

Fact Sheet on the NIDERA Case (under the OECD Guiding Principles)

Two of our assigned readings for this Lesson focus on the NIDERA case, a case that began in June of 2011 when four “notifiers” (complaining parties) notified the Netherlands National Contact Point (NCP) of an alleged “specific instance” (more simply, a complaint) alleging that a multinational corporation, NIDERA, was operating in violation of the OECD Guidelines. The parties who filed the charges against the Dutch-based multi-national enterprise included Argentinian and Dutch human rights organizations. Their allegations charged that NIDERA, a global agricultural products corporation, had treated its migrant agricultural laborers in Argentina in violation of the OECD Guidelines.

Who is NIDERA?

At its website, NIDERA describes itself as “a global commodity service and solutions provider for agricultural markets.” It produces agricultural products that include corn, soy, and many other products. See www.NIDERA.com. Founded in 1920, and headquartered in Rotterdam, the Netherlands, NIDERA takes its name from an acronym describing the six countries where the firm was first active: Netherlands, East Indies, Deutschland, England, Russia, and Argentina. Today, NIDERA operates in over 20 countries, and it distributes products in over 60.

What is significant about the NIDERA case?

We examine the NIDERA case because it illustrates how the OECD Guidelines for Multinational Enterprises (MNEs) can affect the international human resource management practices of an MNE when, of course, the MNE agrees to participate in NCP-supervised mediation.

Before we jump in and review the assigned readings on the NIDERA case, what would be helpful to know?

To gain quicker comprehension of the NIDERA case, it helps to be familiar with the following OECD Guideline terms and one or two more particulars:

“Notification/Notifiers” – This is the OECD term for what might otherwise be called the “complaining party,” or the “allegor.”

The Particular **Notifiers** in the NIDERA case – These were four non-governmental organizations who joined in a single, lengthy, and apparently well documented notification, and they were: 1) the Argentinian-based Centro de Derechos Humanos y Ambiente (CEDHA) (Center for Human Rights and the Environment); 2) the Argentinian-based International Institute of Studies and Social Training of the South (Incasur); 3) the Dutch-based Stichting Onderzoek Multinationale Ondernemingen (SOMO) (Center for Research on Multinational Corporations); and 4) Oxfam Novib (Oxfam of the Netherlands).

“Specific instance” – This is the OECD term for a “case” brought under the OECD Guidelines. To boil the OECD procedures down to their essence, the “notifier” initiates a case under the Guidelines by filing its *notification* of a *specific instance*, a

document that details how the notifiers believe an MNE has allegedly failed to live up to the OECD Guidelines. Although we will not read the actual complaint filed against NIDERA, it is worth noting that it contained extensive and detailed allegations about working conditions that lacked safety and health, as well as sub-standard living quarters, eating areas, and sanitary facilities at NIDERA's Argentine corn-growing properties. NIDERA denied the allegations, and at the same time it agreed to engage in mediation, a process that ultimately produced a multi-page agreement committing NIDERA to detailed, publicly-promulgated due diligence and working conditions standards.

“National Contact Point” – Each government adhering to the OECD Guidelines appoints an authority (usually a group of public officials, but in some nations, a group that includes private individuals as well) to serve as the National Contact Point (NCP). The NCP is responsible for, among other things, receiving “specific instances” alleging that a multinational enterprise has operated in violation of the Guidelines. Upon receiving the specific instance, the NCP investigates to determine whether its allegations are credible enough to warrant the NCP's issuing an invitation to the multinational to enter into a process of NCP-supervised mediation. If the invitation is accepted, the NCP conducts a mediation to resolve the matter. That mediation may take different forms and protocols. Whatever may be the MNE's answer to the invitation to mediation, the NCP in all events issues a final report on the matter.

“CSR” - In the NIDERA readings, we see references to NIDERA's CSR policy. That stands for its Corporate Social Responsibility policy. Our next Lesson will examine such policies in greater detail, and the NIDERA CSR is among the first we meet close-up.

