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Mr. Arvind Ganesan
Director, Business and Human Rights Division
Human Rights Watch
350 Fifth Avenue, 34th Floor
New York, New York 10118-3299

Sent by email and fax

Kongsberg 17 March 2009

Dear Director Ganesan:

Thank you for your letter dated March 5, 2009, inquiring about the situation at Kongsberg Automotive's ("KA" or the "Company") production facility in Van Wert, Ohio. We appreciate the opportunity to explain these events.

From the outset, however, we must express our confusion as to why the Van Wert situation is to be included in your organization's study. Based on the opening paragraph of your letter, it appears that the report you are preparing will focus on instances where (i) an employer has opposed unionization efforts by its employees, or (ii) there has been a finding that the employer has committed unfair labor practices or other unlawful conduct. The Van Wert situation fits neither of these criteria.

First, the Van Wert facility has been unionized for decades, almost from the plant's inception in the late 1960s. KA purchased the plant in early 2008. Unlike many purchasers in KA's position, KA agreed from the outset to retain all employees, to continue the bargaining relationship with United Steelworkers Local 1-524 (the "Union"), which represents our Van Wert production and maintenance employees, and to accept the existing collective bargaining agreement. Thus, Kongsberg has never opposed unionization efforts at the Van Wert plant.

Second, while the Union did claim at one point that KA committed unfair labor practices, not one of these charges has ***ever*** been sustained or otherwise found to have merit. Following the lockout (which is explained more fully below), the Union filed multiple unfair labor practice charges against KA with the United States National Labor Relations Board (the "NLRB"), the branch of the federal government that enforces laws pertaining to labor relations in the United States. The Union claimed that KA unlawfully failed to provide information, engaged in bad faith/surface bargaining with the Union, dealt directly with bargaining unit employees to undermine Union support, unlawfully locked out the bargaining unit employees, unlawfully replaced the bargaining unit employees on a permanent basis, unlawfully relocated bargaining unit work to KA's Mexico plant, engaged in unlawful surveillance of picketing employees, made unlawful statements to temporary employees and unlawfully subcontracted work during the lockout.

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The federal government thoroughly investigated these charges for more than a month. The Union was given the opportunity to present any and all information it possessed in support of its claims. KA filed two lengthy position statements with the NLRB refuting these charges. The Company described each bargaining session and each proposal in detail to demonstrate that the Union had been provided with all required information, that KA had bargained in good faith, and that the lockout was lawful. The Company also explained that the temporary replacements were not permanent.

After considering all the evidence presented, the NLRB ***dismissed*** the Union's claims of unlawful failure to provide information, bad faith/surface bargaining with the Union, direct dealing with bargaining unit employees, unlawful lockout, permanent replacement of bargaining unit employees, and unlawful relocation of bargaining unit work to Mexico. The Union appealed this decision and lost.

On the three remaining issues, the NLRB advised KA that it was unable to resolve the credibility issues upon which the claims were based. These claims related to alleged surveillance of lawful picketing prior to Union picket line misconduct, alleged unlawful statements to temporary employees ***by a supervisor who was on medical leave for most of the lockout***, and an alleged failure to notify the Union of certain subcontracting. While KA believed that a full hearing would have resulted in a dismissal of these claims as well, KA agreed with the NLRB on the underlying principles of law involved. It therefore agreed to post notices explaining the rights of employees in regard to these issues and the NLRB agreed to refrain from further processing of these allegations.

While it does not seem that the Van Wert situation fits the profile of your study, KA is nonetheless happy to provide you with information relating to this matter. KA's negotiating team spent several months meeting with the Union to bargain a new collective bargaining agreement to take effect following the prior agreement's March 31st expiration date. We understood from the outset that, based on current market conditions, these negotiations would be difficult. As you are no doubt aware, the growing trade deficit and various other global forces present significant challenges for the remaining manufacturing employers in Ohio (and the United States in general) to remain competitive. Unfortunately, although these forces largely dictated the course of the Van Wert negotiations, they were beyond the control of the parties.

