

**FINAL REPORT  
INDEPENDENT INVESTIGATION**

**REGARDING THE PROCESS OF COLLECTIVE TERMINATIONS AFFECTING  
190 WORKERS AT HIALPESA S.A.  
LIMA, PERU**

**FOR  
THE FAIR LABOR ASSOCIATION**

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## I. Context and scope of investigation

On June 11, 2019 the union *Sindicato de Trabajadores de la Hilandería de Algodón Peruano S.A.*, henceforth “the Union”, filed a Third Party Complaint with the Fair Labor Association (FLA) against the factory *Hilandería de Algodón Peruano S.A.*, henceforth “HIALPESA” or “the Factory”, regarding the suspension of employment contracts of 190 workers from the spinning and knitting areas, within the framework of a collective termination process before the Administrative Labor Authority, henceforth “AAT” (for its acronym in Spanish), requesting that the FLA investigate allegations regarding noncompliance with the FLA Workplace Code of Conduct and Compliance Benchmarks relating to the suspensions. The factory is located in the San Juan Lurigacho District in Lima, Peru. The participating companies affiliated with the FLA that source from HIALPESA are 47 Brand LLC and Burton Snowboards.

The principal allegation made by the Union is that HIALPESA management implemented the suspension of the aforementioned employment contracts without prior authorization from the Peruvian Ministry of Labor, as required by law, and that as of the date of the suspension, affected workers were denied entrance into the plant by HIALPESA. In addition, the Union alleged that HIALPESA did not pay workers the bonus to which they are entitled according to Peruvian law. The Union alleged further that the real reason for the collective terminations is to interfere with the exercise of their right to freedom of association, since 95 of the 190 affected workers (50% of the total) are affiliated with the Union, and eight of them are union officers. These 95 unionized workers represent 65% of the union's total membership.

HIALPESA Factory management denied that the employment contract suspensions were illegal or that it had an antiunion motivation, stating that the employment contract suspensions affect all workers in the spinning and knitting areas, and these areas are no longer operating.

The FLA accepted the Complaint and subsequently requested an independent investigation to be undertaken by the author of this report, which contains the results of the investigation. The primary purposes of the investigation were to:

1. Determine whether HIALPESA complied with its own regulations and with the FLA Workplace Code of Conduct and Compliance Benchmarks with regard to the decision to reduce employment in the spinning and knitting areas through the actions mentioned above.
2. Review the cases of the 190 workers whose contracts were suspended on June 5 and evaluate whether any violations of the applicable laws and/or related FLA Workplace Code of Conduct and Compliance Benchmarks occurred. Additionally, investigate and document any relevant evidence relating to the relationship between Factory management and the Union before the suspension of the 190 workers from the business units of the factory.
3. Analyze, with regard to the above, whether there is any evidence of antiunion discrimination regarding the decision by HIALPESA to suspend the contracts of the 190 workers, of which -- as mentioned above -- 95 were union members and eight were union officers.
4. Determine whether HIALPESA paid the bonus benefit to the 190 workers terminated on June 5 and confirm whether this payment corresponded to the requirements of Peruvian law.
5. Clarify the status of any procedure initiated with the National Labor Inspection Superintendence (SUNAFIL) regarding this case.
6. Include any additional non-compliance issues identified by the investigator, including those resulting from document review, meetings/interviews with HIALPESA management and with union members/union officers, and during the course of the visit to the facility.

## II. Investigation methodology

Between August 12 and 16, 2019 the investigator traveled to Lima, Republic of Peru. During three days the investigator visited the factory to conduct interviews with HIALPESA management, active Union members and affiliated and non-affiliated workers; in addition, during the stay in Lima, the investigator visited the *Federación de Trabajadores Textiles del Perú* (FNTTP) and interviewed Federation and Union officers, as well as union-affiliated workers affected by the layoffs. Furthermore, an interview was conducted with the Regional Director of Labor and Employment Promotion of the Ministry of Labor (MTPE).

The investigation process included the examination of official documents from MTPE and the Judicial System, internal documents provided by the Factory at the request of the investigator, and documents provided by the Union and the FNTTP; also reviewed were official public records from Peru,<sup>1</sup> and visual inspections at the HIALPESA plants, including the spinning and knitting areas where the suspended employees had worked.

## III. Applicable regulatory framework

The Political Constitution of Peru;<sup>2</sup> International Labor Organization (ILO) Conventions ratified by Peru, particularly Conventions No. 87 and 98 regarding freedom of association, the right to organize and collective bargaining;<sup>3</sup> Legislative Decree No. 728 regarding the Labor Productivity and Competitiveness Law; Law No. 25129 regarding the family allowance benefit; Law No. 27735 which regulates the granting of bonuses to workers in the private sector for National Holidays and Christmas; General Labor Inspection Law; Collective Labor Relations Law; Collective Bargaining Agreement, henceforth, “CBA” 2017-2019 between the Union and HIALPESA; HIALPESA policies and procedures related to the subject matter of the investigation; and FLA Workplace Compliance Benchmarks principally regarding Termination and Retrenchment and guarantees for the respect of Freedom of Association and Collective Bargaining.

## IV. Limits of the investigation

There were delays in providing the requested information on the part of the Factory, especially providing the investigator with the original documents signed by workers affected by the layoffs who had signed their resignations and received their indemnity. This information was not available and was not included in the personnel files of the workers referred to above.<sup>4</sup> The Factory argued that there was an inspection in progress by SUNAFIL and they were preparing the information to be presented to that institution. It should be noted that this information was requested before the in situ visit.

Furthermore, the tour of the knitting area was conducted without electric lighting. The factory alleged that due to economic reasons, they had disconnected the electricity service; however, the same reason was given for the same problem in the knitting area, but during the second tour by the investigator, the lamps were turned on – although only in that area.

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<sup>1</sup> The information sources consulted are listed in Appendix 1 of this document.

<sup>2</sup> Art. 28 of the Political Constitution of Peru of 1993.

<sup>3</sup> Convention No. 87 was ratified by Congress through Legislative Ruling No. 13281 from December 15, 1959 and Convention No. 98 was ratified by Congress through Legislative Ruling No. 14712 from November 18, 1963.

<sup>4</sup> Twenty-two files were reviewed and none contained documents relating to resignations and payment of indemnity.

## V. Background

HIALPESA was established in 1979. Its lines of business are production, marketing, and sales -- nationally and primarily for export -- of textile products, cotton fibers, yarn, fabric and apparel garments. At the time of the employment contract suspensions, it had four areas or business lines: spinning, knitting, dyeing and manufacturing (sewing).

The union *Sindicato de Trabajadores de Hilandería de Algodón Peruano S.A.* is a first-level organization which has existed since 1986. At the time of the employment contract suspensions, the Union had 146 members, 95 of whom were affected by the collective terminations; eight of them were Union officers, including its Secretary General. Of the 95 unionized workers suspended, 17 of them had a short-term employment contract valid until July 31 but were terminated at the same time as the other unionized workers with indefinite contracts. Of the Union members, 65% worked in the spinning and knitting areas, the areas which were closed by HIALPESA on June 5. The rest of the members of the Union worked in the dyeing area and only one worked in the manufacturing area. There are no Union members in the other areas of the Factory.

Of the Union members who were not affected by the layoffs, nine are members of the Executive Committee. At the time of the in situ visit, there were a total of 49 union-affiliated workers in the plant. Management stated that during the last two months -- June and July -- about six or seven workers had disaffiliated voluntarily from the Union but the investigator was only able to verify three such resignations.<sup>5</sup>

HIALPESA and the Union signed the first CBA in 1989; a CBA was in effect for the period August 1, 2017- July 31, 2019. Recently,<sup>6</sup> at the request of the Union, negotiations began for a CBA for the period August 1, 2019- July 31, 2020. To date, two meetings have been held directly between management and the Union to negotiate the new agreement. The CBA for HIALPESA is only applicable to workers affiliated with the Union;<sup>7</sup> therefore, the benefits obtained from the CBA apply to Union members and are not extended to the rest of the workers.<sup>8</sup>

## VI. Results of the investigation

- a. **Determine whether HIALPESA complied with the statutes, policies and procedures as well as with FLA Workplace Compliance Benchmarks regarding termination of employment contracts due to retrenchment.**

The Internal Work Rules<sup>9</sup> (henceforth "IWR") are the primary regulators of labor relations at HIALPESA. An examination makes evident the lack of regulations related to employment contract suspensions or to causes or course of action in cases of employment contract terminations due to retrenchment or collective layoffs. The IWR only regulates specifically the cases of dismissals for offenses related to the worker's behavior, referring to circumstances not foreseen in the IWR as relating to national law.<sup>10</sup>

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<sup>5</sup> Two resignation letters were viewed and the investigator interviewed another worker who stated that he had resigned from the Union.

<sup>6</sup> The request for negotiations was presented on 06-19-2019.

<sup>7</sup> First Clause of the CBA 2017-2018.

<sup>8</sup> Criteria established by the Supreme Court of the Judiciary Power for Labor Appeals No. 12885-2014

<sup>9</sup> Authorized by the MTPE Sub-Directorate of General Records, on March 5, 2019.

<sup>10</sup> Internal Work Rules. Art. 187 "In all cases not foreseen in the present Internal Work Rules, the company will apply the standards contained in the current legal provisions, as well as in its regulations and corresponding provisions."

