

## Refugee Review Tribunal

### AUSTRALIA

#### RRT RESEARCH RESPONSE

**Research Response Number:** THA17611  
**Country:** Thailand  
**Date:** 13 October 2005

Keywords: Thailand – Industrial relations law – Workers’ rights – Trade unions – Worker organisations

This response was prepared by the Country Research Section of the Refugee Review Tribunal (RRT) after researching publicly accessible information currently available to the RRT within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum.

---

#### Questions

- 1. Please provide information about Thai industrial relations law and protections available to industrial workers and union support.**
- 2. Please provide information on trade unions and other workers' associations.**

#### RESPONSE

- 1. Please provide information about Thai industrial relations law and protections available to industrial workers and union support.**

According to the sources consulted, the following legislative instruments govern labour issues in Thailand:

1. Labour Protection Act B.E. 2541 (1998)
2. Labour Relations Act B.E. 2518 (A.D. 1975).
3. The Act Establishing the Labour Court and Labour Court Procedure B.E. 2522 (A..D. 1979).
4. Provident Fund Act B.E. 2530 (A.D. 1987).
5. Social Security Act B.E. 2533 (A.D. 1900).
6. Workmen’s Compensation Act B.E. 2537 (A.D. 1994).
7. Thai Civil and Commercial Code (‘Labor Laws’ 2005, Help Line Law website <http://www.helplinelaw.com/law/thailand/labour/labour.php> - Accessed 11 October 2005 – Attachment 1).

The Labour Protection Act is the principle instrument which sets out “working rules and regulations” and the “rights and duties of employers and employees” (‘Labor Laws’ 2005, Help Line Law website <http://www.helplinelaw.com/law/thailand/labour/labour.php> - Accessed 11 October 2005 – Attachment 1; ‘Rights and duties of employers and employees under the new Labour Protection Act B.E.2541’ 2005, Thai Labour Campaign website

<http://www.thailabour.org/law/thai/code.html> - Accessed 13 October 2005 – Attachment 2).

According to the Thai Labour Campaign website, the Act governs the following:

- Working Hours
- Rest Periods
- Holidays
- Sick Leave
- Maternity Leave
- Sterilization Leave
- Personal Business Leave
- Military Service Leave
- Training Leave
- Basic Pay
- Overtime Work and Holiday Work
- Overtime Pay, Holiday Pay and Holiday Overtime Pay
- Welfare
- Severance Pay
- Severance Pay Exemptions
- Female Labour
- Child Labour
- Work Documents
- Control
- Submission of Complaints
- Penalties

The precise conditions are outlined in Attachment 2 ('Rights and duties of employers and employees under the new Labour Protection Act B.E.2541' 2005, Thai Labour Campaign website <http://www.thailabour.org/law/thai/code.html> - Accessed 13 October 2005 – Attachment 2).

According to the sources consulted, the Labour Relations Act also

provides that employees may form labor unions to protect their employment benefits and/or interests and to promote good relations between the employer and employees, as well as among the employees themselves so long as it does not constitute threat to the national security.

Labor unions must be registered with the Registrar of the Department of Labor Protection and Welfare and start their operation upon the issuance of a license...

Persons having the following qualification can form the labor union.

1. Must be Thai nationals employed by the same employer or engaged in the same type of activity in the same province and
2. must be 20 years of age or over
3. the Labor Union must have at least ten promoters ('Labor Laws' 2005, Help Line Law website <http://www.helpline-law.com/law/thailand/labour/labour.php> - Accessed 11 October 2005 – Attachment 1).

The latest US Department of State report on human rights practices in Thailand for 2004 provides comprehensive advice on the subject of "Worker Rights". Relevant excerpts follow in detail:

#### Section 6 Worker Rights

#### a. The Right of Association

The law allows all private sector workers to form and join trade unions of their choosing without prior authorization; however, the law provides inadequate protection of workers who participate in union activities. Union leaders and academic observers reported that employers often discriminated against workers seeking to organize unions. During the year, employers used loopholes in the Labor Relations Act to fire union leaders prior to government certification of unions. Trade union leaders can be dismissed for any reason, provided severance payment is made. In such circumstances, the law does not provide for reinstatement. In cases where the labor court finds that dismissal was for union activity and was illegal, reinstatement is provided for, but there are no punitive sanctions for employers.

Union officials must be full-time employees of the enterprise. This prohibition against permanent union staff limited the ability of unions to organize and be politically active. The Labor Relations Act also allows only two outside government-licensed advisors to a union. Union leaders and outside observers complained this restriction interfered with the ability to train union members and develop expertise in collective bargaining.

