

Specific Instance between
UNITE HERE Local 11
and
Japan Airlines Co., Ltd. (JAL)
Final Statement

March 19, 2025
Japanese National Contact Point (NCP)
for the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct

1. OECD Guidelines for Multinational Enterprises on Responsible Business Conduct

- (1) The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (hereinafter referred to as the “Guidelines”), adopted by the Organisation for Economic Co-operation and Development (OECD) in 1976, are recommendations addressed by governments to multinational enterprises operating in or from their territories. The Guidelines provide voluntary principles and standards for responsible business conduct in a wide range of fields, including disclosure; human rights; employment and industrial relations; the environment; combating bribery and other forms of corruption; consumer interests; science, technology and innovation; competition; and taxation.
- (2) Governments adhering to the Guidelines establish National Contact Points (NCP). In Japan, the Ministry of Foreign Affairs; the Ministry of Health, Labour and Welfare; and the Ministry of Economy, Trade and Industry jointly constitute the Japanese NCP (hereinafter referred to as the “Japanese NCP”), which promotes awareness and uptake of the Guidelines and contributes to the resolution of issues that arise in relation to the implementation of the Guidelines in specific instances.
- (3) While the Guidelines are not legally binding, the Japanese NCP encourages enterprises to observe the Guidelines.
- (4) The Japanese NCP does not determine whether the enterprises’ activities are consistent with the Guidelines. Moreover, regarding the assertions by each party on the issues raised, the Japanese NCP does not make factual findings or judgements on the legitimacy of the claims.
- (5) The Japanese NCP may make recommendations on the implementation of the Guidelines and any observations the Japanese NCP deems appropriate to include on the reasons why the proceedings did not produce an agreement, if relevant.

2. Submission of the Complaint

- (1) Date of the submission of the Complaint and the parties concerned

On 13 October 2023, UNITE HERE Local 11, a labour union of more than 32,000 hospitality sector workers in Los Angeles, California and Phoenix, Arizona, represented by Ms. Alyssa Peterson (hereinafter referred to as the “Complainant”), has filed a complaint (hereinafter referred to as the “Complaint”) to the Japanese NCP, against Japan Airlines Co., Ltd. (hereinafter referred to as the “Enterprise Involved”), which is headquartered in Tokyo and engaged in air transportation services among others, in relation to their allegation that Flying Food Group (hereinafter referred to as “FFG”), which operates a kitchen facility in the city of Inglewood, near Los Angeles International Airport, has not observed the Guidelines and violated the laws and regulations of the United States (U.S.) on the rights of its workers. The Enterprise Involved is claimed to have failed to observe the Guidelines by not conducting human rights due diligence and have failed to mitigate the adverse impacts on workers of FFG, its in-flight catering contractor.

- (2) The Receipt of the Complaint

The Japanese NCP examined the issues raised and issued a notice of receipt on 9 November 2023.

(3) The Issues Raised by the Complainant

The Complainant alleges that the Enterprise Involved failed to conduct human rights due diligence and to mitigate the adverse impacts on FFG workers. As a result, the Complainant asserts that FFG has not observed the Guidelines and violated the laws and regulations of the U.S. on the rights of its workers. The Complainant specifically alleges as follows:

A. FFG has failed to observe the Guidelines and other laws and regulations.

The following five points are alleged as FFG's non-observance of the Guidelines and the violation of laws and regulations of the U.S.:

- (a) FFG failed to observe Chapter V, paragraphs 1(a)(b) of the Guidelines by intimidating workers who participated in a strike by announcing that they would be replaced by other workers and by conducting unfair labour practices, including firing union leaders in retaliation for union activities.
- (b) FFG failed to comply with the laws and regulations of the U.S. concerning the minimum wage, and to observe Chapter V, paragraph 4(a) of the Guidelines.
- (c) FFG has been accused by the Highway Patrol of employing and authorizing drivers without a valid license to operate trucks weighing more than 26,000 pounds and by the occupational safety and health authority of permitting an untrained employee to operate a forklift, which is a non-observance of the Chapter V, paragraph 4(c) of the Guidelines.
- (d) FFG failed to observe Chapter V, paragraph 1(e) of the Guidelines by failing to take effective action against harassment and gender discrimination in the workplace.
- (e) FFG failed to observe Chapter V, paragraphs 1(a) and (b); 2(a), (b) and (c) of the Guidelines by denying access to its facilities by the Complainant's representatives, which is a trade union, in violation of the parties' collective bargaining agreement and U.S. labour law.

