



# UNION OF FILIPRO EMPLOYEES ( UFE-DFA-KMU )

Km. 44, Niugan, Cabuyao, Laguna

An affiliate of:  
Drug, Food & Allied  
Workers' Federation  
(DFA-KMU)

REGISTRATION NO. 1194-MM-IP-20

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To: **Ms. Cleopatra Doumbia-Henry**  
**Senior Specialist- International Labour Standard**  
**Head, ILO High-Level Mission in the Philippines**

**Case: Extra Judicial Killings, Union Busting, Illegal Dismissal, Criminalization, Arbitrary Arrest and Detention, Threat, Intimidation, Harassment, Non-Implementation of the Final and Executory Decision of the Supreme Court of the Philippines, Violations of ILO Convention Nos.87 and 98**

## **Executive Summary:**

### **I.Name of UNION**

The Union Of Filipino Employees (UFE), an affiliate of Drug, Food and Allied Workers' Federation (DFA)-Kilusang Mayo Uno, (or **UNION** for brevity) registered to the Bureau of Labor Relations (BLR) with Registration No. 1194-MM-IP-20, and with 724 Total Union Members, has been the Exclusive Bargaining Agent of the Rank-and-File employees of Nestlé Phils. Inc. Cabuyao Plant, (or **COMPANY**, for brevity), a multi-national corporation engaged in the production of beverages and infant formula.

### **II. Facts of the Case**

1. **Extra Judicial Killings**- That on Sept.22,2005 our Union President **Diosdado Fortuna** was murdered at around 5:20pm by two motorcycle-riding assassins at Brgy.Paciano,Calamba City. He was the second union president killed during the height of our struggle. The first union president murdered was Meliton Roxas in front of the gate of Nestlé Phils. Cabuyao Plant last January 20,1989 during the protest action of the workers. ([see attached affidavit of Mrs. Luz Fortuna-wife of Diosdado Fortuna](#))

2. **Union Busting**- Through the assailed order of the **Assumption of Jurisdiction** of Secretary Patricia Sto. Tomas of DoLE on November 29,2001, undoubtedly ignored the basic postulates of due process of law and denigrated the constitutional guarantees of the Filipino workers clearly enshrined in the Bill of Rights of the 1987 Philippine Constitution (Article II- Sections 9, 11, 18 Declaration of Principles and State Policies) and undeniably disregarded the ILO Convention Nos. 87 and 98.

The enduring iniquity effects of the biased order are easily evident:

- a) It will not resolve the labor disputes between parties such as blatant violations of the existing CBA, Memorandum of Agreements and existing Laws and ILO Convention Nos. 87 and 98.
- b) It rendered the bargaining power of the union inutile considering that the issues involved constitute flagrant violations of the existing CBA(Art.XXXVIII) and the long been settled case with finality in the Supreme Court Decision of 1991(Nestlé Phils. Inc. VS. NLRC G.R. No. 91231 February 4, 1991) where the Retirement benefits is part and parcel of the CBA negotiations.
- c) It deprived the members of the union of our rights to effectively utilizing our ultimate economic right to strike. The said order unduly imposed upon us an arbitrary mechanism of resolving the labor disputes with

the company through unwarranted government intervention under the guise of the exercise by the State of its police power. {through DoLE Secretary's AJ Order Deputizing the Phil. National Police(PNP) and Military (AFP)January 18,2002}

d) In issuing the assailed order/s, the Secretary has trampled upon the fundamental law of the land, even the International Covenants and she has displayed blatant partiality and unabashed subservience to the interest of the company of which is part of the national policy of this government.

**3. Illegal Dismissal-** 616 workers were illegally dismissed since February 5, 2002 by the COMPANY without due process and used the bias Assumption of Jurisdiction Order by the Sec. of the Department of Labor and Employment as machination to dismiss the workers to accomplish a unionless work environment necessary to contractualize labor and maintain cheap and docile labor and thereby make the most of profit at the expense of the defenseless labor.

**4. Criminalization, Arbitrary Arrest and Detention, Threat, Intimidation, Harassment-** since the start of the UNION's strike on January 14, 2002 there were surveillances, intimidation, threat and harassments done against the officers and active members. Every time we had our union activities such as meetings, protest actions, peaceful picketing there are always the police and military in uniform and some in civilian clothes. ([See the videos/photos taken December 4, 2008](#) and other [harassments/dispersals](#) by police and military, Factsheet of Dec.4, 2008 incident, [Land Transportation Office photocopy of the registrations of the Vehicles used by the PNP-Intel](#))

