



Independent verification process

PETRALEX S. DE R.L, HONDURAS

February, 2016



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I. Background

In March 2015, the *Federacion Independiente de Trabajadores de Honduras* (FITH) federation and the *Sindicato de Trabajadores de la Empresa PETRALEX* (SITRAPETRALEX) union filed a third party complaint with the FLA, alleging that the PETRALEX factory systematically violated workers' rights of freedom of association by dismissing without just cause all members of the SITRAPETRALEX Board of Directors, in addition to dismissing or forcing the resignation of various union members or relatives of union members.

The FLA accepted the complaint for investigation and after a thorough review conducted between April 8 and 11, 2015 it was determined that the factory used justification identified as "workforce reduction" or "retrenchment" to dismiss workers associated with the union, in addition to the use of offers of additional severance payment to compel workers to resign voluntarily; concluding that the factory had committed serious violations of workers' freedom of association in violation of Honduras labor law and the FLA Workplace Code of Conduct which required a remediation plan with an immediate application¹.

The remediation plan was developed between the FLA and Worker Rights Consortium (WRC) in May 2015 and its monitoring and level of compliance was agreed upon to confirm the execution of said plan. Therefore, in February 2016 an independent verification was commissioned to evaluate the compliance level of the remediation plan outlined for PETRALEX.

II. General Information about PETRALEX

PETRALEX S. DE R.L is a textile industry factory, located in the ZIP Bufalo Industrial Park in Villanueva, Department of Cortes in Honduras. PETRALEX is subcontracted by the following brands affiliated with Fair Labor Association (FLA): Dallas Cowboys

¹ Summary of Final Report for PetraleX, Honduras prepared in July 2015; Page 2, Paragraph 2 can be found at the following address:

http://www.fairlabor.org/sites/default/files/documents/reports/petralex_reporte_final_espanol_julio_2015.pdf

Merchandising Ltd., Gear for Sports Inc. (including Under Armour under a licensing agreement), Outerstuff (adidas Group licensee), and VF Corporation.

The factory currently has a production plant made up of a 260 people workforce, 198 women and 62 men. There is a union organization at PETRALEX, named SITRAPETRALEX which is affiliated to *Federacion Independiente de Trabajadores de Honduras* and the *Confederacion Unitaria de Trabajadores de Honduras* (CUTH).

III. Applied methodology

In order to verify the compliance level of the Remediation Plan, the methodology applied basically consisted of an *in situ visit* to the factory for the corresponding document review; and also, *performance of interviews* with representatives from PETRALEX management, from the Labor Ministry of Honduras, from the SITRAPETRALEX union, from the *Federacion Independiente de Trabajadores de Honduras* (FITH) union federation, from the *Confederacion Unitaria de Trabajadores de Honduras* (CUTH) union confederation, a representative from WRC and with randomly chosen factory workers, both affiliated and not affiliated to the union.

During the on-site visit a request was made to the factory to provide the following documentation:

1. Documents that proved the reinstatement of union leaders and workers dismissed during the month of March 2015; and the corresponding evidence of payment of back pay and/or corresponding bonuses;
2. Policy and procedures regarding freedom of association;
3. Statement released by PETRALEX and SITRAPETRALEX recognizing the legitimacy of the union and the factory's commitment to respect freedom of association;
4. Acts of meetings held between management and the union to follow up on the Remediation Plan;

5. Procedure for employment terminations;
6. Grievance procedures;
7. Internal work code;
8. Factory security policies (for admission to the facility);
9. List of training sessions regarding freedom of association and grievance procedures;
10. Resume for the labor rights expert who provided the training sessions; and
11. Inspection Acts from the Labor Ministry for the last year.