Corn de-tasseling – One of the particulars of the NIDERA case, corn de-tasseling is the type of work that the laborers in the NIDERA case performed (and still perform to this day). Those of us who grew up in corn-producing areas will know about this work already, but for our urban colleagues, here's the skinny: In the course of growing corn, there comes a time when de-tasseling is necessary to achieve the highest crop yield. Thus, at a critical time in the growth of the corn plant, a laborer must remove the “silk” (the “tassel”) at the top of the stalk. That promotes growth and productivity of the plant, and that's what the case means when it talks about the work of corn de-tasseling. It is intensive, highly seasonal, and difficult work.

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Miscellaneous Questions to Consider

We offer the following questions to stimulate your thinking.

Questions: the NIDERA Case:

By this point in your HR training and career, it is highly likely that you have read court, government agency, and/or arbitration decisions or case reports (below we'll refer to these as “traditional” case reports). Traditional case reports are typically the result of “hard” (adjudicatory) process, with subpoenas, witnesses, oaths, cross-examination, formal factual findings, transparent processes, etc. As you read the

NIDERA Final Report, please bear in mind that it is the result not of adjudication, but mediation..

1. How does the NIDERA Final Report differ from a traditional case report?
2. a) Does the Final Report in the NIDERA case contain as much fact-finding and adjudication as we typically see a traditional case report? b) For that matter, is the Final Report on the NIDERA matter as “backward-looking” as a traditional case report is? By backward-looking, we mean that hard law case reports typically begin, “here are the detailed allegations, here are our findings concerning whether the allegations are true, here are the norms that were or were not broken, here are the prescribed remedies,” etc.)? c) Is it possible that NIDERA representatives negotiated to have a hand in crafting the language of the Final Report?
3. How did the NIDERA Final Report handle the issue of confidentiality regarding things said and done in the mediation process? Do you regard this as a positive or negative aspect of the OECD process?
4. Presumably, NIDERA was motivated to enter into mediation with its reputational interests in mind (perhaps especially its reputation in the eyes of the government of its headquarters country, the Netherlands). Based on your reading of NIDERA Final Report, do you think NIDERA negotiators did a good or bad job of defending NIDERA’s reputational interests?
5. Did you notice which corporate officers/officials composed the team of NIDERA’s lead negotiators? Given the substance of the allegations and the details of the ultimate “Agreement” (a non-required reading) that was reached, what role, do you suppose, might NIDERA’s HR representatives have played? (you might want to consider that role from the perspective of both IHRM reps in Rotterdam and in-country HR reps in Argentina.)
6. Suppose you had been in NIDERA’s IHRM Department when the Netherlands NCP first notified NIDERA that the NCP was inviting NIDERA to participate in mediation regarding the notifiers’ allegations regarding a “specific instance”. What considerations would argue in favor of, or against, your recommending the CEO of NIDERA to participate in mediation?
 - The credibility of the allegers and their allegations?
 - The accuracy of the allegations?
 - The seriousness of the allegations?
 - What would be the likely cost of remediating the complained-of conditions to the likely satisfaction of the allegers/notifiers?
 - Whether your firm’s (or its subsidiary’s) conduct violated your own code of conduct?
 - Whether your acceptance/rejection of mediation might affect the attitude of your headquarters country government (the Netherlands) toward your firm in other matters pending or likely to arise between your firm and that government?
 - Whether your acceptance/rejection of mediation might affect the attitude of the Argentinian government toward your firm in other matters pending or likely to arise between your firm and that government?
 - Whether your acceptance/rejection of mediation might affect the attitude of the Argentinian government toward your firm in the matters described in the notification of specific instance?
 - Whether the “notifiers” included a worldwide trade union group?
 - Whether the “notifiers” included an Argentinian trade union likely to be interested in organizing and representing your employees in collective bargaining?

- Other factors you can identify and discuss?
7. When we look at all OECD “specific instances” worldwide, the data are clear: when National Contact Points inform a multinational enterprise that the NCP has received a notification of the MNE’s possible violations of the OECD Guidelines, and that that the NCP wishes to invite the MNE into mediation over the specific instance, most MNE’s decline the NCP’s invitation to engage in mediation. Now that we have read the NIDERA case -- an OECD case that travelled the full distance through mediation to issuance of a final NCP report and even follow-up visits by the notifiers -- what do you suppose accounts for the decisions of so many MNE’s to refuse to engage in mediation under the OECD Guidelines altogether?
 8. If you served as a country’s NCP, can you think of ways you could increase the likelihood that MNE’s would participate in mediation using your good offices?

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