



Core Labor Rights

in Indonesia 2010

A Survey of Violations in the Formal Sector



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Also available in Indonesian as ***Hak Dasar Perburuhan di Indonesia 2010: Survei Pelanggaran di Sektor Formal***. Both the English and Indonesian language versions can be downloaded from the Solidarity Center website. The full findings of the workplace polling survey conducted by JRI Research and additional details of the archive of cases generated from the Focus Group Discussions also will be available on the Solidarity Center website from April 2011.

The Solidarity Center is a nonprofit organization established to provide assistance to workers who are struggling to build democratic and independent trade unions around the world. It was created in 1997 through the consolidation of four regional AFL-CIO institutes and is headquartered in Washington D.C. Working with unions, nongovernmental

organizations, and other community partners, the Solidarity Center supports programs and projects to advance worker rights and promote broad-based, sustainable economic development around the world.

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Finally on behalf of the American Labor Movement, I would like to dedicate this publication to all Indonesian workers who are struggling to form a union so as to better provide for their families and to be treated with the respect they deserve in the workplace.

Jamie Davis
Country Program Director
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EXECUTIVE SUMMARY

Although labor rights in Indonesia have improved since the fall of Suharto, a number of systemic violations persist. Institutional capacity, political will, and regulatory loopholes contribute to the persistence of labor rights violations.

The main violations uncovered in the report are the following:

1. Discrimination against women in the workplace is a continuing problem. Compliance with maternity leave is relatively good, but many women are still fired when they become pregnant, and unions are not investing sufficient legal resources in addressing these cases when they arise. Employers frequently impede women from claiming menstruation leave.
2. Anti-union discrimination by employers is rife in Indonesia. Employers routinely form yellow unions to undercut unions formed by workers, refuse to recognize unions, and terminate union officers. Many employers also file trumped up criminal charges against union activists.
3. Many employers refuse to negotiate in good faith with unions. Only a slight majority of unionized workplaces had collective bargaining agreements in place. Even where unions succeeded in concluding a

collective bargain, the quality of these agreements was low and employers frequently violated them.

4. The Manpower Act's regulation of the right to strike violates the relevant ILO conventions by erecting a number of obstacles that make it difficult to exercise the right. Moreover, employers frequently retaliate against strike leaders by firing them or suing them in criminal or civil court.
5. Massive violations of the law pertaining to contract labor and outsourcing are taking place. Most employers that are hiring contingent workers are doing so in violation of the law.

In addition to these more troubling findings, the report also had some positive findings:

1. Although only about 9 million workers out of a formal sector workforce of more than 30 million people are enrolled in Jamsostek at any given time, the workplace survey respondents reported that the vast majority of employers enrolled their workers in Jamsostek and made the required deposits and contributions. This finding provides preliminary evidence that unionization has a positive effect on employer compliance with Jamsostek.
2. Most surveyed workplaces paid the legally required minimum wage and paid over-

- time wages in accord with the law. Women are also usually paid the same wages as men for roughly equivalent work (i.e. production work).
3. Most employers did not interfere with the participation of union officers in activities related to their duties, e.g. attending union meetings and training events.
 4. Workplaces that have codes of conduct in place are more compliant with labor law than those that do not have them. Workplaces with codes of conduct still commit many violations, and in a few areas, these workplaces had higher rates of violations: outsourcing, setting up yellow unions, retaliating against strike leaders, and negotiating with unions to settle a strike.

The report also uncovers several underlying reasons for the pattern of labor rights violations taking place in Indonesia today:

1. The system of labor law enforcement in Indonesia is broken. Local labor offices are understaffed and underfunded and have little authority to sanction employers that violate the law. The police, charged with filing criminal violations with state prosecutors, show little enthusiasm for dealing with labor rights violations. Consequently, most of the worst offenses go unpunished. The new industrial courts have not delivered on the promise of handling disputes quickly and cheaply, and employers routinely refuse to carry out court decisions.
2. Civil and criminal courts have become increasingly important arenas for labor disputes. Part of the reason for this is a Constitutional Court ruling that requires employers to obtain a conviction in a criminal court before dismissing workers for committing criminal acts in the workplace (e.g. stealing). But another reason is that some employers are using the courts both to punish union activists and to deter other union members from challenging employer authority in the workplace.
3. Current law does not provide an efficient and effective way of handling allegations of anti-union discrimination. The industrial courts have proven reluctant to order the reinstatement of union activists fired for the trade union activities. The police are unenthusiastic about pursuing these cases and have been insufficiently trained in how to build an anti-union discrimination case. As a consequence, employers can commit anti-union acts with little fear of punishment.
4. Courts in Indonesia have inconsistently upheld the ruling by the Constitutional Court that invalidated the articles of the Manpower Act that permitted summary dismissals for grave offenses. Some company regulations and collective bargaining agreements still authorize these summary dismissals, even though they violate the law. These provisions provide a powerful weapon for employers to use against union activists.
5. Most unions have insufficient resources to deal with the wide array of labor rights violations. They concentrate their limited resources on defending workers who have been dismissed or on union leaders who are being harassed by employers. In other words, they are too busy putting out fires to bring forward cases that challenge systemic violations, e.g. those pertaining to contract labor and outsourcing.
6. Regional autonomy has hampered labor law enforcement in Indonesia. Local governments are not funding labor offices adequately and the practice of rotating officials from one office to another has negative consequences for the competency and technical skill of labor officials. Competition between localities for investment, and the reliance of many mayors and *bupati* for campaign funds from business people have combined to provide few incentives for elected executives to make labor law enforcement a priority.

INTRODUCTION

Ten years following the recognition of fundamental labor rights by Indonesia, workers still face suppression of their right to freely associate and bargain collectively. Many workers, especially women, experience discrimination in the workplace. Trade unions, labor NGOs and academics have documented a significant number of cases in which employers—sometimes in collusion with state officials—blatantly intimidate workers through the use of threats, hired thugs, illegal dismissals, retaliatory workplace practices and bogus criminal charges with roots in the Dutch colonial and Suharto regimes. The spread of contract labor and labor supply services (outsourcing) have further undermined worker rights because workers fear that their contracts will not be renewed if they join a union.

The frequency of these violations, however, has yet to be documented systematically. It is unclear whether the violations that receive the most attention are extreme examples or indicative of deeper underlying problems in labor relations in Indonesia. The aim of this study is therefore to document the extent and frequency of labor rights violations in Indonesia based on new sources of data collected from twenty sites throughout Indonesia. The report aims both to highlight the scope of labor rights violations and to shed light on their

root causes, as well as to analyze the advocacy efforts of unions and the effectiveness of the institutions charged with the enforcement of labor regulations in Indonesia.

DEMOCRATIZATION AND INDONESIA'S NEW LABOR RELATIONS REGIME

With the resignation of President Suharto in May 1998, Indonesia began its transition to democracy and a new era of labor relations. Under Suharto, Indonesia was frequently criticized for its repressive labor practices (Glasius 1999; Caraway 2006). Only one legal national union existed, Serikat Pekerja Seluruh Indonesia (SPSI), and workers that attempted to organize new unions or that protested wages and working conditions faced intimidation, interrogation, imprisonment, physical abuse, or worse (Indonesian Documentation and Information Centre 1981-86; Hadiz 1997; Ford 1999). The new Habibie administration, keen to weaken the glare of the international spotlight on labor abuses in Indonesia, made important strides in improving the state of labor rights in the country. Within months, the government allowed independent unions to regis-

ter and less than two years later, Indonesia had ratified all of the ILO's core conventions (Ford 2001).¹ With the assistance of the ILO, Indonesia embarked on a major reform of its labor laws, producing three laws that undid many of the repressive aspects of labor regulation from the Suharto years—Act No. 21 of 2000 on Trade Unions, Act No. 13 of 2003 on Manpower, and Act No. 2 of 2004 on Industrial Relations Disputes Settlement (Caraway 2004; Ford 2009). These laws still fall short of being in full compliance with the fundamental conventions, but they are a significant improvement over the system of regulations that were in place during the Suharto years.² (The specific shortcomings of the laws will be discussed below.)

Although the Suharto regime repressed labor's collective rights, the system of labor regulation in place before the transition to democracy provided strong protections for individual labor contracts (Caraway 2004). Most workers in the formal sector were permanent workers with indefinite tenure. Employers could not legally fire workers without the permission of the tripartite labor dispute resolution body (*Panitia Penyelesaian Perseelisihan Perburuhan Daerah/Pusat*, P4D for the provincial bodies, P4P for the national body), and workers were entitled to severance and long-service payments even when they were at fault. However, in the wake of the Asian financial crisis of 1997-98, labor advocates in Indonesia have voiced increasing concern over the spread of precarious forms of work, in particular contract labor and outsourcing. The ILO's fundamental conventions do not address matters of labor market flexibility, but

1 Indonesia ratified Convention 87 on Freedom of Association and Protection of the Right to Organize on June 5, 1998; ILO Convention 105 on Abolition of Forced Labor on May 7, 1999; ILO Convention 111 on Discrimination in Respect of Employment and Occupation on May 7, 1999; ILO Convention 138 on Minimum Age for Admission to Employment on May 7, 1999; ILO Convention 182 on Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor on March 28, 2000.

2 Although perhaps not an improvement over the laws and regulations in place during the Sukarno era. See Suryomenggolo (2008).

security of work tenure has important implications for freedom of association and collective bargaining. Scholars disagree about whether current law provides more or less protection for individual labor contracts than during the Suharto era, but all agree that more Indonesians are laboring in precarious forms of work than in the past, that many of these practices violate the law, and that the spread of labor market flexibility had made it harder for unions to retain and expand their membership (Caraway 1998; Suryomenggolo 2008; Tjandra 2008; Tjandraningsih and Nugroho 2008; Tjandraningsih, Nugroho et al. 2008; Caraway 2009; Juliawan 2010).

In tandem with the labor reform process, Indonesia also undertook an ambitious effort to decentralize governance. It is now one of the most decentralized countries in the world (World Bank 2003). The regional autonomy laws empowered provincial and district governments to make law; they were also charged with implementing national law. In the realm of labor affairs, district (*kabupaten*) and town/city (*kotamadya*) governments are responsible for implementing and enforcing national labor laws. The main government institution that workers deal with is the local labor office (*Disnaker*). These offices handle trade union affairs (e.g. registering unions and collective bargaining agreements) as well as complaints from workers about labor rights violations. Before bringing a case to the labor courts, workers must first take part in conciliation or mediation facilitated by *Disnaker* officials. The national Ministry of Manpower and Transmigration does not have authority over the regional labor offices (Tjandraningsih, Nugroho et al. 2008). Minimum wages are now set through tripartite negotiations in each *kabupaten* and *kotamadya* (subject to approval by the provincial governor) (Tjandra, Soraya et al. 2007).

The Industrial Relations Court (*Pengadilan Hubungan Industrial* or PHI) is the newest labor relations institution in Indonesia. In 2006,

the PHI replaced the P4D/P4P system that handled labor disputes for almost 50 years. The P4D/P4P were tripartite bodies (employers, unions, and government), not courts, and relied on highly informal processes of dispute resolution that were closed to the public. Members of the committees usually had practical experience in industrial relations. The PHI, by contrast, are formal courts. Each province has a court, and the Supreme Court hears appeals from the provincial courts. Composed of career and ad hoc judges from the employer association, APINDO, and unions, the labor courts are charged with settling four types of disputes: interest, rights, termination, and inter-union. Ad hoc judges are required to hold the equivalent of a bachelor's degree (S1) and to compete for positions in a national exam that tests their legal competence. The industrial courts require strict adherence to rules of evidence and procedure, and cases are heard in open court.

Since the fall of Suharto, then, Indonesia has both a new regulatory framework and new regulatory institutions charged with implementing and enforcing labor law. The analysis that follows will address whether Indonesia's labor practices are compliant with its own laws and with international labor standards, focusing on several key areas of labor rights: child and forced labor; discrimination; wages, working conditions, and social insurance; collective rights (freedom of association; collective bargaining; and the right to strike); and precarious work.

DATA SOURCES

The report draws on three data sources in the analysis:

- Focus group discussions and in-depth interviews with 250 key labor leaders, labor inspectors, and police at the national

level and in 20 localities with heavy concentrations of industry³ - **See Appendix 1 (A1)** The focus group discussions with labor leaders produced an archive of cases (N=529) of labor rights violations. For court cases, decisions were collected when they were available.

- A survey by a professional pollster of 658 plant-level labor leaders in the same 20 localities - The survey collected basic firm level data based on the *perceptions* of workplace labor leaders regarding the workforce, outsourcing, contract labor, dismissals, workplace safety, wages, Jamsostek, discrimination, child and forced labor, freedom of association, strikes, collective bargaining, enforcement, the industrial relations court, and advocacy.
- Currently available source materials documenting violations and analyzing labor relations in Indonesia

The sources of data affect the scope of the claims that can be made. The primary data sources are unionized workplaces. This study therefore encompasses a narrow respondent universe of relatively large firms in the formal sector of the economy (only 14 percent of the workplaces employed fewer than 100 workers).⁴ Labor rights are likely to be better in this subset of firms than in other parts of the economy. This study therefore probably underestimates labor rights violations in Indonesia. A profile of the workplaces and respondents can be found in Appendix 1.

3 The twenty localities are Bandung, Batam, Bekasi, Bogor, Cilegon, Cimahi, Deli Serdang, Depok, Gresik, Jakarta, Karanganyar, Karawang, Makassar, Medan, Pasuruan, Semarang, Sidoarjo, Sukoharjo, Surabaya, and Tangerang.

4 Some firms in the informal sector are fairly large and could thus be part of the formal sector, and hence unionized, if they were registered.

LABOR RIGHTS VIOLATIONS

Child and Forced Labor

Indonesia has ratified all four of the fundamental conventions that deal with child and forced labor, but there are significant legal loopholes as well as serious problems with the implementation of laws designed to prevent child and forced labor.

Convention 138 on Minimum Age sets the minimum age for most kinds of work at 15 years, and Convention 182 on the Worst Forms of Child Labor aims to remove all people under 18 years of age from work that endangers their health, safety, or morals. Indonesian law falls short of these principles in several ways. The Manpower Act excludes from its application children who are engaged in self-employment or in employment without a clear wage relationship, which means that labor law does not regulate the part of the economy where most children work. The Act also allows children to engage in work that develops their talent and interests, with no age limits. The Child Protection Act (2002) prohibits children's employment in the worst forms of child labor and imposes criminal penalties for violations. The Act also imposes legal sanctions for the employment of children in commercial sex work, child trafficking, the production or distribution of alcohol or narcotics, and the deployment of children in armed conflict.

Violations of the fundamental conventions pertaining to child labor seldom took place in the surveyed workplaces (**A2**)—only about 3 percent of respondents in the firm-level survey reported that children under the age of 17 labored in their workplace. This finding is largely an artifact of the sample of relatively large firms in the formal sector. The use of child labor is widespread in Indonesia, especially in the informal sector, and includ-

ing the worst forms of child labor.⁵ Hundreds of thousands of children labor as domestic workers (Human Rights Watch 2009). Many of these children are under 15 years old and work 14-16 hour days with no days off at extremely low rates of pay. Human Rights Watch reports that in the worst situations, children endure physical and/or sexual abuse, and may be locked into the household. Provisions in the Criminal Code, Child Protection Act, the Domestic Violence Act,⁶ and the Anti-Trafficking Act provide some protection for children from the worst forms of abuse, but the Human Rights Watch report documented an appalling lack of concern by state authorities for the plight of child domestic workers, so in practice enforcement is lax.

With respect to forced labor, Convention 29 on Forced Labor prohibits "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." The Convention covers a wide array of forms of forced labor, including debt bondage and trafficking. Convention 105 on the Abolition of Forced Labor outlines additional forms of forced labor that should be abolished, including the use of compulsory labor as a method of mobilizing labor for national development, as a means labor discipline, or as punishment for striking. Forced overtime and the withholding of wages also qualify as forced labor.

As with child labor, the surveyed workplaces were largely free of the most egregious violations associated with forced labor. The most common violation uncovered by the survey was forced overtime, which is prohibited by the Manpower Act. Nineteen percent of respondents reported that employees were

5 See the ILO's Individual Observations of the Committee of Experts on the Application of Conventions and Recommendations, available at <http://ilolex.org>.

6 Those who work in the home receive the same protections from domestic violence as family members.

forced to work overtime, and in almost one third of these workplaces, it happened frequently. The workplace survey also found additional violations in a small number of workplaces: unpaid overtime (4 percent), debt bondage (4 percent), the use of force to prevent a worker from leaving (3 percent), forbidding workers to leave the company premises (1 percent), refusal to pay wages in order to prevent workers from leaving (1 percent), and locking in workers (1 percent) – **A3**.

Although the survey found few violations of the forced labor conventions, Indonesia has faced some challenges in eradicating forced labor. Law No. 39 of 1999 on Human Rights recognizes freedom from slavery, slavery-like conditions, servitude and trafficking in persons, as basic human rights. Article 38 also ensures that everyone deserves to have decent work and shall be free to voluntarily choose their work. However, the ILO has criticized Indonesia for insufficient attention to trafficking, weak protections for Indonesian migrant workers, and subjecting those imprisoned for peacefully expressing political views and for non-violent acts during strikes to compulsory labor in prison.⁷ Trafficked workers (both those who work in Indonesia and abroad) are mostly women and are usually recruited for domestic labor or commercial sex work. Many children are also trafficked. These workers often face long hours with no rest days and may be subject to the confiscation of their passports and/or personal belongings, physical abuse, corporal punishment, and sexual abuse. Migrants that are not trafficked, especially domestic workers, may also work under conditions that violate the forced labor conventions (Bustamante 2007; US Department of State 2010). Migrant worker rights groups have criticized Law 39 of 2004 on the Placement and Pro-

7 See the ILO's Individual Observations of the Committee of Experts on the Application of Conventions and Recommendations, available at <http://ilolex.org>.

tection of Overseas Workers, which in spite of the wealth of evidence of the abuses that these workers often endure focuses primarily on placement, not protection (Dasgupta, Hamim et al. 2006). In addition, the exorbitant fees charged by labor recruiters leave many migrant and trafficked workers deeply in debt. Debt bondage is therefore an important vector of forced labor in Indonesia (Dasgupta, Hamim et al. 2006). In 2007 Indonesia passed the Anti-Trafficking Act, which provides the state with new legal grounds for prosecuting traffickers and sets stiff penalties for trafficking.⁸ Indonesia has significantly increased both the number of prosecutions and convictions for trafficking (US Department of State 2010).

Discrimination

Employment discrimination persists in Indonesia, especially against women. Indonesia has ratified both Convention 100 on Equal Remuneration and Convention 111 on Discrimination (Employment and Occupation). Convention 100 requires that ratifying countries ensure that men and women earn equal pay for work of equal value. Convention 111 advocates the elimination of discrimination in employment based on race, color, sex, religion, political opinion, national extraction or social origin. In Indonesia, the Manpower Act requires that all workers receive the same opportunities and treatment from employers and prohibits the firing of women while they are pregnant, giving birth, nursing, or recovering from a miscarriage. The Act is not explicit about equal pay for work of equal value.

8 Previously prosecutors had to prosecute the individual components of trafficking—e.g. fraud, illegal confinement, rape, sexual assault. The Anti-Trafficking Act brings all of the components together into a single packet, including debt bondage. The Act, however, could have gone further with respect to debt bondage. Although the Act includes debt bondage in its definition of trafficking, it imposes no penalties for debt bondage per se, so if it occurs in the absence of trafficking the Act offers no means to punish offenders.

The workplace survey found little wage discrimination between men and women. Only 3 percent of respondents reported that men and women did not receive equal pay for equal work – **A4**. This finding is a reflection of the characteristics of the surveyed workplaces rather than evidence that Indonesia is free of gender discrimination in pay. In most of the industries covered by the survey, minimum wages are the baseline for pay regardless of gender. The minimum wage standard of pay serves to equalize wages between male and female production workers in a workplace. Discrimination in pay usually happens not by paying male production workers more than women production workers for the same work but via job segregation, with men occupying higher paid jobs than women. Within workplaces, women rarely have the same opportunities for promotion to supervisory or technical positions. Women are also concentrated in relatively labor-intensive industries that pay lower wages. While men and women production workers usually earn the same wages in labor-intensive industries, many relatively high paying industries hire few women. Women’s average pay is therefore lower than men’s even though there is often little wage discrimination at the plant level (Caraway 2007).

Age and gender discrimination were the most common forms of discrimination found in the workplace survey. At the time of recruitment, 37 percent of employers always took age and gender into account and another 39 percent sometimes considered these factors in making hiring decisions – **A5**. Eighteen percent of workplaces considered the applicant’s marital status at the time of hiring. Seventeen percent did not hire workers with disabilities, even when the disability did not affect the applicant’s ability to do the job. Only 6 percent of respondents reported that sexual harassment had occurred at their place of employment. This low rate is probably due to the fact that 91.9 percent of the respondents in the plant level survey were men, which in turn is

a product of the low representation of women among union leaders. Women workers may more readily confide in female union leaders about sexual harassment.

Many women are also denied rights to which they are entitled.⁹ The Manpower Act stipulated that women should receive 3 months of maternity leave at full pay and two days of menstruation leave per month if they are feeling unwell. Rather than pay maternity leave, 11 percent of workplaces fired pregnant women. Of the remaining firms, five percent paid less than required by law. Twenty-three percent of employers did not allow women to take menstruation leave. Of the 77 percent that permitted women to claim menstruation leave, 17 percent erected obstacles that deterred women from taking that leave – **A6** (e.g. making women prove that they were menstruating). In spite of the frequent violation of these rights, only five of the cases in the archive dealt with the violation of women’s rights in the workplace (see **Table A1**).

Wages, Working Conditions, and Social Insurance

Indonesian law provides a host of protections for workers related to wages, working conditions, and social insurance. The most important protections pertain to minimum wages, overtime, health and safety, and Jamsostek.

Indonesian employers are required to pay full-time workers at or above the legal minimum wage. The workplace survey found that 87 percent of employers paid at or above the minimum wage. Workers employed by a labor supply service (outsourced) were more likely to be paid below the minimum wage than permanent workers or contract workers, with

⁹ Women workers are also affected by legal discrimination in access to benefits. Since married women cannot be considered heads of households, women workers often cannot extend their health insurance benefits to cover husbands and children, whereas male employees usually can.

17 percent of respondents reporting that outsourced workers earned less than the minimum wage (as opposed to 8 percent for permanent workers and 11 percent for contract workers). Permanent workers were more likely than contract or outsourced workers to earn above the minimum wage—56 percent of workplaces hiring permanent workers paid them in excess of the minimum wage, but only 27 percent of those using contract workers paid them above the minimum wage, and only 18 percent for outsourced workers - **A7**.

Indonesian law also mandates that workers receive overtime pay after working more than 7 or 8 hours in one day (for six-day weeks after 7 hours, for five-day weeks after 8 hours) or after working 40 hours in one week. Overtime pay is 150 percent of the hourly rate for the first hour and 200 percent for each hour thereafter with a maximum of 3 hours per day and 14 hours per week. The workplaces in the survey had a relatively high level of compliance with overtime pay rates, with 88 percent of respondents reporting that the employer paid overtime at the legal rate - **A8**. Seventeen percent of the respondents reported that their pay was delayed at least once in the last two years. Disputes over non-payment of the minimum wage or overtime composed a small proportion of the recent cases handled by union leaders who participated in the focus group discussions. Only 32 of the 529 cases pertained to failure to pay the legal minimum wage or overtime rate (see **Table A1**).

The Manpower Act also requires employers to provide a safe and healthy workplace and to treat workers with dignity. Most workplaces in the survey were relatively free of physical and verbal abuse. Only 11 percent of respondents reported verbal abuse and 8 percent encountered some form of physical abuse - **A9**. A large proportion of workplaces reported issues with worker safety. Although 71 percent of respondents stated that there were no serious injuries on the job, 26 percent reported that 1-5 workers were seriously injured. Less

serious injuries are more common—36 percent of respondents reported that 1-5 workers were injured, 18 percent that 6 or more workers were injured, and just 42 percent that reported no light injuries - **A10**. The vast majority of respondents believed that lighting (95 percent), general safety equipment (e.g. fire extinguishers) (95 percent), ventilation (89 percent), emergency exits (85 percent), safety equipment for individuals (83 percent), and temperatures (79 percent) were sufficient or tolerable - **A11**.

Indonesian law also requires workers in the formal sector to be part of the national system of social insurance known as Jamsostek (*Jaminan Sosial Tenaga Kerja*). Employers and workers are required to make contributions to the plan, which provides insurance for workplace accidents, including death, as well as a modest health and retirement plan. The failure of employers to comply with Jamsostek contributions is a common complaint, so the strikingly high compliance revealed by the workplace survey is surprising and provides preliminary evidence that unionized workplaces are more likely to comply with the law. Eighty-eight percent of employers deducted the correct amount from workers' wages and 86 percent made the required employer contribution (**A12**)—in 93 percent of those cases, respondents believed that the employer transferred the withholding and the contributions to Jamsostek - **A13**. Ninety-five percent of respondents received an end of year balance report - **A14**. Jamsostek cases constituted a small percentage of the cases that unions in the sample pursued in recent years—only 15 (out of 531) cases involved Jamsostek violations. However, the workplace survey did not ask respondents to distinguish between permanent, contract, and outsourced workers. Since the respondents were plant level union leaders, and union members are permanent workers. . Jamsostek cases constituted a small percentage of the cases in the archive—only 16 (out of 529) cases involved Jamsostek violations (see **Table A1**).

Collective Labor Rights

Indonesian labor law currently provides some of the strongest guarantees for collective labor rights in Asia (Caraway 2009). In spite of the comparatively favorable set of laws, however, workers are frequently dismissed for engaging in legal trade union activities, employers are seldom punished for anti-union actions, and a significant proportion of unions have not concluded collective bargaining agreements (Konfederasi Serikat Buruh Sejahtera Indonesia 2005; Konfederasi Serikat Buruh Sejahtera Indonesia 2008). Mounting a legal strike, moreover, requires unions to navigate a legal minefield. Consequently, the authorities deem many strikes to be illegal, so workers who go on strike often lose their jobs. In addition, some employers have taken advantage of antiquated components of Indonesia's criminal law to attack union leaders or charged union activists with other criminal acts (e.g. stealing). In the worst cases, union leaders have faced months of detention awaiting trial and/or been sentenced to jail time.

