



July 27, 2010

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

Thank you for your correspondence of 9 July 2010, and your prior correspondence of February 2009. Sodexo is pleased to provide you greater insight into our positions in North America regarding our employees' rights to freedom of association and collective bargaining.¹

The following is intended to be a comprehensive response to your inquiry. We have reviewed Sodexo's Group-level and U.S. commitments to our employees' freedom of association in light of prevailing international standards as set forth through the ILO and other official bodies charged with interpreting and applying the U.N. Universal Declaration of Human Rights, ILO Conventions 87 and 98, and other jurisprudence interpreting international labor standards. As set forth below, we believe that a full and objective assessment of the issues you have identified in light of Sodexo's policies and practices, warrant the conclusion that as a matter of policy and consistent practice Sodexo's North American operations further Sodexo's commitments to human rights. We trust that your report will concur.

I. COMMITMENT OF THE SODEXO GROUP TO HUMAN RIGHTS

The Sodexo Group is an international company present in 80 countries. Since its creation by Pierre Bellon in 1966, the Sodexo Group has respected the United Nations Universal Declaration of Human Rights and the International Labour Organisation principles in its business activities. While governments have primary responsibility for promoting, ensuring compliance with, and protecting Human Rights, the Sodexo Group recognizes that it is responsible for promoting Human Rights set out in the Universal Declaration of Human Rights.

In 2003, the Sodexo Group joined the United Nations Global Compact, and thereby made a commitment to respecting its ten principles. Throughout its activities and sphere of influence, the Sodexo Group commits to respect and to promote the application

¹ As you noted in your 9 July correspondence, we provided on 31 March 2009, a comprehensive response to your initial inquiry. Your July 2010 inquiry indicates that in the seventeen months since your initial correspondence to Sodexo, you have modified the matters you intend to address in your pending report. Your July 2010 inquiry does not address, however, whether or how you intend to include our 31 March 2009, response in your report. We will assume that your modified set of considerations has rendered our prior response moot. We will therefore restate a number of positions that were communicated to you previously, but will respond specifically to only those matters that you now indicate will be considered in the new draft of your report.



of Human Rights in the workplace. The Sodexo Group has formalized its commitments to these principles by establishing a world-wide policy for the respect of Human Rights. The Group Human Rights policy is available in the Corporate Citizenship section of our web-site, www.sodexo.com. This policy brings together the values and ethical principles to which the Group has committed since its formation, and incorporates the codes of practice, charters and policies that were already in place at Sodexo.

To ensure compliance, the Sodexo Group has established senior management responsibility for the policy, and defined a deployment and monitoring plan for the policy, both internally and externally. The Sodexo Group strives continuously to improve its methods for ensuring compliance across the organization.

II. SODEXO'S LABOR POLICIES AND PRACTICES IN NORTH AMERICA

The policies and practices of Sodexo in North America are consistent with the Sodexo Group's Human Rights policy and commitment to its underlying principles. Sodexo North America has a pro-employee philosophy and we recognize and respect unequivocally the rights of our employees to unionize or not to unionize, as they may so choose.

This is communicated to all employees throughout the organization. Hourly and management employees are told of this commitment in our Employee Handbook, which states:

The Company recognizes the right of its employees to unionize, or refrain from unionizing, as they so choose. The Company will fully comply with all of its legal obligations surrounding that right, including the obligation to bargain in good faith with an elected collective bargaining representative. The Company will not discriminate against any employee because he or she engages in union organizing activities or otherwise supports a union. ...

This statement of policy is also set forth in our Company Policy manual. Sodexo has expanded upon this statement of policy in management training and communication.

We enjoy positive, constructive working relationships with virtually every major labor organization in the U.S. and Canada that represents workers in our industry. We have over 330 collective bargaining agreements in the United States covering over 18,000 employees. Our partnerships are generally strong with the labor unions that represent our employees, and we have an excellent track record of engaging in good faith negotiations in those situations where our employees have opted to unionize.

A. Sodexo is Pro-Employee

Sodexo's mission is to create and offer services that contribute to a more pleasant way of life for people whenever and wherever they come together. Our core values of service spirit, team spirit, and spirit of progress support our fulfillment of our mission. Consistent with our core values, we are committed to treating all of our employees with



respect and fairness and to providing a positive work environment with reasonable wages and benefits. We are committed to being a leader in the areas of diversity and inclusion and corporate responsibility. Not only do we require all of our managers to attend EEO and Spirit of Diversity training, but also today the commitment to diversity and inclusion is ingrained in our corporate culture. Indeed, objective organizations with missions of reviewing and evaluating corporate diversity and inclusion practices in the U.S. have lauded Sodexo for its efforts. For example, this year Sodexo was identified by DiversityInc. magazine as the top company in the United States for diversity (also on the list of top companies every year since 2004).