B. The Enterprise Involved has failed to observe the Guidelines.

The Complainant alleges that the Enterprise Involved did not observe the Guidelines in the following two points:

- (a) The Enterprise Involved has not taken any action to prevent FFG's non-observance of the Guidelines and violation of laws and regulations of the U.S. and has not had any meaningful engagement with the Complainant. Regarding the Complainant's allegations about FFG's actions, the Enterprise Involved responded, without indicating any grounds, that FFG had not violated any laws or regulations. In response to the Complainant's request for direct dialogue, the Enterprise Involved explained that the Enterprise Involved was not in a position to engage in direct dialogue with the Complainant. These alleged actions are not in line with Chapter II, paragraphs 10 and 14; and Chapter IV, paragraph 5 of the Guidelines and the OECD Due Diligence Guidance for Responsible Business Conduct.
- (b) FFG's business is directly linked to the business of the Enterprise Involved, and the Enterprise Involved has the ability to change FFG's wrongful practices. The Enterprise Involved has a code of conduct and hotline in place to exercise influence over its suppliers. Despite these facts, the Enterprise Involved has failed to use its leverage over FFG. This is non-observance of Chapter II, paragraph 12 and its commentary paragraph 19 of the Guidelines.

(4) Request by the Complainant

The Complainant has requested that the Enterprise Involved conduct effective human rights due

diligence and engage in dialogue with the Complainant to resolve the adverse impact FFG is having on its workers and requested that the Japanese NCP conduct mediation to facilitate dialogue between the two parties.

3. Views of the Enterprise Involved

On 19 December 2023, the Enterprise Involved shared its views with the Japanese NCP as outlined below:

- (1) There is no capital relationship between the Enterprise Involved and FFG, and FFG has contracts with approximately 20 other airlines operating at Los Angeles International Airport. The sales from the Enterprise Involved accounts for about 2 to 3% of FFG's total sales.
- (2) After receiving a report from the Complainant, the Enterprise Involved conducted fact-checking with FFG, obtained written confirmation from FFG that it understands and agrees to comply with the "Supplier Code of Conduct" of the Enterprise Involved; and has made efforts to use its leverage, including two visits to the FFG's site. It is willing to continue to urge FFG to resolve the issues raised in the Complaint.
- (3) The Enterprise Involved also communicated promptly with the Complainant in good faith after it received the report.
- (4) If the matters alleged by the Complainant are found out to be true, the Enterprise Involved intends to notify FFG in the future that such actions are highly condemnable and strongly urge FFG to engage in dialogue with the Complainant. In addition, the Enterprise Involved will continue to engage in dialogue and visit FFG until all of the issues described in the Complaint are resolved.
- (5) The Enterprise Involved believes that direct dialogue between the Complainant and FFG, rather than mediation between the Enterprise Involved and the Complainant, would be the most effective way to fully resolve the issues.

4. Initial Assessment

The Japanese NCP, in line with the Guidelines and the Procedural Guidance of the Japanese National Contact Point under the Guidelines, conducted the initial assessment as described below and issued it with a conclusion as described in (8) below on 6 June 2024.

- (1) Whether the Japanese NCP is the Correct Entity to Assess the Complaint

FFG's violations of workers' rights alleged by the Complainant concerns issues that occurred in the United States. However, considering that the Complainant requests the Enterprise Involved to use leverage over FFG and to establish dialogue between the Complainant and the Enterprise Involved for that purpose; that procurement decisions of the Enterprise Involved are reportedly made at its head office in Tokyo, that reports to JAL Supplier Hotline are reportedly addressed mainly by its head office in Tokyo, the Japanese and U.S. NCPs consulted on which NCP should be the lead NCP and decided that the Japanese NCP assumes the role of the lead NCP with the U.S. NCP playing a supporting role. The Enterprise Involved and the Complainant have been informed of this decision respectively on 29 and 30 November 2023.

