

Independent Investigation

Final Report: Petrallex, S. de R.L.

ZIP Bufalo, Villanueva, Honduras

April 8-11, 2015



FAIR LABOR
ASSOCIATION™

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I. Executive Summary

Between November 2014 and March 2015, the Petrallex factory in Villanueva, Honduras, illegally fired or forced the resignations of at least 19 garment workers, including nine SITRAPETRALEX union leaders, and 10 union affiliates or relatives of union leaders, according to an independent investigation conducted by the Fair Labor Association (FLA) in April of 2015.

Through interviews with union leaders, factory management, government officials, and more than 30 workers, along with a rigorous review of factory and union documentation, FLA investigators concluded that the factory used unjustified claims of “personnel readjustment” or “restructuring” to carry out anti-union firings. Investigators found no evidence of actual readjustments or restructuring in the departments affected by the firings. They also found that factory management used offers of extra severance pay as a way to coerce workers the company wanted to dismiss to sign voluntary resignations instead.

Ultimately, investigators found that the systematic use of these tactics to carry out worker terminations has over time “served as a means for management to disguise anti-union animus.” The firings at Petrallex follow a pattern of anti-union terminations dating to the summer of 2006, when Petrallex fired all members of a Provisional Union Board established to bring a union to the factory; and to June of 2007, when Petrallex fired all candidates for leadership of the new union that was still coming into existence. At the time, these terminations were described as “personnel restructuring” as well.

The FLA investigation reveals that the current labor environment in the factory discourages workers from fully exercising their right to freedom of association, while the firings deprive workers of the leaders they need for their union to carry out its activities. The Petrallex firings constitute a violation of the Constitution of the Republic of Honduras, the Honduran Labor Code, ILO Conventions 87 and 98, and FLA’s Workplace Code of Conduct and Benchmarks.

FLA-Affiliated Brands and Recommended Remediation

At present, five FLA-affiliated companies source products from Petrallex: Box Seat Clothing, Dallas Cowboys Merchandising Ltd., Gear for Sports Inc. (including Under Armour under a licensee agreement), Outerstuff (an adidas Group licensee), and VF Corporation.

The FLA recommends that, in consultation with the SITRAPETRALEX union, the affected brands should independently assess and publicly report on the progress made by Petrallex in remediating these labor rights violations. Specifically, the factory’s remediation steps should include:

1. Reinstatement of the 19 fired workers and compensation for their lost wages, ensuring that seniority is respected.
2. No further firings and other retaliatory acts based on union or collective activity, family bond, or friendship with those workers exercising their associational rights.
3. An acknowledgement of the SITRAPETRALEX union board and establishment of regular, weekly dialogue with its members.
4. Continuous training for all workers, supervisors, and managers, on freedom of association rights, initially to be led by an independent expert.
5. A letter, written in Spanish, issued jointly with the union to all Petrallex workers expressing respect for their associational rights in the factory.

The FLA-affiliated brands involved should verify the achievement of these remediation steps over the next six months. Thereafter, given the seriousness of the violations, and their recurrence over time, the brands should regularly monitor the factory's termination practices to prevent future anti-union worker firings, and regularly confirm that the workplace environment at Petrallex allows workers to exercise their right to freedom of association.

II. Investigation Scope and Methodology

This report contains the results of an independent investigation conducted by *Fair Labor Association* (hereinafter, referred to as FLA) at Petrallex S. de R.L. (hereinafter, referred to as Petrallex), in Honduras, in response to a Third Party Complaint submitted to FLA by “Federación Independiente de Trabajadores de Honduras” (hereinafter, referred to as FITH), on March 31, 2015, alleging violations of Freedom of Association against union leaders, union members, relatives and sympathizers of the “Sindicato de Trabajadores de la empresa Petrallex S. de R.L. (hereinafter, referred to as SITRAPETRALEX), in Honduras.

Specifically, the investigation focused on allegations of terminations and forced resignations of SITRAPETRALEX’s union leaders, union members, union members relatives and sympathizers, between November 2014 and March 2015, carried out by Petrallex S. de R.L. management (hereafter, referred to as the factory or Petrallex) due to their union activities or family bond with workers who exercise their associational rights. In addition, the investigators were requested to conduct a review of the current status of the remediation plan that arose from an SCI¹ assessment conducted by FLA at the factory, in November 2013².

The following FLA-affiliated companies currently source from Petrallex: Box Seat Clothing, Dallas Cowboys Merchandising Ltd., Gear for Sports Inc. (including Under Armour under a licensee agreement), Outerstuff (Adidas Group licensee), and VF Corporation.

Between April 8 and 11, 2015, FLA investigators conducted interviews with various stakeholders related to the case, such as representatives of the Secretariat of Labor and Social Security (hereinafter, referred to as STSS), FITH union leaders, terminated SITRAPETRALEX union leaders and members, affiliated and non-affiliated workers, a former STSS official, a representative of the Asociación Hondureña de Maquiladores (hereinafter, referred to as AHM), and a union leader

¹ Sustainable Compliance Initiative.

