employees and has acted as their representative to the management since being elected President of the union.

AK-NAFLU-KMU is being represented by the International Labor Rights Forum (ILRF). The ILRF is an advocacy organization dedicated to achieving just and humane treatment for workers worldwide. ILRF serves a unique role among human rights organizations as advocates for and with working poor around the world. ILRF believes that all workers have the right to a safe working environment where

¹ General OECD Guidelines: PART I, CH II, PARAGRAPH 1(A) Respect the right of their employees to be represented by trade unions and other bona fide representatives of employees; PART I, CH IV, PARAGRAPH 1(D) Employers should not discriminate against their employees with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin; PART I, CH II, PARAGRAPH 2 Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments; PART I, CH IV, PARAGRAPH 8 Enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters; ; PART I, CH IV, PARAGRAPH 2(B) Provide information to employee representatives which is needed for meaningful negotiations on conditions of employment; PART I, CH IV, PARAGRAPH 2(C) Promote consultation and co-operation between employers and employees and their representatives on matters of mutual concern; and PART I, CH IV, PARAGRAPH 3 Provide information to employees and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.

they are treated with dignity and respect, and where they can organize freely to defend and promote their rights and interests.

Dole Food Company, Inc. (hereinafter Dole) and its wholly owned subsidiary Dole Philippines, Inc. is based in Westlake, California, and is one of the world's largest producers of bananas and pineapples, and a leader in packaged fruit products, packaged salads and fresh vegetables. Dole is the second largest global marketer of fresh pineapples, growing and selling more than 34 million boxes in 2009.² Dole currently operates on 15,600 hectares, including independent farms in the area, in Polomolok on Mindanao, the second largest and most southerly Philippines islands. The facility is the largest integrated pineapple plantation, cannery, and packaging complex in the world shipping 25 million cases of processed pineapple – slices, chunks, tidbits, crushed, juice and concentrate – to global markets every year.³ Almost 6,000 men and women work full-time at the Dole facility.⁴ At the facility, Dole also employs an estimated 12,000 contractual employees who are not union members.

III. Dole Philippines, Inc., a wholly owned subsidiary of Dole Foods Company, Inc., has been engaged in systematic violations of its workers' rights to freedom of association beginning in 2006 continuing to today.

A. From 2001 to 2005, the union enjoyed growing support among the workers and a collaborative relationship with Dole management.

From 2001 until 2006, Dole management and AK-NAFLU-KMU enjoyed a collaborative, peaceful, and productive relationship under the 2001 CBA. The union and management agreed to significantly improved compensation and benefits, including a 10% wage raise, a “Bottom Line Bonus”, increased benefits and vacation leave, and resources for innovative social and economic programs.⁵ In 2004, the Union and management also agreed during the negotiation on an Addendum to the contract to regularize more than 1500 contractual workers.

Of the new CBA provisions, the Union was proud of its successful effort to secure a monthly, in-kind rice allowance, which was both a great economic and a symbolic victory for the union and its members. Rice, as the staple of the Filipino diet, represents the line between starvation and success. JT and the AK-NAFLU-KMU leadership have also pioneered creative efforts to promote the economic welfare of its members and their families. For example, faced with a decision about how to distribute the rice allowance among the union, union members decided to pool their rice allowance money, which the union received as a single check equal to 390 pesos/employee, and secure a wholesale supply contract with a local rice distributor. By pooling their resources to purchase rice wholesale, the Union was able to capitalize on economies of scale and save needed money through the rice allowance program for other social programs. The Union was also able to secure a long-term supply contract at a set price as further insurance against the rapidly rising price of rice.

² 2009 Annual Report, Dole Food Company, Inc., available at <http://investors.dole.com/phoenix.zhtml?c=231558&p=irol-reportsannual> (visited Oct. 5, 2010).

³ Philippines, Countries, Dole Food Company, Inc., available at <http://dolecsr.com/PlanetDole/Countries/Philippines/tabid/5443/Default.aspx> (visited Oct. 5, 2010).

⁴ Philippines, Countries, Dole Food Company, Inc., available at <http://dolecsr.com/PlanetDole/Countries/Philippines/tabid/5443/Default.aspx> (visited Oct. 5, 2010).

⁵ Collective Bargaining Agreement (February 11, 2001 – February 10, 2006) between AK-NAFLU-KMU and Dole (2001).

Between 2001 and 2004, the Union was able to realize Php 5.9 million in savings for its 4,980 members (as of 2006) through the Rice Allowance supply contract.

In 2004, the union membership voted to invest their savings in a mini-mart where union would offer subsidized food and goods at below market prices to union members.⁶ Individually, Php 5.9 million is only Php1,200 per member of the Union. Combined, however, the Union was able to leverage the capital to start a store to expand economic benefits to the Union members. *See* Complaint to the Philippine Commission on Human Rights, para. 2.5.⁷ Supporters and organizers for UR-Dole/Gales Group (*See* para. 2.11), opposed the decision to reinvest the surplus funds to capitalize and operate a mini-mart. Instead, they wanted an individual cash payment and were uninterested in pooling their resources to provide subsidized products for Dole's employees.

Because of the Union's innovative social and economic programs developed between 2001 and 2006, such as the in-kind rice allowance, establishing the mini-mart program, as well as successfully negotiating for the regularization of more than 1500 workers, AK-NAFLU-KMU's popularity grew rapidly. In 2001, AK-NAFLU-KMU won with only a small majority of the vote. By 2006, though, JT and his fellow AK-NAFLU-KMU officers had the support of more than 80% of Dole's rank-and-file employees and won a landslide victory over UR-Dole/Gales Group in the 2006 certification election (CE).

B. Beginning during the 2005 union election campaign and the subsequent CBA negotiations in 2006 – 2007, Dole implemented policies and practices intended to undermine the union leadership.

Faced with an increasingly united union that had achieved significant gains for the workers in a short time, Dole management began implementing policy changes intended to undermine the union and the union's popular programs in order to drive support away from the union during the upcoming negotiations on a new CBA. To begin with, throughout the CE campaign in 2005 and into the negotiations for a new CBA in 2006, Dole Vice-President and Director of Dole Philippines Kevin Davis, who was chosen by Dole Foods to replace Damko Stambuk in 2005, and other managers at Dole began openly opposing the workers' decision to choose AK-NAFLU-KMU. In separate meetings with union officers, Davis and other managers asked that the union leaders disaffiliate from the National Federation of Labor Unions-Kilusang Mayo Uno⁸ (NAFLU-KMU) citing allegations by the Philippine government that the KMU is a front for the New People's Army⁹. Davis also made clear that if the Union challenged

⁶ *See* Minutes of April 18, 2004 Special General Assembly for AK-NAFLU-KMU.