Anti-Union Discrimination

The Trade Union Act is the primary law that regulates union formation in Indonesia. It allows groups of ten or more workers to form a union, and multiple unions are permitted in a single workplace. The registration process is straightforward, requiring a list of the names of the founding members, the union's constitution and bylaws, and the names of the people on the union's governing board. In principle, all workers are allowed to form unions, but a legal vacuum exists for public servants. The Trade Union Act stipulates that civil servants have the right to associate but leaves its regulation to another law, which has not yet been enacted. Currently, civil servants are required to belong to the state-controlled professional association, KORPRI. Thus far civil servants have not tested the le-

gal waters by trying to register a union.¹⁰

The Trade Union Act also forbids unfair labor practices and imposes criminal penalties. While these penalties could potentially deter anti-union behavior, unions have encountered great difficulty in exploiting this section of the law. Since the PHI cannot impose criminal penalties, these cases must be heard in criminal court. Unions therefore depend on the willingness of investigators from Disnaker and/or the police to file a criminal case with the state prosecutor. The prosecutor then has the discretion to go forward with filing criminal charges or to drop the case. To date, these state offices have proven to be reluctant to take up anti-union cases. The focus group discussions indicate that the police usually consider labor relations to be the domain of Disnaker and frequently refuse to accept cases that deal with labor relations. Even when the police do agree to conduct an investigation, they often do so unenthusiastically and rarely turn the case over to prosecutors. For example, at PT Angkasa Pura I, management retaliated against union officers after a three-day strike at six airports. Management sacked the chair of the Sepinggan branch, Arif Islam, and suspended seven union officers. Although the police initiated an investigation, official letters from the police to the union reveal a half-hearted and cursory investigation that demonstrates little understanding of labor laws. After a year, they dropped the case based solely on testimony from an expert witness from the Manpower Ministry.¹¹ Disnaker offices are also wary of initiating criminal investigations against employers for fear of driving away investment.

10 However, state enterprise workers and public school teachers have formed unions and registered them.

11 In September 2008, the seven suspended officers returned to work, but they have yet to receive all of the back pay owed to them and are constantly harassed and monitored by management. In an effort to undermine SPAP 1's majority status—which gives it the right to bargain collectively—management has also supported the formation of another union, actively encouraged workers to affiliate to it, and transferred SPAP 1 leaders. SPAP 1 has filed a complaint with the ILO's Committee on Freedom of Association.

So far only one case has worked its way through the legal process and resulted in a conviction. In February 2009, the acting manager of PT King Jim in Pasuruan was sentenced to 18 months in prison for obstructing union activities by firing several union activists and threatening and intimidating union members who participated in a legal strike. These threats resulted in the resignations of 150 workers from FSPMI. With just one conviction in nine years, the criminal sanctions for anti-union discrimination in the Trade Union Act have provided little protection for workers.

Facing little risk of legal retribution, it is therefore predictable that many employers will engage in anti-union practices. The firm-level survey and focus group discussions identified a number of fundamental and systemic anti-union acts committed by employers. First, many employers set up rival unions in order to undercut unions formed independently by workers. Sixteen percent of the workplaces surveyed had more than one union (A15), and in 40% of these cases, one of the unions was a yellow union formed by the employer to compete with the independent union (see Nestlé). Forty two percent of the workplaces with more than one union report that the employer does not treat all unions with equal respect, and 38 percent stated that the employer favors the yellow union.

NESTLÉ: YELLOW UNION AND COMPULSORY ARBITRATION

The IUF-affiliated Nestle Indonesia Workers' Union - Panjang (SBNIP) representing the workers Nescafé factory at Panjang, Indonesia had been in negotiations with management over changes to the collective bargaining agreement since the fall of 2007. These negotiations were prompted by large increases in the price of food and other necessities that year. The SBNIP goal was to negotiate wages as part of the collective bargaining process and to have the wage scale incorporated in the employment contract. Nestlé refused since it considered wages to be

a commercial secret. In December 2007 Nestlé retaliated by forming a rival union. Management ensconced twelve Panjang workers in a luxury hotel in Jakarta, hundreds of kilometers from Panjang, to found FKBNI. All new hires are now given an application to join FKBNI, and SBNIP members face intimidation and discrimination on a daily basis. Instead of bargaining in good faith with SBNIP, Nestlé filed the dispute with the PHI, which imposed a collective bargaining agreement on the parties. The court ruled that SBNIP must accept Nestlé's proposal or revert to the old collective agreement. Nestlé has indicated that it is open to negotiating wages in 2010 but only if the FKBNI is included in the negotiations.

Second, employers frequently target union activists as a means of weakening unions. Since the surveyed workplaces already have established unions, few respondents reported employer harassment at the stage of union formation. However, employer refusal to recognize a union is a persistent problem in Indonesia (see PT Mulia Knitting). The focus group discussion participants reported 29 such cases (out of 529; see Table A1). These cases often result in the dismissal of union officers and members. For example, in June 2008 Malaysian-based PT Smart Glove Indonesia in Medan, summarily dismissed 97 workers when they tried to form a union. Later that year, management at PT Satya Raya Keramindo Indah in Tangerang detained and then fired two union organizers, Riyanto and Arzani, after they established a union that affiliated with the FKUI federation of KSBSI. Also in 2008, the Hotel Grand Aquila in Bandung refused to recognize the newly founded union, which was affiliated to the FSPM federation. Management fired nine workers, including the president of the union, and warned other workers not to join the union.

PT MULIA KNITTING FACTORY: REFUSAL TO RECOGNIZE NEW UNION

In May 2007, a group of 19 workers established a new union, SBGTS Mulia Knitting Union, which affiliated to the GSBI federation. After receiving

notification of the establishment of the new union, management filed a criminal complaint against the workers for using the factory's address without permission in their application. (The SPSI union at the factory had used the factory address for years.) Over the next ten days, management suspended the new union president, fired three union leaders, transferred the remaining union leaders to PT Mulia Spindo (located 62 kilometers away), and filed a complaint with Disnaker to dissolve the new union. Supervisors also intimidated rank-and-file members. After an extensive onsite investigation, the Worker Rights Consortium concluded that, "the company violated workers' associational rights and did so in a systematic and brazen fashion (Worker Rights Consortium 2008)." The Indonesian Human Rights Commission (Komnas HAM) also concluded that the employer had violated its employees' associational rights. After a three-year international campaign, PT Mulia finally recognized SBGTS and paid compensation to the five union founders who had continued to fight for their rights. The 14 others had given up after accepting a financial settlement from the factory. None of the irregularly dismissed union members were reinstated (see <http://www.cleanclothes.org/urgent-actions/indonesian-garment-workers-win-back-their-rights-after-lengthy-campaign>).

The workplace survey also revealed a host of discriminatory practices experienced by leaders of legally registered unions. The most common forms of harassment and intimidation of trade unionists were transferring activists to less desirable positions or locations (13 percent of workplaces) and telling employees that the union would not advance their interests (13 percent of workplaces). Firing (5 percent of workplaces) and threatening (8 percent of workplaces) trade unionists was less common in the surveyed workplaces; when dismissals did occur, about half of them involved six or more workers, however, essentially wiping out the entire union leadership in the workplace – **A16**. The case archive (N=529) compiled from the focus group discussions paints an even darker picture than the workplace survey. These cases contained a total of 597 violations.¹² Almost one-third

¹² The number of violations exceeds the number of cases because some cases had multiple violations.

(31.8 percent) of the cases reported to union leaders at higher levels involved discriminatory acts against trade unionists. The most common violation was the firing of union activists (108 cases), but employer refusal to recognize a union (29 cases) and cooked-up criminal charges against union leaders (19 cases) were also common (see **Table A1**).

Anti-union discrimination cases usually involve the dismissal or suspension of trade unionists. If the employer is facing criminal charges for anti-union discrimination in another court, the PHI should not rule on the dismissal of the trade unionist/s until the anti-union discrimination claim is settled. If the case is not tied up in the criminal courts, however, the PHI has the authority to require employers to rehire trade unionists who are dismissed illegally. For example, when management at PT Bangun Busana Maju dismissed an officer of the FSBI union, Neneng, for missing work while attending an event at Disnaker, the Jakarta PHI ruled that the employer had obstructed him from carrying out his lawful duties as a union officer by denying the leave. They ordered his reinstatement with back pay.¹³ In practice, however, judges seldom rule in favor of reinstatement. Judges and unions also rarely invoke the sections of the Trade Union Act that pertain to anti-union discrimination. One reason for this is that employers often refuse to implement orders to reinstate workers (see the Securicor case). For this reason, and because they fear that forcible reinstatement will produce a disharmonious workplace, mediators and judges often opt to award the maximum severance to wrongfully dismissed workers. The ILO considers Indonesian law to be insufficiently developed in terms of providing workers expeditious avenues for redressing anti-union discrimination claims. Since procedures for settling dismissals are well established but procedures for anti-union discrimination

¹³ The worker, however, preferred not to return to work and was awarded the maximum severance payment.

claims are poorly institutionalized, trade unionists are often dismissed without any serious consideration of the freedom of association issues at stake in the case.¹⁴

PT SERBA GUNA: A RARE CASE OF REINSTATEMENT OF TRADE UNIONIST

On September 8, 2007, a group of workers established a union at PT Serba Guna in Medan. The union was affiliated to LOMENIK, a federation affiliated to the confederation KSBSI. After registering the union with Disnaker on September 14, the employer ordered the newly elected leader of the union, P. Siagian, to resign. He refused to resign and was fired. In court, the employer claimed that P. Siagian was laid off because of a downturn in business. In presenting its case, the union explicitly invoked the Trade Union Act and ILO Convention No. 87, arguing that P. Siagian was fired for his role in the union. A witness called by the union stated that only one worker was laid off, Mr. Siagian. The judges considered that the employer presented no evidence that it was experiencing economic difficulties and decided that it was more likely that the employer was harassing Mr. Siagian. Citing the Trade Union Act and Article 153-1-g of the Manpower Act, which forbids dismissing someone for lawful trade union activities, the judges ordered the reinstatement of Mr. Siagian.

Less commonly, employers harass and intimidate trade unionists by reporting them to the police and filing criminal charges. Seven percent of the respondents in the workplace survey reported that members were arrested after employers made exaggerated or false accusations against union activists to the police. These charges are usually a means to intimidate workers that have established a new union, to harass officers engaged in intense collective bargaining negotiations, and/or to punish strike leaders. Although these cases are infrequent, the consequences can be dire for workers and their unions. The worse case scenario is that workers are found guilty in a court of law, lose their jobs, and must live the rest of their lives with a criminal record.

¹⁴ The ILO's Committee on Freedom of Association highlighted this issue in its report (case 2236) on allegations brought by FSP-KEP against the Bridgestone Tyre Indonesia Company.

Regardless of whether the case is brought to court, workers who face criminal charges endure police interrogations and often detention. Even if ultimately found innocent, labor activists are often held without bond; while in prison, they are often beaten by other inmates. The expense and stress of the ordeal can be immense. Moreover, the criminalization of these workers sends a message to other workers about what they might confront if they join a union or become a union officer. Some employers also harass union officers by suing them for civil damages. Some courts refuse to hear the cases because the judges consider them to be under the jurisdiction of the PHI. But others agree to hear the cases. For example, PT Multi Anugrah Lestari Texindo in Mojokerto sued a vocal member of FSPMI, Eddi Kostrad, for civil damages, claiming that he had damaged a forklift. The state court in Pasuruan refused to hear the case, but the employer appealed to the higher court in Surabaya, which ruled that Mr. Kostrad had to pay 15,000,000 rupiah in damages to the company.

Another form of anti-union discrimination is employer refusal to permit union officers to carry out their work. By law, the employer must permit union officers to attend events that are pertinent to their duties and must not interfere with the exercise of their duties as union leaders. In the workplace survey, 84 percent of employers granted leave to union leaders who attended training and union meetings – **A17**. The collection of dues is also vital for the sustainability of a union in the workplace. Although the law does not require employers to implement a check-off system, its presence is a good indicator of healthy labor relations at the firm level, since employers who are hostile to unions often refuse to implement it. The check-off system was in place in 71 percent of the workplaces. Of the 29 percent that did not use the check-off system, almost half of the unions had never asked the employer to do it. In the other half, the employer never responded to or

refused to grant their request. In about half of the workplaces that did not use the check-off system, union leaders reported that dues collection was difficult.

PT TAKITA: CRIMINALIZATION OF UNION OFFICERS

Evi Risasari and Yuli Setianingsih were union officers of the FSPMI union at PT Takita in Bekasi. Both were active in discussions with the employer about granting permanent employment status to contract workers at the factory. The employer subsequently accused both women of falsifying medical expense claims worth about \$40 and demanded that they sign a statement admitting their guilt, threatening them with dismissal if they did not sign them. After signing the statement, the employer then threatened to report them to the police if they did not resign. Evi and Yuli refused to resign, so the employer reported them to the police. The legal aid office of FSPMI persuaded the police not to detain either worker, but after the prosecutor decided to pursue criminal charges, both were arrested and detained until trial. In June 2009, the court ruled that they were guilty and sentenced them to six months imprisonment and five months of probation.

Collective bargaining

To acquire bargaining rights in Indonesia, a union must represent a majority of workers in the bargaining unit.¹⁵ Only one collective bargain may be concluded in a workplace, and the terms of the agreement apply to all workers, regardless of whether they belong to a union. Federations and confederations are allowed to bargain, but the Manpower Act does not describe the means through which they can acquire bargaining rights. If bargaining is deadlocked, then either party can take the matter to the PHI. The ILO has noted

¹⁵ However, if a single union does not reach the majority threshold, the Manpower Act permits that union to bargain if a majority of workers vote to allow the union to bargain for them (Section 119-2). Employers are allowed to be present during the vote, however, which violates international labor standards. If more than one union exists in the workplace and neither has a majority, they can opt to bargain jointly if together they reach the majority threshold. Both practices are extremely rare.

that this provision of the law permits compulsory arbitration to be imposed without the consent of both parties, which hampers the practice of voluntary collective bargaining (see Nestle).

PT TOSHIBA CONSUMER PRODUCTS: COLLECTIVE BARGAINING DISPUTE AND UNION BUSTING

On April 16, 2009, workers affiliated to FSPMI at PT Toshiba Consumer Products Indonesia in East Jakarta Industrial Park went on strike over the employer's refusal to register a collective labor agreement that both parties had signed. Despite Disnaker's recommendation not to fire workers for exercising their legal right to strike, Toshiba locked out and dismissed all workers who participated in the strike, including the entire governing board of the union. During the strike, the police and 30 hired thugs attacked workers outside the company gates. Toshiba filed criminal charges and a lawsuit for \$1.6 million against union leaders; FSPMI reported Toshiba for anti-union discrimination. Most of the striking workers—697—were reinstated after a delegation from the International Metal Federation, with representatives from Toshiba and Japanese unions, brokered a settlement. A condition of the settlement, however, was that all of the union officers resign. FSPMI made this bargain because they thought it was the only way to preserve the union at Toshiba. Both sides also agreed to drop legal cases against each other.

The workplace survey indicates that the practice of collective bargaining is weak in Indonesia. Only 61 percent of the unionized workplaces had a collective bargaining agreement – **A18**. Moreover, even when unions succeeded in reaching an agreement with the employer, the quality of those agreements was poor. Only 53 percent included provisions that were better than required by law, while 42 percent merely repeated national law and 5 percent contained some provisions that violated labor laws – **A19**. In addition, over one third of informants reported that employers occasionally or often violated the collective bargaining agreement. The provisions most frequently violated pertained to allowances (e.g. for food, transportation) and pay incentives (32 percent) and

wage increases (23 percent) – **A20**. In spite of these dismal numbers, collective bargaining issues were salient in only 7 percent of the case archive, which may be because unions prefer to use strikes as a weapon in these types of disputes and because respondents reported the incident (e.g. insufficient food allowances) as a dispute but did not mention that the dispute also concerned violating a bargaining agreement. In a number of cases in the archive, aggressive anti-union tactics began after union officers initiated collective bargaining discussions with the employer or after they challenged the employer for violating an existing agreement (e.g. PT Toshiba Consumer Products).¹⁶ In some cases, the military or police harass and intimidate union officers who are negotiating on behalf of workers (see PT Cigading Habeam).

PT CIGADING HABEAM: MILITARY INTIMIDATION IN A COLLECTIVE BARGAINING DISPUTE

In January 2005, workers belonging to the Lomenik federation of KSBSI at PT Cigading Habeam Centre Company announced plans to organize a strike in pursuit of their demand for a 15 percent wage increase. When the union attended mediation meetings at Disnaker, military staff from the special forces were present. Failing to reach a settlement, workers advanced their plans for a strike on February 7, giving notice of the strike on 31 January, as required by law. On February 4, the employer locked out workers without giving the required 7-days notice. The following day, the factory reopened using replacement workers from the Baladika cooperative, owned by the army's Special Forces Group I of Banten. After continu-

ous pressure from the military, about 250 workers resigned, many of them signing their resignation letters at the special forces barracks in Serang. In September, the central labor dispute resolution body legalized the dismissal of all 480 members of Lomenik, accepting management's claim that it dismissed the workers on grounds that it had suffered economic losses. Workers continued to protest their dismissals outside the factory. In March 2006, 60 members of the special forces conducted a military exercise on the company premises, shooting blanks at the 100 workers who were demonstrating, injuring two of them. In June 2007, the Supreme Court refused to hear Lomenik's appeal. The ILO's Committee on Freedom of Association noted that the labor dispute resolution body "apparently did not examine the allegations of the anti-union nature of the dismissals" and that "acts of antiunion discrimination should not be authorized under the pretext of dismissals based on economic necessity."

Another issue that receives little attention from labor rights observers in Indonesia is company regulations (*peraturan perusahaan*). A number of cases in the archive demonstrate that they potentially have dire consequences for trade unionists, as courts treat them as legally binding. When a collective bargaining agreement is not in place, the Manpower Act requires employers to develop company regulations. If there is a union, the company is required to consult with it in formulating the regulations. In practice, most firms that have a collective bargaining agreement also have company regulations in place, and since employers do not have to prove that they consulted with unions in formulating these regulations, it is likely that they often do not. Neither company regulations nor collective bargaining rights may abrogate rights guaranteed by law. However, some courts have allowed workers to be dismissed on the grounds that they violated provisions of company regulations, even though the company regulations violated rights protected by law.

For example, the company regulations at PT Yoshikawa in Bintan stated that refusing to work, slowing down work, or inciting others

¹⁶ The PT Takeda Indonesia and PT Gunung Madu Plantation cases brought to the Committee on Freedom of Association also fit this pattern. PT Takeda dismissed 58 union members and leaders of the FARKES-Reformasi federation after they challenged the employer's failure to pay required salary increases and to negotiate the transfer of a worker as stipulated in the collective bargaining agreement. At PT Gunung Madu Plantation, management fired the leader of the union there (an affiliate of the SPM federation) after he rejected the salary increases proposed by the employer. PT Rotarindo in Tanjung Pinang indefinitely suspended 327 workers from the SPSI-Reformasi union after the workers went on strike to protest the employer's refusal to bargain. The PHI ruled that the suspensions were illegal, but by then the company had closed, so workers were awarded the maximum severance payment permitted by law.

to do the same constituted a grave offense (*kesalahan berat*) that could result in dismissal. Such a prohibition is a flagrant violation of the Manpower Act, which guarantees the right to strike. The Constitutional Court has also overturned the provisions of the Manpower Act regarding dismissals for grave offenses.¹⁷ In spite of this ruling, many collective bargaining agreements and company regulations still contain provisions regarding grave offences. In its decision for this case, the PHI invoked the company regulations as justification for dismissing the union officer without severance. In another case, Bandung's PHI authorized the dismissal of an officer of the SPN union at PT Benang Warna for disseminating a pamphlet that called for rejecting revisions to the Manpower Act. The court did not award the worker any severance or long-service pay. The judges justified the ruling based on a section of the company regulations that required workers to obtain permission before posting documents in the workplace. The company regulations defined posting documents without permission as a grave offense that would result in termination.¹⁸ Under the Manpower Act (Article 161), employers may dismiss workers that violate

17 In 2003, the Constitutional Court declared that the articles pertaining to grave offenses of the Manpower Act (Articles 158 and 159) are unconstitutional. These articles allowed an employer to summarily dismiss a worker for committing a grave offense and included a list of acts that constituted grave offenses (e.g. stealing, being intoxicated at work). If workers considered that the employer had dismissed them unfairly, they could contest the firing by filing a case with the PHI. The Constitutional Court invalidated these provisions because they required workers to prove their innocence rather than for employers to prove their guilt. In addition, for grave offenses that are criminal in nature, the Constitutional Court considered that these charges would have to be heard in a criminal court. One unfortunate consequence of this decision is that employers that want to fire a worker for stealing or other criminal offenses must now take them to a criminal court, which usually results in the detention of the worker, whereas before the firing could be handled by the PHI. The law provides insufficient compensation to workers who face criminal charges filed by employers but are found not guilty by the courts. Although the employer is obligated to reinstate the worker, the Manpower Act does not require that workers receive back pay. Under Article 160, workers charged with committing these offenses only receive 25 to 50 percent of their wages for six months.

18 As the union pointed out in court, the union officer did not post the leaflet but disseminated it when he was off duty. Prohibiting union officers from disseminating information to members is a blatant violation of freedom of association.

an individual contract, the company regulations, or the collective bargaining agreement if they are warned three times (within specified periods of time of no less than 6 months). But when terminating workers under this provision, employers must request permission from the PHI and are legally obligated to pay severance and long-service pay. As illustrated by the Benang Warna case, however, some judges are allowing dismissals for grave offenses in spite of the Constitutional Court's decision.

BANK MANDIRI: STIFLING FREE SPEECH

Over a thousand members of the union at Bank Mandiri took to the streets in August 2007 to demand the resignation of the Bank's directors. Workers had a series of complaints about welfare and wage issues at the Bank, and the union had made little headway in their discussions with management. Instead of a strike, workers opted to express their views by organizing a peaceful protest outside of working hours. The Bank warned workers not to participate in the protest, and suspended several union officers. The protest, they said, violated sections of the collective bargaining agreement that stated that union and management were not to interfere in each other's internal affairs and that workers were obliged to settle all disputes through the mechanisms outlined in Act No. 2 of 2004 on Industrial Relations Disputes Settlement (i.e. arbitration, conciliation, mediation, or the PHI). The company regulations, which were written wholly by management and were never registered with Disnaker as required by law, also obliged employees to put the Bank before their personal needs and prohibited employees from taking actions that would reflect badly on the Bank. The judges at the PHI agreed with the Bank's position that demanding the resignation of the directors was the right of shareholders, not workers, and thus did not fall within the realm of industrial relations. Having concluded that they had no jurisdiction over the matter, the judges surprisingly proceeded to rule anyhow. In their view, workers should have settled their differences with management via industrial relations mechanisms, not by protesting in the streets, so the court determined that the workers were at fault and that Bank Mandiri could lawfully terminate their employment. The Supreme Court upheld the PHI's decision, adding that workers have the right to strike but not to protest. Thus, the courts legitimated the use of company regulations and collective bargaining agreements to curtail the right of workers to criticize their employers in public outside of working hours.

The Right to Strike

Indonesian law recognizes the right to strike, but that right is severely circumscribed in ways that violate international labor standards.¹⁹ First, workers can only strike as a response to a workplace dispute, so strikes mounted for general social and economic policy are illegal. Second, the procedure for mounting a legal strike is cumbersome, so much so that the ILO has raised concerns that workers cannot meaningfully exercise the right to strike. The Manpower Act stipulates that workers may strike after negotiations break down, which may be the product of deadlocked discussions or the employer's refusal to meet. After the breakdown of negotiations, workers must give 7 days notice before striking. This procedure seems fairly straightforward, but other legal instruments complicate the process considerably. A ministerial regulation adds further conditions that unions must meet before striking. The ministerial regulation further defines the breakdown of negotiations as the employer's refusal to meet after two requests (made in writing) over a period of 14 days or a written statement signed by both parties that negotiations broke down. Employers could protract the process indefinitely by refusing to sign a statement that negotiations reached a dead end. Unions must therefore wait at least three weeks after a dispute arises before a legal strike can take place.

Third, legal ambiguity exists as to whether unions can strike once a dispute has entered the mediation process. After receiving a 7-day strike notice, *Disnaker* offices are required to offer to mediate the dispute, and unions must respond within 7 days. Neither the Manpower Act nor the Industrial Relations Disputes Settlement Act states explicitly that a strike is illegal during ongoing bipartite negotiations or mediation/conciliation, or even when

before PHI. Section 141-5 of the Manpower Act, however, states that workers can continue their strike if mediation of the dispute fails, even though section 141-4 requires the mediator to turn the matter over to PHI. This provision should protect workers from charges of illegal strikes provided that they have followed the procedures in the ministerial regulation. But it is a gray area that leaves unions vulnerable to being charged with an illegal strike, since the window for a legal strike would be extremely brief if judges consider strikes during mediation or conciliation to be illegal (Mizuno 2008).

As a consequence of this fraught legal terrain, workers who strike often face termination of their employment. If the court deems a strike to be illegal, striking workers are considered to be absent without leave during the strike. If workers do not respond to two back-to-work orders in a 7-day period, they resign their position. Employers have the right to hire replacement workers if the strike is illegal, and workers cannot claim strike pay, to which they are legally entitled if the employer is violating the law (e.g. non-compliance with the minimum wage). When judges consider a strike to be illegal, they usually approve the employer's request to dismiss the workers involved (e.g. Musim Mas).

PT MUSIM MAS: THE RISKS OF STRIKING

Soon after the Kahutindo federation established a union at PT Musim Mas in December 2004, the harassment of union officers began. Management refused to grant Kahutindo officers leave for union activities and transferred union officers. Despite organizing over half the workforce, management refused to enter into collective bargaining negotiations and continued to deal with another union in the workplace. Musim Mas dismissed several union leaders and forced five others to resign. Kahutindo's members went on strike in April, demanding the reinstatement of the dismissed officers and that the company respect minimum labor standards. A second strike occurred in August and a third in September. After PT Musim Mas

¹⁹ The Manpower Act and a ministerial regulation (KEP 232/MEN/2003) regulate strikes in Indonesia.

hired 100 replacement workers and a company truck drove through a picket line, injuring two workers, the conflict escalated. Workers pushed the refinery gate off its rails, leading to a police complaint and the arrest of five (and eventually six) union leaders. The courts found the union officers guilty of damaging persons or property and sentenced them to prison terms of 14 months to 2 years. In December, the P4P ruled that workers had struck illegally and approved the dismissal of 701 workers. Kahutindo reported that management forcibly evicted workers and their family members from the company housing estate and did not renew the contracts of over 300 union members. About 200 workers refused to accept financial compensation for their illegal dismissal, but due to fatigue from months of battling the company, as well as economic hardship and pessimism about overturning the P4P ruling, they agreed to a settlement of \$123 per worker—six weeks of wages. Kahutindo dropped all legal claims against Musim Mas and the jailed union officers signed agreements stating that they had renounced their right to appeal their convictions. The ILO's Committee on Freedom of Association lamented that the punishment seemed disproportionate to the alleged offenses and that government offices failed to investigate the allegations of anti-union discrimination and violent acts committed against workers by the police and the employer.