² During the morning of April 10 the investigators came to an agreement with the Human Resources Manager that they would return to the factory on April 11 to review documentation regarding the current status of the remediation plan resulting from the November 2013 SCI assessment; however, that same day the investigators were informed that said visit would no longer be possible, due to the fact that all information related to the remediation plan had been submitted to the FLA-affiliated company responsible for following up on the remediation plan.

from Central General de Trabajadores (CGT). Furthermore, an on-site visit lasting a day and a half was conducted at the Petrallex premises at ZIP Búfalo, Villanueva, to conduct interviews with workers and management, document review, and a visual inspection of the plant.

The investigation process included a review of official documents issued by STSS and other public entities, internal documents, and public communications prepared by FITH and SITRAPETRALEX.

All information sources consulted (interviews, records reviewed, etc.) are listed in Annex A of this document.

Given how difficult it could be to prove anti-union discrimination – mainly because of the lack of documentary evidence -- the investigators triangulated the evidence collected inside the factory with testimonial evidence gathered externally, in order to determine if the dismissals of union leaders, members, relatives and sympathizers, were motivated by the exercise of their right to freedom of association, or by some other reason such as disciplinary measures, an overall retrenchment of personnel, or other reasons.

As already established by the International Labor Organization's (hereinafter, referred to as ILO) Committee on Freedom of Association, *"(...) it may be difficult, if not impossible, for workers to furnish proof of an act of anti-union discrimination (...)"*³; it should, in effect, be understood that the employer has the power to document (from which derive the burden and obligation to document), the power which workers normally lack⁴.

³ Freedom of Association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO. Geneva 2006, par. 819

⁴ Goldin, Adrian; Mission Report regarding the closure of Jerzees Honduras, previous investigations and freedom of association rights, *Fair Labor Association*, p. 4, online http://www.fairlabor.org/sites/default/files/documents/reports/jdh_hq_spa_01.28.09.pdf, consulted on April 10, 2015.

III. Background

Prior to delving into the current issues to investigate, it is useful to provide some background on the history of union formation at Petrallex. On June 24, 2006, a group of Petrallex workers, advised by FITH, held an assembly at which they formed SITRAPETRALEX⁵. Minutes were taken of this assembly, which were presented to STSS headquarters in Tegucigalpa, along with the rest of the documentation required by Article 481 of the Labor Code in order for the union to be legally recognized.

In the days that followed, Petrallex management terminated all members of the Provisional Union Board and several union members⁶. Meanwhile, STSS granted legal personality (recognition) to said union through May 7, 2007⁷. It was the union federation CGT which in June 2007, decided to make the first effort to constitute a Statutory Union Board for the union created by FITH⁸.

To carry this out, CGT requested that a labor inspector visit the factory and certify that union leader candidates had been employed by the company for at least 6 months, a condition required by Article 510 paragraph c) of the Labor Code for all union leaders candidates. The certification issued by the Directorate of Labor Inspection serves as proof that the union leaders complied with the requirements to conform the Union Board (Article 481 paragraph c) of the Labor Code)⁹.

Between June 6 and 8, 2007, Petrallex's management terminated all union leader candidates -- a total of six -- before CGT could present the certification of the Directorate of Labor Inspection. The company adduced "personnel restructuring" as the official cause for the terminations¹⁰.

⁵ Provisional Union Board Foundation and Election minutes of SITRAPETRALEX, June 24, 2006.

⁶ Interview with Alejandro Santos Deras and Francisco Joel Lopez from FITH, on April 8, 2015.

⁷ Transcript No 31/Dos/2009, entry of recognition and inscription of legal personality of SITRAPETRALEX, issued by STSS on October 20, 2009.

⁸ The Provisional Union Board is responsible for the management of a newly-formed union, for a maximum period of 30 days after obtaining legal personality. Following this period, the union must elect the Statutory Union Board, and the term of office will be regulated in the union statutes (Articles 478, paragraph 8, and 512 of the Labor Code).

⁹ Interview with Evangelina Argueta of CGT, April 10, 2015.

¹⁰ Documented Facts on Public Review of U.S. Submission before the Office of International Labor Affairs (OTLA), under CAFTA-DR Chapters 16 and 20, p. 23.

Between the second half of 2007 and the first half of 2008, CGT continued making efforts to legally constitute the Governing Board, by accrediting its members. After every attempt, the workers were terminated¹¹, a clear violation of the legal guarantee known as *"fuero sindical"*¹², which is granted to all union leaders by Honduran labor law.

In the beginning of 2008, STSS headquarters in Tegucigalpa assigned two inspectors to investigate the terminations carried out by Petrallex management against union members and leaders. In their public report resulting from this commission, dated May 23, 2008, STSS concluded that Petrallex had violated national law, specifically, Article 117 of the Labor Code, by terminating 134 union members without the prior authorization of a judge, and ordered their reinstatement within three days¹³. Petrallex did not comply with said order.

Available data suggests that, from 2009 through August 2014, neither FITH nor CGT attempted to constitute a new SITRAPETRALEX Union Board until August 2014, when FITH decided to resume organizational efforts¹⁴.

Some of the behavioral patterns of Petrallex management vis-à-vis Freedom of Association which have been documented are¹⁵:

1. Not allowing access to the factory facilities to STSS officials, primarily labor inspectors;
2. Refusal to sign acknowledgement receipt of SITRAPETRALEX Union Board constitution notification;
3. Non-observance of STSS recommendations, specifically those related to the reinstatement of dismissed union members.