About 250 workers were criminalized, charged with an average of 37 criminal cases each before the Municipal Trial Court-Cabuyao (MTC-Cabuyao) and Regional Trial Court-Binan (RTC-Binan). This militarization against workers is the continuing consequence of the Assumption of Jurisdiction Order and Deputization Order by the DoLE Secretary. Last December 10, 2008 when we were having our [International Human Rights Day](#) activity, I was again victim of arbitrary arrest by the joined forces of PNP Cabuyao, Provincial Mobile Group-Laguna(PMG-Laguna) and Laguna Industrial Peace Police Action Group (LIPPAG) detailed in Nestlé Cabuyao Plant as their detachment. ([see attached Annex-1 subpoena for Sept.24,2009 hearing](#), Annex-2 Booking Sheet and Arrest Report PNP-Cabuyao, Annex-3 [My Sworn Statement](#), Annex-4 [Factsheet of the Arrest and Inquest](#), Annex-5 [Affidavit of the Complainant PNP-LIPPAG](#))

5. Non-Implementation of the [Final and Executory Decision of the Supreme Court of the Philippines](#), Violations of ILO Convention Nos.87 and 98- Right to bargain collectively – It is evident that the Department of Labor and Employment has no intension of implementing the final and executory decisions of the Supreme Court. The public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof. It is clear interference of the DoLE Sec. to impede the clear directives of the Supreme Court the right of the UNION to collective bargaining. The principle that both employers and trade unions should negotiate in good faith and make efforts to reach an agreement means that any unjustified delay in the holding of negotiations should be avoided. DoLE Sec.'s unjustified failure to implement the final decision of the Supreme Court. (see attached Annex-6 Supreme Court Decision2008, Annex-7 [DoLE Sec.Roque's letter distorting the final SC's decision](#), Annex-8 [voucher of Sec.Sto Tomas' sponsored trip to Europe](#))

### **III. Action Taken**

We filed two Notices of Strike to the National Conciliation and Mediation Board on October 30, 2001 on the ground of CBA Deadlock and amended on November 7, 2001 on the ground of Unfair Labor Practice, particularly, on the ground of the COMPANY's refusal to bargain or bargaining in bad faith (setting precondition). Filed Petition for Certiorari to the Court of Appeals, Petition to the Supreme Court, [Motion for Writ of Execution](#). [Appeal Letter of the LGU](#), [Church People](#); Union's Gen.Membership Letter to DoLE, [Petition Letter of the Community](#), Protest Actions.

#### **IV. Analysis**

The COMPANY has effectively used the Office of the DoLE Secretary to attain the COMPANY's wickedness design to:

- a) BUST THE UNION/ EXTERMINATE UNIONISM necessary for a cheap and docile labor force in violation of the constitutional and statutory right of the workers to self – organizations ;
- b) SAVE MILLIONS OF PESOS IN CBA benefits by using DoLE's awesome power to assume jurisdiction or compulsory arbitrate in violation of the constitutional and statutory right of the workers to collective bargaining for just wages and benefits and other terms and conditions of employment; and
- c) ALTER AND DISREGARD the final and executory decision of the Supreme Court for the workers.

#### **V. Background**

1. On June 04, 2001, the existing Collective Bargaining Agreement (CBA) between the UNION and the COMPANY expired. Within the sixty-day freedom period, the UNION served the COMPANY a letter signifying its intention to renew, amend and/or improve the terms and conditions of employment as embodied in the existing CBA. Thus, the parties started the CBA negotiation meetings on June 05, 2001.
2. However, during the second negotiation conference, the COMPANY started to impose upon the UNION a pre-condition that it will not proceed in the CBA negotiations with the UNION unless the latter concedes that the RETIREMENT BENEFITS is a NON-CBA MATTER, hence, not subjected to the CBA negotiations. As a justification, the COMPANY pointed out that its RETIREMENT BENEFITS is a unilateral grant of management it being non-contributory on the part of the employees.
3. The UNION argued that the Retirement Benefits cannot be considered a NON-CBA matter it being a fact that the same is already part and parcel of the parties' existing CBA, particularly contained under **Article XXXVIII** thereof. Moreover, the COMPANY for its part of the CBA, issue having been the subjected matter of the UNION's strike in 1987.
4. The said 1987 strike was assumed by the Office of the Department of Labor and Employment and certified the sole issue of Retirement Benefit for compulsory arbitration with the National Labor Relations Commission and to which the latter ruled in favor of the UNION in 1989. The COMPANY appealed the Labor Arbiter's Decision all the way up to the Supreme Court and in 1991, the Supreme Court in G.R. No. 91231 resolved the issue that the Retirement Plan is part of the CBA.

#### **VI. Recommendation**

Stop and pull out the militarization in the workplace and in workers' community; Repeal of the Assumption of Jurisdiction authority of the DoLE Sec; Stop criminalization of workers; make certain to the Phil. government the adherence to the ILO Convention no. 87 and 98.

Witness:



Jose Noel Alemania  
Acting Union President