⁷ *See* Complaint to the Philippine Commission on Human Rights. The paragraphs noted throughout this complaint refer to paragraph numbers of the complaint, filed by AK-NAFLU-KMU to the Philippine Commission on Human Rights on July 20, 2010, which provide more a more detailed explanation of the details attached hereto as Exhibit A.

⁸ Violation of General OECD Guidelines: PART I, CH II, PARAGRAPH 1(A) Respect the right of their employees to be represented by trade unions and other bona fide representatives of employees; PART I, CH IV, PARAGRAPH 2(C) Promote consultation and co-operation between employers and employees and their representatives on matters of mutual concern; *and* PART I, CH IV, PARAGRAPH 1(D) Employers should not discriminate against their employees with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin.

⁹ The New Peoples' Army has been fighting a protracted insurgency for more than 39 years. Philippine military officials estimate that the NPA has around 7,500 members, and that they have broad support in many communities with many sympathizers. *See* Human Rights Watch. *Scared Silent: Impunity for Extrajudicial Killings in the Philippines*. June 2007.

management prerogatives and decisions, the more he would resist the Union.¹⁰ The Union leaders refused management's demands to disaffiliate.

When the negotiations on a new CBA began in April 2006, Dole and the Union began with widely divergent positions. By the 7th negotiating session nearly two months later, though, while the Union had offered significant concessions, Dole had not changed its position.¹¹ Angry that Dole management was not bargaining in good faith, the Union staged a demonstration of solidarity when over 2,000 union members did not swipe their ID's on their way to and from lunch for several days, though they did check in and out of work each day. For their part, Dole management shut down the Union's enterprising mini-mart program by refusing to allow Union members to pay for goods through check-off requests, as had been the practice.¹² See para.. 2.8. Management also fired two union officers and suspended others involved in the solidarity demonstration.¹³

In September 2006, Dole management also joined forces with a group of disgruntled workers, who later formed the group UR-Dole,¹⁴ to spread allegations of corruption against the Union and then to violate the CBA by circumventing the Union rice program and distributing their rice allowance to them directly as cash payments.¹⁵ See para.. 2.11. Dole has continued its efforts working with UR-Dole/Gales Group leaders for the past several years in an effort to end the Union's successful rice program beginning in August 2006 when Dole supported UR-Dole/Gales Group organizers when they refused to collect their rice allowance in-kind at the Union office and instead insisted on cash payments from management in violation of the CBA. See para.. 2.12 *et seq.*

Dole management has also taken retaliatory actions against union negotiators, including suspending and firing many of them, and has otherwise interfered with the union's ability to negotiate a fair deal for its members.¹⁶ Dole has sought criminal charges for defamation against one union leader, cut off paychecks to workers engaged in negotiations, and fired and suspended workers for being Absent Without Permission while negotiating the CBA.¹⁷ See para.. 2.13 *et seq.*, para.. 6.6. As discussed further, *infra*, at para.. 6, efforts by the National Conciliation and Mediation Board to mediate the dispute failed. In the

¹⁰ Violation of General OECD Guidelines: PART I, CH II, PARAGRAPH 1(A);

PART I, CH IV, PARAGRAPH 2(C); and PART I, CH IV, PARAGRAPH 1(D).

¹¹ Violation of General OECD Guidelines: PART I, CH IV, PARAGRAPH 2(B) Provide information to employee representatives which is needed for meaningful negotiations on conditions of employment; and PART I, CH IV, PARAGRAPH 8 Enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.

¹² Violation of General OECD Guidelines: PART I, CH II, PARAGRAPH 1(A); and PART I, CH IV, PARAGRAPH 2(C).

¹³ Violation of General OECD Guidelines: PART I, CH IV, PARAGRAPH 8; PART I, CH IV, PARAGRAPH 2(C); PART I, CH IV, PARAGRAPH 1(D); PART I, CH II, PARAGRAPH 2 Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments; and PART I, CH II, PARAGRAPH 1(A).

¹⁴ UR-Dole is a group formed by disgruntled union members led by Francis Gales, a former union leader who was unseated from power when AK-NAFLU-KMU defeated the UR-Dole/Gales Group in the 2000 certification election. According to Dole's auditors, "Evidence collected showed that 'UR-Dole' group really exists; these are the group of workers who are not satisfied with the leadership of Mr. Joe Teruel and are represented by Francis Gales and other dissatisfied workers." UR-Dole leaders, who refer to themselves as "members of Amado Kadena", are self-described as friendly to management.

¹⁵ Violation of General OECD Guidelines: PART I, CH II, PARAGRAPH 1(A); and PART I, CH IV, PARAGRAPH 2(C).

¹⁶ Violation of General OECD Guidelines: PART I, CH IV, PARAGRAPH 8; PART I, CH IV, PARAGRAPH 2(C); PART I, CH IV, PARAGRAPH 1(D); and PART I, CH II, PARAGRAPH 1(A).

¹⁷ Violation of General OECD Guidelines: PART I, CH IV, PARAGRAPH 8; PART I, CH IV, PARAGRAPH 2(C); PART I, CH IV, PARAGRAPH 1(D); and PART I, CH II, PARAGRAPH 1(A).

proceedings before the Secretary of Labor and Employment to resolve the contract negotiation dispute, Dole asserted in defense of their position UR-Dole/Gales Group's baseless corruption allegations as a tactic to intentionally prejudice the union and unfairly influence the outcome of the AJ Decision.¹⁸ See 2.14 *et. seq.*

Despite Dole's efforts, the DOLE decided the remaining deadlocked provision of the contract negotiation in favor of the Union, including the rice allowance and the wage provisions. In addition to supporting the Union's position that Dole must continue making mini-mart deductions as a part of the CBA, *see* paras. 2.10, DOLE also agreed to increase the per employee rice allowance to Php. 400 and side with the Union's position that the Union retain the right to distribute the allowance in their chosen manner. *See* para. 2.16 – 2.17, 6.1 *et seq.* Yet, despite the Department of Labor and Employment's attempt to resolve the rice allowance and mini-mart dispute in the January 2007 AJ Decision, the Union and management were still unable to find common ground on either issue, and Dole management immediately began to violate the language and spirit of the DOLE AJ decision, including by refusing to respect the status quo during pendency of a legal appeal, insisting on supporting the position of UR-Dole supporters to change the rice allowance distribution.¹⁹ *See* para 6.1 *et seq.*

C. Since the Philippine government ordered a resolution to the contentious CBA negotiations, Dole management hastened efforts to undermine the union throughout 2007.

