



TEAMSTERS LOCAL UNION 117

Affiliated with the International Brotherhood of Teamsters

General Public and Private Sector Employees and Special Services Employees in King and Pierce Counties and Employees of the State of Washington

I. Summary of Facts and Demands

Theo Chocolate company management have violated Section 2.1.2 of IMO's Fair for Life standard, which provides:

“Workers, without distinction, have the right to join or form trade union of their own choosing and to bargain collectively unless restricted by law. **The employer adopts an open attitude towards the activities of trade union and their organizational activities.** Workers representatives are not discriminated against and have access to carry out their representative functions in the workplace.”¹
(emphasis added)

As discussed below, when Theo management discovered that workers were organizing a union with Teamsters Local 117, they immediately took measures to combat their efforts, including hiring a union avoidance consultant and implementing a union avoidance plan. Then, to replace the union Theo management established a parallel structure, the Round Table, which management would control and dominate. The workers had little say and management all the power, as demonstrated by management's total control in the design and structure of the Round Table and by the removal of [redacted] from her seat when she was unable to attend a last minute meeting. Finally, Theo management fired one worker and took negative actions against others, including thorough pressure tactics aimed at ending support for the union.

Theo must be suspended from the IMO's Fair for Life Certification program pending implementation of a specific, comprehensive corrective action plan. As a part of that plan, and to demonstrate compliance with IMO requirements that management adopt an “open attitude” toward trade union activities. Theo must (1) enter into a union neutrality agreement; (2) provides access and paid time for a labor rights training program conducted by a labor rights organization; (3) provide full severance pay that was verbally promised to Ms. Jahnke when she was fired, and finally (4) issue a public statement rescinding public assertions that IMO has found that “no labor abuses occurred at Theo.”

¹ http://www.fairforlife.net/logicio/client/fairforlife/file/IMO_SFT_Programme_Version3_Feb08.pdf

II. Background on Theo Chocolate Company

Incorporated as a confectionary with only a few employees in 2005, Theo Chocolate Company has grown to a multi-million dollar business which employs over 60 people in factory and across the US. Built upon the foundation of being the US's "first and only Fair Trade Organic bean to bar chocolate factory," Theo has quickly become a household name, carried in all major natural food grocery stores as well as hundreds of bookstores, cafes, salons, boutiques, and small businesses across the US. As Theo's business relationships have matured, so too has Theo's workforce. Theo has benefitted greatly from the hard work of its employees. Most of Theo's employees have been drawn to Theo precisely because of its mission for Fair Trade, organic chocolate and their belief that Fair Trade values can have a transformative effect on business and society.

III. Theo workers sought to organize a trade union to strengthen their voice in the workplace and empower them to improve working conditions.

Recently, many workers had become increasingly concerned about changing and inequitable working conditions at Theo Chocolate. In its drive to meet the demand of new, fast growing markets, and large customers like Whole Foods, management had been increasing production demands, and the workloads were having an impact on the health of the workers, especially the long-time employees. Management also routinely scheduled weekend shifts at the last minute, but would ensure that everyone went home before they qualified for overtime pay. An increasing number of safety problems had arisen, resulting in debilitating injuries for several workers. Wage discrimination, irregular hiring and firing procedures, failure to notify employees of their legally mandated healthcare and vacation leave and other management issues were going unaddressed despite good-faith efforts of long-term employees to bring these up with management over the course of several years. In the eyes of its workers, Theo was losing touch with its commitment to treating its workers fairly, with both dignity and respect.

So, on February 20, 2010, several Theo workers met outside of work with a Teamsters Local 117 organizer to discuss ways in which they could work together to help improve working conditions as management's demands on them increased. At the meeting, workers discussed forming a trade union and negotiating a collective bargaining agreement as a proactive way to engage management and improve working conditions. They viewed their organizing effort as both an expression of their commitment to fair trade principles as well as a simple

exercise of their right to form a union, which is *protected* by law but *promoted* by the principles of fair trade and IMO's Social and Fairtrade Certification Programme.

Over the next few days, the core group of organizers shared their idea with their friends from work, and by the following weekend, the number of workers interested in forming a union at Theo grew quickly. More than half of Theo's eligible employees attended the next organizing meeting on February 27, where they heard from a representative from the Teamsters Local 117, and signed union cards. 19 people total signed union cards, out of a workforce of 30 who would qualify to join the union under US law. Theo workers believe that more would have signed later, had it not been for the anti-union pressure exerted by management and professional union-avoidance consultant Mr. David Acosta.