With regards to the first point above, the former Regional Labor Director in San Pedro Sula confirmed that on one occasion in February 2008, she had to intervene seeking the involvement of the police force, to finally ensure that a labor inspector could enter the free trade zone¹⁶.

¹¹ *Ibid*, pp. 8-11. The complaint presented to OTLA documents SITRAPETRALEX union leaders' dismissals on the following dates: July 25, 2007; December 21, 2007; February 11, 12 and 13, 2008; and February 21, 2008.

¹² The Honduran Labor Code, article 516, guarantees *"Fuero Sindical"* protection, which consists of a legal protection for all members of the Union Board to not be terminated from their job without prior proof presented to a judge of just cause for the termination of their contracts.

¹³ *Ibid*, p. 11.

¹⁴ Interview with Alejandro Santos Deras of FITH, April 13, 2015; interview with Evangelina Argueta of CGT, April 10, 2015.

¹⁵ *Supra* note 9, pp. 22-27.

¹⁶ Interview with Lucía Rosales, former Regional Labor Director in San Pedro Sula (2006-2008 term), April 8, 2015.

IV. Investigation Results

The following facts were corroborated by FLA investigators:

Termination of Union Leaders in November 2014

The organizational efforts undertaken as of August 2014 by FITH resulted in the registration of a new SITRAPETRALEX Union Board with STSS, on November 21 2014¹⁷. Petrallex management terminated three union leader members of that Union Board, all of them from the Cutting Department, between November 17 and 20, 2014¹⁸. Henceforth, these workers will be identified as **Union Leader # 1**, **Union Leader # 2**, and **Union Leader # 3**¹⁹.

According to the termination letters issued by the factory's management, these three terminations were due to "personnel readjustment". The investigators talked with two of the terminated workers²⁰, who asserted that their termination was motivated by their union activities and not due to a "restructuring" as alleged by management.

In investigating why the dismissal of these union leaders occurred before the Union Board was registered, the following was concluded: testimonial evidence obtained proves that, among others, the activities of factory guards activities include surveillance of workers with the purpose of identifying those workers involved in union activities. In addition, it came to light that some workers loyal to management relayed information regarding the identity of workers who were exercising their right to freedom of association²¹. Thus, management had knowledge of FITH efforts, as of August 2014, to constitute a new SITRAPETRALEX Union Board.

¹⁷ Transcript No. 336/2014, registration of SITRAPETRALEX Union Board, issued by STSS on November 27, 2014.

¹⁸ Termination letters filed in the terminated workers' personnel files.

¹⁹ In order to protect the identity of the affected workers, their names will be omitted and they will be referenced with the following names "union leader #"; "union affiliate #", and in the case of family members, with the relationship of consanguinity or affinity with union members. The names of all persons included in this report will be shared with all stakeholders if Petrallex management decides to reinstate the workers as suggested in the recommendations section of this report.

²⁰ The investigators conducted calls with these workers between April 13 and 14, 2015. Likewise, an attempt was made to reach the third union leader but it was not successful.

²¹ Onsite interviews with active Petrallex workers and offsite interviews with terminated workers.

The surveillance and control of workers included observing groups of workers during lunch, and following certain workers -- considered “targets” by the guards -- outside of the factory and free zone at a site known as “El Metro”, with the purpose of determining if they were meeting other workers afterwards. In addition, the Petrallex guards have been observed filming groups of factory workers during meetings at this site, and the free trade zone guards ask Petrallex workers to leave when they gather at “El Metro.”

Termination of Union Leaders in March 2015

As a result of the dismissals of the three union leaders, SITRAPETRALEX members along with FITH restructured a new Union Board on December 4, 2014. STSS Headquarters in Tegucigalpa issued a certificate of registration of this new Union Board through February 25, 2015.²² Both union leaders unaffected by the November 2014 dismissals continued to be a part of the Union Board, occupying new positions within said board.

Early in the morning of March 2, 2015, three members of the new Union Board presented themselves at the office of the Human Resources Manager at Petrallex and expressed that they were members of the recently constituted Union Board. They tried to deliver to the Human Resources Manager a copy of the transcript of the official STSS registration of said Board.

According to the union leaders’ testimony, the Human Resources Manager expressed that there was no comment to be made and refused to sign the acknowledgement of receipt of the aforementioned transcript, in spite of keeping a copy.

That same day, management started dismissing the new Union Board members. The details of the facts are described hereafter. In order to maintain dismissed workers’ identity confidential, they will be identified in the same manner previously mentioned.

Case of Union Leader # 4

On March 2, at approximately 2:30 pm, this worker’s supervisor sent him to the Human Resources Manager’s office. The Human Resources Coordinator showed him on the computer the calculations of severance payment for termination and told him that if he signed a resignation letter, he would receive twice the severance amount to which he was entitled by law. As the worker refused to sign the resignation, the Human Resources Coordinator asked “How much money do you want?” The employer representative insistently attempted to persuade him in various ways to

²² Transcript No 029/2015, registration of SITRAPETRALEX Union Board issued by the STSS on February 25, 2015.

resign, even telling him to “remember your son.” They kept him in the office for approximately three hours, and after refusing management’s proposal, he was fired. He did not sign the severance settlement or the termination letter and did not take the severance payment. His wife also worked at the factory and she was also fired. Her case is described below.