The riskiness of striking may lead some workers to try alternative means of expressing their frustration, for example, collective protests that are not technically strikes (see also Bank Mandiri). For example, after months without progress regarding claims about unpaid overtime and violations of the collective bargaining agreement, members of the FARKES union at the Husada Hospital gathered outside management's main offices and collectively expressed a vote of no confidence in the hospital's leadership. Management suspended two union officers, and the PHI authorized their dismissal. The legal grounds for the dismissal were unclear, but the judges scolded the workers, declaring that they did not have the authority to hold a vote of no confidence, that the collective agreement did not authorize them to protest, and that the protest had no clear

justification.²⁰

Perhaps the most terrifying consequences of striking are being sued in civil or criminal court and bullying by the military, police, or hired thugs. Some employers have invoked antiquated provisions of the criminal code to punish strike leaders, usually article 160 of the criminal code, which deals with incitement (*penghasutan*, encouraging others to commit a criminal act) (see PT Wahyuni Mandira). Employers have also sued workers for economic losses incurred during a strike, and won. For example, PT Rotarindo successfully sued 8 union officers for over \$200,000 in damages for economic losses that resulted from a strike.²¹ Since strikes by definition are acts in which workers withhold their labor, employers will always suffer economic losses during strikes, so it is a nonsensical basis for awarding damages. Unions have argued that the PHI has jurisdiction over strikes, since they are labor disputes, but numerous judges in other courts evidently disagree.

PT WAHYUNI MANDIRA: CRIMINALIZATION FOR ORGANIZING A STRIKE

In 2008, Hukatan, a federation affiliated with KSBISI, attempted to meet with management at PT Wahyuni Mandira to discuss food and transport allowances, outsourcing, and Jam-sostek. After trying to meet with management on 22 and 29 October, but the employer refused, so Hukatan submitted a strike notice on November 17 and went on strike on November 26 through December 3. While the workers were on strike, the shrimp were not fed, and

20 The workers still received some severance (1x PMTK). According to the law, however, workers should receive three warning letters before being dismissed for disciplinary reasons. The employer presented no evidence that the workers had been disciplined in the past. Moreover, only union officers were punished.

21 The PHI in Tanjung Pinang ruled that the strike was legal and would have reinstated the workers if the company had not closed. The judges in the civil damages case, by contrast, ruled that the strike was illegal without referencing any of the relevant law. They scolded the eight defendants for making unreasonable demands that resulted in enmity between workers and management and the closing of the business.

the workers turned off the flow of water to the shrimp ponds. The employer claimed losses of 200-250 million rupiah. In late 2008, the state prosecutor in Kayu Agung charged union officers Yuce Hengki Sadok bin Thimotius Lasbaun and Winardi of Hukatan with incitement under Article 160 of the Criminal Code. Although the local Disnaker office declared the strike to be illegal, the court did not rule on the legality of the strike and found them guilty of incitement for encouraging others to commit the criminal act of intentionally killing animals. They were sentenced to four months and twenty days.

In spite of these risks, workers frequently strike. Seventeen percent of the workplaces surveyed had a strike during a two-year period. Union leaders considered that the strikes were conducted in accord with the law in 81 percent of the workplaces—which probably means that the strike occurred after negotiations reached a dead end and after issuing a 7-day strike notification – **A21**. Violence occurred fairly frequently (17 percent of strikes). The most common disputes that led to strike action pertained to wage increases (29 percent), delays in paying wages (23 percent), dismissals (11 percent), and insufficient food allowances (10 percent) – **A22**. In the majority of cases (83 percent) – **A23**, strikes sometimes (25 percent) or always (58 percent) prompted discussions that led to the resolution of the dispute that provoked the strike – **A24**. Striking workers, however, frequently faced retaliatory measures such as dismissal (18 percent), threats of dismissal (11 percent), transfers (11 percent), and non-payment of wages (6 percent) – **A25**. Even when courts rule that employers have illegally retaliated against workers for exercising their legal right to strike, some employers refuse to carry out the ruling (see Securicor Indonesia).

PT SECURICOR INDONESIA: ILLEGAL FIRINGS FOR A LEGAL STRIKE

PT Securicor Indonesia announced its merger

with Group 4 Falck in July 2004. Indonesian law required the company to enter negotiations with the Securicor Indonesia Labor Union, an affiliate of ASPEK Indonesia, regarding the terms and conditions of employment for workers in the merged enterprise. After refusing to negotiate for many months, the union called a strike in April 2005. Securicor responded by firing over 250 workers, and the police called in workers for interrogation. In July 2005, three union members were charged with “unpleasant acts.” The central dispute resolution body (P4P) ruled that the strike was legal and ordered that all participants be reinstated. Securicor appealed the ruling. The Supreme Court affirmed the P4P’s decision—which had also been upheld by the state administrative court—in June 2006. With all avenues of appeal closed, the employer still refused to implement the court verdict. Workers mounted a vigorous international campaign highlighting Securicor’s impunity, and the ILO’s CFA agreed to review the case. Workers occupied Securicor headquarters in Jakarta. Securicor agreed to negotiate in July and reached a settlement that paid the workers twice the minimum required severance pay (PMTK) and 11 months of back pay. Securicor also dropped criminal charges against the union president (Champagne 2007). Workers got their severance pay but were not reinstated, and Securicor successfully eradicated the union.

Precarious Work

Before the Asian financial crisis of the late 1990s, most workers in the formal sector in Indonesia were permanent workers, i.e. workers with contracts of indefinite duration. Employers that dismiss permanent workers are required to provide the dismissed worker with generous severance benefits and long-service pay. To avoid paying these costs related to dismissals, employers are hiring more workers on fixed-term contracts and outsourcing more jobs to workers supplied by a labor contractor. Since the outsourced workers are employees of the labor supply company, the end user has no contractual responsibilities to them. Outsourced workers therefore do not have a formal employment contract with the end user of their labor but

rather with the labor supply company.

Indonesian law, however, places a number of restrictions on the use of fixed-term contracts and outsourced labor. All fixed-term contracts must be in writing and are only permitted for work that is of a temporary nature (e.g. seasonal work) or that is related to the development of a new product or service. Fixed-term contracts may not be used for routine work that is part of the production process of the firm (e.g. a sewer in a garment factory). The length of a fixed term contract can be up to two years (but in practice most fixed-term contracts are much shorter in duration), and a contract can be extended once for no more than one year. A fixed-term contract can be renewed 30 days after its expiration, but this can only be done one time and the new contract may not be longer than two years. Outsourced labor may only be used for non-core work. At a garment factory, for example, outsourced labor on the sewing line would be illegal but would be permissible for cleaning or catering. In addition, the labor supply company must be a legal entity that is licensed by Disnaker. If a firm violates any of these rules, the outsourced workers become employees of the end-user.

The workplace survey does not allow for an assessment of trends over time, but it does confirm that a number of forms of precarious work are rife in Indonesian workplaces, and that most employers that hire non-permanent workers are violating Indonesian law. Sixty-nine percent of workplaces employed contract workers, 43 percent contracted with labor suppliers, 23 percent engaged day laborers, and 15 percent employed apprentices – **A26**. In most of these workplaces, contract workers or outsourced workers constituted less than 25 percent of the workforce. Contract labor composed over 25 percent of the workforce in 40 percent of the firms that hired contract labor; outsourced workers composed over 25 percent of the workforce in 30 percent of the workplaces that used labor supply services

– **A27**. Day laborers were a smaller proportion of the workforce than the other forms of precarious labor—25 percent or more of the workforce in only 27 percent of firms that hired day laborers. The focus group participants also reported a large number of cases pertaining to violations of the law for contract labor (62) and outsourcing (19) (see **Table A1**).

Based on the workplace survey, a large number of employers did not provide permanent or contract workers with a copy of their contract (35 percent of firms using contract labor did not provide them with a written contract, and 25 percent did not provide them to permanent workers) – **A28**. Of the employers that hired contract labor, 85 percent employed them on routine and ongoing work, 74 percent extended the contract more than once, 48 percent renewed the contract more than once, and 32 percent employed them for longer than a 3 year continuous period – **A29**. Forty-eight percent of employers that relied on outsourcing employed them on jobs that respondents considered to be “core work,” and in 55 percent of these cases, the majority or all of the outsourced workers laboring in the firm performed core work – **A30**.

The increase in the use of precarious forms of work contracts has presented new challenges for unions. Most union members are permanent workers. Seventy percent of respondents in the workplace survey reported that none of their members were contract workers – **A31**. One reason for this is that workers in precarious forms of labor are more difficult to organize. Fearing non-renewal of their contract or arbitrary dismissal, they may be reluctant to join a union. In addition, in exchange for sheltering union leaders and a select groups of workers, some unions have conceded to management efforts to expand the proportion of contingent labor in the workforce (Tjandraningsih, Nugroho et al. 2008). Moreover, the workplace survey demonstrates that many plant level leaders are unfamiliar with the laws regulat-

ing contract labor. For example, 43.2 percent of respondents at firms that used fixed-term contracts for routine work did not know that it was illegal. If unions cannot develop an effective strategy for organizing precarious labor and challenging its unlawful use, union membership will be confined to an increasingly narrow segment of the working population in Indonesia.

In spite of the challenges that precarious work present to unions, they are not aggressively pursuing these cases. In the workplaces where employers outsourced some work, 89 percent of respondents reported that they thought that the firm was violating the law – **A32**. In almost one-third of these workplaces, the union had not taken any action to redress the violation. In almost one-half of these workplaces the union had engaged in initial conversations with the employer about the matter and 23 percent had taken the case to court or reported the violation to Disnaker – **A33**. In the 220 workplaces where respondents reported the use of contract workers for routine and ongoing work, 36 percent had not taken any action and 43 percent had only begun discussions with the employer – **A34**. In 21 percent of cases, the union had taken the employer to court or reported the employer to Disnaker. In cases where the employer had kept workers on fixed-term contracts for longer than three years, one-third of unions did nothing, about half initiated discussions, and 20 percent took the case to court or reported it to the authorities – **A35**.

Since there are not penalties in the law for violating the contract and outsourcing provisions of the Manpower Act, unions are compelled to redress violations through the PHI. Yet this route of action promises to yield uncertain results. The cases in the archive demonstrate that the courts rule unpredictably in these types of cases. The PHI in Surabaya, for example, ruled that PT Metalindo Perwita had unlawfully employed workers on fixed-term contracts on the production line

in its furniture factory.²² Since it was a furniture factory, they ruled that any job related to producing furniture was ongoing work. A different panel of judges at the same court, by contrast, ruled that since PT Surabaya Autocomp Indonesia depended on orders for its business, work was not ongoing and the employer could hire fixed-term contract labor. Of course, almost all manufacturers depend on orders, so by the logic of this decision, there is no such thing as ongoing work in such enterprises. In this case, judges also flagrantly ignored that the employer had extended the contract more than one time. Such unpredictable decisions probably give unions pause about the utility of challenging these violations in court. Moreover, even when unions get a favorable ruling, employers often refuse to carry out the court order.

ADVOCACY

Unions are handling a large number of cases, both individual and collective. In a two-year period the unions that participated in the focus group discussions reported 531 cases that affected more than 75,000 workers. The first action that unions take when a case arises is to meet with the employer. About one-fifth of the 531 cases were settled in a bipartite fashion. In the workplace survey, 61 percent of the respondents reported that they had brought grievances to the employer, but they had only settled 38 percent of

22 When the court finds that an employer used contract labor illegally, it usually rules that the workers can be dismissed but that the employer must pay the maximum severance. Unfortunately for the workers at PT Metalindo Perwita, the Supreme Court overruled the PHI's verdict. The judges did not provide any reasoning for the decision other than that the workers had signed the labor contract (the legality of the contract was not defended in the ruling). In addition to using fixed-term contracts for ongoing work, the employer had also extended the contracts multiple times. The Manpower Act stipulates that when employers use fixed-term contracts that violate the law, they are invalid. The workers then become employees with indefinite tenure.

them – **A36**. In the remaining cases, employers ignored the complaint or refused to take action. When bipartite discussions fail, unions usually turn to mediation before mounting a strike. Mediation also does not seem to be working very effectively. Unions only accepted the mediator’s recommendation in 42 cases, with very few cases resulting in a settlement (only 4, although there were 58 cases still in the process of mediation). Another option for unions is to go on strike, but once the strike notification is sent, Disnaker will also push for mediation in order to avoid or end a strike. If unions do not reach agreement with the employer through mediation, they have the option to bring a case to the PHI. About 40 percent of the cases in the case archive were on their way to, in process, or settled in the labor courts (or other courts).

With the advent of the PHI, unions have scaled up their legal aid teams. Handling cases in the industrial courts is more time consuming, expensive, and complicated than in the P4 system. Many of the cases that unions submit to the courts are rejected for technical shortcomings. If unions do not refile these cases before the employer appeals, they must wait for the case to reach the Supreme Court, which takes many months.²³ So it is important that legal aid offices are staffed with experienced personnel that can meet the exacting standards for submitting a correct and complete case. Most federations therefore have legal aid offices, often at both the branch and national level, to help plant level leaders with cases. The most common type of case that legal aid offices handle is dismissals. One-third of the caseload was composed of dismissals unrelated to freedom of association (e.g. violations pertaining to severance pay, layoffs, and other dismissals, including those for cause.)

²³ Some of our focus group participants reported that employers were increasingly using this tactic to delay cases. If the employer successfully protracts a case, there is a greater probability that workers will accept a settlement that is less than what they could win in a court verdict.

Unions also often represent their members who are arrested based on accusations made by the employer (e.g. stealing, incitement, “unpleasant acts”). About 10 percent of respondents in the workplace survey reported that a member had been arrested – **A37**. In 72 percent of the workplaces where these cases occurred, all of the accused were found not guilty or released for lack of evidence, and in 13 percent some of the workers who were arrested were found not guilty or released for lack of evidence – **A38**.

Plant level union officers in the survey were very satisfied with the performance of the legal aid offices. Only 3 percent of respondents complained of difficulty in soliciting assistance from them and only 6 percent regarded them as unhelpful – **A39**. Some workers do fall through the cracks, however. Given their limited resources, legal aid offices will prioritize mass dismissals over individual cases, which can have deeply unfortunate consequences for the people affected. In one case, two union officers in Bekasi were found guilty of fraud. Due to limited resources, the branch legal aid team was reluctant to appeal the verdicts and to sue for separation pay in the PHI. The national legal aid team did not want to handle individual cases because the compensation that workers would receive would not cover the operational costs of bringing the cases to court. In the end, neither of the criminal verdicts was appealed. One of the union officers asked the legal team in Bekasi to prioritize the other union officer’s case in the labor courts. They did, so in the end one union officer received some financial compensation, while the other did not. Similarly, in the PT Wahyuni Mandira case discussed above, Hukatan only appealed one of the criminal convictions since the union had insufficient resources to appeal both.

ENFORCEMENT

There are three institutions responsible for enforcing labor rights in Indonesia: Disnaker, the police, and PHI. Disnaker offices are the first line of defense in upholding labor rights in Indonesia. In addition to mediating disputes between unions and management, they are also responsible for labor inspection. Investigators in the oversight (*pengawasan*) office at Disnaker have the authority to issue warnings to employers to comply with labor laws when they find violations of the provisions of the law for which there are sanctions. However, current law imposes few sanctions for violating the law. For instance, there are not penalties stipulated if an employer violates provisions related to contract labor or outsourcing. In these cases, it is up to unions to work through mediators at Disnaker and to eventually file a case with the PHI if employers fail to comply with the law. For violations with criminal penalties, Disnaker investigators may assemble the evidence that is turned over to the police, who then assess whether to turn the case over to state prosecutors.

According to the union respondents in the workplace survey, management in 45 percent of the firms had violated labor laws – **A40**. Unions in almost 70 percent of these firms reported the violation to Disnaker or to the police.²⁴ For those who did report the violation to the authorities, unions could not comment on the progress of 31 percent of the cases because the authorities were still conducting an investigation or because the case had just been reported. In the remaining cases, the authorities issued a warning to 53 percent of employers and have not taken any action in

24 The rest did not report the violation/s because they preferred to handle the issue through direct negotiations with the employer (43 percent), because the violation was not very serious (27 percent), because the union doubted that the authorities would act (25 percent), or because they feared retaliation from the employer (13 percent).

17 percent. After reporting the offense to Disnaker, some employers stopped committing the violation (21 percent), the employer reaction was pending in others (18 percent), and 14 percent of employers ignored the warning – **A41**. In a two-year period, 56 percent of the workplaces were visited by a labor inspector – **A42**. Inspectors visited the fewest workplaces in Batam and Makassar and the most workplaces in Sukoharjo, Sidoarjo, and Cimahi. In half of the workplaces the unions reported that there were no serious violations, but in the remaining half where there were some problems, only about one fifth made significant improvements as a result. Almost half made small steps, and one-fifth made no changes whatsoever.

Focus group participants, regardless of region, voiced critical views of the effectiveness of Disnaker as an enforcement agent. Of the 113 respondents who had experience dealing with Disnaker, only 16 had faith that it acted impartially in handling labor disputes, while 86 expressed deep skepticism about its impartiality. Many noted that Disnaker offices were understaffed. In Medan, for example, there are only 11 inspection officers who are responsible for overseeing almost 2,000 workplaces employing 40,000 workers. In South Sulawesi, there are only 48 inspectors for the whole province, which has over 8,000 companies employing over 144,000 workers. Focus group participants also observed that most Disnaker staff were not committed to doing their jobs well, especially the inspectorate. Disnaker officials, they said, also often demonstrated little knowledge about labor regulations, a problem that has become more severe with regional autonomy, since local governments frequently transfer civil servants to positions in other offices. Training inspectors is also expensive. One Disnaker official in West Java reported that training one inspector (*pegawai pengawas*) costs 45,000,000 rupiah, a significant chunk of their budget, an investment that would be lost if the civil servant is transferred to

a post in another office. The lack of funding also limits the number of formal investigations that inspectors can carry out. Some unions reported that Disnaker officials accepted (or perhaps demanded) money from employers, which unions thought compromised their objectivity in handling cases. Focus group participants also commented that local governments considered the enforcement of labor laws to be a low priority because governments thought that it would drive away investment. Consequently, local governments starve Disnaker of resources and discourage vigilant enforcement of the law. As a result of recent election reforms, moreover, governors and mayors are directly elected and may depend on generous contributions from businesspeople in the area. Some participants observed that unions had to aggressively handle cases, otherwise Disnaker officials would settle cases in favor of management. Others noted that unions had to resort to protests in order to motivate Disnaker to take action.

Indonesia ratified ILO Convention No. 81 on Labor Inspection in 2004. The Convention requires countries to place inspectors under the control and supervision of a central body. In March 2010 the president issued a new rule (*Peraturan Presiden No. 21*) on labor inspection that does provide for some coordination between local, provincial, and central labor departments, but authority over Disnaker offices still resides with local governments. The national ministry only has authority over inspection in cases that have nationwide or international impact or when the subnational office has proven itself incapable of its duties after receiving guidance and training from the national ministry. Indonesia therefore still falls short in complying with the Convention.

In addition to Disnaker, the police also play a role in labor law enforcement in Indonesia. When the violation involves criminal sanctions, the police must review the evidence

turned over to the state prosecutor. Since Disnaker officials rarely file the investigatory paperwork (*berita acara pemeriksaan (BAP)*) required by the police to turn over to prosecutors, unions are increasingly trying their luck with reporting criminal violations directly to the police in hopes that police investigators will be sympathetic and accept the case.²⁵

Unions were also critical of the performance of the police, although less so than Disnaker. Twenty-six of the 98 participants in the focus group discussions had reported cases to the police, but only 26 believed that the police acted impartially while 64 believed that they favored employers over workers. The main reason given for the police's impartiality, however, was that they refused to handle the cases at all because they considered them to be the domain of Disnaker. Money played a decisive role for the police, according to those who viewed the police negatively. Some participants observed that when unions report a case, the police take their time, but when management reports workers, they act very quickly. (One reason for this may be that employers are reporting workers for offenses in the criminal code—the police consider these offenses to be their realm of responsibility.) Most of the union officers who had dealt with the police thought that they did not have a good grasp of labor regulations. Participants with a relatively positive view of the police often emphasized the importance of approaching police officers, patiently and respectfully explaining the situation, and keeping the lines of communication open. For freedom of association cases, the requirement to have physical evidence (e.g. documents, photos, and recordings) is a major obstacle, since the police are not accustomed to dealing with the combination of circumstantial evidence that

25 For example, criminal penalties apply to Sections 78-2 (overtime), 90 (minimum wages), 143 (obstruction of strikes), 144 (the hiring of replacement workers), and 148 (lockouts) of the Manpower Act. The Trade Union Act stipulates criminal sanctions for the violation of Section 28 (unfair labor practices). The underfunding of Disnaker offices, of course, means that investigators can issue fewer BAP.

characterizes most freedom of association cases. Moreover, intimidation from employers is often done verbally and without witnesses present, and other witnesses are likely to be employees as well, who may be fearful to testify. Police also usually rely on expert witnesses from Disnaker, who also are not very adept at handling freedom of association cases.

Some of the observations of the focus group participants are supported by Mustofa's (2008) survey of police officers, which revealed that police officers had little understanding of fundamental labor rights. In addition, Mustofa found that police training did a poor job of teaching officers how to balance their role in maintaining public order with their duty to respect labor rights. The ILO has attempted to address this problem by developing a training program on fundamental labor rights for inclusion in the curriculum of the National Police Academy and police training schools. In addition, this ILO project also developed Guidelines on the Conduct of the Indonesian National Police in Handling Law and Order in Industrial disputes. The Chief of the National Police approved the guidelines, so they are now in force throughout Indonesia (Perry 2005). Unlike the Manpower Ministry, the National Police are a centralized body, which means that national heads can make policy decisions that must be implemented throughout the archipelago. In addition, the police have more experience in conducting investigations and compiling the documentation necessary to bring forward a criminal case.

In spite of these efforts, however, reports abound of police intimidation and violation against workers. Although less prevalent than during the Suharto years, these reports of intimidation and violence are worrisome. The police have played a role in some of the most egregious violations of labor rights highlighted in this report. Police in some localities have also harassed unions for organ-

izing peaceful protests (see Sarta bin Sarim). For example, on December 10, 2008, about 15,000 members of FSPMI demonstrated in front of the Governor and Regent offices in Batam to demand increases in minimum wages. Several members were hospitalized after the police attacked them; the police also detained three protestors. Police in Surabaya, Karawang, Yogyakarta, Jakarta, and Bandung also interfered with KASBI's preparations for its national day of action in Jakarta on October 20, 2009, detaining, interrogating, monitoring, threatening, and/or obstructing the movement of union officers.

SARTA BIN SARIM: POLICE ABUSE AND DETENTION FOR ORGANIZING A PEACEFUL MAY DAY DEMONSTRATION

In May 2007, the chairperson of the FKUI federation of SBSI at PT Tambun Kusuma, Sarta bin Sarim, was charged under Sections 160 (incitement) and 335 (unpleasant acts) of the Criminal Code after encouraging workers from various factories to take part in a peaceful May Day demonstration in Tangerang. He was arrested without a warrant and physically abused while in custody. He was only informed about the charges against him after KSBSI organized a large demonstration. After being held in preventive detention for three months, he was convicted of violating Section 335 and sentenced to three months in prison in July. The ILO CFA has urged that Indonesia either revoke or amend sections 160 and 335 so as to ensure that "these provisions cannot be used abusively as a pretext for arbitrary arrest and detention of trade unionists."

The third institution that plays a significant role in the protection of labor rights in Indonesia is the PHI. If unions are unable to settle disputes through bipartite negotiations or mediation/conciliation/arbitration, workers have the right to bring them to PHI. Unions in most of the workplaces in the survey (65 percent) have not had any disputes in the last two years – **A43**. In the remaining workplaces, only one-third of the disputes were brought to the PHI. Unions that opted not to bring cases to the PHI often preferred to re-

solve the dispute directly with the employer (47 percent). But many also decided against taking the dispute to court because the court process takes too long (37 percent), the courts are too expensive (26 percent), the procedure is too complex (24 percent), the courts' rulings are unjust (13 percent), and/or the long distance to the court (13 percent) – **A44**. The courts are located in provincial capitals, which means that many workers must travel long distances to appear before the court. For example, in the Riau Archipelago, the PHI is located in the capital, Tanjung Pinang. Travel from Batam, where most of the formal sector workers in the province live, to Tanjung Pinang, requires a ferry ride and takes almost two hours. Since each case has many hearings, the time and expense of bringing cases to the court deters some workers from pursuing their rights via the PHI.

Unions have mixed feeling about the performance of the PHI. Of the unions that have received verdicts from the courts, 61 percent considered that the judges have a good grasp of the law. Almost two-thirds reported that the process took longer than stipulated by law, and almost one-fourth made additional payments to court officials (i.e. payments that are not stipulated by law). The participants in the focus group discussions were more critical of the labor court than the plant level survey respondents. Only 32 out of 84 participants with experience dealing with the courts considered the judges to be sufficiently familiar with labor laws. Fifty-five percent of these participants regarded the judges' knowledge of labor law to be inadequate, and 63 percent considered the court's rulings to violate labor laws in most cases. Fifty-nine of the respondents reported making some sort of unofficial payment to staff at the courts, usually in order to obtain a copy of the decision but also to help move the case through the courts. Very few reported that judges asked for bribes, and those that did stated that judges never asked directly but through staff members. Two-thirds of participants

with experience in the courts reported that cases always took longer to process than required by law – **A45**.

Compliance with court decisions is also a serious problem. Even though labor court verdicts are legally binding, employers often refuse to implement them. For example, in the dismissal cases for which unions had received verdicts, employers complied with the ruling only 12 percent of the time. When employers refuse to abide by the verdict, unions must obtain an execution order from the state court (*Pengadilan Negeri*). Obtaining such orders is not only difficult but also adds time and expense to cases that in most cases have already lasted over two years.

In addition to these domestic institutions of enforcement, many multinational corporations have codes of conduct that they pledge to uphold. Most codes include commitments to comply with local labor laws and/or to respect fundamental labor rights. International brands and retailers expect their subcontractors to uphold these codes of conduct and reserve the right to sever contracts with suppliers who violate the terms.²⁶ More than half of workplaces exported products abroad (371 or 56 percent) – **A46**, and seventy-eight percent of these workplaces had codes of conduct – **A47**. If codes of conduct positively affect labor rights, firms with them should have fewer labor rights violations than those without. The survey reveals a mixed picture, but in most areas where there were sizeable differences based on the existence of a code of conduct, those with codes of conduct showed greater respect for labor rights.

Firms with codes of conduct were more likely to violate restrictions on outsourcing (43.7 percent vs. 33.3 percent). On fixed term

26 How often they sever contracts, however, is unknown. A recent study of Nike's monitoring of its code of conduct suggests that codes of conduct have produced few improvements of labor rights at Nike subcontractors (Locke 2005; Locke, Qin et al. 2007).

contracts, companies with codes of conduct were less likely to violate the law than those without, but violations were rife in both. For example, 84 percent of companies with codes of conduct employed workers on fixed-term contracts for routine work (versus 88 percent for those without codes of conduct). A greater proportion of companies with codes of conduct complied with regulations about overtime pay (95.2 percent vs. 81.8 percent), make Jamsostek deductions (95.2 percent vs. 81.8 percent) and contributions (93.8 percent vs. 81.8 percent), allowed women workers to take menstruation leave (83 percent vs. 70 percent). Fewer delayed wage payments (12.1 percent vs. 24.2 percent) or imposed forced overtime (20 percent vs. 27 percent).

