



Conduct Code Verification Committee

FINAL REPORT

INDEPENDENT INVESTIGATION

AT

TEXTILES OPICO, S.A. de C.V

San Juan de Opico, La Libertad

El Salvador

May 15 - 17, 2013



Conduct Code Verification Committee

INDEPENDENT INVESTIGATION TEXTILES OPICO, S.A. de C.V.

INDEPENDENT INVESTIGATION OBJECTIVE

The Fair Labor Association (FLA) asked COVERCO to carry out an independent investigation at the request of the FLA-affiliated that is a Participating Supplier (PS), Textiles Opico, S.A. de C.V. (TEXOPS) due to employee firings that were possibly related to the formation of a union in that factory, located in San Juan Opico, El Salvador.

AREAS TO INVESTIGATE

According to the Terms of Reference, the investigation covered the environment in which TEXOPS workers can freely associate to form a union of their choice. Specifically, the investigator evaluated, among other things, the following allegations:

1. Termination by management of worker(s) in retaliation for union activities, or suspected union membership;
2. Worker coercion to sign an anti-union petition; suggesting that a potential factory closure will result in case of union formation;
3. Management coercion of workers to work overtime without payment, supposedly to compensate for "lost" hours after former company shutdown;
4. Allegations of child labor and an "apprenticeship" program led by management, where children as young as 14 years old are working in the production lines, next to regular workers.

During the assessment period, the investigator also examined allegations that were brought up by other stakeholders and raised in public reports.



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METHODOLOGY

The methodology used by COVERCO had 2 phases: 1) **Interviews**: 42 were conducted with both internal (administrative personnel and production workers) and external actors and 2) **Labor Records review**, including personnel files of inactive workers who were fired during the week of March 23, management policies documentation, and the Garrobo project.

Interviews

The investigation began Wednesday May 15 with interviews with key internal and external actors, and ended Friday, May 17. On Wednesday the 15th, an initial meeting was held with the President of the company, the Human Resources Manager, and the Compliance Officer. On the 16th and 17th, interviews were done with active workers selected from different production areas, based on gender, seniority, and work position.

32 interviews were done with management personnel, middle management, supervisors, and workers, including members of the Communication Committee (CC).

Additionally, 10 interviews with key external actors were conducted and included: a worker fired the week of April 23; union leaders of the Sindicato de Trabajadoras, Trabajadores, Sastres, Costureras y Similares (SITRASACOSI); the Centro de Estudio y Apoyo Laboral (CEAL); and 2 officials from the Ministry of Labor and Social Welfare (MINTRAB). With the state institution, the objective was to obtain evidence, information, and understanding linked to this case.

On Friday, May 17, a closing meeting was carried out, in which the President of the company participated by videoconference; the Human Resources Manager, the Compliance Officer, and 2 representatives from FLA were also present.

Labor Records review

The following documents were solicited from management:

1. Management Policies: Freedom of Association and Collective Bargaining policy and procedures, Non-Discrimination, and Workplace Conduct;
2. Company's Code of Conduct;
3. Internal Regulations;
4. Orientation and training records and content;
5. Hiring and termination employee records from 2011, 2012, and (until April) 2013;
6. Personnel files of selected cases;
7. Records of the lost overtime hours from previous pay periods before 2013;



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8. Procedures and functions of the Communication Committee;
9. MINTRAB notifications related to the case.

IMPORTANT INFORMATION

100% of the interviews with active workers shared their sense of belonging toward the company, especially: 1) senior employees, 2) workers who have received economic support from the factory due to personal or family problems, and 3) workers who benefit from the childcare service. Despite this, 9% of those interviewed mentioned that there are problems related to the payment of overtime hours, pressure from supervisors, and low salaries.

Management commented that since the beginning of the TEXOPS operations in the year 2010, the factory has had a Communication Committee, which meets at least once a month¹, with the objectives of: 1) “being mediators between the employees and the company, to promote a space for discussion and dissemination of work-related matters” and 2) “to listen to the needs, concerns, and suggestions of employees, in order to present them to Management².”

