

Analysis of National Express Group PLC's Workplace Rights Policy

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National Express Group (NEG) is a large, multinational transportation conglomerate based in the United Kingdom. It operates in the United States as Durham School Services, focused solely on student transportation through its school bus service.¹ With a fleet of over 13,000 buses, Durham currently holds contracts with 350 school districts located in 30 states.² In this capacity, the company stands as the second-largest private provider of student transportation in the U.S.³

In recent years, Durham's employees throughout the U.S. have sought to form unions in order to gain a voice on the job, primarily with the International Brotherhood of Teamsters (IBT). Bus drivers and monitors tend to be low-paid; worker interest in collective bargaining is prevalent across the industry. Durham's management has actively resisted worker efforts to organize, while still claiming to be a model corporate citizen supporting basic workplace rights, including the freedom to associate. In fact, 94 percent of NEG's employees in its home country of the U.K. are union members, while only 32 percent of its North American workforce can make the same claim – many of which held union representation before working for the company.⁴

When pressed on claims of anti-union activity, Durham managers frequently point to its Workplace Rights Policy as evidence of its progressive stance on unions and the right of workers to collectively bargain. Durham's position seems to be, "So long as we operate within the framework of our employment practices standards, we are doing nothing wrong." The validity of such a stance rests on the assumption that Durham's Workplace Rights Policy is an impartial document containing universally-recognized standards.

This brief analyzes Durham's Workplace Rights Policy in light of internationally-accepted workplace rights standards to test such an assumption. To call Durham's document legitimate, one expects to see substantial, if not complete overlap between the company's code of conduct and universally-recognized human rights norms. Unfortunately, as this brief indicates, Durham's Workplace Rights Policy fails to meet such a test. Rather than legitimately and fairly protecting the fundamental rights of its employees, the document serves the interests of management to continue running aggressive anti-union campaigns. The brief ends with recommendations on how Durham

¹ Our businesses: North America. (n.d.) Retrieved September 7, 2011, from National Express Group website, <http://www.nationalexpressgroup.com/aboutus/northamerica.aspx>.

² Durham School Services. (n.d.) Retrieved September 7, 2011, from Durham School Services website, <http://www.durhamschoolservices.com/Home/tabid/36/Default.aspx>.

³ --(2011). National Express Group: A Culture of Contradictions. Washington, DC: International Brotherhood of Teamsters.

⁴ *Ibid.*

can rewrite its policy to truly be in line with internationally-accepted workers' rights standards.

Foreign Companies in the United States: A Pattern of Double Standards

Before analyzing the contents of NEG/Durham's Workplace Rights Policy, it is necessary to consider the context for the code's importance. NEG enjoys a reputation abroad as a progressive employer, one that practices business the right way. One need just look to the high percentage of its British employees in unions to sense that NEG respects its workers' rights there. Promulgating and adhering to a Workplace Rights Policy furthers the case that NEG and its subsidiaries like Durham are good employers – a helpful attribute to have in a business where communities and taxpayers are the revenue source. Yet this code of conduct, perversely, while appearing to respect workers' rights, actually provides management plenty of wiggle room to aggressively resist any attempts by workers to form unions. In fact, by doing so, NEG/Durham follows a litany of European-based companies with seemingly progressive reputations in employment practices that have chosen a low-road approach when doing business in the U.S.

In a 2009 report, international labor scholar John Logan documented how German telecom giant Deutsche Telekom, a company committed to cooperative labor relations in its native Germany, actively resisted efforts of workers at its subsidiary T-Mobile USA who sought to form a union.⁵ Under the guidance of an aggressive anti-union law firm, T-Mobile management relied on an operations manual recommending supervisors distribute misleading fliers about labor unions and collective bargaining and requiring detailed surveillance of employees for any indication of union activity. More recently, a subsidiary of IKEA, the Swedish furniture manufacturer, disregarded its own workplace rights policy and the International Labor Organization conventions it signed to combat the efforts of workers at its U.S.-based factory in Danville, Virginia. Though the workers eventually prevailed, they faced a torrent of anti-union literature and misinformation intended to bully them into voting against forming a union.⁶

Despite the behavior of these two companies, the experience of U.K.-conglomerate First Group demonstrates that European companies can succeed in the U.S. while fully respecting workers' rights. Like NEG/Durham, First Group's subsidiary company First Student provides student transportation services across the U.S, and is the leader in the industry.⁷ As noted in a 2006 report, First Student's management routinely violated internationally-recognized standards for workers' freedom of association.⁸ Because of

⁵ Logan, J. (2009). Lowering the bar or setting the standard? Deutsche Telekom's U.S. labor practices. Washington, DC: American Rights at Work.

⁶ BWI action for recognition in Danville taken up in the Swedish press (n.d.) Retrieved September 12, 2011, from the Building and Woodworkers International website, <http://www.bwint.org/default.asp?index=3264&Language=EN>; Rosenkrantz, H. (2011, Jul. 27). Ikea's factory workers vote to join union. *Bloomberg*. Retrieved from <http://bloomberg.com>.