B. Sodexo Supports Employees' Right to Unionize or Not

The decision whether or not to unionize is an important one for our employees. Sodexo believes that our employees have the absolute right to make that decision freely, in an informed manner, and in an atmosphere that is free from interference, intimidation, harassment or coercion. We will not discriminate against any employee for engaging in union organizing activities or otherwise supporting a union.

We have consistently recognized and bargained in good faith with unions that have become the designated representatives of our employees based upon the outcome of fair and reliable processes for determining our employees' wishes. When presented with an election petition, we have consistently worked collaboratively to resolve any issues and enable an election within the NLRB's six-week target time-frame. When our employees have voted through an NLRB election to unionize, we have never appealed the election, but instead have moved quickly to negotiate a contract in a timely manner.²

We have also agreed that under certain circumstances where protections are ensured, a card-check process may be appropriate for determining whether or not our employees wish to organize. In those cases, we have worked collaboratively with unions to ensure that the process allows our employees to make a free and informed choice without interference, harassment, intimidation, or coercion, and that the rights of all of our employees are safeguarded.³

² Human Rights Watch (HRW) has stated that "long delays in the U.S. labor law system confound workers' exercise of the right of freedom of association." L. Compa, Unfair Advantage: Workers Freedom of Association in the United States under International Human Rights Standards, p.23 (Human Rights Watch 2004). Although the ILO has criticized certain legal systems that include lengthy registration procedures as being an obstacle to the right of workers to establish a labor union without previous authorization, Sodexo's history of quickly processing representation cases before the NLRB is comparable to procedures that have been approved of by the ILO. Compare ILOCFR, 357th Rep., Case No. 2107, ¶ 137, Algeria (2009)(criticizing a process that has taken more than 7 years to establish a union), with, ILOCFR, 337th Rep., Case No. 2244, ¶ 1261, Russian Federation (2002)(holding a process that takes 1 month to be reasonable). Sodexo's track record demonstrates that it is in fact committed to fair and expeditious resolution of labor issues consistent with international labor standards. Thus, regardless of whether the finding and recommendation of HRW on this issue, see id. at 23-25, are aspirational or in fact have been affirmed by the ILO, we would expect any objective analysis to highlight Sodexo's record of compliance with this standard.

³ This is also consistent with HRW's prior statement of findings and recommendations regarding the exercise of freedom of association in the United States. See id. at 22-23.



C. Sodexo's Record of Working with Unions Demonstrates Our Commitment to Our Employees and Respect for their Organizational Rights

Sodexo operates at over 6,000 locations in North America and employs over 100,000 hourly employees. We have over 330 collective bargaining agreements with over 30 different labor unions covering over 18,000 employees. Sodexo's rate of unionization (18%) is therefore substantially greater than the average rate of unionization (7.2%) for private industry in the United States.

The union that represents more Sodexo employees as of the date of this letter than any other, Service Workers United ("SWU"), was created as a joint national local of UNITE HERE and the Service Employees International Union ("SEIU"). Virtually all of the groups of Sodexo employees currently represented by SWU achieved that status as the result of the voluntary and collaborative recognition process jointly established by Sodexo, UNITE HERE, SEIU, and SWU.

We enjoy positive, constructive working relationships with virtually every major labor organization in the U.S. that represents workers in our industry. Out of respect for its relationships with multiple unions both large and small and our employees' right to choose for themselves which union they wish to have represent them, if they choose to be represented, Sodexo has refused to enter into agreements with unions seeking to exclude other unions from representing Sodexo employees in geographical areas, or defined business segments.

When and where we have recognized a union, we have an excellent track record of bargaining in good faith and working constructively with the union to negotiate fair and reasonable contracts. With the one exception of the SEIU, as described more fully below, our partnerships are generally strong with the labor unions that represent our employees. Through this approach, we have laid the foundation for our strong relationships with the organizations that represent our employees and have historically avoided work stoppages and significant labor unrest.

D. Recent Attacks against Sodexo further Underscore Sodexo's Respect for its Employees' Freedom of Association

In early 2009, an intense fight erupted between SEIU and UNITE HERE. At that time, Workers United formed as the result of a split within UNITE HERE, and then affiliated with SEIU. This dispute has generated lawsuits and resulted in competing charges of unethical behavior. (For more information on these charges, visit this union web-site: www.wrongwayseiu.org.) For nearly five years before this fight broke out, Sodexo had worked constructively and collaboratively with SEIU, UNITE HERE, and their joint national local, SWU.

Since this fight broke out, however, Sodexo and our employees have been caught in the middle of it. Most of Sodexo's hourly workforce is in the historical foodservice jurisdiction of UNITE HERE. The fight between UNITE HERE and SEIU has centered on the SEIU's efforts to displace UNITE HERE from its traditional jurisdiction. Sodexo



has refused to support the SEIU's attacks on UNITE HERE, and as a result has come under fire from SEIU.