A smaller proportion of companies with codes of conduct committed unfair labor practices such as punishing or transferring those who formed unions or actively discouraging workers from forming unions. However, in workplaces with multiple unions, one of those unions was an employer-controlled union in 33.3 percent of firms with codes of conduct, a higher rate than those without codes of conduct (25 percent). A larger share of firms with codes of conduct had concluded collective bargaining agreements with unions (69.7 percent vs. 51.5 percent), but there were not significant differences in the quality of those agreements. In addition, companies with codes of conduct were more likely to always comply with the collective bargaining agreement (67.3 percent versus 52.9 percent) and respond to grievances in good faith (43.9 percent vs. 21.7 percent). However, in response to strikes, a smaller share of firms with codes of conduct agreed to terms that were acceptable to unions (61.5 percent vs. 85.7 percent), and they were more likely to retaliate against striking workers—only 48.1 percent never retaliated, as opposed to 71.4 percent for companies without codes of conduct. A greater proportion of companies with codes of conduct implemented the check-off system (81.7 percent vs. 75.8 percent) and

readily gave dispensation to union officers (86.9 percent vs. 75.8 percent).

CONCLUSION AND RECOMMENDATIONS

This report provides perhaps the most thorough overview of labor rights violations in Indonesia since the fall of Suharto. Based on focus group discussions and interviews in 20 localities and a 658-firm survey of unionized workplaces, the report documents a number of disturbing patterns of labor rights violations. Since the new data collected for this report focus on unionized firms in the formal sector of the economy, the conclusion will concentrate on the main findings and recommendations that are most relevant for the types of violations found for this segment of the labor force.

In spite of more than a decade of freedom of association, workers in Indonesia face major challenges in exercising their collective rights. Workers who form unions face harassment and intimidation from employers, and even after successfully establishing new unions, many union officers face ongoing obstruction from employers in carrying out their activities. About 40 percent of the unionized workplaces in the survey did not have a collective bargaining agreement, and the most potent weapon for pressuring employers to bargain in good faith—the strike—is difficult and dangerous to deploy in Indonesia. Indonesian law sets up a number of barriers to exercising the right to strike that violate international labor standards, and many workers who lead strikes are terminated and/or sued by employers in criminal or civil court. Local governments, the police, and the courts have not fulfilled their obligation to protect the rights of workers. In many cases, the most that workers can hope for is a gen-

erous payment, in the form of severance, as compensation for the violation of their right to associate.

Similarly, weak sanctions for violating provisions of the Manpower Act pertaining to contract labor and outsourcing, and putting the onus on unions to take employers to court for violating these provisions, have created a situation in which employers flagrantly disregard the law. Unions do not have the capacity to rectify these systematic abuses on their own. Moreover, since contingent workers are less likely to join unions, the spread of precarious work has threatened the membership base of unions. Violations of freedom of association and the spread of precarious work combine to undercut unions in Indonesia.

The analysis in this report suggests several steps that can be taken to remedy these systematic violations. First, Indonesia must develop an efficient and effective means for dealing with violations of freedom of association. The current situation, in which dismissals and criminal sanctions are dealt with through two separate and independent processes, provides inadequate protection to workers. One possibility is to rewrite the Trade Union Act to make anti-union acts a civil offense with very stiff penalties, and to rewrite the Labor Dispute Settlement Act so that the PHI can impose these penalties on employers. Simply reinstating workers or requiring employers to pay the maximum severance is too light a punishment to deter them from violating worker rights. The PHI, in spite of its flaws, is better able to handle labor disputes than the police and the civil and criminal courts.

Second, judges in all courts in Indonesia need to obtain a better understanding of the principles of freedom of association and of current labor law in Indonesia. The reluctance of judges to invoke passages of the Trade Union Act in their decisions and the ignorance of

many judges of the impact of the Constitutional Court's review of the Manpower Act on jurisprudence in Indonesia reflect a systematic failure in the judicial system. More training for judges on these matters, as well as clear guidelines about jurisdictional issues from the Supreme Court, would be helpful. In addition, judges do not have the tools that are needed to impose penalties on employers that violate many parts of Indonesia's labor laws. Usually, the most that they can do is to order the employer to stop committing the violation, which is not much of a deterrent. In addition, fines for refusing to carry out verdicts need to be raised substantially so that employers will carry out the verdicts of the PHI.

Third, the decentralization of labor inspection and dispute settlement needs to be reconsidered. The current system encourages a race to the bottom in labor rights. Local politicians, fearful of angering business, will not adequately fund local labor offices or assure that those in charge of those offices actively enforce labor laws. A recentralization of labor inspection and dispute settlement under the national ministry would assure that the state officials handling labor rights issues are career civil servants with expertise in the field. Moreover, their professional fates would be tied to carrying out their duties in this centralized ministry.

Fourth, the Manpower Act and supporting regulations need to be revised to empower unions to exercise the right to strike in accord with international labor standards. Without a robust right to strike, unions have greater difficulty in reaching collective bargaining agreements with employers and in sanctioning employers who fail to respect those agreements.

Fifth, unions need to work harder to highlight the freedom of association issues at stake in the cases that are before the courts. Making

these arguments persuasively in court is difficult, even for skilled advocates. Training for union legal aid officers in how to build strong freedom of association cases could be very beneficial.

Finally, many of the issues raised in this report are a reflection of a political system in which the political elites have placed a low priority on labor rights. The weakness of the

rule of law favors employers and the rich. Unions are forced to mobilize collectively in order to defend their most basic rights. The reforms outlined above are unlikely to happen without a major restructuring of political power in Indonesia, which in turn is unlikely to occur unless what is left of Indonesia's fragmented labor movement organizes collectively to push for these changes.

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APPENDICES

List of FGDs and In-Depth Interviews

List of FGDs conducted:

No.	Target Locations	Date	Participating Unions	# of Participants
1.	National level (KSBSI federations)	29 April 2009	Bupela, Fesdikari, Nikeuba, FKUI, Hukatan, FTA, Garteks, LBH KSBSI	8
2.	Surabaya	6 May 2009	Nikeuba, FSPMI, KASBI, FSP KEP, OPSI, FSPN, FSP KAHUTINDO	8
3.	Jakarta, Bekasi, Depok, Bogor	6 May 2009	OPSI, FSBI, FSP FARKES/R, FSPN, ISBI, FSP KAHUTINDO, FSPMI, Par Ref	12
4.	Semarang District	15 May 2009	FTA, Hukatan, FSP KEP, FSBI, FSP KAHUTINDO, FSPMI, Fesdikari	15
5.	Bandung	12 June 2009	FSPM, FSP FARKES/R, SBSI 92, SPBSI, KSBSI, FSPN, KASBI, FSPMI	15
6.	Medan	24 June 2009	Kikes, SBMI, FSPM, Lomenik, FSPN	15
7.	Batam	2 July 2009	FSPMI, Kamiparho, FKUI, FSPSI Ref, FSP FARKES/R, KSPSI, Lomenik	16
8.	Makassar	19 Nov. 2009	Nikeuba, NIBA SPSI, FSP KAHUTINDO, FSPBI, FKUI, FSP KEP, Kamiparho, Fesdikari, FSP FARKES/R, GSBN, Par Ref	15
9.	Tangerang and Serang	3 Dec. 2009	FSPTSK, FSPMI, FKUI, Gaspermindo, SBSI 92, FSPN	12
10.	National Level (non-affiliated federations)	30 Dec. 2009	FSBI, ISBI, FSPN, Sekarga, SP AP I, SBT-PI, Ikagi, OPSI, Forum Pegawai Merpati	12
11.	National Level (KSPI federations)	30 Dec. 2009	FSP FARKES/R, Par Ref, FSP ISI, FSP KEP, PGRI, Aspek Indonesia, FSPMI	11
				Total = 139

List of In-Depth Interviews conducted:

No.	Title of Person Interviewed	Name of Person Interviewed	Interview Date	Location
National Level				
1.	Supervisory Judge, Supreme Court	Syafrudin	3 Feb 2010	Supreme Court Building
2.	Labor Norms Director, Directorate General of Supervision	Muji Handoyo	2 Feb 2010	Ministry of Manpower Office
3.	Directorate V of Specific Crimes	Pudjiarti	11 Feb 2010	National Police Headquarters
Surabaya				
4.	Inspection Office Head	Roem Hidayat	5 May 2009	East Java Provincial Manpower Office
5.	Section Head of Industrial Relations and Labor Requirements	Eko Rindarto	5 May 2009	East Java Provincial Manpower Office
6.	Chief of Investigations and Crime Unit	Syamsul Arifin	5 May 2009	Pasuruan District Police Office
7.	Chief of Specific Crimes Unit	Sutrianto	5 May 2009	Pasuruan District Police Office
8.	Occupational Health and Safety Section Head	Kris Subiantoro	6 May 2009	Surabaya City Manpower Office
9.	State/Labor Court of Surabaya	Nyoman Gede Wirya	6 May 2009	Surabaya State Court
10.	Chief of Specific Crimes Unit	Agung Marlianto	7 May 2009	Surabaya City Police Office
Jakarta & Bogor				
11.	Head of Bogor District Manpower Office	Musa Alex Gandapermana	7 Nov 2009	Bogor District Manpower Office
12.	Labor Judge	Tri Endro	22 Feb 2010	Jakarta Labor Court
13.	Youth, Children and Women's Unit Head	Lilik Hariati	18 Feb 2010	Jakarta Provincial Police Office
Bandung				
14.	Bandung District Manpower Office Head	Dadang Supardi	10 June 2009	Bandung District Manpower Office
15.	Labor Judge	Asep Maulana	10 June 2009	Bandung Labor Court
16.	Specific Crimes Unit Chief	Janter Nainggolan	11 June 2009	Bandung Metropolitan Police Office

17.	Specific Crimes Unit Chief	Victor Teodorus Sihombing	11 June 2009	West Java Provincial Police Office
18.	Career Judge of Bandung Labor Court	Hadi Siswoyo	12 June 2009	Bandung State Court
19.	Labor Inspection Section Head	M. Suharyadi	12 June 2009	Bandung City Manpower Office
Semarang				
20.	Specific Crimes Unit Chief	Haril Nugroho	13 May 2009	Semarang Metropolitan Police Office
21.	Employer Judge of Semarang Labor Court	Daryanto	12 May 2009	Semarang State Court
22.	Labor Inspection Sub Office Head	Dewi M	14 May 2009	Semarang City Manpower Office
Medan				
23.	Labor Requirements Office Head	Jaminudin Marbun	22 June 2009	North Sumatra Provincial Manpower Office
24.	Industrial Relations Dispute Office Head	Robert Tambunan	22 June 2009	Medan City Manpower Office
25.	Labor Inspection Office Head	Jhony Sibuea	22 June 2009	Medan City Manpower Office
26.	Labor Judge	Daulat Sihombing	22 June 2009	Medan Labor Court
27.	Investigation and Crime Unit Chief	Gidion Arief Setyawan	23 June 2009	Medan Metropolitan Police Office
28.	Career Judge	Charles Simamora	23 June 2009	Medan Labor Court
29.	Public Relations Office Head	Baharudin Jafar	24 June 2009	North Sumatra Provincial Police Office
Batam				
30.	Civil Servant Employee Inspection and Investigation Coordinator	Hulman Panggabean	29 June 2009	Riau Islands Provincial Police Office
31.	Analysis Office Head	Budi Wibowo	29 June 2009	Riau Islands Provincial Police Office
32.	Labor Judge	Widiono Agung	30 June 2009	Tanjung Pinang Labor Court
33.	Labor Judge	Budiono	30 June 2009	Tanjung Pinang Labor Court
34.	Employer Judge	Bambang S	30 June 2009	Tanjung Pinang Labor Court
35.	Riau Islands Manpower Office Head	Azman Taufik	1 July 2009	Riau Islands Provincial Manpower Office

36.	Labor Inspector	Jalfirman	1 July 2009	Batam City Manpower Office
37.	Operational Affairs Office Head	Jefri Sam	1 July 2009	Barelang District Police Office
Makassar				
38.	Inspection Sub Office Head	Hidayat	17 Nov 2009	South Sulawesi Provincial Manpower Office
39.	Specific Crimes Unit Chief	Sukardi	17 Nov 2009	South Sulawesi Provincial Police Office
40.	Labor Inspector	Harun	18 Nov 2009	Makassar City Manpower Office
41.	Labor Judge	Chandrayana	19 Nov 2009	Makassar Labor Court
42.	Specific Crimes Unit Chief	Ibda Jamal	19 Nov 2009	Makassar Metropolitan Police Office
Tangerang & Serang				
43.	Civil Servant Employee Inspector/Investigator	Sri Marsudihati	30 Nov 2009	Tangerang City Manpower Office
44.	Investigation and Crime Unit Chief	Budi S.	30 Nov 2009	Tangerang Metropolitan Police Office
45.	Labor Norms and Inspection Office Head	Joko Suharto	1 Dec 2009	Banten Provincial Manpower Office
46.	Special Investigation Unit Chief	Tri Hambakti	1 Dec 2009	Banten Provincial Police Office
47.	Specific Crimes Unit Chief	Sofyan	1 Dec 2009	Serang City Police Office
48.	Special Crimes Unit Chief	Rensa	1 Dec 2009	Serang City Police Office
49.	Labor Inspector	Mulyono	2 Dec 2009	Tangerang District Manpower Office
50.	Investigation and Crime Unit Chief	Nuraji	2 Dec 2009	Tangerang District Police Office
51.	Labor Judge	Hotland Pardosi	2 Dec 2009	Serang Labor Court

Summary of violations in case archive

(N=529)

Violation	Number of Cases	Percentage of Cases
Dismissals	262	49.5%
Freedom of Association	168	31.8%
Refusal to recognize a union	29	5.5%
Firing of a union leader	108	20.4%
Criminalization	19	3.6%
Contract/status disputes	62	11.7%
Minimum wages	32	6.0%
Collective bargaining	27	5.1%
Outsourcing	19	3.6%
Jamsostek	16	3.0%
Women's rights	5	0.9%

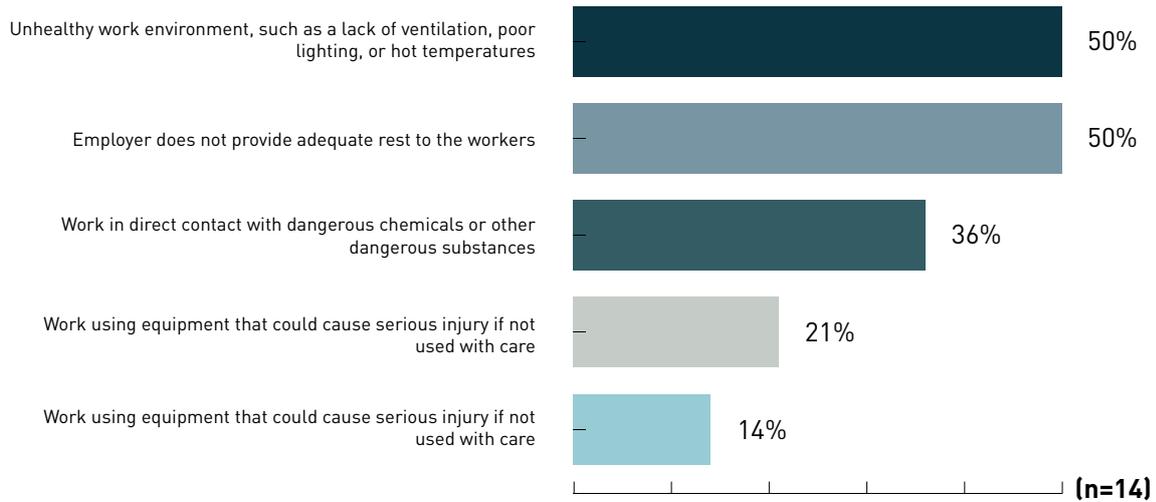
Note: Total exceeds 100% because some cases have multiple violations

A2

(n=658)



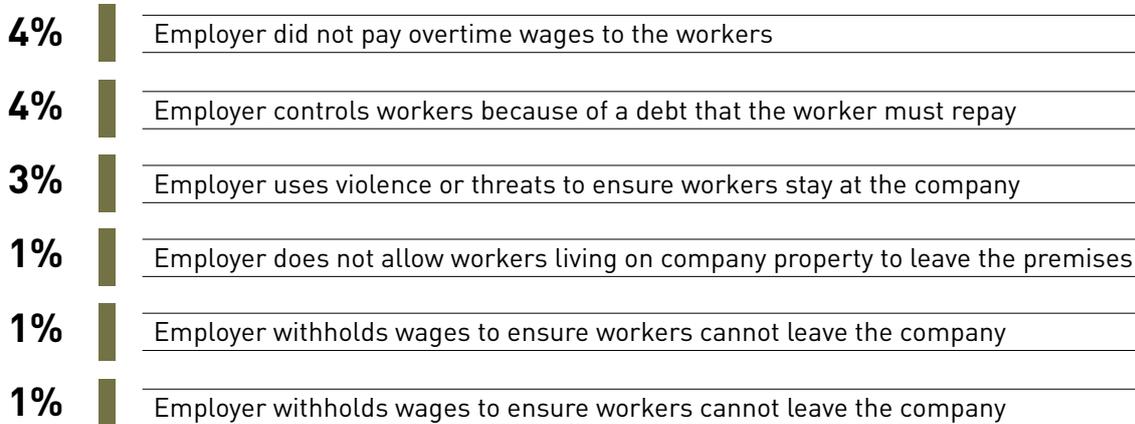
conditions of their work



A3

Have you ever found any of the following to be true in your workplace?

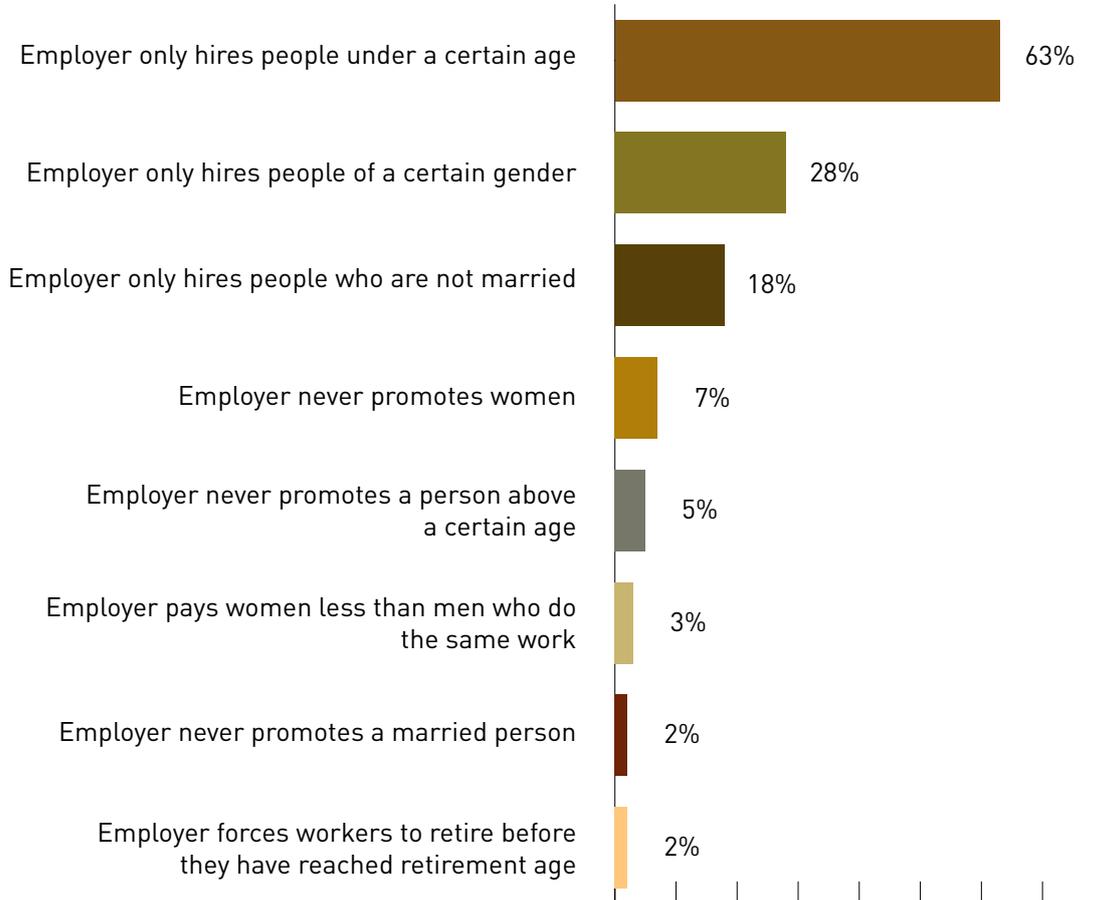
(n=658)



A4

Discrimination towards an applicant or employee in relation with their gender, age or marital status; when employer is hiring new employees, increasing the wage, taking a promotion or termination

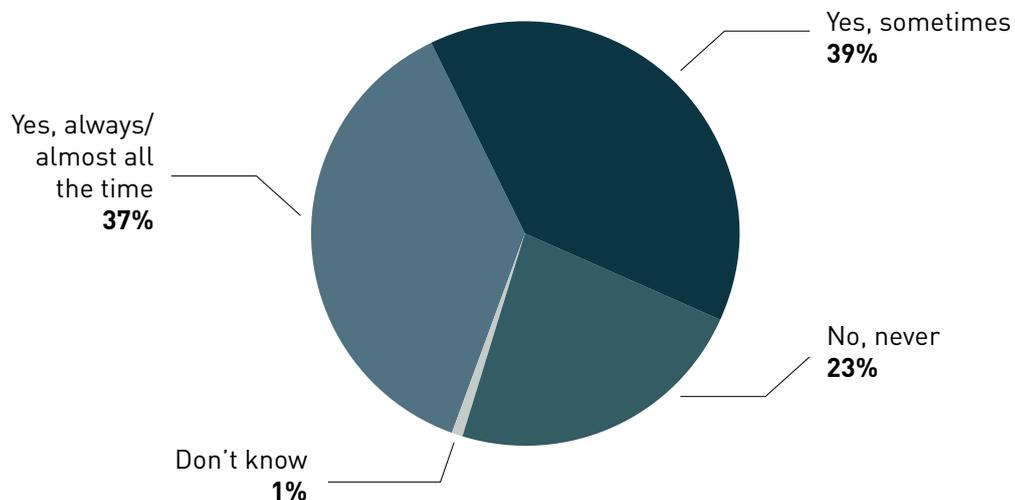
(n=658)



A5

In the employer's recruitment materials, are there any statements saying only people of a certain age or sex may apply for employment?

n=658

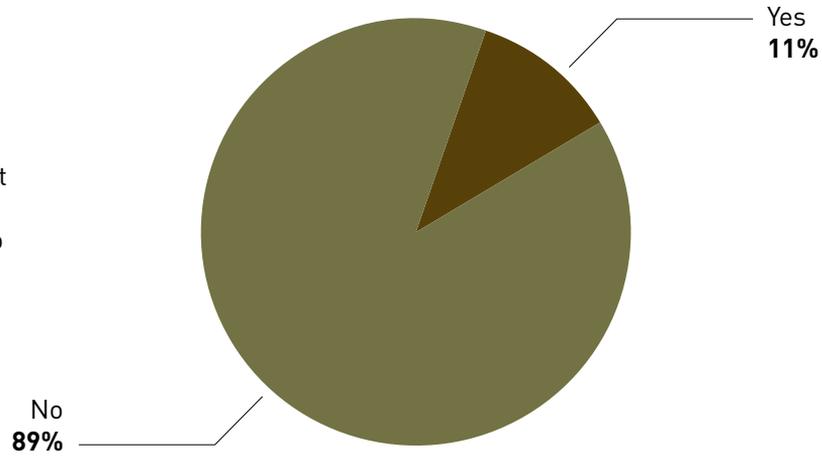


Does the employer fire women employees who become pregnant?

(n=658)

(n=587)

The employer did not give full salary for women workers who took the birth leave (5%)

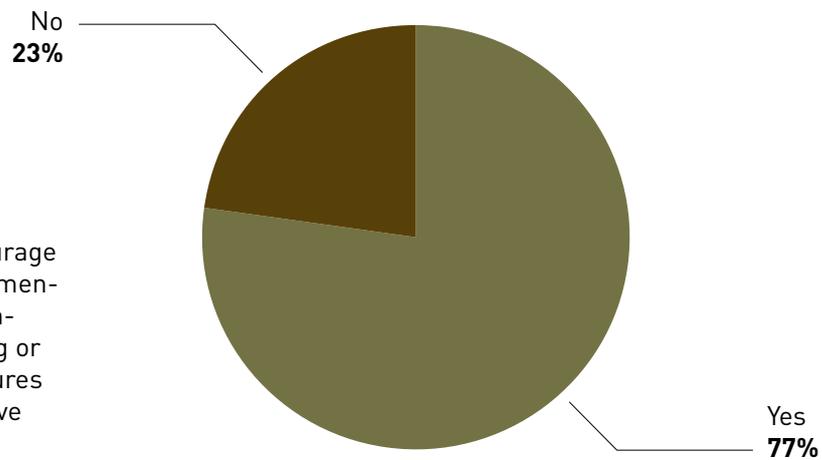


Does the employer allow women to take two days paid menstruation leave each month?