IV. Theo Management hires a "union avoidance" consultant and implements a "union avoidance" plan to end the employee's efforts.

Soon, management had heard of the workers weekend meetings, during which they discussed forming a union, and they quickly moved to quell the organizing efforts. Rather than view the workers' desire to form a union as a positive step toward a more mature labor-management relationship, Theo management viewed the workers efforts as a personal affront, and a challenge to the company's business model. On March 3, Debra Music (Vice President of Marketing) and Dana Kemmerling (Marketing Coordinator) confronted one union supporter in the break room causing her to cry. Another worker was confronted directly by Joe Whinney, Theo Chocolate's CEO. Management began to spread an overall anti-union culture through the use of emotional manipulation and guilt, intimidation and fear, and myths about unions.

By the end of the week, Mr. Whinney had hired David Acosta from American Consulting Group (ACG), a company that specializes in advising management on strategies to undermine employee-led union organizing drives; what ACG refers to as "union avoidance strategies,"² (or what is colloquially known as "union-busting"). According to ACG's website, they help management (1) formulate its anti-union strategy, (2) work with management to enhance communication skills and provide other resources to implement those strategies, (3) communicates directly to employees to explain why management is opposed to a union, and (4) assists management in "realigning employees" to ensure that the

² <http://www.american-consulting.com/main/index.php?pg=union>

company will remain union-free in the long-term. ACG business model is premised on the concept that unions are bad and should be avoided at all costs.

A. Management, with help from its union avoidance consultant, conducts captive audience meetings with both groups and individuals to express vehement opposition to the union.

As his first step in “union avoidance”, Mr. Whinney began pulling workers aside individually after meetings and asking them to share their grievances with him. He explained to them that he could address their grievances directly and that they ought not to join a union. This was also done in groups.

The following Sunday, March 7, workers met again to continue discussing ideas about forming a union. This time, however, several managers, including Audrey Lawrence, Nathan Palmer-Royston, Dana Kemmerling, Jesse Lundin, disrupted the meeting and verbally attacked the union organizer and all who supported the union.

On Monday March 8, management continued its full offensive against the workers’ union organizing effort. David Acosta, Theo’s “union avoidance” consultant, began calling Theo workers into captive audience meetings at work for the purpose of dissuading them from forming a union. Many meetings went on for several hours (some as long as 4 hours), and workers were not told that the meetings were voluntary until the end of the meetings. The meetings continued for more than one week.

On Tuesday March 9, Mr. Whinney called a mandatory staff meeting to deliver management’s response to union organizing efforts by the workers developed in consultation with Mr. Acosta. Mr. Whinney began spreading unfounded negative rumors about the Teamsters, including propagating a myth widely used by union avoidance consultants that unions get “commissions” for organizing workers and others.

Ms. Music, Ms. Kemmerling, and Ms. Lundin attempted to make the union supporters feel guilty. Propelled by Mr. Acosta’s anti-union program, they accused the union supporters of ruining the family atmosphere at Theo claiming that forming a union would damage the relationship between management and the employees. In what would become a self-fulfilling prophecy, they would also cry at staff meetings, as well as in their offices and around the factory, claiming that nothing would ever be the same at Theo again.

Workers were also made to feel like their support for the union would ruin the gains Fair Trade had made for cocoa farmers supplying Theo its cocoa, stating that organizing a union is an extreme act of selfishness that will negatively impact the poor Africans who depend on Theo's business. Ms. Music told one union supporter, "You can't imagine how hard life is in Africa - your situation pales in comparison to theirs."

Though unconfirmed, it was suggested by management to one union organizer that the company would be forgoing anticipated donations to [redacted] a core component of Theo's marketing strategy, because they had decided to hire a union avoidance consultant instead. To justify its decision, Theo management asserted it was more important for management to campaign against the union, citing its "rights" to exist as a fair trade business, than it was to donate proceeds to [redacted] [redacted] implying that a union would destroy rather than reinforce Theo's socially responsibly business model.

On Friday March 12, Theo manager Nathan Palmer Royston called another staff meeting to discuss "solving internally" the issues the union organizers had hoped to resolve in a collaborative collective bargaining agreement. While the meeting resulted in heated debates, the workers were unable to form a company-wide consensus about organizing a union, with many committed but others not. In the interim, though, the workers did call for a management to publish a handbook so that they could better understand their current rights and benefits. Management eventually distributed a newly minted employee manual in May, months after initially promised. However, the manual does not address many of the issues raised by the workers in their union meetings or to management, including serious systematic issues like production expectations and management practice of scheduling additional shifts and overtime on short notice. Employee handbooks, though, are non-binding commitments that management can change whenever they want.

