

Fair Labor Association

# Special Investigation

New Holland Apparel de Nicaragua, S.A.

Managua, Nicaragua



**December 2015**

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## Background

On November 13, 2015 the *Sindicato Trabajadores al Poder de la Empresa New Holland Apparel* union complained about violations to the exercise of the right to Freedom of Association alleging that the Union Confederation to which it belongs, supporting the factory, are engaged in persecution of a group of workers who constituted the Executive Board of a new union in the process of formation, with the factory firing union affiliates who attended a meeting held at the Union Confederation to resolve internal issues regarding the organization of the union within the context of the election of its new Executive Board.

The dismissed workers, according to information provided by the union, were: Iris Sánchez, Claudia Chávez, Claudia Traña, Jerson Pérez and Edgar Robleto (union leader).

For this reason, the Fair Labor Association requested the present independent investigation be conducted on behalf of FLA-affiliated brands adidas-Group and Under Armour, buyers from New Holland Apparel, with the objective of determining the following:

1. If the employment terminations of the union leader and four members of the *Sindicato Trabajadores al Poder* were carried out in compliance with national legislation and internal factory regulations; and if these resulted from the exercise of their union duties.
2. Identify whether factory management at any level interfered with the right to Freedom of Association, for instance by favoring one labor organization over another, or interfering in the formation or operations of worker organizations.
3. Review if the Factory Management System guarantees that all procedures related to termination and the applicable criteria used to determine worker terminations are objective and comply with national laws, rules and procedures and are free of harassment, abuse and discrimination.
4. Review if the Factory Management System safeguards against or prevents all acts of discrimination or antiunion retaliation, that is, if it guarantees that no employment decisions are made that negatively affect workers, either totally or in part, due to their union affiliation or due to the workers' participation in union activities.
5. Analyze if the Management System safeguards against and prevents management interference in the exercise of the right to Freedom of Association, favoring one worker organization over another or interfering with the formation or operation of worker organizations.
6. Review if the Management System complies with the FLA Workplace Code of Conduct and Compliance Benchmarks related to the previous parameters.

## Factory general information

New Holland Apparel, S.A. is located in Astro Industrial Park, Nicaragua, and is a maquiladora (assembly) company in the textile sector, producing sportswear. As indicated above, adidas-Group and Under Armour are buyers from New Holland Apparel.

Currently, its workforce is made up of 2,100 employees of which 1,300 are women (61.90%) and 800 are men (38.10%).

There are three union organizations constituted within New Holland:

1. *Sindicato de Trabajadores al Poder;*
2. *Sindicato de Trabajadores Ni un Paso Atrás ;* and
3. *Sindicato de Trabajadores Unitarios.*

Recently, the factory in conjunction with the formally-established union organizations signed a Collective Bargaining Agreement, in effect from the present year until 2017, outlining internal work regulations and the rights and benefits of the workers and union organizations at New Holland.

## Methodology

The methodology applied basically consisted of an onsite visit to the factory with the objective of reviewing documentation related to the facts that motivated the present investigation and conducting interviews with the worker organizations present at the factory.

In order to conduct the document review, the following were requested from the factory:

1. Policies and procedures for labor terminations, non-discrimination and freedom of association;
2. Internal Workplace Rules in effect;
3. Possible changes to the Internal Workplace Rules;
4. Collective Bargaining Agreement;
5. Employee files for the dismissed workers: and,
6. Employee files of union leaders from the three labor organizations at New Holland.

During the visit to the factory, 5 group interviews were conducted, with participation of 33 people. These interviews were conducted as follows:

1. With New Holland management, with the General Manager, Human Resources Manager and Regional Human Resources Manager for Honduras and Nicaragua being present.
2. With members of the *Sindicato de Trabajadores al Poder*, with the Secretary General, the Organization Secretary, the Finance Secretary, the Propaganda Secretary, the Women's Affairs Secretary, the Secretary for Acts and Agreements, the Secretary for Labor Affairs and Conflicts, the Secretary for Youth, Culture and Sports, the Fiscal Secretary, the Secretary for National and International Relations, the Secretary for Health and Safety; and Executive Council Members 1 and 2 in attendance.
3. With the *Sindicato Ni un Paso Atrás* union, with the Secretary General, two Occupational Health and Safety Secretaries, the Secretary for Culture and Sports, the Women's Affairs Secretary, the Secretary for Acts and Agreements, the Organization Secretary, the Quality Secretary, and the Secretary for Union Training in attendance.
4. With members of the *Sindicato de Trabajadores Unitarios* union, with the Secretary General, the Labor Affairs Secretary, the Finance Secretary, the Women's Affairs Secretary, the Organization and Propaganda Secretary, the Sports Secretary, the Health and Safety Secretary, the Secretary for Bonus and Production, and the Acts Secretary in attendance.
5. With two Human Resources Assistants, responsible for Occupational Safety Compliance and Personnel Timesheets, Medical Certifications and Subsidies.