Soon after the January 2007 AJ Decision, the Union officers and negotiating panel were still facing serious charges of being Absent Without Permission for participating on the Union negotiating panel, which the Union viewed as unjustified and a serious Unfair Labor Practice.²⁰ *See* para. 2.13.3. Angry at the blatant effort to undermine the Union's ability to negotiate a CBA and manage grievances on behalf of their members, the Union prepared a Notice of Strike against the unfair labor practices. However, after discussing it with the NCMB Conciliator-Mediator Wilfredo P. Santos, the Union instead agreed to a path of reconciliation rather than more fighting and filed for preventative mediation.²¹ Despite these efforts, in September 2007, Dole fired three (3) union officers and suspended nineteen (19) for being AWOP for their participation on the Union team negotiating the CBA in 2006.²² In January 2008, Dole fired another Union officer on the same grounds.²³ *See* para. 6.6. On July 26, 2008, Mediator Santos issued his observations on the case, noting that, among others:

- (1) Middle management is blocking all information coming from the union and they don't give the right information to Kevin Davis.

¹⁸ Violation of General OECD Guidelines: PART I, CH II, PARAGRAPH 1(A); and PART I, CH IV, PARAGRAPH 2(C).

¹⁹ Violation of General OECD Guidelines: PART I, CH II, PARAGRAPH 1(A); and PART I, CH IV, PARAGRAPH 2(C).

²⁰ Violation of General OECD Guidelines: PART I, CH IV, PARAGRAPH 8; PART I, CH IV, PARAGRAPH 1(D); PART I, CH II, PARAGRAPH 1(A); and PART I, CH II, PARAGRAPH 2.

²¹ Memo (July 26, 2008) from Conciliator Mediator Wilfrido Santos to NCMB Executive Director IV *In re Labor Relations Status at Dole Philippines, Inc.*

²² Violation of General OECD Guidelines: PART I, CH IV, PARAGRAPH 8; PART I, CH IV, PARAGRAPH 2(C); PART I, CH IV, PARAGRAPH 1(D); PART I, CH II, PARAGRAPH 2; and PART I, CH II, PARAGRAPH 1(A).

²³ Violation of General OECD Guidelines: PART I, CH IV, PARAGRAPH 8; PART I, CH IV, PARAGRAPH 2(C); PART I, CH IV, PARAGRAPH 1(D); and PART I, CH II, PARAGRAPH 1(A).

- (2) Mr. Robert Buranday and company are using workers who are against the union, to file cases against the union President before the local court for [corruption], and using management resources to produce leaflets.
- (3) Mr. Robert Buranday and company refused to follow the agreed procedure on grievance under CBA.
- (4) Mr. Robert Buranday and company are using the military and the community to harass the union. *See* paras. 6.6.

At the same time, UR-Dole/Gales Group and the military, with support from Dole management, intensified the public campaign against AK-NAFLU-KMU, using television, the radio, and anti-KMU education programs as platforms to allege that its leaders are stealing from the Union and were NPA “recruiters.” *See* para. 3, para.. 4 and Para.. 5. To support their allegations, Dole management, UR-Dole and the military rely on the self-serving complaint that UR-Dole supporters filed at DOLE during the 2006 CBA negotiations seeking an accounting of the Union’s finances, wherein they claim union officials had been stealing money.²⁴ After the auditors spent six days reviewing the Union’s voluminous records in March 2007, they reported that the Union had been improperly accounting for their individual accounts by aggregating them. Nothing in the audit report indicated that the Union officers stole any funds. *See* para. 6.2 *et seq.*

In April 2007, 89 UR-Dole/Gales Group supporters within the union, out of a membership of more than 4,200, filed another petition with DOLE demanding that DOLE order the union to exempt them from the Rice Allowance program and directly release their Rice Allowance in cash which they claim is required by the CBA.²⁵ In support their position, they argued that Dole management’s February 2, 2007 letter to the union in support of their efforts to change the rice distribution method had “settled” the matter and that the Union was in breach of the CBA.²⁶ DOLE rejected UR-Dole/Gales Group’s argument that the Union must provide the Rice Allowance in cash, but, over the Union’s opposition, ordered a referendum by the union membership anyway.

Next, throughout the summer of 2007, Mr. Robert Buranday, Dole’s Industrial Relations manager in Polomolok worked with UR-Dole organizers to bog the Union down with a litany of criminal and civil charges in order to disrupt Union operations, sully the Union’s reputation, and fuel the UR-Dole/AFP programs by accusing the union of unilaterally altering check-off requests that the Union had submitted to Mr. Buranday’s office more than five months earlier.²⁷ *See* paras. 6.4 *et seq.*

D. In June 2008, AK-NAFLU-KMU leadership won another resounding victory and quickly negotiated and agreed to new contract terms with Dole management.

Despite the vigorous Dole/UR-Dole campaign against JT and the Union, JT was once again re-elected President of the union on June 25, 2008, with the resounding support of the membership to serve until the end of the current Collective Bargaining Agreement (CBA) in 2011. Also in 2008, the Union and Dole management negotiated an addendum to the 2006 CBA, as ordered by the Secretary of Labor in the

²⁴ *Analen Braga, et al. v. Amado Kadena-NAFLU-KMU*, In re. Petition for Audit of Union Funds, BLR-A-A-49-10-25-07 (RO12-0610-UAE-001).

²⁵ *See Jeremias Ababon et. al. v. AK-NAFLU-KMU*, In re Conversion of Rice Allowance to Cash. R1200 – 0703-AU-003 (BLR-A-TR-40-9-17-07).

²⁶ *See* Complainant’s Position Paper (May 8, 2007), *Jeremias Ababon et. al. v. AK-NAFLU-KMU*, In re Conversion of Rice Allowance to Cash. R1200 – 0703-AU-003 (BLR-A-TR-40-9-17-07)

²⁷ Violation of General OECD Guidelines: PART I, CH II, PARAGRAPH 1(A).