During the negotiations, three critical facts were undisputed and/or indisputable:

1) The Van Wert plant had been unable to attract ***any*** new work under the economic package that existed in the prior collective bargaining agreement;

2) The typical five-year product cycle in the auto industry effectively required the Van Wert plant to win 20% of its revenue in new work just to stand still; and

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3) The work that remained in the Van Wert plant would reach the end of its life cycle well before the end of the next collective bargaining agreement, and no work was available to replace it.

These facts—on which the parties all agreed—confirmed that the Van Wert plant was inevitably destined for closure unless the parties were able to reduce the Van Wert plant's cost structure. Unfortunately, we were unable to reach such an agreement.

The fact that these negotiations were unsuccessful, however, was certainly not attributable to bad faith conduct on the part of KA. Indeed, from the very beginning of negotiations, KA made a sincere effort to reach an agreement with the Union. Company representatives met with the Union on nineteen (19) separate occasions before the contract's March 31st expiration and presented twenty (20) different written proposals. KA also withdrew a number of its initial demands in the interest of reaching agreement and made a number of concessions to the Union, including a proposal to create a two-tier wage scale that would have insulated current employees from wage concessions for as long as they continued working on their existing production line. In the end, however, the parties were simply unable to find common ground on wages and pensions.

Despite the considerable efforts made to solve the situation, KA realized that the negotiations had come to a deadlock. At that point, KA considered the option of continuing with the old contract until agreement was reached. Although that would have been the path of least resistance, we determined that it was not the proper choice for the continued viability of the Van Wert plant. The prior agreement had a demonstrated record of failure in terms of attracting new work and was a serious impediment to the sustainability of the Van Wert plant. Without new orders to fill the production volumes of completed orders, the factory would inevitably cease all business in a near future. To allow such a scenario to take place would have been irresponsible to the business and to the community. KA therefore made the very difficult decision to lock out the Van Wert employees beginning on April 2nd to push the parties toward resolution.

As the automotive industry is dependent on daily deliveries, KA had to maintain the production. It is beyond doubt that any, even minor disturbances in the deliveries would have caused our customers to move the orders to other suppliers. , KA therefore found itself to have no option other than to hire ***temporary*** replacements to keep the plant in operation during the lockout. (The reference in your letter to ***permanent*** replacements is incorrect; as the NLRB held, the replacements were at all times temporary.) If we had failed to fill our customers' orders, the Van Wert planet would immediately been without any business and the labor negotiations would instantly have become irrelevant.

The NLRB held that KA acted lawfully in this regard. Specifically, NLRB Regional Director Frederick J. Calatrello held that KA had not bargained in bad faith and had employed a completely legal bargaining tactic in resorting to the lockout:

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> [T]here was no evidence presented to suggest that the lockout was unlawfully motivated or in support of illegitimate demands, nor was the lockout undertaken in the face of bad faith bargaining or other unfair labor practices sufficient to taint an otherwise lawful lockout. In addition, evidence reveals that [KA] gave the employees proper notification regarding the lockout and actions necessary to end the lockout.

Director Calatrello further found that the replacements were temporary and not permanent as alleged by the Union.

Subsequently, on April 28th, because of cost pressures and demands from customers, KA notified the Union of the Company's intention to relocate the Van Wert shifter cable lines to its facility in Nuevo Laredo, Mexico. The Company advised the Union that the relocation would begin in mid-July 2008 and would be completed by January 2009. The Company specifically stated its willingness to meet with the Union to discuss the relocation if the Union so desired. KA also noted in the announcement that all parties were aware that the cables would be relocated in the immediate future, a fact that the Union never contested. Indeed, the Union Vice President stated at the parties' March 17th negotiation session that all employees knew that the cable lines would be leaving shortly.