⁷ *First Student – Quick Facts*. (2011). Retrieved October 6, 2011, from First Student website, <https://www.firststudentinc.com/about/first-student-facts>.

⁸ Compa, L. (2006). Freedom of Association and Workers' Rights Violations at First Student, Inc. Washington, DC: American Rights at Work.

stakeholder pressure, however, the company soon adopted a credible workplace rights policy for union activity, removing itself as a barrier to employees' efforts to form unions.⁹ Today this neutrality policy is enforced by a Joint National Grievance Review Committee, made up of management and labor representatives, as part of First Student's national collective bargaining agreement with IBT.¹⁰

The Standard Bearer: Internationally Recognized Workers' Rights

The international community established standards for the rights of workers to form unions and collectively bargain through a series of principle documents. Chief among them are the Universal Declaration of Human Rights and the core conventions of the International Labor Organization (ILO).¹¹ The norms contained in them specifically address the right of workers to freely assemble as a collective group (a union), the right to collectively bargain, and the right to strike.¹² These documents are primarily written for governments in relation to their citizens, not employers.

While the international treaties enshrining worker protections as human rights speak to the role of governments, they serve as an important reference point for corporate codes of conduct. Codes of conduct are generally voluntary sets of standards intended to regulate the workplaces of a company and, often, its suppliers. Ranging in scope and specificity, these guidelines can be written and enforced solely by a company and/or trade association, or they can also be negotiated with nongovernmental organizations, unions, and governments. Research indicates that unilaterally implemented codes of conduct are weaker than those written and enforced bilaterally or multilaterally.¹³ The principle international documents mentioned earlier, including the Universal Declaration of Human Rights and the ILO Conventions, often serve as at least a reference point in these corporate codes of conduct.¹⁴ NEG/Durham's Workplace Rights Policy is one such corporate code of conduct referencing the Universal Declaration of Human Rights.

Selective Rights: An Analysis of the National Express Group (NEG) Workplace Rights Policy

NEG/Durham's Workplace Rights Policy, as alluded to earlier, begins with a pronouncement of "respect" for the fundamental rights included within the Universal Declaration of Human Rights. The specifics of the NEG's standards, however, make it

⁹ --(n.d.) Employee Relations – The Group's neutral view on union membership. FirstGroup plc.

¹⁰ --(2011). Article 42: Joint National Grievance Review Committee. FirstGroup plc./International Brotherhood of Teamsters.

¹¹ Compa, L. (2000). *Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards*. Ithaca: Cornell University Press.

¹² International workers' rights document of course make clear that it is not feasible for all workers to strike, but they do make clear that a legitimate mechanism, such as arbitration, be available to workers in such a circumstance (Compa, 2000).

¹³ Anner, M. (2004). Review of *Corporate Responsibility and Labour Rights: Codes of Conduct in the Global Economy*, by Rhys Jenkins, Ruth Pearson, and Gill Seyfang. *Industrial & Labor Relations Review*, 58(1), pp. 154-156.

¹⁴ *Ibid.*

nearly impossible for workers to realize these very same human rights. In that regard, NEG's Workplace Rights Policy cannot be called legitimate or fair.

The first sign of conflict occurs in the statement, "NEG will consider policies or practices that go beyond such fundamental rights, But in doing so, NEG will be mindful of its obligations to its shareholders and customers, and its duty to avoid adopting standards that so significantly exceed local requirements that doing so would place NEG at an economic disadvantage to its competitors." This clause serves as an escape hatch for the company; it suggests that standards affecting workers will only receive consideration based on how they impact owners and customers, not the workers themselves. Like what we have seen with Duetsche Telekom and IKEA, NEG's refusal to do more than follow the bare minimum of local laws allows the company to take advantage of the broken U.S. labor law system, which falls well below international human rights standards.¹⁵

This realization becomes all the more clear upon transitioning into the Workplace Rights section of the policy. In this section the company declares in point three that, "Everyone shall have the right to freedom of expression. This right shall include freedom to seek, receive, and impart information and ideas of all kinds, either orally or in writing, or through any other media of their choice, and the freedom to hold opinions without interference." Assuming NEG/Durham counts itself and its managers as part of "everyone," this section of the Workplace Rights Policy provides self-made clearance for employer resistance to union organizing attempts. In a 2009 report, researcher Kate Brofenbrenner identified the use of captive audience meetings, distribution of anti-union material, and supervisor one-on-one meetings with workers as a main part of employers' anti-union campaign arsenal.¹⁶ Given that NEG/Durham's Workplace Rights Policy approves of "information and ideas of all kinds," the company policy implicitly approves of half-truths and misinformation concocted by management and management consultants to dissuade employees from supporting a union and suggests that is okay by international standards.

