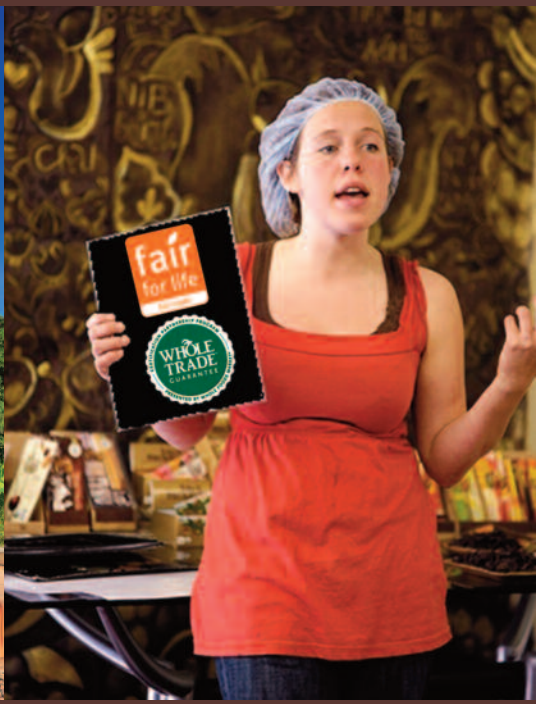
IMO AND THEO CHOCOLATE: A CASE STUDY



AIDING AND ABETTING

How Unaccountable Fair Trade Certifiers Are Destroying Workers' Rights

ILRF

A REPORT BY THE INTERNATIONAL LABOR RIGHTS FORUM

Foreword by Judy Gearhart, Executive Director of ILRF

U.S. CONSUMERS ARE INCREASINGLY aware that the goods they buy may be made under inhumane working conditions – whether apparel, electronics, agricultural products or diamonds. Hollywood, journalists and activists have all helped to build this awareness and various groups have proposed solutions – or attempted solutions – to ensure better treatment of workers. Global brands have begun to map their supply chains, some even down to the raw materials. Consultants and other advocates of corporate social responsibility have developed training programs, monitoring programs, certification systems, reporting protocols and, in some cases, labeling programs.

Although a number of these programs have developed codes of conduct pegged to the principles of international human rights conventions and the core conventions of the International Labor Organization, many companies started off resistant. The ILO reported in 1999 that only 15 percent of workplace codes of conduct acknowledged workers' rights to freedom of association and collective bargaining[1]. Some progress has been made since then, at least on paper, through increased commitments by companies to honor labor rights standards. On the ground, however, most workers have seen no increase in real wages or in their opportunities to organize.

This report describes how a company marketing itself based on social standards became unhinged from its commitment to workers, despite adopting a strong workplace code of conduct and contracting external monitors. The case illustrates how certification bodies, paid directly by brands, can harm efforts by workers to unionize rather than help them. It also shows how workers, seeking to use the code and certification process constructively, are put at a disadvantage when there is no transparency around the grievance process and no independent appeal of findings from a certifier's investigation. This report focuses on one case study in particular – an unfortunate case of missed opportunities – which should serve as an important lesson for many other companies and other professional monitoring programs.

Theo Chocolate made a public commitment to ensure workers' rights to organize and prided themselves on their 'bean-to-bar' certification from IMO (Institute for Market Ecology). Behind closed doors, however, management actively campaigned against worker organizing efforts using professional union avoidance consultants, intimidation, and discriminatory treatment of workers based on support of the union. Although workers informed IMO about these violations, IMO neglected to intervene to uphold its commitment to Fair Trade standards.

In 2011, ILRF assisted Teamsters Local 117 in preparing and filing a complaint to IMO about their certification decision at Theo Chocolate's manufacturing facility in Seattle, Washington. Had the IMO been diligent in their duties to investigate worker grievances in a transparent and timely manner, or had they advised workers to immediately seek direct legal recourse, many workers would still have their jobs at Theo today, and might have won respect and a voice on the job at the United States' first organic, fair trade, *union* chocolate factory. Due to a series of violations, however, that never came to pass. IMO's certification of Theo Chocolate provided no independent mechanism for workers to challenge IMO's flawed investigation of Theo's violations of workers' human rights.

The failure of both IMO and Theo to uphold their commitments to consumers are grave. However, this report is not without hope.

Fair trade companies have a choice as to how they will conduct labor relations policy in the United States. They can implement values and practices of respect for workers' organizing rights and acceptance of collective bargaining as a normal way of engaging with employees, or they can convert to forms of management interference with workers' organizing and bargaining efforts that are all too common in the United States, but in direct contradiction to fair trade values and international labor standards.