(n=658)

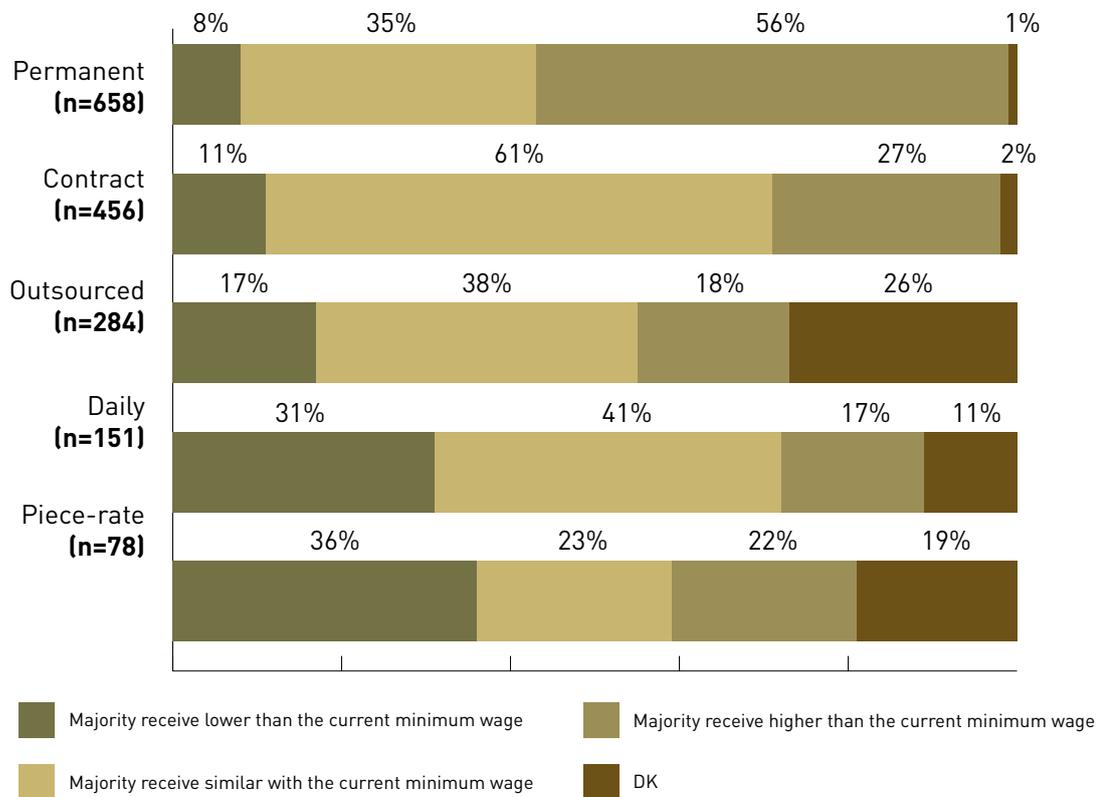
(n=509)

The employer discourage women from taking menstruation leave by imposing embarrassing or complicated procedures for claiming that leave (17%)



A7

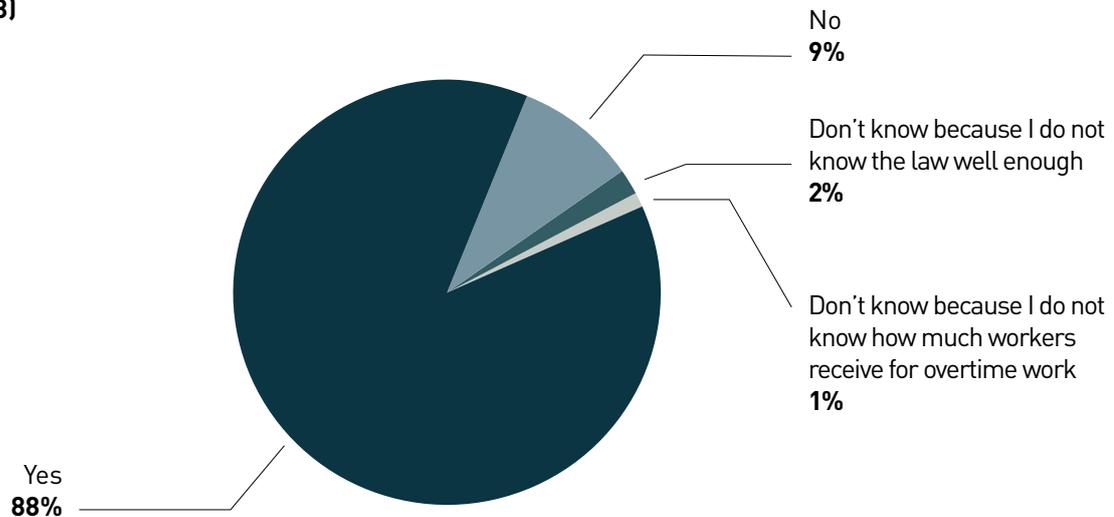
The monthly wage received by workers by status of workers



A8

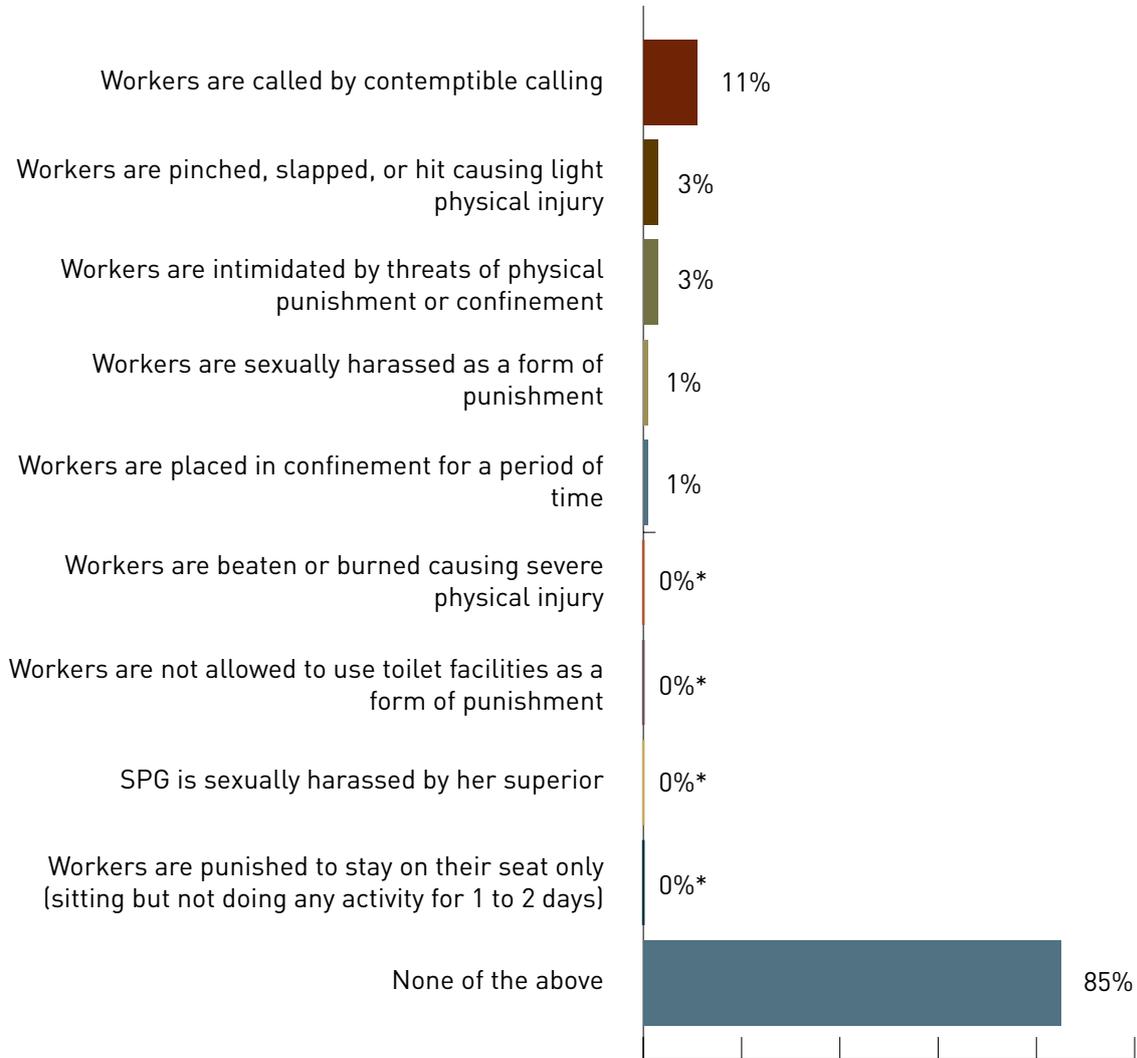
Does the employer comply with national law when paying wages for overtime work?

(n=658)



Which physical punishment or humiliating treatments have been used by company managers to discipline workers?

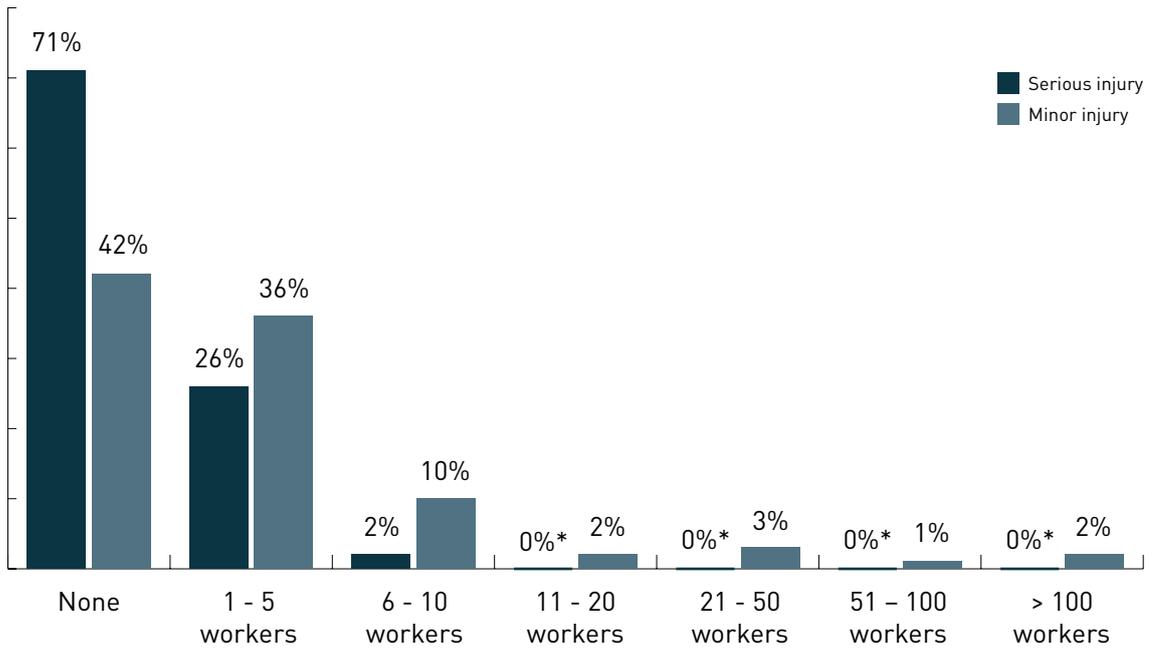
(n=658)



*=actual figure is less than 0.5%

From the year 2007 until now, to the best of your knowledge, approximately how many workers received serious injuries or were killed due to accidents at the workplace?

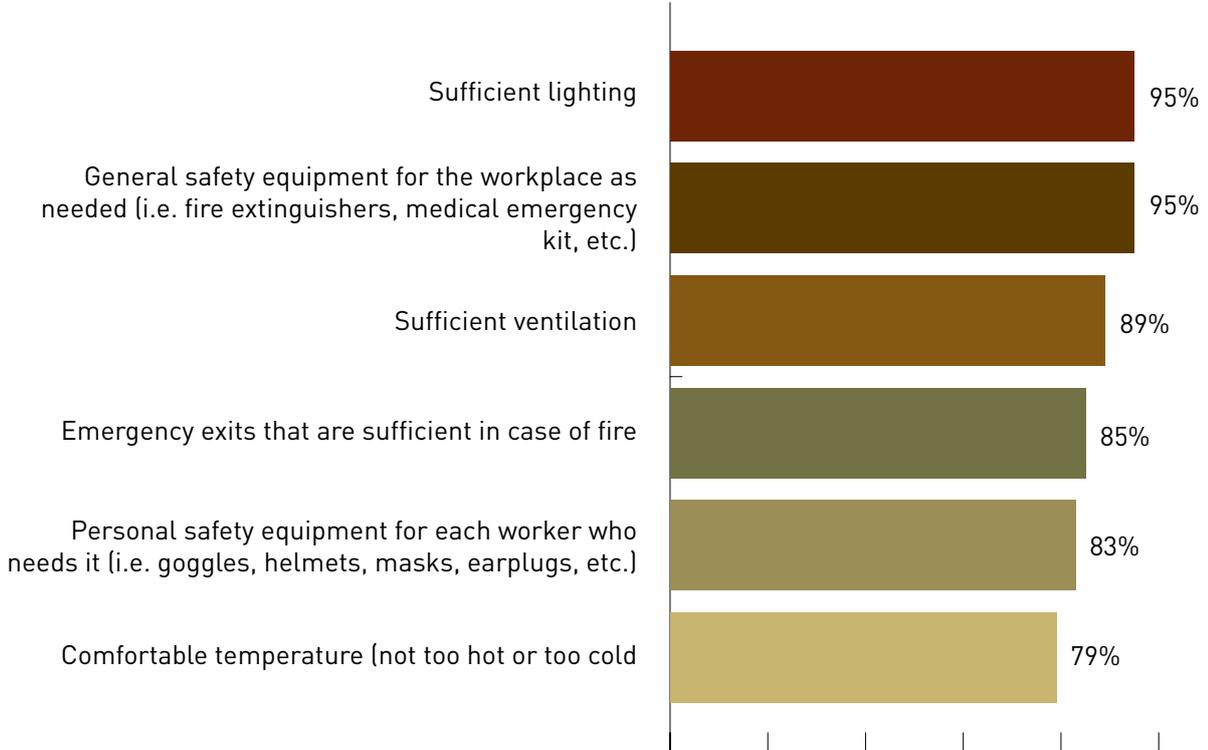
(n=658)



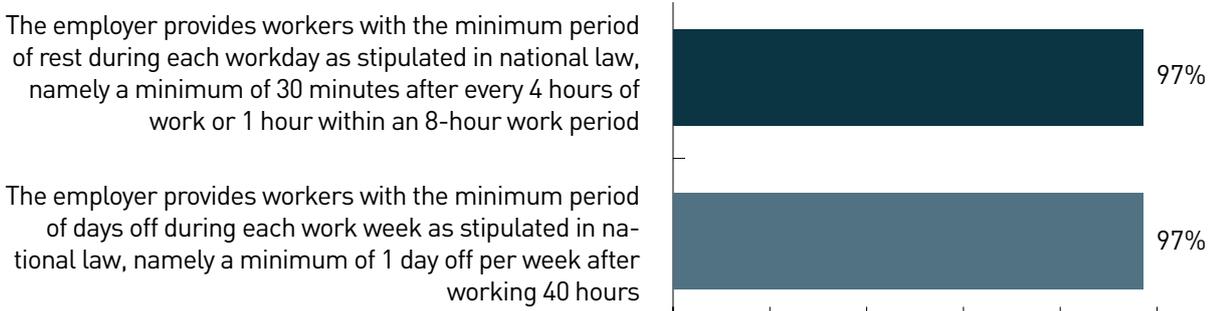
*=actual figure is less than 0.5%

Condition or equipments provided by the company

(n=658)



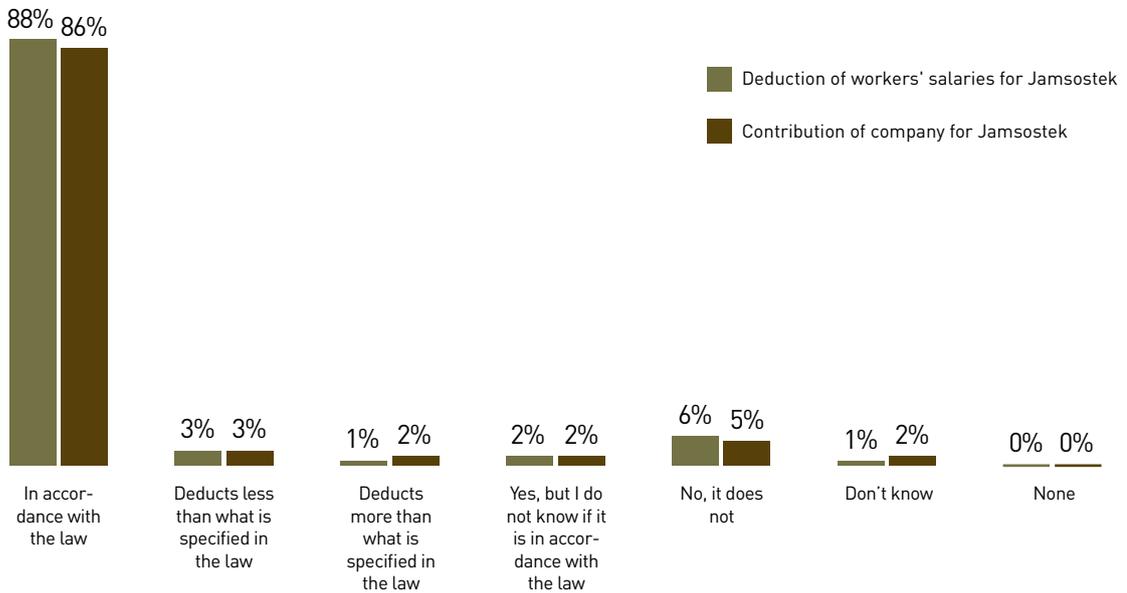
Minimum period of rest



A12

Contribution for Jamsostek

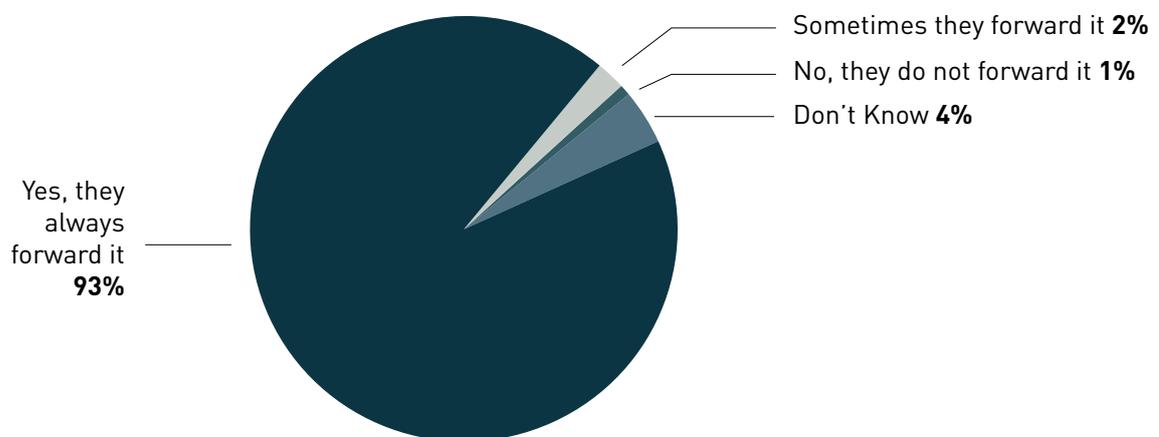
(n=658)



A13

Does the employer forward all JAMSOSTEK payroll deductions and employer contributions to JAMSOSTEK?

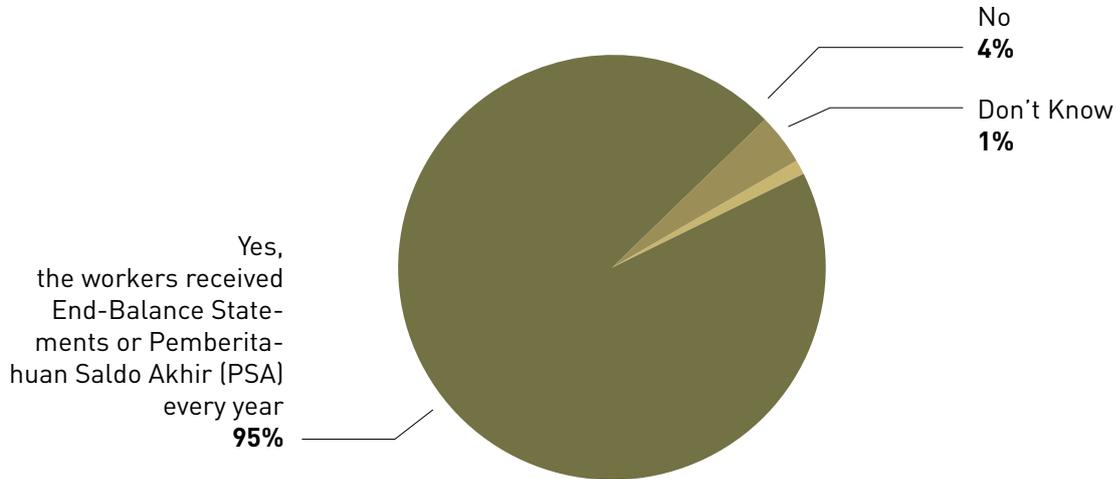
(n=628)



A14

Related to the JAMSOSTEK, have the workers received End-Balance Statements or Pemberitahuan Saldo Akhir (PSA) every year?

(n=600)

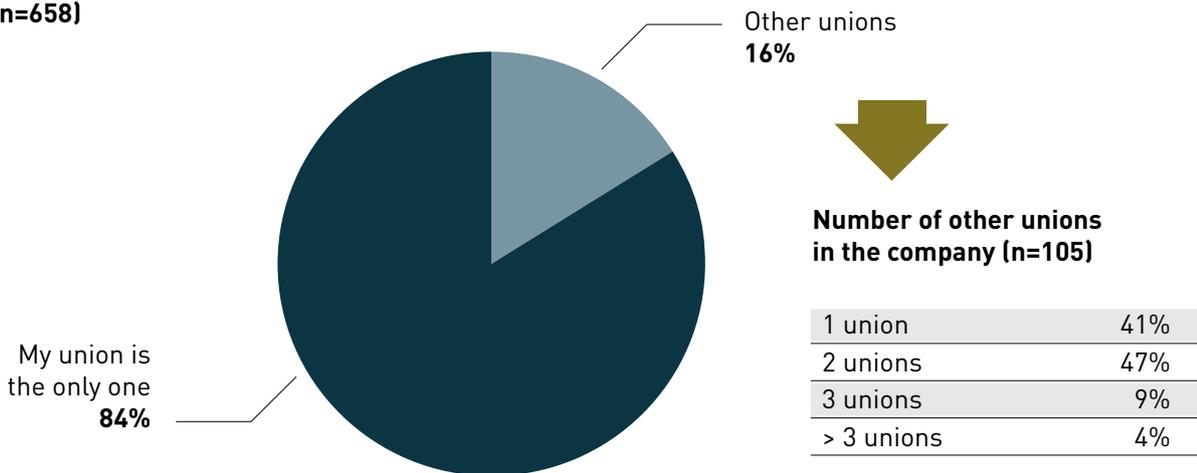


* Asked to respondents who said that their companies sometime or always pay Jamsostek

A15

How many unions are at your workplace?

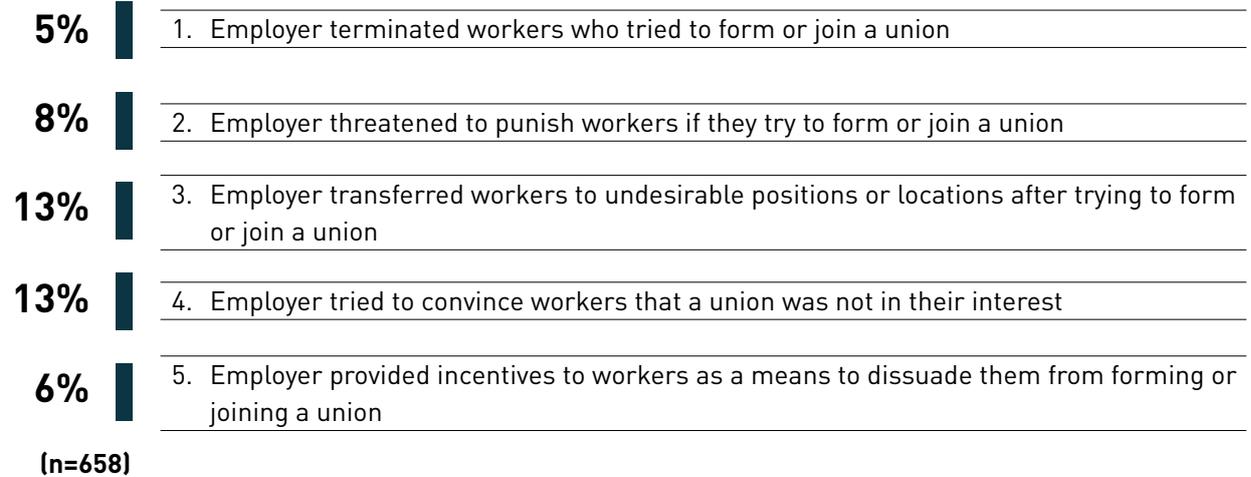
(n=658)



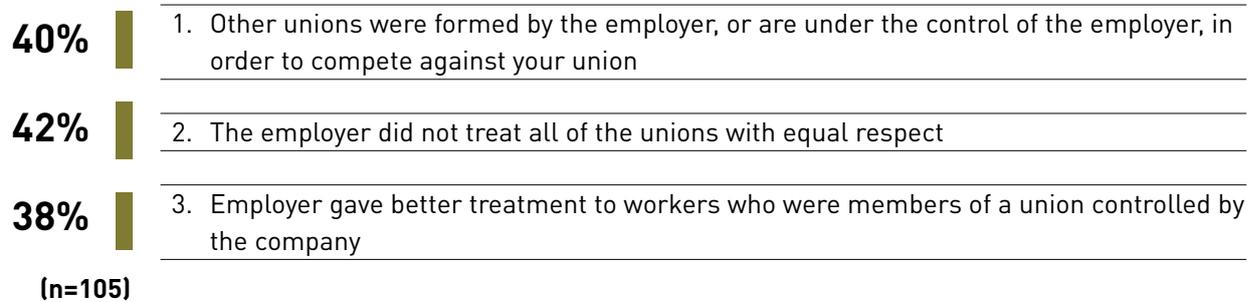
A16

Have you ever found the following in your workplace?