Case of Union Leader # 5

According to the testimony of SITRAPETRALEX union leaders, this worker was terminated on March 3. In his personnel file, investigators found a hand-written resignation letter, apparently signed by the worker, dated March 2, 2015. In his personnel file, the investigators also found the severance settlement -- with the same signature as on the resignation letter -- but dated February 27, 2015. The Human Resources Manager was unable to explain the disparity between the dates of the severance settlement and resignation letter. According to the signed severance settlement, both parties -- worker and management -- agreed by mutual consent to end the labor relationship, without liability for the parties, and the worker received HNL 5,634.83 Lempiras (approximately USD 259.70). No evidence was found of a bank transfer or check issued for the severance payment; management stated that payment was made in cash. This is not a common practice.

The investigators had a telephone conversation with this worker, who did not want to provide information on the exact date of his termination or of the exact amount of money he received as severance. He did confirm that he received payment in cash, that he voluntarily decided to resign from his job, and that he is not interested in returning to the factory.

Both Union Leader # 4 and Union Leader # 5 worked in the factory’s Logo Department (*Heat Transfer*). The investigators were able to determine that replacements were assigned to the production lines within two days for the positions both workers occupied. In addition, according to the collected information, at the time of the dismissal of both workers no “personnel readjustment” was being implemented in the Logo Department, as alleged by Petrallex management.

Case of Union Leader # 6

This worker was taken to the Human Resources office at approximately 4:00 pm, on March 3. The Human Resources Coordinator told her she was being terminated due to “personnel readjustment”, but that if she signed a resignation letter she would receive twice the severance amount required by law, offering up to HNL 80,000.00 Lempiras (USD 3,686.89). The Human Resources Coordinator told her that they would even pay for a taxi to take her home, so that she would not have to travel on public transportation with so much money. The worker refused to accept management’s offer and was fired. She also did not sign her severance settlement or her termination letter. Two of the worker’s sisters, who also worked at the factory, were also fired; their cases are described below.

According to the gathered testimonial evidence, Union Leader #6 was a good sewing operator. Management's production team tried to replace her right after her dismissal but they had difficulty in finding an operator with her abilities to replace her. Management trying to replace this worker plus the fact that her module did not suffer other changes such as the number of workers and style at the time of her dismissal, suggests that the reason for her termination is not the "personnel adjustment" alleged by management.

Case of Union Leader # 7

On March 3, at about 5:30 pm, his supervisor took Union Leader #7 to the Human Resources office. The Human Resources Coordinator notified him that he was fired and that his severance and resignation letter were ready to be signed. The worker refused to sign the acceptance of dismissal and left the office.

This worker worked in the Cutting Department, operating a circular knitting machine, a position that only requires one person. The evidence gathered indicates that a replacement was assigned to this position shortly after his dismissal, and that the worker who took his place was still in that position at the time of the on-site visit. Once again "personnel readjustment" was the reason given for the termination.

Case of Union Leader # 8

This worker was called in to the Human Resources office on March 4, at 7:00 am. The Human Resources Coordinator told her that she was being dismissed due to "personnel readjustment", and that her severance according to the law was HNL 35,000.00 Lempiras (USD 1,613.06), but that they could pay her HNL 52,000.00 Lempiras (USD 2,396.55) if she signed a resignation letter. She refused to resign and was fired. She also refused to sign her severance settlement and termination letter.

This worker was a sewing operator. Once again, immediately upon her dismissal, the production team at the factory designated another worker to take her position. The investigators did not find substantial changes in the composition of the module where she worked at the time of her dismissal.

Case of Union Leader # 9

This worker was terminated on March 9, 2015, at about 4:00 pm. She was informed by a representative of Human Resources, whose name she does not know because she was new and ceased to work there within a few days. This worker accepts that she signed the acknowledgement of receipt of the termination letter, but did not sign the severance settlement nor accept the severance payment.

On the day following the dismissal of this sewing operator, her position was also occupied by another worker. Again, the same pattern is detected: a worker is dismissed due to a presumed "personnel readjustment", but the module where she

worked did not experience changes in the number of workers at the time of her dismissal. It is relevant to highlight that all terminations of union leaders mentioned above constitute a violation of the legal protection known as “*fuero sindical*”.

Cases of dismissal of workers affiliated with the union and union member relatives

The FITH provided investigators with a list of 10 workers terminated by the factory at the beginning of March 2015, alleging that these terminations were based on the workers’ exercise of their right to freedom of association and/or a family bond with union members.

The investigators were able to determine that nine of these ten workers were affiliated to SITRAPETRALEX. From this group, two workers, in addition to being union members, are sisters of one of the union leaders terminated in March 2015. The only terminated worker who was not a union member is the wife of one of the union leaders fired in March 2015.

According to documentary and testimonial evidence, the terminations of these ten workers were done during the same period during which the last Union Board members were terminated, again alleging a “personnel readjustment,” which is not documented²³. All interviews with workers confirmed the anti-union environment promoted and tolerated by Petralelex management with the aim of avoiding the effective operation of the union. In this context, the evidence shows that the persecution of the union is systematic, open and focused on any worker suspected of being directly involved in union activities, in any production department, or having a bond or affinity with another worker believed to be affiliated or a supporter of a union initiative²⁴.