When they met again the next Sunday the 14th, union supporters realized that management would turn their effort to form a union into a bitter struggle. Many were demoralized and disheartened. The workers had no reason to believe that management would relent efforts to end the union organizing drive. As a Fair Trade company, Theo management had committed to "adopting an open attitude toward the activities of trade unions and their organizational activities." At the time, management was under review to qualify for the IMO Fair for Life certification.

The week of the 15th through the 19th, Chuck Horne, the company accountant, gave a powerpoint comparing Theo's healthcare plan to a Teamsters' negotiated plan, despite knowing that these issues would be open for negotiations during any future collective bargaining negotiations.

The following Tuesday, March 16, Mr. Royston continued the pressure tactics by announcing publicly over the company-wide listserve and posting in the break room that the workers had agreed by consensus that they would stop organizing a union. Many workers quickly refuted the claim at the time.

B. Theo management established a parallel worker representation scheme that they could maintain control over.

Mr. Whinney announced the next week on March 22 that management had decided, after consulting with their union avoidance consultant, to establish a Round Table through which workers could raise their issues with management. According to Mr. Whinney's plan, workers in each of Theo's four departments (retail, kitchen, production, administration) would hold departmental meetings to vent their concerns. Then, workers select a departmental representative to meet with the other departmental representatives, thereby providing the Round Table process with some token democratic elements. Those representatives compare their lists and are instructed to choose only five to bring to Mr. Whinney. Mr. Whinney will then meet with the representatives and hear their views.

Mr. Whinney's plans, though, established no clear obligations on the part of management to address the concerns raised, nor would management agree to set clear timelines for addressing worker complaints.

The Round Table is simply a process where issues can be raised and revisited in a circle without ever leading to negotiated, binding commitments. Therefore, the employee representatives chose as their very first issue to bring to the Round Table, addressing the Round Table itself, which many did not view as a suitable replacement for a fairly negotiated collective bargaining agreement.

C. Theo management then began to strategically single out the most vocal union supporters; firing one and pushing several others out of the company.

At the end of March 2010, Mr. Whinney and management also began implementing the final phase of their “union avoidance” strategy, which Mr. Acosta’s firm refers to as strategically “realigning employees” to ensure that the company will remain union-free in the long-term.

On March 28, less than one month after Mr. Acosta was retained, [redacted] was called into a meeting with management where they questioned whether she could continue in her job as tour guide and company spokesperson citing her support for the union. In a heated discussion Mr. Whinney told her that if she used the term “union-buster” in reference to Mr. Acosta again, he was “through with her,” and also told her he would rather close the factory than sign a contract with the Teamsters.

On April 9, Mr. Whinney again called [redacted] into a meeting during which he reiterated that if he had to sign a contract with a union, the investors backing the business would leave and he would pull out too.³ Later, to remove [redacted] from her seat on the Round Table, Mr. Whinney scheduled a last minute meeting of the Round Table while she was on leave. [redacted] had been the most insistent participant on the panel and brushed up against management by insisting on deadlines and follow-through for decision reached at the Round Tables. Unfortunately, [redacted] recognized that her future at Theo was limited and left her job after more than 3 years to find other employment on October 1.

For [redacted], another union supporter who processed all internet orders, work was gradually taken away from her and given to other employees in order to reduce her overall hours.

Management also began reviewing the salaries of workers in early April 2010, ostensibly to address worker demands for overdue pay raises, and the retaliation continued. Management refused to offer one union organizer a review until July. When the review was finally held, the union supporter was denied a pay raise despite an exemplary review, similar to the

³ Threatening to close a factory because of a union organizing campaign and individually threatening the employment of an employee because of their stance towards a union would qualify as an unfair labor practice in violation of US Law as defined by section 8.a of the National Labor Relations Act.

experiences of other union supporters. For those known union supporters who did get timely reviews, many were denied pay raises. In contrast, workers who were vocally anti-union were all rewarded by management with pay raises and promotions.

Once again highlighting the need for a collective bargaining agreement, management's salary proposals were substantially below industry standards in at least two departments, retail and kitchen.