We intend for this report to encourage Theo and IMO to make amends with the workers and consumers they have wronged by clearly conveying their willingness to ensure workers' rights to organize and bargain collectively through concrete, legally binding actions. We wish to understand the structural failures of the IMO's Fair for Life certification model so that we can better inform fair trade advocates who may have promoted them and so that IMO and others can avoid repeating the same mistakes in the future. Our vision is to establish a process that could serve any labor rights certification and monitoring program; a proposal for creating a more credible and independent mechanism for reviewing investigations by certifying organizations in cases where workers' rights to organize and bargain collectively are at risk. By addressing the inherent conflict-of-interest created when monitors are paid by the company they audit, the proposed solution will provide workers a useful tool in their efforts to win dignified treatment in the workplace.

Prior to publishing this report, we asked IMO and Theo for input. To date, both IMO and Theo have replied with only very general statements about their programs. Neither has yet agreed to the recommendations, but ILRF will post updates on our blog -- Labor is Not a Commodity -- if their response changes.

ILRF is grateful to the University of Washington Law School students Amanda Ballantyne, Ben O'Donnell and Matt Woods who contributed to this report by conducting worker interviews and summarizing their research.

October, 2012

1. International Labour Organization, Working Party on the Social Dimensions of the Liberalization of International Trade; GB.273/WP/SDL/1 (Add.1); 273rd Session; Geneva, November 1998.

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I. Executive Summary

On September 11, 2012, the world was horrified when nearly 300 workers burned to death at a textile factory in Karachi, Pakistan. More shocking news followed--only weeks before, the factory had been certified by a leading social auditing organization, indicating that the company was in compliance with standards on working conditions and safety.

Many questions remain unanswered, including: Who holds these certifying organizations accountable? Who ensures that workers are protected when certifiers fail them?

The Pakistan case is an extreme example, but numerous reports of breaches of certification and fair trade standards are straining the credibility of corporate social responsibility systems. This report tells the story of the Institute for Market Ecology (IMO), an organization that audits companies in order to provide fair trade certification and labels to their products. IMO certified Theo Chocolate, a U.S.-based chocolate company, as meeting its labor, environmental and development standards. Theo markets its chocolate as fair trade because of this certification.

IMO branded Theo Chocolate as fair trade, despite being told by Theo workers that the company had hired an anti-union consultant and was violating U.S. and international labor standards during a union organizing campaign. When the workers decided to form a union, management responded with hostility, intimidation and retaliation. The workers were able to convince IMO to conduct an audit post-certification, but IMO upheld Theo's fair trade certification and told the workers that the results of the audit were confidential. IMO also loosened its own labor standards in order to justify its decision.

The lack of recourse for workers, and the lack of accountability among fair trade-certifying and social auditing organizations, is unacceptable. In this report we provide a critical review of why the fair trade community must establish greater accountability among the certifying organizations they support. We also propose a new approach that would greatly increase transparency and add an element of independent review to the certification process.

A summary of our recommendations are:

- **We urge the global fair trade community to partner with the labor movement to create an "International Fair Trade Board of Appeal." This Board would have the ability to assess and remedy instances where fair trade organizations mishandled cases involving allegations of workers' rights violations. The global fair trade community must also require fair trade certifying and social auditing organizations to make their processes and audit results transparent to all parties.**

- We demand that IMO change its procedures to create transparency and accountability and to allow its audits to be reviewed by the aforementioned International Fair Trade Board of Appeal. We demand that IMO submit the Theo Chocolate complaint for review by this Board. IMO must make its audit findings transparent as well.

- We demand that Theo Chocolate affirm with employees its respect for international labor rights and its employees' ability to exercise those rights. Theo must also put an end to the atmosphere of fear and intimidation created by its anti-union campaign, and establish ground rules should the workers wish to organize a union in the future.

II. How Theo Chocolate Defeated Workers' Attempts to Claim Their Rights

A. About Theo Chocolate

Theo Chocolate is a private company headquartered in Seattle, Washington. It was founded in 2005 and has grown to a multimillion dollar business that employs over 60 people. Calling itself the United States' "first and only fair trade organic bean-to-bar chocolate factory," Theo has quickly become a fair trade household name. Its products are carried in many major natural food grocery stores, including Whole Foods, Bartell Drugs, Bon Appetit, Fred Meyer, Metropolitan Markets, Puget Consumers' Co-op, Thriftway, Wegmans, as well as hundreds of bookstores, cafes, salons, boutiques and small businesses across the U.S.

Theo controls and executes the entire chocolate procurement and production process, from bean sourcing through to the final molding process. It operates a single factory in Seattle and produces approximately 128,000 bars per week. Theo is fair trade certified by the IMO (Institute for Market Ecology), a Swiss-based independent international agency that claims to inspect, certify and guarantee quality assurance for a wide variety of "eco-friendly" consumer products.

Theo's customers are committed to sustainability and social justice. They are willing to pay a premium for a product that doesn't damage the environment, that is healthy to eat and that is just in dealings with farmers, farm workers and workers along the production/supply chain.