January 2007 AJ Decision. After listening to management's position and Dole's claim of financial difficulties created by the 2008 financial crisis, the Union agreed to Dole's wage offer after only four meetings. Dole did not disclose that its business had continued to expand, production is increasing, and world demand for pineapples is at their all-time high.²⁸

E. Throughout 2009 and 2010, Dole management continued to work with the UR-Dole/Gales Group to undermine the union culminating in February 2010 with the illegal recognition of UR-Dole/Gales Group as representatives of the workers over the democratically-elected AK-NAFLU-KMU leaders.

In 2009, Dole management and UR-Dole cooperation to interfere with internal union affairs continued when management agreed to UR-Dole's request to circumvent Union authority and directly distribute the Rice Allowance in cash employees.²⁹ When the company agreed to UR-Dole's request in early May 2009, Dole management also illegally applied the request retroactive to the April Rice Allowance, which the union had already distributed in April, thereby causing the union significant financial losses and months of work that has so far failed to recoup the losses.³⁰ *See paras. 6.9 et seq.*

By refusing to reimburse the Union for the April 2009 Rice Allowance, Dole laid the groundwork for UR-Dole's next legal offensive against the union that culminated with Dole and UR-Dole collaborating to replace AK-NAFLU-KMU leaders with UR-Dole leaders on February 13, 2010. Unsatisfied with the cash payments distributed by the union, UR-Dole organized another petition to DOLE asking for another referendum, this time to require management to provide the rice allowances as direct cash payments, and removing from the Union the authority to distribute the Rice Allowance.³¹ *See paras. 6.10 et seq.*

Eventually accepting the petitions after rejecting them three times, the Department of Labor and Employment Mediator-Arbitrator ruled on the petition in December 2009 and ordered AK-NAFLU-KMU's Executive Board to conduct a special general assembly "in accordance with [the Union's] Constitution and by-Laws" for the Union to decide whether management or the Union would be responsible for distributing the workers' Rice Allowance,³² even though the CBA negotiated with management grants sole authority of distribution of the Rice Allowance to the Union.³³ The union filed a timely appeal of the Med-Arbitrator's position to the Bureau of Labor Relations (BLR), and the regional Director for DOLE indorsed the case to the BLR in Manila. No decision has been made on the appeal. According to Philippine law, an arbitrator's order is stayed pending resolution of the timely filed appeal.³⁴

Ignoring the pending appeal and without legal authority, UR-Dole moved forward with their own plans to call for a Special General Assembly for February 13, 2010, and began an intensively negative

²⁸ Violation of General OECD Guidelines: PART I, CH IV, PARAGRAPH 2(B); PART I, CH IV, PARAGRAPH 8; and PART I, CH IV, PARAGRAPH 3 Provide information to employees and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.

²⁹ Violation of General OECD Guidelines: PART I, CH II, PARAGRAPH 1(A), and PART I, CH IV, PARAGRAPH 2(C).

³⁰ Violation of General OECD Guidelines: PART I, CH II, PARAGRAPH 1(A), and PART I, CH IV, PARAGRAPH 2(C).

³¹ See *Lilibeth Franje, et. al. v. Amado Kadena-NAFLU-KMU*, in re For Conduct of Special General Assembly. Case No. R1200-0910-AU-003, Department of Labor and Employment, Regional Office XII.

³² Order (December 22, 2009) *Lilibeth Franje, et. al. v. Amado Kadena-NAFLU-KMU*, in re For Conduct of Special General Assembly. Case No. R1200-0910-AU-003, Department of Labor and Employment, Regional Office XII.

³³ Collective Bargaining Agreement by and between Dole Philippines, Inc., and AK-NAFLU-KMU, February 11, 2006 – February 10, 2011, Article XVIII, Sec. 5.

³⁴ DOLE Department Order 40-03.

campaign relying heavily on a strategy of intimidation and deception of the workers. UR-Dole campaigners distributed leaflets maligning Amado Kadena officers and parroting accusations they've been making at their military-backed programs that AK-NAFLU-KMU leadership are NPA. Also, UR-Dole accused the union leaders of corruption and stealing from the rice allowance and mini-mart programs.

AK-NAFLU-KMU sought an emergency injunction from the Regional Trial Court on February 11 to stop the assembly. Unfortunately, the union was unable to get the court to schedule a timely hearing, which set the hearing date for February 19, nearly a full week after the date of the SGA.

Many workers report feeling intimidated and harassed to attend the UR-Dole event and to sign the attendance sheet because they were threatened by both UR-Dole leaders and Dole work supervisors with the possibility of being transferred from their work sections or not receiving their Bottom Line Bonuses. After years of witnessing management's hard-line policy of non-cooperation against the union and its strongest supporters, Amado Kadena members took the threats seriously.

Also ignoring pending proceedings at DOLE intended to resolve the intra-union dispute, Dole management violated the union's rights by recognizing UR-Dole as the representative of the workers on February 18, 2010.^{35, 36} Dole's decision to recognize UR-Dole was based solely on the self-serving word of Mr. Gales because the workers who attended the SGA did not have the right to vote by secret ballot as required to ensure a fair election. Dole management relied instead on the signed attendance sheets as proof of Mr. Gales claim to be the legitimate leader of the Union.

To justify their actions, Dole put forward several different rationales, none of which are based in law, including:

- (1) More than 71% of the membership participated in the SGA, though there is no record of the vote count;
- (2) The Union had been unable to secure a restraining order, though a hearing was set for February 19;
- (3) The Union hadn't protested to management what they thought was a sham General Assembly, ignoring Dole's direct dealings with Mr. Gales in the lead-up to the Assembly. Had Dole management either checked with the Union or the Department of Labor and Employment before recognizing the Gales Group, they would have discovered that the assembly was both unauthorized by law and unconstitutional in process.³⁷
- (4) Lauding the exercise of people power revolution as a "pillar or democracy and feigning respect for the "Rule of the Majority", not rule of law, Dole management also asserted that they've unilaterally determined the will of the majority before, that time in favor of AK-NAFLU-KMU, so it can do so again.³⁸
- (5) Finally, Dole management simply asserted that they will not return recognition to AK-NAFLU-KMU since the results of SGA are a matter internal to the union implying that returning recognition to AK-NAFLU-KMU would improperly interfere with internal union affairs.³⁹

³⁵ Letter from Buranday to JT, February 19, 2009 attached.