HIALPESA only has a policy for termination of the employment relationship titled “**Procedure for Termination of Labor Relationship**”, which does not include a procedure to cover all aspects related to employment contract terminations due to employee retrenchment, but only mentions them in general. With regard to the reasons for which such a measure could be carried out, it states: “in exceptional situations linked to reasons of production and customer purchase orders, HIALPESA may opt to execute an employee retrenchment. The reduction must be based always on *objective grounds of an economic nature or that would seriously affect the continuation of company operations*”<sup>11</sup> (Emphasis added). It stipulates that objective causes for termination of the employment relationship are unexpected events or force majeure; economic, technological, structural or related reasons; and the dissolution, liquidation and/or bankruptcy of the company or any of its production units. The procedure expressly states that terminations will be conducted according to the regulations established in Chapter VII of Supreme Decree No. 003-97-TR (Law No. 728).

Since HIALPESA does not have a specific policy regarding the course of action to be followed in cases of employee retrenchment that leads to employment contract terminations, and the IWR makes a direct referral to national law, this does not comply with the parameters established by the FLA Code of Conduct and Compliance Benchmarks regarding Employment Relationship ER.1.1. and ER. 32.1. that state that employers must adopt policies and practices in writing that regulate all aspects of employment, from recruitment to employee retrenchment and employment termination.

***FLA Workplace Compliance Benchmark ER.32.3.*** establishes that when an employer faces changes in production, program, organization, structure or technology and those changes result in temporary or permanent layoffs, the employer must communicate any alternatives to employee retrenchment that may have been considered and consult with worker representatives with a view to avoid or minimize layoffs.

HIALPESA sent a letter to the Union on April 9, informing them that Factory management were considering initiating a procedure before the AAT for contract termination for workers in the spinning and knitting areas (and other related areas), alleging economic reasons and stated the following specific reasons: i) the influx of low-cost Indian yarn, ii) the lack of a response from INDECOPI<sup>12</sup> regarding the requested antidumping trade measure, iii) the old age of the machinery; and, iv) the loans and interest cost for the purchase of raw materials.

In this letter, management invited the Union to a meeting on April 12 for the purpose of – according to the letter – reaching agreement on the conditions of the terminations of the employment contracts or the measures that could be adopted to avoid or limit employee layoffs. A second letter with similar terms, addressed to workers not affiliated with the Union, was delivered between April 9 and 12.<sup>13</sup> Neither one of the letters included alternative measures to prevent the layoffs or to mitigate their effects.

After receiving the letter, the Union requested from HIALPESA information regarding the company’s economic situation. Initially, the Union requested information on a specific list of 17 items related to the economic, financial and labor situation of the Factory, not limited to the areas of spinning and knitting. The Union considered this information as being necessary to learn and understand the financial crisis that HIALPESA had invoked as cause of termination and requested that the meeting be rescheduled for April 16.

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<sup>11</sup> The cursive and bold fonts were added by the author of this report.

<sup>12</sup> National Institute for the Defense of Competition and the Protection of Intellectual Property.

<sup>13</sup> Letters signed by HIALPESA dated April 09, 2019.

When the date arrived, however, the Union decided not to participate because the Factory had also invited non-affiliated workers, who were present at the meeting. The Union also repeated their request for information. Over the following days, there was further communication between management and the Union, although the first meeting with the Union only occurred on May 15. According to the records the meetings of non-unionized workers with HIALPESA took place on April 12 and 16.<sup>14</sup> The minutes of these meetings state that HIALPESA informed them that it had decided to initiate the proceedings before the AAT regarding the collective termination of the employment contracts of all of the workers in the spinning and knitting areas as well as from related areas.

Non-affiliated workers were informed, at the meetings on April 12 and 16, about four options, from which they could choose one. The options presented were: 1. Signing a mutual termination contract and receiving an economic incentive, 2. Dismissal of workers and preferential rehiring once the crisis ended, 3. Terminating the labor relationship and, through an external company, offering counseling and training to maximize their skills to find job in other workplaces; and, 4. Granting a vacation period.

The Union was informed during the meeting on May 15 about the decision that HIALPESA had taken regarding the employment contract terminations and the reasons for the terminations. On May 27<sup>15</sup>, HIALPESA provided part of the requested information: Factory's financial statements for 2014, 2015 and 2016; Tax Statements (*Impuesto sobre la Renta*) for 2017 and 2018 and information related exclusively to unionized workers mainly from the areas of spinning and knitting and not for the Factory as a whole. This information was conveyed by HIALPESA to the Union during a meeting on May 31. Subsequently, HIALPESA summoned the Union to another meeting, held on June 4, so that the Union could present its proposals regarding the closure and reach an agreement. At this meeting, the Union insisted on obtaining the information previously requested, and presented to management a letter reiterating its request for labor information, stating that until it received the requested information it could not accept any proposal, and the Union suggested they meet again on June 6.

HIALPESA did not accept providing the remaining requested information since management considered it to be irrelevant and at the meeting of June 4 management presented the Union with a proposal, which it called "Final Proposal", consisting of granting workers one of the following four measures: 1. Entering into a mutual contract termination agreement providing for: a) Economic compensation of 50% of a base salary for each year worked, capped at two base salaries regardless of the worker's seniority; and b) preferential sales of garments at a price of S/5.00 soles per garment, capped at 100 garments per month for two years; 2. Dismissal of workers and preferential rehiring once the crisis ended, 3. Ending the labor relationship and, through a third party company, offering counseling and training to maximize skills in order to reenter the labor market; and, 4. As an extraordinary offer for Union officers, relocating them to the dyeing area and offering training, with a part-time contract earning 50% of their current compensation.

In order to examine whether HIALPESA violated the applicable standards, it is necessary to analyze the dialogue and consultation process. Consulting with worker representatives should not be a mere formality or the means to provide simple information regarding the motives for a given measure; the consultation should be effective, and it is only effective when timely, adequate and pertinent<sup>16</sup> information is provided in order for worker

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<sup>14</sup> HIALPESA informed about other meetings with non-affiliated workers but the investigator only received minutes for two meetings.

<sup>15</sup> The letter is dated May 24th but was received by the Union on May 27

<sup>16</sup> "Pertinent information" refers to information related to the subject matter of the consultation. For example, if the consultation concerned an allegation of financial crisis as the cause for worker terminations, information that justifies such allegation would be deemed to be pertinent information.

representatives to properly examine the reasons the employer is invoking and the situation faced by the company.<sup>17</sup>

The consultation is intimately linked to the information, which should provide the necessary elements in order for worker representatives to make a decision based on knowledge and understanding so that they may be able to truly have a role in the decision that is ultimately adopted.<sup>18</sup> This means that the decision has not yet been made, that it is being evaluated and that other options may be considered through the dialogue with worker representatives and hearing their opinions.

The above requires other elements such as good faith and transparency, of utmost importance in this challenging process with serious repercussions, such as collective layoffs where a large number of workers will be impacted. Therefore, the consultation must be carried out sufficiently in advance, in order to prevent the application of sudden or hasty measures which would cause more damage than those it would naturally cause<sup>19</sup> and follow national law and practice with regard to consultations with the Union without the presence of non-affiliated workers. Once the timely, pertinent and appropriate information is provided, the worker representatives may begin the consultation having at their disposal the necessary elements to perform an assessment of the situation. Given the seriousness of the situation, the objective should be consultations that, while they may be brief, nevertheless are real and effective.

In the case at hand, HIALPESA had meetings to address the subject of the collective dismissals, but did not provide all of the information the Union considered necessary in order to evaluate the situation and make a proposal that could minimize the effects of the measure. There is evidence that, on April 12, the Union requested that HIALPESA, prior to the meeting, provide information relating to the economic situation of the company such as: financial statements, tax returns, production reports, reports of sales and expenses, information regarding all workers including, compensation, income, vacation days expiring or about to expire, production areas with their cost structure, etc.

However, it was not until May 27 that part of the information was provided, which was explained to the Union at the meeting held on May 31. Subsequently, in spite of the Union continuing to request the information, the Factory denied the request, arguing that the information was confidential, however, it was information related to the matter invoked to implement the suspensions. It was not until June 4 -- the last meeting before contract suspensions -- that HIALPESA presented the proposal with "alternative" measures stated above.

HIALPESA indicated to the Union at that meeting that the deadline to indicate the Union's willingness to negotiate on its proposal was that same day at 4:00 pm. The Union proposed relocating all union members to jobs within HIALPESA, notwithstanding not having received the previously requested information, but the Factory did not accept this and maintained its position. As noted earlier, the Union became aware of the management proposal with the four measures at the last meeting with HIALPESA before the contract suspension, and the timeframe for the negotiation of the proposal offered by the company was obviously insufficient.

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<sup>17</sup> Report by the Committee of Experts on the Application of Conventions and Recommendations of the ILO, regarding the Protection Against Unjustified Dismissals, Convention No. 158 and Recommendation No. 119. First Edition 1995. Paragraph 285.

<sup>18</sup> Report of the Committee of Experts on the Application of Conventions and Recommendations of the ILO, regarding the Protection Against Unjustified Dismissals, Convention No. 158 and Recommendation No. 119. First Edition 1995. Paragraph 283.

<sup>19</sup> Report of the Committee of Experts on the Application of Conventions and Recommendations of the ILO, regarding the Protection Against Unjustified Dismissals, Convention No. 158 and Recommendation No. 119. First Edition 1995. Paragraph 294.

