

# **CHOOSING RIGHTS**

## **Nissan in Canton, Mississippi, and Workers' Freedom of Association under International Human Rights Standards**

**A report by the Mississippi State Conference of the NAACP  
Derrick Johnson, President**

**and**

**Lance Compa  
International labor law scholar**

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## Foreword

### **Derrick Johnson, President, Mississippi State Conference of the NAACP**

To fulfill our historic mission, the civil rights movement must evolve both substantively and strategically to confront the most pressing, urgent and timely challenges that face our people and our nation. During the time of Dr. Martin Luther King, Jr.'s leadership, our struggle focused primarily on obtaining equality under the law. That struggle continues. And indeed Dr. King believed strongly in economic justice; he lost his life while fighting for the right of Memphis workers to have a union. In the 21<sup>st</sup> century, economic inequality and injustice must be at the forefront of our concerns. "Choosing Rights" is a critical and well-researched report documenting the very corporate practices that pose the greatest threat to achieving justice in our society.

Globalization is the salient feature of economic life in our time. Multinational corporations have used their enormous wealth and clout to override national concerns, constraints and limitations, enabling capital investments to move unrestrictedly across borders. Wielding this supra-national power, corporations strive to pit community against community, state against state, nation against nation, as everyone attempts to attract and retain corporate investments. Corporate loyalty to employees or communities has long since vanished, and the mantra is to maximize short-term profit by moving to find the cheapest and most exploitable labor.

The excessive power of global capital leaves workers everywhere vulnerable, as they are told that if they speak out on issues of safety, or fairness, or compensation, or unionization, the company can simply pull up stakes and go elsewhere. The outsized influence of global corporations also leaves communities vulnerable, for we are told that unless we provide huge incentives and tax relief, the company will take its jobs elsewhere.

The damaging results of ceding so much power to private global corporations are clear. Over recent decades, the incomes of middle class Americans have declined, while the wealth of the top 1% has grown. Working class people are losing hope of achieving the security that is the essence of a middle class living standard. The American dream is slipping away, while the rich get richer.

The case of Nissan's actions here in Mississippi represents a clear and visible example of the abuse of power by a global corporation. The people of Mississippi welcomed Nissan with generous incentives and open arms, and our workers have dedicated themselves to making this company successful. While still supporting Nissan, a number of workers began to have concerns about certain aspects of their employment situation. The growing reliance on temporary labor supply firms rather than hiring regular full-time employees for production work is one issue. Lower pay and benefits in Mississippi

compared to Tennessee is another problem. Safety at the plant and the treatment of injured workers also raise concerns.

Because of these issues, workers reached out to the United Auto Workers union (UAW) and asked for assistance in gaining union representation at the plant. For a company like Nissan, working with a unionized workforce would not seem to be very problematical. The facilities in Japan, Nissan's home country, are fully unionized. Nissan and its Alliance partner Renault engage in collective bargaining in the U.K., Australia, South Africa, Spain, France, Mexico, Russia, and in other parts of the world where they operate. However, as this report documents, rather than respecting American workers' request to be treated like other workers all over the globe, Nissan has reacted to employee interest in unionizing with "a sustained campaign of psychological pressure against workers' organizing efforts."

This Report chronicles Nissan's aggressive anti-union tactics. These include mandatory "captive audience" meetings, individual sessions with supervisors, closed-circuit television presentations, surveillance, and interrogations. Nissan management has relentlessly and repeatedly implied to its workforce that the plant faces the risk of closing down if the workers decide to have a union. Instead of allowing workers to decide freely whether or not to participate in a union, the company chooses to create a climate of fear and uncertainty. Such fear-mongering is inconsistent with freedom of choice.

Nissan has also consistently attacked the United Auto Workers as a negative, corrupt outside force seeking to make money by organizing workers. In light of the fact that the UAW has commissioned this report, it is important for me to emphasize that – unlike the company – the union has not engaged in any pressure tactics or intimidation. Instead, the UAW's request is that the company abide by Principles for Fair Union Elections. These Principles simply require that when the company makes its anti-union speeches, the workers are allowed to hear equally from the other point of view. A fair election also requires that there be no threats or intimidation, and that both management and union show respect and courtesy towards each other. These are reasonable guidelines that reflect how democratic elections take place. Nissan has refused to accept these Principles. Instead, Nissan continues to defend its fierce anti-union behavior.

As this Report outlines, the right to form a union has been recognized by the United Nations and other international bodies as a basic human right. It is the right of freedom of assembly, freedom of association, and the right to bargain collectively. For Nissan to threaten people who seek to exercise their fundamental rights is an attack on our most cherished values. The civil rights movement rose up and demanded the right to vote. We demanded the right to equal access to public accommodations and equal education. We must rise up and tell global corporations such as Nissan that we will not tolerate the suppression of workers' voices.

This is a critical moment for the civil rights movement. We must not be silent when powerful and wealthy global companies bully American workers. We must support our fellow citizens when they face threats in the workplace for simply exercising their rights. We must stand up for the right to organize unions without fear or intimidation. We must link arms with the labor movement as one of the best vehicles for securing and preserving a middle class.

With this report we are calling out misconduct by a corporate giant. The civil rights movement will not rest until Nissan is held accountable for treating American workers as second class citizens and for cynically trampling on our freedoms.

## Executive Summary

Nissan North America's massive auto assembly plant near Canton, Mississippi, employs some 4,000 regular full-time workers, hundreds of whom work for temporary labor supply firms. Workers have sought union organizing help from the United Auto Workers (UAW) and formed a Fair Election Committee.

Under international law and its own stated commitments, Nissan is supposed to respect human rights standards on workers' freedom of association – the right to organize and the right to collective bargaining. But for the past 10 years in the Canton plant, Nissan has pursued an aggressive campaign of fear and intimidation to nullify these rights.

This report explains Nissan's international obligations and shows how the company is failing to live up to them, based on workers' accounts of their experiences as Nissan employees.

Nissan says, "Our Canton team members can earn up to *\$9 more per hour* than the average Mississippi wage... An employer bears the responsibility to comply with national law, and in the United States, Nissan has an excellent and proven record of doing that."

But this report uses international standards as the relevant benchmark, not U.S. labor standards. The issue is whether Nissan complies with international labor standards on workers' freedom of association.

Many features of U.S. labor law themselves do not comport with international standards. This does not give employers a free pass to violate international standards without accountability, using the excuse that they are not violating U.S. law.

International standards prohibit "acts of interference" against workers' organizing efforts. These include "imposing pressure, instilling fear, and making threats of any kind that undermine workers' right to freedom of association" and "creating an atmosphere of intimidation and fear with respect to union organizing." International standards also allow workers to hear from union representatives inside the workplace about their organizing rights.

Nissan is obligated to comply with international labor standards under International Labor Organization (ILO) conventions, the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises, the United Nations (UN) Guiding Principles on Business and Human Rights and other global labor norms, and through its participation in the UN Global Compact, which has similar requirements. These standards require multinational companies such as Nissan to respect the ILO core labor standards on workers' freedom of association wherever they do business.

Nissan's systematic, unrelenting campaign against union formation at the Canton plant is in clear violation of international standards on workers' freedom of association. Management subjects workers to frequent "Big Brother" anti-union messaging on in-plant TV monitors. Management forces workers to attend captive-audience meetings with thinly-veiled hints of lost jobs and implicit threats that Nissan will not put new products into the plant if workers form a union.

Management sends supervisors out for one-on-one meetings with workers to gauge their union sentiments and suggests dire consequences if they support the union. While it bombards employees with one-sided, consistently negative attacks on the UAW and the very idea of union formation, Nissan refuses to let employees receive information from union representatives inside the workplace, as international standards require.

Any one of these tactics meets the definition of interference with workers' organizing rights under international labor standards. Taken together, they amount to an all-encompassing, sustained drive to discourage, demoralize, and frighten employees from exercising the right to organize.

Here is how one employee describes his experience:

In all these meetings they tell us that Nissan is a non-union company. Right there they are misleading people. Nissan has unions all over the world, starting in Japan . . . – the workers there all have a voice. We're not asking for more money. It's not us versus them. They are here because of the quality of our work. When I put my hand on a unit they are getting 100 percent from me. We want to sit at the table and have a voice, too.

To remedy these violations, Nissan should work with the UAW to establish a new framework in the Canton plant for employees' exercise of the right to freedom of association. In particular, Nissan management should:

- affirm workers' right to organize in keeping with the core labor standards of the ILO and ILO Convention 87 on freedom of association;
- make clear that it will not close the plant or fail to introduce new product lines because workers choose union representation, and
- assure workers that if they choose representation, it will negotiate in good faith with a sincere desire to reach a collective bargaining agreement.

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#### **I. Introduction**

##### **A. Background**

Nissan North America's massive auto assembly plant rises from the fields near Canton, Mississippi, like King Ahab's Ivory Palace.<sup>1</sup> Nissan built the factory 20 miles north of the state capital in Jackson a decade ago in exchange for the promise of hundreds of millions of dollars in subsidies from state and local governments. It occupies 3.5 million square feet of building space on 1,400 acres of land – a modern industrial palace reflecting the size and power of a Fortune Top 50 multinational corporation. In the Canton plant, workers produce the Altima sedan, the Titan truck, the Armada SUV and other Nissan models.

Nissan operates on a global scale. Headquartered in Yokohama, Japan, the company employs 160,000 workers and has manufacturing operations in more than a dozen countries. For the 12-month period ending March 31, 2013, global sales reached a record-high of 4.914 million units. Nissan made net profits totaling \$4.13 billion on revenue of \$116 billion.<sup>2</sup>

The Nissan plant in Canton is the pride of state economic development officials. They insist that the enormous subsidies and tax breaks to Nissan are a net gain for Mississippi.<sup>3</sup> Some 4,000 workers are employed at the plant. After five years' service, Nissan production employees reach the top pay level of \$23.22 per hour. But working

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<sup>1</sup> 1 Kings 22:39. On Google Maps, enter "Canton, MS" and follow Interstate 55 and U.S. Route 51 just south of Canton. The huge, unmistakable Nissan plant is between the two highways.