Based: total



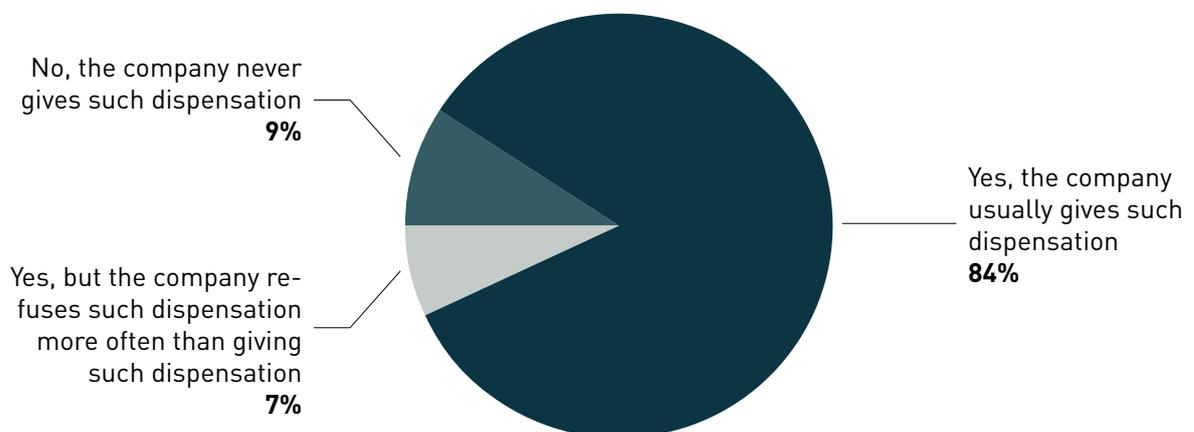
Based: those who said there is more than 1 union in the workplace



A17

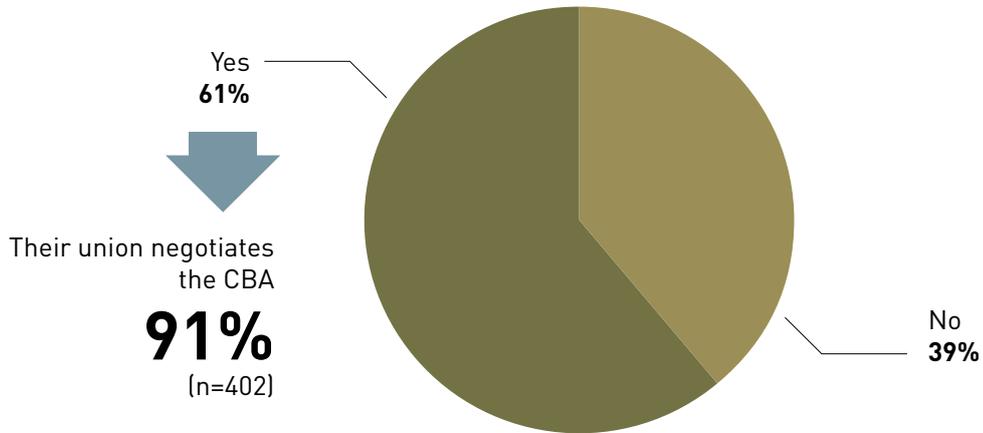
Has the company been willing to give dispensation to union officials to conduct union activities? (for example: to attend a union training or a meeting outside of the workplace during working hours, etc)

(n=658)



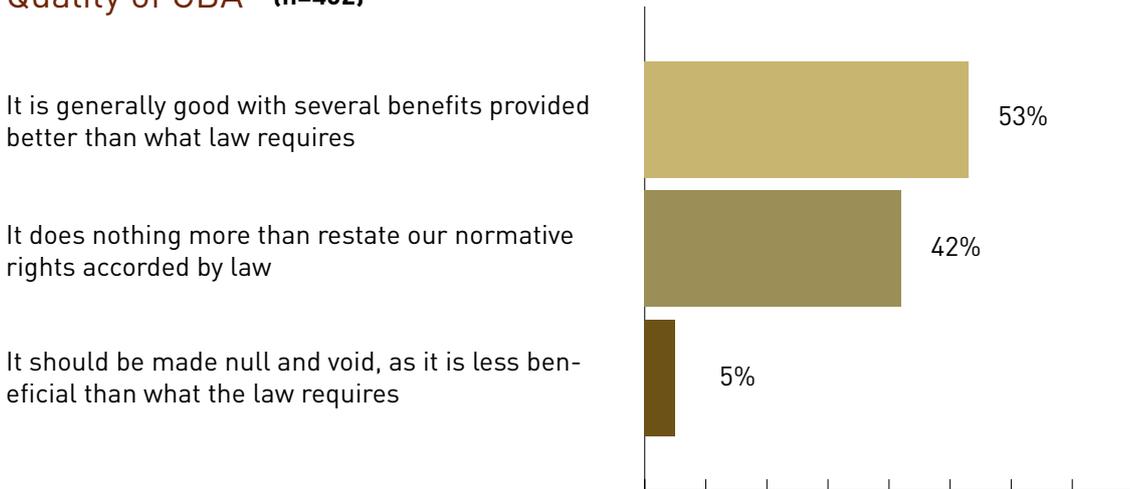
A18

Is there a Collective Bargaining Agreement (CBA) in effect at your workplace?
(n=658)

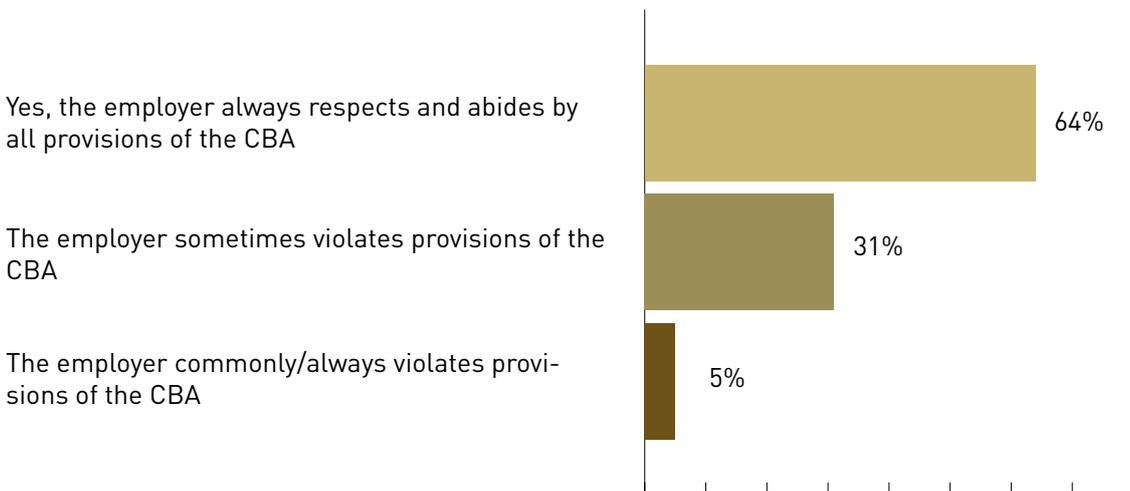


A19

Quality of CBA (n=402)



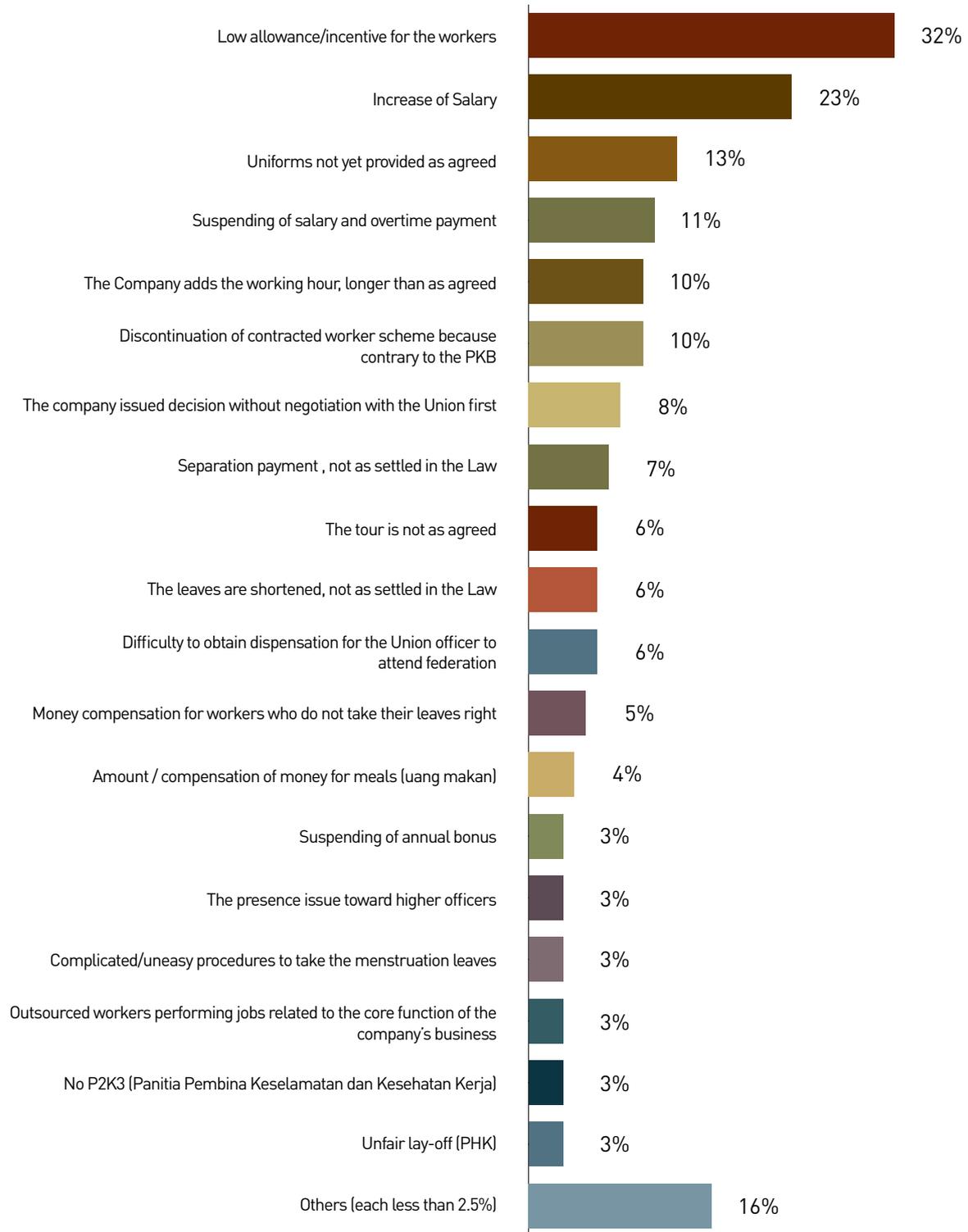
Employer attitudes toward CBA (n=402)



* Asked to respondents whose companies own CBA

What items in the CBA have been violated or not abided by the company?

(n=145)

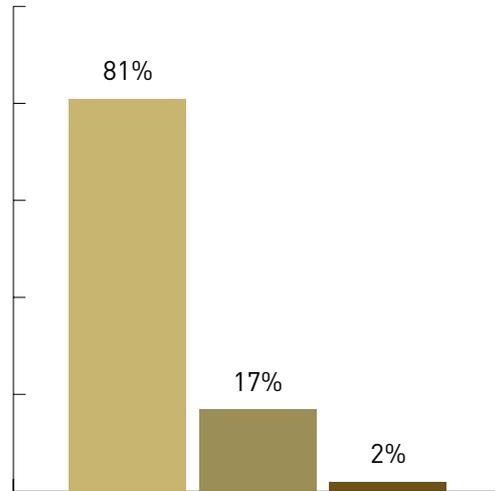


A21

Were the strikes conducted in accordance to the law?

(n=109)

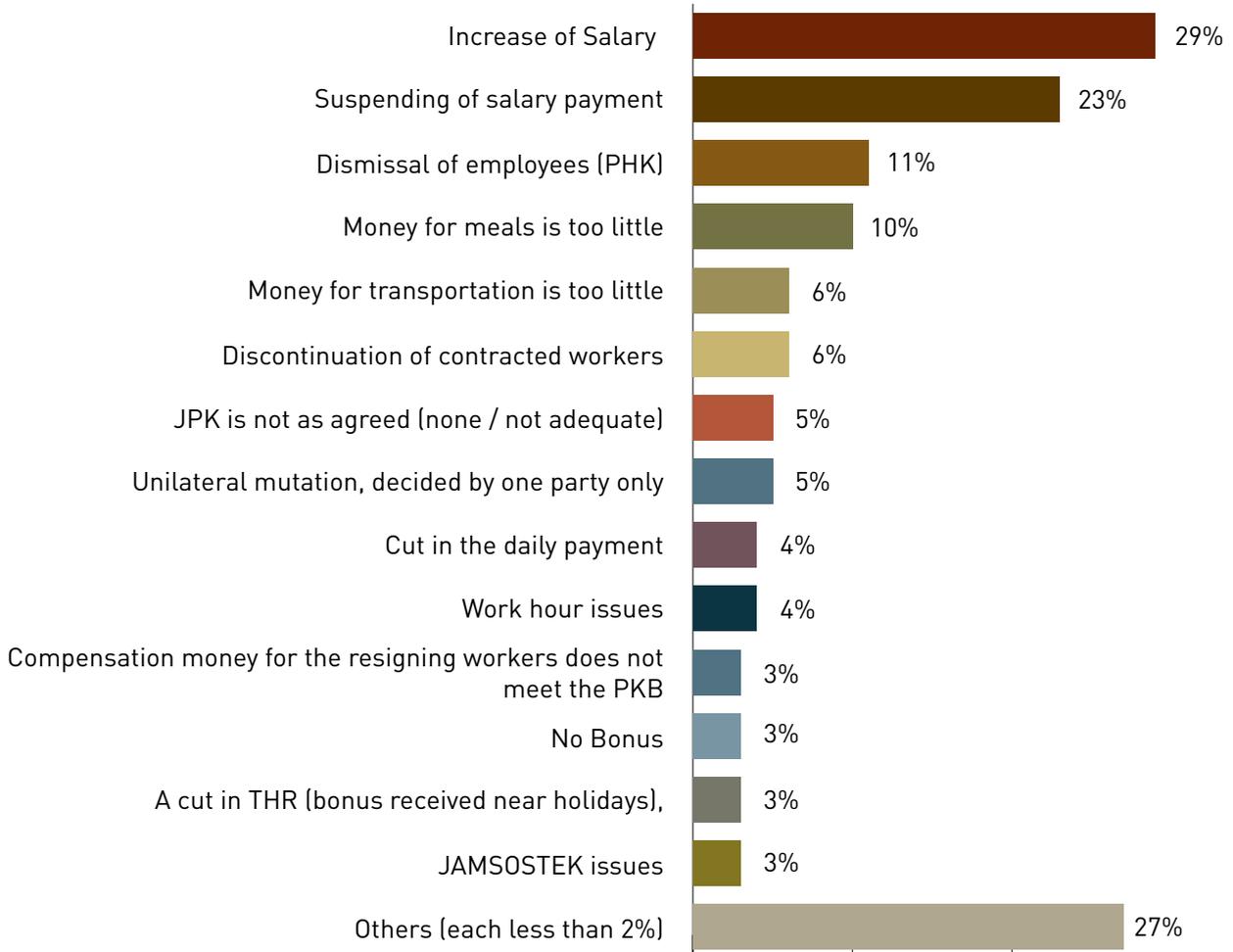
■ Yes ■ No
■ I don't know; my knowledge of the law is not good enough
 * Asked to respondents who said that their Union (SP/SB) ever took strikes



A22

What issues caused the strike(s)? (n=109)

* Asked to respondents who said that their Union (SP/SB) ever took strikes



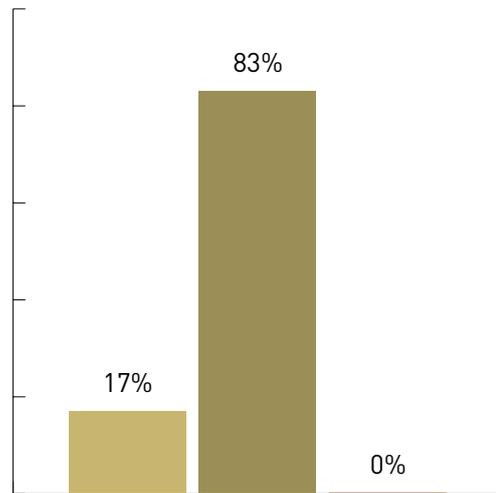
A23

Was there any violence that occurred during the strike(s)?

(n=109)

- Yes
- No
- I don't know; my knowledge of the law is not good enough

* Asked to respondents who said that their Union (SP/SB) ever took strikes



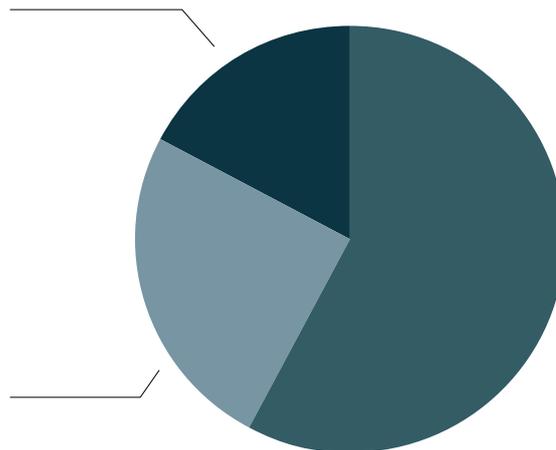
A24

How did the company respond to the strike?

(n=109)

The employer (always) refuses to negotiate acceptable solutions and the dispute(s) continue
17%

The employer is sometimes willing to negotiate acceptable solutions which ended the dispute(s)
25%



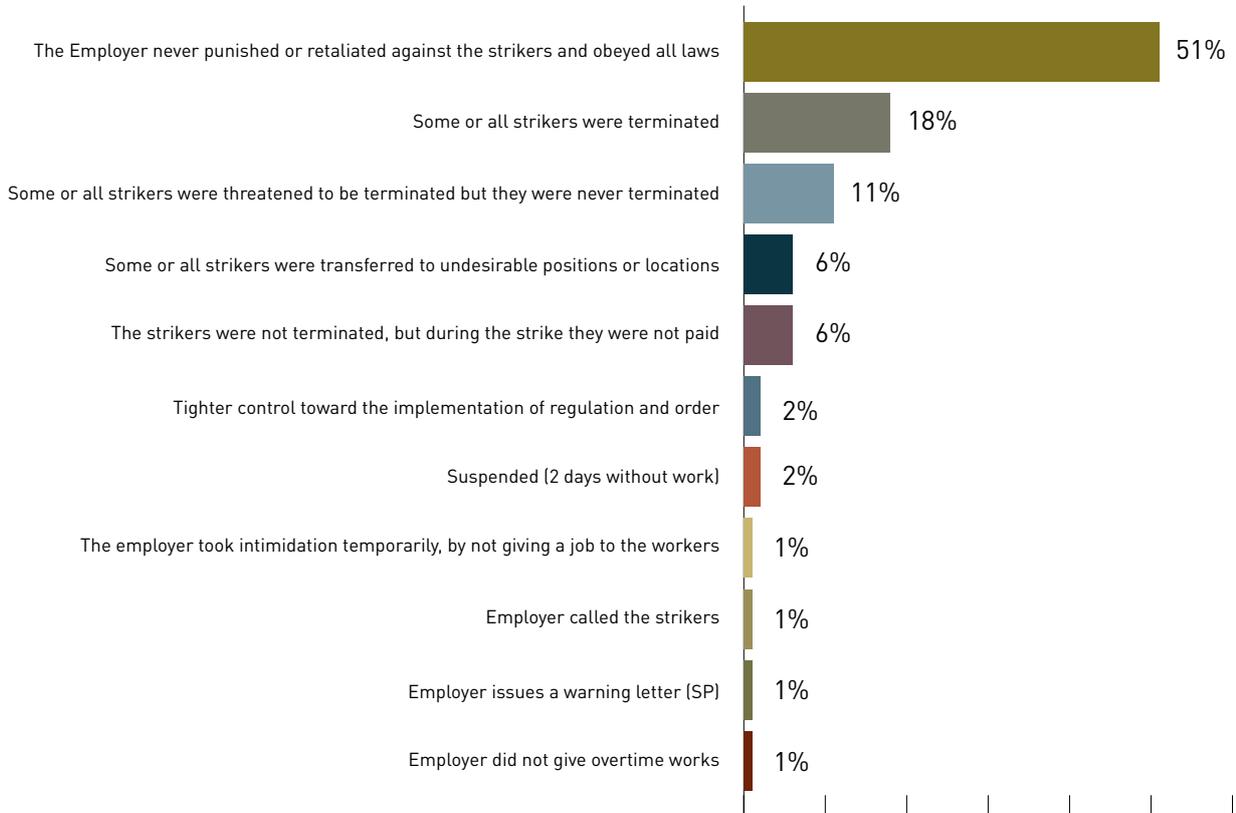
The employer is (always) willing to negotiate acceptable solutions which ended the dispute(s)
58%

* Asked to respondents who said that their Union (SP/SB) ever took strikes

A25

How did the company treat the strikers?

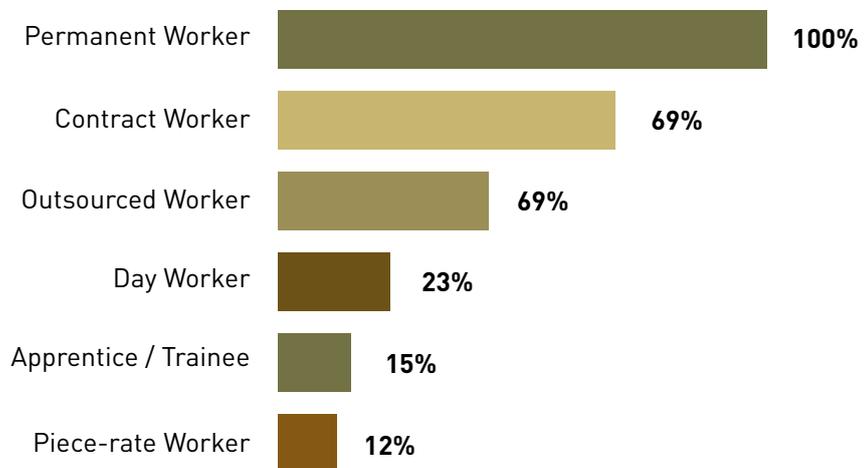
(n=109)



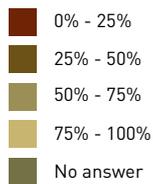
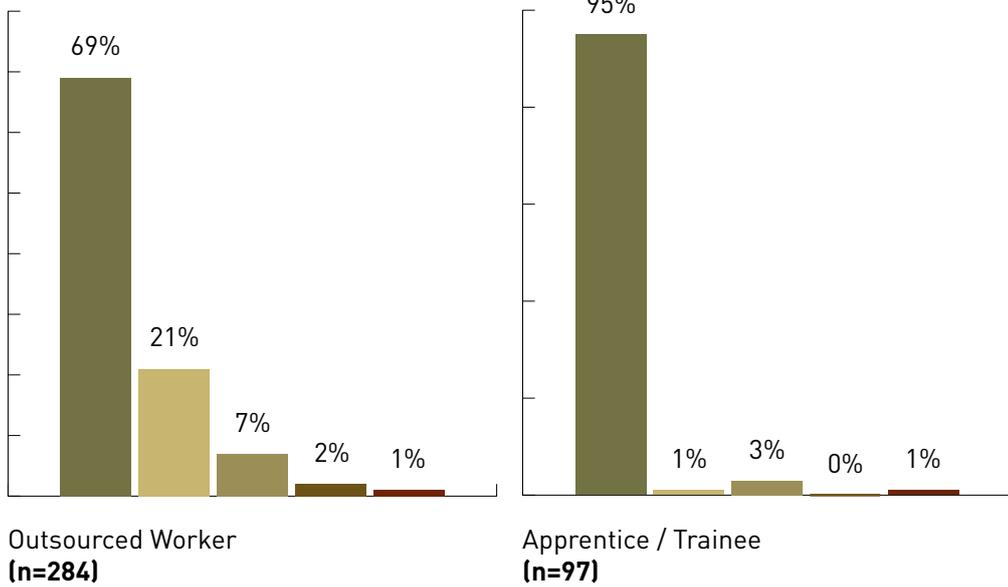
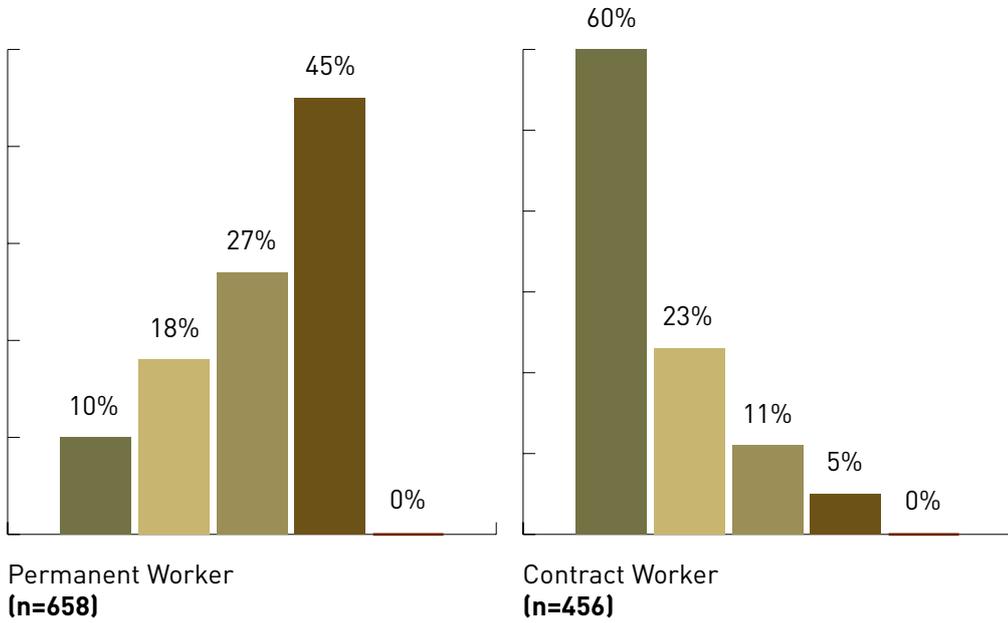
A26

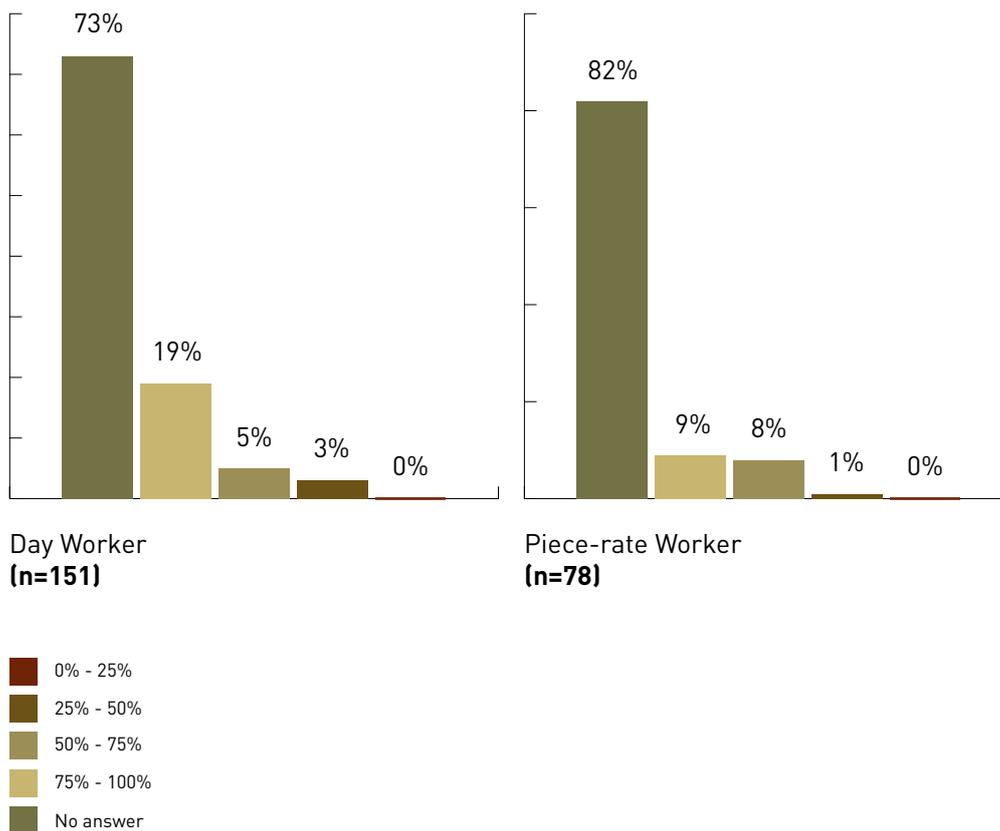
Incidence level for each of workers status

Base=658



Percentage of workers by status compared to the total number of workers in the company





A28

How the workers do know their status?