Under these conditions, in the view of the investigator, it was impossible for the Union to adequately evaluate the measure of the collective layoffs or to consider alternative measures. What the company proposed -- at the last meeting with the Union -- was for it to choose one of the indicated options; the layoffs were not up for discussion. The lack of prior communication with the Union extended to the fact that the employment contracts were to be suspended on June 6, while the options provided by the Factory were still being discussed -- as seen in the minutes dated June 4.

This casts doubt on the good faith of HIALPESA in the dialogue with worker representatives. The investigator is aware that even if an agreement is not reached, in order for the dialogue and consultation with worker representatives to be effective it must be based on good faith, transparency and the possibility of having pertinent, sufficient and timely information, and that it should not only be a mere formality.

For these reasons, in the judgment of the investigator, HIALPESA violated the FLA Code of Conduct, specifically the Workplace Compliance Benchmarks regarding Employment Relationship ER.32.3 because there was no real and effective consultation with worker representatives with a view to avoid or minimize the impact of the measures.

***Workplace Compliance Benchmark ER.32.4.*** establishes that when employee retrenchments are unavoidable -- whether temporary or permanent -- a plan should be developed and implemented in order to mitigate the adverse effects of these changes on workers and their communities.

In line with what has been stated in the preceding paragraphs and analyzing whether HIALPESA complied with Compliance Benchmark ER.32.4 regarding having a plan to mitigate the adverse effects of the collective dismissals, the investigator concludes that it did have a plan which took into account proposals for both Union members and non-members, although these were communicated to the Union only one day before the suspension occurred. However, in the judgment of the investigator, the previously mentioned plan "was neither comprehensive nor sufficient" because it did not address the contract suspensions that HIALPESA was contemplating while the AAT was considering the case, and did not include information on mitigating or reducing the adverse effects that the suspension would bring to affected workers. Suspending contracts suddenly and without prior notice to workers increased the adverse effects of the collective dismissals, since without prior notice it was unable to perform its job and address its members' needs.

Furthermore, the plan for the layoffs/suspension of employment contracts did not consider specific measures for vulnerable groups such as elderly workers<sup>20</sup> and those with illnesses or under medical treatment -- data that should have been available to the company from personnel records. In addition, the economic compensation offered as an incentive in the case of non-union members, had no specific information regarding the amount or any other condition; therefore, it did not provide certainty or clarity regarding the scope or limits of the incentive. (The proposal to transfer union officers is specifically addressed below.) Consequently, seeing that the layoff plan was neither comprehensive nor sufficient, the investigator also finds a violation of FLA Workplace Compliance Benchmark ER.32.4.

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<sup>20</sup> Of the 190 terminated workers, 25 are aged between 60 and 69 years old.

*Workplace Compliance Benchmark ER.32.5* requires that the “plan” be communicated clearly and be posted, and include setting up feedback channels for workers that allow them to ask questions and seek clarifications.

The plan regarding the collective dismissals was shared by the company with both the Union and with non-unionized workers; however, what was communicated to them only concerned the decision to initiate the proceedings for the collective termination before the AAT, as well as the proposed measures to mitigate the adverse effects caused by the terminations. These measures were shared during the meetings held with non-union members on April 12 and 16 and with the Union on June 4, as cited above. The investigator considers it necessary to point out that the so-called “alternative” measures did not refer to the terminations; that is, the decision to carry out the collective dismissal or termination was a firm decision for HIALPESA, and the options proposed refer only to alternatives to deal with the decision, from which the workers could select one.

In none of the minutes for the meetings with non-unionized workers is it stated that they were consulted or that clarifications were made regarding the measures proposed by HIALPESA. Furthermore, they do not record whether management communicated to workers how to present their proposals or request more information or clarify their doubts, to whom they could be addressed, or the approximate timeframe and planned dates to initiate the proceedings with the AAT. There is no evidence that workers intervened in any way or presented their concerns.

The Union became aware of the terms of the HIALPESA proposal at the meeting held on June 4, which as noted above consisted of offering Union members one of four proposed measures contained in the proposal. HIALPESA gave the Union until 4:00 pm that same day to express its willingness to negotiate. The Union reiterated its request regarding information that had not been provided and proposed that all union members be transferred within HIALPESA in addition to requesting another meeting for June 6. The company denied the request for information and reiterated its June 4 proposal; the meeting ended without reaching an agreement. In addition, the information regarding the collective termination and proposed measures presented by HIALPESA were not posted anywhere in the Factory; the written communication only related to the causes invoked by the company as justification for the termination.

Two days later, on June 6, the workers were unable to enter the premises. Posted at the gate was a statement from HIALPESA notifying the workers that the previous day (June 5) it had requested from AAT the collective termination and as of that day, their obligation to come to work was suspended, listing the names of the 190 workers affected by this measure. This was without any explanation regarding the effect on their income or other conditions related to vulnerable workers in light of this suspension, or specific communication channels that would allow workers to ask questions or seek clarification. The Human Resources Manager confirmed to the investigator that on that day, June 6, he went out to the street outside the plant and gave some explanations to suspended workers who had come to the Factory but could not enter the premises based on the Factory’s statement as posted at the gate. This cannot be considered to be an adequate communication channel in the case of an event with such an important impact on workers.

The suspension of employment contracts while the AAT proceeding is in progress is a right of the employer in cases where it is necessary,<sup>21</sup> but neither the Union nor the workers could have predicted it as part of the process if it was not notified to them. This measure should have been part of the plan that HIALPESA intended to execute in the framework of the termination. The suspension had an effect contrary to the intended purpose

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<sup>21</sup> Art. 48 subsection c) 2nd paragraph of the LPCL.

of mitigating the adverse effects of the terminations. By suddenly leaving the workers without income constituted a more burdensome measure for them and their families than what was supposed to be avoided or mitigated. In light of this, based on previous considerations, the investigator believes that there was noncompliance with the FLA Workplace Compliance Benchmark ER. 32.5.

*Workplace Compliance Benchmark ER.32.6* establishes that employers must give retrenched workers the opportunity to transfer to other owned facilities in the country, at a comparable wage, and make all efforts to facilitate reemployment in other companies in the country.

The relocation to other areas of the company or to other companies was not a measure offered by HIALPESA to workers; it only came about as an extraordinary measure for Union officers at the last meeting on June 4. The company offered relocation on a part-time basis and at 50% of their current base salary to those Union officers. The Union did not accept it and made a counter proposal for the relocation of all workers.

Management explained to the investigator that this measure for all workers was not considered “viable” because all job positions in other areas were already filled by other workers and it was not possible to increase employment because this would cause an effect opposite to what the company was seeking, which was structural reorganization, cost reduction, improvement of the situation for the Factory, and not affecting the rest of the workers. Furthermore, management explained that the tasks performed in other areas are different, with different equipment and processes, and it would have to hire and train personnel. According to management, operators in the manufacturing (sewing) area “are specialized”, and “a spinning operator will not be able to do it; they (the workers affected by the termination) do not have the predisposition to transfer to sewing.”

Later management acknowledged to the investigator that experience was not indispensable for all positions in the sewing area because HIALPESA has a training school. This was corroborated by numerous statements from workers in different areas that although experience was important, it was not indispensable in many positions because you could learn there; many of them noted that they had never worked in a company of this type before.

Furthermore, HIALPESA is currently hiring workers. There is a large sign on one of the gates announcing this, and the investigator observed people going through the hiring process and was informed that it was a group of 30 people for the inspection area and between 20 and 30 for the sewing area; for the inspection positions, the investigator was informed that no experience was required. Factory HR Management explained that it is true that they are hiring but only to replace workers who have resigned in the last months. According to data provided at the request of the investigator, during the months of January, February and March, 810 workers were hired and 726 were separated; during the months of April and May, 86 were hired and 286 were separated; and, from June until August, 102 were hired and 240 were separated. The total for the year is 998 new workers.

The following table shows the data provided by the company:

*YEAR 2019*

Month	Hires	Separations
January	342	239
February	260	246
March	208	214
April	57	137
May	29	149
June	14	119
July	43	114
August	45	7
<b>Total</b>	<b>998</b>	<b>1225</b>

Therefore, the explanation given by HIALPESA about why it did not offer relocation to workers affected by the terminations, and did so only with respect to Union officers, is not valid in the judgment of the investigator. The fact that HIALPESA hired 998 workers in 2019 (from January to the date of the in situ visit) implies that the Factory did not make the necessary effort to transfer suspended workers to other production areas within the plant, even to positions that required some sort of training which the Factory could provide. The absence of this alternative is not justified or offset by offering Union officers transfer to a part-time position at half salary because it entails a serious deterioration of their working conditions. In general, there was no evaluation of the competencies, abilities, skills and knowledge of the workers by the company that would lead it to conclude that the workers could not fulfill the other job positions that clearly, and as shown by the data provided by the Factory, are available.

The offer to provide counseling and training through a third party to maximize worker skills in order to reenter the labor market could have been an acceptable option for those workers who did not want to be transferred to another job within the company, but not for those that wanted such as transfer. Therefore, the investigator concludes that HIALPESA also violated the Compliance Benchmark regarding Employment Relationship ER.32.6.

***b. Analysis of the decision by HIALPESA regarding the suspension of employment contracts for 190 affected workers, in light of applicable Peruvian law and FLA Workplace Compliance Benchmarks***

Peruvian law regulates collective terminations through the Labor Productivity and Competitiveness Law (Legislative Decree No. 728) -- henceforth LPCL for its acronym in Spanish -- and its Regulations.<sup>22</sup> It points out, as “objective” grounds or factors that may give rise to collective terminations: “economic, technological, structural or similar reasons.” The law does define each one.