Less than 4 percent of the total work force but nearly 11 percent of industrial workers and over 50 percent of state enterprise workers were unionized. Cultural traditions, unfamiliarity with the concept of industrial relations, efforts by the Government to diminish union cohesiveness, and the sizeable agricultural and informal sectors (where unions are not permitted) were cited as reasons for low rates of labor organization.

State enterprise employees can join organizations of workers in the private sector, but only at the level of confederations. This restriction effectively divided the trade union movement along public and private sector lines. However, unofficial contacts at the union level between public and private sector workers continued, and the Government did not interfere with these relationships.

Some corrupt private sector union leaders were exploited by politicians or employers, but public unions generally operated independently of the Government and other organizations. Internal conflicts, corruption, and a lack of leadership weakened the labor movement.

#### b. The Right to Organize and Bargain Collectively

The law provides for the right of citizen private-sector workers to organize and bargain collectively; however, the Government's efforts to protect this right were weak. The Labor Relations Act defines the mechanisms for collective bargaining and for government-assisted conciliation and arbitration in cases under dispute. In practice, genuine collective bargaining occurred only in a small fraction of workplaces, and, in most instances, it continued to be characterized by a lack of sophistication on the part of worker groups and autocratic attitudes on the part of employers. Wage increases for most workers came as a result of increases in the minimum wage rather than as a result of collective bargaining. The process of setting minimum wages locally through provincial tripartite committees may further limit union influence; many of these provincial committees excluded labor representatives and placed factory managers on the wage committees to represent worker interests. The minimum wage increase in the year did not keep pace with inflation. The Government sets wages for both civil servants and state enterprise employees under the State Enterprise Labor Relations Act (SELRA) (see Section 6.e.).

The Government has the authority to restrict private sector strikes that would affect national security or cause severe negative repercussions for the population at large; however, it seldom invoked this provision and did not do so during the year. Labor law also forbids strikes in "essential services," which is defined much more broadly than in the International Labor Organization (ILO) criteria, and includes sectors such as telecommunications, electricity, water supply, and public transportation as essential services. The law also prohibits termination of employment of legal strikers;

however, some employers used unfavorable work assignments and reductions in work hours and bonuses to punish strikers. Employers are legally permitted to hire workers to replace strikers. SELRA provides public sector employees in state enterprises the same rights to organize as exist in the private sector. SELRA prohibits lockouts by employers and strikes by state enterprise workers. Ongoing antiprivatization protests by state enterprise employees of the Electrical Generating Authority of Thailand were undermined by management threats of demotions and undesirable work assignments against some workers who assembled outside of work hours. Strike action in the private sector was constrained by the legal requirement to call a general meeting of trade union members and to have a strike approved by 50 percent of unionists. During the year, there was 1 legal strike involving 1,700 workers, and there were 4 lockouts involving 1,876 workers.

The law prohibits antiunion actions by employers; however, it also requires that union committee members be full-time employees of the company, which makes them vulnerable to employers seeking to discipline workers who serve as union officials or who attempt to form unions.

A system of labor courts exercises judicial review over most aspects of labor law for the private sector. Workers also may seek redress for grievances through the Tripartite Labor Relations Committee. The law authorizes the Ministry of Labor to refer any private sector labor dispute for compulsory arbitration by a government-appointed group other than the Labor Relations Committee. Although the legal authority seldom was used, the ILO viewed this provision as acceptable only in defined essential services. Redress of grievances for state enterprise workers is handled by the State Enterprise Relations Committee. Labor leaders generally were satisfied with the treatment that their concerns received in these forums, although they complained that union leaders unjustly dismissed were awarded only back wages with no punitive sanctions against the employer. This limited any disincentive for employers to fire union organizers and activists.

There are no special laws or exemptions from regular labor laws in export processing zones (EPZs), in which wages and working conditions often were better than national norms because of the preponderance of foreign-based multinational firms. However, union leaders alleged that employers' associations were organized to cooperate in discouraging union organization. Unions existed in the automobile and petroleum production facilities located in EPZs.

Noncitizen migrant workers, whether registered or illegally present, did not have the right to form unions or serve as union officials; however, registered migrants may be members of unions organized and led by citizens. From July through September, the Ministry of Labor offered a registration program for foreign workers residing illegally in the country, most of whom were from Burma. Few, if any, of the 1.2 million migrants who registered joined unions.