In addition, individual telephone interviews were conducted with two of the dismissed *Sindicato de Trabajadores al Poder* members.

## Results

With regard to each of the issues of the independent investigation, set out in the Terms of Reference, and the triangulation of the information obtained from the document review and interviews, the following was determined:

**1. If the employment terminations of the union leader and four members of the *Sindicato Trabajadores al Poder (STP)* were carried out in compliance with national legislation and internal factory regulations; and if these resulted from the exercise of their union duties.**

- A) **Case of Edgar Robleto**, STP Leader; his employment termination occurred on 11-13-2015 with the acceptance of the termination of his contract, as stated in the Conciliation Act from the Labor Ministry, in accordance with Art. 48 and 231 of the Labor Code.

The review of the personnel file of the worker found a series of reports of disciplinary actions regarding different behavioral problems (due to verbal abuse and threats against factory personnel, including those against an Under Armour Auditor and a company security guard). In addition to the disciplinary reports that motivated verbal and written sanctions imposed by the Human Resources Department, the following were found; a 5 day suspension applied to the union leader in January 2015, and **a last and final warning applied in June 2015** that arose from a meeting of the Bipartite Labor Commission, with the presence of STP and factory representatives, in which recommendations were made to the leader to (1) participate in training on how to interact with people and resolve labor issues and (2) meet once per week with management to support him and provide suggestions, for a period of 3 months. **In the agreement that emerged from the bipartite meeting, it was determined that should these problems continue, the cancellation of the work contract would be requested from the competent authorities.** However, after the warning, new disciplinary reports were recorded in the leader's employee file for verbal abuse in October 2015, resulting in a new meeting of the Bipartite Labor Commission in which it was determined that the factory would request the cancellation of the leader's employment contract from the Labor Ministry because of for the threats that the union leader had made against a company security guard, an affiliate of the *Ni Un Paso Atrás* union.

It should be mentioned that at this second meeting of the Bipartite Labor Commission, representatives of the union organization *Ni un Paso Atrás* were included to represent the interests of its affiliated member and they recommended the termination of the union leader accused of verbal abuse. In the agreement act, the worker manifested his dissatisfaction with the investigation conducted by the Human Resources Department as did his representative Deyling García, Secretary General of the STP union, who argued that the event occurred because of the security guard's provocation.

Edgar Robleto was protected by union immunity (fuero sindical) immunity regulated by Art. 231 of the Labor Code, which implied: (i) that his termination should have been authorized by the Labor Ministry; and (ii) that it would have to come about in accordance with a cause justified by the law and duly proven. In the framework of the termination process before the Labor Ministry, it was argued that a justified cause existed for the application of Art. 48 of the Labor Code, however a cause was not specified, the worker did not have the support of witnesses,<sup>1</sup> and in the end, the worker accepted the cancellation of his contract<sup>2</sup>.

According to STP, and the affected union leader, the termination resulted from the worker's exercise of his union duties, in the framework of the election of the organization's new Executive Board, in order to prevent him from being reelected again.

During interviews conducted with the other two union organizations, it was expressed that the leader Edgar Robleto had conduct and verbal abuse problems against other workers. Factory management alleged the same behavioral problems affecting the union leader and the Regional Human Resources Manager stated that he maintained constant communication with the leader to support and help him improve his behavioral issues, but that there were no favorable results.

With regard to the union leader's behavioral problems, Edgar Robleto himself accepted that he did have problems and conflicts generated by his strong personality.

In conclusion, through the revision of files and interviews, the worker's recurrent behavioral problems were established and in virtue of this, the process to terminate his contract was initiated in accordance with Art. 48 and 231 of the Labor Code and the Internal Labor Regulations and the Collective Bargaining Agreement (Clause 10 Ord. 1).