<sup>2</sup> See Nissan press release of May 10, 2013 on the company's website at [http://www.nissan-global.com/EN/NEWS/2013/\\_STORY/130510-01-e.html](http://www.nissan-global.com/EN/NEWS/2013/_STORY/130510-01-e.html) (visited July 18, 2013).

<sup>3</sup> Critics contest the claim. See, for example, R.L. Nave, "Is Nissan Worth It for Taxpayers?" *Jackson Free Press*, July 19, 2012; See also Philip Mattera and Kasia Tarczynska, "A Good Deal for Mississippi? A Report on Taxpayer Assistance to Nissan in Canton, Mississippi," *Good Jobs First*, May 2013, at [http://www.goodjobsfirst.org/nissan\\_report](http://www.goodjobsfirst.org/nissan_report) (visited July 19, 2013). This report takes no position on such an economic policy issue, as it does not implicate international labor standards.



alongside direct-hire employees are hundreds of workers employed by temporary labor supply firms. Many of these workers start at about \$12.00 per hour.<sup>4</sup>

Nissan workers around the world are represented by trade unions, starting in its home country with the Japanese Auto Workers union (JAW). Nissan workers in Australia, Spain, UK, Russia, Mexico, South Africa and elsewhere also have unions. These are mutually beneficial collective bargaining relationships that respect the needs of the business and meet the needs of employees.

Under international law and pursuant to its own stated commitments, Nissan is supposed to respect human rights standards on workers' freedom of association – the right to organize and the right to collective bargaining. But in the Canton plant, contrary to its cooperative approach to dealing with unions elsewhere in the world, Nissan has launched a sustained, aggressive campaign of fear and intimidation to nullify these rights.

This report explains Nissan's international obligations and shows how the company is failing to live up to them based on workers' accounts of their experiences as Nissan employees. Employee interviews took place between September 2012 and January 2013 in Canton, Mississippi. No United Auto Workers (UAW) union representatives were present at the interviews.

While this report was under preparation, Nissan was invited to comment on its commitment to international standards on freedom of association and how its actions in Canton comport with those standards. Nissan responded in a letter on February 25, 2013. At relevant points this report provides the company's comments.

### **B. Workplace Issues**

During the course of these interviews, workers expressed many reasons why they turned to the UAW for help at the Nissan plant. They cited what they perceived as:

- favoritism and unfair treatment by managers and supervisors
- retaliatory job assignments
- lack of consideration for seniority
- disparate and unfair application of attendance policy
- need for health and safety improvements
- pay disparities with Nissan's Smyrna, Tennessee, plant
- added job duties with no additional pay
- denial of bathroom use
- freezing of the pension plan
- blaming employees for quality defects when it was not their fault

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<sup>4</sup> The terms and conditions of employment described in this report were those in effect in July 2013.

- managers who say “you are lucky to have this job, and if you don’t like it, there’s the door.”

In its February 25 letter, Nissan said “Our employees in Mississippi enjoy some of the most secure jobs in the state and earn some of the highest manufacturing wages in the region. In fact, our Canton team members can earn up to \$9 *more per hour* than the average Mississippi wage.”<sup>5</sup>

This report is not about these kinds of workplace issues and whether employees want or need trade union representation, which is their decision to make. It is about Nissan’s *response* to workers’ exercise of freedom of association and whether the company’s actions comply with international labor standards.

Workers have a fundamental right to define for themselves the issues they deem important and to decide for themselves whether to have a union to address such issues through collective bargaining and contractual grievance procedures. Interviewed workers repeatedly pointed to what they perceived as Nissan’s failure to meet their expectations and the lack of a genuine “voice” of their own, rather than company-controlled “roundtables,” to deal with management on workplace issues. This was the overriding reason they gave for seeking assistance from the UAW.

In its February 25 letter, Nissan said “Over the 10 years of operation of our Canton facility, our employees have chosen to maintain a direct relationship with the company rather than inviting an outside party like the UAW to speak for them.”<sup>6</sup> But no representation election has ever taken place at the Canton plant. Instead, over the 10 years of its Canton operation Nissan management has mounted a sustained campaign of psychological pressure against workers’ organizing efforts.

Nissan often refers to workers’ efforts to form a union as those of an “outside party” or “third party” alien to the employees and the workplace. This is a basic mischaracterization of the dynamic of workers’ freedom of association. Unions do not organize workers. Workers organize themselves. In the organizing process, they need help from union representatives experienced in leadership development and knowledgeable about legal rules on organizing and collective bargaining.

Employee *self*-organization is the engine of freedom of association. In its campaign against the union, Nissan is really campaigning against its own employees trying to exercise a fundamental right. Management’s constant reference to a “third party” as the organizing force demonstrates a fundamental disdain for workers’ freedom of association and right to self-organization.

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<sup>5</sup> See Nissan letter to report author, February 25, 2013 (emphasis in original).

<sup>6</sup> See Nissan letter to report author, February 25, 2013.

### C. U.S. Labor Law and International Standards

Interviewed employees recounted actions by management that arguably are unfair labor practices under the National Labor Relations Act (NLRA). They include:

- threats that the plant will close if workers choose the UAW to represent them
- threats that Nissan will not put new products into the plant if workers choose the UAW to represent them
- interrogation of workers about their union sympathies
- surveillance of known union supporters
- isolating known union supporters from other employees
- retaliating against union supporters in job assignments and disciplinary actions
- soliciting grievances from employees to undermine union support.

Only legal proceedings can conclusively determine if Nissan violated the NLRA. But whether or not Nissan committed unfair labor practices in the Canton plant is not an issue for this report. This report uses international standards as the relevant benchmark, not U.S. labor law. The issue is whether Nissan complied with international labor standards on workers' freedom of association.

#### **Nissan's Response:**

Nissan does not accept this framework of analysis of its actions at the Canton, Mississippi, plant. Although it has joined the United Nations Global Compact and is subject to the OECD Guidelines for Multinational Corporations, Nissan denies that it is obligated to adhere to the international labor standards set forth in these instruments. Instead, the company relies on U.S. labor laws that themselves run afoul of international standards to justify its aggressive campaign against workers' organizing efforts in Canton.

In its February 25 letter, Nissan says:

[E]ven though we are committed to corporate citizenship, our understanding of the principles of freedom of association and the effective right to collective bargaining as defined at the international level is that it does not require companies like Nissan to abrogate or otherwise disregard rights available to it under national law. ... Our understanding of international labor standards is that they do not apply to private enterprises like Nissan. Rather, they apply to governments, which then use them as guidance to structure national law. An employer

bears the responsibility to comply with national law, and in the United States, Nissan has an excellent and proven record of doing that.<sup>7</sup>

Many features of U.S. labor law themselves do not comport with international standards. Indeed, the main U.S. employers' organization which represents them at the International Labor Organization (ILO), the U.S. Council for International Businesses, acknowledges that "U.S. law and practice conflict with many of the requirements of the ILO standards, preventing U.S. ratification of some of the core labor standards."<sup>8</sup> But this does not give employers a free pass to violate international standards without accountability, using the excuse that they are not violating U.S. law.

Even where elements of U.S. law comply with ILO norms, delayed enforcement and weak remedies often make recourse to the National Labor Relations Board (NLRB) an ineffective option for workers. Many unions choose to avoid using the NLRB. They do not want to get tied up in proceedings that take years to finish and provide no penalties against employers that violate the law.<sup>9</sup>

Nothing has changed in the more than 10 years since Human Rights Watch reported that:

The reality of NLRA enforcement falls far short of its goals. Many workers who try to form and join trade unions to bargain with their employers are spied on, harassed, pressured, threatened, suspended, fired, deported or otherwise victimized in reprisal for their exercise of the right to freedom of association. . . . In the United States, labor law enforcement efforts often fail to deter unlawful conduct. When the law is applied, enervating delays and weak remedies invite continued violations. . . . Many employers have come to view remedies . . . as a routine cost of doing business. . . . A culture of near-impunity has taken shape in much of U.S. labor law and practice.<sup>10</sup>

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<sup>7</sup> See Nissan letter to report author, February 25, 2013.

<sup>8</sup> See U.S. Council for International Business, "U.S. Ratification of ILO Core Labor Standards," *Issue Analysis* (April 2007), at [http://www.uscib.org/docs/US\\_Ratification\\_of\\_ILO\\_Core\\_Conventions.pdf](http://www.uscib.org/docs/US_Ratification_of_ILO_Core_Conventions.pdf).

<sup>9</sup> The NLRA is "remedial, not punitive" (*Republic Steel Corp. v. NLRB*, 311 U.S. 7, 1940). For example, the typical remedy for an unlawful threat to close a facility is an order to post a notice in the workplace promising not to engage in the unlawful conduct. Moreover, NLRB cases are routinely settled with "non-admission clauses," releasing the employer from the burden of acknowledging any wrongdoing even while it posts a notice promising not to act unlawfully in the future.

<sup>10</sup> See Human Rights Watch, *Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards* (2000), available at [www.hrw.org/reports/pdfs/u/us/uslbr008.pdf](http://www.hrw.org/reports/pdfs/u/us/uslbr008.pdf).

### D. Report Outline

Following this Introduction, Section II reviews international labor standards on freedom of association to set benchmarks for measuring Nissan's compliance. In particular, it focuses on the core labor principles of the International Labor Organization (ILO) and related ILO Conventions 87 and 98 on freedom of association and collective bargaining. These international labor standards prohibit employer interference with workers' organizing efforts and support workers' right to meet with and hear from union representatives inside the workplace about their organizing rights.