Attempts by registered migrant factory workers in factories to carry out work stoppages to demand minimum and back wages led to mass deportations, resulting from apparent collusion between factory owners and local government immigration officials.

#### c. Prohibition of Forced or Compulsory Labor

The Constitution prohibits forced or compulsory labor, including by children, except in the case of national emergency, war, or martial law; however, the Government was unable to enforce these provisions effectively in the large informal sector. During the year, there were reports of sweatshops in which employers prevented workers, primarily foreign migrants, from leaving the premises...

#### e. Acceptable Conditions of Work

The minimum wage ranged from \$3.33 to \$4.23 (133 baht to 169 baht) per day, depending on the cost of living in various provinces. The minimum wage was set by provincial committees that sometimes included only employer representatives. This wage was not adequate to provide a decent standard of living for a worker and family.

With extended family members' financial contributions, the minimum wage provided the basis for a marginally adequate overall standard of living. The official poverty rate was 78 cents (31 baht) per day, which permitted survival only in areas where subsistence agriculture was possible. The Ministry of Labor is responsible for ensuring that employers adhere to minimum wage requirements (applicable to the formal sector); however, nationwide, academics estimated one-third of formal sector workers received less than the minimum wage, especially those in rural provinces. Despite encouragement of employees to report violations to labor inspectors, the enforcement of minimum wage laws was mixed. Many labor laws, including the minimum wage law, do not apply to undocumented workers, primarily hill tribe members and illegal aliens. An estimated 1 to 2 million unskilled and semiskilled migrant workers worked for wages that were approximately one-half the minimum wage.

The Government mandated a uniform workweek of 48 hours, with a limit on overtime of 35 hours per week. Employees engaged in "dangerous" work, such as in the chemical, mining, or other industries involving heavy machinery, legally may work a maximum of 35 hours per week and are not permitted overtime. The petrochemical industry is excluded from these regulations.

Working conditions varied widely... In medium-sized and large factories, government health and safety standards often were applied, but enforcement of safety standards was lax. In the large informal sector, health and safety protections were substandard.

Provisions of the Labor Protection Act include expanded protection for pregnant workers by prohibiting them from working on night shifts, overtime, holidays, or working with dangerous machinery or on boats. Employers of migrant women often fired workers who became pregnant.

The Ministry of Labor promulgates health and safety regulations regarding conditions of work; however, the inspection department enforced these standards ineffectively, due to a lack of human and financial resources. There is no law affording job protection to employees who remove themselves from dangerous work situations. Redress for workers injured in industrial accidents was rarely timely or sufficient. Few court decisions were handed down against management or owners involved in workplace disasters (US Department of State 2005, *Thailand: Country Reports on Human Rights Practices for 2004*, 28 February – Attachment 3).

## **2. Please provide information on trade unions and other workers' associations.**

The Thai Labour Campaign website indicates that there are nine Labour Congresses and ten Labour Federations organized by industry in Thailand. The nine Labour Congresses are:

- Confederation of Thai Labour
- Labour Congress Center for Labour Unions of Thailand
- Labour Congress of Thailand
- National Congress of Private Employees of Thailand
- National Congress of Thai Labour
- National Free Labour Union Congress
- National Labour Congress

- Thai Trade Union Congress
- Thailand Council of Industrial Labour ('Labour Congresses' Undated, Thai Labour Campaign website <http://www.thailabour.org/orgs/congress/index.html> - Accessed 13 October 2005 – Attachment 4).

The ten Labour Federations are:

- Federation of Bank and Financial Workers' Unions of Thailand
- Federation of Thailand Siam Motors Automobile Industry Workers' Union
- Paper and Printing Federation of Thailand
- Petroleum and Chemical Workers' Federation of Thailand
- Petroleum of Thailand Federation
- Textile, Garment and Leather Workers' Federation of Thailand
- Thai Automobile Workers' Federation
- Thailand Electrical Appliance Workers' Federation
- Thailand Metal Workers' Federation
- Transport Workers' Federation of Thailand ('Labour Federations' Undated, Thai Labour Campaign website <http://www.thailabour.org/orgs/federation/index.htm> - Accessed 13 October 2005 – Attachment 5).

The website of the Asia Monitor Resource Center, an independent non-government organization (NGO) which focuses on Asian labour concerns, provides the following list of “typical situations that courageous Thai workers frequently face when attempting to organise a union”:

- The Hong Kong-based May Choeng Toy Products company owns Master Toy Company in Thailand, which produces Maisto brand toys. In December 2000 Master Toy dismissed 173 workers because they were members of a union. The workers protested for half a year before achieving justice.
- On 1 March 2001 over 50 union members and union committee members of Alpha Spinning were set upon by a group of hooligans who attacked them in front of the factory gate after the company refused to let the workers implement their right to work; the attack resulted in serious injury to one committee member. Some of the workers managed to run away and call the Emergency Police Line '191'. The police arrive and injured workers were sent to hospital.