For the workers at Theo Chocolate in Seattle, it wasn't just a job. They believed in the fair trade mission of the company. Theo Chocolate's website states that its "fair trade" practices include:

- Using only pure ingredients that are grown sustainably. We source our ingredients locally whenever possible.
- Partnering with our growers by ensuring they earn a living wage and have access to education for their families.
- Honoring and respecting our employees and suppliers. This is possible due to the unique fact that we control every step of our own manufacturing process.
- Using green energy sources to power our factory.

Due to Theo's advocated values, its workers expected encouragement from management when they decided to form a union. But when management found out about the organizing campaign, the workers' hopes were shattered.

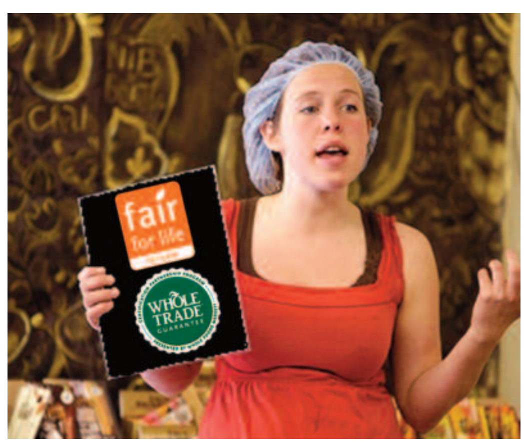
B. Theo Chocolate Workers Decide To Organize

In 2009, Theo Chocolate entered into an agreement with Whole Foods Markets to sell its chocolate bars throughout the Whole Foods national chain. Meeting this increased demand required that Theo dramatically increase production in its Seattle plant. As the result of the production speed-up, several workers were seriously injured, and the company began changing the terms and working conditions of its employees. There were shift changes on short notice, onerous workloads and mandated long hours.

A group of Theo workers decided that forming a union was both an expression of their commitment to fair trade principles, and a proactive way to improve working conditions. They sought advice from a well-respected local union. On February 20, 2010, 12 workers (30 workers were legally eligible to participate in a union) met with Teamsters Local 117 organizer Brenda Wiest to discuss ways in which they could 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 have a voice at work, engage management on work related issues and improve their quality of life in the workplace.

At the meeting Brenda advised them that many U.S. employers react to workers uniting with a high-pressure union busting campaign. Some in the meeting had no experience with unions and wanted to know more. All the Theo workers left the meeting with a positive feeling that sticking together was the right way to address their concerns at work, that it was consistent with their fair trade values and built an identity with other working people.

In the days after the meeting, discussions between coworkers confirmed the interest of most of the work force in forming a union. More than half of Theo's non-management employees attended the next organizing meeting on February 27. Workers shared their common concerns about safety issues in the factory, short notice shift and furlough changes, untenable workloads, low wages, lack of transparency about hiring, discipline and promotion practices, subpar health care coverage, lack of respectful treatment by management and suspicion of wage discrimination against non-English speaking workers. By the end of the meeting a majority of Theo Chocolate workers signed cards expressing their support for union representation. Ultimately, 19 of 30 workers eligible to form a union would sign cards authorizing union representation.



C. Theo's Response: Union Busting

Sometime in late February, Theo management learned that the Theo workers were attempting to form a union. To the workers' surprise, management responded with hostility, intimidation and retaliation. 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 efforts as a personal affront and a challenge to the company's business model. Top management, including CEO Joe Whinney, confronted union supporters and spread an anti-union culture through emotional manipulation, guilt, intimidation, fear and derogatory accusations about unions in general[2].

On March 3, two senior marketing managers confronted a union supporter in the break room, demeaning her for her support for the union, saying that she was "ruining the family of Theo Chocolate" and causing her to cry.

The following Sunday, March 7, workers met again to continue discussing ideas about forming a union. This time, however, a group of four Theo managers disrupted the meeting and excoriated union organizer Brenda Wiest, and all who supported the union; some even called Brenda names. Workers were intimidated by their presence and ended up leaving without being able to plan the next steps of their effort to build unity.

In early March, Theo hired David Acosta from American Consulting Group (ACG), a company that specializes in advising management on labor relations strategies. At the time, the ACG website described services as "union avoidance strategies."[3] ACG's website stated that it could help management (1) formulate anti-union strategy, (2) work with management to enhance communication skills and provide other resources to implement those strategies, (3) communicate directly to employees to explain why management is opposed to a union, and (4) assist management in "realigning employees" to ensure that the company will remain union-free in the long term.

On Tuesday, March 9, Mr. Whinney called a mandatory staff meeting to deliver management's response, developed in consultation with Mr. Acosta. Instead of addressing worker concerns, Mr. Whinney attacked the workers' organizing initiative and the Teamsters. Some of his arguments were exactly what Brenda Wiest told them happened in union busting efforts elsewhere, including propagating a myth that unions get "commissions" for organizing workers.