From the review of the personnel files of these ten workers, the investigators found no evidence of low performance or disciplinary actions taken against them; on the contrary, the testimony of interviewed co-workers indicates that they were good workers who complied with company regulations.

As examples of the situation surrounding the ten workers mentioned above, the investigators documented two concrete cases²⁵:

²³ The investigators requested records about production orders and style changes and how these changes affected the production modules in February and March 2015 from the Production Manager. The Production Manager informed the investigators that “he does not keep physical or computer records.”

²⁴ One hundred percent of the factory workers interviewed confirmed this situation.

²⁵ Due to the limited duration of the on-site investigation, the investigators did not have enough time to document the remaining cases in detail. However, the gathered information is sufficient to establish a historical pattern of anti-union behavior by the company.

Case of Union Affiliate # 1

This worker held the position of Supervisor in the Logo Department (*Heat Transfer*) at the time of his dismissal. He was a union member and participated in efforts to reactivate the Union Board at the end of 2014. He was terminated on March 3, 2015 at approximately 12:00 pm. The Human Resources Coordinator stated that the termination was due -- once again -- to a “personnel readjustment.” This worker has a December 2013 medical diagnosis of a back problem from the Honduran Social Security Institute, recommending,, among other measures, relocation to an area where he can alternate between a standing and seated position²⁶.

According to the Plant Manager, this worker was relocated on two occasions, alleging that due to the back ailment, the worker could not occupy a position that required being in the standing or seated position during the entire work shift and was terminated because there was “no ideal position for his condition.” The investigators found no evidence of the relocation. According to the workers, the only accommodation to benefit the worker was when he was transferred to Logo Supervisor, where he felt good and performed his duties adequately. The Plant Manager also stated that this worker “made many mistakes in his job performance,” which are not documented.

It was found that the position held by Union Affiliate #1 was also filled by another worker immediately after his dismissal; and as previously mentioned, there is no evidence of “personnel readjustment” affecting other positions in the Logo Department.

Case of Union Affiliate # 2

Union Affiliate #2 is a sewing operator, terminated by management on March 13, 2015, due to “personnel readjustment”. Interviews with co-workers indicate that the reason for termination was the exercise of the right to freedom of association. As with all the cases previously described, the worker’s position was filled shortly after the dismissal by another worker.

Case of non-union member with a family bond with Union Leader # 4

The investigators interviewed the wife of Union Leader # 4, who had worked for 12 years for the company as a finished product Quality Auditor; this information was corroborated by documentation in her personnel file. According to her testimony, she was not given a reason for her dismissal, which occurred on March 3, 2015, a day following her husband’s dismissal. She was surprised by the dismissal because at that time the company was hiring more quality auditors.

²⁶ Technical Committee of Occupational Hazards, Honduran Institute of Social Security, San Pedro Sula, Work Relocation Decision No CTRP SPS 313-13.

She confirmed that she was not involved in union activities, but that she believes she was dismissed because of her family bond with one of the union leaders.

It should be stressed that, in the case of Union Affiliate #8, Union Affiliate #9, and Union Leaders # 4, 5, 6, 7, 8 and 9, the Labor Inspection Office, in Notifications dated March 9 and 24, 2015, ordered Petrallex to reinstate all workers in their job positions under the same conditions. To date, Petrallex has not complied with any of these requirements.

Table 1: Consolidated list of workers fired by Petrallex due to their union activities and/or family bond with members of the union

Union member status and/or family bond		Termination date	Worker name
Union leaders (Union Board members November 2014 and March 2015)	Union Leader # 1	November 20, 2014	[REDACTED]
	Union Leader # 2	November 17, 2014	[REDACTED]
	Union Leader # 3	November 20, 2014	[REDACTED]
	Union Leader # 4	March 2, 2015	[REDACTED]
	Union Leader # 5	March 3, 2015	[REDACTED]
	Union Leader # 6	March 3, 2015	[REDACTED]
	Union Leader # 7	March 3, 2015	[REDACTED]
	Union leader # 8	March 4, 2015	[REDACTED]
	Union Leader # 9	March 9, 2015	[REDACTED]
Terminated union affiliate workers and relatives of affiliate workers	Union Affiliate # 1 (Sister of Union leader # 6)	March 4, 2015	[REDACTED]
	Union Affiliate # 2 (Sister of Union leader # 6)	March 4, 2015	[REDACTED]
	Union Affiliate # 3	March 4, 2015	[REDACTED]

	Union Affiliate # 4	March 13, 2015	[REDACTED]
	Union Affiliate # 5	March 13, 2015	[REDACTED]
	Union Affiliate # 6	March 13, 2015	[REDACTED]
	Union Affiliate # 7	March 13, 2015	[REDACTED]
	Union Affiliate # 8	March 3, 2015	[REDACTED]
	Union affiliate # 9	March 5, 2015	[REDACTED]
	Fired worker # 1 (Non union affiliate, nor union sympathizer, wife of Union Leader # 4	March 3, 2015	[REDACTED]
TOTAL: 19 Workers			

Assessing factory's termination practices

Investigators observed that all notification letters of terminations mentioned above were justified by a “personnel readjustment,” while the monthly termination consolidated list, maintained by the Human Resources management, establishes that the motive was “restructuring.”