During the verification process a total of 12 interviews were conducted -group and individual- with the participation of 30 people, detailed below:

- a) Interviews conducted outside of factory facilities:

Interview type	Participants
1 group interview with SITRAPETRALEX, <i>Federación Independiente de Trabajadores de Honduras (FITH)</i> , <i>Confederación Unitaria de Trabajadores de Honduras (CUTH)</i> ; and Worker Rights Consortium (WRC)	8 participants: <ul style="list-style-type: none"> - SITRAPETRALEX President, Vice-president, Secretary General, Recording Secretary; and Treasurer; - FITH Organization Secretary; - CUTH General Undersecretary; and - WRC Representative.
1 individual interview with the Labor Ministry of Honduras	Regional Chief of Labor Inspection
Total interviews: 2	Total interviewees: 9

- a) Interviews conducted during the *in situ* visit:

Interview type	Participants
1 group interview with management	4 participants: General Manager, Plant Manager, Human Resources Manager and Hygiene and Occupational Safety Chief.
1 group interview with workers dismissed in March 2015	9 workers affiliated to the union and relatives of union leaders dismissed in March 2015.
8 individuals interviews	8 workers chosen randomly
Total interviews: 10	Total interviewees: 21

IV. Results of the verification process

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No	Remediation Action	Person Responsible	Deadline	Verification status (in process, pending, complete)
1	Factory management must reinstate the 9 union leaders dismissed between November 2014 and March 2015.	General Manager and Human Resources Manager	May 08, 2015	<p><u>Action complete</u></p> <p>On Monday 05-25-2015, 8 of the 9 leaders dismissed in March 2015 were effectively reinstated. When management was consulted as to why the deadline was not met, they stated that the delay was due to negotiations with SITRAPETRALEX to execute the reinstatements.</p> <p>The reinstatement that was not carried out because of the union leader's refusal to accept reinstatement.</p>
2	Management must reinstate the 10 union members or relatives of union members dismissed between November 2014 and March 2015. Factory management will work with representatives of FITH and SITRAPETRALEX to contact all these workers.	General Manager and Human Resources Manager	May 08, 2015	<p><u>Action complete</u></p> <p>On Monday 05-25-2015 and Thursday 05-28-2015, 6 of the dismissed workers were effectively reinstated.</p> <p>The reasons for not reinstating 4 union members were the following:</p> <ul style="list-style-type: none"> a) 2 of the union members did not accept reinstatement (one of them moved to the United States and the other was working at another factory); b) One union member decided to pursue legal action, considering that the case involved disciplinary issues. The case had not been definitively resolved at the time of this investigation; and c) Factory management and SITRAPETRALEX determined that one of the workers mentioned in the April 2015 FLA investigation report was not a union member. With regard to this case, the union and management determined that the worker would not be reinstated because the worker was deemed unfit to continue working; however, she was given the bonus granted to union leaders, and the corresponding benefits and severance payments.

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3	<p>Factory management will compensate the 19 dismissed workers for lost wages, regardless of whether they accept reinstatement. Lost wages must be calculated based on the average salary during the last six months before dismissal.</p>	<p>General Manager, Personal Responsible for Finances and Human Resources Manager</p>	<p>May 15, 2015</p> <p>If the factory requests to make payments of lost wages in monthly installments, these must be paid to all 19 workers within 3 months at the most.</p>	<p><u>Action complete, requires monitoring</u></p> <ul style="list-style-type: none"> ❖ Case of union leaders (9 people) <p>It was verified that on 05-20-2015 the corresponding payments to 8 dismissed SITRAPETRALEX leaders who were reinstated were completed the agreed amounts.</p> <p>In the case of the union leader who did not accept reinstatement, the corresponding payment was not verified. The company and the union negotiated an agreement so that the amount owed to the union leader would be disbursed to the union. This negotiation is legitimate, however did not exempt the factory from its responsibility to pay the dismissed union leader, as per Article 516 of the Labor Code, which states the following:</p> <p>“Workers who are members of the executive committee of a union organization, from the time of their election up until six (6) months after leaving office, may not be dismissed from their job without proving to the competent judge or civil court judge that there is just cause for contract termination. The judge presiding over summary proceedings will rule as applicable. This provision is only applicable to the main board of directors when unions are organized in sections and subsections. Violation of the disposition of the above paragraph will make the employer liable for payment to the union of the equivalent of six (6) months of the worker’s salary, without prejudice of the worker’s corresponding rights.”</p> <ul style="list-style-type: none"> ❖ Cases of dismissed union members and relatives of union leader (10 people) <p>On 05-25-2015, a payment of 4,000 Lempiras to 6 of the 10 dismissed workers was completed, according to the agreement reached by the union and management, on 05-21-2015. In spite of the described agreement, the group of people and the union also demanded the payment of a bonus and lost wages. For this reason, management decided to make these payments but deducted the payment of the 4,000 Lempira bonus and the payment of the proportional employment benefits which were granted in virtue of their dismissals.</p>