Even UNITE HERE's leadership has stated that Sodexo is unfairly caught in the middle of the two unions' dispute. One Executive Vice President of UNITE HERE has stated that the campaign is not about Sodexo, but rather is about the SEIU "stealing [UNITE HERE's] jurisdiction." http://www.inthesetimes.com/working/entry/5466/unions_at_odds_in_campaign_to_organize_multinational_sodexo/ (January 24, 2010). Not just UNITE HERE has criticized SEIU for its behavior. As set out in letter that UNITE HERE's President, John Wilhelm, recently sent to many Sodexo clients, 270 labor experts recently wrote the SEIU asking them to stop interfering with other unions. (See also www.nuhw.org, which sets forth other allegations about attacks by SEIU on other unions.)

The core of SEIU's demands have been 1) a national agreement that it could use to prevent Sodexo employees from selecting UNITE HERE or any other union as their exclusive bargaining representative, and 2) area-wide recognition agreements that it could use on a regional basis to exclude other unions from seeking to represent Sodexo employees. Sodexo has refused these demands and because of that stance has been made the target of a smear campaign by SEIU.

Sodexo's position is wholly consistent with principles of international labor law. The plain language of ILO Convention 87 provides this, and the ILO's Committee on Freedom of Association ("CFA") has examined countless cases in which its conclusions and recommendations have furthered the principle of allowing employees to select a labor union of their own choosing.⁴ The demands that SEIU made before launching its campaign against Sodexo, if agreed to, would arguably violate the principles of international labor law as they have been defined by the ILO.

E. Sodexo's Record of Compliance with the National Labor Relations Act (NLRA) Demonstrates Our Strong Commitment to Our Employees and Respect for their Organizational Rights

Our record of compliance with the National Labor Relations Act (NLRA) is also consistent with our policies and commitments to our employees' organizational rights. Sodexo aspires to 100% compliance throughout its organization with all of Sodexo's policies, including its respect for employees' rights to organize as they choose. Despite our size, scope, and decentralization, our efforts have resulted in a strong track record consistent with the policies and practices discussed above. Indeed, in the last five years, no court, no administrative law judge, and no panel of the NLRB has found that any of Sodexo's managers in its 6,000 locations across the country have interfered with any employees' rights to unionize, or to refrain from doing so.

⁴ See Freedom of Association – Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO, 2006 Digest, Annex I, at 309-310..



III. SPECIFIC ISSUES RAISED BY HUMAN RIGHTS WATCH

As discussed above, Sodexo in the United States has pro-employee policies supportive of our employees' rights to choose to unionize or not. We have a strong record of working constructively with multiple labor unions and minimizing delays. We have a higher-than-average rate of union representation in the U.S. and a strong record of compliance with applicable laws. Despite this strong record, Human Rights Watch appears to highlight exceptional and in some cases outdated or out-of-context issues to support its working hypothesis.

As set forth more fully below, none of the matters you have identified in your most recent inquiry, when viewed in their context and in the light of Sodexo's overall record, supports the conclusion that as a matter of policy Sodexo North America is operating inconsistently with Sodexo Group's commitments to human rights. Specifically, NLRB cases nos. 28-CA-18708 et al. arose out of events occurring seven years ago and they were fully resolved more than five years ago. NLRB cases nos. 22-CA-29322 and 4-CA-37334 in New Jersey and Lafayette have arisen directly out of the SEIU campaign (see Part II.D above) and have been resolved in a manner that reflects Sodexo's commitment to ensuring that its employees are fully aware of their rights under U.S. law. The remaining issues appear to be based upon obsolete versions of proprietary and confidential Sodexo documents that, taken in their entirety, reflect a commitment to ensuring that its managers comply with applicable law and that its hourly employees have the ability to make free and accurately informed decisions about whether or not to unionize in the event of organizational efforts. We will address each of these in greater detail below.

A. The NLRB Cases

1. **The Outdated Matter: Phoenix, AZ; NLRB Case Nos. 28-CA-18708 et al.**

The circumstances at Sodexo's Commercial Linen Exchange in Phoenix, AZ, demonstrate Sodexo's respect for our employees' right to choose a collective bargaining representative and our commitment to bargain in good faith where the employees have fairly chosen a bargaining representative. On February 15, 2005, Sodexo recognized Service Workers United (SWU) as the collective bargaining representative for its employees at the Commercial Linen Exchange in Phoenix, AZ. Sodexo recognized SWU based upon the results of an agreed upon card check and neutrality process. Within a couple of months thereafter, Sodexo and the Union agreed to an initial contract, and have subsequently negotiated a renewal labor contract there.