³⁶ Violation of General OECD Guidelines: PART I, CH II, PARAGRAPH 1(A), and PART I, CH IV, PARAGRAPH 2(C).

³⁷ Id.

³⁸ See Letter from Buranday to JT, February 22, 2010.

³⁹ Letter from Buranday to JT, March 8, 2010.

On March 18, 2010, the DOLE Bureau of Labor Relations (BLR) rejected Dole's arguments and ordered the parties back to the Status Quo pending resolution of the Union's appeal for nullification of the SGA. Yet, Dole reinterpreted the order to support the Gales claim to union leadership, not the status quo at the time of the violation, and again refused to return recognition to the Union as required by the Order.⁴⁰

Later on July 1, 2010, DOLE BLR again rejected Dole's decision to recognize the Gales Group and rebuked the management's decision not to recognize Mr. Teruel or the union. The BLR then rebuked the Gales Group for conducting an unconstitutional change of leadership of the union and found the February 13 assembly to be illegally conducted.⁴¹

Throughout this time, Dole continued to demonstrate its overt support for UR-Dole.⁴² Dole supervisors verbally reprimanded several workers for not attending the Special General Assembly.⁴³ Also, Dole management followed through with many of UR-Dole's pre-Assembly threats transferring non-compliant workers to another section of the Dole plantation where the work is more physically arduous and they only receive 4 or 5 days of work rather than the 6 days of work under their previous assignment in the Harvesting section.⁴⁴ Many of the workers who were transferred had been working in their positions for more than 10 years. In one section, approximately 20 of the 26 workers assigned to the section refused to sign the attendance sheet being circulated by UR-Dole. All were transferred by Dole management shortly thereafter.⁴⁵ Then, in an orchestrated demonstration of support for UR-Dole, Dole management released the Bottom-line bonus within days after the February 13 SGA. Dole management further demonstrated discriminatory practices by approving leave for the UR-Dole Gales Group during the March 2010 SGS audit allowing them "to roam around the facility...causing discomfort to workers being interviewed."^{46, 47}

In addition to taking over management of the workers' rice allowance and recognizing UR-Dole as the representatives of the workers, Dole management has been intentionally interfering with the basic daily operations and management of the union. Dole has refused to provide the union president with reasonable access to visit the worksite; refused to grant Union leave for Union officers to attend union functions or tend to union business; and refused to remit the union dues on time.⁴⁸ Dole management also implemented new policies, such as the locker search policy where KMU leaders were singled out, without providing the two weeks notice. Management has also refused to grant Union Leave for union officers to attend union functions or tend to union business despite "7 or 8 years" of established practice

⁴⁰ Order (March 18, 2010), *AK-NAFLU-MU v. Gales, et. al.*, Petition for Declaration as Null and Void the February 13, 2010 Special General Assembly. Case no. RO1200-1002-AU-007. Bureau of Labor Relations.

⁴¹ Order (July 1, 2010), *AK-NAFLU-MU v. Gales, et. al.*, Petition for Declaration as Null and Void the February 13, 2010 Special General Assembly. Case no. RO1200-1002-AU-007. Bureau of Labor Relations. Attached hereto as Exhibit F.

⁴² Violation of General OECD Guidelines: PART I, CH II, PARAGRAPH 1(A).

⁴³ Violation of General OECD Guidelines: PART I, CH II, PARAGRAPH 1(A); and PART I, CH IV, PARAGRAPH 1(D).

⁴⁴ Violation of General OECD Guidelines: PART I, CH II, PARAGRAPH 1(A), and PART I, CH IV, PARAGRAPH 1(D).

⁴⁵ Violation of General OECD Guidelines: PART I, CH II, PARAGRAPH 1(A), and PART I, CH IV, PARAGRAPH 1(D).

⁴⁶ See March 2010 SGS Audit Report.

⁴⁷ Violation of General OECD Guidelines: PART I, CH II, PARAGRAPH 1(A), and PART I, CH IV, PARAGRAPH 1(D).

⁴⁸ Violation of General OECD Guidelines: PART I, CH II, PARAGRAPH 1(A), PART I, CH IV, PARAGRAPH 1(D); and PART I, CH IV, PARAGRAPH 2(C).

and despite the union having sufficient credit.⁴⁹ Dole management has also applied a restrictive standard of what Union activity it was prepared to classify as ‘legitimate’ and as required by the CBA.⁵⁰

In August 2010, in the face of a scathing rebuke in the July 1, 2010 BLR decision in favor of AK-NAFLU-KMU, Dole filed an interpleader to again profess to being neutral in the union dispute and seeking DOLE’s assistance to ensure it remains neutral. Yet, immediately thereafter, when the union moved forward providing the UR-Dole Gales Group with union leave to interfere with a union General Assembly called by the union on order of the Department of Labor and Employment.⁵¹

In the meantime, rather than respect the Status Quo order, Dole management is attempting to force the Union President back to his harvesting job thereby preventing him from representing the workers as provided in the CBA.⁵² Many union officers have been fired, and many union members fear retaliation from management if they are caught supporting AK-NAFLU-KMU.

Dole management’s support for the UR-Dole/Gales Group is also a clear violation of the CBA and personnel policy, which states that “organizations of any form or for any purpose within Company premises should have prior authorization from Management, except for legitimate trade unions, which employees may join freely.”^{53,54}

IV. Dole’s practice of using contract labor to expand its pineapple production is intended to weaken local labor organizations and deprive most of its workforce of the full benefits of freedom of association in contravention of the OECD Guidelines.

Since the late 1980s, Dole’s business model and expansion plans have relied on outsourced and contracted labor. Unlike regular full-time workers, these workers are underpaid, deprived of union benefits, and left in constant job insecurity.⁵⁵ In the past five years, the local community has witnessed a significant increase in the number of contractual jobs with contract labor drop points, or the equivalent of day labor centers, have emerged along the highway through Dole’s territory.

Dole has pioneered the development of “labor cooperatives”⁵⁶ as a means to reduce its regular workforce and expand its use of contract labor to capture the benefits of disempowered, cheap labor.⁵⁷ Many labor cooperatives, which currently supply Dole with an estimated 12,000 workers who engage in

⁴⁹ Violation of General OECD Guidelines: PART I, CH II, PARAGRAPH 1(A), PART I, CH IV, PARAGRAPH 1(D); and PART I, CH IV, PARAGRAPH 2(C).