Appalled by this illegal company activity, the union made an official statement: “The workers realise that we have let the employer exploit us for a long time. So we decided to organise a workers’ union and present our demands according to the union’s right to collective bargaining. Instead of following the collective bargaining process and negotiating with the union representatives, the employer used the local mafia and their contacts with local police to beat us up and then arrest us.”

- The local mafia who had beaten the workers also reported their case to the police claiming that the workers had beaten them up! “As a result, four union committee members (one man and three women who have been beaten up, including the union chairwoman) were jailed for one night before an officer from Samut Prakarn Labour Office bailed them out around noon. One worker was badly injured when she was hit on the head with a wooden table. Her skull was depressed three centimetres and the doctor who examined her said that there may be possible brain damage. She was one of the workers who was charged by the police and was under police surveillance while she was in the hospital.”
- 45 core leaders of Almond Company (Jewelry) workers were dismissed in early January 2001 because of their struggle for union rights. The workers and the union struggled for union recognition and reinstatement, it took them a year to win recognition from management.
- Nine union committee and 13 union members working at the Diamond Cliff Hotel, which is situated on the most famous tourist beach in Phuket, were dismissed only days after they held their general congress at two o'clock on the morning of 19 June 2003. The employer Phatanapong Ekwanich is the president of the Phuket Tourism Association, who stated in a letter published in the Phuket Chamber of Commerce magazine (January 2003 edition), “Today the majority of service operators are frightened by the attitude of their employees due to the continual union organising.” The letter ended, “Founding of new unions should be delayed for a while as a precaution measure against any possible problems that might affect the future of Phuket tourism business.”  
(Yimprasert, J. 2003, ‘Capitalists’ Union Busting: Thailand’s Lessons Learned’, Asia Monitor Resource Center website, July <http://www.amrc.org.hk/4805.htm> - Accessed 13 October 2005 – Attachment 6).

In a submission to the Joint Standing Committee on Treaties regarding the Australia-Thailand Free Trade Agreement, the Australian Council of Trade Unions indicates that Thailand had a “poor record on labour issues” (Australian Council of Trade Unions 2004, *ACTU Submission to the Joint Standing Committee on Treaties regarding the Australia-Thailand Free Trade Agreement*, 17 June

<http://www.aph.gov.au/house/committee/jsct/12may2004/subs/SUB009.pdf> - Accessed 13 October 2005 – Attachment 7).

Attached with the ACTU’s submission is a report by the International Confederation of Free Trade Unions on labour standards in Thailand. That report states as follows:

Thailand has ratified only four of the eight core ILO labour Conventions...

Thailand has ratified neither the ILO core Convention on the Right to Organise and Collective Bargaining nor that on Freedom of Association and Protection of the Right to Organise. There is insufficient protection against anti-union discrimination. The right to strike and the right to collective bargaining are severely restricted, in particular for public sector workers...

Less than 2 percent of the total work force are unionised, although this accounts for nearly 11 percent and over 50 percent of state enterprise workers. The majority of total employment is in the agricultural and informal economy...

The 197 Labour Relations Act recognizes the right of private sector workers to organize and bargain collectively, and prohibits anti-union discrimination by employers. Ten workers in the same factory or industry can apply to form a union, which must be registered with the Ministry of Labour and Social Welfare (MOLSW).

Workers can be legally fired for any reason provided they receive severance pay, even if they are union leaders, a provision which can easily be abused. Members of the bilateral Worker-Employer Welfare Committees are protected from dismissal under the 1998 Labour Protection Act, but even in such cases reinstatement for unfair dismissals is a very lengthy process...

Private sector workers have the right to strike but the government may restrict strikes that would "affect national security or cause severe negative repercussions for the population at large"...

Employees of state enterprises regained the right to form trade unions and bargain collectively when an amended State Enterprise Labour Relations Act (SELRA) came into force in April 2000... Under the SELRA, there is a restriction on affiliation between state enterprise unions and private labour congresses or federations. The SELRA prohibits strikes and lockouts within state enterprises. Labour law forbids strikes in "essential services", which it defines in broader terms than the ILO's internationally-recognised definition...