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<sup>22</sup> Supreme Decree No. 001-96-TR.

The procedure developed based on Art. 48 of the stated Law, with regard to Arts. 63 to 71 of the Regulations, identifies the following stages: 1) Presentation of the request for employment contract terminations on objective grounds. The employer must inform workers through the union, or directly if no union exists, and the AAT to initiate the corresponding proceedings. In cases where the terminations include union officers, it must include a specific justification regarding this point; 2) Direct Negotiation: the employer must negotiate with the union or in its absence directly with affected workers in order to agree to the conditions of the contract terminations or the measures that may be adopted to avoid or limit layoffs; 3) Real Cause (sworn affidavit and expert's report): the employer must present to the AAT a sworn affidavit stating that they are subject to (involved in) the cause invoked and substantiate the fact with the expert report of an auditor authorized by the pertinent authority (simply invoking the cause is not sufficient); 4) Conciliation convened by the AAT as the agency that directs the proceeding; 5) Administrative resolution: the AAT must issue a resolution within five business days after the end of the conciliation stage or after the decision to submit the conflict to arbitration; 6) Appeals; and, 7) Review.

Moreover, the law establishes that it is the right of the employer to request from the AAT the “**complete suspension**” of work for the duration of the procedure. Such a request is considered approved with its mere receipt, subject to its subsequent verification by the Labor Inspection Preliminary Investigation Authority. This is a cautionary measure which the employer may take advantage of *during the proceedings for the authorization of the layoffs*.<sup>23</sup>

#### ***Start of the proceedings for authorization for collective layoffs before the AAT***

HIALPESA presented the AAT with a request for collective layoffs for structural reasons and the request for the “complete suspension” of work based on subsection c) of Art. 48 of the LPCL. The request was filed on June 5 at 4:56 pm. The AAT issued a resolution on July 2, ruling the request “DEEMED NOT TO HAVE BEEN FILED”<sup>24</sup> due to an absence of meeting legal requirements. HIALPESA presented an appeal of this resolution seeking reversal, which was ruled as inadmissible on July 19; the latter resolution in turn was appealed by HIALPESA.

The AAT declared the appeal as well founded and on August 20 issued a resolution and ordered initiating proceedings to carry out the process established by law and proceeding to establish ex post legal compliance checks over the procedure followed by the employer to carry out the collective termination of employment contracts. After this report was prepared, both the investigator and the FLA were informed by the Union that they have presented their own legal and financial report as a rebuttal to HIALPESA position regarding the motives communicated to the AAT to justify the collective termination. On October 16, the first of three consultation hearings, held as part of the AAT proceedings, took place -- but the parties did not reach any agreement. The AAT process is still ongoing.

For HIALPESA, the decision to initiate the proceedings before the AAT came about in light of the impossibility of reaching an agreement with the Union and with non-unionized workers in spite of the multiple attempts management claims to have made for this purpose through dialogue. According to HIALPESA, the decision was made on June 4 after meeting with the Union -- when the Union refused to sign the minutes of that meeting. This indicated to the company that the direct negotiation stage had come to an end, which is why it decided to

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<sup>23</sup> Art. 48 subsection c) of the LPCL

<sup>24</sup> File No. 85994-2019-MTPE/1/20.2.

approach the AAT and set the date for the closure of spinning and knitting operations as June 6, together with the “perfect suspension”<sup>25</sup> of the employment contracts of 190 workers.

The Union indicated that this action by the company took it by surprise because it was engaged in the process of dialogue and negotiation, or at least that was what it was attempting. On June 4 the Union had proposed another meeting date and repeated the request for information in order to have the elements that would allow it to offer proposals and continue the dialogue. However, the company gave the Union only until 4:00 pm that same day to provide a response, which it was not able to do due to the time constraint and lack of pertinent information.<sup>26</sup> When workers arrived on June 6, they found the spinning and knitting facilities closed and were not allowed to enter; as noted above, they found a notice posted on the main gate with the announcement that a proceeding had been initiated before the AAT regarding the work suspension and a list with the names of affected workers. The HR Manager reported that he was outside the plant at this time, giving some explanations to suspended workers based on the information provided in the Factory’s notice.

The duty to inform and negotiate required by law should not be viewed as a mere formality. The information provided by management needs to be appropriate, pertinent and sufficient to set forth to the workers or worker representatives the reasons on which the decision is based and the alternative measures to avoid or minimize the action, as well as measures to mitigate the negative impact in case it is inevitable, so that a real and effective dialogue can be facilitated.

As previously stated, this has not been fully observed in the present case, although undeniably there was some information exchanged and some meetings between the parties were held. The point is that the Union did not have sufficient information it needed in order to effectively analyze the situation that HIALPESA was alleging. This considerably affected the Union’s capacity to voice opinions and present a proposal. The same can be said about workers non-affiliated with the Union, because as noted in the minutes of the meetings they held with management, these were only of an informative nature and there was no exchange with the workers. Therefore, in addition to violating Workplace Compliance Benchmark ER.32.3, Art. 48 of the LPCL subsections a) and b) were also violated.

The “complete suspension” does not require prior authorization: the law is clear in stating that it is considered approved with the “mere” reception by the AAT of the request, even though it is subject to subsequent verification. Therefore, the decision to invoke perfect suspension in itself is not “illegal.” The law does not mandate any additional requirements specifically; however, from the comprehensive analysis of the standards that regulate the procedure for layoffs, it stands to reason that if the employer is considering closing operations in a given area or areas and consequently suspending employment contracts for all workers in those areas, which will deprive them of their income and benefits for the duration of the procedure before the administrative authority, the employer should have communicated this fact to the Union and non-union workers with the required anticipation as a token of good faith and transparency. While this lack of transparency and good faith in the dialogue and consultation with the Union and workers cannot be affirmed to be a violation of the law because it is not expressly required, it can be considered a breach of FLA Workplace Compliance Benchmark ER.32.3.

Regarding the other requirements with which HIALPESA has complied formally, it has presented a sworn affidavit that it is subject to the objective grounds invoked and expert report that demonstrates the existence of the

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<sup>25</sup> Perfect suspension means workers not providing services and the company is not paying salaries and benefits.

<sup>26</sup> Act dated June 4 (without signatures)

structural causes that make the collective terminations necessary. The AAT has the authority to examine, within the formalities of the procedure, both the actions carried out by HIALPESA as well as the merits of the motives and invoked causes, and to rule whether the layoffs are authorized.

A new element that must be examined by the AAT is that currently, the number of workers subject to the layoffs is no longer 190 workers, because at least 82 have resigned “voluntarily.” These resignations were verified by the investigator and they should therefore be excluded from the procedure, which means that the number of workers laid off is less than the 10% required by law, which could lead to the inadmissibility of the collective terminations since, according to data provided by HIALPESA, as of August 15 there were a total of 1766 workers.<sup>27</sup> This new element must be established in the proceedings before the AAT, which have just been initiated, and the parties must demonstrate that to date almost 50% of the workers initially affected no longer have an employment relationship with HIALPESA.

*c. Analysis of the existence of evidence of antiunion discrimination with regard to the decision by HIALPESA to suspend 190 workers, of which 95 were Union members and eight were Union officers.*

In order to examine this element of the investigation it is necessary to take into account the background and relevant elements which have marked the relationship between the Union and HIALPESA, especially since 2012-2013 when a Third Party Complaint was also filed with the FLA and since the investigation performed by COVERCO in 2014<sup>28</sup> determined the existence of antiunion discrimination in the framework of a decision announced by HIALPESA to close the spinning mill. Ultimately the closure of the spinning mill did not go forward due in part to the pressure caused by the investigation and not because of the will of HIALPESA. A precedent of this nature is still very relevant as reference about previous conduct by the party against which the current complaint has been filed.

Furthermore, it must be noted that the history of labor-management relations since then, even though the parties have negotiated successive CBAs, has been marked by strong actions by the Union and the Federation with which it is associated against HIALPESA, using both administrative and judicial legal mechanisms to defend and demand recognition and respect for the rights of its affiliates.

According to the documentation to which the investigator had access, in light of a claim presented by the Union in 2013 which finalized in 2017, 76 workers affiliated with the Union obtained their classification as permanent workers; likewise, in 2014 SUNAFIL<sup>29</sup> determined that a violation was committed by HIALPESA regarding 611 workers with short-term employment contracts and ruled that the contracts were denaturalized. In addition, between 2017 and 2019, Union members have presented a series of legal claims through which they have obtained various rulings against HIALPESA, ordering the company to reinstate the workers because their dismissal was ruled void or arbitrary, short-term contracts were deemed as denaturalized, the company was forced to pay the textile bonus and family allowance with backpay for the years worked, and other processes are in progress in the courts of first and second instance. The investigator had access to at least 29 judicial processes, details of which are set out in the Appendix.<sup>30</sup>

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<sup>27</sup> In a previous case, the AAT excluded from the procedure, workers who had resigned during the course of the procedure. Directorial Resolution No. 003-2013/MTPE.

<sup>28</sup> <http://www.fairlabor.org/reports/hialpesa>.

<sup>29</sup> National Labor Inspection Superintendence.

<sup>30</sup> The Union informed that there are many more cases in progress and finalized but due to the time constraints they were unable to provide them and that they are currently presenting various claims for the annulment of the terminations and requesting reinstatement.