Section III examines Nissan's obligations under international standards on workers' freedom of association from three angles:

- 1) under Nissan's own acknowledgments of such commitments;
- 2) under international labor law standards that apply to all multinational corporations, whether or not they expressly adopt them; and
- 3) under principles adopted by socially responsible investment firms that include Nissan in their portfolios.

Section IV is the heart of the report. Here, Nissan workers give their accounts of management's harsh, sustained campaign against their organizing efforts. Management strategies include the use of sophisticated communication techniques to hammer an anti-union message to employees, "captive-audience" meetings with attacks on unions and implications of dire consequences, especially plant closure or layoffs, if workers pursue union representation, one-on-one meetings by supervisors with employees taking advantage of the superior-subordinate relationship to undermine union sentiment, and other tactics that create a climate of fear and intimidation about union organizing.

Section V concludes the report with recommendations to Nissan and to the UAW for an innovative turn to a new freedom of association framework in the Canton plant. It also makes recommendations to the socially responsible investment community and to international organizations for steps they can take to bring the labor-management relationship at Nissan's Canton plant in line with these bodies' international freedom of association standards.

## II. International Labor Standards on Freedom of Association

### A. Freedom of Association under the ILO Declaration and ILO Conventions

The ILO's 1998 Declaration on Fundamental Principles and Rights at Work is the key point of reference for international standards on workers' freedom of association. To give the Declaration more specific content it points to two "conventions" – the term used for international standards adopted by the ILO – on freedom of association and collective bargaining. The ILO Declaration says "[T]hese principles and rights have been expressed and developed in the form of specific rights and obligations in Conventions recognized as fundamental both inside and outside the Organization."<sup>11</sup>

ILO Convention 87 says, "Workers ... without distinction whatsoever, shall have the right to establish and ... to join organizations of their own choosing."<sup>12</sup> Convention 98 says that workers "shall enjoy adequate protection against any acts of interference" by employers or the government.<sup>13</sup>

The United States has not ratified either of these core ILO conventions. However, the ILO Declaration states that "all Members, *even if they have not ratified the Conventions in question*, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions."<sup>14</sup>

#### 1. Acts of Interference

The Committee on Freedom of Association (CFA) has repeatedly emphasized non-interference with workers' organizing and bargaining rights as a cornerstone of freedom of association. The CFA has identified prohibited "acts of interference" in its handling of thousands of complaints submitted under Conventions 87 and 98 in the past half century. The following are some of the CFA's examples of employers' conduct resulting in prohibited interference with workers' organizing and bargaining rights:

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<sup>11</sup> ILO Declaration on Fundamental Principles and Rights at Work (1998).

<sup>12</sup> ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise, adopted July 9, 1948, 68 U.N.T.S. 17, entered into force July 4, 1950, art. 2.

<sup>13</sup> ILO Convention No. 98 concerning the Right to Organise and Collective Bargaining, adopted July 1, 1949, 96 U.N.T.S. 257, entered into force July 18, 1951, art. 1.

<sup>14</sup> ILO Declaration on Fundamental Principles and Rights at Work (1998) (emphasis added).

- imposing pressure, instilling fear and making threats of any kind that undermine workers' right to freedom of association;
- creating an atmosphere of intimidation and fear with respect to union organizing;
- pressuring or threatening retaliatory measures against workers if they choose union representation;
- attempting to persuade employees to withdraw authorization cards given to a trade union to unduly influence the choice of workers and undermine the position of the union;
- harassing and intimidating workers by reason of trade union membership or legitimate union activities, including to prevent the free exercise of trade union functions.<sup>15</sup>

### 2. Access to the Workplace

The ILO has also said that to meet international labor standards companies should allow employees to receive information from union representatives inside the workplace. In fact, the ILO Committee on Freedom of Association spelled out this norm in a case involving a French company and a union in the United States.

The United Food and Commercial Workers (UFCW) and its global union federation, the International Union of Food Workers (IUF), filed a complaint to the CFA because U.S. labor law allowed the company to prohibit union representatives' access to employees at any employer-owned property. The Committee concluded that workers in the United States must have an opportunity to meet with and hear from union representatives inside the workplace, even when the union does not yet represent them. The Committee's recommendation stated:

The Committee requests the Government to guarantee access of trade union representatives to workplaces, with due respect for the rights of property and management, so that trade unions can communicate with workers in order to apprise them of the potential advantages of unionization.<sup>16</sup>

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<sup>15</sup> ILO, *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition* (2006), paras. 35, 67, 514, 786, 863.

<sup>16</sup> See ILO Committee on Freedom of Association, *Complaint against the United States*, Case No. 1523, Report No. 284 (1992).

### III. Nissan and International Standards on Freedom of Association

#### A. Nissan's Commitments and Obligations under International Standards

Nissan has publicly proclaimed a corporate social responsibility (CSR) policy accepting international standards on workers' freedom of association and right to organize. The company says "incorporating CSR concepts into our management is important." It "seeks to contribute to the sustained development of society" and "to this end, we listen carefully to the wide variety of our stakeholders ... we listen closely to the voices of society."<sup>17</sup>

In 2011, Nissan defined its CSR activities as "Blue Citizenship" designed to "meet the expectations of society while achieving global growth." The company's CSR program came under the direct control of Chief Executive Officer Carlos Ghosn. Ghosn is at the same time CEO of Renault, the French auto giant that joined with Nissan in a strategic alliance in 1999.<sup>18</sup>

Nissan's obligation to respect international labor standards on workers' freedom of association is reflected both internally and externally. Internally, the company has acknowledged its commitment to international standards:

- by joining the United Nations Global Compact;
- by embracing the International Standardization Organization's ISO 26000 Guidance on Social Responsibility.

Externally, Nissan has responsibilities on freedom of association:

- under the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises, and
- under the United Nations (UN) Guiding Principles on Business and Human Rights.

Finally, expectations to respect workers' freedom of association are placed on Nissan by socially responsible investment groups that invest clients' money based on Nissan's

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<sup>17</sup> See "Nissan's Approach to CSR," at <http://www.nissan-global.com/EN/COMPANY/CSR/NISSAN/> (visited July 18, 2013).

<sup>18</sup> Renault has its own extensive commitments to workers' rights, expressed in the document *Renault's Commitment to Corporate Social Responsibility (CSR)*, at <http://www.renault.com/en/Groupe/developpement-durable/responsabilite-sociale-de-l-entreprise/Pages/politique-rse.aspx> (visited July 18, 2013). However, this report concentrates on Nissan's obligations, separate from those of Renault. See Appendix B.



reputation as a socially responsible company. In this field, as well as in the commitments and obligations mentioned above, Nissan's CSR policy and practices are linked to the core labor standards of the ILO on workers' freedom of association and the right to form and join a union.

### 1. United Nations Global Compact

In 2004, Nissan joined the United Nations Global Compact.<sup>19</sup> The Global Compact calls itself "a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labor, environment and anti-corruption" and says it is "the largest voluntary corporate responsibility initiative in the world."<sup>20</sup>

By joining the Global Compact, firms commit themselves "to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labor standards, the environment and anti-corruption." More specifically, corporations commit themselves to the Global Compact's Ten Principles on those core subjects.

The Global Compact's Principle 3 declares: "Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining." The UN body notes that "the labor principles of the Global Compact are taken from the International Labor Organization's Declaration on Fundamental Principles and Rights at Work" and that "the Principles and Rights identified in the ILO Declaration comprise the labor portion of the Global Compact."

### 2. ISO 26000 Guidance Standard on Social Responsibility

In 2010 the International Standardization Organization (ISO) adopted a new guidance standard on social responsibility called ISO 26000. The ISO is a non-governmental experts' group that sets quality and performance standards recognized worldwide. In its 2010 CSR Handbook, Nissan featured the new ISO 26000 standard. Nissan said that ISO 26000 "will serve as a benchmark for business partners and investors around the world in judging a corporation."<sup>21</sup>

ISO 26000 is meant to guide businesses and organizations on how to operate in a socially responsible way. The ISO cites the ILO's "fundamental principles and rights at

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<sup>19</sup> See "The UN Global Compact," at <http://www.nissan-global.com/EN/COMPANY/CSR/GLOBALCOMPACT/> (visited July 18, 2013).

<sup>20</sup> See <http://www.unglobalcompact.org/AboutTheGC/index.html> (visited July 18, 2013).

<sup>21</sup> See Nissan CSR Handbook 2010, at [http://www.nissan-global.com/EN/DOCUMENT/PDF/HB/2010/HB10E\\_P31.pdf](http://www.nissan-global.com/EN/DOCUMENT/PDF/HB/2010/HB10E_P31.pdf) (visited July 18, 2013).

work” as the foundation of its labor guidance.<sup>22</sup> Going even farther, the ISO calls for “social dialogue” defined as “all types of negotiation, consultation or exchange of information between or among representatives of governments, employers and workers on matters of common interest relating to economic and social concerns.”<sup>23</sup>

### **B. Nissan’s Obligations as a Multinational Corporation**

#### 1. OECD Guidelines for Multinational Enterprises

The Organization for Economic Co-operation and Development (OECD) is the economic and social policy forum of the most advanced industrial countries. All multinational firms with headquarters or operations in an OECD member country are expected to adhere to the OECD Guidelines. With headquarters in Japan and large manufacturing plants in the United States, Nissan is a classic example of a multinational enterprise covered by the OECD Guidelines.

First adopted in 1976 and most recently updated in 2011, the OECD Guidelines incorporate the ILO core labor standards and call on multinational companies to:

- respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organizations of their own choosing;
- respect the right of workers employed by the multinational enterprise to have trade unions and representative organizations of their own choosing recognized for the purpose of collective bargaining, and engage in constructive negotiations with such representatives with a view to reaching agreements on terms and conditions of employment;
- provide information to workers’ representatives which is needed for meaningful negotiations on conditions of employment;
- promote consultation and co-operation between employers and workers and their representatives on matters of mutual concern.<sup>24</sup>

The OECD has stated that its industrial relations guidelines mean that corporate management should “adopt a positive approach toward the activities of trade unions

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<sup>22</sup> See ISO 26000, para. 6.3 (2010).