Civil servants are excluded from the SELRA or the Labour Relations Act, and there are government regulations prohibiting them from forming unions. There is not protection for the right of civil servants to strike.

Unions in Thailand report that employers frequently dismiss workers who try to form trade unions. In some cases, they are dismissed while awaiting registration, while in others they are dismissed ostensibly for non-union reasons invented by the employer. Thai law does not provide for punitive damages in cases of wrongful dismissal.

For example, the management of Gina Form Bra Company Ltd. Has been harassing and intimidating union members since it was taken over by a new owner in 2001. Actions have varied from threats to call in the police to stop the union from collecting union dues; not paying damages to 24 workers that had been laid off in August 2001; the dismissal of new Welfare Committee members and a union member after elections; violence against the former union treasurer; and the forced signing of blank pieces of paper which were later presented as an agreement between employer and workers, containing provisions below the existing benefits.

Another example is the Auto Alliance, a joint venture uniting Ford Motor Co. and Mazda Motor Corp., which suspended four unions leaders for allegedly instigating a refusal of overtime on the part of the workers. Three were then fired outright and the case of the fourth (who could not be fired immediately because he was a member of a legally mandated committee) was pending before the Thai labour authorities. After strong protests by the International Metalworkers' Federation (IMF) and its affiliates, an agreement was reached for the reinstatement of the workers.

At the Light House production plant (...), in October 2001 600 workers were dismissed (out of a total workforce of 1,400). The majority of these were women with more than 10 years of experience with the company. Overtime benefits were cut and wages slashed by 25% to \$3.60 per day for the remaining workforce, despite a dramatic increase in their workload. Large-scale protests ensued in Bangkok, culminating in 200 protesting workers from the Light House Labour Union presenting a letter written in their own blood to the Thai parliament. In June 2002, 20 elected union representatives at Light House were dismissed, and when 849 workers stopped working to protest. All were immediately dismissed. 200 workers were taken back on new contracts on July 12, following a further walkout, but many others, mostly women, are still waiting to be reinstated

(International Confederation of Free Trade Unions 2003, Internationally Recognised Core Labour Standards in Thailand: Report for the WTO General Council Review of the Trade

Policies of Thailand, 12 & 14 November. Reproduced in: Australian Council of Trade Unions 2004, *ACTU Submission to the Joint Standing Committee on Treaties regarding the Australia-Thailand Free Trade Agreement*, 17 June  
<http://www.aph.gov.au/house/committee/jsct/12may2004/subs/SUB009.pdf> - Accessed 13 October 2005 – Attachment 7).

## List of Sources Consulted

### Internet Sources:

Google search engine

UNHCR      *REFWORLD*      UNHCR Refugee Information Online

### Databases:

Public	<i>FACTIVA</i>	Reuters Business Briefing
DIMIA	<i>BACIS</i>	Country Information
	<i>REFINFO</i>	IRBDC Research Responses (Canada)
RRT	<i>ISYS</i>	RRT Country Research database, including Amnesty International, Human Rights Watch, US Department of State <i>Country Reports on Human Rights Practices</i> .
RRT Library	<i>FIRST</i>	RRT Library Catalogue

## List of Attachments

1. 'Labor Laws' 2005, Help Line Law website.  
(<http://www.helplinelaw.com/law/thailand/labour/labour.php> - Accessed 11 October 2005)
2. 'Rights and duties of employers and employees under the new Labour Protection Act B.E.2541' 2005, Thai Labour Campaign website.  
(<http://www.thailabour.org/law/thai/code.html> - Accessed 13 October 2005)
3. US Department of State 2005, *Thailand: Country Reports on Human Rights Practices for 2004*, 28 February.
4. 'Labour Congresses' Undated, Thai Labour Campaign website.  
(<http://www.thailabour.org/orgs/congress/index.html> - Accessed 13 October 2005)
5. 'Labour Federations' Undated, Thai Labour Campaign website.  
(<http://www.thailabour.org/orgs/federation/index.html> - Accessed 13 October 2005)
6. Yimprasert, J. 2003, 'Capitalists' Union Busting: Thailand's Lessons Learned', Asia Monitor Resource Center website, July. (<http://www.amrc.org.hk/4805.htm> - Accessed 13 October 2005)
7. Australian Council of Trade Unions 2004, *ACTU Submission to the Joint Standing Committee on Treaties regarding the Australia-Thailand Free Trade Agreement*, 17 June.  
(<http://www.aph.gov.au/house/committee/jsct/12may2004/subs/SUB009.pdf> - Accessed 13 October 2005)