⁵⁰ Violation of General OECD Guidelines: PART I, CH II, PARAGRAPH 1(A), PART I, CH IV, PARAGRAPH 1(D); and PART I, CH IV, PARAGRAPH 2(C).

⁵¹ Violation of General OECD Guidelines: PART I, CH II, PARAGRAPH 1(A), PART I, CH IV, PARAGRAPH 1(D); and PART I, CH IV, PARAGRAPH 2(C).

⁵² Violation of General OECD Guidelines: PART I, CH II, PARAGRAPH 1(A), PART I, CH IV, PARAGRAPH 1(D); and PART I, CH IV, PARAGRAPH 2(C).

⁵³ Dole Philippines, Company Rules and Regulations, Sec. V (1).

⁵⁴ Violation of General OECD Guidelines: PART I, CH II, PARAGRAPH 1(A), PART I, CH IV, PARAGRAPH 1(D); and PART I, CH IV, PARAGRAPH 2(C).

⁵⁵ Field research conducted by the Ecumenical Institute for Labor Education and Research in the provinces of Sultan Kudarat, South Cotabato and Sarangani between June 2006 and June 2007. (EILER Report) Primary data-gathering included surveys, interviews, and focus group discussions with key informants such as union leaders, company officers, community leaders, government officials, plantation growers, land owners, and children. 91 individuals were interviewed.

⁵⁶ Many of the cooperatives working with Dole are mislabeled as “multi-purpose cooperatives.”

⁵⁷ Flores-Obanil, Carmina B. and Mary Ann Manahan. *Leaseback Arrangements: Reversing Agrarian Reform Gains in the Philippines*. LRAM (8 Feb. 2007).

the same work as the full-time employees, operate similar to employment agencies in the US.⁵⁸ When Dole needs additional labor, it pays the cooperatives directly in exchange for personnel while officers from the cooperatives are then responsible for paying the workers or “members”. However, to become a member of a cooperative, though, you have to buy a stake, thereby incurring significant debt to the cooperative. By the time the cooperative deducted the debt payments, the worker’s take home pay is well below the minimum wage. Cooperatives also deduct a portion of monthly wages (PhP 100) from their member for capital build up.

Being a member of the cooperative does not guarantee that the cooperative bosses will choose you for work, though. You are simply eligible at that point. To get work, you still must remain in the good graces of the cooperative officers. Once chosen for work, unlike full-time employees with whom they work side by side, members are paid according to the pakyawan production quota system and are not paid for any overtime work. Because cooperative workers are not full-time employees, they are not allowed to unionize, negotiate a collective contract, or receive the benefits of a collective contract.⁵⁹

As noted by the Philippine Institute for Development Studies, fundamental issues that arise from Dole’s employment practices remain unexamined, particularly issues of equity and sustainability.⁶⁰ At the same time, expanded use of contract workers and labor abusive labor cooperatives are undermining freedom of association in Mindanao. Finally, expanded use of contractual labor undermines long-term economic development by perpetuating a exploitative labor system.

V. Dole has been found in violation of Social Accountability International’s SA8000 standard but has refused to accept or implement recommendations to end the violations.

According to its website, Social Accountability International (SAI) is a global, multi-stakeholder, standards setting organization whose mission is to advance the human rights of workers around the world primarily through promoting its SA8000 social standard. To be certified SA8000, companies have to have adopted policies and procedures that protect the basic human rights of workers, including ILO Conventions 87 and 98 on the respect the right to form and join trade unions and bargain collectively and decent working hours and compensation. For more than 10 years, Dole’s facility in the Philippines has been certified to the SA8000 standard.

In 2009, the union filed a complaint against Dole’s SA8000 audit company, SGS, with its accreditation body, Social Accountability Accreditation Services (SAAS) for failing to identify or address violations at the facility. At the same time, the union lodged a complaint against Dole Foods with Social Accountability International (SAI) through their Complaints Management System (CMS) for Dole’s failure to respect the workers’ freedom of association rights.

In July 2009, Dole’s auditors conducted the first audit since the union lodged the complaint, wherein they found that Dole had violated the rights of the union, but improperly downgraded the violation on

⁵⁸ Dole disputes the number of contract workers supplied by the labor cooperatives

⁵⁹ Borras, Saturnino and Jennifer Franco, *Struggles for Land and Livelihood: Redistributive Reform in Agribusiness Plantations in the Philippines*. Journal of Development Studies, Vol 41, No. 1, pp. 90 - 134.

⁶⁰ Digal, Larry. *Agricultural Contracts in Mindanao: The Case of Banana and Pineapple*. Philippine Institute of Development Studies, Discussion Paper Series No. 2007-24. (December 2007), pg. 1.

the grounds that there was also an intra-union dispute and on the ground that it is the common practice of human resources and business managers across the Philippines to bust KMU unions.⁶¹

Also in July 2009, pursuant to the complaint process, SAI and SAAS contracted with an independent monitor to shadow the auditors conducting the audit and to independently investigate the union's allegations. The union has not seen the full investigative findings, but they have been provided with a summary of the recommendations. After their investigation, the SAAS/SAI audit team recommended, among others, that Dole immediately end support for UR-Dole because "interference of this kind is against the ILO Convention 98 and the SA8000 standard" and to make a pro-active statement "of employees' rights to join and to organise a union of their own choosing and that their doing so will not result in any act of discrimination or victimization." They called on Dole to address management's attitude towards the trade union and, at a minimum, adopt a neutral, apolitical attitude towards the union, and reach an understanding with AK-NAFLU-KMU on a path forward.⁶² Finally, the SAAS/SAI auditors also called for an investigation and monitoring of Dole's use of contract laborers, who are poorly compensated and work under difficult conditions with no job security. Dole Foods appear to have rejected the recommendations of the SAAS/SAI auditors.

In March 2010, Dole's SA8000 auditors conducted a follow-up audit to the July 2009 audit with a different lead auditor. Again, the auditors found that Dole management was continuing its open support for UR-Dole in its campaign against AK-NAFLU-KMU.⁶³ According to Dole's auditors from Societe Generale de Surveillance (SGS) who conducted the audit found that Dole management is assisting Mr. Francis Gales group, UR-Dole; Dole management is assisting Ms. Franje to lodge harassing litigation against the union leadership; Dole management provided Mr. Francis Gales and other members of his group, UR-Dole, union leave to roam around Dole's facility during the March audit thereby creating a threatening environment for the audit; Dole management has been providing financial assistance for the Armed Forces of the Philippines' anti-KMU "education" programs; and Dole management has been cited for failing to disclose to the number of labor cooperative workers it employs.