On Friday, April 26, according to information from management, a group of between 20 and 30 people met after 4:00pm outside of the factory. Some interviewed workers commented that minutes before leaving the factory, Human Resources informed them that this group was picketing. In their interviews, 91% of workers commented on their concern about: 1) the April 26 picketing outside the factory and 2) the rumors of the formation of a factory union, arguing that, “when there are unions, factories close.” 35% of those interviewed have worked in factories that have closed, according to them, due to the formation of a union; others worked at the sewing factory LIDO, which was in the same location as TEXOPS, and closed more than 4 years ago for other reasons.

Every interviewed worker was asked if they were aware of the existence of a factory union. 65% responded that due to the reinstatement of a worker (which will be explained later in this report), a union is being organized; 26% was not aware; and 9% confirmed the existence of a factory union. 13% of those interviewed commented that in April and May 2013, they received phone calls to their personal telephones, and were asked if they would grant interviews outside of the factory, with the objective of obtaining information about the workplace situation at TEXOPS.³

Despite the CC procedure that establishes monthly meetings, there have only been 2 meetings so far in 2013; the first was April 30, the second May 10. According to information from the interviewed members of the CC, they solicited the meeting with management on April 30 to

^{1/} The Communication Committee procedures establish that committee members should be elected every 6 months, that meetings must be held at least once monthly, and that these meetings will be attended by the company’s President, the Human Resources Manager, and the Industrial Safety Chief.

^{2/} Numerals 2 and 3 of the Communication Committee functions.

^{3/} According to those interviewed, these people identified themselves as representatives of the brands that have production in the factory.



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consult, among other points: 1) the reinstatement of an employee fired during the week of April 23, 2) the formation of a union, and 3) the April 26 picketing.

Management commented that when they reinitiated operations in June 2010 in their new facilities and under the name TEXOPS, the first few weeks they had low production. During that time, the company had to opt to either: 1) terminate more than 200 workers or 2) come up with an agreement with these workers in which they would continue receiving their salaries without working, and would later make up that time with the company as overtime. In the end, this latter option was chosen.

When consulted, management said that MINTRAB⁴ was not involved in this agreement, but that MINTRAB did declare to them that they were acting in accordance with the law.

Management confirmed that, during the second fortnight payment period of April 2013, those workers who had received a salary without working made up their outstanding hours through overtime work.

Since July 2012, TEXOPS has developed a social project based on its experience in Bangladesh. It is known as the Garrobo project, and is in its experimental phase. It has among its objectives to “support and guide” girls, adolescents, and young women at high risk. The project, which receives counsel from the factory (experienced supervisors and instructors) attempts to teach different sewing designs and other skills to the participants within 3 to 6 months. On May 17, 6 adolescents older than 12 were beneficiaries of the Garrabo project.

TEXOPS has a Code of Conduct that establishes, “All employees have the right to free association, without fear of being fired, abused or degraded⁵.” Nowhere does the Code specify union membership.

TEXOPS’ Freedom of Association policy and procedure establishes the same concept as the Code of Conduct, except for Freedom of Association procedure 3.1, which includes the concept of “affiliation or not, to any social association.” It describes 5 possible associations⁶:

1. Unions;
2. Communication Committee;
3. Nutrition Committee;
4. Occupational Health and Safety Committee;
5. Sports Teams.

100% of those interviewed did not remember the contents of the Code of Conduct, nor the Freedom of Association policy and procedure.