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				<p>In the case of worker deemed unfit to fulfill the function of the job, the corresponding payment was verified and agreed by the union.</p> <p>With respect to payment of the other 3 affected workers, the following can be stated:</p> <ul style="list-style-type: none"> a) One of the union members did not receive payment because the case is still before the courts, as pointed out in subsection (b) of Point 2 of the Status of the Remediation Plan. b) In the case of the two workers who did not accept reinstatement payment was not verified and, according to the factory, this was because the union did not request it during negotiations. This is breach of the remediation action corresponding to this specific case which compels payment regardless of the acceptance of reinstatement.
4	<p>Factory management must abstain from new terminations and other acts of retaliation due to union activity/affiliation or family ties to union members. In cases of future dismissals due to retrenchment or employee reduction, management must review the specific cases with the union before any final decision is made.</p>	<p>General Manager, Plant Manager, Production Manager and team, Human Resources Manager, Health and Industrial Safety Manager, Area or Department Chiefs, Factory Security Guards and Supervisors</p>	<p>From April, 27 2015 onward.</p>	<p><u>Action complete, requires monitoring</u></p> <p>SITRAPETRALEX does not report any dismissals executed by factory management motivated by union discrimination.</p> <p>However, the union and the factory expressed that in June 2015 the factory initiated the dismissal of approximately 124 people, due to the loss of customers Outerstuff (ADIDAS) and Kayser Roth, in addition to reduction in orders from VF Corporation and Gear for Sports Inc.</p> <p>With regard to these dismissals, the factory communicated the situation to the union, for which SITRAPETRALEX expressed concern and pointed out that they did not comply with the factory's procedures for employment terminations; and they did not comply with the terms of this remediation action since management did not review the case of each specific person to be dismissed with the union, in order to make a final decision.</p> <p>In that regard, the factory mentioned that they did take into account the opinion of the union at the time of the terminations and proof of that is that of the two companies with the same management (PETRALEX and</p>

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				<p>CALI), 75% of the dismissals occurred at CALI and only 25% at PETRALEX.</p> <p>With regard to dismissals, information regarding how many union members were affected by this measure was requested from SITRAPETRALEX; however, they expressed that they did not keep record of this information.</p> <p>According to the factory's procedure for employment terminations, in order to proceed with dismissals for operational reasons, those with least seniority will be chosen first taking into account performance evaluation stating that SITRAPETRALEX will be included to inform them of the reasons for the reduction.</p> <p>Regarding this issue, it must be mentioned that in the minutes from 07-04-2015, factory management and SITRAPETRALEX mutually agreed that the procedure for employment terminations would apply the criteria of seniority and performance; and that workers reinstated in 2015, pregnant workers or lactating workers would not be affected, which was evidence of the union's general involvement in the process but not in each specific case as determined by the present remediation action.</p> <p>Finally, a request was made to management to provide a sample of 15 pay slips, determining that these do comply with the legal dispositions of Labor Code corresponding to the matter of payment of employment benefits due to dismissals: severance payment, proportional payment of vacations; and payment of the "thirteenth" and "fourteenth" salary.</p>
5	<p>Factory management after consultation with the union will establish, in writing, a schedule of weekly meetings to have a dialogue with the SITRAPETRALEX union. The key issues to discuss are (a) grievance procedures, including the right of union leaders to represent workers during the disciplinary process; (b) agreed rules</p>	<p>General Manager and Human Resources Manager</p>	<p>Starting May 4, 2015 for the following 3 months.</p> <p>Afterwards the parties may agree on a</p>	<p><u>Action complete, requires monitoring</u></p> <p>Since 06-04-2015 meetings were held between the factory and the union every 15 days, with the objective of monitoring compliance with the remediation plan; this issue could be verified with the review of the corresponding minutes.</p> <p>With the examination of the minutes, the attention to the following key</p>