Factory's termination procedure (P-RHX-015, dated June 2, 2014) does not define what is a “personnel readjustment” or a “restructuring.” The Human Resources Manager, when asked about the difference between “personnel readjustment” and “restructuring,” was not able to provide an explanation. The Plant Manager, however, explained the difference between “personnel readjustment” and a “restructuring.” According to the Plant Manager, a “personnel readjustment” refers to a change in style or product that impacts on the number of operations in a specific module, which could be translated into a termination if a worker or workers can not be reassigned to another module. Meanwhile, a “restructuring” occurs when there is a lack of production orders -- or a reduction in orders -- which results in a significant number of worker retrenchments.

When reviewing the consolidated list of terminations from 2014 up to the present, it was observed that there was no “personnel readjustment” in 2014, and such category appears for the first time in February 2015. The above demonstrates that

there is a defined and standardized procedure in the matter of terminations, and that management uses the terms “restructuring” and “personnel readjustment” indistinctly.

Furthermore, in none of the cases was there evidence to justify the company’s termination decisions. In other words, the assessed firings are decisions that appear to have been made in a discretionary manner.

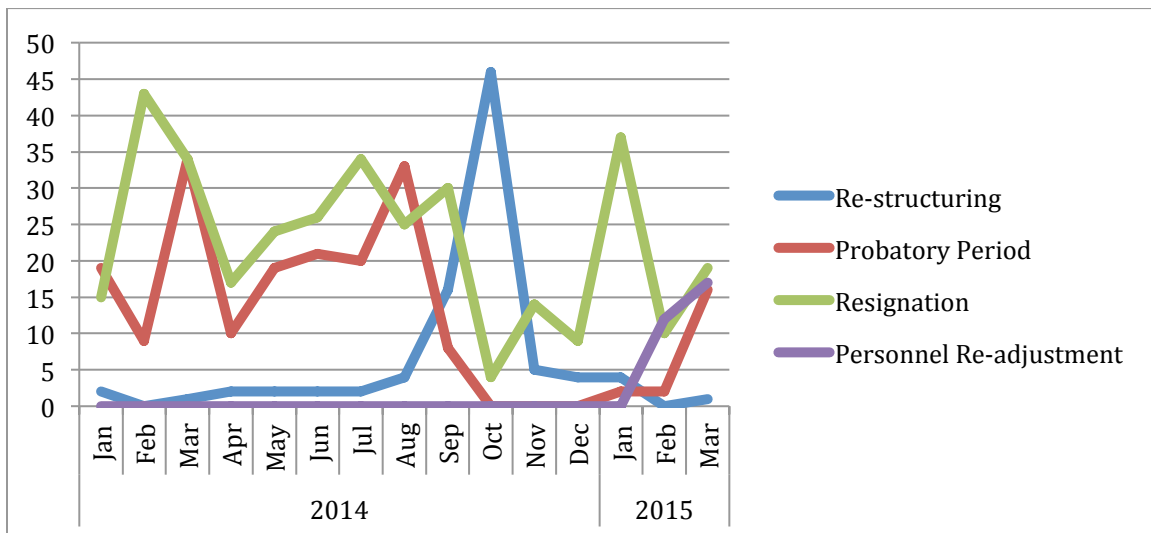
Also, investigators corroborated that between November 2014 and March 2015, a period during which the 19 terminations described above occurred, there was no restructuring as there were no large worker retrenchments. On the contrary, in the month of October there was a restructuring that affected 46 workers (see Graph 1, a consolidated list of terminations between January 2014 and March 2015, including the motive of termination).

Investigators also noted that, in the same period, March 2015 was the month that registered the most terminations due to “readjustment” or “restructuring,” with a total of 18 fired workers; once again, there is no evidence of restructuring on that month (see Graph 1).

To sum up, gathered information indicates that the factory has utilized -- and continues to utilize -- the terms “restructuring” and “readjustment” as a way to justify terminations of workers involved in union activities²⁷.

²⁷ Corroborated information from interviews with FITH, CGT, and STSS. This situation is also documented in the complaint presented by some social organizations to the OTLA office.

**Graph 1: Termination consolidation in the period
Jan 2014 through March 2015**



Freedom of Association policy and its training

Within its policies and procedures, Petrallex has a freedom of association and collective bargaining policy which recognizes the workers' right to freely choose to organize or not. It goes on to indicate that workers can join any "legally constituted" groups, such as social, political, or religious groups. The most relevant commitments of this policy include: i) to respect all laws of the Republic on these matters; ii) to avoid harassment, abuse, discrimination, and retaliation toward workers that exercise their freedom of association and collective bargaining rights; and iii) to provide training on said topics.

This policy limits freedom of association to worker affiliation with "legally constituted" groups exclusively, which can limit worker participation in other worker representative structures, such as workers committees, in clear contradiction with international labor principles.

Furthermore, the policy does not include a reference to the ILO Conventions and Principles on the matter of freedom of association and collective bargaining, nor to other inherent prerogatives to freedom of association such as: i) providing worker representatives the facilities for the prompt and efficient performance of their functions; and ii) commitment to an open dialogue with union members.