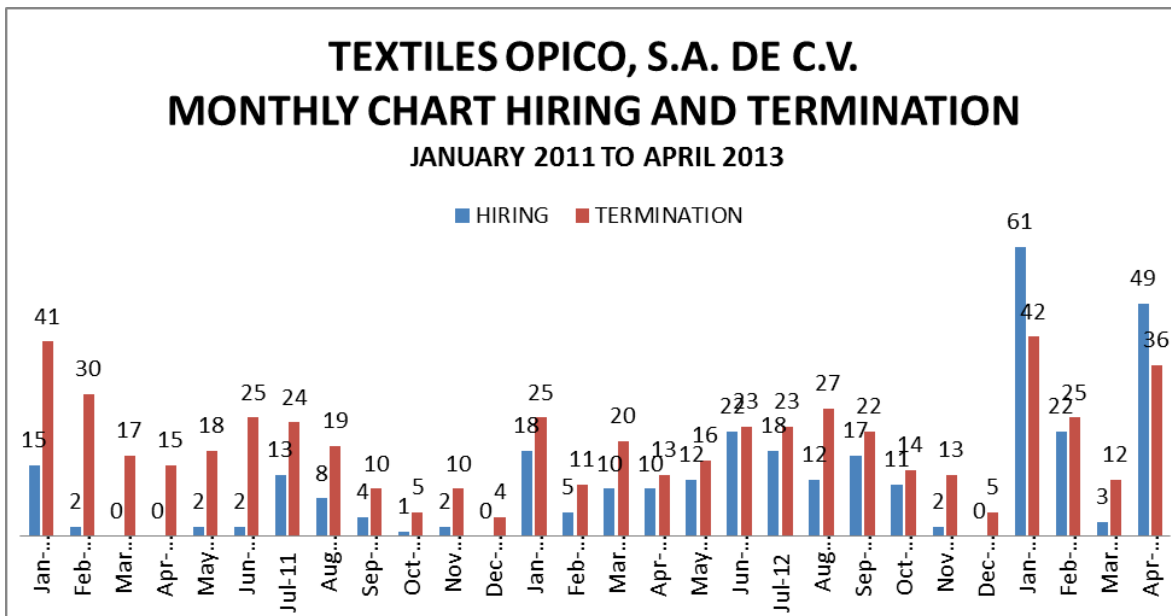
⁴/ Those interviewed commented that workers did not have records of the exact hours they were liable to compensate through overtime.

⁵/ Article 10 of the TEXOPS Code of Conduct.

⁶/ Although they do not implicitly establish the right to association as the right to belong to a union, the FLA Guides in Guide E.R. 26, Industrial Relations/Right to Organize, Collective Bargaining and participation in Legal Strikes, establishes that there should be “under the principals and jurisprudence of the ILO,” therefore, “any social association” concept should not be considered as it is established in TEXOPS procedure.

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Based on the information obtained, it is evident that the factory has a permanent labor rotation. There was a noticeable loss of employees in January 2011, 2012 and through April 2013. April 2013 is the month in which, presumably, a representative of the union Director was fired, along with possible affiliates of the SITRASACOSI sectional union.



Source: Prepared by COVERCO based in data provided by TEXOPS.

FINDINGS

a. Formation of the SITRASACOSI sectional union

Testimonial and documentary evidence exists that on: 1) Sunday March 17, 2013, the Sectional Union from SITRASACOSI trade union was organized in TEXOPS, 2) March 18, its members presented their registration to the Departamento Nacional de Organizaciones Sociales de la Dirección General de Trabajo of the Ministry of Labor and Social Welfare, 3) April 4, the union leadership council was officially registered, and 4) Friday, April 19, MINTRAB issued the credentials to prove their status as Union Leaders from the TEXOPS Sectional.⁷

⁷/ Article 219 of the Labor Code of El Salvador



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In the case of sectional unions, Salvadoran law does not stipulate that MINTRAB should notify the employer of the names of the sectional leadership council, except if the trade or industry union does it ex-officio and in good faith. This investigation did not have access to the list of all Sectional founders.

In the meeting that the investigator held with SITRASACOSI, its representatives indicated that they planned to notify TEXOPS management on Monday, April 22— immediately after receiving the TEXOPS sectional union member credentials, the formation of the sectional union, and a petition of a dialogue table to discuss cases related to the workplace issues. Nevertheless, said notification was not possible due to the firings of the Sectional General Secretary and 4 other affiliates.

Given the situation, SITRASACOSI presented a complaint about the firings before MINTRAB. On April 23, representatives of said entity visited the factory facility and held a meeting, in which they informed that the case was not concluded, and that they would follow up on the complaint presented by SITRASACOSI, which included the reinstatement request of the Sectional General Secretary, among other issues.