With regard to the listed cases, it is relevant to highlight those related to “family allowance”, which at that time was included in the CBA<sup>31</sup> -- although providing a benefit lower than what Law No. 25129 establishes.

HIALPESA initially stated to the investigator that it did not have any major conflicts with the Union, that the Secretary General (Mr. Máximo Gutiérrez) is a person who likes dialogue, and that with regard to the family allowance, even though management assumed it had an agreement in the framework of the negotiation of the CBA 2017-2019 to maintain the amount of this concept as well as other benefits under the same terms as the previous years, the Union nevertheless encouraged a worker to file a claim against the company. This claim was ruled on in favor of the worker and as of that date more claims along the same line were presented against the company. HIALPESA told the investigator that due to this fact, the owners of the company considered that the Union had “betrayed” them: an element that is relevant in the judgment of the investigator regarding HIALPESA’s conduct.

The Union told the investigator that in December 2018, HIALPESA had requested that it cease the claims regarding family allowance, because if these continued, they would “*take the company to bankruptcy and they would be forced to close.*” At this meeting HIALPESA proposed an amendment to the CBA, for which they provided a text, called: “AMENDMENT TO THE COLLECTIVE BARGAINING AGREEMENT.”<sup>32</sup> Through the amendment the company proposed leveling the amount of the family allowance established in the CBA to correspond with the amount established by Peruvian law; the amendment would go into effect as of January 2019. Because up to that time there were rulings in favor of the workers regarding the family allowance, the Union did not accept the company’s amendment because it went against the rights already recognized, and further it considered the warnings of the General Manager, Mr. Pablo Rivera, to be threats which, in the opinion of the Union, have since materialized.

Management expressed to the investigator that it did meet in December 2018 with the Union to make the Union aware of the difficulties that the company was facing and that the company had to seek solutions, although it did not mention the proposal for the mentioned amendment. In the opinion of the investigator, this meeting is key to understanding HIALPESA’s decision. Specifically, management admitted that for the company’s owners, the decision by the Union not to accept the amendment of family allowance clause of the CBA had been a “betrayal” by the Union and that for them, the good faith of the Union had been lost. The Union officers stated that they were told that if they continued filing claims they could take the company into bankruptcy and the company would be forced to close the Factory. Management stated that the agreements in effect within the framework of the CBA increased costs considerably, to which the company must add the payments for the claims presented; they have calculated that for family allowance the amount to be disbursed will be approximately TWO MILLION SOLES.

Moreover, SUNAFIL<sup>33</sup> has initiated an administrative sanctioning procedure against HIALPESA, in light of the request for an investigation regarding “*wage discrimination for union motives.*” This preliminary investigation resulted in a finding of violation issued in favor of twelve workers affiliated with the Union<sup>34</sup> and the imposition of a sanction on the Factory in the amount of THIRTY-SEVEN THOUSAND EIGHT HUNDRED SOLES for not complying with the duty to cooperate by not facilitating the information requested by the authority, during the inspection proceedings carried out on March 25 and April 11, 2019, respectively.<sup>35</sup>

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<sup>31</sup> The CBA (03-20-2018) establishes in clause No. 9 the payment of S/.13.5 for each child -up to 3- and for a spouse corresponding to the family allowance.

<sup>32</sup> The investigator received a copy of this document which states what is mentioned.

<sup>33</sup> SUNAFIL, the National Superintendency of Labor Inspection, is an agency within the Ministry of Labor and Employment Promotion that is responsible for promoting, monitoring and enforcing labor and safety and health standards.

<sup>34</sup> Finding of Violation No. 1133-2019-SUNAFIL/LIM.

<sup>35</sup> File No. 1449-2019-SUNAFIL/LIM. Resolution issued May 17, 2019.

### *Issues Relating to Freedom of Association*

Because there is an allegation relating to violations to freedom of association, it is relevant to mention some elements of management's behavior at HIALPESA verified in the framework of the in situ visit:

- ***Supporting workers to disenroll from the Union.*** Human Resources management stated to having supported at least seven workers who expressed their wish to disenroll from the Union; the support consisted in helping them to write their letters of resignation from the Union. The investigator examined copies of two such letters and during interviews one worker stated to having received support from the HR Manager to write the disaffiliation letter. The Manager expressed to the investigator that he did it to help the workers.
- ***Direct agreement of the company with two Union members.*** The Factory made extrajudicial agreements with two Union members, without the presence of their union representatives.<sup>36</sup> This agreement contained a clause entitled "OBLIGATION TO PRESERVE THE REPUTATION"<sup>37</sup> of both parties.
- ***Meeting of HR Manager with workers from the dyeing and laundry areas, the laboratory and quality control following the closure of the spinning and knitting areas.*** After the closure, the HR Manager mentioned that meetings were held with workers from the dyeing and laundry areas, the laboratory and quality control. In those meetings he told these workers not to worry because of closure of the spinning and knitting areas had happened due to losses in those areas but there are no such losses in the areas where they were working. The decision to close those units would allow the Factory to maintain jobs in other areas and even improve working conditions.
- ***Police presence in front of the factory facilities in light of the march by suspended workers.*** The first day of the investigator's visit to the Factory, the Union organized a march toward the building. The march was peaceful; using loudspeakers the organizers alleged violations of their rights and called attention of passers-by using whistles, signs, drums, etc. After the march, they went to the front of the plant, across the street, without obstructing the entrance to the facility or traffic. A group of anti-riot police positioned itself by the entrance to the factory. The HR Manager stated that the company called for police presence every time suspended workers organized a similar activity because on one occasion the marchers had approached other workers to give them flyers. The above does not justify the police presence, which is intimidating to workers, and therefore violates the Workplace Compliance Benchmarks regarding Freedom of Association and Collective Bargaining FOA.14.
- ***Encouraging the officers and members still working at the plant to create their own union board.*** According to solid testimonial evidence, Factory representatives have encouraged Union officers and members who continue to work at HIALPESA (mainly in the dyeing area) to form their own union board and forget about union officials and members affected by the layoffs because they no longer belong to the Union. In fact, the list of the petitions for the next CBA could be negotiated by management with them, without the involvement of the suspended members of the Union board.

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<sup>36</sup> The investigator was able to view the documents signed by the workers and their corresponding indemnity payments.

<sup>37</sup> The clause stipulates: "THE WORKER and THE COMPANY reciprocally commit to protect and preserve the good name and reputation of the other party, and will abstain from making any comment, assertion or statement, verbally, written or through images that affect the other party. The obligation of THE WORKER also extends to safeguard the good name of employees, officers, directors and shareholders of THE COMPANY."

- ***The environment at HIALPESA is not favorable for the free exercise of freedom of association*** It became evident to the investigator that there is a fear to exercise the right to freedom of association on the part of workers. Management confirmed that training has never been provided on the subject; in addition, there is a belief by workers that the closure of the spinning and knitting areas was because of the Union, that is, because companies like HIALPESA do not want to have unions, and those areas had the majority of Union members. This generalized belief points out that the work environment is not favorable to, and does not promote, the exercise of the right of association.
- ***The unjustified denial by HIALPESA to relocate workers to other areas of the company, in particular union officers.*** As established in this report, HIALPESA has been hiring workers during the course of this year, even after the announcement of the layoffs although at a lesser rate. At the time of the in situ visit the process of hiring 60 workers for various positions was in progress; there was no analysis of the capabilities of the workers affected by the layoffs to determine whether in fact they could have filled those vacant positions, many of which do not require experience and for those that do require experience, for which positions the company could facilitate training. Moreover, the offer to relocate the Union officers reducing their working conditions is not meaningful.

***Regarding the reasons for the collective dismissals:***

HIALPESA argued initially, both to the Union and to non-union workers, that the collective dismissals were due to economic reasons, alleging that the company has been going through an “economic crisis” since 2013 and adding that should this crisis continue, it could prevent the company from meeting its legal obligations in spite of the actions taken to revert the crisis. The company specifically mentioned four causes: 1) the influx of Indian yarn at lower prices; 2) the lack of an action from INDECOPI<sup>38</sup> regarding the request for imposition of antidumping measures on Indian yarn; 3) the age of the equipment, the replacement cost of which it is not able to afford; and, 4) the loans and interest incurred for the purchase of raw materials.

Later, HIALPESA modified the cause for the dismissals originally communicated to the Union and non-affiliated workers in their application to the AAT from “economic crisis” to “structural reasons”, although the arguments made remained basically the same; therefore irrespective of how it was termed at the beginning, what matters is whether the situation on which the decision is based is so serious or of such a magnitude that it does in fact place at risk the continuity of the business and HIALPESA did everything due diligence requires from a business to avoid arriving at the point of having to decide on the layoffs.