Investigators confirmed the lack of a training program that would allow the transfer of knowledge to workers, middle management, and management about their

associational rights, even though freedom of association has been, historically, a very troublesome topic inside the workplace environment of the factory.

Despite the existence of a freedom of association policy, 100 percent of the interviewed personnel expressed not having participated in any training about freedom of association. On the contrary, workers expressed a generalized fear about getting involved in union activities and most of these workers questioned the reason behind management's fear of unionism.

Petrallex's legal arguments to justify management actions about the terminations of SITRAPETRALEX union board members

In order to justify that management has acted "legally" when terminating union leaders, Petrallex's legal advisor made the following arguments:

- ★ Petrallex does not recognize the existence of the union's Board, because the factory's General Manager has not been formally notified about its constitution.
- ★ Since the union had not formally notified Petrallex's General Manager about the existence of the union board, its members do not enjoy "*fuero sindical*" protection.
- ★ Since the union leaders do not enjoy "*fuero sindical*" protection, their dismissals are legal.
- ★ Those workers joined the Union Board right after being fired; therefore, they were not active workers when joining the union board as legally required.

The above arguments are made by the legal advisor, based on articles 858 and 517 of the Labor Code²⁸.

Investigators' considerations:

There is no need for an interpretation of the procedure for notifying the formation or reelection of a Union Board (based on article 858), due to the fact that article 516 clearly establishes that "*fuero sindical*" starts from the moment of the union leaders' election and up to six months after the end of their functions as Board members. In other words, to enjoy "*fuero sindical*" protection, a formal notification to the employer about the election of union leaders is not needed. Moreover, article 517 refers to the legal protection for promoters of a union during formation; on this specific case, the union legally exists since 2007.

²⁸ Based on this legal argument, article 858 would allow a supplementary application of laws for cases in which the law does not regulate procedures to follow. The legal advisor misinterprets that the formal notification mentioned in article 517, as referred in the Labor Code (applicable to the formation of a new union), is also applicable for the notification of a new Union Board formation.

Testimonial evidence indicates that SITRAPETRALEX union leaders notified the Human Resources Manager on March 2, 2015²⁹, the date of the official document that reflects the election of the new union Board. According to the legal advisor's argument, this type of notification, in order to be valid, must be provided exclusively to the General Manager. However, there is no legal foundation for this argument, due to the fact that article 6 of Labor Code regulates the "Employers Substitution" figure, whereby managers, administrators and directors -- amongst others -- are considered employer's representatives.

Finally, the SITRAPETRALEX union leaders fired in March 2015 were elected on December 4, 2014, when they were active workers in the factory. In the case of the three union leaders fired in November 2004, their election as Board member occurred on October 12, 2014; therefore, in accordance of article 516 of the Labor Code, all these union leaders enjoyed "*fuero sindical*" at the time of their terminations³⁰.

Recent STSS due diligence/actions³¹

Some local social organizations have questioned STSS's performance in general, and particularly about this case, in recent years³². This investigation does not pretend to examine STSS's performance those years, but it will present some considerations with respect to the recent interventions, specifically those conducted since March 2015..

On March 4, 2015, FITH requested the intervention of the Regional Labor Inspection Office in San Pedro Sula. That same day, the Chief of said office, along with two labor inspectors, one FITH representative, and a fired union leader traveled to Petrallex's facilities with the purpose of corroborating the infringements to the Labor Code and

²⁹ Annex B reproduces the STSS official transcription of the election of the SITRAPETRALEX union leaders; this document was delivered to the Human Resources Manager.

³⁰ Investigators possess certified copies of the SITRAPETRALEX ordinary general assembly meetings minutes, which cite that union leaders were elected on October 12, 2014 and December 4, 2014 respectively. Due to confidentiality issues, these documents are not annexed to this investigation report.

³¹ During a conversation with a representative of the Honduran Association of Maquiladores (AHM), the representative said: "In relation to the Petrallex case, this association, when following its labor law compliance policies, sees positively that the company Petrallex, as well as its organized workers that demand Company actions to ensure freedom of association, have opted to rely on the legal instances, in order to resolve the labor conflict they are currently facing. We hope that the resolutions coming from the authorities with labor competency will be respected by all of the parties."

³² Documented Facts in Public Report of Review U.S. Submission 2012-01, to the Office of Trade and Labor Affairs (OTLA), under Chapters 16 and 20 of the Free Trade Agreement between United States and Dominican Republic and Central America (DR-CAFTA), pages 22-17.

ratified international conventions by the State of Honduras on the matter of freedom of association³³.

The labor inspectors could not gain access the factory and were met by an Administrative Assistant from Petrallex, with no decision-making power, who confirmed the firings, and said she was limited to transferring the information to management.

On March 9, the Inspection Office conveyed to Petrallex a report which documents infringements by the factory of both the law and ILO Conventions 87 and 98, related to the firings of five union leaders between March 2 and 4, 2015. In said report, the Inspection Office provides Petrallex a three-day time period to reinstate the five terminated workers. As reflected in the notification report, the inspector was not able to enter the factory facilities to duly effect the notification, and was received by a factory representative inside the free trade zone³⁴.

