



ISSUE BRIEF

The FLA is a multi-stakeholder organization combining the efforts of businesses, universities, and civil-society organizations to improve conditions for workers around the world. Occasionally, the FLA publishes briefs on current issues in the global supply chain. We intend for these briefs to provide an overview of the various perspectives on a given issue. At all times, the FLA expects its business affiliates to comply with all legal requirements, as well as the provisions of its Workplace Code of Conduct.

TITLE: Protection Contracts in Mexico

DATE: March 2015

THE ISSUE:

How should brands respond to collective bargaining agreements in Mexico between employers and illegitimate unions that don't represent workers' interests?

EMPLOYER-DOMINATED UNIONS:

Factory workers in Mexico face a unique barrier to their right to freedom of association and collective bargaining through the widespread use by employers of illegitimate collective bargaining agreements (CBAs), commonly known as "protection contracts."

Designed to protect employers from having to negotiate with legitimate unions representing workers' interests, a protection contract is a signed CBA between an employer and an employer-dominated union -- one that does not truly represent workers and their interests. The sham unions are known by different names ("ghost union" or "yellow union" being the most common terms in Mexico), and may be the creation of a lawyer, a union federation, or bogus "union leaders," but in each case the CBAs are drafted and signed without real and effective consultation with workers or workers' knowledge of the terms of the agreement. In some instances, a protection contract may even be established preemptively prior to the hiring of any workers at a facility, to prevent the legitimate negotiation of a CBA in the future by a legitimate union. Protection contracts make up nearly 90 percent of all Collective Bargaining Agreements (CBA) signed in Mexico, according to IndustriALL.¹

In determining the existence of protection contracts in Mexican factories, FLA assessors look for certain indicators that the union is not truly representing workers, and that there is therefore a violation of the freedom of association element of the FLA Workplace Code of Conduct. These indicators include²:

1. There are no general assembly elections with worker participation;
2. Workers do not participate in meetings or in the development of agendas for meetings;
3. Workers do not receive prior notice of CBA negotiations, are not aware of who "represents" them in those negotiations, and do not have the opportunity to ratify new or revised CBAs;

**THE GOVERNING
ELEMENT OF THE
FLA CODE: FREEDOM
OF ASSOCIATION
AND COLLECTIVE
BARGAINING**

"Employers shall recognize and respect the right of employees to freedom of association and collective bargaining."

* <http://www.fairlabor.org/our-work/labor-standards>

1 In 2014, IndustriALL identified the widespread use of protection contracts as a reason for placing Mexico on their "critical list" of countries for labor rights violations: <http://www.industriall-union.org/mexico-and-colombia-on-industrialls-critical-list-for-severe-worker-violations>

2 Among the different FLA Compliance Benchmarks that might be violated through the existence of Protection Contracts are: Employment Relationship: ER.26; and Freedom of Association: FOA.2; FOA.10; FOA.11; FOA.12; FOA.13.1.1; FOA.16.1; FOA.17, and FOA.20.2.

4. Workers are automatically enrolled with the union upon hiring;
5. Workers are unaware of the existence of the union and the leaders that represent them;
6. The provisions of the CBA do not result in benefits to workers beyond the minimum legal requirements already in the labor code;
7. Workers are not provided with a copy of the CBA.

Furthermore, many of the CBAs signed by employer-dominated unions also include “inclusion and exclusion clauses.” Inclusion clauses require workers to join the “union” that signed the CBA as a condition of employment. Exclusion clauses, on the other hand, enable management to fire workers who leave the union, or attempt to organize another union. Although the practice of firing workers who resign or are expelled from the union was banned by labor law reform in 2012, inclusion clauses requiring union membership as a condition to being hired remain legal.³ In 2014, FLA assessors have continued to find inclusion and exclusion clauses in CBAs during assessments of Mexican factories.⁴

EXACERBATING OTHER VIOLATIONS:

While protection contracts represent a violation of the FLA Workplace Code of Conduct in their own right, the labor-rights environment they create – a workforce devoid of legitimate worker representation – leaves workers vulnerable to other serious workplace violations.

For example, FLA assessors have identified the misuse of short-term employment contracts in factories with sham CBAs in Mexico as another serious issue, which violates the Employment Relationship element of the Workplace Code of Conduct. These employers use continually renewed short-term employment contracts to block workers from gaining seniority or the benefits and job security enjoyed by permanent workers. Without legitimate unions, workers’ ability to collectively advocate for fair employment contracts is severely compromised.

FLA REFLECTIONS:

Genuine freedom of association is critically important for workers to be able to advocate for their interests and protect themselves at work.

³ Article 395, Mexico Federal Labor Law:
<http://info4.juridicas.unam.mx/juslab/leylab/123/399.htm>

⁴ Assessment reports can be found on the FLA’s website:
<http://www.fairlabor.org/transparency/tracking-charts>

Under the FLA Workplace Code of Conduct, affiliated companies have a responsibility to ensure that unions have the ability to freely conduct their activities, establish their own internal rules, and register the union with the local authorities. FLA affiliates sourcing from Mexico should confirm the legitimacy of the unions operating in their sourcing factories – starting with workers’ freedom to nominate and elect their own union representation, without management interference. Companies should look for the same indicators as FLA assessors (listed above), consult with workers about factories’ respect of their associational rights, and consult with local CSOs about the specific freedom-of-association issues in a particular sector or region.

Before choosing new suppliers in Mexico, company affiliates should know the status of the unions operating in that factory. A company’s respect for legitimate freedom of association should then block any affiliates from knowingly entering into any new supplier relationships where the factory’s collective bargaining agreement has signed by an employer-dominated union. Affiliated companies should instead reward suppliers that support genuine collective bargaining agreements by developing and maintaining long-term relationships with these suppliers that share affiliates’ commitment to improving workers’ lives.

If an FLA affiliate learns that a current supplier’s CBA was signed by an employer-dominated union, the company should immediately take action to fix this situation. In the short term, the factory should provide workers with a copy of the current CBA, along with clear communication that the factory will respect their right to join or form organizations of their own choosing and to bargain collectively for a new or revised CBA, without management interference. Any “exclusion clauses for dismissal” should be removed from any current CBAs, and must be kept out of any future CBA negotiations;

In the long term, FLA affiliates should assist factory management in creating, adopting, and implementing a formal industrial relations policy that embodies a clear commitment to freedom of association and the right to collective bargaining. The policy should enable workers to negotiate the terms and conditions of their employment, and provide input to management.

By maintaining responsible long-term relationships with factories committed to freedom of association, and by insisting that factories with employer-dominated unions change their practices, FLA affiliates can improve the lives of their workers in Mexico.