**B) Case of Jerson Pérez , STP union member; his termination occurred without just cause on 11-13-2015, in application of Art. 45 of the Labor Code.**

During the review of the file, two disciplinary reports were identified, from 10-02-2015 and from 11-04-2015, for poor job performance and for performing work not corresponding to him. However, the reports do not identify the presence of witnesses, the worker's refusal to sign was evident and the presence of a leader from his union to defend his interests was not documented. Management's argument for dismissal focused on the

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<sup>1</sup> According to Edgar Robleto and the STP union, witnesses that could clear up the facts were planning to testify but they did not show up for fear of being fired for giving testimony.

<sup>2</sup> The affected worker stated that he accepted the cancellation of his contract because he could not handle any more the harassment that management had exercised against him, through the application of disciplinary sanctions.

worker connecting a USB device to his work computer in breach of a provision of the Factory's Information Technology Policy<sup>3</sup>. In this regard, STP and the affected worker expressed that the accusation was evidence of the harassment exercised against him in the context of the election of the new union board of directors, because the affected worker was on a slate of candidates to be a member of the Executive Board. They also mentioned that the worker's computer had the USB ports blocked, which is why they considered that this accusation was false.

Management argued that attached to one of the disciplinary reports was documented evidence regarding the facts described above, in the form of screen captures that showed the installation of a USB device. However, the images do not decisively demonstrate that it was the worker who connected the USB device, since there was no additional information that could sustain that accusation or witness testimony of persons that may have had knowledge of the facts.

To date, the worker has refused to accept his severance check since he considers his termination unjust.

In conclusion, the employment termination was carried out in the framework of an unjustified termination contemplated by the Labor Code (Art. 45), in violation of Clause 10 of the Collective Bargaining Agreement, because the Bipartite Commission was not formed as required to address a case of a labor offense, before taking action before the competent authority.

- C) **Case of Iris Sánchez;** her termination occurred without just cause on 11-11-2015, in accordance with Art. 45 of the Labor Code and the severance payment was verified within the established legal limits.

In the worker's file it was observed that the worker had one disciplinary report for "not being at her work post without authorization and performing functions that do not correspond to her" dated 11-04-2015. The above report is not signed by the worker and does not include witnesses. Upon consulting management for elaboration, management expressed that the worker moved through the factory without authorization, in a manner inconsistent with her duties, and that the moving around prevented her from performing her job efficiently.

STP also considers that the termination of Iris Sánchez came about because she was on a slate of candidates for the election of a new union Executive Board.

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<sup>3</sup> "Do not connect any electronic device to computers connected to the local network at New Holland Apparel de Nicaragua, S.A. such as cell phones, cameras, Ipods, printers, USB devices, or other external device not related to their job position."



It was determined that her termination was unjustified, in accordance with the figure established in Art. 45 of **the Labor Code, but not in compliance with the previously cited dispositions of the Collective Bargaining Agreement that require the establishment of the Bipartite Commission.**

- D) **Case of Claudia Chávez;** union leader of the *Sindicato Ni Un Paso Atrás* (SNPA). It was verified that her dismissal occurred on 08-20-2014 for an unjustified 5 day absence. This termination was carried out within the framework of the legally established procedures for dismissal of a union leader in the Labor Code (Art. 48 and 231), that is with the authorization of the Labor Ministry.
- E) **Case of Claudia Traña;** according to information provided by management and the union organizations, the worker is still actively employed at the factory, which was confirmed by timecard records for the month of November 2015.

**2. Identify if any management authority interferes with the right to freedom of association, favoring one organization over another, interfering with the formation or operation of worker organizations.**

The STP union expressed that there was management interference in the operation of their union organization, dismissing two of its leaders with the aid of the *Sindicato Ni Un Paso Atrás* union, and two of their affiliated members that were in a short list as possible candidates in the election of the new Union Executive Board. When presented with this claim, management stated that they had no knowledge that the dismissed workers were candidates for the new union Executive Board.

Management expressed that they have a policy of openness with regard to demands or problems presented by the union organizations, based on equal treatment and non-discrimination. However, two of the unions interviewed expressed that there was preferential treatment in dealing with demands with respect to another worker organization (*Ni Un Paso Atrás*), mentioning as examples:

- a. That management allows them to suggest names of people to be employed at the factory; and
- b. That management included the Secretary General and other leaders from the *Ni un Paso Atrás* union in the termination process for the STP leader when this is not established in the Collective Bargaining Agreement.

Furthermore, in spite of the factory granting union leaders 45 days of annual leave for the exercise of activities and freedom to handle member's problems in the factory, two of the

union organizations interviewed expressed that there are discriminatory remarks made by supervisors and human resources personnel, at the time the leave is granted by verbally questioning if the leave truly will be used to exercise their union duties. For example, they stated that the supervisors and some human resources assistants challenge whether the authorizations truly will be used in the exercise of their functions as worker representatives and that the leave is used to “waste time”, “not work”, “rest”, etc.