<sup>23</sup> See ISO 26000, para. 6.4.5.1 (2010).

<sup>24</sup> OECD, Guidelines for Multinational Enterprises (2011).

and, in particular, an open attitude toward organizational activities within the framework of national rules and practices.”<sup>25</sup> This does *not* mean that multinational firms are relieved of the obligation to maintain a positive approach and an open attitude in countries like the United States where national law and practice allow, but do not require, aggressive campaigns of interference with workers’ organizing rights. The OECD Guidelines do not set double standards. The single standard of a positive approach and an open attitude always applies, including in the United States.

### 2. UN Guiding Principles on Business and Human Rights

In 2011 the UN adopted its Guiding Principles on Business and Human Rights laying out these obligations:

- Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
- The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labor Organization’s Declaration on Fundamental Principles and Rights at Work.<sup>26</sup>

Importantly, the UN notes that “the responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. . . . It exists *over and above compliance with national laws* and regulations protecting human rights.”<sup>27</sup>

That is, all multinational companies such as Nissan have an obligation to respect the ILO core labor standards on workers’ freedom of association wherever they do business. Where national labor laws are weaker than international standards, companies should comply with international standards.

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<sup>25</sup> OECD Committee on International Investment and Multinational Enterprises, *The Review of the 1976 Declaration and Decisions on International Investment and Multinational Enterprises* (1979), para. 60.

<sup>26</sup> See “UN Guiding Principles on Business and Human Rights: Implementing the United Nations’ ‘Protect, Respect, and Remedy’ Framework,” (UN 2011) at [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) (visited July 18, 2013).

<sup>27</sup> *Id.* (emphasis added).

Nothing in U.S. labor law requires employers to aggressively campaign against workers' organizing efforts or otherwise disregard international labor standards and their own proclaimed values and codes of behavior. Nothing in the U.S. labor law system prevents corporations from complying with international norms that surpass American standards. Nothing prevents them from implementing best practices higher than minimum legal standards or from simply treating workers and their unions in the United States as respectfully as they do at home.

Multinational firms have a choice as to how they will conduct labor relations policy in the United States. They can implement home-based values and practices of respect for workers' organizing rights. They can accept collective bargaining as a normal way of engaging with employees in their U.S. operations. Or they can convert to forms of management interference with workers' organizing and bargaining efforts that are all too common in the United States but almost unheard of in developed countries in the rest of the world. Unfortunately, Nissan has opted for the latter at its Canton, Mississippi, plant.

### **C. Expectations of Nissan Performance by Socially Responsible Investors**

The socially responsible investment (SRI) community also sets standards for multinational corporations. SRI groups do not set binding obligations, but they create expectations that firms should act consistent with the values of investors, both individual and institutional, who want their investments to advance "ESG" – environmental, social and governance – goals in the global economy. Many SRI investment firms include Nissan on lists of socially responsible companies in which they invest clients' money.

Nissan recognizes the significance of SRI, noting in its October 2012 CSR Newsletter:

Socially responsible investment (SRI) is a type of investment that encourages corporations to improve their CSR practices. In SRI, an investment decision is made based on a company's CSR efforts in addition to its financial information and SRI is rapidly growing in recent years. As SRI index grows to play an important role for investors, Nissan is actively communicating its CSR efforts to the stakeholders.

In the same document, Nissan pledged that it "will continue to listen carefully to the wide variety of our stakeholders as we pursue activities that meet society's needs."<sup>28</sup>

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<sup>28</sup> See [http://www.nissan-global.com/EN/DOCUMENT/PDF/SR/2012/CSR\\_Newsletter\\_E\\_1210.pdf](http://www.nissan-global.com/EN/DOCUMENT/PDF/SR/2012/CSR_Newsletter_E_1210.pdf) (visited July 19, 2013).

### 1. FTSE4Good

The guide for FTSE4Good, a London-based SRI company, lists Nissan as a company “that meets globally recognized social responsibility standards.”<sup>29</sup> FTSE4Good expects listed companies to make “a public statement of commitment to respect all the ILO core labour standards globally” or to join the UN Global Compact (which Nissan has done).<sup>30</sup>

FTSE4Good says further:

There is general consensus that workers' rights are universal. This is demonstrated by internationally agreed core labor rights that have been established through the International Labor Organization (ILO). ... The FTSE4Good criteria use the ILO standards as a starting point.

### 2. Calvert Investments

Calvert Investments is a leading SRI firm known for careful screening of companies' ESG performance for socially conscious investors. In assessing corporate performance “Calvert seeks to invest in companies that provide strong labor codes (*addressing the core ILO standards*), comprehensive benefits, demonstrated training and development opportunities and a record of sound employee relations.”<sup>31</sup> Calvert includes Nissan in its International Equity Fund screened at the highest “Signature” level.<sup>32</sup>

### 3. Dow Jones Sustainability Index

The Dow Jones Sustainability Index (DJSI) is a key global indicator of companies' responsible performance. In September 2012 Nissan was incorporated in the DJSI Asia Pacific Index for the fourth consecutive year since the Asia Pacific Index was established in 2009. The DJSI social responsibility program is managed by RobecoSAM, which considers ILO core labor standards in its evaluation system.<sup>33</sup>

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<sup>29</sup> See FTSE4Good Markets Performance Report, Q2 2012, at [http://www.ftse.com/Research\\_and\\_Publications/2012Downloads/FTSE4Good\\_Report\\_06\\_12.pdf](http://www.ftse.com/Research_and_Publications/2012Downloads/FTSE4Good_Report_06_12.pdf) (visited July 18, 2013).

<sup>30</sup> See FTSE4Good Index Series Inclusion Criteria at [http://www.ftse.com/Indices/FTSE4Good\\_Index\\_Series/Downloads/FTSE4Good\\_Inclusion\\_Criteria.pdf](http://www.ftse.com/Indices/FTSE4Good_Index_Series/Downloads/FTSE4Good_Inclusion_Criteria.pdf) (visited July 18, 2013).

<sup>31</sup> See Calvert Investments, Sustainable and Responsible Investing Signature Criteria, at <http://www.calvert.com/sri-signature-criteria.html#Workplace> (emphasis added) (visited July 18, 2013).

<sup>32</sup> See Calvert Mutual Funds Holdings, at <http://www.calvert.com/fundHoldings.html?t=2&fund=926> (visited July 18, 2013).

<sup>33</sup> See RobecoSAM website at <http://www.robecosam.com/en/sustainability-insights/index.jsp> (visited July 18, 2013).

#### 4. Domini Social Investments

Another case of Nissan's tie to the SRI community arises with Domini Social Investments, one of the most prominent SRI investment managing firms. Domini invests clients' money in Nissan through its International Social Equity Fund.<sup>34</sup> According to Domini, this fund "invests primarily in stocks of companies in Europe, the Asia-Pacific region and throughout the rest of the world that meet Domini Social Investments' social and environmental standards."<sup>35</sup>

Domini sets out this requirement for its socially responsible investments:

##### *Solidarity with Unionized Workforce*

The acceptance of unions as a positive force in the workplace . . . ha[s] made a major contribution to the stability of the capitalist system and addressed many of its worst abuses. The rights to freely associate and form or join a union of one's choice and to bargain collectively for the terms of one's employment are among the core conventions of the International Labor Organization and are recognized as fundamental human rights. ...

Without unions, the possibilities for long-term equal partnerships between management and labor would be vastly diminished. ... *overly aggressive efforts by management to stop drives to unionize nonunion employees can lead to protracted battles that cause more harm than good* for all parties.

We therefore seek to identify companies where management and unions work respectfully with each other in balancing the appropriate needs of both constituencies.<sup>36</sup>

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<sup>34</sup> See Domini International Social Equity Fund, Schedule of Portfolio Holdings, at [http://www.domini.com/domini-funds/Domini-EuroPacific-Fund/Portfolio/Schedule-of-Portfolio-Holdings.doc\\_cvt.htm](http://www.domini.com/domini-funds/Domini-EuroPacific-Fund/Portfolio/Schedule-of-Portfolio-Holdings.doc_cvt.htm) (visited July 18, 2013).

<sup>35</sup> See Domini International Social Equity Fund Investor Shares Overview, at <http://www.domini.com/domini-funds/Domini-EuroPacific-Fund/index.htm> (visited July 18, 2013).

<sup>36</sup> See Domini Social Investments, Global Investment Standards, at [http://www.domini.com/GlobInvStd/3Employees.doc\\_cvt.htm](http://www.domini.com/GlobInvStd/3Employees.doc_cvt.htm) (emphasis added) (visited July 18, 2013).

Nissan's aggressive campaign against workers' union organizing efforts in the Canton plant undermines its standing as a socially responsible corporation with FTSE4Good, Domini Social Investments and other SRI groups.

### **Nissan's Response:**

Despite its participation in the UN Global Compact and its recognition of the 1998 Declaration on Fundamental Principles and Rights at Work, Nissan denies responsibility to adhere to the more specific international standards on workers' freedom of association developed under the instruments summarized above. In its February 25 letter Nissan said:

[Y]ou are incorrect in stating that Nissan has expressly incorporated any ILO Convention or other ILO instrument into its policies. ... [W]e do not believe that any Nissan entity has made any such commitment apart from general commitments to the principles of respect for freedom of association and the effective right to collective bargaining outlined in the UNGC and the 1998 ILO Declaration on Fundamental Principles and Rights at Work. Consistent with U.S. law, we believe this principle simply allows workers the right to decide whether or not to join a labor union.<sup>37</sup>

## **IV. Nissan's Violations of International Labor Standards**

International norms do not stop at joining a union or not. They extend seamlessly to rights to choose union representation and to go forward to collective bargaining, all without interference by employers. Freedom of association requires non-interference by employers at every stage of workers' exercise of this fundamental right.