In order to demonstrate these facts, HIALPESA has presented to the AAT a report dated June 4, 2019, prepared by an authorized auditor as stated in the document. This report is to be shared with the Union once the proceeding is initiated so that the Union is able to challenge the report and present other expert testimony. All of this will be examined by the AAT, which will ultimately decide if the reasons invoked by HIALPESA are valid, so that they justify the termination of the employment contracts of 190 workers. During the visit, the investigator viewed the expert’s report but did not obtain a copy because the company’s legal counsel argued that it could not be shared because it had not been provided to the Union or to workers yet and was still confidential. The expert’s report confirms the existence of the “structural” reasons alleged by HIALPESA to decide on the closure of spinning and knitting operations, but it is important to point out that in explaining the limits and scope the

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<sup>38</sup> INDECOPI, the National Institute for the Defense of Competition and the Protection of Intellectual Property, is the agency of the Peruvian government that administers Peru’s antidumping law.

report stated: “*our work was limited to proving objective facts that render the layoffs appropriate and did not include an analysis of causes other than structural reasons that could lead to this measure, or of reports or documents prepared by third parties or the Company.*”

The above is relevant, because there may be -- as HIALPESA and the expert’s report in fact indicate – other reasons that may justify the closure of the spinning and knitting areas. Again, the expert’s report does not take into account, as stated by the author, “*causes other than the structural causes that could lead to this measure.*” With respect to the expert’s report, the investigator lacks the expertise and knowledge to dispute its findings; however, she considers that its existence and veracity is not enough to dismiss the *absence of antiunion motivation* (as the ILO Committee on Freedom of Association states, the restructuring of a company must not directly or indirectly undermine the situation of unionized workers and their organizations).<sup>39</sup>

Although the AAT will decide whether the closure of the spinning and knitting areas was necessary and inevitable for the reasons invoked by HIALPESA, this decision should not automatically imply the dismissal of all the workers, because before reaching that conclusion, the company must prove (not only invoke) with concrete and real actions that it has objectively evaluated the viability of relocating workers to other sections or areas of the company, which in this case has not been done. As has been mentioned previously, HIALPESA did not consider relocating workers affected by the suspension to other areas of the company; it only offered relocation of Union officials to part-time positions and with a half salary.

Finally, based on a comprehensive evaluation of all the related elements, without dismissing that in fact the economic or structural circumstances alleged by HIALPESA could have occurred, and even if they are deemed appropriate by AAT in the recently initiated proceeding, they are not enough in the judgment of the investigator to set aside the evidence that the layoffs are also motivated by the existence of the Union and the actions taken by the Union in defense of the interests and rights of its members. This represents an action of anti-union discrimination which would fracture the organization significantly, leaving it with only 35% of its members and without its most important officers, which cannot be ignored. Based on this, in the investigator’s judgment the FLA Workplace Compliance Benchmarks regarding Freedom of Association and Collective Bargaining FOA.5.1, 8.1 and 8.2 have been violated.

**d. *Determine whether HIALPESA paid the bonuses to the 190 workers suspended on June 5 and confirm whether the payments correspond to the legal requirements of Peruvian law.***

It was confirmed that of the 190 workers affected by the layoffs, 82 -- including two Union members -- received the payment for the “national holiday bonus” corresponding to the month of July; this sum was included in the payment of their indemnity for termination of the employment relationship. Management explained that after the employment contract suspension, these workers approached the Human Resources Department and reached an agreement with HIALPESA through which they presented their resignation and received an economic compensation denominated “exgratia payment.” Management did not offer information regarding the criteria used to set the amount. The average payment for this concept was TWO THOUSAND SOLES. The information provided by Management only reports that 82 workers received their indemnity.<sup>40</sup> In addition, the information relating to the termination of the employment relationship and payments provided was not included in the

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<sup>39</sup> ILO Committee on Freedom of Association Digest of Decisions and Principles. 2018 Edition, paragraph 1113.

<sup>40</sup> For greater clarity, the bonus payments were only made to the 82 workers who resigned; the 108 workers who did not resign did not receive such payments.

employee personnel files but in separate files kept by the Human Resources Department, with the explanation given was that they were preparing them to present to SUNAFIL.<sup>41</sup>

All of the reviewed indemnity payments contained the payment of the following: social benefits: CTS, vacations, national holiday bonus, pending compensation (basic wages, mobility, lunch, textile bonus) as well as the exgratia payment. HIALPESA provided the investigator the database with the record of payments made to the 82 workers, with details on the specific amounts paid corresponding to national holidays and vacation days awarded and proportional vacation days.

Similarly, the investigator verified that the 190 workers received their wages corresponding to the first five days in June. All of the workers who have not reached an agreement have not yet received the payment of the national holiday bonus corresponding to July. This information was confirmed by management; it is waiting for the resolution by AAT although management is aware that it is a payment that will have to be disbursed irrespective of whether the layoffs are authorized or not, since it represents acquired rights that are not negotiable and must be paid even though the employment relationship is terminated. The same was the case for vacation days due, to which workers have a right to a proportional amount. Management stated these have not been paid at this time because of advice it received. Of the 190 workers, two are receiving disability payments due to accidents and the company has continued to make the payments as verified by the corresponding payment stubs.

The right to a bonus for national holidays is recognized in Law No. 27735 (06-28-2002) and in Supreme Decree 005-2002-TR which contains the Regulatory Standards for the law that regulates the granting of bonuses for workers in the private sector corresponding to National Holidays and Christmas. One is awarded in July and the other in December; both must be paid during the first fifteen days of the month. The law establishes in Art. 6 that in order to be eligible for the bonus, the worker must be working at the moment when the bonus is payable, but Art. 7 states that where the worker no longer has a current employment relationship at that time they still have the right to receive the proportional amount corresponding to the months effectively worked.

*e. Status of the administrative proceedings currently in progress before SUNAFIL.*

*1. Inspections requested by the Union representing the 95 workers affiliated with the Union affected by the collective dismissal:*

<i>No</i>	<i>Date</i>	<i>Claim</i>	<i>Current Status</i>
1	07-08-2019	Payment of complete compensation for the month of June/2019 for 95 union members.	In progress
2	07-16-2019	Payment of the bonuses corresponding to July 2019 for 95 union members.	On 08/12/2019 an inspection visit was conducted at the Factory and the legal representative was summoned to appear on 08/16/2019, in order to present evidence of the payment for national holiday bonus and holidays from January to July with respect to workers affected by the collective employment contract terminations. This process is ongoing before SUNAFIL.

<sup>41</sup> There are two inspections in progress regarding the payment of bonuses and wages for the months of June/July.

## 2. Administrative sanctioning proceeding against HIALPESA

In addition, as previously mentioned, stemming from an inspection for wage discrimination due to alleged anti-union animus requested by the Union in 2017, the corresponding initial finding of violation was rendered inadmissible, and a new preliminary investigation has been ordered. The inspection visits began in February of this year and in May an administrative sanctioning proceeding against HIALPESA was initiated for not cooperating with the labor inspection task (obstruction).

Date	Reference	Authority	Resolution
05-17-2019	1894-2019-SUNAFIL/LIM/SAI Ref. Inspection Order No. 20916-2019.  The inspection proceeding began on 02-13-2019	The Lima Regional Government Authority for Preliminary Investigation/SUNAFIL	Total fine imposed on HIALPESA: S/37,800 Soles Non-compliance by HIALPESA was determined with regard to its duty to cooperate because they did not provide the information required for the ordered inspection.

### f. Other findings:

- Excessively long work schedules.** The investigator confirmed that the majority of interviewed workers work at least 72 hours a week. One of the interviewed workers stated that he had been working for two weeks consecutively, for twelve hours each day. Management explained that they have three work shifts: 1) from 8 am to 5:15 pm, 2) from 8 pm to 7 am; and, 3) 12 hour shifts for 4 days from Monday to Thursday, and overtime on Friday to Saturday. Management recognized that even though the 12-hour shift has been established to be used from Monday to Thursday, it is the workers who request to work on Friday and Saturday as overtime. The above was confirmed in interviews with workers; they stated that they agree to work Fridays and Saturdays, and on occasion even on Sundays, in 12-hour shifts, to be able to increase their income, since the minimum wage is not enough to cover their needs. Irrespective of the explanations given, the excessive hours worked per day and per week violate Art.1 of Legislative Decree No. 854 regarding Work Shift, Schedule and Overtime, modified by Law No. 27671, as well as Convention No. 1 of the ILO ratified by Peru and the FLA Code of Conduct, specifically Workplace Compliance Benchmarks regarding Hours of Work HOW.1, HOW 1.3 and HOW 2.
- Incomplete payment of family allowance pursuant to the law for union members.**<sup>42</sup> In spite of multiple court rulings in favor of Union members that have recognized the right to the payment of the family allowance pursuant to Law No. 25129, the company continues to apply the CBA for those workers who have not presented a claim or have not obtained a firm resolution. The unionized workers are owed the amount of the underpayment of family allowance in order to comply with the legal required amount. Correction of the family allowance payment will also require adjustments to the amounts of other social benefits.

<sup>42</sup> For workers not affiliated to the Union, the family allowance is calculated and paid pursuant to Law No. 25129.