	Permanent	Contract	Outsourced	Apprentice/Trainee	Daily	Piece-rate
base	658	456	284	97	151	78
The employer gives each worker a written document that explains his/her status.	62%	59%	26%	35%	15%	10%
The employer shows each worker a written document that explains his/her status, but the worker is not given a copy of the document.	25%	35%	19%	19%	28%	18%
The employer tells each worker orally about his/her status.	11%	4%	10%	16%	40%	59%
The employer does not inform each worker about his/her status.	2%	1%	6%	5%	11%	9%
Don't know	0%	2%	39%	25%	7%	4%

A29

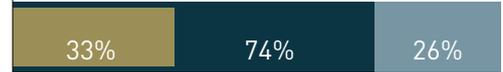
Working condition

(n=456)

They do routine or permanent work, not only seasonal or in a peak order time or in a deadline situation



They experience more than 1 extension for their contract



Their contract has been renewed more than 1 time (first they are dismissed for a minimal of 1 month, and then they are rehired for the same job with the same position, namely as a contract employee)



They have been hired for longer than three years



They have been moved to other companies which are owned by the same owner



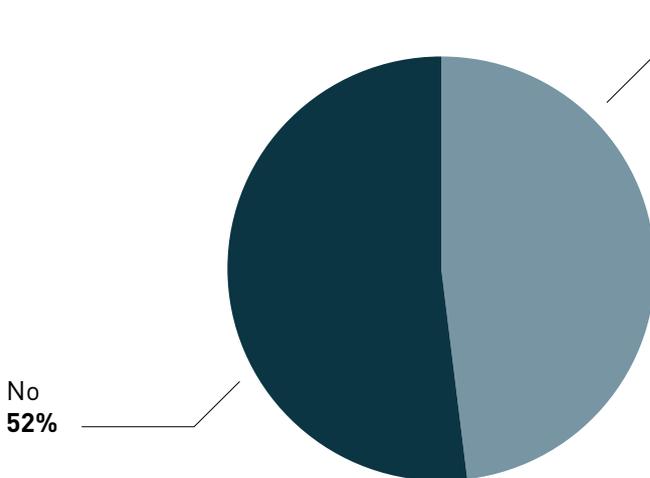
OCCURRED in the company
 NOT OCCURRED in the company
 Those who think the situation is violating the law

* Asked to respondents whose companies hire contracted workers

A30

To your knowledge, are any outsourced workers performing jobs related to the core function of the company's business?

(n=284)



Yes
48%

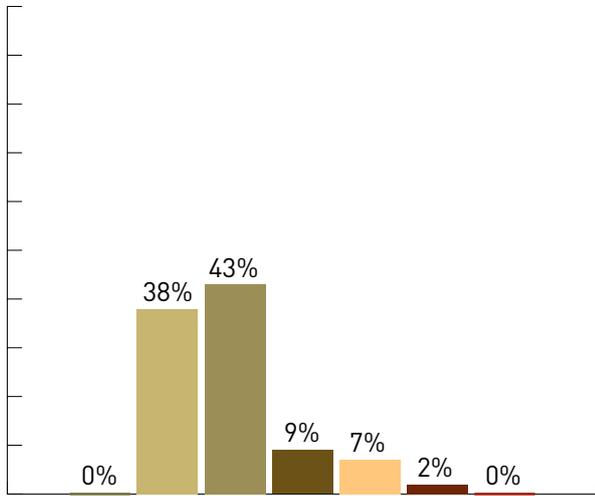
How many of the outsourced workers are performing core function jobs?

	(n=136)
A few (1-20%)	25%
More than a few (21-50%)	21%
The majority (51-99%)	31%
All of them (100%)	24%

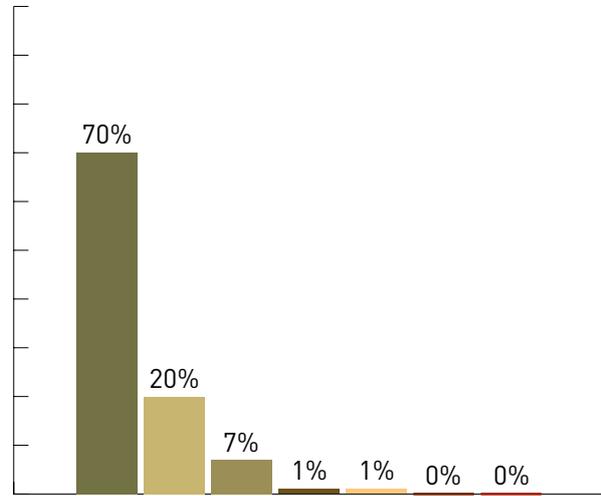
* Asked to respondents whose companies hire outsourced workers

How many union members are:

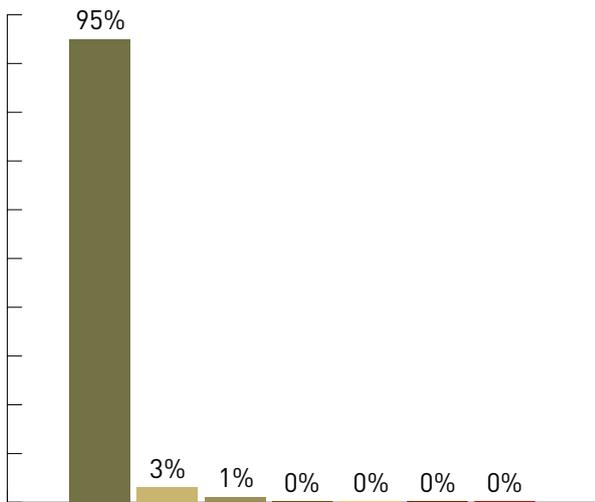
(n=658)



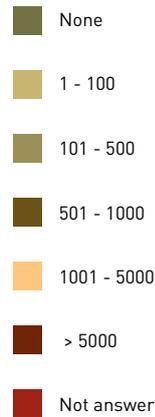
Permanent workers



Contract workers



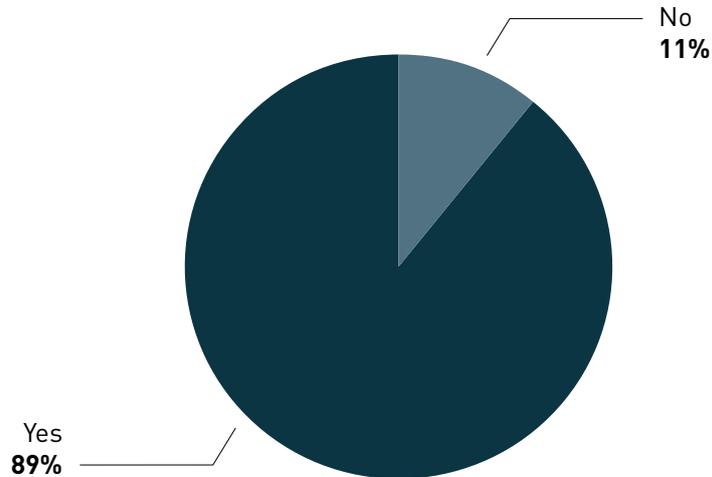
Others



A32

In your opinion, is this outsource system violating the law or not?

(n=136)

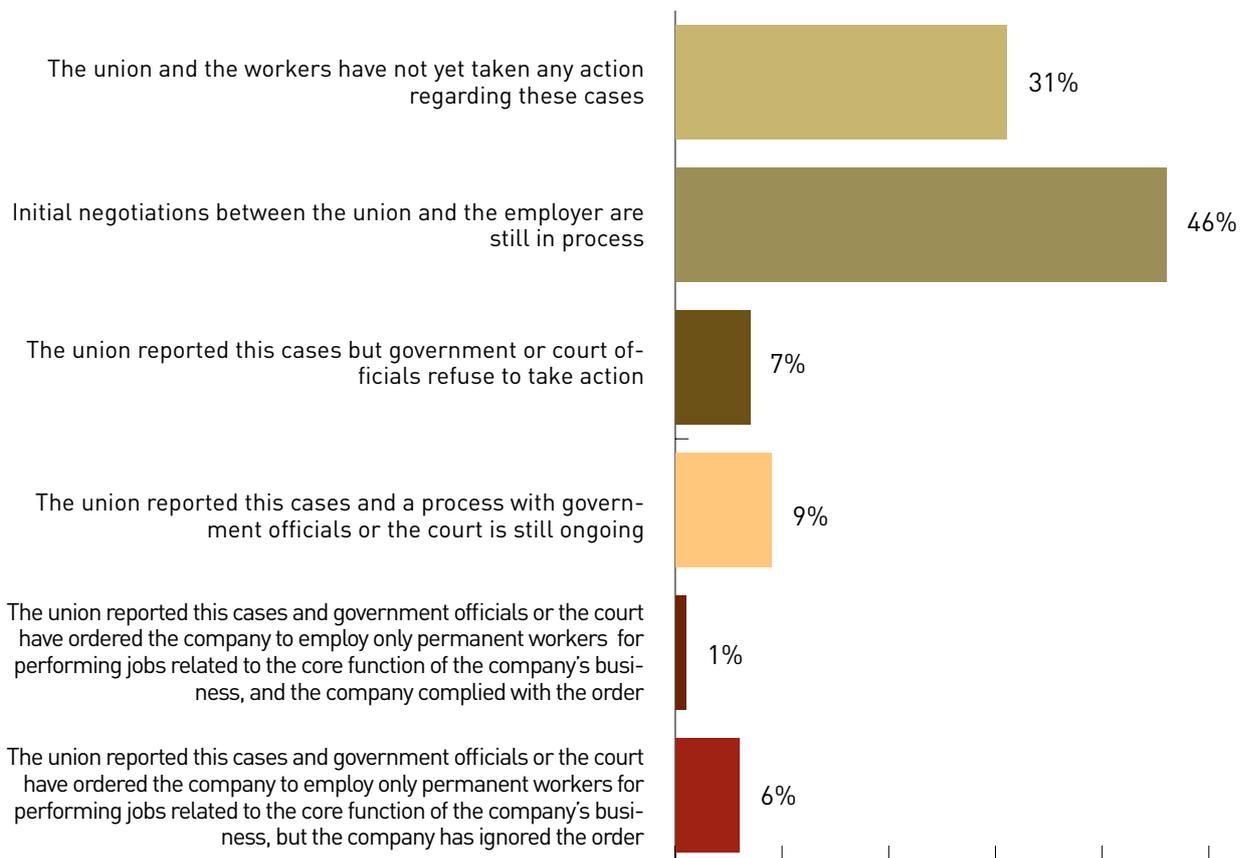


* Asked to respondents whose companies assign outsourced workers to do the core-function job

A33

Which of the following best describes the current situation regarding these outsourced workers who perform jobs related to the core function of the company's business?

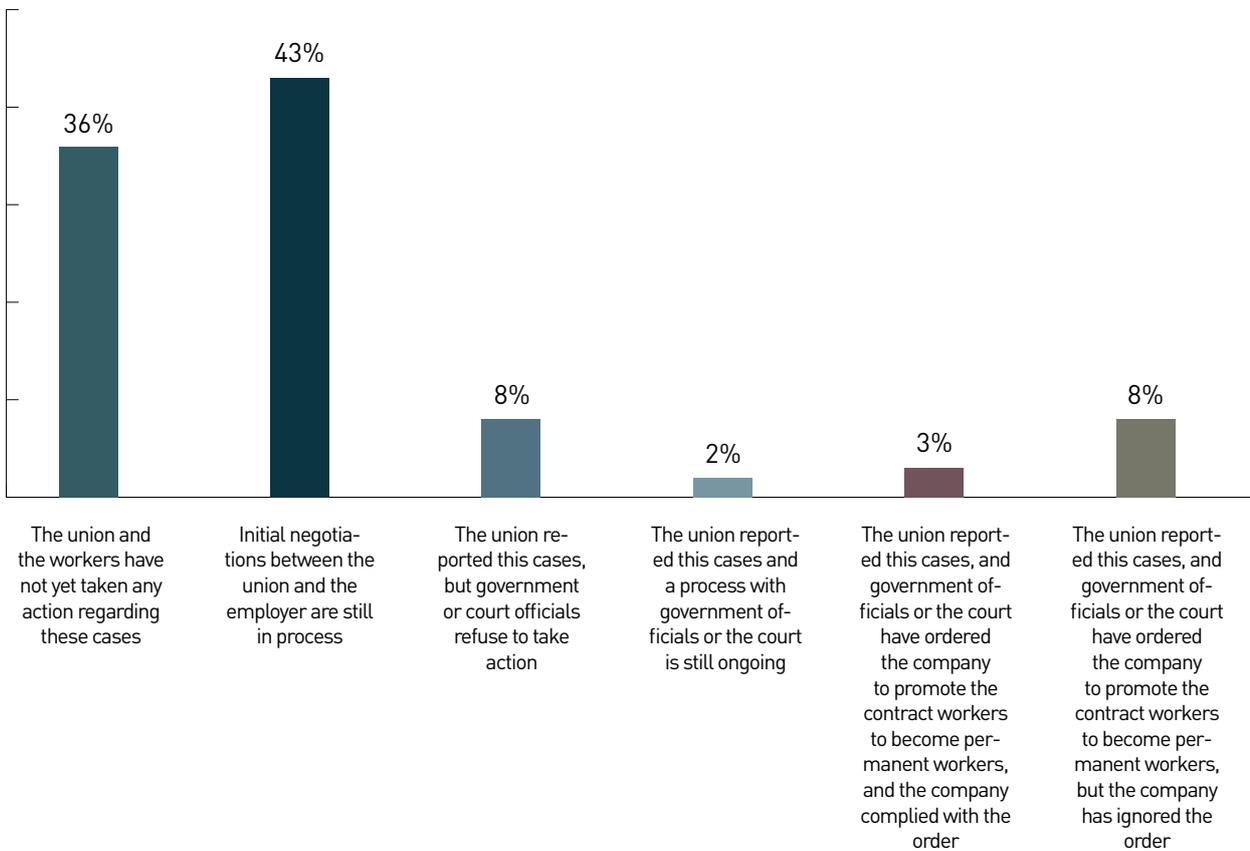
Base= those who said that this outsource system is violating the law (n=121)



If it is violating the law, which one most describes the current condition of the contract workers who

Do routine or permanent work, not only seasonal or in a peak order time or in a deadline situation

(n=220)

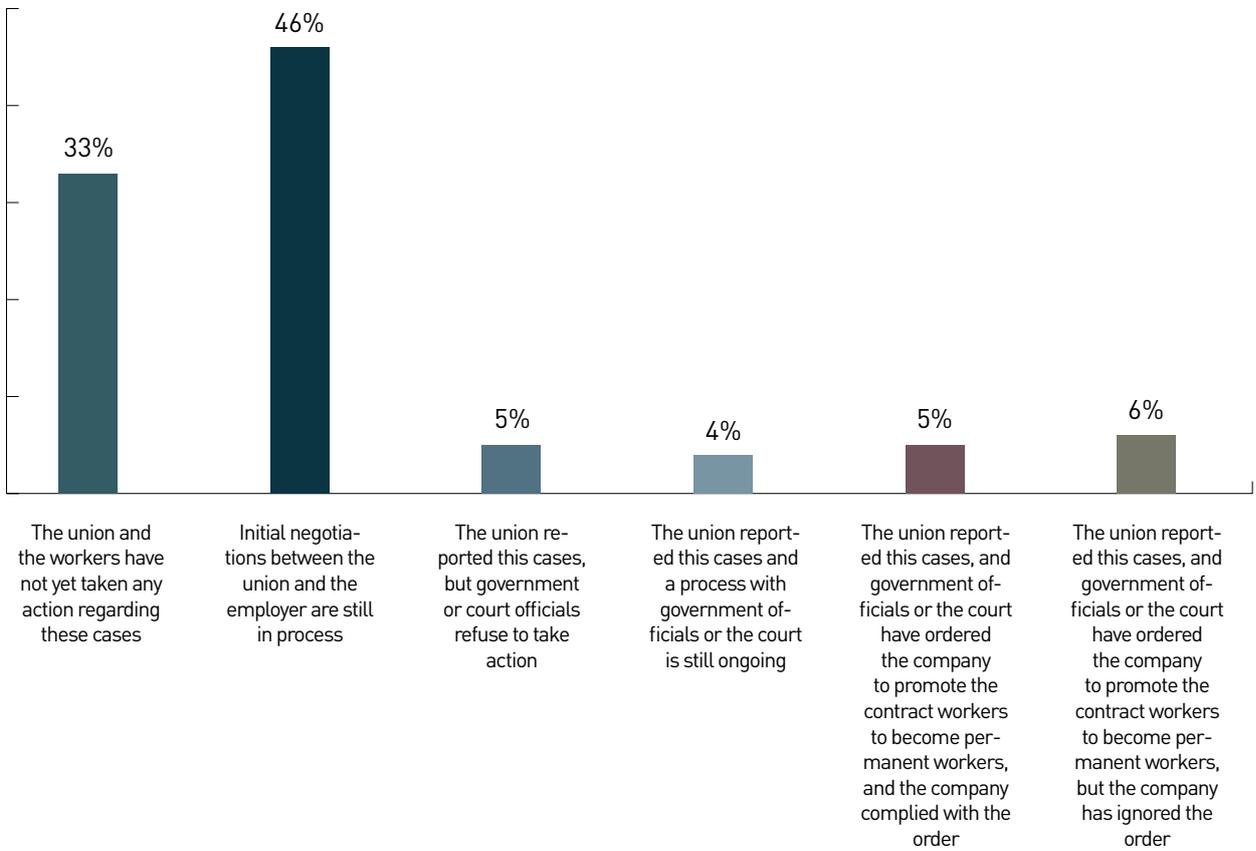


* Asked to respondents who said that it is a violation to the law

If it is violating the law, which one most describes the current condition of the contract workers who

Have been hired for longer than three years

(n=112)

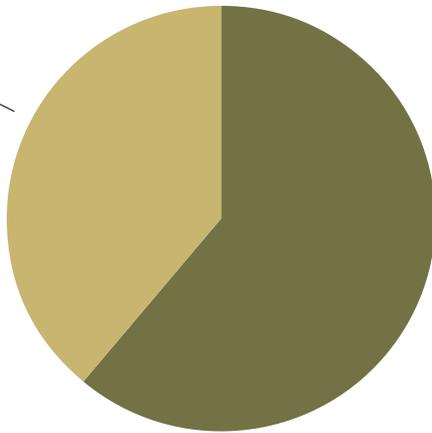


* Asked to respondents who said that it is a violation to the law

Is there currently one or more major grievance or problem that your union has requested the employer to address?

(n=658)

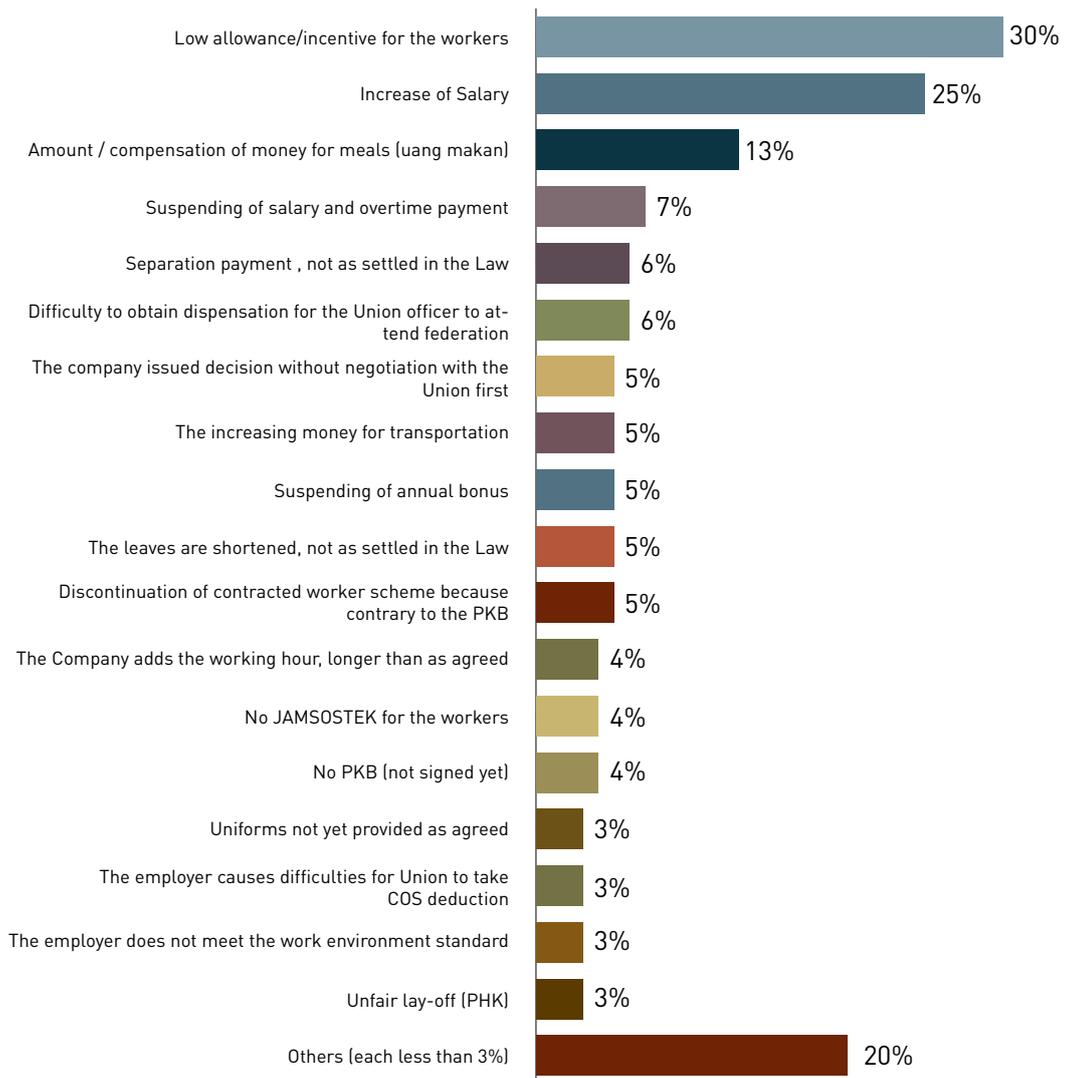
No
39%



Yes
61%



(n=402)



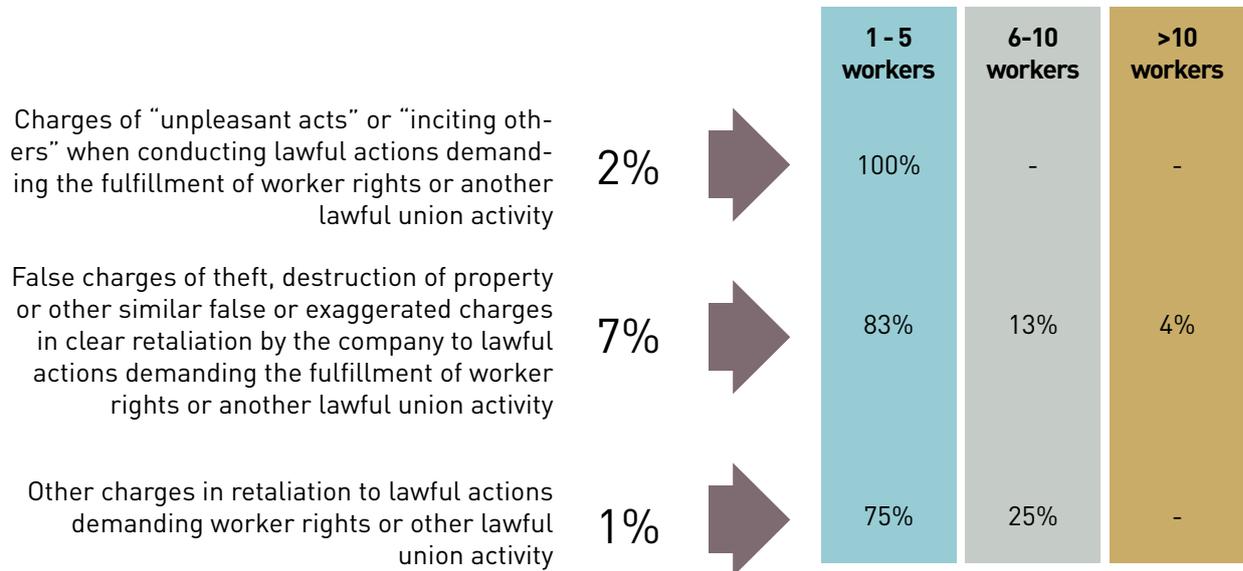
A37

In the past 2 years, have any workers at your company been arrested under the following situations?

(n=658)

Yes

How many workers have been arrested?

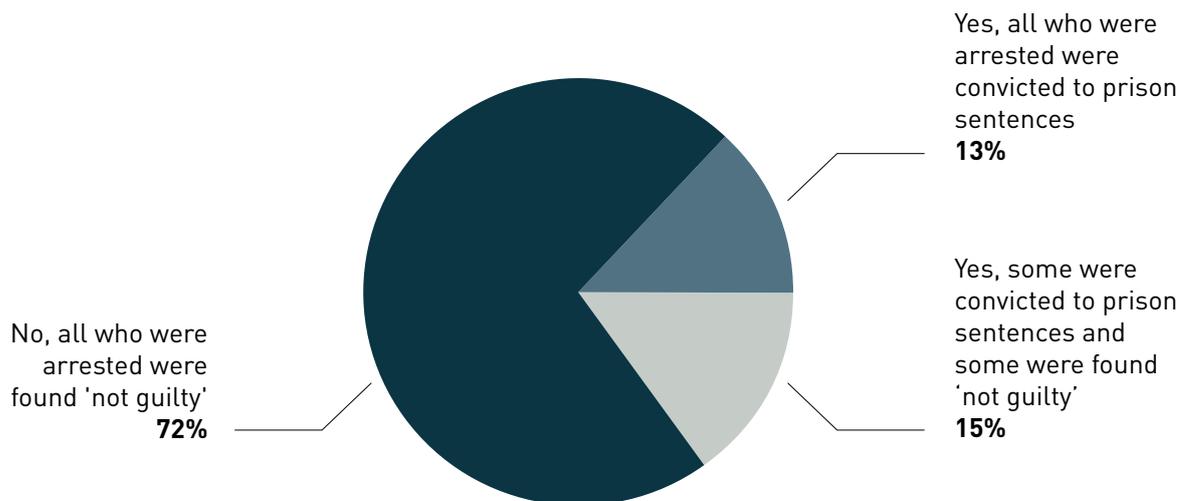


A38

Were the workers who were arrested ever convicted to prison sentences?