By joining the UN Global Compact and acknowledging the ISO 26000 standard, Nissan commits itself to comply with international norms on workers' freedom of association. Under the OECD Guidelines and the UN Guiding Principles, Nissan is obligated as a multinational corporation to respect international standards. Socially responsible investors also demand respect for these rights. But inside the gleaming industrial palace in Canton, management's harsh, aggressive, one-sided campaign against workers' organizing efforts violates their right to freedom of association.

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<sup>37</sup> See Nissan letter to report author, February 25, 2013. The company's narrow, "simply" interpretation of the ILO's core labor standard on freedom of association leaves out the critically important condition that workers should be able to exercise the right to form and join trade unions without interference by management.

**A. Day One “Inoculation” Against Union Organizing**

Nissan has used many of the practices noted above as violations of ILO standards to interfere with workers’ organizing efforts. For many employees, it started before they even entered the plant.

The first groups of employees were hired in late 2001 and early 2002. Many of them went to Nissan’s plant in Smyrna, Tennessee, for their training before production ramped up in Canton. But according to Jeff Moore, a body shop quality technician who went to the Smyrna plant, training there was not only about how to work in an auto plant:

In the first meetings, managers told us that the union tried to get into Smyrna but they couldn’t do it, that Nissan is totally nonunion and didn’t want any part of unions, that unions make plants close. Everything they said about unions was negative, nothing positive. It’s like they were drilling it into our heads, stay away from the union.

Rafael Martinez, a trim department technician hired in 2003, said “It started on day one. They had us in a meeting, about 20 of us. The HR [human resources] manager talked about how we don’t need a union, the union only wants your money, the UAW is losing members and closing down plants, all that kind of stuff. It was all negative.”

Rosalind Essex is an engine quality technician who said:

When I got hired in 2004 they had us go through training at [an offsite training center near the plant]. I remember them starting off saying ‘Nissan is a nonunion company’ and ‘Nissan has never had a union’ and stuff like that, practically telling us that Nissan doesn’t allow unions. It’s like they wanted to put the fear of God in you from day one.

Lee Ruffin, a production technician hired in 2003, echoed the experience. “It started before I ever set foot in the plant. They told us in meetings that the union is no good. It was like basic training in the Marines, kill, kill, kill, except it was kill the union.”

**B. Management’s 2004-2005 Anti-Union Surge**

All interviewed employees recounted a Nissan management offensive against the UAW in late 2004-early 2005, after union representatives first came to Canton to meet with workers there.



Management training material distributed to HR representatives and supervisors reveals the company's attitude toward workers' freedom of association. In what it called "early warning signs" that supervisors should note, Nissan cited the following:

- organizing activity in the community
- an increase in employee "huddling"
- increased "business" during breaks, before work, after work and during lunch
- employee using "union" words: grievances, seniority, contract ...
- increase in private conversations
- new associations, unusual alliances being formed among rank-and-file employees
- employees hanging around before and after work to talk to employees on other shifts
- new informal leaders emerge<sup>38</sup>

All of these are classic exercises of workers' freedom of association. Under international labor standards, employees are supposed to be free to engage in such activities openly and without fear of management surveillance and reprisals. With genuine respect for international labor standards, Nissan should openly acknowledge these rights, not label them "early warning signs" that managers and supervisors should view with the loathing implicit in this instruction.

As part of its anti-union surge in 2004-2005, Nissan had all employees attend captive-audience meetings to watch films and listen to management speeches against employees' involvement in union organizing.

"I was one of the people who called the UAW in 2004," said Rosalind Essex. "A bunch of us were upset about the way some things were going on in the plant, the way they treated people. After union reps came and talked with some of us, the company set up roundtable meetings for everybody. We had to go to these meetings."

Everlyn Cage, a sealer line technician hired in 2003 and later discharged following a work-related injury, described the meeting she attended:

There were about 20 of us in there, with the HR manager and our department manager. They talked about how Nissan has never had a union, unions just make plants shut down, they just want your money, everything bad they could think of. They showed pictures of plants that had unions and closed down, like the same thing would happen to us. They talked about a Frito-Lay plant that had a union and then closed.

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<sup>38</sup> See "How to Know the Possibility of Union Organizing Activity," undated management memo, on file with author.

Pat Ruffin, a quality technician hired in 2003, said:

Management called us off the line to come into these meetings, about 20 or 25 people at a time. The HR manager<sup>39</sup> talked about unions closing plants, about union plants closing and moving to Mexico. He showed us an old film about how bad unions are. He told us we don't need a third party coming in and wrecking the business.

About her group's meeting, Rosalind Essex said, "The managers said unions are just the Mafia, they are just after your dues money. They showed us a movie from about 50 years ago about union strikes and picket lines and pictures of closed factories. People that didn't know better were scared, and they're still scared."

The transcript of a meeting held in April 2005 suggests the force of management's talk about plant closings and layoffs:

I am the department manager. We have [another manager] down from Smyrna helping us with these roundtables. ... Also our plant manager ... HR will be taking notes.

The biggest portion of loss of [UAW] membership has been with direct loss of jobs with UAW plants. ... Many of us know about the different union plants, for instance Frito Lay. They closed after employees selected a union. ... Nissan has never laid off a production or maintenance technician in the United States.<sup>40</sup>

The UAW's record is one of plant closings, layoffs, decline of market share. Nissan's record in the U.S. is one of building new plants, hiring to increase market share. ... Virtually all of the new jobs in the auto industry are non-UAW companies. Virtually all of the plant closings and layoffs in the auto industry are predicted to be UAW-represented companies.<sup>41</sup>

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<sup>39</sup> In this and many statements, employees stated the names of managers involved. However, this report focuses on Nissan management actions as a whole, so individual managers' names are not included here.

<sup>40</sup> Note the careful use of the word "technician." Nissan's technicians are regular full-time employees. Alongside them, Nissan hired more than a thousand "associates" employed by third-party labor supply agencies Kelly Services, Yates and others in Canton. Temporary workers are subject to layoffs as business ebbs and flows.

<sup>41</sup> See transcript of Nissan meeting with employees, April 26, 2005. The manager speaking identifies himself, but as noted above his name is withheld here because this report is about Nissan's systematic interference with workers' freedom of association, not statement or actions of individual managers.

Nissan management's one-sided captive-audience meetings were filled with such implicit threats of job losses and other dire consequences if employees persist in organizing. Note the "predicted to be" formulation at the end, showing how management uses subtle language twists to convey threats of plant closing in a form unlikely to be challenged by the NLRB.

### **Nissan's Response:**

In its February 25 letter Nissan said:

As for meetings when such communications occur, Nissan has never disciplined, threatened discipline or taken adverse action against any employee who chose not to participate. No intimidation or reprisals of any kind for engaging in lawful behavior have been or will be tolerated at Nissan, and the absence of complaints illustrates this reality.

Employees interviewed for this report saw it differently. "They didn't tell us it was voluntary or you don't have to go," said Rosalind Essex. "They just told us to go to a meeting. If you don't go, they would mark you down as a union supporter."

### Captive Audience Meetings in Japan

While this report concentrates on international standards rather than national law, it is worth noting that captive-audience meetings like those of Nissan in the Canton, Mississippi, plant do not occur in Japan. A Japanese labor law expert explains:

*The Constitution requires employers not to impair the worker's rights guaranteed therein. This constitutional guarantee of worker's right provides the fundamental basis for regulating any employer's anti-union speech that affects the formation and management of unions ... Because the very fact that employees at "captive-audience speeches" are forced to assemble by order of the employer and compelled to listen to anti-union speeches delivered by the employer underscores the strong posture of the employer against unions, employees at such speeches are more easily influenced than by other forms of expression of anti-union opinion by the employer. Thus, "captive-audience speeches" are assumed to more seriously infringe on the workers' constitutional right to organize ... free from an employer's influence. The constitutional guarantee of workers' right to organize ... provide[s] the basis for the negative evaluation of "captive-audience speeches."<sup>42</sup>*

### Captive Audience Meetings in Brazil

A Brazilian labor law scholar said:

*[A] general grasp from Brazilian labour jurisprudence seems to indicate that captive audience speeches would be considered illegal because they interfere with the right to unionize. . . . The interdiction comes from the actions' nature that is far beyond the scope of a labour contract.*

*Sure, employers are entitled to free speech but they cannot stretch their prerogative to impose on workers the burden of listening to whatever they want. They cannot make political proselytism or anything alike. Captive audience speeches must then be related to the workplace and it is not so unusual to have this kind of situation related, for example, to a safer work environment. Thus, professional videos, PowerPoint presentations, scholar discourses connected to a better healthy life, to nutritional circumstances, or to hygiene demands seem to be acceptable. On the other hand, speeches advocating a certain political choice or emphasizing the disastrous consequences of unions' activities seem to be unacceptable. . . . The idea of carrying an anti-union discourse seems so unnecessary that the problem is not present in our Courts and Tribunals.<sup>43</sup>*

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<sup>42</sup> See Hisashi Okuno, "Captive Audience speeches in Japan: Freedom of Speech of Employers v. Workers' Rights and Freedoms," 29 *Comparative Labor Law & Policy Journal* 129 (2008). This special issue of the Journal examines the use of mandatory employee meetings throughout the world and finds that, of the countries whose laws were studied, only the United States permits the kind of mandatory captive-audience meetings conducted by Nissan in Canton.

<sup>43</sup> Roberto Fragale Filho and Ronaldo Lobao, "Captive Audience Speech in the Brazilian Labour Law", *Id.*, at 341.

### C. Nissan's "Brave New World" Anti-Union Communications

Reminiscent of the entertainment machines in Aldous Huxley's *Brave New World*, Nissan has installed television screens throughout break areas in the plant. Many work shifts begin with a show edited and produced by Nissan management. The shows are often about production quality, Nissan sales, consumer tips, health care advice, seasonal features and other innocuous issues. But in many instances, management features bad news about the "Detroit 3" (Nissan managements' epithet for General Motors, Ford and Chrysler) and the UAW.