- (2) The Identity of the Parties Concerned and Their Interests in the Matter

The main issue in this case is the working conditions of FFG employees. Since the Complainant is a trade union whose membership includes approximately 400 employees of FFG at the Los Angeles

site, it is considered that the Complainant has an interest in this matter.

(3) Whether the Issue is Material and Substantiated

As noted in 2. above, each of the issues raised by the Complainant concerns the specific working conditions of FFG's employees and the exercise of their right to organise over working conditions; and it can be assessed that substantive issues are alleged. For each of the issues raised, specific facts are presented to support the allegations. In addition, the Complaint is accompanied by documents supporting some facts, including the fact that the Highway Patrol and the occupational health and safety authority have cited FFG for violations of relevant standards. Accordingly, it can be assessed that the issues are raised based on evidence.

(4) Whether There Seems to be a Link between the Activities of the Enterprise Involved and the Issue Raised in the Specific Instance

Considering that the Enterprise Involved has a contract with FFG for in-flight meal catering and FFG has provided in-flight meals to the Enterprise Involved at seven airports in the United States, including Los Angeles International Airport, it is considered that there are some connections between the activities of the Enterprise Involved and the issues in FFG raised by the Complainant. Although it is possible that the Enterprise Involved accounts for only a small percentage of FFG's sales, the Enterprise Involved is in a position to be able to request FFG to submit a written confirmation of compliance with the "Supplier Code of Conduct" of the Enterprise Involved, inspect local facilities, talk with employees, and so on. In light of this, it cannot be said that the possibility for the Enterprise Involved to use its leverage is negligibly small.

(5) Relations with Applicable Law and Procedures Including Court Rulings

Regarding this issue, it appears that proceedings are ongoing in the National Labor Relations Board for the investigation of unfair labour practices with respect to the allegations by the Complainant described in 2 (3) A (a) above, and in the California Civil Rights Department with respect to its allegations described in 2 (3) A (d) above. However, as provided in paragraph 26 of the Commentaries on the Implementation Procedures in the Guidelines (2011 edition), it should not be immediately decided that the issues do not merit further consideration because there are parallel proceedings to the Complaint. It should be evaluated whether an offer of good offices can positively contribute to the resolution of the issues raised, will not create serious prejudice to either party in those other proceedings or will not undermine court procedures.

In this case, it is unlikely that the Complainant's dialogue with the Enterprise Involved would create serious prejudice to FFG and other parties involved in the ongoing proceedings or undermine court procedures. With regard to the allegations described in 2 (3) A (b), (c), and (e) above, while the authorities had made dispositions that support the Complainant's allegations, the Enterprise Involved responded to the report of the Complainant that FFG had not violated any laws and regulations. Considering these circumstances, there appears to be a significant difference in the understanding between the two parties. Dialogue between them may improve such difference in the understanding and contribute to resolving the issues. Therefore, the fact that each of the above proceedings is ongoing does not necessarily conclude that the issues do not merit further consideration.

(6) How Similar Issues Have Been or Are Being Treated in Other Domestic or International Proceedings

There is no precedent where a clear decision has been made in court or other proceeding as to how a party should deal with labour or other issues of its business partners as presented in this case.

(7) Whether Consideration of Specific Instance Would Contribute to the Purposes and Effectiveness of the Guidelines

All of the issues raised by the Complainant concern FFG's violations of laws and regulations of the U.S. related to the Guidelines, and resolving these issues could contribute to the purpose and effectiveness of the Guidelines. It can also be said that the dialogue with the Enterprise Involved requested by the Complainant contributes to the purpose and effectiveness of the Guidelines as it may help to resolve the issues, albeit indirectly.

(8) Conclusion of the Initial Assessment

Given the foregoing, the issues raised by the Complainant are considered to merit further examination.