Because the relocation of the shifter cables had a negative impact on the Van Wert facility's sales margin, KA advised the Union that the cables relocation would require deletion of the grandfathering provision (*i.e.*, the two-tiered wage scale) from the Company's previous offer. However, in the interest of reaching an agreement, the Company offered to forego this modification if the Union membership ratified the existing offer by May 2nd. Notably, KA did ***not*** offer to forego the relocation if the agreement was ratified. Rather, KA offered only to forego the modification to its final offer. In any event, KA received no response.

Again, although the Union claimed that KA acted unlawfully in this regard, NLRB Director Calatrello disagreed. He noted that the cables relocation had been planned for several years, and that KA had never linked the move to the collective bargaining negotiations:

> [T]he evidence establishes that transfer of cable work and sample service work was contemplated by the predecessor employer—Teleflex—and, indeed, that it was common knowledge among employees that such a move was likely in the offing. ***The movement of the work was not in any sense an outgrowth of the bargaining process nor was it intimately connected to the lockout.*** . . . As far as [KA's] obligation to give the Union notice and an opportunity to bargain over the decision and/or effects, evidence reveals that [KA] gave formal notice of its intent to move the work on April 28, 2008, although the Union and employees were aware well before that date that this move was likely. . . . Moreover, evidence reveals

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> that, while [KA] reiterated its willingness to meet with the Union over the relocation, to date, the Union has failed to pursue such a meeting.

(Emphasis added.)

Sadly, the last half of 2008 confirmed that KA was correct in its assessment of how critical the situation was for the Van Wert plant. While the Company remained hopeful that the new cost structure it proposed would attract new and diversified work to the facility, the worsening condition of the global economy, the virtual implosion of the U.S. automobile industry, and the expectation of a prolonged downturn put to rest any possibility of realizing this goal. Moreover, the work that remained in the plant is in the final months of its lifecycle and takes up less than 30% of the available production floor space. The Nuevo Laredo plant had (and still has) sufficient excess space to house this work, and it would be economically imprudent for KA to continue to operate both facilities.

KA therefore announced the closure of the Van Wert facility to employees in December 2008. The closure is scheduled to be completed by Summer 2009. Following the announcement, KA and the Union successfully negotiated a closing agreement that allowed employees to choose between immediate receipt of a severance package or a possible return to work (based on qualifications and seniority) with a severance package to follow.

While KA is disappointed in the outcome of these negotiations, the Company steadfastly maintains that the NLRB was correct. This result is the product of the harsh realities of the current economic environment, and did not involve any unlawful or unethical conduct by KA.

As stated above, NLRB has found that KA, according to national law, has acted correctly in the Van Wert conflict. We appreciate that the requirements of the applicable law might not accord in all aspects with the standards that follow from the ILO core labor standards, the OECD Guidelines and the UN Global Compact. (KA does not hold a **membership** in the UN Global Compact). It should however be emphasized that NLRB on basis of the merits of the case has assessed that KA in fact has conducted fair bargaining and that the moving of work from Van Wert to Mexico was not an outgrowth of the bargaining process, nor was it connected to the lock out.
Kongsberg Automotive is of the firm opinion that we in the Van Wert case have acted according to all the standards, norms and guidelines that we refer to in our Codes of Conduct. NLBR's decisions, based on factual evidences presented by the parties, are supporting this conclusion.

In practical life we sometimes have to deal with dilemmas. In this case on one hand the threat to wind down Van Wert due to a cost level that made it impossible to win new orders and on the other hand through a lockout to try to get to an agreement with our employees that could save the jobs based on a lower compensation level. The compensation we offered is by the way in line with what other companies in the region are paying. The

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third alternative would have been to stick to the agreement we had and move the production to our facility in Mexico. Again that would have left our Van Wert employees with no option to save their jobs. Decisions were made with the best intentions. Whether we succeed or not can be discussed when we know the outcome.

I hope this information is helpful, and please feel free to contact us if you have any further questions.

Yours sincerely

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