**3. Review if the Factory Management System guarantees that all procedures related to termination and the applicable criteria used to determine worker terminations are objective and comply with national laws, rules and procedures and are free of harassment, abuse and discrimination.**

In general terms the procedures related to termination established in the Internal Labor Regulations for New Holland and in its procedures from terminations and resignations, adheres to the articles of the Nicaraguan Labor Code related to termination of individual contracts or of the employment relationship (Art. 40 to 48). However, it is not established in detail in which cases the factory must request authorization for terminations from the Labor Inspectorate of the Labor Ministry: for a serious honesty offense, for a serious offense against the life and physical integrity of the employer or of co-workers, for abusive or defamatory expressions against the employer that cause discredit or economic damages to the company, and for any violation of the Individual Contract or Internal Regulations, that have caused serious damages to the company.

The labor termination procedure does not contain provisions or standards that incorporate measures allowing discrimination or harassment or abuse, but at the same time they do not establish guarantees of protection against such acts.

Finally, it should also be noted that even though the factory has within its Internal Labor Regulations a procedure for terminations and resignations and provisions regarding labor terminations, it does not have a specific policy regarding labor terminations that responds to the obligations established in FLA Compliance Benchmarks ER 1.1 and ER 32.1

**4. Review if the Factory Management System safeguards against or prevents all acts of discrimination or antiunion retaliation, that is, if it guarantees that there are no employment decisions that negatively affect workers, either totally or in part, due to their union affiliation or due to worker participation in union activities.**

The factory has a non-discrimination policy that includes the prohibition of discrimination based on union affiliation. However, there are no procedures that set out the measures to ensure or guarantee the nonexistence of retaliation or acts of discrimination due to union affiliation or due to the exercise or participation in union activities.

Management expressed verbally that the factory is committed to the free exercise of union activities and that they do not apply retaliation measures for this reason, arguing that they have a policy of non-retaliation against employees. However, after reviewing this policy we observe that it cannot be considered as such since it only includes the possibility for employees to report their grievances through various channels, but it does not set out in detail the methods for protecting or safeguarding employees, unionized or non-unionized, from possible retaliation for communicating their grievances.

**5. Analyze if the Management System safeguards against and prevents management interference with workers in the exercise of their rights to freedom of association, favoring one worker organization over another or interfering with the formation or operation of worker organizations.**

Within the factory's internal policies and procedures, there are no preventive measures that guarantee equality in the treatment of union organizations and respect for the independence of the union organization processes of formation and operation.

The only item related to this, is Clause 1 of the Collective Bargaining Agreement, is limited to a general statement of a commitment of action without any more limitations than those established by the ILO Conventions ratified by Nicaragua, including Convention 87 regarding union freedom and protection of the right to unionization and Convention 111 regarding discrimination. There are no specific measures that prevent and safeguard against company interference in the exercise of the right to freedom of association, free of any type of discrimination or interference in its operation.

**6. Review if the Management System complies with the FLA Workplace Code of Conduct and Compliance Benchmarks with regard to the previous parameters.**

The factory does not comply with the FLA Workplace Code of Conduct and Compliance Benchmarks, with respect to the following points:

**6.1.** The factory does not have a progressive disciplinary procedure, that is, the severity of disciplinary actions applied for committing offenses do not increase (ER.27.1). This in turn can generate conditions for discretionary application, giving rise to discriminatory or unfair disciplinary measures (ER.27.2.1). For example, the Internal Labor Regulations establish specifically that disciplinary measures that are to be applied to workers will be subject to the discretion and consideration of the General Manager and the Human Resources Manager, not inhibiting the company from considering dismissal, depending on the case (Art.21). Furthermore, it also states that the corrective measures imposed on workers that act in a manner inconsistent with internal regulations, will not be subject to increasing severity, rather they will correspond to the nature of the violation, incidence,

seriousness, etc. will be dealt with depending on the case and views of the General Manager and Human Resources Manager (Art. 26).