At the March 9 staff meeting at the plant, three managers attempted to make the union supporters feel guilty. They accused the workers of ruining the "family atmosphere" at Theo. They claimed that forming a union would damage the relationship between management and the employees. They used these arguments repeatedly over the next weeks in what workers came to refer to as "emotional blackmail." In what would become a self-fulfilling prophecy, managers 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 made to feel that forming a union would ruin the gains that fair trade principles had made for cocoa farmers supplying Theo its cocoa. Management told them that organizing a union is an extreme act of selfishness that would negatively impact the poor Africans who depend on Theo's business. A senior manager told one union supporter, "You can't imagine how hard life is in Africa - your situation pales in comparison to theirs."

On Friday, March 12, a Theo manager called another staff meeting to discuss "solving internally" the issues the union organizers had hoped to resolve with a collective bargaining agreement.

When they met again the next Sunday, March 14, union supporters expressed their frustration that management was turning their efforts to stick together and create a unified voice at work into a bitter struggle. Many were demoralized and disheartened. The workers had no reason to believe that management would relent in their efforts to sabotage the union organizing drive.

The following Tuesday, March 16, management continued the pressure tactics by posting a false announcement on the company-wide listserve and in the break room that the workers had agreed by consensus that they would stop organizing a union.

By the end of March 2010, the Theo workers were scared, discouraged and thoroughly intimidated. At that point Mr. Whinney and his managers began implementing a new phase of their "union avoidance" strategy, which Mr. Acosta's firm refers to as "realigning employees"; discouraging unionization in the long term.

Theo management formed a "Round Table" of elected employee representatives to air employee grievances to management. Over many months workers raised concerns including wages, hours and working conditions, but it was always clear that Theo management controlled the Round Table's decisions. At her first meeting on the Round Table, Ms. Taber pointed out how projects the Round Table had approved had not been implemented, and complained about a lack of follow through and transparency. She was verbally reprimanded by Mr. Whinney in front of other employees. Later, Mr. Whinney scheduled a last minute meeting of the Round Table while she was on leave, though she had given prior notice of her unavailability at this time. She was then removed from the Round Table by Mr. Whinney for missing a meeting. However, other Round Table participants who had equally complicated schedules were not removed.

On March 28, Rachel Taber, a leader of the union effort, was called into a meeting with management. They questioned whether she could continue in her capacity as tour guide and company spokesperson, citing her support for the union and outreach to Fair Trade allies. 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 Ms. Taber into a meeting. He reiterated that if Theo had to sign a contract with a union, he and the financers of Theo would pull out of the business.

The anti-union campaign continued throughout the summer, fall and winter of 2010. The following is a recap of the various anti-organizing actions taken by management:

- Union supporters were denied pay raises despite positive reviews, while workers who were vocally anti-union received pay raises and promotions.
- Several Theo employees and union supporters including Tim Reimer and Rachel Taber left Theo in the summer of 2010 out of disgust over their treatment since initiat-

ing the unionization effort and because it was clear they had been black-listed against any future promotions.

- On October 25, 2010, lead union supporter Mackenzie Jahnke was fired. No cause was given for the firing and she had just a few weeks before been given a positive evaluation. The workers believe she was fired for her union support and to intimidate other remaining union supporters. Mackenzie shared the story of what happened to Theo workers with the IMO and the fair trade community. Three days after her termination, a communication she had signed addressed to Green America regarding the labor situation was forwarded on the company-wide listserv, which she no longer had access to.
- A manager told an employee to "watch your back about the union if you know what is good for you."
- Two senior Theo managers circulated a letter to Green America stating how employees loved working at Theo Chocolate and did not believe labor abuses had occurred. They pressured workers, many of whom they directly supervise, into signing the letter during the work day, often in front of their peers, customers and other managers.

2. The description in this section and the next are based on direct reports from current and former Theo employees and from interviews conducted by University of Washington Law School students with former and current Theo workers; some names are not referenced to protect anonymity.
3. ACG's website is now password-protected.

III. IMO Certifies Theo Chocolate Despite Workers' Rights Violations

On May 28, 2010, two months after Theo management initiated its union avoidance offensive, the Institute for Market Ecology (IMO) certified Theo Chocolate as meeting one of its fair trade standards called "Fair for Life" despite hearing from workers about Theo's anti-union tactics described above.

A. About IMO

IMO has been active for more than 20 years in the organic certification movement, and is considered an expert in social accountability monitoring. IMO's "Fair for Life" program is a "brand-neutral, third party certification program for social accountability and fair trade in agricultural, manufacturing and trading operations" and is designed to complement fair trade certification systems by offering producers and businesses an expanded set of social and ethical criteria for certification and focusing on a product's entire supply-chain. At the time, section 2.1.2 of the IMO "Fair for Life" standard stated: "Workers, without distinction, have the right to join or form a 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 unions and their organizational activities. Workers representatives are not discriminated against and have access to carry out their representative functions in the workplace."