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	<p>regarding the access of union and federation representatives to the workplace to meet with workers during breaks and other rest periods; and (c) develop training material regarding freedom of association and collective bargaining. Factory management and the leadership of the SITRAPETRALEX union should consider a temporary position of ombudsman during the first three months, who will provide the service of mediator between the parties.</p>		<p>different schedule to hold their meetings.</p> <p>Written agreement about grievance procedure, union representative access and preparation of training material about freedom of association must be completed by 06-01-2015.</p>	<p>issues was verified: grievance or complaint procedures; and the development of training material about freedom of association and collective bargaining; and regarding access of union and federation representatives to the workplace to meet with workers, as long as the factory's protocol for admittance is followed. However, the issue of work representation by the union during the disciplinary process was not addressed.</p> <p>Finally, with regard to this issue, in the minutes dated 07-08-2015, the factory and union agreed that the presence of an ombudsperson was not necessary since there is good communication between the factory and the union.</p>
6	<p>Factory management must issue, in collaboration with the union, a joint letter in Spanish, to all workers expressing respect to their union rights and recognizing the establishment of the SITRAPETRALEX union. The letter must be communicated to all workers through various channels (for example, bulletin board, flyers, messages through the loudspeaker) and read to workers by supervisors.</p> <p>The text of the letter must be approved by the FLA and WRC before it is issued; FLA and WRC observers must be notified and must have access to observe this process.</p>	<p>General Manager and Human Resources Manager</p>	<p>May 19, 2015</p>	<p><u>Action partially completed</u></p> <p>On 06-04-2015 a joint letter was issued in which the factory recognizes and reaffirms the right to freedom of association and collective bargaining; and recognizes the legal personality and legality of the Board of Directors of SITRAPETRALEX. At the same time, in this statement, SITRAPETRALEX expresses and validates that the company is respecting the freedom of association of its workers and the lawful existence of the union and the Board of Directors.</p> <p>According to various interviews conducted with the union and non-affiliated workers, the statement was issued through the loudspeaker and posted on the factory information board, but only for a few days (this was verified during the tour of the plant where evidence of this statement was not found on the board).</p> <p>It must be pointed out that in the interviews that had the participation of SITRAPETRALEX, FITH and CUTH and the WRC, it was stated that the</p>

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				statement was not approved by neither the WRC nor the FLA; and that they did not participate as observers during the process.
7	Factory management in conjunction with the union must implement a continuous training program about freedom of association and collective bargaining , which includes the participation of all workers (including security personnel), supervisors, middle and senior management. The training must be held by an independent external expert acceptable to management, the union, the FLA and WRC, with the participation of the union in the generation and presentation of content.	General Manager and Human Resources Manager	<p>Management and the union will begin a dialogue to define the expert to take charge of the implementation of the training program on 05-04-2015.</p> <p>The training program must be implemented permanently, covering all factory workers. Through the end of 2015, all workers should have received at least one training session regarding freedom of association and collective bargaining.</p>	<p><i>Action partially completed</i></p> <p>As of 05-21-2015, there is evidence of 9 training sessions regard freedom of association and collective bargaining, with the participatiior a total of over 300 people, between production workers, administrat and management.</p> <p>According to the reviewed documents, the training sessions had laste total of 4 hours and covered the following subjects: (i) legal instrume such as the Constitution, Conventions 87 and 98 and the Labor Code. Labor Code regulations regarding freedom of association; and examples of practical situations. Evidence of the inclusion of Workplace Code of Conduct and Compliance Benchmarks was not fou neither was evidence of guarantees of protection offered to un organizations.</p> <p>With respect to the training facilitator, management and SITRAPETRA agreed to hire an independent lawyer specializing in Labor Rig However, the FLA and WRC were not included in the selection of expert as established by the present remediation action.</p> <p>During interviews conducted with management, SITRAPETRALEX and n affiliated workers, they expressed satisfaction with regard to the cont of the above training session; which was reflected in the writ evaluations, grading as excellent - in the majority of cases- the w performed by the facilitator.</p>
8	Factory management must review its current policy on freedom of association and collective bargaining to guarantee compliance with the standards of the FLA	General Manager and Human Resources	The new revised version of the Policy will be completed by	<p><i>Action complete, requires monitoring</i></p> <p>On 06-27-2015 a new Policy on Freedom of Association was approv</p>

