

C. Third Party Complaint Regarding a Facility Contracted by Liz Claiborne in Guatemala

Overview

This report relates to two apparel factories in Guatemala, which are owned and managed by the same Korean company and have had a longstanding contract with Liz Claiborne. In July 2003, the first collective bargaining agreement in Guatemala's maquila sector was signed by management and union representatives from these factories, which had been the subject of interventions by various parties. The agreement is a unique product of collaboration among workers, a local monitoring group, local government, factory owners/management, international unions, a multinational corporation, and the Fair Labor Association. While the case remains open for the FLA due to the need for continued improvements at the factory, it is viewed internationally as an example of multi-stakeholder engagement leading to workplace change.

Legal and Economic Context

Guatemala's Constitution and Labor Code recognize workers' freedom of association and their right to organize free from discrimination or abuse. In addition, the Labor Code contains provisions that protect the right of workers to choose not to join or to withdraw from a union. Accordingly, the Labor Code of Guatemala provides that a union must have at least 20 members in order to be able to register, and at least represent 25 percent of the workforce to bargain collectively. In this context, it took the founding members of the two unions in this case over a year to organize and obtain their legal recognition.

In Guatemala, the apparel sector is the greatest generator of formal employment. There are currently an estimated 250 maquilas that employ approximately 120,000 workers. Apart from those involved in this case, there is another union that is currently in the process of registering in the maquila sector. Other than these isolated cases, however, there are no other active unions in Guatemala's maquila sector.

Background

This third party complaint actually focuses on two separate factory locations that are owned and managed by the same company. The factories are located in an industrial zone approximately 30 km from Guatemala City and are owned by a Korean company with Korean management, who oversee middle managers from Guatemala. Given seasonal variation, at any given point 30 to 70 percent of the production in these factories is for Liz Claiborne and the remaining percentage is for other American brands. As of April 2002, the first factory had a total of 709 workers, 605 women (85%) and 104 men (15%). Also as of April 2002, the other factory had a total of 382 workers, 315 women (82%) and 67 men (18%).

In July 2001, workers at both factory locations filed an application for official recognition of their unions to the Guatemalan Ministry of Labor,⁵⁵ and on the same day informed factory management of the union. By registering the union, they obtained a "job protection" court order, which protects against dismissal of union affiliates.

According to worker accounts, an anti-union campaign began almost immediately. Anti-union workers and factory management were reported to have circulated propaganda against the trade union, slandered officials, threatened to place trade union officials on blacklists, pressured workers to sign documents expressing opposition to the union, and alarmed the workforce that the company would close. In the following month, non-union workers reportedly assaulted and made death threats against union members which resulted in the resignation of some union members out of fear for their safety.

As reports of heightened tensions at the factories continued, COVERCO, a local monitoring group contracted by Liz Claiborne, made frequent visits to the facility. During a visit in July, a monitor witnessed an assault on union leaders and communicated concern about the conditions in the facility. Police and representatives from MINUGUA, the UN mission in Guatemala also visited the facilities, but had little success in assuaging tensions there. Both the managers and the police said they were unable to ensure union members' safety.

In an effort to influence a change in atmosphere at the factories, Liz Claiborne officials distributed a letter in Spanish to workers in both factories. The company declared that they would continue to source from the facilities if workers respected the right of all workers to join, or not join a union; and if the situation was resolved in a peaceful manner.

In light of ongoing tensions and international attention, the Guatemalan government actively sought a resolution of the situation. On July 25, 2001, it hosted a meeting between the union and factory management which sought to "improve observance of national law and international labor standards in the country." At the meeting, factory management was instructed to resolve the situation, with a warning that it could lose its export license if problems persisted. The factories' parent company and the Ministry of Labour signed an agreement which included the company's commitment to:

1. respect the right to freedom of association;
2. reinstate all union members in their posts, preserving their seniority in the company, and allow them to carry out their union activities without interference;
3. allow representatives from the MINUGUA, the UN mission in Guatemala to enter plant premises to ensure that the agreement was being observed; and
4. apply disciplinary measures against persons responsible for labor rights violations.

The parent company also made a public statement clarifying that it would not close the factories as a result of the union's establishment.

⁵⁵ Both unions were affiliated with the Trade Union Federation of Food, Agricultural and Allied Workers (FESTRAS), which has been assisting and advising them. Currently the unions are not part of the Federation.