This collaborative work between Sodexo and the Union has superseded any past disagreements that may have existed and reflected a resolution consistent with even the standards that have been articulated by Human Rights Watch in Unfair Advantage. The findings and order to which your correspondence likely refers arose out of events occurring in 2003, about seven years ago. The findings were based upon actions by supervisory personnel at a single Sodexo unit, and were exceptional within Sodexo's



organization. Sodexo in fact chose to appeal a finding by the Administrative Law Judge not only that the outcome of the election in which a majority of employees voted against union representation should be overturned, but also that the vote should be replaced with an order requiring Sodexo to recognize the Union without any reliable show of majority support. While the appeal was pending, however, Sodexo had a dialogue with the Union and reached an agreement about a manner that was mutually satisfactory to both the Union and the Company to provide assurances that Sodexo would recognize the Union based upon a fair process and a valid determination of what the majority of employees wanted.

By agreeing to a card check by a neutral party, Sodexo's approach in this matter was wholly consistent with the approach encouraged by Human Rights Watch.⁵ Given the exclusive representation rules in the United States, a reliable and objective process for determination of majority intention is an essential element of compliance with international standards.⁶ Satisfied that the necessary protections could be ensured by this agreed-upon process, Sodexo opted for this approach even though it could have continued to pursue its appeal with a very reasonable expectation of success.⁷

As a result of Sodexo's collaborative work with the Union to resolve their various differences in this matter, all charges were withdrawn and the entire proceeding was dismissed on 12 April 2005, more than five years ago. Many of the underlying behaviors attributed to the plant-level management were not consistent with Sodexo policy, and Sodexo has taken appropriate measures to ensure that company policies are followed looking forward. To latch onto an exceptional and outdated set of circumstances to try to construct a picture of non-compliance, rather than to focus on the constructive manner in which this was resolved so as to fully respect our employees' freedom of association would paint a false picture of Sodexo. As stated above, Sodexo strives continuously to improve its methods for ensuring compliance with its policies and global commitments, and the resolution at Phoenix situation is one example of this.

2. The SEIU Campaign Cases: NLRB Case No. Case No. 4-CA-37334 (Easton, PA) and 22-CA-29322 (West Orange, NJ)

With the onset of the SEIU campaign in the last 6-8 months, our management teams at some of our accounts have faced circumstances many of them simply have not encountered before because we have had such strong relationships with unions generally. The SEIU campaign has touched more than 100 of our 6,000 locations, in addition to generating misleading publicity attacking Sodexo and attempting to damage our relationships with our clients and other stakeholders. It does not appear that the account-

⁵ Unfair Advantage, pp. 22-23 (advocating card-check as a means of avoiding election acrimony and setting the stage for constructive negotiations).

⁶ E.g., U.N. ILOCA, 265th Rep., Case No. 1386, Peru, ¶¶ 276-277 (1986).

⁷ Cf., e.g., Unfair Advantage, pp. 23-25, 116-18 (criticizing employers and U.S. law for causing and allowing undue delay).



level activities have generally been the result of a worker-driven, unit-level outreach, which is the traditional context in which workers seek to exercise their freedom of association.⁸ Indeed, despite all of the SEIU's activities since launching its campaign, it has not filed a single petition for an election to determine whether a majority of employees at any location wish to be represented by them. Nor has the SEIU made a single demand for recognition in which they have claimed to have majority support. Rather, the account-level activity appears instead to have arisen solely in the context of a massive, top-down, union-driven effort to establish dominance over other unions who have traditionally represented food service workers and to compel Sodexo's support for that effort. See Section II.D above.

Both the West Orange and Lafayette charges have arisen in the context of the SEIU campaign.⁹ None of the alleged behaviors underlying the settlements is consistent with Sodexo policy, which is fundamentally to respect our employees' rights to unionize or not. Except as noted specifically below, the accused Sodexo managers denied engaging in the behaviors attributed to them, and Sodexo would have contended at any trial that virtually all of the allegations were false or, even if true, lawful. Because such credibility assessments are not generally resolved short of a trial,¹⁰ however, Sodexo was presented with the choice of dragging these matters out through litigation or stepping up strongly and promptly with re-statements of our commitments to our employees' rights that are in any event wholly consistent with Sodexo's policies. Sodexo has in both cases chosen the more proactive, pro-employee approach.

Lafayette College, 4-CA-37334 (Easton, PA)

The SEIU filed a ULP charge with the NLRB regarding Sodexo's operations at Lafayette College in Pennsylvania. The charge included a laundry list of allegations. Sodexo would have contended at any hearing that virtually all of the allegations in the charge were false or, if true, lawful. Litigation would have ensured that this matter remained open at least through the beginning of the new school year, and perhaps throughout the entire year. Sodexo agreed not only to settle the matter but also to pay to

⁸ This worker driven model is the model described by Human Rights Watch as part of the framework for its prior analysis of protection of freedom of association under U.S. law. See Unfair Advantage, at pp. 33-35.