Theo workers were aware that Theo had applied for certification with IMO. Since the actions of Theo management directly contradicted IMO's and global fair trade standards, the workers contacted IMO soon after management launched the anti-union campaign. They hoped IMO would demand that Theo recognize their workers' initiative and negotiate a contract with them.

B. Theo Workers Ask IMO to Apply Its Standards

Theo workers held a series of phone calls and e-mail correspondence with Kerry Hughes, IMO's U.S. Director, in March 2010. In September 2010, Theo worker activist Rachel Taber spoke with Kerry Hughes and Florentin Meinhausen about the situation in person for several hours at the Fair Trade Futures Conference. Workers later corresponded with Wolfgang Kathe at IMO's headquarters in Switzerland. In the midst of the anti-union campaign, workers were very concerned about the risks to their jobs if management learned which workers were complaining. Nevertheless, the workers provided specific information about the anti-union campaign to IMO.

IMO certified Theo as fair trade in May 2010, even as it advised the workers that it was looking into the issues raised. Theo's employees continued to press IMO to investigate, and enlisted many fair trade supporters to write letters to IMO, asking them to intervene on workers' behalf, including Green America, Sweatfree Communities of Seattle, Washington Fair Trade Coalition, Community Alliance for Global Justice, individual scholars specializing in fair trade at the University of Washington, Fair Trade Seattle and certifyees of IMO. A former national coordinator for United Students Against Sweatshops sent an email, with many influential national parties in the Fair Trade and labor movement copied, on November 6. IMO finally conducted an audit in November 2010, days after IMO received this letter, though more than nine months after the initial worker complaint.

C. IMO Audits

IMO auditors interviewed some workers to ask about the workplace and organizing issues. However, the interviews were not confidential. They were conducted on site in full view of management. One worker had her interview with the IMO auditor interrupted multiple times by Theo managers. IMO representatives seemed to have very little understanding of U.S. labor law or international labor standards.

Workers were expected to ask permission from their managers to speak with the auditors during their regular workday. Many who wanted to speak to auditors were unable to do so, for fear of reprimand or due to heavy production needs on the day of the visit. Others were not aware that a labor rights audit was being conducted.

Union supporters encouraged the IMO auditor Kerry Hughes to contact former Theo workers who were fired or resigned. She was provided with names and contact information of the former workers. None of these workers were contacted as part of the audit. IMO auditors were also asked to look at pay records to uncover any instances of discrimination reported by workers. IMO made no mention of discrepancies in pay in their public statements on Theo, and workers do not believe IMO investigated this issue. Workers do not believe IMO investigated the presence of a union-avoidance consultant. Such an inquiry would have indicated to IMO that ACG promoted itself as an expert in union prevention strategies (see appendix).

Kerry Hughes is IMO's U.S. Director and recruits new companies into its certification business. She also conducted both Theo audits. Having the same person perform both recruiting and auditing is a violation of ISO 65 accreditation standards. Another IMO spokesperson was a production manager for Theo Chocolate for several years before working with IMO, thus further compromising the independence of the IMO audit.

On December 16, 2010, the workers learned about the results of the IMO audit via a statement by Theo's CEO Joe Whinney when he spoke at a Fair Trade Resource

Network online seminar. IMO denied Theo workers' requests for the results, but management had them and reported publicly that:

"IMO has investigated in detail the recent complaints concerning Theo Chocolate's alleged violation of its worker's rights to Freedom of Association, discrimination of employees based on associative or pro-union activities and health and safety violations in the workplace. The findings of this in-depth investigation are that Theo has not violated their workers' right to freedom of association and that workers favoring the Teamsters have not been discriminated or dismissed on grounds of their associative or pro-Teamster activities. The work environment was confirmed to be adequately safe for employees and health and safety concerns raised by workers are being addressed. Theo employees are compensated fairly and the company provides significant benefits to all employees who work 28 hours per week or more."

In February 2011 the workers and Teamsters Local 117 sent a formal complaint to IMO contesting the findings of the audit. In response to the complaint, IMO advised the workers that their audit in November 2010 had resulted in a secret "summary assessment" and that a follow-up audit would take place in March 2011. IMO refused to provide further information and refused to do anything more than encourage the workers to directly communicate with Theo Chocolate from that point forward.

The March 2011 audit was also poorly conducted. Film crews from the Food Network were present in the factory while the audit was taking place. Workers were asked to line up and wait in line in the kitchen to make an appointment to talk to auditors. IMO auditor Kerry Hughes stated in front of one worker's direct manager that perhaps she should speak with a different auditor, as she had testified to Ms. Hughes last time. Hughes' statement exposed that worker's involvement in the auditing process and the worker feared for her job. One worker was uncomfortable with the on-site interview and requested it be held outside the workplace. IMO auditor Wolfgang Kathe eventually agreed, but the interview was still held in an area frequented by management. Several workers who wanted to testify did not because no arrangement was made to relieve them at their work duties.