In May 2010, Dole rejected a plan by the SAI Complaint Panels whose task is to review the SAAS/SAI recommendations and to establish a remediation plan with the union and the company. Dole refused the recommendations stating that they were "uninterested."

In July 2010, Dole management in turn lodged a complaint against SGS's lead auditor and the SGS/SAAS audit process complaining that management was treated unfair and that the SAI/SAAS and SGS audits were conducted improperly. Dole was apparently upset at the manner in which the lead auditor presented his findings and the fact that the auditor apparently found more violations later after reviewing the evidence collected during the 3 day audit. In a letter to the union that was also sent to local and provincial government officials, Dole alleges the March audit was flawed because the union's legal counsel discriminated against Filipinos; claimed that the union needed their permission before being allowed to speak to auditors; claimed that the SGS's lead auditor for the March 2010 audit was a foreigner who was biased against multi-nationals; and accused the SAAS/SAI field investigators of also "perpetrating" bias against multi-national corporations by holding "secret meetings" with union officials, when in fact they were simply conducting their investigation.⁶⁴

⁶¹ See *SGS July 2009 Audit Report attached hereto as Exhibit C.*

⁶² See Annex I, Recommendations for Corrective Action. Based on SAAS/SAI audit team's participation in a witness audit from June 36 to July 23, 2009.

⁶³ See Exhibit C, July 2009 Audit Report and March 2010 SGS Audit Report.

⁶⁴ See Letter from Hernandez to Jose Teruel, June 1, 2010.

Dole has also refused to offer any other alternative way to resolve this matter and has ended engagement with the union, with the exception of writing letters demanding the union president return to work or risk being fired by management. Therefore, the SAI process has stalled and is unlikely to result in an outcome that will ensure remediation or a free and fair election this coming February.

VI. Before the union certification election is held in February 11, 2011, measures must be in place to ensure free and fair elections, which will also require addressing past violations.

The current CBA between the union and Dole management expires on February 11, 2011 when the workers get to again choose who will represent them. Despite the sustained campaign against the union, AK-NAFLU-KMU will be running again confident that they continue to represent the workers' best interests and that the workers will agree. The Freedom Period for the workers begins on December 11, 2010, or 60 days before the end of the CBA election, during which time the certification election campaign will intensify and workers will have to decide on their representatives who will negotiate their next CBA with Dole management.

Recognizing that 5 years of joint management, UR-Dole, military campaign has a severe impact in the community, the union filed a complaint with the Philippines Commission on Human Rights seeking an investigation of the violations and to provide election monitoring for the February 2011 certification elections. The complaint detailed the violations of freedom of association that were occurring at the Dole Polomolok facility with a focus on the involvement of the Armed Forces of the Philippines (AFP), in conjunction with private individuals, corporations, and other organizations to systematically subject many local unions to anti-KMU campaigns intended to erode support for democratically-elected KMU unions the AFP alleges are communist and who are accused of impeding the government's pro-business investment policies.

The Union realized that the joint campaign efforts and involvement of the military created a climate of fear and intimidation that needed the oversight of the impartial human rights body. The Union sought the assistance and oversight of the Philippine Commission on Human Rights to: conduct an inquiry into the anti-KMU education programs and issue a finding of fact whether their right to freedom of association was being violated; seek an end to the military's and management's support for the anti-KMU campaign against the Union; help resolve the on-going, simmering labor-management disputes caused by management and the military's anti-union campaign; and ensure free and fair union elections in 2011 at Dole's plantation in the Philippines. (*See* para. 8.1 *et seq.*, para. 8.4) The Commission on Human Rights (CHR) is dedicated to ensure the protection and promotion of human rights in the Philippines, and the Union is hopeful that they will adequately and impartially investigate the concerns raised in the complaint; however the process is likely to be slow and delayed. Moreover, the CHR does not have the adequate resources to urgently mobilize election monitoring in such a tense climate.

VII. The petitioners hereby request the United States Government Department of State to offer the good offices of its OECD National Contact Point to ensure a free and fair democratic trade union election in 2011 at Dole's facility in the Philippines.

A. The OECD National Contact Point has the mandate to receive and examine complaints of violations of the OECD Guidelines, and is tasked to respond to the complaints and find ways to work with the parties to find a solution.

The Organization for Economic Cooperation and Development endorsed a set of guidelines in 1976 for the purpose of ensuring multinational corporations from OECD countries respect the rights of workers and the broader community of stakeholders when doing business globally, particularly in countries where rights are not enforced and the rule of law is weak.

Though designed as voluntary and not legally binding, the OECD governments committed to establishing National Contact Points (NCP) to oversee a complaints process regarding violations of the OECD Guidelines, and work with the parties to find a solution. Recognizing the need for the National Contact Points to play an active and robust role in resolving violations, the OECD developed multi-step “Procedural Guidance” for addressing complaints. Within the “Procedural Guidance” OECD NCPs conduct an initial assessment of the claims to determine whether it “merits further examination.”⁶⁵ When determining whether a complaint is “bona fide”, or merits further examination, the NCP should consider (1) the complainant’s interest in resolving the violation; (2) whether the issues raised are material and substantiated; (3) the relevance of applicable law and procedures; (4) how similar issues have been treated in other domestic or international proceedings; (5) and whether examining the case will contribute to the purpose and effectiveness of the Guidelines.⁶⁶

The Union is committed to resolve the current issues, and has attempted to find resolution through various forums, such as at the DOLE or through the SAI complaint mechanism; but they have been rebuffed at every turn, which lead the Union to file a complaint with the Philippine Commission on Human Rights. The Philippine Commission on Human Rights is taking up an investigation of the military involvement and human rights violations in Polomolok, however the OECD NCP has the competency and expertise to respond to the U.S. based multinational corporation’s labor rights violations. The petitioners file this complaint to the OECD NCP with hope to resolve the issues at Dole’s plantation in the Philippines as soon as possible prior to the upcoming certification election in February 2011 before the workers lose the opportunity to freely and fairly elect the union of their choice.