- 6.2.** In the reviewed personnel files of union leaders from the three organizations, the investigator found 16 cases in which it could be observed that disciplinary reports lacked the signature of the sanctioned workers or did not record the presence of a witness, issues that are inconsistent with FLA Compliance Benchmarks ER.27.3.3 and ER.27.4. It must be stated that the factory does have an appeals mechanism, but management admitted that it has not been disseminated to personnel.
- 6.3.** The factory does not have policies and has not adopted procedures that safeguard against or prevent discrimination due to union affiliation or to the exercise of freedom of association without employer interference, as outlined in the FLA Compliance Benchmarks (ER.1.1, FOA.1, FOA.5.1, FOA.11; and FOA.13.1) and the Code of Conduct by establishing that rules and work conditions will be adopted that respect worker's rights in accordance with laws and national and international labor regulations.

## Conclusions

1. Edgar Robleto's employment termination was found to have been carried out in compliance with the current legal framework and the factory's internal procedures, due to a series of disciplinary reports that demonstrated the union leader's recurrent conduct problems.
2. The fact that the dismissals of Iris Sánchez and Jerson Pérez occurred during the same week and not in compliance with dispositions established in the current Collective Bargaining Agreement, with respect to the formation of a Bipartite Labor Commission to resolve individual or collective cases through dialogue, and in the context of the election of a new union Executive Board in which the mentioned workers were participating, challenges the factory's actions with regard to union organizations being able to operate in a manner free from discrimination and interference. With respect to this point, management expressed that they had no knowledge about the election process, while STP representatives expressed that it was impossible for management not to have knowledge of the internal election process of the union Executive Board because they were engaged in an election campaign and had requested permission to attend a meeting at their union federation to talk about aspects related to said election.
3. The majority of union leaders from two of the union organizations that participated in the interviews identified the Human Resources Manager as the authority that prevents the free exercise of union freedom or hinders relations between the factory and worker representatives. In addition, they mentioned that the work environment improves or that

work relations are more harmonious only when the Regional Human Resources Manager is present at the factory.

4. The factory's Management System does not prevent discrimination or antiunion retaliation, since it does not include procedures or specific measures to prevent or safeguard against such acts, to the detriment of worker representatives or their union affiliates.
5. Within the internal policies and procedures that make up the Factory Management System, there are no clearly defined preventive measures that would prevent or safeguard equal treatment of union organizations and respect for the independence of union organizations in their processes of formation or operation.
6. The Factory Management System does not comply with FLA Workplace Code of Conduct and Compliance Benchmarks relating to the Employment Relationship, Discipline, Non-Discrimination and Freedom of Association and Collective Bargaining (ER.1.1, ER.27.1, ER.27.2.1, FOA.1, FOA.5.1, FOA.11, FOA.13.1, ER.27.3.3; and ER.27.4).

## Recommendations

1. Reinstate, in the short term, the workers Iris Sánchez and Jerson Pérez, in compliance with FLA Benchmark FOA.6, for violating the dispositions contained in Clause 10 of the current Collective Bargaining Agreement, issue that uncovers indicia that their dismissals were carried out by committing acts of union discrimination in the context of the election of the new Executive Board of the *Sindicato de Trabajadores al Poder* union.
2. Design and implement a specialized training program directed towards management, human resources personnel, and union organizations with regard to the right to union freedom that incorporates its scope and limitations in the framework of national legislation, international labor standards contained in Conventions 87 and 111 of the ILO and the FLA Workplace Code of Conduct and Compliance Benchmarks related to freedom of association.
3. Include within the Factory Management System, policies and procedures that include preventive measures and safeguards to retaliation due to the exercise of union freedom and against worker representatives and their affiliates; and that determine preventive measures and guarantee equal treatment of union organizations and respect the principles of independence of union organizations and non-interference by the employer in aspects related to the organization and operation, in compliance with national and international legislation and the previously mentioned FLA Code of Conduct and compliance benchmarks.

4. Approve, in the short term, the new set of Internal Labor Regulations for New Holland, after consultation with the union organizations, that should incorporate measures that respond to the weaknesses identified in the factory's Management System, especially those related to the application of disciplinary systems and employment termination, that prevent subjectivity in the application of sanctions, guaranteeing that its provisions are in accordance with national and international laws and the FLA Code of Conduct and Compliance Benchmarks.
5. Carefully analyse the factory's new Internal Labor Regulations to guarantee that their provisions are in compliance with national and international legislation, with the current Collective Bargaining Agreement and with the FLA Workplace Code of Conduct and Compliance Benchmarks.
6. Design a remediation plan that addresses the recommendations raised in the present report, setting a timeframe and the responsible party to guarantee their completion. In addition, it is recommended that an ombudsperson be engaged in order to generate the conditions that facilitate and harmonize labor relations between the factory and unions.