

## **THE RIGHT TO KNOW**

### **The right to company information is integral to the right to collective bargaining in transnational companies**

One of the challenges faced by unions representing workers in transnational companies is the lack of information about the company's financial situation and business plans at local, national and global levels. Without this information unions will approach the bargaining table at a serious disadvantage. Basically they end up relying on local management as the only source of information (and often this is just verbal or just a 'snapshot').

If the union already exercises strong collective bargaining power then it can still negotiate and advance the interests of its members, even without having all the company information required. But few unions are in this position. The reality is that the union's ability to monitor changes in the company (e.g. to predict and respond to changes in business plans and restructuring; to challenge global management policies; or to determine how much money is being sent back to the head office as profit, royalties and fees) is severely limited by a lack of information.

There are many ways unions can overcome this disadvantage. They may conduct their own research, collect information from the workplace, check financial statements and reports filed with government agencies, use information that is provided to shareholders, etc. This provides pieces of the jigsaw puzzle, and unions can go into collective bargaining armed with information to challenge what management says.

But in situations where information is incomplete or acquired from other sources, management might exploit the missing pieces, provide dis-information (lies), or challenge the source of the union's information.

So the response is simple: one source of information must be the management itself. They must provide all of the information that the union needs for the purpose of collective bargaining. In other words, for unions to fully exercise the right to collective bargaining they must also have the right to access all of the company information (at local, national and global levels) needed for bargaining negotiations to be transparent and fair.

This principle is stated very clearly in key international treaties and guidelines regulating transnational companies.

According to paragraph 55 of the **ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy** (1977), transnational companies should provide workers' representatives with information required for meaningful collective bargaining. The information should enable the workers' representatives to obtain a true and fair view of the performance of the plant concerned and of the global company as a whole. This is reaffirmed in the revised *Tripartite Declaration* in 2000 and 2006.

***55. Multinational enterprises should provide workers' representatives with information required for meaningful negotiations with the entity involved and, where this accords with local law and practices, should also provide information to enable them to obtain a true and fair view of the performance of the entity or, where appropriate, of the enterprise as a whole.***

The term “**meaningful negotiations**” is critical to our understanding of the right to company information as part of the right to collective bargaining. If unions cannot get access to information about the financial situation of a workplace or business performance, then how can they respond to management's claims and counter-claims? How can they defend and advance members' interests in negotiations if even basic data (productivity, performance, wages, revenue and expenditures, etc) is not provided? Collective bargaining in a vacuum, with no information on which to actually negotiate, is **meaningless**.

The concept of a ‘**true and fair view**’ is based on a (British) legal concept that those preparing and presenting the financial accounts of a company must be able to declare that they believe the information is true and accurate, and that it complies with accepted standards of reporting and transparency. In this context it means that management must be able to declare that they believe the company information given to the union is true and accurate.

By ‘**performance of the entity**’ it means information on the company, factory or office where the union is representing workers in collective bargaining. This information can extend to ‘**the enterprise as a whole**’, meaning the company's operations at national, regional and global level. In transnational companies unions can argue that information on the performance of ‘**the enterprise as a whole**’ is needed precisely because management decisions and policies affecting union members are made and or applied at different levels of ‘**the enterprise as a whole**’.

Paragraph 56 the **ILO Tripartite Declaration** is also important because it requires governments to provide unions with sector-wide information that will assist in collective bargaining and requires transnational companies to provide governments with the information on their operations:

***56. Governments should supply to the representatives of workers' organizations on request, where law and practice so permit, information on the industries in which the enterprise operates, which would help in laying down objective criteria in the collective bargaining process. In this context, multinational as well as national enterprises should respond constructively to requests by governments for relevant information on their operations.***

One of the dangers of obtaining information from local or national management in transnational companies is that they will often try to create ‘consultation’ mechanisms or channels of information that bypass the union. The purpose is to

undermine the union. To prevent this, paragraph 57 of the **ILO Tripartite Declaration** states very clearly that “***consultation should not be a substitute for collective bargaining***”:

***57. In multinational as well as in national enterprises, systems devised by mutual agreement between employers and workers and their representatives should provide, in accordance with national law and practice, for regular consultation on matters of mutual concern. Such consultation should not be a substitute for collective bargaining.***

The principle of the right to access company information is also laid down in Article (2) of **Recommendation No.163, Collective Bargaining Recommendation** (1981) that supports **International Labour Convention No.154, Collective Bargaining Convention** (1981), where we again see the emphasis on “meaningful negotiations”:

***(a) public and private employers should, at the request of workers' organisations, make available such information on the economic and social situation of the negotiating unit and the undertaking as a whole, as is necessary for meaningful negotiations; where the disclosure of some of this information could be prejudicial to the undertaking, its communication may be made conditional upon a commitment that it would be regarded as confidential to the extent required; the information to be made available may be agreed upon between the parties to collective bargaining;***

These rights are also outlined in much clearer language in **The OECD Guidelines for Multinational Enterprises (2000)**, an instrument that the IUF has actively used in relation to transnational companies that have imposed restructuring programs without providing the necessary information for trade unions to negotiate such changes. The **OECD Guidelines** apply to any transnational company headquartered in an OECD country. If the violation of the **OECD Guidelines** occurs in a country that is not in the OECD, a complaint can still be filed against the transnational company's head office.

According to section **IV Employment and Industrial Relations** of the **OECD Guidelines**:

***2. a) Provide facilities to employee representatives as may be necessary to assist in the development of effective collective agreements.***

***b) Provide information to employee representatives which is needed for meaningful negotiations on conditions of employment.***

***c) Promote consultation and co-operation between employers and employees and their representatives on matters of mutual concern.***

**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.**

Again, we see that company information is necessary for “meaningful negotiations” and that the information is not limited to the factory or office where collective bargaining is taking place, but to the transnational company as a whole.

These international treaties can be used by unions as a tactic in pressuring management to provide all of the company information unions need to negotiate effectively. In practical terms this should not only facilitate bargaining at the local level, but also national bargaining that covers all of the workplaces in the same transnational company.

Of course, even if unions succeed in getting company information from management they need to have their own capacity to analyze and use this information. Unions shouldn't demand the right to information then – once they've got the information – simply rely on management to explain what it all means. The interpretation of information (“what does it mean?”) is critical and unions must have their own capacity to do this.

The volume of information is also important. One management negotiating tactic could simply involve providing too much information, so that the union is overwhelmed. Being able to make sense of large amounts of information and to throw out the information that is irrelevant or not useful is a skill unions must develop.

Another important tactic for unions is to develop a series of detailed questions for management. After receiving the information, unions analyze it and form their own views on what it means. But at the same time, the union records a series of detailed questions that show:

- a) the union understands the information provided, but more information is needed;
- b) the information provided must still be explained in a “true and fair” manner;
- c) if management representatives can't provide and/or explain the information, then are they really authorized to negotiate?
- d) information should be provided regularly, not just when collective agreements are negotiated (if the company imposes continuous restructuring means, then we need continuous bargaining!)

Only then can negotiations be meaningful and the right to collective bargaining be fully realized in practice.