⁹ Using Unfair Labor Practice (ULP) charges before the NLRB is a common campaign tactic of the SEIU. In public statements recently, the new President of the SEIU spoke of "creating" ULP charges with the NLRB in its campaigns. See Bloomberg, "SEIU Chief Henry Vows \$4 Million to Organize Bank, Grocery Jobs" (8 May 2010). Between 2008 and 2009, the SEIU filed over 2,000 ULP charges against various employers in the U.S. Once the SEIU files such charges, they then point to the charges they file to suggest the company is behaving badly. In fact, in the last 12 months, the SEIU has filed and then withdrawn multiple ULP charges against Sodexo.

¹⁰ As you know, the preliminary investigation by the NLRB Regional Office into a ULP charge does not make any finding of facts. It assesses whether or not the information it gathers, viewed most favorably to the charging party, provides a reasonable basis to believe that a violation of the law may have occurred. If the preliminary evidence does not meet even this lenient standard, the Regional Office will proceed to dismiss the charge. Otherwise, it will generally provide an opportunity to settle before filing a complaint. Credibility assessments at this stage will generally be resolved in favor of the charging party.



mail the settlement notices to the homes of each of the employees. Sodexo did not admit any wrongdoing.

One particular allegation in the charge has warranted special attention from Sodexo. One known union supporter was absent from her station for a prolonged period of time. In addition, management had received numerous complaints from employees that the employees felt as though they were being harassed by this person while they were working. The employee was disciplined in part for leaving her cashier station unattended, which presents nothing problematic. In addition, however, the disciplinary action, a written warning rather than a written coaching, also stated that the employee was creating a hostile environment for other employees by insisting on speaking to them on work time about non-work-related issues. The Regional Office of the NLRB believed that this statement may reflect anti-union animus on behalf of the manager. As part of the settlement agreement, this disciplinary action was rescinded.

The manager consulted with his Human Resources Director before issuing the discipline. The Human Resources Director approved the discipline. Both people acted on a good faith belief that they had a right and obligation to remedy the several complaints of harassment they had received from other employees about the disciplined employee's behavior. However, neither person consulted with Labor Relations or Legal before issuing the discipline. Had they done so, they would have been advised to issue only a written coaching based upon the employee's absence from her station. Since this event, Sodexo has also taken several steps to ensure that similarly well-intentioned actions are reviewed appropriately in advance.

Sodexo took prompt remedial action to convey to its workforce its commitment to their rights to freedom of association. Sodexo has also taken appropriate measures to ensure continued legal and policy compliance. Our efforts have focused on ensuring that our managers do not repeat the type of error set forth above and that they do not engage in any of the other behavior alleged in the charge and set forth in the settlement. We aspire to, and work to promote, 100% compliance with all of our policies, including our recognition and respect for our employees' right to unionize or not. Where a valid question of compliance at the unit level arises, we move quickly and directly to address it. That is what a company committed to protecting its employees' rights should do; and that is what we have done at Lafayette.

West Orange School District, Case No. 22-CA-29322 (West Orange, NJ)

The SEIU also filed a ULP charge with the NLRB regarding alleged statements and actions at West Orange School District, NJ.

Specifically, it was alleged that the General Manager unlawfully interrogated employees regarding their union activity by allegedly asking them "what they expected to get from the union", and creating the impression that employees' union activities were under surveillance by saying that he "knew about the meetings the union was holding, that he knew who attended the meetings and where they were held". The General Manager squarely denied these allegations in their entirety.



In addition, the charge alleged that an employee the union characterized as a supervisor circulated an anti-union petition. This employee was a “lead,” without any “authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action.” See NLRA, 29 U.S.C. § 152(11). Sodexo believes this person was and is subject to the protections of the NLRA, and did not believe that it could properly interfere with the employee’s circulation of the petition without violating the law. The NLRB indicated that it was not prepared at this stage of the investigation to agree to that characterization of the employee, and was instead prepared to issue a complaint against the company on this issue.

As at Lafayette, Sodexo agreed to settle the matter. Sodexo posted settlement notices. It did not admit any wrongdoing. If the General Manager had said and done the matters attributed to him, which he has categorically and credibly denied, then such actions would not have been consistent with Sodexo’s policies or practices. Under the current circumstances, Sodexo has taken measures to ensure continued legal and policy compliance.

The matter at West Orange highlights another aspect of the SEIU’s efforts to obtain exclusivity of representation over Sodexo employees that should give Human Rights Watch pause in preparing any report concerning respect for workers’ rights to freedom of association. The SEIU has improperly attempted to use the supervisory exclusion under the NLRA to stop employees from expressing their opinions when those opinions do not favor the SEIU. This conduct directly contradicts international labor standards.