In May 2011, representatives from Teamsters Local 117 wrote to IMO again to request a response to the complaint filed in February. IMO responded that the audit, inspection and findings reports were all confidential and that for any further information, the workers would need to communicate directly with Theo. Theo's workers and Local 117 have not received any additional correspondence from IMO regarding this incident since May 2011.

D. IMO Changes Its Standards

At the time the Theo workers lodged their complaint, the IMO Fair for Life standards were – on paper – among the most rigorous on freedom of association and collective bargaining, drawing on language from the U.K.-based Ethical Trading Initiative's base code to adopt ETI clauses 2.2 and 2.3 verbatim: "The employer adopts an open attitude towards the activities of trade unions and their organizational activities. Workers representatives are not discriminated against and have access to carry out their representative functions in the workplace."

Since the complaint was filed, however, the IMO standards have changed. IMO states in the summary of changes posted on their website that the language on freedom of association and collective bargaining has been strengthened, but that is a deceptive assertion. In fact, IMO has gone from simply requiring employers to be open toward unions to recommending that employer-selected consultants be inserted into workers' organizing choices. By most interpretations of ILO Conventions 87 and 98, this is employer interference in conversations that should be conducted by workers and among workers.

The new IMO language in Fair for Life Module 2, clause 2.1.2.b. allows for employers to engage consultants to talk to workers about their organizing choices, but never mentions a requirement that trade unions be allowed to present their benefits directly to workers. Instead, IMO recommends that the employer "invite neutral external experts in to provide balanced information… to allow workers to make well informed decisions." Oddly, the neutral external expert is not the same as the consultant to be brought in to facilitate "open internal discussions on the advantages and possible disadvantages of unionization."

The new language in the IMO standards could be interpreted to permit what Theo Chocolate did, which was to bring in a consultant who created a state of intimidation in which it became impossible for a majority of workers to actually achieve union representation. IMO's suggestion that an outside consultant be invited to sway workers' opinions rather than union representatives eerily echoes the website of the consulting firm engaged by Theo, the American Consulting Group. The ACG website (see appendix) in 2010 and 2011 advertised its expertise in counter-organizing programs. Theo management claimed to have been unaware of ACG's anti-union practices, but this information was clearly published at the top of ACG's website, which has since become password protected.

In the case of Theo Chocolate, IMO aided and abetted the company's abuses of workers' rights. It is even more disheartening that after workers filed their complaint against Theo, the fair trade networks that promote IMO allowed IMO's standards to be downgraded to the point where they now can be interpreted as permitting the kind of interference that is strictly forbidden in ILO Conventions. The fair trade community must stop aiding and abetting certifying organizations like IMO that are failing to uphold fair trade principles.

IV. International Labor Standards and U.S. Labor Law

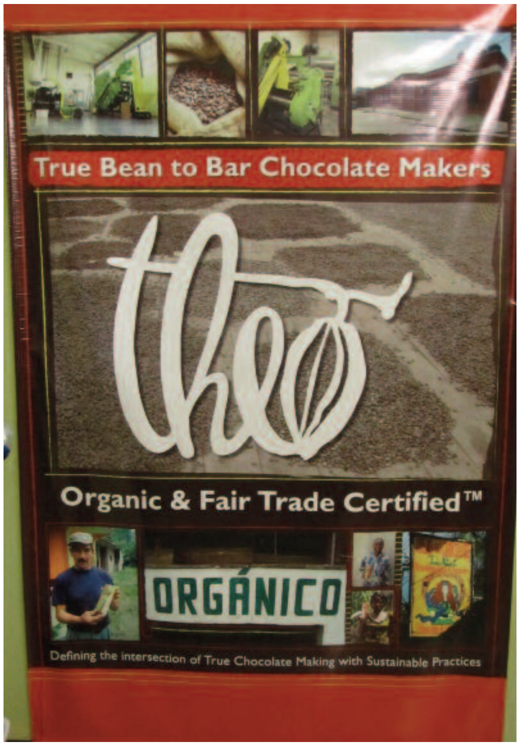
In any given workplace, code of conduct auditors need to be aware of domestic law and the voluntary standards against which they are auditing. When those standards are pegged to ILO conventions, as is the case with IMO, it is up to the auditor to understand how to interpret compliance with the principles of those conventions. The auditors cannot assume that national law – even in an industrialized country like the U.S. – is in line with ILO conventions. The following analysis illustrates how an audit based solely on U.S. labor law would fall short of upholding a commitment to the ILO-based principles in the IMO Code.