Moving on to point five of the Workplace Rights section, NEG/Durham makes use of an unbalanced element of U.S. labor law used to portray unions in a negative light. The point reads, "Everyone shall have the right to protection against interference with their privacy, family, home or correspondence, or attacks on their reputation, and no one shall be subjected to such interference or attack." Without any expertise in the nuances of U.S. labor law – which one can reasonably assume is the case for the average worker – this seems like a pretty straightforward, commonsense standard. The reality is that, with few exceptions, union staff members are barred from entering an employer's premises without authorization from management.¹⁷ The only way union supporters can reach their colleagues without fear of punishment for talking on the job is to visit their homes or call them during off-work hours. Management, of course, can require employees to meet at

¹⁵ Compa, 2000.

¹⁶ Brofenbrenner, K. (2009). *No Holds Barred: The Intensification of Employer Opposition to Organizing*. Washington, DC: Economic Policy Institute.

¹⁷ *Lechmere, Inc. v. National Labor Relations Board*, 502 U.S. 527 (1992)

any time to talk about unions and collective bargaining.¹⁸ Far from remaining consistent with fundamental human rights, this point serves only to make unions and union supporters who reach out to coworkers outside of work appear beyond the bounds of international human rights, while also not giving an opportunity for them to have equal access inside the workplace.

Finally, one can look to the last sentence of the NEG/Durham Workplace Rights Policy to fully appreciate the real intention of the document. It states, “NEG will not tolerate conduct by any person or organization that seeks to intimidate, harass, or coerce employees in the exercise of these rights.” Such a strongly worded conclusion serves only to shore up NEG/Durham, while simultaneously attacking the intentions of unions and union supporters. As an employer, the institution capable of affecting workers’ pay, benefits, job responsibilities, and economic security, NEG/Durham yields a great degree of influence to intimidate, harass, and coerce employees into voting against union representation through constant meetings, one-on-one sit downs with supervisors, anti-union literature, and retaliation against known union members. Unfortunately, though not surprisingly, NEG/Durham’s own corporate code of conduct permits all such behavior. Only likely steps that union supporters would need to take in order to educate and organize colleagues together in support of forming a union are labeled as wrong.

Conclusion and Recommendations

Through a close analysis of the NEG/Durham Workplace Rights Policy in comparison to accepted workers’ rights standards, it is readily apparent that the document is not a legitimate or fair Workplace Rights Policy. The document takes a leap in logic from a broad acceptance of the Universal Declaration of Human Rights to specific rights that serve only the intentions of management to engage in anti-union campaigns that run afoul of human rights standards. Actions generally taken by union supporters in an organizing campaign, from house visits to talking about the benefits of being in a union on the job with colleagues, are identified by the document as impermissible and, therefore, violating human rights. Meanwhile, the code of conduct approves of management conduct requiring no basis in fact, but serving to harass, intimidate, and coerce employees into opposing a union.

As mentioned at the beginning of the analysis, NEG/Durham has an incentive to appear as a good employer taking the high-road approach. Promulgating a Workplace Rights Policy helps it achieve this objective. Yet, couched inside the document are generic points that identify certain behaviors as good and others as bad—expected elements for such a policy to the casual observer. To employees in the midst of deciding whether to form a union, NEG/Durham’s Workplace Rights Policy is a screaming dog whistle, suggesting that actions union supporters are likely to take violate human rights accords, while endorsing management’s coercive behavior as consistent with international treaties. With this in mind, one must conclude that NEG/Durham’s Workplace Rights

¹⁸ Eaton, A. and Kriesky, J. (2001). Union organizing under neutrality and card check agreements. *Industrial and Labor Relations Review*, 55(1), p. 42-59.

Policy is not just an illegitimate, unfair code of conduct, but another weapon for management to deploy in the war against worker representation in the workplace.

Given that NEG/Durham crafted a one-sided policy that permits the company to continue its problematic anti-union campaigns against its workforce, the company is advised to make substantive changes to the document. One can look to employee rights policies adopted by other multinational companies and accepted by stakeholders and observers as legitimate for guidance. Examples of such policies include the aforementioned First Group employee relations policy and Rhodia's Global Corporate Social Responsibility Agreement.¹⁹ In these agreements, the companies unequivocally pledge to follow international standards, including ILO Conventions on freedom of association and the right of employees to collective bargaining. Unlike NEG/Durham's policy, these agreements do not pick and choose elements of international standards; they fully respect that the right to organize as a union and collectively bargain remains solely with employees free of management interference.

NEG/Durham must adopt similar, impartial language in its workplace rights policy to legitimately be within the bounds of internationally-recognized human rights norms. And any such workplace rights policy enacted by NEG/Durham in the U.S. needs robust oversight - preferably by an independent source to prevent any management backsliding - with transparent disclosure to the company's stakeholders on the progress and implementation of such a policy.

¹⁹ --.(n.d.) Employee Relations – The Group's natural view on union membership. FirstGroup plc.; --. (2011). Global Corporate Social Responsibility Agreement between Rhodia and ICEM. Rhodia/ICEM. Retrieved on October 7, 2011, from ICEM's website, <http://www.icem.org/en/69-Global-Framework-Agreements>.