"Every negative thing about Detroit or the UAW goes on the monitor. This week it was all about how the Volt is not doing good," said Rafael Martinez.<sup>44</sup> "They want to make us think that Chevy is in trouble and it's all because of the UAW. Everything is negativity, negativity, negativity. They cherry-pick the news they want to present. Nothing is on there when UAW members get a bonus or a UAW plant adds a shift."

Jeff Moore confirmed the anti-union use of the monitors. "Every work area has a closed-circuit TV where they put up messages about how bad the UAW is and how bad the Detroit companies are doing." Asked about the frequency of such messaging, he said, "It's about once a month when things are quiet, but then it's once every week or two when they know the union has something going on."

"They don't just show it once at the start of your shift," explained Pat Ruffin. "They put the film on a continuous loop and show it all day long, so it's in your face whenever you look up at the screen."

Washad Catchings, a production technician in the stamping department hired in 2003, said:

I've seen lots of good things on the national news about the American auto companies. But Nissan doesn't show any of it. It's totally one-sided. They tell us they're giving us the latest industry news. They make us watch the screens in the plant whenever they have something negative to say about Detroit or the UAW. It's like a dictatorship where you have to listen to them. If you don't pay attention they mark you down as a union supporter.

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<sup>44</sup> The Volt is Chevrolet's electric car. Employees report that management never puts negative news about Nissan on the screen, such as widespread reports of restart failures, premature battery aging, loss of range and other problems with Nissan's electric car, the Leaf. See, for example, "Nissan says restart problems reported in Leaf electric cars," *Reuters*, April 11, 2011, at <http://www.reuters.com/article/2011/04/11/us-nissan-leaf-idUSTRE73A0JN20110411> (visited September 28, 2012); Nikki Gordon-Bloomfield, "Nissan Owners Ratchet Up Attack On Nissan Handling Of Battery Loss," *Green Car Reports*, September 26, 2012, at [http://www.greencarreports.com/news/1079431\\_leaf-owners-ratchet-up-attack-on-nissan-handling-of-battery-loss](http://www.greencarreports.com/news/1079431_leaf-owners-ratchet-up-attack-on-nissan-handling-of-battery-loss) (visited July 18, 2013).

Interviewed workers reported that in June 2012 all employees were required to watch a video presentation on the TV monitors by the plant manager. Washad Catchings explained:

He said that Nissan opposes the union and that the union would be calling and knocking on our doors to sign union cards. He said we can just hang up or shut the door, and that it's dangerous to sign a union card. Something about the union card being a legal document and signing it means you give up your rights, it can come back to bite you if you sign it.<sup>45</sup>

### D. 2012: Nissan Steps Up the Pressure

All interviewed employees recounted a sharp escalation of management's anti-union campaigning in late 2011 and 2012 after Canton workers formed the "Committee for a Fair Election" and began meeting with religious, political, student and community leaders to build support. The Committee points to the UAW's "principles for fair union elections" which call for managers and supervisors, on the company side, and union supporters and UAW representatives, on the union side, to refrain from negative, fear-based campaigning so that an election can take place in a climate free of intimidation and coercion (see Appendix A).

Instead of exploring even the possibility of agreement on the UAW's fair election principles, Nissan heightened the climate of fear and intimidation in the Canton plant. Management undertook a new series of captive-audience roundtables led by top managers and HR officials for the sole purpose of attacking the union and alarming employees with predictions of terrible consequences if they support the union.

Contrary to international standards, U.S. labor law gives wide latitude to employers to launch aggressive campaigns against workers' organizing efforts. Employers cannot make outright threats such as "if you vote for a union, we will close the workplace." But they can convey the same message using a variety of subtle communication ploys that have been perfected by anti-union lawyers and consultants.

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<sup>45</sup> Union cards simply say "I support the UAW" and "I authorize the UAW to represent me in collective bargaining." Signing is voluntary, and anyone who signs a card can change his or her mind and revoke the card. In extraordinary circumstances, when a majority of employees sign cards but the employer's massive, severe unfair labor practices destroy the union's majority status, the National Labor Relations Board can issue a so-called *Gissel* order directing the employer to bargain with the union. Such an order is subject to judicial review by the federal court of appeals and the Supreme Court. See *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

Here is an example of one prominent anti-union consulting group's advice:

Using *conditional words* in discussing union issues with employees can be helpful in avoiding claims by a union that the employer committed unfair labor practices or objectionable conduct. Words such as "may," "might," and "could" are preferred to "will." For example, say, "The plant *could* shut down" rather than, "The plant will shut down" if the union gets in.<sup>46</sup>

"My section's roundtable was during the morning shift," said Jeff Moore. "First the plant manager showed a slide show on how the UAW messed up the auto industry and if they come here they will mess up Nissan. Then the department manager talked about UAW plants downsizing while Nissan is putting new vehicles into Canton, like if we have a union they will pull out production. It was completely biased."

"Whenever anybody asked a question, the HR rep took notes," Moore said. "It was obvious they were keeping track of people's ideas about the union. A lot of people had questions but they didn't ask because they were afraid the company would retaliate."

Moore said he was already a known union supporter. He said "I asked them, 'why don't we bring in the UAW so we can hear from both sides?' They said they would never do that – it's their plant, they're not going to let the UAW in."

Production technician Michael Carter described a similar meeting of about 15 body shop employees with management:

They showed us a video about the Detroit plants having layoffs and they blamed it all on the UAW. It was all negative, one-sided. This was with the department manager, another manager and an HR rep who took notes. I asked them, 'what's the purpose of this meeting?' They said 'it's to give you the facts.' But it's just the facts they pick and the message they want to send – support the union and lose your job.

Betty Jones, a truck engine dress technician, said that her department manager and an HR representative conducted her work group's roundtable:

He showed slides and talked about the Big 3 and how they failed because of the UAW but Nissan is doing OK because it's non-union. She [the HR representative] was taking notes whenever any of us said anything. They were getting a feel for who's for and who's against. If you didn't know about the union it would scare you. They should let the UAW come in so we can hear from both sides.

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<sup>46</sup> William R. Adams, Adams, Nash, Haskell & Sheridan, *A Manager's Guide to Labor Relations Terminology* (second edition, 2003; emphasis in original).

Morris Mock said that in his group's roundtable a manager read a script while showing a PowerPoint presentation. "They put up a picture of Bob King [UAW president] and talked about the union being desperate for members and just wanting dues money. They said companies now are treating people better and there's no need for unions anymore."

Mock also noted the effect of note-taking at the roundtables by HR managers. "It's intimidating," he said. "It seems like they're making a blacklist of who's for the union and who isn't. They already know about those of us who have spoken up but people who haven't said anything, it scares them, like what are they going to do with those notes."

Rosalind Essex also said that her roundtable opened with a picture of Bob King on a screen and the manager saying "who is the UAW and what do they want?" She said the manager insisted that "unions close companies" and the union "only wants your dues." When she asked, "Can someone from the UAW come in to make a presentation?" the response was "No, Nissan will never allow that."

"They said they would talk about the pros and cons of unions but they only talked about the cons," said Washad Catchings. "They didn't literally say the plant would close if the union came in but they showed plants that had unions and closed. They read from a script and chose their words very carefully. They hinted at it. They left you with the idea that 'this will happen to you.'"

Rafael Martinez said:

In the auto industry, every five years it's a new business. Threats not to bring in new [product] lines have an effect on people, make them afraid of losing their jobs. They are toying with us. In all these meetings they tell us that Nissan is a nonunion company. Right there they are misleading people. Nissan has unions all over the world, starting in Japan. The workers there all have a voice. We're not asking for more money. It's not us versus them. They are here because of the quality of our work. When I put my hand on a unit they are getting 100 percent from me. We want to sit at the table and have a voice, too.

### **E. One-on-One Supervisor Pressure**

Both union organizers and anti-union consultants know that management's most powerful tool for interfering with workers' organizing efforts is to enlist employees' direct supervisors to drill fear into them. All the interviewed workers said that following meetings and video presentations in Canton in 2012, employees' immediate supervisors staged one-on-one meetings with individual employees.



Relationships with their front-line supervisors are usually workers' most important interaction with company management. Supervisors have countless opportunities to reward and punish employees in many ways that affect workers' lives on the job.

When supervisors call employees into individual one-on-one meetings, by definition they are in a relationship of authority and subordination. The supervisor is vested with all the power of company management while the worker is unrepresented and vulnerable. In this setting, supervisors' anti-union statements intensify the climate of fear and intimidation established by Nissan's TV monitors and captive-audience roundtables with upper management and HR note-takers.

Anti-union consultants specialize in training supervisors how to confront workers individually about their union sentiments. As with statements by upper management, supervisors cannot directly threaten plant closing or loss of jobs if workers support the union. In an effort to circumvent this rule, supervisors might ask, for example, "do you have any questions about the union?" or "what did you think about the roundtable?" and use that opening to launch an anti-union propaganda offensive.<sup>47</sup>

### Nissan's One-on-One Strategy

Nissan itself recognizes the impact of one-on-one supervisor pressure. Training materials provided to HR representatives and supervisors said this:

Company Strategy: Our role is to create a work environment that fosters employee vs. union sentiments. How does the company attempt to achieve their strategy? Through the members of management/supervision.

The relationship between the employee and the supervisor is the strongest factor influencing an employee's thinking about unions. Supervision conducting frequent and meaningful one-on-one conversations with employees is critical.<sup>48</sup>

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<sup>47</sup> For a description of anti-union consultants' advice to supervisors and other tactics to undermine workers' organizing rights, see Martin Jay Levitt, *Confessions of a Union Buster* (New York, Crown Publishers, 1993).

<sup>48</sup> Undated "Employee Relations 101" memo, on file with author.