On Saturday, April 27, a meeting was carried out between TEXOPS management, SITRASACOSI, CEAL, and the General Secretariat of the TEXOPS Sectional⁸. The meeting's purpose was to discuss and possibly resolve some of SITRASACOSI's concerns, such as: 1) the reinstatement of those workers fired on April 22 and 23, and 2) the formation of a dialogue table. The only agreement in that meeting was the confirmation of the reinstatement of the Sectional General Secretary.

65% of those interviewed expressed that the reinstatement of the worker meant the formation of a union. Various employees voiced their rejection to the formation of a union in the factory, and commented that the CC had asked management, MINTRAB, and the Procuraduría para la Defensa de los Derechos Humanos (PDDH) to prevent the existence of a union in the factory. This confirms that workers and CC members do not understand the implications of the right to freedom of association.

b. Dismissals of Sectional Union Workers

Documentary information confirms that on Monday, April 22 and Tuesday, April 23, 2013, the General Secretary of the Sectional was fired, along with other members affiliated with the union.

Management confirmed that during the week of April 22: 1) several employment contracts were terminated due to restructuring and low performance and 2) it had no information of

⁸ / On this date, the Sectional General Secretary still had not been reinstated.



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the existence of a union or sectional union; therefore, the dismissals were not motivated, at any time, by union discrimination.

Although the internal regulations do not implicitly establish disciplinary measures due to low performance or noncompliance with production goals and quality, the factory has the right to terminate employment contracts with employers' responsibility, by making the severance pay stipulated by law. The 4 files of the workers mentioned in this report show at least 1 verbal warning due to low performance. Nevertheless, existing information does not prove that their low performance had been systematic and reiterated, nor does it show progressive disciplinary measures or the right to appeal these disciplinary measures, as stipulated by FLA guides.⁹

On April 24, and with the intervention of the Unidad de Prevención de Actos Laborales Discriminatorios of the MINTRAB, TEXOPS notified via telephone, the Sectional General Secretary reinstatement. Said reinstatement was made effective on April 29.

Information obtained from SITRASACOSI and the interviews carried out confirm that 4 workers who were affiliates of the Sectional Union were fired, and have not been reinstated. Their names are the following:

	Name	Hiring Date	Termination Date
1	[Employee name #1]	06-14-2010	04-22-2013
2	[Employee name #2]	09-17-2012	04-22-2013
3	[Employee name #3]	06-14-2010	04-23-2013
4	[Employee name #4]	09-26-2012	04-23-2013

Only [Employee name #3] did not accept her severance pay or sign her severance package. SITRASACOSI has requested the reinstatement of the 4 workers.

Considering the Salvadoran legislation, international conventions, FLA Code, and Compliance Benchmarks, in consequence, the 4 employees: 1) should be reinstated to their work positions and 2) must be compensated for the salaries and benefits they should have received from the moment of their termination until the moment of their reinstatement.

c. Communication Committee activities that indicate anti-union interference and acts of union discrimination.

As indicated earlier, management advised that since the beginning of TEXOPS operations, a Communication Committee was formed, which, until the present date, has overseen and resolved worker complaints in a timely manner.

⁹/ FLA Compliance Benchmarks ER.27.1 and ER.27.3.2



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As a result of the events of Friday the 26, and the reinstatement on April 30 of a worker who was allegedly organizing a union, the CC called for a meeting. The objective was to discuss the motive of the reinstatement and the union formation, among other topics.

That same day, a meeting with all CC¹⁰ members was held, where 3 of the 16 modules represented stated that they did not want a union, expressing the following conclusions: “their support for the company,” “don’t want a union,” “why was the woman from the union reinstated”, “what can be done to fire the woman from the union again?” Management only responded to the question about the Section General Secretary’s reinstatement: “At the request of the Ministry of Labor, because she was a union member.”

In the April 30 meeting, the CC overstepped its functions with the previously indicated requests to PDDH and MINTRAB, and confirmed its lack of awareness of the Code of Conduct, and TEXOPS Freedom of Association policies and procedures. Additionally, management did not appropriately confirm in this meeting, the contents of its own Code; Freedom of Association policy and procedures; and commitments to comply with the Code and FLA Guidelines.