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	Workplace Code of Conduct and Compliance Benchmarks.	Manager	05-15-2015 at the latest.	<p>however this policy does not completely address FLA Compliance Benchmarks (FOA.5.1, FOA.6, FOA.7 and FOA.12).</p> <p>In general terms it expresses the factory's commitment to respect freedom of association and collective bargaining; however, it does not include procedures or actions of guarantee that protect the exercise of these rights. For example, it does not point out in a precise manner the conduct prohibited or identified as anti-union violence, the forms of protection of union representatives, the reinstatement model as a guarantee of protection from dismissal motivated by an act of anti-union discrimination, the right to nonintervention or noninterference, etc.</p> <p>In interviews conducted with randomly chosen workers, 100% of them mentioned that they had knowledge of the policy but that they still feared forming part of the union since they considered that they could be affected or dismissed.</p>
9	Factory management, in collaboration with the union must develop confidential grievance procedures available so that all workers may report issues related to freedom of association. Factory management will provide training to all workers with respect to this new grievance procedure, to enable them to use said mechanism.	General Manager	May 15, 2015	<p><u>Action complete, requires monitoring</u></p> <p>On 8-11-2015 the factory and SITRAPETRALEX agreed on grievance and complaint procedures which were communicated to workers. In this regard, the factory provided a list of people who attended a training session about this procedure on 11-25-2015; however, SITRAPETRALEX expressed that the objective of this action was not met since adequate training was not provided; the procedure was only communicated verbally.</p> <p>In the 8 interviews conducted independently and chosen randomly, it was expressed that the only confidential grievance mechanism that they had is the suggestion box; but that there is no assurance of a response, and they therefore consider that they would not use this mechanism because they did not know how it really works.</p> <p>Upon reviewing the defined procedure, it was indeed noted that the suggestion box is included as a confidential grievance mechanism so that</p>

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				<p>workers may inform of situations that require urgent attention (such cases of harassment or abuse). However, it must be noted that mechanism has weaknesses since it does not respond to the urgency these cases. For example, the procedure states that the suggestion box be checked weekly by management, when this should be done more frequently, assuming that through its use workers could be informing serious situations within the factory which should be addressed immediately.</p> <p>In conclusion, the present action was completed by issuing a writ grievance mechanism and a mechanism that guarantees confidentiality but it does not comply with FLA Compliance Benchmark E.R 25.3.2, which establishes the obligation of the employer to “guarantee that applicable procedures and regulations to address grievances will be made known to workers”; and in addition, does not offer guarantees of efficient functioning which motivate workers to present their grievances.</p>
10	Management must assign a high ranking officer at the factory to be responsible for industrial relations within the factory, including freedom of association. This position will represent the factory and serve as a communication liaison with the union.	General Manager	May 04, 2015	<p><u>Action complete</u></p> <p>As of 06-22-2015 the factory assigned the Human Resources Manager the representative of Labor Relations, with the objective of being a liaison between the union and factory management.</p> <p>During the interview conducted with SITRAPETRALEX, it was stated that “the Human Resources Manager is accessible to their suggestions as an organization, and though there are decisions that do not depend on her she communicates the union’s requests to management”.</p>
11	Factory management must guarantee that labor inspectors and any other relevant authority have free access at all times to the facilities.	General Manager	Starting on 04-27-2015 and ongoing	<p><u>Action complete</u></p> <p>During interviews with SITRAPETRALEX and the Ministry of Labor, it was stated that labor inspectors have had free access to the factory facilities</p>
12	Factory management must comply with the STSS ruling that have not been addressed by other points in the	General Manager	Starting on 04-27-2015 and	<p><u>Action undetermined</u></p> <p>In interviews conducted with SITRAPETRALEX and the Ministry of La</p>