Convention 87 provides that the right to form a union of their own choosing applies to all employees “without distinction.” To that end, in a legal system where supervisors are not permitted to join workers organizations, such as that created by the NLRA, the ILO has held that such restrictions “should be limited to cover only those persons who genuinely represent the interests of employers.”¹¹ HRW has made this argument as well by contending that the exclusion of “supervisors” from the definition of “employee” under the NLRA limits the scope of its protections unacceptably when compared to Conventions 87 and 98.¹²

The SEIU’s allegations against hourly leads at West Orange are but one example of the SEIU’s efforts to invoke the machinery of the government as an offensive tool to inhibit the speech of employees who have voiced opposition to the SEIU. The SEIU’s recently dismissed charge at Clark University in Massachusetts is another example of this anti-democratic approach.¹³ At Clark, the SEIU’s charge alleged that five hourly employees who were opposed to the SEIU violated the NLRA by attending a union

¹¹ U.N. ILOCA, 349th Rep., Case No. 2524, United States, ¶ 854 (2006).

¹² See *Unfair Advantage*, pp. 42, 54, 171-73, and 184-86.

¹³ NLRB Case No. 1-CA-45933 (withdrawn on about 22 July 2010).



meeting, resisting efforts to eject them from the meeting, and trying to convince other employees to oppose the SEIU. When it became aware that the NLRB would not pursue their claims, the SEIU withdrew the charge rather than have it dismissed.

The SEIU's actions suggest a belief that an employee's entitlement to protection under the NLRA is dependent upon his or her support of the SEIU. Sodexo does not agree that an employee should be excluded from the protection of the NLRA to express their opinion simply for voicing opposition to being represented by a union in general or by the SEIU in particular. We trust that Human Rights Watch shares this view and gives full consideration to this concern as it considers allegations arising out of the SEIU campaign.

B. Other Materials and Information: "Organized Labor and the Employee Free Choice Act – Are You Ready?" and "Employee and Labor Relations Guidelines"

Sodexo has a strong record of recognizing and respecting employees' rights to choose to unionize or not and of complying with all applicable laws. This is no accident. First, our policy of respecting employees' organizational rights is clear and is communicated to front-line and management employees. Second, our managers receive training and other resources focused on helping them to understand and enabling them to comply with Sodexo's policies and applicable laws. Third, we provide to all employees several means of reporting concerns about possible legal and policy violations, including an anonymous business ethics hotline and the procedures set forth in our Promise of Respect and Fair Treatment. If potential policy or legal violations are brought to our attention, we have the opportunity to investigate them and address them immediately—and we do so.

Your most recent inquiry stated that "we have become aware of a Sodexo PowerPoint slide show presentation for company managers titled "Organized Labor and the Employee Free Choice Act – Are You Ready?" and of Sodexo's Employee and Labor Relations Guidelines (sic)." You have correctly identified the titles of two documents that have been proprietary and confidential to Sodexo, but have been made public somehow since the advent of the SEIU campaign. However, you appear to be quoting from materials that are obsolete and that, in any event, support legal compliance by our managers and informed decision-making by our employees. Neither of these objectives is inconsistent with international standards.

1. Organized Labor and the Employee Free Choice Act – Are You Ready?

The document of this name is no longer available for use at Sodexo. This document did educate our managers about the substance and potential impact of the Employee Free Choice Act (EFCA), a bill proposed in the U.S. Congress. This document did not advocate any position regarding the EFCA. The guidance provided to our managers in connection with this document ensured that they were up-to-date on an issue of interest to our clients and employees and equipped to comply with both the law and



Sodexo policy in a changing environment. This is wholly consistent with both U.S. law and international standards.¹⁴

This document did indeed provide tools to our managers to recognize potential signs of union organizing activity and to notify company Labor Relations at the first sign of such activity. United States labor law places many restrictions on actions that managers may take in connection with union organizing activity that might otherwise be legal were the activity not union related. For example, managers ordinarily have clear rights to ensure that employees are wearing uniforms that do not bear any insignia other than company logos. However, if an employee shows up wearing a union button or a union sticker on their uniform, the employer may not be able to enforce the uniform policy in a manner that requires removal of the union insignia. As another example, managers are ordinarily free to make changes in working conditions as they see fit. If changes are implemented after union activity arises, however, it may create charges of unfair labor practices. As stated previously, Sodexo aspires to 100% compliance with our labor laws, and training our managers to recognize signs of union activity and to contact labor relations upon learning of such activity is an essential part of our compliance program.

The EFCA presentation was for communication to managers only. The presentation was accompanied by further guidance for responding to inquiries about the EFCA and signing a card. This guidance, which was either ignored or undiscovered by whomever chose to distribute Sodexo's proprietary information, remains part of Sodexo's policy guidance to managers. As demonstrated by the following examples, this guidance reflects a fundamental respect for our employees' right to freedom of association:¹⁵

Should I sign the card if I am asked to?

That is your decision. Signing a card is like voting YES for the union. You should read the card very carefully. You should ask any questions you need to ask. You should not sign the card unless you agree completely with what the card says.