In the following days, the CC continued with activities that were inappropriate for its functions and procedures. They collected signatures to ask that the union person be changed to another module and to inform MINTAB and PDDH that “they are a committee of employees, chosen by the employees,” and that the company has offered its freedom of association. They also stated “they do not have and do not want a union,” and to avoid the “development of a union.” Management informed that the CC delegates solicited personal leave for these activities at the MINTRAB and PDDH. Those hours were deducted and not paid in the corresponding fortnight pay period.

With the exception of 1 case, all of the interviews confirmed that: 1) they voluntarily signed the 2 petitions (MINTRAB and PDDH), 2) no representative of the CC pressured them or intimidated them into signing, and 3) some workers did not sign and did not have problems with their colleagues because they did not sign. On May 14, 2013, the factory had 770 employees registered, including supervisors. The MINTRAB petition was signed by 728 workers and the PDDH petition by 760 employees. Interviews confirmed that some supervisors signed the PDDH petition.

In the criteria of the investigator, the CC did not only overstep its functions and procedures, but also these actions contradict FLA and TEXOPS Codes of Conduct; Freedom of Association policies and procedures; and national and international laws that guarantee workers’ freedom to organize in unions. In addition, the absence of timely clarification by management allowed

¹⁰/ 16 delegates from the workers and 2 management representatives participated in the meeting.



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the CC to carry out activities during work hours that were outside of the labor law and its own internal commitments. These actions, carried out with management's consent by action or omission, are acts of interference and union discrimination.¹¹

d. Hour Bank and its replenishment

In June 2010, when the corporate name of the PARTEX company was changed to TEXOPS, the workers were guaranteed a salary, even though the new factory had difficulties in reinitiating its operations. TEXOPS management stated that it arrived at an agreement with its workers, so that in the following months they would repay these hours outside of their normal work shifts, and that these hours would not be considered as overtime. In the months of January and April 2011, there was a production order reduction, and so the bank hour agreement was extended to repay with overtime hours.

Due to this agreement, and based on their seniority, a significant number of workers¹² had between 100 and 140 hours to repay.

Information from management confirms that in April 2013, it sought to form a committee, with the specific goals of: 1) consulting the workers of each section about how many hours they thought they still had remaining and 2) cross-referencing that information with factory records. With the information obtained in the second fortnight pay period in April 2013, workers were paid for the hours that they had repaid, and these hours were paid to the workers as overtime.¹³

On April 26, SITRASACOSI distributed a statement to the TEXOPS workers via flyers that indicated that they had petitioned before MINTRAB that management pay overtime for all hours that had been compensated in earlier months.

It is the opinion of the investigation that, despite having come to an agreement with the workers in June 2010, it should have been verified and approved by MINTRAB in order to guarantee its legality. Upon not carrying out these consultations with the maximum labor authority and receiving its favorable opinion, it did not act in accordance with Salvadoran labor law¹⁴ and FLA Code of Conduct and Benchmarks¹⁵.

e. Garrobo Project

¹¹/ FLA Code of Conduct: Employment Relationship, Non-Discrimination and Freedom of Association and Collective Bargaining; FLA Compliance Benchmarks: Employment Relationship, ER.1.1, ER.16.1; ER.26; Freedom of Association and Collective Bargaining, FOA.2; FOA.4.1; FOA.5.1, and FOA.13.1

¹²/ The investigator could not confirm the number of workers who were involved in the June 2010 agreement.

¹³/ A pending assignment for this investigation is to confirm the number of workers.

¹⁴/ Articles 33 and 34 of the Labor Law.

¹⁵/ Employment Relationship: ER.23



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Management commented that the project began in July 2012. They explained that it included girls and adolescents at high risk, including 2 current workers who were in the project, and, upon becoming legal adults, were contracted by TEXOPS.