- *Absence of a policy regarding freedom of association and training for personnel.* HIALPESA does not have a policy regarding freedom of association and has never carried out training or had discussions regarding this subject involving personnel from the Executive Offices and other management. This was acknowledged both by Management and by interviewed workers.
- *Signing documents regarding the resignation of rights and liability release in favor of HIALPESA in exchange for an indemnity.* The investigator confirmed that some workers affected by the layoffs who presented their resignation and received their indemnity signed an “extrajudicial agreement” through which they waived the right to exercise actions regarding claims in their favor -- of any nature -- and acknowledge that all claims that they may have stemming from the employment relationship have been satisfied. Included in these agreements is a clause entitled: “OBLIGATION TO PRESERVE THE REPUTATION” discussed earlier in this report. The document does not include the signature of the company representative, and the investigator assumes that the workers did not receive a copy. This release and waiver of worker rights in exchange for an indemnity to cover their benefits and the so-called “exgratia payment” run counter to FLA Workplace Compliance Benchmark ER.19.3 which states that employers shall not obligate workers to sign a release from liability or consent form regarding other rights as a condition to receive their indemnity and other complementary benefits from the company, and that the company will not threaten to hold benefits if the workers do not sign.
- *Transfer of production.* During the in situ visit, information was provided to the investigator to the effect that HIALPESA has transferred production to a plant located in Chincha, named “JANTEX S.A.C.” This situation was repeatedly denied by HIALPESA, stating that they only purchase yarn from that company as well as from FILASUR. HIALPESA also stated that knitting services are carried out by external contractors who are provided with yarn and accessories.<sup>43</sup> Based on testimonial and documented information, as well as a visual inspection, in the view of the investigator there are sufficient elements to find a link between both companies: two HIALPESA Managers are also officers at JANTEX<sup>44</sup> and it is possible that equipment (circular knitting machines) was transferred to that plant. The fact that HIALPESA provides the yarn to a plant managed by two of its high-ranking executives undermines its primary argument that it closed the spinning and knitting areas because of the low cost of Indian yarn.
- *Use of temporary contracts as a general practice.* The investigator was able to verify that the use of short-term contracts (one or two months) is a general practice at HIALPESA; all the interviewed workers -- except for those declared to be permanent employees by a judicial resolution -- have short-term contracts. This includes 17 of the 95 unionized workers affected by the suspension, with a tenure between 4 and 22 years; they were suspended even before the time their contracted term ended (July 31). Although Peruvian law (Law No. 728 and/or Legislative Decree 22342) allows -- without any limits -- employment of workers through recurring renewal of short-term contracts, this practice violates the FLA Code of Conduct, primarily Workplace Compliance Benchmarks ER.9, ER.9.1, ER.9.2 and ER.9.3.

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<sup>43</sup> Appendix 2

<sup>44</sup> SUNAT Public Records show that the primary executive officers are Pablo Alfonso Rivera Perales and Álvaro Martín Abusada Abusada. <https://www.datosperu.org/empresa-jantex-sac-20554912321.php>

## VII. Conclusions

1. The decision by HIALPESA to close spinning and knitting operations, and the corresponding employment contract terminations for the workers in those areas, was motivated by, among other reasons, the actions taken by the Union in the defense of the interests and rights of its members, especially during the period prior to the announcement of the measure.
2. The AAT will be the authority that determines the legality of the closure of both production areas in HIALPESA within the framework of analyzing the validity of the cause invoked for the closure.
3. Even though HIALPESA had a plan regarding the collective dismissals, its communication and consultation with worker representatives was not “effective” and did not permit the workers to evaluate other alternative or measures regarding the future of the two production units different from the ones already decided, which confirms that the process was primarily informative in nature.
4. HIALPESA did not consider in its proposal measures to mitigate the negative impact of its decision with regard to vulnerable groups such as older workers, those under medical treatment, or those with some disability.
5. The decision to suspend without prior notice the employment contracts was a measure that worsened the effects of the dismissals for the workers, depriving them suddenly of their income for an indefinite period and exposing them to serious risks considering that many are over 60 years old.
6. The decision by HIALPESA to not offer affected workers -- including Union officers -- the opportunity to perform job positions in other areas of the company was subjective and lacks justification. This decision was made without an objective evaluation of the capabilities, skills, and knowledge of each of the workers being dismissed or of the job positions they might fill, even those that could require some type of training. This occurred despite the fact that there have been positions available within HIALPESA for which the company has been recruiting and in which the company has the intention of investing to expand the sewing area.
7. HIALPESA decided to initiate the proceeding before AAT without previously exhausting the process of dialogue and negotiation with the Union; however, this is not an obstacle for the parties within this proceeding to make an effort to reach agreements that satisfy the interests of both.
8. It was verified that 82 of the 190 workers affected by the dismissals no longer have an employment relationship with HIALPESA and, as such, may be excluded from the procedure for authorization for contract termination initiated before the AAT; there are now fewer than 10% of the total workers required by law as subject to contract termination.
9. Of the 95 unionized workers suspended, 17 had a short-term employment contract that ended July 31, by which time they were already suspended. Two workers from this group voluntary resigned after the suspension.
10. It appears very probable that HIALPESA has transferred production to a plant linked to the company, located in Chincha.
11. HIALPESA has complemented the in-house knitting process with subcontracting from outside companies and workshops.
12. The daily work shift and number of hours worked per week at HIALPESA exceed the limits established by national law and FLA Workplace Compliance Benchmarks.
13. HIALPESA complies with the payment of family allowance in accord with the law only to workers covered by the CBA who file claims.<sup>45</sup>
14. HIALPESA has a general practice of using short-term contracts.

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<sup>45</sup> The HR Manager told the investigator that the family allowance has only been paid pursuant to law to workers who have filed claims.

## VIII. Recommendations

1. Regardless of the course of the proceedings before the AAT and the outcome of that process, HIALPESA should make every effort to proceed immediately to reintegrate workers affiliated with the Union and relocate them to other areas of the company, after an evaluation of each of their profiles, competencies, experience, capabilities, skills, etc. as well as of the job positions that they could perform. The Union should be consulted in this process.
2. As part to this process, HIALPESA should reach out to suspended workers and enter into a dialogue to rehire those workers who wish to continue working at HIALPESA in suitable positions and under comparable working conditions.
3. In the process of reintegrating suspended workers affiliated with the Union, HIALPESA should respect workers' permanent employment status, this should include those who had a short-term employment contract and were suspended before the contractual term ended.
4. HIALPESA should compensate suspended workers in the amount of their salary and other legal and contractual benefits from the date of suspension of their employment contracts until their effective reinstatement, including the bonus for national holidays. This should be carried out expeditiously following the publication of this report.
5. HIALPESA should adjust its hiring practices regarding short-term contracts to comport with FLA guidance, including with respect to the principles of the FLA Workplace Code of Conduct and Compliance Benchmarks.
6. HIALPESA should pay all workers, irrespective of whether they are covered by a collective agreement or not, the family allowance required by national law.
7. HIALPESA should develop, after consulting with worker representatives, a policy regarding the right to freedom of association and collective bargaining, free from discrimination, and should provide training to 100% of personnel – management as well as workers -- regarding these rights.
8. Factory management should read and post in the facility a statement indicating respect for freedom of association and collective bargaining by HIALPESA. The statement should be read and posted in all areas of the facility, in the presence of witnesses such as the FLA and local civil society organizations. The content of this statement should be defined jointly among HIALPESA, the FLA-affiliated brands, and the FLA.
9. HIALPESA should make every effort to continue dialogue with worker representatives on the basis of fundamental principles of transparency and good faith.
10. HIALPESA should develop, in consultation with worker representatives, policies and procedures that identify and address all aspects and steps relating to employment contract suspensions or terminations that may arise from personnel retrenchment, permanent closure or liquidation.
11. HIALPESA should grant the Union the facilities necessary to communicate with workers at the Factory, including through bulletin boards in visible places of the plant where they can post information related to the work of the Union -- within the limits established by law, and respecting union autonomy.
12. HIALPESA should grant access to Union officials to all working areas when necessary, subject to agreement between both parties.
13. HIALPESA should provide workers who resign with a copy of their signed resignation agreement, including HIALPESA's signature, and should add all related documents to the workers' personnel files.
14. Should an agreement be reached between HIALPESA and the Union regarding the termination, relocation of workers or other related matters, it should be posted in visible areas of the Factory reachable by workers.
15. Within six months of publication of this report, the FLA should conduct a follow-up verification investigation at HIALPESA to confirm that the recommendations in this report are being followed and the remediation plan developed by FLA-affiliated buyers, are being implemented by the Factory.
16. The FLA-affiliated sourcing brands should request more information from HIALPESA regarding how they are meeting their yarn and fabric requirements in order to be transparent regarding the current operation of their supply chain and whether they have transferred knitting equipment to JANTEX and other companies.

17. The affiliated brands or the FLA should conduct an investigation of HIALPESA's knitting contractors to ensure that the contractors are complying with the law, including with regard to payment of the textile bonus, night shift bonus, family allowance, overtime and profit sharing as well as with collective bargaining and freedom of association and FLA Workplace Compliance Benchmarks.