People say that we will be fired if we sign cards. Is that true?

No, that is not true. Nobody will be terminated for signing a card.

Will I get in trouble if I sign a card?

No. Sodexo respects your right to decide whether or not you want to be represented by a union.

¹⁴ Sodexo has taken no position regarding the EFCA. Our concern is to ensure that our management teams are equipped to address questions that they may face concerning or because of the EFCA and that we can ensure compliance no matter what the law may be. At least one commentator has argued that two aspects of the EFCA as currently pending before the United States Senate and House of Representatives, its substitution of card-check for a secret-ballot election and compulsory interest arbitration for first contracts, fail to comply with international labor law. See Stefan J. Marculewicz, Elimination of the Secret Ballot Union Election and Compulsory Arbitration Under the Employee Free Choice Act: A Violation of Fundamental Principles of International Labor Law, International Labour and Social Policy Review, International Organisation of Employers, Geneva, Switzerland (2009). We understand that Lance Compa, who authored Unfair Advantage has articulated a contrary view. Sodexo takes no position in this debate.

¹⁵ Creation of this guidance post-dates the creation date of the obsolete Q&A addressed in the following section.



People say that we will get raises/new benefits/etc. if we have a union. Is this true?

The only thing anybody can promise you is what is written on the card. If the union comes in, we will bargain with them about terms and conditions of employment. Nobody can make any promises about what the outcome of those negotiations will be.

If the union comes in, will we lose our jobs?

Whether or not a majority chooses the union will not affect whether you keep your job.

Does the Company think we should have a union?

That choice is entirely up to you. Sodexo wants to be sure that you have an opportunity to make a fully informed decision about whether or not you want a union without any pressure, intimidation, or harassment from anybody else. You have to do what you think is best, not what somebody else wants you to do.

2. Employee and Labor Relations Guidelines

Sodexo's "Employee and Labor Relations Guidelines," state clearly: "Sodexo recognizes and respects the rights of our employees to unionize, or not to unionize, as they may so choose." The Guidelines reiterate that Sodexo "will not discriminate against any employee for engaging in union organizing activities or for otherwise supporting a union." Among many other things, the Guidelines admonish managers that they may not "retaliate or discriminate against an employee because of perceived union support," "start a petition against the union or encourage or take part in circulating such a petition," or urge others "to attempt to induce others to oppose the union." Managers are also admonished that they may not threaten employees with adverse consequences for supporting a union, interrogate employees about union activity, spy on actual or suspected union activity, or make promises of benefits in exchange for keeping a union out. These fundamental commitments and admonishments are at the core of the Guidelines and comport fully with both U.S. law and international standards.

International Labor Law Encourages Freedom of Expression

Your most recent inquiry states summarily that features of U.S. labor laws do not conform to international standards, and that your analysis includes instances in which employer conduct is permitted under U.S. labor law but does not comport with international standards on workers' freedom of association. Some discrete aspects of U.S. law have been criticized by the ILO over the years, but ILO jurisprudence has also established that U.S. labor laws that govern the right to organize generally comply with such standards.

This is particularly so in the area of freedom of expression. The ILO has stated repeatedly that freedom of expression and freedom of association can co-exist under national law in a way that permits an employer to express its opinion and state facts regarding unionization, while at the same time guaranteeing employees their right to organize.¹⁶ Rather than requiring silence of employers when its employees are making a

¹⁶ U.N. ILOCF, 357th Rep., Case No. 2683, ¶ 584 United States (2010). "While having stressed the importance which it attaches to freedom of expression as a fundamental corollary to freedom of association and the exercise of trade union rights on numerous occasions, the Committee also considers that they must not become competing rights, one aimed at eliminating the other."



decision whether or not to associate with a labor organization, international labor law encourages the freedom of opinion and expression by all parties involved in the discussion, including employers.

The ILO has written that “[t]he full exercise of trade union rights calls for a free flow of information, opinions and ideas, and to this end workers, employers and their organizations should enjoy freedom of opinion and expression at their meetings, in their publications and in the course of other trade union activities.”¹⁷ On numerous occasions, the ILO has sought to ensure that governments “guarantee through the existence of independent means of expression, the free flow of ideas, essential to the life and well-being of employers’ and workers’ organizations.”¹⁸ International law guarantees to all social partners, including employers’ representatives, the right to enjoy the exercise of civil liberties which include freedom of opinion and expression.¹⁹

The ILO has found that certain employer statements can amount to interference and violate international standards if condoned by national law and practice. For example, statements by employers that forming a labor union is illegal, or statements encouraging workers to withdraw their membership in the union, amount to interference.²⁰ Conversely, statements of fact or expressions of opinion, including factual statements about how to vote against a union in a representation election do not constitute interference.²¹

As with international law, the NLRA permits an employer to express its opinion and state facts related to labor unions provided the expression or statement does not amount to interference, restraint or coercion. To the extent such speech by an employer amounts to interference, then it constitutes an unfair labor practice and is subject to prosecution under the law. Nothing in the ILO jurisprudence suggests that the remedies and procedures for redress under the NLRA are insufficient to protect against interference.²²

¹⁷ Freedom of Association – Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO, 2006 DIGEST, ¶ 154 (2006)(emphasis added).