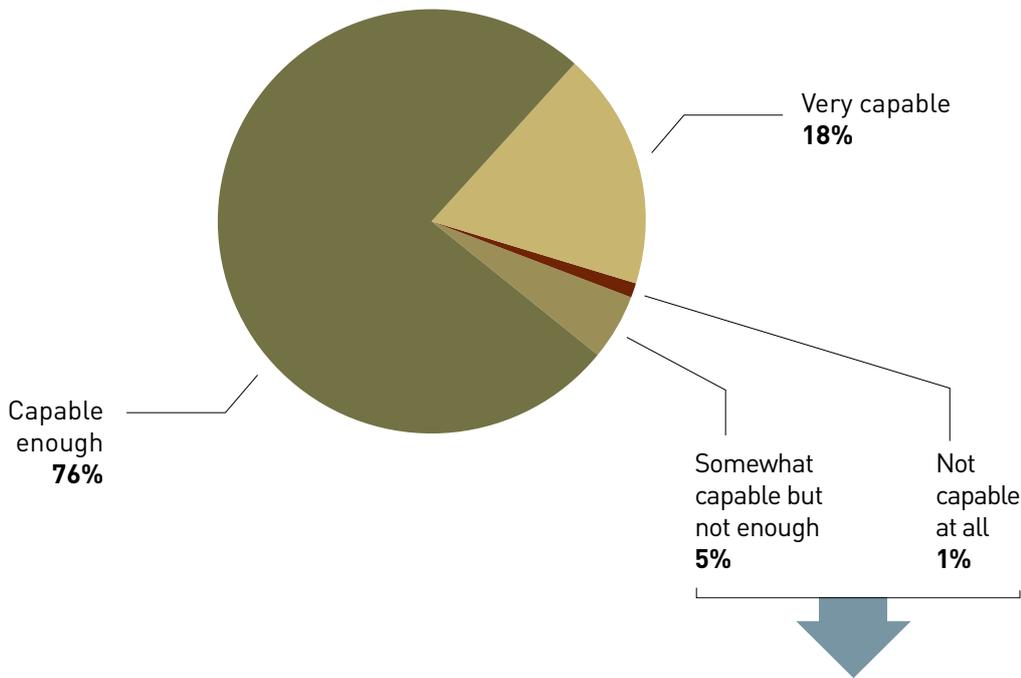
(n=61)

* Asked to respondents who said that their companies ever took an arrest



In your opinion, how capable is your larger union structure (district office, provincial office and national office) in supporting the union in your workplace when confronted with problems or cases?

(n=658)

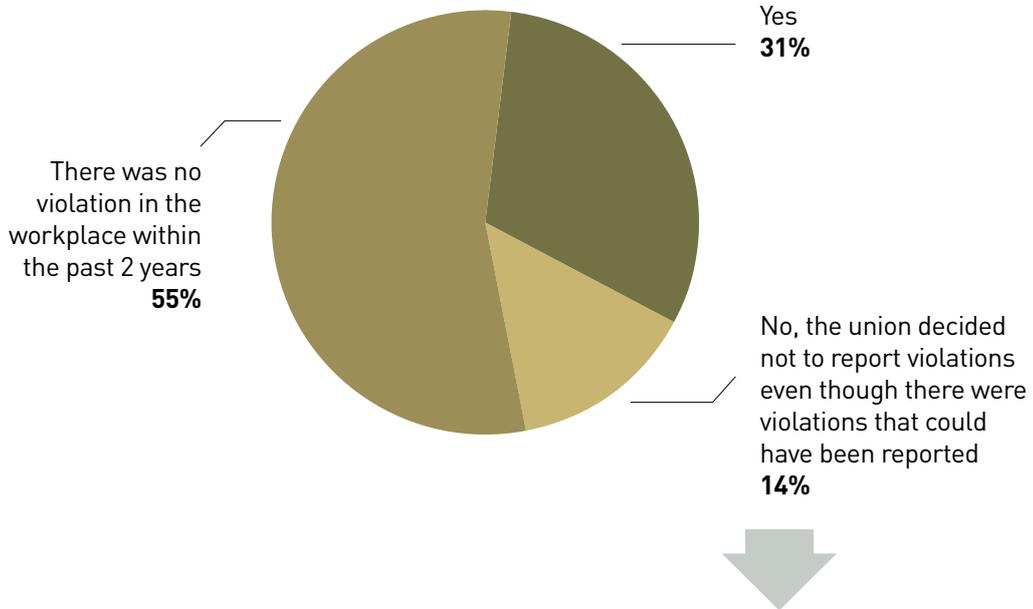


Why? (n=32)

Not responsive in solving the existing cases	59%
Because lot of cases sent to PHHI are loss in the court level	16%
The manpower resource is not well educated to do a higher job	9%
Result from a case is always not satisfying	9%
Because they can not be a representative in deciding the employment policy & law	6%

In the past 2 years, have there ever been any violations that the union reported to the Manpower office or to police?

(n=658)



Why did the union not report the violation?

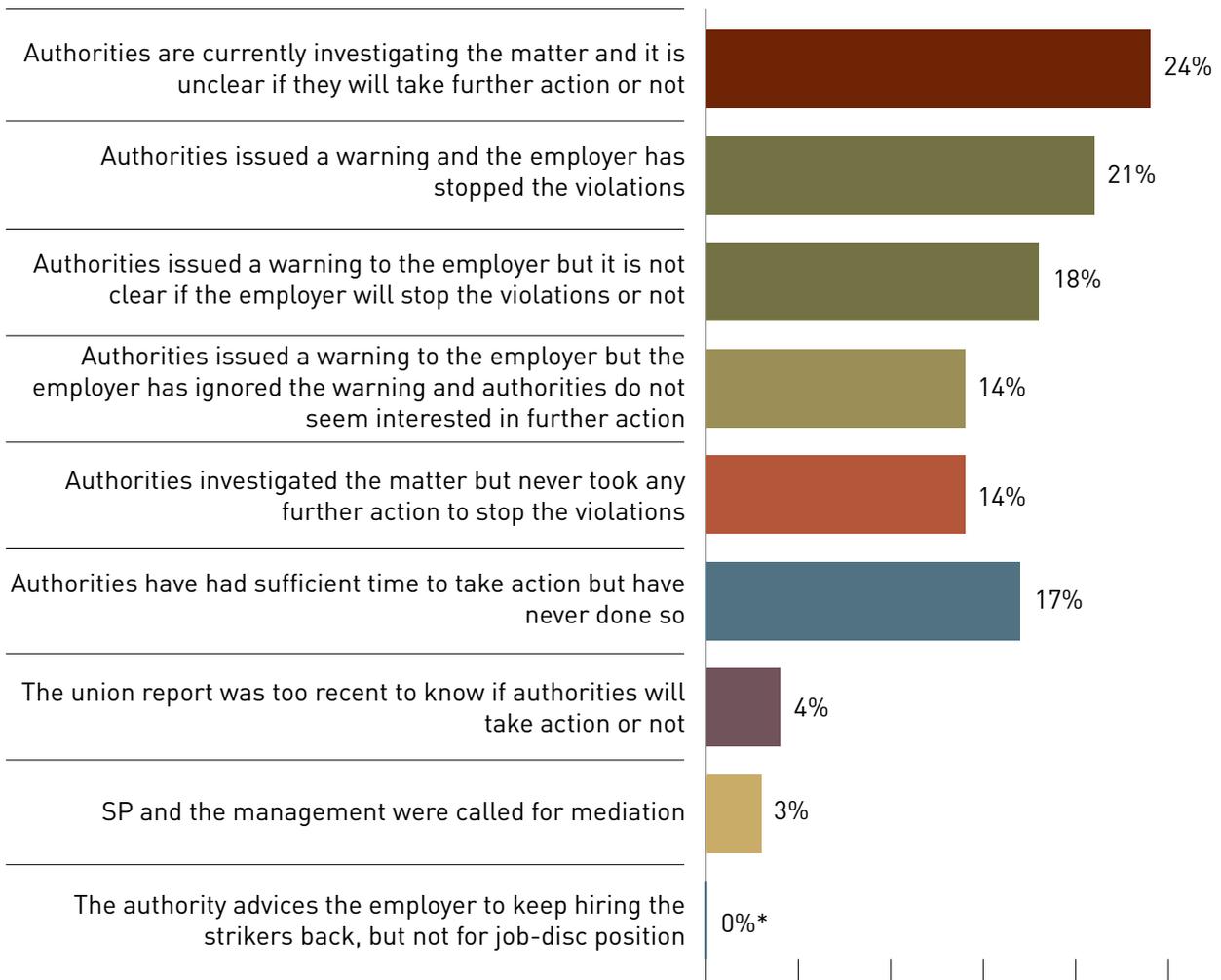
(n=91)

Because members were afraid of retaliation by the employer	13%
Because members believed the authorities would not do anything	25%
Because the violation was not very serious	27%
It is too far to go to the Manpower office just to report the case	1%
We did not have money to make report to the Manpower office	3%
The Union seems tolerant to the company, so that the case is solved through negotiation (musyawarah)	43
I don't know	2%

What was the response of the Manpower office or police to the union report(s) of violations?

(n=202)

*Asked to respondents who said their unions ever reported the violation to the authority

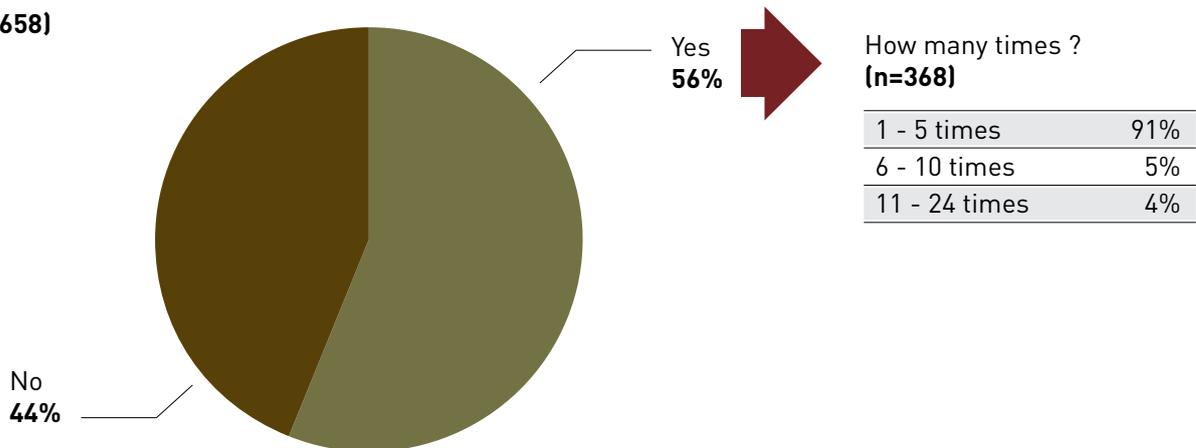


*=actual figure is less than 0.5%

A42

In the last 2 years, has a labor inspector visited to inspect your workplace?

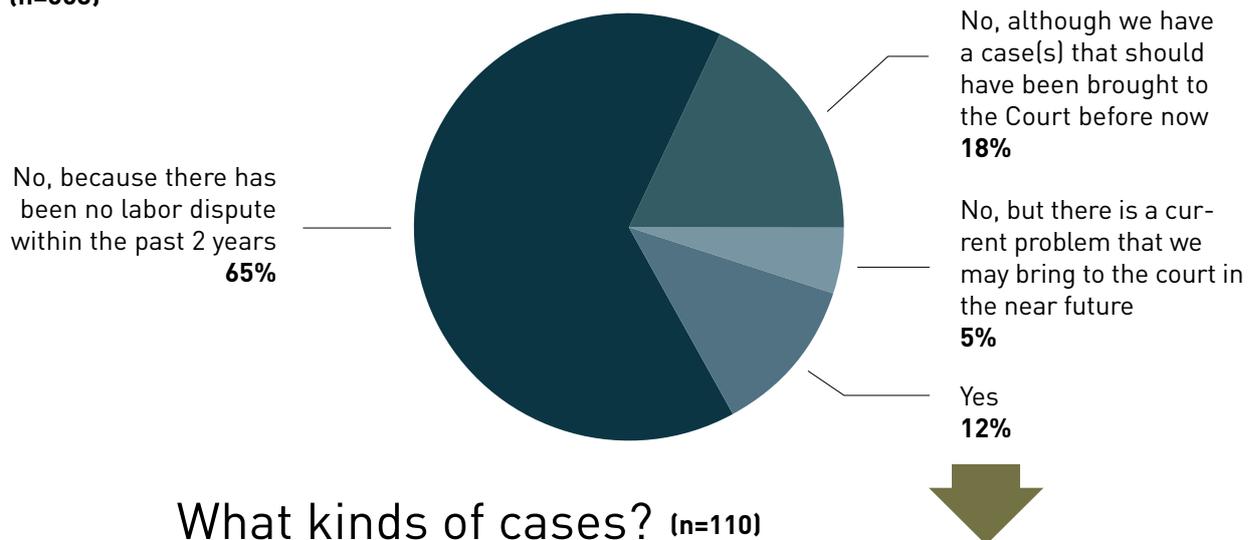
(n=658)



A43

Has your union brought a case to the Labor Court (PPHI) in the last 2 years?

(n=658)

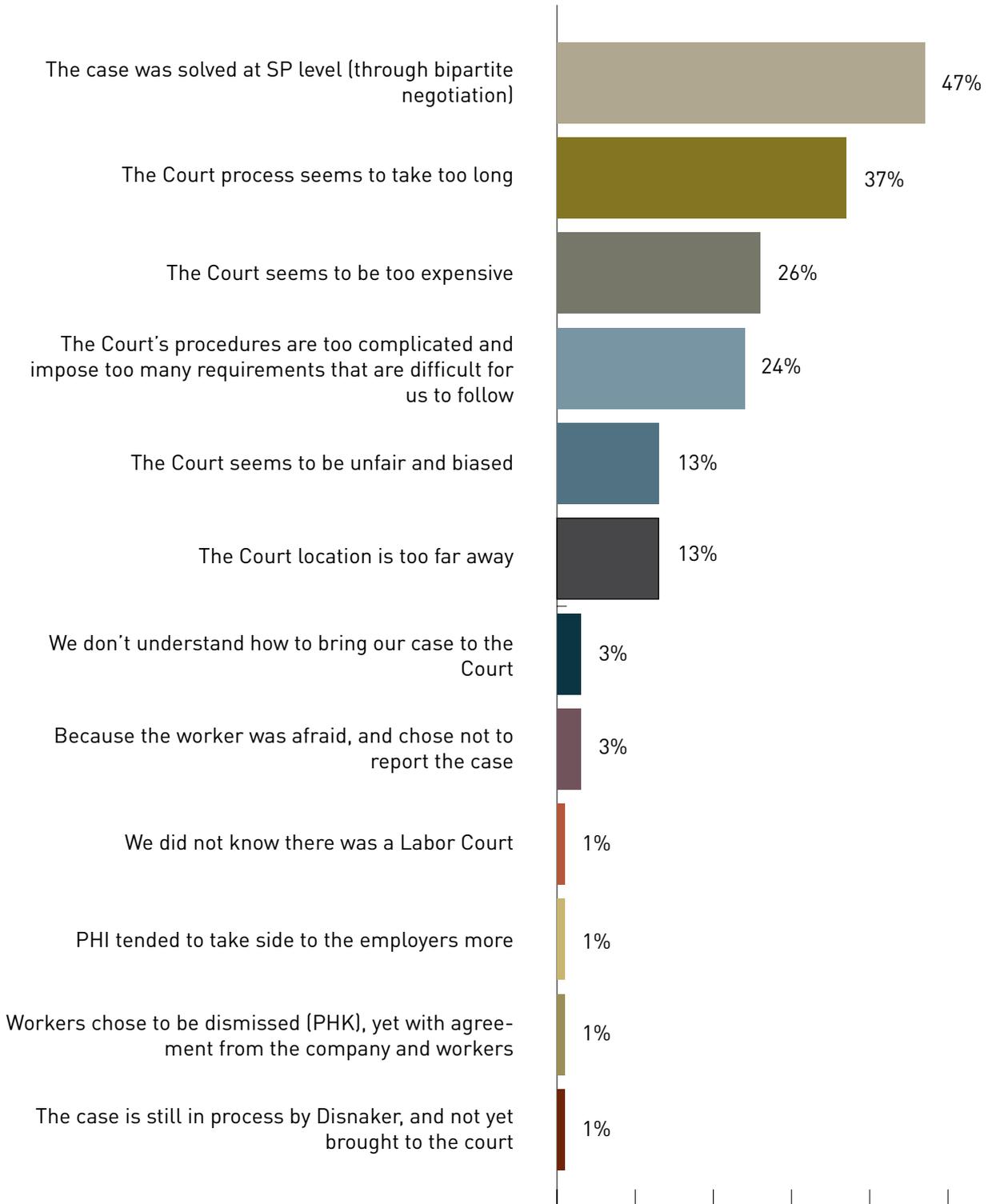


What kinds of cases? (n=110)

Unilateral dismissal of employees (PHK)	24%
Minimum wage case	20%
Contract violation case	19%
Freedom of association case	15%
Non-payment of wage case	12%
Discrimination case	11%
Separation payment for the dismissed workers is not as of the regulation	6%
Outsourcing case	5%
Indiscipline	4%
Early pension for workers who have not reached their pension age	2%
Employment prosperity issues	2%
Cheating and stealing cases	2%
Moving/mutation for worker	2%
Others (each less than 1 %)	14%

Why has the union not brought the case(s) to the Labor Court before now?

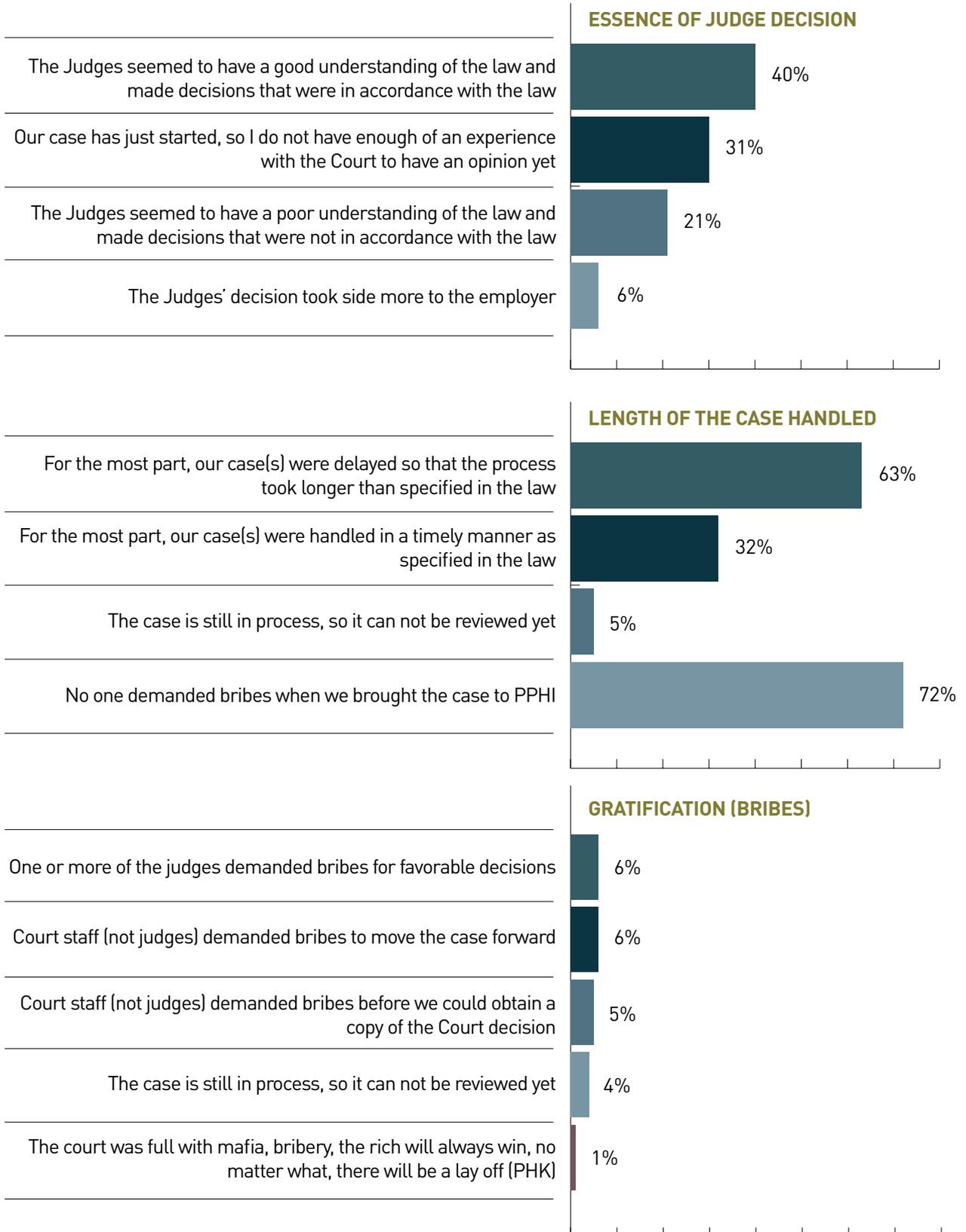
(n=119)



* Asked to respondents who said their Unions ever reported the case to PPHI

Experience and opinion toward the Labor Court (PPHI)

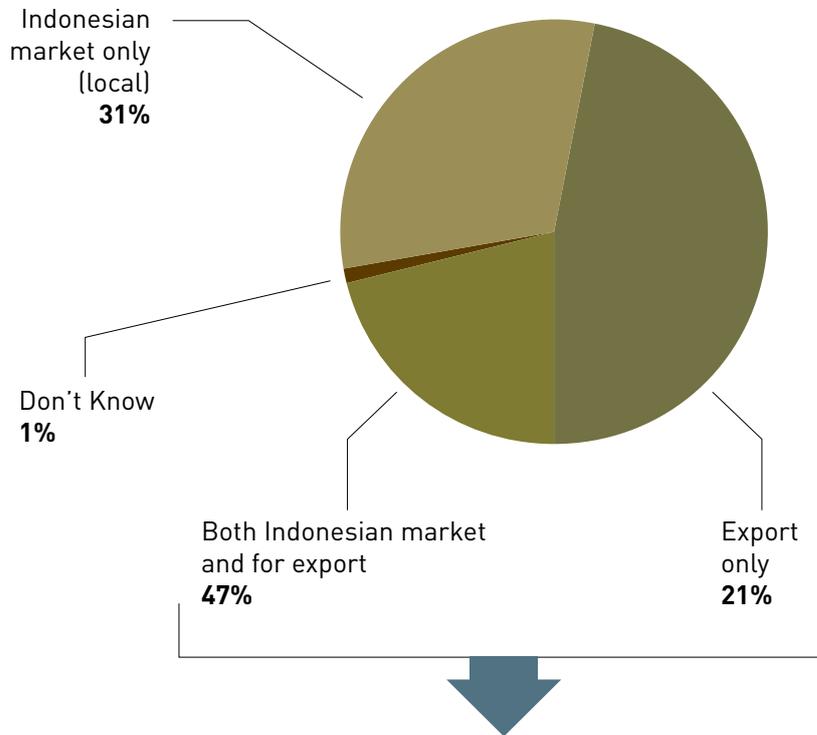
(n=78)



Is the company product for the Indonesian market or for export?

Base=544*

* Asked to respondents from non-service companies



Where to ?

n=371

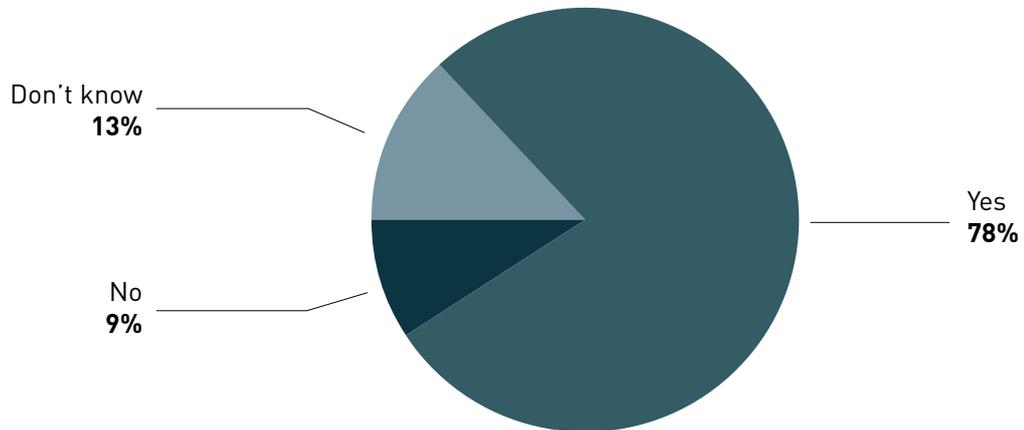
Europe	50%
United States	46%
Japan	42%
Singapore	15%
Malaysia	13%
Middle East	12%
China	9%
Australia	9%
Southeast Asia	9%
Thailand	9%

Korea	6%
Asia	5%
Vietnam	5%
Hongkong	5%
Taiwan	4%
Brazil	3%
Philippine	3%
Saudi Arabia	3%
Canada	3%
Others (each are less than 2%)	22%

A47

To your knowledge, is there a code of conduct in your company that has been required by one or more foreign brands that buy your products to be sold abroad?

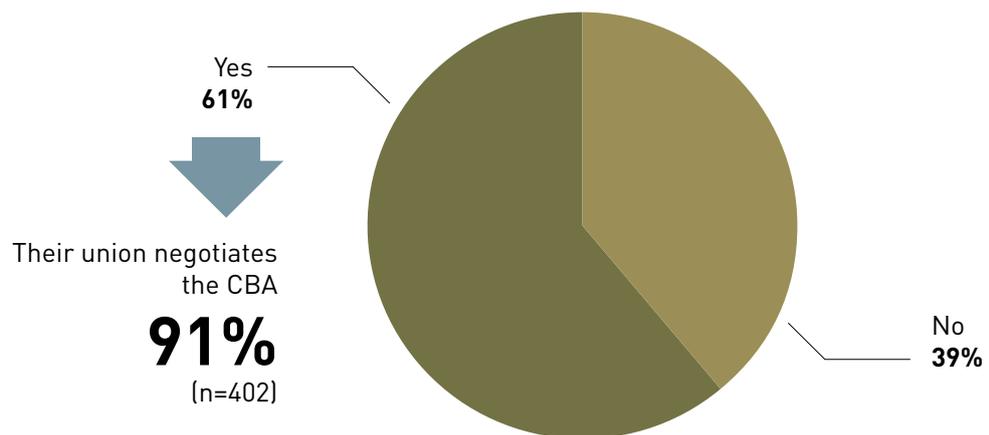
n=371



A48

Is there a Collective Bargaining Agreement (CBA) in effect at your workplace?

(n=658)





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