United States labor law falls short of international standards in many important respects, often failing to protect workers' right to organize and to bargain collectively[4]. U.S. law allows employers to mount one-sided, aggressive workplace pressure campaigns against workers' organizing efforts, marked by mandatory "captive-audience" meetings and one-on-one supervisor-employee meetings scripted by anti-union consultants without comparable opportunities at the workplace for employees to hear from union representatives or for pro-union workers to convey their views to fellow workers.

Other U.S. legal provisions comply on their face with international standards but fail in application. For example, it is unlawful to threaten or to discharge workers covered by labor laws for trying to form a union. But these provisions are not adequately enforced in a remedial scheme marked by delays and slap-on-the-wrist penalties that fail to deter or punish violators, a breach of international labor rights.

ILO conventions 87 and 98 obligate member countries to ensure workers' rights to choose union representatives and right to bargain collectively with employers. ILO Convention 98 says, "Workers' organizations shall enjoy adequate protection against any acts of interference by employers in their establishment or functioning."

The United States has not ratified these



conventions. However, the ILO core labor standards declaration says that "all Members, even if they have not ratified the Conventions in question (emphasis added), have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions" [including Conventions 87 and 98].

The ILO Committee on Freedom of Association (CFA) has also said, "When a State decides to become a Member of the Organization, it accepts the fundamental principles embodied in the Constitution and the Declaration of Philadelphia, including the principles of freedom of association."

The CFA has also declared that all ILO members, by virtue of their membership and regardless of ratification, are "bound to respect a certain number of general rules which have been established for the common good…Among these principles, freedom of association has become a customary rule above the Conventions."

This means that ILO Conventions 87 and 98 are binding in the United States, even though it has not ratified them.

Fair trade companies have a choice as to how they will conduct labor relations policy in the United States. They can implement values and practices of respect for workers' organizing rights and acceptance of collective bargaining as a normal way of engaging with employees, or they can convert to forms of management interference with workers' organizing and bargaining efforts that are all too common in the United States, but in direct contradiction to fair trade values and international labor standards.

4. For a fuller discussion of this issue, see Human Rights Watch's report "Unfair Advantage: Workers Freedom of Association in the United States under International Human Rights Standards."

V. Conclusions and Recommendations

It is clear from this case study of Theo Chocolate and IMO that the fair trade label can be abused by companies that have no intent to follow all of the principles of the fair trade movement. In Theo Chocolate's case, it has increased sales by marketing itself as a fair trade company, with no negative consequences when it violated the labor standards of the fair trade label.

The "Fair for Life" label was awarded to Theo Chocolate by an international certifying organization that, at best, does not understand its own labor standards for that label. When an organization like IMO certifies companies as fair trade, keeps audit results a secret from workers and consumers, and changes its standards after the fact to conform to its findings, the certification process is broken. There is no credible or effective way for injured parties to appeal unjust fair trade labeling or unjust audit results.

What's more problematic in a case violating workers' organizing rights is that the auditors' process becomes a false promise to workers. Theo workers sought to resolve their grievances by bringing their concerns to the external auditors. In the end, that process hurt the workers; it caused their organizing momentum to stall and gave management cover to mount a vindictive anti-union campaign. They would have been better off going directly to labor law authorities or launching a media campaign instead of relying on IMO's promise of a fair certification system – a promise that ended in betrayal.

In order to restore the credibility of the fair trade process and to ensure that workers are not abused and their rights not violated, we conclude that the fair trade community, IMO and Theo Chocolate must take the following actions:

Recommendations:

A. The global fair trade community must:

1. Identify, recognize and address the inherent conflicts of interest that arise when a fair trade certifier or auditor, working with or paid by the employer, is also the judge between a worker-management dispute about worker organizing or collective bargaining.
2. Partner with the labor movement to create an "International Fair Trade Board of Appeal" comprised of experts in labor relations and labor standards with the ability to assess complaints about violations of workers' rights to organize and bargain collectively. This panel should:

a. Include three individuals who review the complaint voluntarily, one industry representative, one labor representative, and one international labor law expert who will chair the panel.

b. Have the ability to assess the complaint within the context of each country where certification is offered.

c. Guarantee that all appeal decisions reached by this Board are transparent and published online and in an accessible format for all. The findings of the Board will be binding on the certifier or auditor.

3. Require all fair trade certifying/auditing organizations to ensure that workers are fully informed when a certification or auditing process is under way. This includes how grievance procedures work and how they have been or will be handled at each relevant level, whether the grievance is taken directly to the employer, the certifier, or the (proposed) appeal panel.

4. Require all fair trade certifying/auditing organizations to make their processes, audit results, and grievance resolutions transparent to all parties online or in culturally appropriate ways accessible to workers themselves in their own language at no cost.

B. The IMO must:

1. Agree to have its fair trade certification and audit results reviewed by the proposed International Labor Standards Board of Appeal when an appeal is requested. The decisions of the Board are binding on the IMO.