¹⁸ U.N. ILOCF, 350th Rep., Case No. 2254, ¶¶ 1655, 1978(g) Venezuela (2003); U.N. ILOCF, 216th Rep., 1084, ¶ 36 Nicaragua (1981); U.N. ILOCF, 331st Rep., Case No. 2220, ¶ 576 Kenya (2002).

¹⁹ U.N. ILOCF, 331st Rep., Case No. 2220, ¶ 576 Kenya (2002).

²⁰ U.N. ILOCF, 356th Rep., Case No. 2301, ¶ 80 Malaysia (2003).

²¹ U.N. ILOCF, 357th Rep., Case No. 2683, ¶ 584 United States (2010). Indeed, the ILO even refused to condemn employer statements to employees encouraging them to “shred” their ballots which the National Mediation Board determined was not interference.

²² HRW has suggested that delays common to the NLRB process render it ineffective in protecting workers rights. Although this has not been confirmed by any ILO body as best we can determine, Sodexo’s strong track record before the NLRB, including the expediency with which it has generally chosen to resolve matters, suggests this issue is not relevant here.



Sodexo's Q & A Complies with these International Labor Standards

We believe that an objective analysis of the international standards as reflected in the jurisprudence will recognize that the Q & A reflected in your inquiry does not undo Sodexo's strong record of compliance with international standards in its U.S. operation. First, the version of the Q & A to which you refer is obsolete; it is no longer available for use at Sodexo. Second, none of the statements in the obsolete Q & A comes anywhere near the type of statement that the ILO has determined may amount to interference. See n.20 above. Third, even as written in the version to which HRW appears to refer, the statements are presented as opinions and factually accurate answers to questions posed by employees, which is explicitly permissible under international labor standards.

Sodexo values open dialogue with its employees, whether the topics being discussed involve unions, service standards, development opportunities, or anything else. In our experience, where union representatives have been speaking with employees about unionization, employees will often approach managers with questions that arise out of claims or representations made by the union representatives. A common topic of inquiry by employees has to do with promises that have been made to them by unions guaranteeing higher wages and better benefits in the event of unionization. In response to such questions, our management is trained that they cannot make threats about losing benefits in the event of unionization. They are equipped through the Q & A to clarify for our employees that the company cannot promise anything under the law and that the union cannot guarantee outcomes of bargaining. Such a response is factual and accurate, and intended to provide employees with information to help them make an informed decision about whether or not they wish to be represented by a union of their choosing.

In other situations, employees have told managers that unions have promised them guaranteed job security if the union is elected, and have asked whether such promises are true. Again, Sodexo can and must respond to our employees in a manner that is truthful and accurate. Such an approach enables our employees to make their decision using truthful and accurate information and not on false or inaccurate misrepresentations by the union representatives. Indeed, even as written, Sodexo's answer to questions about job security cannot remotely be construed as even a prediction of what might happen at that location of Sodexo if a union were elected, let alone as some sort of threat.

Finally, Sodexo acknowledges that our employees, whether they are represented or not, have the right to strike under U.S. and international law. Employees have shared with managers that they have been told that they will be paid their full wages during a strike and that U.S. law protects them against any job loss as a result of a strike. Although Sodexo has never hired a permanent replacement worker in North America, we have an obligation to our employees to be certain that our employees have factually accurate information about their legal rights and obligations, particularly where our managers have indications that our employees are being misled on this issue.



Even as described by HRW in its inquiry, the responses by Sodexo to these questions as well as other statements by the company involving unions have never been found by the NLRB or U.S. courts to constitute interference with an employee's right to make a decision to join a labor union or to refrain from doing so. Nor have these statements been found by any ILO body to provide a basis for any finding of interference. To the extent that HRW suggests that international standards proscribe Sodexo from ensuring that employees base their decisions whether or not to unionize on clear and accurate information, we must respectfully disagree with that conclusion.

IV. CONCLUSION

For all the reasons stated above, we believe that our commitment to our employees' human rights is strong and is reflected consistently throughout our United States operations.

Thank you again for your inquiry. If you have any further questions or concerns about these matters, please do not hesitate to contact Tom Mackall, Vice President Employee & Corporate Relations at 301-987-4492. For matters relating to Sodexo's broader Corporate Citizenship and Sustainable Development efforts, please contact Arlin Wasserman, Vice President Corporate Citizenship, 301-987-4328.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michel Landel", is written over a light blue horizontal line.

Michel Landel
Chief Executive Officer
Sodexo SA