## IX. Appendix

### 1. List of interviews and reviewed documents

Interviews conducted away from the factory	1 initial interview with the Union's Secretary General and 2 officers from the Federation. 1 group interview with terminated workers affiliated with the Union, including Union officers (49 total workers) Various interviews with the Union's Secretary General during the visit and via telephone calls.
	1 interview with the Labor and Employment Promotion Regional Director
	1 interview with 2 Armstrong representatives
Interviews at the Factory	1 initial interview with Management with the participation of: <ul style="list-style-type: none"> <li>• General Manager</li> <li>• Business Manager</li> <li>• Business Chief</li> <li>• Human Resources Manager</li> <li>• Legal Counsel (2)</li> </ul>
	1 interview with Business Chief (individually)
	1 interview with the Business Manager, Business Chief and Human Resources Manager
	Constant communication with the HR Manager during the visit Various consultations with Human Resources Personnel
Interviews with active workers	Total: 25 workers (3 Union officers and 22 workers from different areas, both affiliated to the union and non-affiliated workers)
Documents reviewed	HIALPESA Internal Work Rules
	Policy for Employment Contract Termination
	Collective Bargaining Agreement 2017-2019
	26 judicial resolutions of first and second instance regarding the payment of family allowance
	15 judicial resolutions of first and second instance regarding dismissal and reinstatement
	14 judicial resolutions of first and second instance regarding the textile bonus
	2 resolutions of first and second instance regarding the ruling of 76 employment contracts as denaturalized
	Act of charges against HIALPESA No. 1894-2019/SUNAFIL/ and act of finding of violation No. 1133-2019 regarding Wage Discrimination
	Draft of the Modification of the Agreement of the Collective Bargaining Agreement regarding family allowance
	22 employee files for workers affected by the dismissal
	10 dockets of documents related to the resignation and indemnity of non-affiliated workers and 2 affiliated workers
	7 payment stubs
	Documents related to the collective dismissals: letter dated 04-09-2019 communicating to the Union and the non-affiliated workers the layoffs and their causes, various letters exchanged between the Union and the company, minutes of meetings with the Union and non-affiliated workers, lists of attendance with their signatures, documents presented to AAT regarding the initiation of administrative proceedings, MPTE resolutions, documents of appeals, expert report of an authorized auditor contracted by HIALPESA (only to review on site) and resolutions issued by AAT.
Lists: of active personnel as of 06-05-2019, active workers affected by the collective dismissals, affiliated workers, workers from various areas of the plant, workers with unused vacation days or about to be awarded vacation days, hires and dismissals for 2018-2019, indemnity of workers who resigned, dismissed workers by seniority and age, payroll for 5 days in June.	
Finding of Violation No. 1179-2014/SUNAFIL/ Denaturalization of 611 contracts	

	Request for inspection regarding payment of bonuses corresponding to July 2019
	Request for inspection regarding payment of compensation corresponding to the month of June 2019
	List of principal sources of knitted products
	2 letters of disaffiliation from the Union
	File of CBA negotiations for the period 2019-2020/94151-2019-MTPE/1/20.21
	Docket of Purchase Orders for Knitting Services from different companies/workshops

2. List of knitting contractors and yarn suppliers to Hialpesa<sup>46</sup>

No	Name/Workshop
KNITTING CONTRACTORS	
1	CORPORACIÓN TEXTIL ESPAIN & ESPINOZA S.A.C.
2	MILLATEX S.A.C.
3	PORRAS LLACCTAHUAMAN JULIO CESAR
4	CONSORCIO FAZZA S.A.C.,
5	TEXTILERA SURI DEL PERÚ S.A.C.
6	CORP. TEXTIL IMPERIO DEL SOL S.A.
7	CORPORACIÓN RIP SOL S.A.C.
8	MAQCH
9	CORPORACIÓN TEXTIL REMALUZ S.A.C.
10	INVERSIONES AWAY S.A.C.
11	CONFECCIONES TEXTIMAX S.A.
12	SERVICIOS TEXTILES ASOCIADOS S.A.C.
13	IDEAS TEXTILES S.A.C
14	LOOP FINE S.A.C.
15	TEXTIL SAN RAMÓN S.A.
16	TRICOT FINE S.A.
17	VILLA TEX S.A.C.
18	CORTEZ JUAREZ ELMER
19	CORPORACION SPORTING S.A.C
20	TEXTIL COTTON FINE S.A.C.
21	S&B NUEVA GENERACIÓN S.A.C.
22	TEXTIL BALENO S.A.
YARN SUPPLIERS	
23	JANTEX S.A.C.
24	FILASUR S.A.

<sup>46</sup> The investigator viewed a docket with 35 purchase orders for knitting services for some of the workshops mentioned. HIALPESA provides the yarn.

3. List of claims and judicial rulings arising from actions by the Union and/or its affiliates against Hialpesa

<i>No</i>	<i>Resolution Date</i>	<i>Reference</i>	<i>Authority</i>	<i>Resolution</i>
1	05-04-2017	31538-2013-0-1801-JR-LA-11	Eighth Permanent Labor Court	Declares the ineffectiveness (denaturalization) of the employment contracts for 76 union members and orders their conversion to employees with indefinite term contract.
2	02-27-2014	1179-2014	MTPE/Labor Inspection	Finds violation by HIALPESA with respect to 611 denaturalized employment contracts.
3	08-20-2018	03471-2015-0-3207-JR-LA-03	Permanent Labor Court	Rules that the employment contracts are denaturalized.
4	08-10-2018/09-03-2018	09001-2015-0-1801-JR-LA-12	Permanent Labor Court	Orders the payment of the <b>textile bonus</b> and others.
5	05-10-2018	14961-2015-0-1801-JR-LA-12	Eighth Permanent Labor Court	Orders the payment of the <b>textile bonus</b> and others.
6	11-21-2018	14969-2015-0-1801-JR-LA-41	First Permanent Labor Court	Orders the payment of the <b>textile bonus</b> and others.
7	04-06-2018	14959-2015-0-1801-JR-LA-12	Eighth Permanent Labor Court	Orders the payment of the <b>textile bonus</b> and others.
8	12-06-2017	14966-2015-1801-JR-LA-12	Seventh Labor Court	Orders the payment of the <b>textile bonus</b> and others.
9	10-19-2017	14968-2015-0-1801-JR-LA-12 (S)	Seventh Permanent Labor Court	Orders the payment of the <b>textile bonus</b> and others.
10	04-08-2019	03111-2017-0-3207-JR-LA-03	Permanent Labor Court	Orders indemnity due to arbitrary dismissal.
11	04-10-2019	03146-2017-0-3207-JR-LA-03	Permanent Labor Court	Declares the dismissal as void and orders that the worker be reinstated and paid all social benefits, including the textile bonus.
12	06-17-2019	01603-2019-0-3207-JR-LA-03	Third Permanent Labor Court	Accepts the complaint and assigns a date for a conciliation hearing.
13	07-19-2019	0256-2018-0-3207-JR-LA-03	Permanent Labor Court	Recognizes the denaturalization of the employment contracts and rules that the worker be subject to an indefinite term employment contract.
14	06-07-2019	13851-2015-0-1801-JR-LA-08	Eighth Specialized Permanent Court	Recognizes the denaturalization of the employment contracts, rules that the dismissals are without just cause and orders the reinstatement of the workers to his position.
<b><i>FAMILY ALLOWANCE AND OTHERS</i></b>				
15	07-25-2019	00962-2019-0-3207-JP-LA-01	Third Permanent Labor Court	<ul style="list-style-type: none"> <li>• Reimbursement of family allowance.</li> <li>• Pay 10% of the minimum wage pursuant to Law No. 25129.</li> <li>• Continue paying the family allowance for spouses pursuant to the CBA.</li> </ul>

16	02-12-2019	09788-2018-0-3207-JP-LA-01	Second Permanent Labor Court	Idem
17	07-02-2019	0959-2019-0-3207-JP-LA-02	Third Permanent Labor Court	Idem
18	07-18-2019	01227-2019-0-3207-JP-LA-01	Third Permanent Labor Court	Idem
19	07-02-2019	01228-2019-0-3207-JP-LA-02	Third Permanent Labor Court	Idem
20	07-18-2019	01226-2019-0-3207-JP-LA-02	Third Permanent Labor Court	Idem
21	06-07-2019	00068-2019-0-3207-JP-LA-02	Second Permanent Labor Court	Reschedules the appeals hearing for 09-24-2019/ First instance ruling in favor of worker
22	07-03-2019	05713-2019-0-3207-JP-LA-01	First Permanent Labor Magistrate Court	Accepts the complaint and sets a hearing date for 08-22-2019.
23	07-24-2019	00066-2019-0-3207-JP-LA-02	Second Permanent Labor Court	Reschedules the hearing for 08-22-2019. First instance ruling in favor of the worker.
24	08-06-2019	03751-2019-0-3207-JP-LA-02	Second Permanent Labor Court	Agrees with the ruling (accepted) in favor of the worker as it was not appealed by HIALPESA.
25	07-03-2019	00065-2019-0-3207-JP-LA-01	Second Permanent Labor Court	Schedules an appeals hearing for 08-16-2019/First instance ruling in favor of the worker
26	08-16-2019	07141-2019-0-3207-JP-LA-01	First Labor Magistrate Court	Accepts the complaint and sets a hearing date for 10-10-19.
27	08-06-2019	07005-2019-0-3207-JP-LA-02	Second Permanent Labor Magistrate Court	Accepts the complaint and sets the only hearing date for 11-19-2019.
28	07-24-2019	01644-2019-0-3207-JP-LA02	Second Permanent Labor Court	Reschedules the conciliatory hearing for 09-17-2019.
29	08-05-2019	06231-2019-0-3207-JP-LA-02	Second Permanent Labor Magistrate Court	Prevents the plaintiff from correcting the complaint.
30	07-03-2019	05727-2019-0-3207-JP-LA-01	First Permanent Labor Magistrate Court	Accepts the complaint and sets a hearing date for 08-26-2019.
<b><i>RESOLUTION OF INITIATION OF SANCTIONING ADMINISTRATIVE PROCEEDINGS FOR OBSTRUCTING THE INSPECTION TASK/ WAGE DISCRIMINATION RELATED TO UNION AFFILIATION</i></b>				
31	05-17-2019	1894-2019-SUNAFIL/LIM/SIAI/ Inspection Order No. 20916-2019.	SUNAFIL	Total fine imposed on HIALPESA: S/37,800 Soles HIALPESA found not to be in compliance because they did not fulfill their obligation to cooperate by providing the necessary information for the ordered inspection. The inspection investigation initiated 02-13-2019. A term of 5 days was granted to respond.