Unfortunately, this agreement did not resolve the issues at the Guatemalan factories. Over the course of the next year, problems continued to arise. The factories became well-known in the international labor context and activists often referred to them to exemplify the need for improvements in the promotion of labor rights in Guatemala more broadly. These groups included the International Textile, Garment and Leather Workers' Federation (ITGLWF), which filed a complaint with the International Labor Organization (ILO) in early 2002 alleging numerous anti-trade union actions in Guatemala. The AFL-CIO, in December 2002, filed a petition before the United States Trade Representative requesting that Guatemala be excluded from the GSP for continuing to "systematically violate workers' rights to freedom of association and collective bargaining." In 2003, international activists sought to use negotiations around the Central American Free Trade Agreement (CAFTA) as a vehicle for improvements in labor rights in Guatemala.

In this context, the Ministries of Labor and of Economic Affairs worked to exhibit the government's enforcement of labor standards. One approach they took was declaring that, regardless of the economic and social consequences, a number of maquilas would have their export licenses withdrawn due to their repeated violations of the Labor Code. A list of 37 noncompliant factories was released and circulated among factories, and the two sister Guatemalan facilities were the first to be targeted. Observers speculate that this was due in large part to the factories' high international profile.

The Third Party Complaint in Process

In June 2003, the FLA received a third party complaint from union members alleging violations of the Code of Conduct. After investigating the situation, FLA President Auret van Heerden met with the Minister of Labor to determine ways in which 1) the fourteen-year-old business could remain open; 2) 1,000 workers could retain their jobs; and 3) the only two maquila unions in Guatemala could freely exist. It became clear that the only way that the factory could avoid losing its export license was to sign a collective agreement with the union before the end of June.

Several rounds of meetings and negotiations were held between the union and factory management. Given the magnitude of the situation, the president of the company that owned the facilities traveled from Korea to participate in the meetings and had a considerable impact on the outcome of negotiations. The FLA played an active role in facilitating the discussions, which were also attended by representatives from Liz Claiborne, the Guatemalan government, the monitoring group COVERCO, local unions, the US Embassy, the Minister of Labor, and the General Secretary of the ITGLWF.

On July 3, 2003, the negotiations started in an atmosphere of mutual respect. Discussions over the course of the next week were intense, but with continuous mediation and advice, management and the union completed negotiations on July 10. On that day, they signed a Collective Bargaining Agreement (CBA) and a Declaration of Principles, which was a commitment by the factory to respect freedom of association and the collective bargaining agreement. It states that "the companies and the unions will rely on the FLA as a communication channel in the short term to help establish mutual trust between the companies and the unions, and to promote mutual respect for the parties." The group also discussed a Plan of Action for the Declaration of Principles, as required by the Ministry of Labor.

Beginning July 15 2003, COVERCO began to monitor compliance with the Declaration of Principles and the collective bargaining agreement on behalf of the FLA. Union leaders indicated that the climate in the factory improved significantly after they signed the collective bargaining agreement, and that the threats and antagonism they had experienced had stopped. At the beginning, there was a sense of greater trust and good faith, and the communication channels operated more effectively than they had before negotiations. The workers also saw positive outcomes of the collective bargaining process when they started to receive the benefits that the union had negotiated.

Despite initial positive results, the situation became increasingly tense. Both sides felt that the CBA was not being respected. Ongoing monitoring of the situation was also interrupted this past year when factory management denied access to COVERCO, complaining that the monitoring group was only listening to union leaders. In May of 2004, the FLA received another Third Party Complaint from the unions stating that factory management was violating the CBA.

Ongoing Remediation

Since the first complaint was received, Liz Claiborne worked with union representatives and factory management based in Korea and Guatemala to remediate the ongoing challenges that exist in the factory. During the past year, serious concerns arose regarding adherence to the CBA, resolution of previous problems, and productivity of workers. For instance, union leaders reported that no disciplinary measures were taken against workers that committed the abuses against them in July 2001. In addition, both management and union members have reported inappropriate language and disrespectful responses to complaints filed through the factory's internal system.

Despite these challenges, there have been changes that indicate progress in recent months. In July of 2004, there were management changes both in Korea and Guatemala. Restructuring in Guatemala included the creation of a position solely responsible for labor/management relations and, as of August 18, 2004, management and unions had reportedly been meeting almost everyday since July 5, 2004 to review and resolve issues. These meetings indicate an atmosphere of increased collaboration between management and unions. Liz Claiborne's compliance team has pledged to support continued engagement that is positive and productive.

The FLA will continue to monitor the situation and report publicly on actions taken in response to these complaints.