Management’s detailed instructions demonstrate the high level of interference with workers’ organizing rights that accompanies the one-on-one campaign. It instructs supervisors to:

Tell employees that the company neither wants nor needs a union.

Tell employees that if they engage in an economic strike, they may be permanently replaced and need be reinstated only if an opening occurs.<sup>49</sup>

Supervisors may campaign vigorously against the union ... request employee to vote against the union and ask them to tell others to do the same. What to say:

A union can mean increased cost of operating the business and therefore impact the competitiveness of the business and our job security.

Some customers look very favorably on us as a supplier because they know we are non-union.

The problems of doing business in a profitable way have become so great in some union plants that the company has had to close down the plant.<sup>50</sup>

A typical device favored by consultants is to have the supervisor say “my brother was in a union plant and the plant closed down.” No one is going to verify if there really was a brother, or a union or a closed plant. But the message is unmistakable: Support the union and lose your job.

Lee Ruffin said that his manager told him his [the manager’s] brother was a union member who went on strike and lost his job. Jeff Moore said that his supervisor called him into a meeting and asked: “What did you think about the roundtable? What do you think about unions after what you heard?” The supervisor told him, “My old job was a union job. The union was terrible. It never got anything done. All we did was pay dues.” The manager did not identify where he worked or of what union he spoke.

Washad Catchings said that his supervisor in a one-on-one meeting told him “I used to work for Tyson. They got a union and the plant closed. People told me it was a big

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<sup>49</sup> This is a clear violation of international labor standards. The ILO has ruled that the “permanent replacement” doctrine in U.S. labor law violates freedom of association. See ILO Committee on Freedom of Association, Compliant against the United States, para. 92, Report No. 278. Case No. 1543 (1991). However, no interviewed employee cited a manager or supervisor conveying the threat of permanent replacement.

<sup>50</sup> Id.

mistake to go union.” The supervisor did not identify the Tyson plant or the union in question.

The exchanges cited above took place between supervisors and workers who were willing to speak about them with an outside researcher. When thousands of Canton employees are subjected to management’s concerted program of one-on-one anti-union meetings, the cumulative effect is devastating for workers’ freedom of association.

### **F. The Newest Target: Labor Supply Agency/Temporary Workers**

In September 2012 Nissan launched a new anti-union offensive in the Canton plant, this time targeting the hundreds of workers who labor full-time in the plant but are employed by third-party labor supply agencies. Called “associates,” many of these temporary workers (also known around the globe as “precarious” workers) work alongside regular Nissan “technicians” doing the same work. But instead of the production technicians’ \$23.22 per hour wage, the workers employed by these agencies can make as little as about \$12.00 per hour.

This large cohort of temporary workers allows Nissan to assert that it has never laid off Canton employees. Temporary workers give the company an elastic labor force that until now has insulated regular employees from layoffs.

Temporary employees are keenly sensitive to their second-class status. Interviewed Nissan temporary workers feel that they are victims of pay discrimination, in many cases doing exactly the same work as “technicians” but for far less pay. Some said that they even train technicians who then move to their jobs – training people who can make almost twice as much as they do.

Nissan began calling its temporary workers into captive-audience meetings in groups of 20-25 at a time. As in its meetings with regular employees, management showed anti-union slide shows and made anti-union speeches, this time to an even more vulnerable group of workers.

A temporary worker who asked not to be identified for fear of reprisals described the meeting:

They called us into a meeting during work time. There were about 25 of us at the meeting. A Kelly manager, a Nissan HR manager, and someone taking notes on a computer were in front of the room.

They showed us a video of a high-up Nissan manager saying that they don’t want the union in the plant, that unions kill jobs. He said we

shouldn't sign a union card because signing a union card gives up your rights. He didn't say why.

Then the managers went on about how the union only wants your dues money and unions only bring a lot of trouble, like strikes and stuff. They told us to stay away from the union, don't talk to them, hang up on them.

They said they don't know if we would get to vote in a union election, but that we should know that the union is only after our money and can only bring trouble.

They asked us if we have any questions. As soon as one of us said anything the person taking notes typed into the computer. So people didn't say much because we were afraid they would mark us down if we asked a hard question.

We heard about the meetings with the technicians but this was the first time they brought us associates in. We already saw the anti-union videos up on the TV monitors in the break room. They show those all the time, all the bad news about Detroit and about the union.

### **Nissan's Response:**

Nissan explained its anti-union meetings and videos in its February 25 letter, which said:

Nissan's communications with employees are entirely lawful under U.S. law ... Nissan has a proud tradition of engaging in an open and ongoing dialogue with its employees about matters important to our business, including whether or not to be represented by the UAW. To that end, Nissan does share information with our employees about the factual realities of workplaces in our industry, both union and nonunion. Nissan's communications are always consistent with the law. ... The company respects and encourages its workers to make an informed decision about whether to designate the UAW as their representative in dealings with Nissan and reserves the right to present the company's perspective as appropriate.<sup>51</sup>

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<sup>51</sup> See Nissan letter to report author, February 25, 2013.

### G. One-Sided Communication Power

The ILO has recognized the imbalance in communication power between the employer and the union. Employers have complete control of employees' activities for eight hours a day and more. They can call workers into "captive" meetings with anti-union films and speeches at any time. They can deploy supervisors to conduct one-on-one meetings with employees to undermine union sentiments. Nissan has used all these tactics in Canton.

Meanwhile, the union must rely on workers voluntarily finding time to meet with union representatives outside of work time, in the face of conflicting household obligations and other commitments outside the workplace – not to mention a need for leisure time and rest from the stress of fast-paced factory labor which often requires extensive mandatory overtime. The result is a one-sided, unfair advantage tilted against workers and their organizing rights.

As noted above, the international standard calls for "access of trade union representatives to workplaces, with due respect for the rights of property and management, so that trade unions can communicate with workers in order to apprise them of the potential advantages of unionization."<sup>52</sup>

### Nissan's Response:

In its February 25 letter, Nissan says:

Any access available to labor union officials arises within the context of the rights of the employer to property and management. We believe that U.S. labor laws strike an effective balance on this point, and we do not intend to deviate from that law. Moreover, to grant access beyond that required by law would also evidence favoritism by Nissan toward the UAW or any other union. We do not believe that to be appropriate and, in fact, believe it would be in violation of national law and principles of international law.<sup>53</sup>

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<sup>52</sup> See ILO Committee on Freedom of Association, *Complaint against the United States*, Case No. 1523, Report No. 284 (1992).

<sup>53</sup> See Nissan letter to report author, February 25, 2013.

Nissan also cited proprietary technology, sophisticated manufacturing processes, and safety as further reasons to refuse to let workers hear from union representatives inside the plant. But as the ILO indicated, access can be reconciled with “due respect for the rights of property and management” by establishing ground rules on time, location and manner of access.<sup>54</sup>

Nissan is wrong to suggest that granting access would be in violation of national law and principles of international law. Nothing in U.S. law prohibits union representatives’ access to the workplace for organizing activity. Without violating any law, many American companies agree to access inside the workplace in non-work areas on non-work times such as lunch and rest breaks.<sup>55</sup> As for international law, the established ILO norm calls for such access. No issue of favoritism arises because Nissan workers in Canton have asked only the UAW for help in organizing.

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<sup>54</sup> The UAW has crafted groundbreaking *Principles for Fair Union Elections* that address the communication imbalance by providing equal access for workers to hear from union representatives (see Appendix A). Moreover, diverging from conventional U.S. union demands on employers to dispense with elections and rely on signed union cards to gain recognition, the UAW acknowledges that secret ballot elections can be an effective means of determining employees’ choice. Under the UAW *Principles*, both sides can vigorously advocate for their positions but on a positive basis without disparagement of the other side.

<sup>55</sup> For example, in 2008 Smithfield Foods, Inc. and the United Food & Commercial Workers (UFCW) negotiated ground rules for an NLRB election at a 5,000-employee factory in Tar Heel, North Carolina. The company and the union agreed to run a positive campaign, free of attacks and invective and to allow employees to hear from union representatives inside the factory in non-work areas on non-work time. A majority of the workers voted in favor of union representation and the company and union negotiated a collective bargaining agreement hailed by both as a positive outcome. See Catherine Pritchard, “Union, Smithfield put differences in the past,” *Fayette Observer*, September 2, 2012. Reflecting their positive relationship, Smithfield and the UFCW have jointly developed a “Feeding the Hungry” program to bring 20 million meals to food-for-the-needy programs in a three-year period. See Smithfield Foods, “Helping Hungry Homes Update, June 2012, at <http://www.smithfield.com/feedingthehungry>.

## V. Conclusion and Recommendations

Nissan's unrelenting, systematic campaign against union formation at the Canton plant is in clear violation of international standards on workers' freedom of association. Management makes workers watch "Big Brother" anti-union messaging on in-plant TV monitors. Management forces workers to attend roundtables with thinly-veiled hints of lost jobs and implicit threats that Nissan will not put new products into the plant if workers choose to form a union.

Management sends supervisors out for one-on-one meetings with workers to gauge their union sentiments and suggest dire consequences if they support the union. While it bombards employees with one-sided, consistently negative attacks on the UAW and the very idea of union formation, Nissan refuses to let employees receive information from union representatives inside the workplace, as international standards require.

Any one of these tactics meets the definition of interference with workers' organizing rights under international labor standards. Taken together, they amount to an aggressive, all-encompassing, sustained drive to discourage, demoralize and frighten employees from exercising the right to organize.

Interviewed workers described the effects of Nissan management's interference with workers' freedom of association. "It's constant discouragement," said Rafael Martinez. "Discouragement is a powerful thing. You don't feel like doing anything. The sad thing is, it works."

"People are afraid they'll get fired if they even mention the word union," said Wayne Walker, a production technician hired in 2003. "They're afraid to lose what they have."