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	remediation plan.		ongoing	<p>(ST), it was informed that it is not possible to determine compliance with these resolutions as of this date, there is no definitive ruling.</p> <p>Currently, an ex officio inspection is in process conducted at the factory on 8-24-2015. The Regional Chief of Inspections stated during the interview that the results of the inspection pointed to mistreatment of employees; however, management presented rebuttal evidence which is currently being examined which is why there is no definitive ruling of the case.</p> <p>It should be mentioned that in September 2015 there was a strike in one of the factories in the Industrial Park where PETRALEX is located. As a result, factory management communicated to workers that work would also be suspended at PETRALEX to prevent problems. The union stated that the seventh day was not paid along with the seventh day (rest day). In view of this situation and according to information provided by STSS and the union organization, a complaint was filed with the STSS, which was later withdrawn in order to take legal action, which is pending resolution.</p>

V. Conclusions

In general terms a substantial compliance level with the Remediation Plan outlined for PETRALEX was observed; which included as a good practice, the active participation of SITRAPETRALEX in this process. For example, of the 12 remediation actions established:

1. 5 of the actions were fully completed (41.67%):

- 1.1. The reinstatement of the dismissed union leaders,
- 1.2. The reinstatement of the dismissed union members,
- 1.3. Naming a factory officer to serve as a liaison between the union and factory management,
- 1.4. Compliance with the inspection judgments; and
- 1.5. Free access to labor inspectors to the factory;

2. 2 of the actions were partially completed (16.67%)

- 2.1. The issuance of a joint statement regarding respect of freedom of association; and
- 2.2. Training on the matter of freedom of association.

3. 5 of the actions were completed but require monitoring (41.67%):

- 3.1. Payments submitted to union leader who did not accept reinstatement and members dismissed in 2015;
- 3.2. The participation of SITRAPETRALEX in cases of terminations, retrenchment and workforce reduction;
- 3.3. The representation of workers by the union in disciplinary processes;
- 3.4. The Policy of Freedom of Association and Collective Bargaining; and
- 3.5. The Policy for Grievances and Complaints.

VI. Recommendations

In the case of the remediation action which require monitoring and in the case of the action that was undetermined, the following points are recommended for total compliance with the established Plan:

1. Guarantee payment of lost wages and bonuses, as per the specific case, to people dismissed in March 2015 who did not accept reinstatement.

2. In future cases of workforce reduction, allow the involvement of SITRAPETRALEX in the decision process to define the people that will be affected by these cuts to guarantee full respect of the criteria established in the termination and resignation procedures.
3. Define a disciplinary procedure for the plant that includes the participation of SITRAPETRALEX in these procedures so that they may act as the defense of the interested workers.
4. Develop Procedures for Freedom of Association and Collective Bargaining, in order to include measures of protection that are in agreement with the guidelines of the FLA Workplace Code of Conduct and Compliance Benchmarks. This process should be completed with the participation of management, SITRAPETRALEX, the FLA and the WRC. In addition, it is recommended that training be held regarding the FLA Code of Conduct and Compliance Benchmarks governing freedom of association and collective bargaining.
5. Modify the Grievance Procedures in order for them to align with FLA Workplace Code of Conduct and Compliance Benchmarks, defining deadlines that guarantee the efficient attention to grievances and complaints that may be presented by workers. With regard to this point, it also requires the participation of management, the union, the FLA and the WRC for its modification and to design an effective strategy for communication that allows all workers to be aware of the procedure and the guarantees necessary for the attention of their problems or complaints.
6. With regard to the inspection process by the STSS currently pending, the factory should comply with the final ruling.