The issues and violations raised in this inquiry are material, and must be addressed in order for the conflict to be resolved. Dole has created a climate of fear and intimidation at the Polomolok facility where workers are not free to associate or support the democratically elected union due to the threat to their security and fear of retaliation in the form of illegal suspension, firings, or transfer. The OECD NCP is best suited to examine the company’s misconduct with regard to labor violations, and must address the material issues prior to the certification election in February 2011. The violations are substantiated in the footnotes, attached exhibits, and supporting documentation presented to the CHR.

With regard to the relevance of applicable law and procedures, the local Philippine institutions do not have the capacity to adequately address the labor rights violations. While the Philippine DOLE has expertise in labor relations, their processes are extremely slow and disputes such as this can drag out for 7-10 years. Dole has taken advantage of the delays and inefficiency of the Philippine labor and justice systems. Moreover, when Philippine administrative agencies issue orders contrary to Dole’s interest, such as the status quo orders or the findings regarding the rice allowance distribution, Dole circumvents the government administrative processes to unilaterally implement its own employment policies at the request of UR-Dole supporters.

⁶⁵ OECD Guidelines for Multinational Corporations, Procedural Guidance, Section I(C).

⁶⁶ OECD Guidelines for Multinational Corporations, Commentary on the Implementation Procedures, Procedural Guidance for NCPs.

The issues and actions raised in this inquiry have been found to be violations of the union's right to freedom of association in both the domestic and international arena. The DOLE's July 1, 2010 Resolution in response to the Union's petition for declaration as null and void the Special General Assembly staged by the UR-Dole/Gales group members on February 13, 2010 reiterated to Dole that its actions are in violation of the Union's right to freedom of association.

We look with complete disfavor at the Dole [Philippines] insistence on its own interpretation of the Rules despite our clear ruling in the status quo ante order. If the company is indeed wary of possible suits, it would have been more prudent on its part to deal with the Gales Group whose assumption into office was still in question, even just during the pendency of the subject petition... Wherefore, the foregoing premises considered, the petition is hereby GRANTED. Accordingly, the impeachment of the Teruel Group and the subsequent election of the Gales Group as union officers during the 13 February 2010 SGMA are NULLIFIED. [sic]

As discussed above, Dole again refused to comply with the Resolution, and decided to file an interpleader in August 2010 to allege that it was neutral in the union dispute while seeking DOLE's assistance to ensure neutrality. In complete opposition to its interpleader, Dole management continued to provide the UR-Dole/Gales Group with union leave to interfere with an AK-NAFLU-KMU General Assembly called by the Union on the basis of the July 1, 2010 Resolution of the DOLE.

Examination of the case will provide the U.S. NCP with the opportunity to ensure the Guidelines meet the purpose for which they were originally drafted, which is to ensure multinational corporations from OECD countries respect the rights of workers in countries where the rule of law is weak. For these reasons, the Petitioners request the NCP offer their good offices to help resolve the dispute with Dole.

B. Dole has violated at least seven of the General OECD Guidelines for responsible business conduct in employment and industrial relations.

As detailed throughout the complaint, Dole has violated General OECD Guidelines for responsible business conduct in employment and industrial relations.

1. **Dole failed to respect the employees' right to be represented by a trade union.** (OECD Guidelines: PART I, CH II, PARAGRAPH 1(A) "Respect the right of their employees to be represented by trade unions and other bona fide representatives of employees.")
2. **Dole discriminated against specific employees based upon their political opinion.** (OECD Guidelines: PART I, CH IV, PARAGRAPH 1(D) "Employers should not discriminate against their employees with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin.")
3. **Dole failed to respect the human rights of those affected by their activities.** (OECD Guidelines: PART I, CH II, PARAGRAPH 2 "Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.")
4. **Dole obstructed the Union's ability to negotiate a collective bargaining agreement.** (OECD Guidelines: PART I, CH IV, PARAGRAPH 8 "Enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.")

5. **Dole failed to share information with Union representatives to allow for meaningful negotiations.** (OECD Guidelines: PART I, CH IV, PARAGRAPH 2(B) “Provide information to employee representatives which is needed for meaningful negotiations on conditions of employment.”)
6. **Dole did not provide representative information to employees about the performance of the company.** (OECD Guidelines: PART I, CH IV, PARAGRAPH 3 “Provide information to employees and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.”)
7. **Dole maintains a policy of non-cooperation with the employees’ democratically-elected union.** (OECD Guidelines: PART I, CH IV, PARAGRAPH 2(C) “Promote consultation and co-operation between employers and employees and their representatives on matters of mutual concern.”)

Dole’s repeated and continued violations of the workers’ right to freedom of association have poisoned the environment for a free and fair certification election. Dole’s discriminatory retaliation against employees for their political opinions and demonstrations of support for the democratically-elected AK-NAFLU-KMU Union further exacerbate the climate of fear and intimidation among the workers at Dole’s facility in Polomolok. The OECD NCP’s assistance with election monitoring will allow the workers at the Dole’s plantation to exercise their human right, recognized under the OECD Guidelines, international law, and Philippine labor law, to democratically elect of union of their choice without fear of reprisal.

C. The union requests: (1) election monitoring; (2) mediation of lingering conflicts, and (3) a determination of Dole’s compliance with the guidelines and issue recommendations for Dole’s obligations under the OECD Guidelines.

In accordance with OECD guidelines, we respectfully request the NCP to examine this complaint, and offer their good offices to assist the parties to ensure the workers’ right to freedom of association is respected and protected on Dole’s plantations and facilities. Specifically, the Union would like the NCP (1) to work in collaboration with the Philippine Commission on Human Rights to mitigate the climate of fear and hostility, and ensure that the workers on the Dole plantation in Polomolok have the opportunity to freely and fairly elect the leaders of their own choosing by engaging in election monitoring; (2) to take immediate action to submit the parties to mediation where the NCP will provide very clear guidance on what constitutes acceptable procedures for selection of a mediator, terms, issues to be mediated, and a timeline, in order to address the fundamental violations that have made free and fair union elections impossible including Dole’s use of a labor cooperative system; and (3) to issue a public written determination regarding Dole’s compliance with the OECD Guidelines, as well as recommendations for Dole’s obligations under the OECD Guidelines.

Given the time sensitive nature of the violations, we reiterate the urgency to take immediate steps to ensure the workers’ ability to democratically elect a representative union of their own free choice.

Respectfully submitted,



Brian Campbell
 Director of Policy and Legal Programs
 International Labor Rights Forum