The project offers a weekly grant of USD20.00. The girls participate in a workshop with trainers from the factory in order to learn to use different sewing machines, and also learn other activities the industry requires. In the workshop, they use prime material that the factory will no longer use, and the product they create is not part of TEXOPS production. The workshop is located in the factory building, but not in the industrial modules dedicated to production. According to information from management, TEXOPS is constructing other facilities to which the project will be moved in the same area. The adolescents who have children can use the factory's "children's house" (childcare) for free.

This investigation considers that although this project has an important social impact on the high-risk girls and adolescents, it is possible that some misinformation exists in relation to its objectives, the procedures for the selection of beneficiaries, and the products that the project generates.

CONCLUSIONS

In the information obtained during interviews and labor records review, there is fundamental evidence that during the week of April 22, 2013 there was union discrimination against the 5 fired workers who were members of the TEXOPS Sectional. Furthermore, despite the corrective action taken to reinstate the General Secretary of the Sectional Leadership, it is still necessary to: 1) reinstate the 4 other workers and guarantee their compensation from the date they were fired until the date of their re-hiring, including the economic benefits they stopped receiving.

Whereas the FLA Code of Conduct, its compliance benchmarks, especially FOA.2; FOA.4.1; FOA.5.1 and FOA.13.1; ILO Conventions, Numbers 87 and 98¹⁶; the observations of the Committee on Freedom of Association in matters of Acts of Union Discrimination; the Declaration Relative to the Fundamental Principles and Rights of the Workplace (1998); the State Commitments to Dignified Work in El Salvador; and the Chapter 16 of the Free Trade Agreement between the Dominican Republic, Central America and the United States. Therefore, compensation and reinstatement of fired workers the week of April 22nd proceeds. The lack of compliance with these policies and procedures leads to consider that by action or omission, the factory carried out actions of union discrimination.

The Communication Committee exceeded its functions and procedures; its actions to defend the company do not fall within the procedures outlined in national and international

¹⁶/ A convention about freedom of association and the protection of the right to unionize, 1948, No. 87. Convention about the right to unionize and collective bargaining, 1949, No. 98.



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legislation, where management, by action or omission, allowed union discrimination to be committed.

The procedure used to repay time—whether due to forces beyond its control or problems with raw material—is the responsibility of the employer. Workplace consultations with the appropriate authorities were not carried out. TEXOPS did not follow through with administrative due process; therefore, it should not have encouraged workers to repay these hours at times outside normal work shifts, and certainly should not have compensated that time with normal rates, instead of overtime.

RECOMMENDATION

TEXOPS Company

Inform, using the most appropriate means, that TEXOPS respects the labor rights of its workers, and that since March 2013, there has been a sectional union in the factory.

Reinstate and compensate the 4 workers who were terminated and members of the TEXOPS sectional union for the salaries and economic benefits they did not receive until the date of their rehire.

Update policies and procedures in alignment with the FLA Code of Conduct and Compliance Benchmarks, especially related to Employment Relationship; Freedom of Association and Collective Bargaining; and Industrial Relations.

Adequately implement Non-Discrimination and Freedom of Association in its Policies and Procedures, offering training on all during the orientation program.

Implement a program for sustained training, and an objective evaluation of the knowledge acquired through such training, in terms of the policies and procedures for prohibiting acts of discrimination, Freedom of Association, and Code of Conduct.

Reorient the functions and procedures of the Communication Committee to be in agreement with the existence, representation, and functions of the sectional union.

Conduct an assessment to confirm that the compensation of the repaid time corresponds to each worker and that the calculation is correct.

Adequately inform SITRASACOSI and other stakeholders about the Garrobo project, explaining both its scope and social impact.



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Brands affiliated with FLA in Textiles Opico

Communicate to all workers the commitment of the FLA-affiliated companies to respect the right to freedom of association and collective bargaining, and their interest in continuing business relations with TEXOPS.

Considering their commitments with the FLA—in this case, FOA.6: **Restoration of Worker Rights/Reinstatement**— request that the factory reinstate the 4 workers who were fired during the week of April 22, 2013, and reimburse them for the salaries not received between the date of their firing and the date of their reinstatement.

Verify, as a result of this report, the factory's compliance and commitment to the remediation plan due to union discrimination.