5. The Japanese NCP's Assistance in Dealing with the Issues

- (1) After the Japanese NCP issued the letter of receipt on 9 November 2023, the meeting between the Japanese NCP and the Enterprise Involved was held on 29 November 2023. On 30 November, the Japanese NCP also held a meeting with the Complainant.
- (2) The Japanese NCP received a petition from the Enterprise Involved on 19 December 2023 and received an English translation of the same petition on 15 January 2024 which was shared with the Complainant on 16 January 2024. In response, the Japanese NCP received comments from the Complainant on 17 February and a petition on 15 March. The Japanese NCP shared the relevant documents with both parties on 12 April.
- (3) Based on the views of both parties and taking into consideration the views of the U.S. NCP as the supporting NCP, the Japanese NCP issued an initial assessment to both parties on 6 June 2024. When issuing the initial assessment, the Japanese NCP asked the parties whether or not they were willing to participate in a dialogue through mediation by the Japanese NCP on this specific instance.
- (4) In response to the initial assessment, on 8 June, the Complainant responded that it is willing to participate in the dialogue. However, on 5 July, the Enterprise Involved responded that it is not willing to participate in the dialogue. On 1 August, the Japanese NCP held a meeting with the Enterprise Involved to exchange views on mediation, but the Enterprise Involved remained unwilling to accept dialogue through mediation. The Enterprise Involved explained that since the report was submitted to the hotline of the Enterprise Involved hotline in June 2023, it has communicated promptly with the Complainant in good faith, received a written confirmation from FFG that it understands and agrees to comply with "Supplier Code of Conduct" of the Enterprise Involved; and by conducting fact-checking with FFG; it has made efforts to use its leverage over FFG, including visits and audits on the FFG's site. The Enterprise Involved also explained that it has received information from FFG that there has been some progress in the issues raised with FFG through the local judicial system and administrative authorities, and that it believes that direct dialogue between the Complainant and FFG is the best way to resolve this case. The Enterprise Involved also explained that it is willing to continue urging FFG to resolve the issues.
- (5) Following the meeting with the Enterprise Involved, the Japanese NCP notified the Complainant, on 15 August 2024, that it will terminate the proceedings since one of the parties concerned is unwilling to participate in the dialogue.
- (6) Following the Japanese NCP's notification of the position of the Enterprise Involved, on 30 September 2024, the Japanese NCP held a meeting with the Complainant to exchange views.
- (7) Based on the above-mentioned circumstances, the Japanese NCP acknowledged that since one of the parties was unwilling to participate in a dialogue, there was no agreement of the parties concerned on the NCP's assistance for solving the issue in this specific instance, and it decided to terminate the handling of this specific instance in line with paragraph 35 of the Commentaries on the Implementation Procedures (2011 edition).

- (8) In the preparation of the final statement, the Japanese NCP took into account the opinions of the U.S. NCP, the supporting NCP, and provided a draft of the final statement to both parties and requested their comments on the draft on 31 January 2025. The Complainant and the Enterprise Involved submitted their comments to the Japanese NCP respectively. The Japanese NCP considered the comments submitted by both parties and finalised the statement.

6. Conclusion

- (1) The Japanese NCP welcomes that the Enterprise Involved has been responding to the report made to JAL Supplier Hotline by the Complainant, has exercised a certain degree of leverage, and worked to resolve the issue with FFG by receiving written confirmation of its commitment to comply with its Supplier Code of Conduct through fact-finding hearings and by conducting audits and site inspections. On the other hand, the Enterprise Involved decided not to participate in the direct dialogue through the NCP process as requested by the Complainant. The assistance of NCPs in resolving issues cannot be provided without the agreement of parties, and as one of the parties to the specific instance has declined the mediation offered by the Japanese NCP, the Japanese NCP will regrettably terminate the proceedings in this specific instance in line with the commentary 35 of the Implementation Procedures of the Guidelines (2011 edition).
- (2) The Japanese NCP recommends that the Enterprise Involved continue to ensure the observance of the Guidelines and carry out due diligence, including through the use of its leverage over suppliers, and continue to urge FFG and seek to engage with the Complainant to resolve the issues raised.