In September, several union supporters decide to seek support for their efforts through expressions of solidarity from supportive organizations and individuals. They hoped to solicit the aid of friendly organizations and the IMO to convince Theo management to reconsider their vehement opposition the workers' efforts to exercise their right to form a trade union. They also believed that Theo management's actions violated fundamental principles of the fair trade movement, which views trade unionism as a benefit, not a detriment to a business, and wanted to ensure that their experience was shared so that it would not happen again at a Fair Trade facility.

On October 4, Green America informed Mr. Whinney that his company was no longer eligible for its Green Business of the Year Award.

Sometime around October 23, Mr. Whinney was able to obtain a copy of a letter written by union supporters to friends and allies soliciting support for their efforts. The following Monday morning, October 25, management fired one of the remaining union organizers, [redacted], despite an exemplary review one week earlier. [redacted] was informed that they wanted to replace her part-time position with a full-time employee and cited her unavailability as a student. However, the position does not require a full time employee, as demonstrated by the fact that they do not have a full time employee in the position. [redacted]'s email account was taken off less than ten minutes after she was fired.

Three days following [redacted] [redacted], on Thursday October 27th Mr. Whinney sent a company-wide e-mail that included a letter written by [redacted], [redacted], and [redacted], asking local organizations for support for their efforts. Soon after, [redacted] was called in to a meeting with a company manager, [redacted]. [redacted] expressed concerns for her job. She was told that if she were concerned for her job, she should "watch [her] back."

One worker who had been supportive of the union left on scheduled leave to address a family situation, only to find on her return that management had posted her job publicly without notifying her. She was then required by management to sign a contract stating that her job would be terminated January 1st, after the high volume holiday rush ended.

V. **Theo management has violated IMO Fair for Life Social and Fairtrade Certification**

On May 28, 2010, a full two months after Theo management implemented its “union avoidance” offensive, the Institute for Marketecology (IMO) certified Theo Chocolate to the Fair for Life standards.⁴ Yet, Section 2.1.2 of IMO’s Fair for Life standard provides:

“Workers, without distinction, have the right to join or form trade union of their own choosing and to bargain collectively unless restricted by law. **The employer adopts an open attitude towards the activities of trade union and their organizational activities.** Workers representatives are not discriminated against and have access to carry out their representative functions in the workplace.”⁵
(emphasis added)

For Theo to maintain its Fair for Life certification, management is obligated to “fulfill all MUST criteria.”⁶ Under Section 2.1.2, therefore, Theo management must (1) “permit associative activities” and (2) cannot discriminate or punish workers for exercising their right to join union/associative activities.

As we demonstrated above, Theo management has violated both of those requirements. When Theo management discovered the workers were organizing, they immediately took measures to combat the union, including hiring a union avoidance consultant and implementing a union avoidance plan. Then, to replace the union Theo management established a parallel structure, the Round Table, which management would control and dominate. The workers had little say and management had all the power, as demonstrated

⁴ See IMO’s audit standard of “permit associative activities” is weaker than the standard, which requires the employer to adopt an open attitude.

⁵ http://www.fairforlife.net/logicio/client/fairforlife/file/IMO_SFT_Programme_Version3_Feb08.pdf

⁶ http://www.fairforlife.net/logicio/pmws/indexDOM.php?client_id=fairforlife&page_id=system&clang_iso639=en

by management's total control in the design and structure of the Round Table and by the removal of [redacted] from her seat when she was unable to attend a last minute meeting. Finally, Theo management fired one worker and took negative actions against others, including thorough pressure tactics aimed at ending support for the union.

VI. Corrective Action Demands

- 1) Theo must lose its certification for having failed two of IMO's "MUST" categories under Section 2.1.2 Freedom of Association and Right to Collective Bargaining until management has implemented a full remediation plan.
- 2.) As a demonstration of their commitment to adopting an open attitude towards the activities of trade unions, Theo must enter into a union neutrality agreement with Teamsters Local 117. Theo's commitment must include free access for union organizers to come to Theo premises to talk to workers.
- 3.) Theo must provide [redacted] her full severance pay that Theo verbally promised her when she was fired, as well as any legally required unemployment.
- 4.) Theo provides paid time and access for an annual labor rights training for its management and employees conducted by a labor rights organization.
- 5.) Theo must issue a public statement rescinding assertions made by CEO Joe Whinney on a Fair Trade Resource Network Webinar that the IMO has found that "no labor abuses occurred at Theo," and he must agree participate in education programs on the FTRN highlighting the important role labor organizations play in fair trade systems.