Everlyn Cage said, "A lot of us who have been here longer see the need for a union. But the younger people who went through all these meetings, they are scared about losing their jobs if they get involved."

As Betty Jones put it, "I love what I do. I love the people in this plant. I give the company more than 100 percent every minute of every day. But they just want us to come in and work and keep quiet. A lot of people do that because they're scared. That's the problem, the fear. We just want a fair election without the fear."

## Recommendations

“Choose Nissan” and “Innovation that Excites,” say Nissan’s featured advertising slogans. In the same spirit of choice and innovation, the following recommendations offer a dramatic step forward for Nissan and the UAW toward a new freedom of association framework in the Canton plant.

### To Nissan North America:

1) Nissan should establish a new framework in the Canton plant for employees’ exercise of the right to freedom of association. Nissan management should:

- affirm workers’ right to organize in keeping with the core labor standards of the ILO and ILO Convention 87 on freedom of association;
- make clear that it will not close the plant or fail to introduce new product lines because workers choose union representation, and
- assure workers that if they choose representation, it will negotiate in good faith with a sincere desire to reach a collective bargaining agreement.

These affirmations, declarations and assurances should be conveyed to workers in the same manner and with the same frequency as management’s earlier anti-union attacks.

2) In keeping with international labor standards, Nissan should grant access to UAW representatives so that employees can receive information from them inside the workplace. For the first six months Nissan should allow the UAW to hold union “roundtables” in the same times and manner that company management held them, under conditions that guarantee no disruption of normal production. An access program should also permit employees to meet individually inside the workplace with a UAW representative to discuss the union in the same way that employees were required to meet one-on-one with supervisors.

3) Nissan should respect the UAW *Principles for Fair Union Elections* and engage with the UAW to set ground rules for implementing the Principles in the Canton plant.

4) Nissan and the UAW should “jump start” a new freedom of association framework with a joint appearance at the Canton plant by CEO Carlos Ghosn, North American President and CEO Nobao Araki and Canton plant manager Dan Bednarzyk, alongside UAW President Bob King, UAW Region 8 Director Gary Casteel and a Nissan shop floor worker selected by the union. Nissan and the UAW should invite Mr. Guy Ryder, the Director General of the International Labor Organization, to accompany them in the program to communicate essential elements of international standards on freedom of



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association. The company and the UAW should jointly agree on a program to be presented to employees in this forum.

### To the UAW:

1) The UAW should:

- affirm management's right to run the plant efficiently and productively;
- make clear that the union will represent Nissan workers to the best of its ability and in complete equality with all UAW-represented workers in the automotive industry, and
- assure employees and management that it will bargain in good faith to defend Nissan workers' interests while respecting and helping to advance the company's success in the automotive marketplace.

2) The UAW should guarantee to Nissan that union representatives will respect the company's property rights and in no way affect production operations in availing themselves of access to the Canton plant to communicate with employees under access rules consistent with international labor standards.

3) The UAW should engage with Nissan on ground rules for implementing the *Principles for Fair Elections* in the Canton plant.

4) The UAW should engage with Nissan for agreement on a program to be presented to Canton employees in a joint appearance of company and union leaders on a new freedom of association framework as outlined above.

### To the Socially Responsible Investment Community:

1) Applying their own requirements for adherence to ILO standards on freedom of association, organizations such as FTSE4Good, Domini Social Investments, Calvert Investments and other leaders in the SRI field should re-evaluate their portfolio holdings of Nissan stock in light of the company's actions at the Canton, Mississippi, plant.

2) SRI groups should engage with Nissan management to encourage adoption of the recommendations in this report.

### To the UN Global Compact and the OECD:

As with the socially responsible investment groups, the United Nations Global Compact (UNGC) and the OECD should review Nissan's record to consider whether the company's actions in Canton are consistent with its commitment to UNGC Principle 3 on freedom

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of association, and with its obligations under the ILO core labor standards and the freedom of association guidelines in the OECD Guidelines for Multinational Enterprises. Following such a review, the UNGC and the OECD should endorse a new freedom of association framework at the Canton plant and offer their good offices to assist Nissan and the UAW in implementing the new framework.

## Appendix A:

### UAW Principles for Fair Union Elections

#### Preamble

*The UAW of the 21st century inhabits a global economy, therefore, the union must be fundamentally and radically different from the UAW of the 20th century. In the context of global competition the only true path to job security is to produce the best quality products and services for the best value for consumers. In order to promote the success of our employers the UAW is committed to innovation, flexibility, lean manufacturing, world best quality and continuous cost improvement. Through teamwork and creative problem solving, we are building relationships with employers based upon a foundation of respect, shared goals and a common mission. We are moving on a path that no longer presumes an adversarial work environment with strict work rules, narrow job classifications or complicated contract rules. The UAW seeks to add value as advocates for consumer safety, energy efficiency and green technologies.*

*Just as the UAW has embraced fundamental change, we call upon the business community to also change. They can demonstrate their openness to change by agreeing to the framework established in these principles. The current federal framework under the National Labor Relations Act does not protect the rights of workers to freely decide whether or not to join the UAW. Unlike a truly democratic election, there is vastly unequal access to the electorate. In many cases employers use explicit and implicit threats of loss of jobs or benefits if workers support a union. Screening job applicants to weed out potential union supporters, mandatory anti-union meetings, firing of union supporters and threats to close the facility are tactics used to create a climate of fear. Community based business organizations employ explicit threats that would be illegal if they came directly from the employer. Employee attempts at redress are futile due to lengthy delays and lack of penalties. A free, democratic election cannot take place in a climate of fear.*

*The UAW invites employers to endorse these Principles for Fair Union Elections. If employers abide by these principles we will respect the choice of the workers whether or not they choose to join the UAW.*

#### The Principles

##### A fundamental human right

**1.** The right to organize a free trade union is a fundamental, human right recognized and respected in a democracy.

**No coercion, intimidation or threats**

2. Employees must be free to exercise the right to join a union or refrain from joining a union in an atmosphere free of fear, coercion, intimidation or threats. There is no free choice if a worker is afraid of losing a job or losing benefits as a result of his or her choice or is intimidated into making a choice not of one's own making.

**No repercussions from management or the union**

3. Management must clearly articulate that if workers choose to unionize there will be no negative repercussions from the company. The UAW must clearly articulate that if workers choose not to unionize there will be no negative repercussions from the union. Both the company and the union will negotiate in good faith and any failure to reach agreement will not be caused by bad faith negotiations.

**No wage or benefit promises from management or the union**

4. Management will clearly articulate that it does not promise increases in pay or benefits if workers choose not to unionize. The UAW will clearly articulate that it does not promise increases in pay or benefits if workers choose to unionize.

**Equal access to the electorate**

5. During the course of a union representational campaign employees will have the opportunity to hear equally from both the union and management regarding this issue. There will be no mandatory meetings of employees on the issue of unionization unless the UAW is invited to participate in the meetings. Written and oral communications must be equal. The union must be granted the same ability as the employer to post campaign material.

**Disavow any threats from community allies**

6. Management will explicitly disavow, reject and discourage messages from corporate and community groups that send the message that a union would jeopardize jobs. Likewise, the UAW will explicitly disavow, reject and discourage messages from community groups that send the message that the company is not operating in a socially responsible way.

**No disparaging the other party**

7. Both the UAW and management should acknowledge that the other party is acting in good faith with good intentions. Negative and disparaging remarks about the union or

the company are not appropriate and not conducive to a spirit of mutual respect and harmony, and will not be made by either party.

### **Immediate Resolution**

**8.** Any disagreements between the UAW and management about the conduct of the organizing campaign, including allegations of discriminatory treatment or discipline relating to the union campaign, will be resolved immediately through an impartial, third party.

### **Secret ballot election**

**9.** The democratic right of workers to freely and collectively choose if they want to form their UAW local union is the workers' First Amendment right. A secret ballot election incorporating these principles is an acceptable method of determining union representation if principles two through six have been adhered to and if there is no history of anti-union activities. The parties may select an alternative method on a case-by-case basis that reflects the best process for demonstrating employee wishes. If the parties cannot agree on specifics of the procedure an arbitrator may decide.

### **Bargaining**

**10.** If employees choose to unionize the employer and union will engage in collective bargaining to achieve an agreement as soon as possible. The goal will be an agreement that takes into account the employer's need to remain competitive, the dignity, respect, and value of every employee, the importance and value of full employee engagement and creative problem solving, and that provides a fair compensation system. The employer and the UAW commit to full information sharing and joint creative problem solving. The employees will vote on whether to accept the agreement. Disagreements between the union and company will be discussed in a respectful manner. If no agreement is reached within six months of recognition the parties may mutually agree to mediation and/or interest arbitration to resolve any outstanding issues.

### **Partnership in the mission of the employer**

**11.** The UAW pledges that if the workers choose union representation the union as an institution will be committed to the success of the employer and will encourage our members to engage in the employer's successful achievement of its mission. The UAW and the employer will work together in fulfilling the mission of the employer. The UAW embraces a performance-based and participatory culture where the union contributes to continual improvement of processes and shared responsibility for quality, innovation, flexibility and value.

## Appendix B:

### Renault's CSR Commitments on Workers' Freedom of Association

#### Employee representation

Renault strives to ensure that employees are represented in all Group companies by employees working in those companies who have been elected to represent them or who belong to the relevant labour organizations.

Renault has the strictest respect for freedom of association, regarding the freedom to join a trade union and hold office in a trade union, in compliance with the principles set out by ILO convention No. 87 of 1948 on the freedom of association and the protection of the right to organize. Recognition of the freedom of association means that each employee has the right to join a trade union or decline membership. Renault is also determined to comply with the provisions of ILO convention No. 98 on the right to organize and collective bargaining.

Renault also adheres to the ILO declaration on the fundamental rights and principles at work adopted in 1998 at the 86th International Labour Conference with respect to freedom of association and the effective recognition of the right to collective bargaining.

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