2. Submit the Theo Chocolate complaint for review by the proposed International Fair Trade Board of Appeal.

3. Confidentially conduct worker interviews during IMO audits to ensure no recrimination by the employer. IMO must review the interview reports with the workers interviewed to ensure accuracy.

4. Make publicly available their previous audit findings with regards to complaints filed against Theo. If the Board finds that labor standards were violated by Theo, IMO will withdraw "Fair for Life" certification from Theo. In that event, certification could be reinstated if Theo reaches agreement with its workers and their union for a remediation plan and implementation that restores freedom of association for its workers in Seattle.

C. Theo Chocolate must:

1. Affirm its obligation to respect all of the laws and regulations concerning the treatment of its employees in the United States and all other countries in which it operates.

2. Affirm its obligation to respect the rights set forth in the International Labor Organization's "Declaration on Fundamental Principles and Rights at Work" – particularly with respect to Conventions 87 and 98 on Freedom of Association, as well as ILO Convention 135 on "Workers' Representatives."
3. Communicate these affirmations to employees in writing and in meetings with employees.
4. Demonstrate to workers that management is now open to worker organizing by meeting within 60 days of accepting these recommendations with its workers' union and negotiating an agreement on the following matters:
a. ground rules for employer, union and employee conduct during union organizing;
b. access for union representatives to meet with employees at the workplace under conditions that do not interfere with work;
c. a reasonable period of time for employees to demonstrate majority support for their union;
d. agreement to recognize the union upon showing of majority support and to enter into good faith collective bargaining with a sincere desire to reach an agreement; and
e. agreement on recourse to mediation, conciliation, and if necessary, arbitration to set the terms and conditions of a first collective agreement if the parties are unable to reach an agreement through good faith negotiations after six months.

Appendix

Screen shot of the ACG website taken in March 2011. The ACG website is now password-protected.

The professional staff at ACG has the experience, knowledge base and expertise necessary to formulate practical strategies and programs to achieve your company's goals.

Union Prevention & Campaign Services

Services

- Union Avoidance
- Human Resources
- Workplace Safety

We have successfully partnered with our many clients in diverse industries to improve their employee relations environment, prevent pre-petition organizational activity, and conduct winning counter organizing campaigns.

Prevention Methodology

Our approach is to work with you to identify your organization's specific needs. We utilize professionals from our staff which best meet those needs and blend with your organization's requirements, values and philosophy. We focus on identifying the root issues and working with management to develop solutions and enhance your existing employee relations and communication programs. Some of our preventative strategies include:

- Issue identification, resolution and action plans.
- Management education, coaching and role playing exercises.
- Employee relations auditing and focused polling.
- Attitude surveys.
- Leadership workshops on union prevention, communications, problem solving, teamwork, and creating a positive employee relations climate.
- Union education meetings with employees.
- Orientation videos.

Educational Campaign Methodology

All of our experienced labor relations professionals understand that each campaign is unique and requires a tailor made approach that fits the situation.

- We listen to your needs and incorporate your values and culture.
- We provide guidance, support, and training to enhance communication skills, which allows managers to communicate with confidence.
- We provide resources and experience gained from over thirty

American Consulting Group Advantage

Our Philosophy

We recognize and value the importance of forming partnerships with our clients by understanding their needs and jointly devising strategies to achieve their objectives. We are committed to providing the highest quality consulting services in the most cost-effective manner.

Our Experience and Expertise

Founded in 1973, ACG has over 30 years of experience as a corporation specializing in all aspects of labor and employee relations, human resources, and workplace safety

Company History

Nationally recognized with more than 3,000 clients, from small and medium sized businesses to Fortune 100 corporations.

A successful track record and experience gained from well over 1,000 documented union elections. In addition, ACG�s campaign experience has led to unparalleled success in designing preventive programs that continues to keep thousands of our clients union-free. No other consulting firm has been involved in more elections or has had more success than ACG.

A full-time staff of diverse and seasoned professionals with bilingual capabilities.

Comprehensive knowledge of the environment and culture unique to the workplace in heath care, transportation, distribution, manufacturing, hospitality, retail, technology, and many other industries throughout the United States, as well as Canada and Mexico.

Services

Labor Relations

- Union Prevention Programs
- Educational Counter Organizing Campaigns
- Employee Relations Audits
- Union Free Training
- Video Communications
- Decertification

Human Resources

- Employee Handbooks
- Policy and Procedure Manuals
- Human Resource Audits
- Wage and Hour Compliance
- Compensation Planning and Benefit Programs
- Management and Harassment Training
- Organizational Development
- Attitude and Opinion Surveys
- Sexual Harassment Investigations
- On-site Human Resource Services

Workplace Safety

- Safety Audits
- Environmental Regulations Compliance
- State and Federal OSHA Requirements
- Safety Training Programs
- Injury and Illness Prevention Programs