It was known to the investigators that Petrallex presented rebuttal evidence to the March 9 inspection report, mentioned above, before the Central STSS Office in Tegucigalpa; for that reason the file was transferred to said office³⁵.

After the firing of a sixth union leader (on March 9) and two other workers affiliated to the union, the Inspection Office was requested by FITH to intervene once again. Thus, on March 16 a labor inspector visited the factory. On this occasion, the Labor Inspector was able to enter the factory and was met by Petrallex's General Manager, who stated that the terminations were justified by virtue of a "restructuring," denying infringement of the law.

On March 24, Petrallex's General Manager was notified about infringements of the law and ILO Conventions 87 and 98, due to the firing of one union leader and two union affiliated workers allegedly because of "personnel readjustment." ³⁶ Once again, Petrallex was ordered to reinstate the three workers. Furthermore, the Inspection Office ordered that the factory:

- ★ Reinstate the fired union leader and the two workers affiliated to the union;
- ★ Make a compensation payment in favor of SITRAPETRALEX due to the dismissal of a union leader in November 2014, equivalent to six months of salary, for a total amount of HNL 46,285.71 Lempiras (USD 2,133.19).

To date, Petrallex has not complied with any of the directives..

³³ Interview with the Regional Inspection Office Chief in San Pedro Sula, April 10, 2015; STSS, Inspection Report from the Petrallex visit, March 4, 2015.

³⁴ STSS, Notification record from Regional Labor Office of San Pedro Sula, dated March 9, 2015.

³⁵ Interview with the Regional Inspection Office Chief in San Pedro Sula, April 10, 2015

³⁶ STSS, Notification record from Regional Labor Office of San Pedro Sula, dated March 24, 2015.

In parallel to the Inspection Office's actions, on March 6, the FITH and the dismissed workers sought the intervention of the Regional Director of Labor in San Pedro Sula, who convened Petrallex management, fired union leaders, and FITH members to a formal meeting to discuss the union's allegations. However, Petrallex representatives did not attend the meeting.

On March 16, through a petition by the affected union leaders, Conciliatory Administrative Proceedings were initiated. On March 24, the union leaders and the factory's lawyer attended a conciliation meeting to discuss the union's proposal for reinstatement of the terminated union members, but the parties could not reach an agreement. As a result, that same day the conciliation process ended³⁷.

Within the timeframe of this field investigation, and more specifically, on April 9, the STSS Regional Office in San Pedro Sula, on behalf of the fired union leaders, filed a lawsuit against Petrallex, demanding:

- ★ Reinstatement, under the same conditions, of all union leaders that have not accepted their severance or signed a settlement.
- ★ In the case of workers in union leadership positions that accepted a severance payment and signed a settlement, a "*Petición de Fuero Sindical*" is being made, which consists of a compensation to be paid by the employer in favor of the affected union.

In conclusion, the San Pedro Sula STSS branch, through both the Labor Affairs Department and the Inspection Office, have documented Petrallex's infringements of the law due to the firing of union leaders and workers affiliated with the union. In the Regional Labor Director's words: "we offer our total and unconditional support to these workers and seek respect for labor rights" ³⁸.

Finally, it is clear that there is no STSS involvement in the case of the firings of union leaders on November 2014, because neither FITH nor the affected workers activated the legal mechanisms available to them.

³⁷ STSS, Conciliatory Administrative Proceedings, Closing Report by the parties decisions, File number RACL-0501-CONC-07985-15, RACL-0504-CONC-07986-15, RACL-0501-CONC-07987-15, RACL-0501-CONC-07988-15, and RACL-0501-CONC-07990-15.

³⁸ Interview with the Regional Director of Labor in San Pedro Sula, April 8, 2015.

V. Conclusions

- ★ The current labor environment at PetraleX impairs the full and free exercise of the right of freedom of association by its workers. Without a Union Board in place, SITRAPETRALEX's ability to consolidate itself as a workers' representative organization is significantly compromised. This in turn limits the union's and its members' capacity to conduct union-related activities.
- ★ The systematic practice of terminating worker contracts, and labeling those terminations as "personnel readjustment" or "restructuring," has served as a means for management to disguise anti-union animus, as it was confirmed in the firings of SITRAPETRALEX's union leaders, affiliates, and relatives of affiliated workers between November 2014 and March 2015.
- ★ These firings constitute a violation of the Constitution of the Republic of Honduras, the Honduran Labor Code, ILO Conventions 87 and 98 (ratified by the Honduran State and therefore with the force of law in the nation), and FLA's Workplace Code of Conduct, provision on Freedom of Association (FOA) and Compliance Benchmarks FOA.1; FOA.2; FOA.4; FOA.6; FOA.7; FOA.9, and FOA.10.³⁹

³⁹ Please refer to FLA Compliance Benchmarks in the following link: <http://www.fairlabor.org/our-work/labor-standards>

VI. Recommendations

To Petrallex's management:

1. Reinstate and compensate with lost wages the 19 workers terminated between November 2014 and March 2015, included in Table No 1 of this report. It is understood that the reinstatement will restore workers' seniority from the first date of hire in the factory. Lost wages will be calculated from the termination date to the reinstatement date in the same job terminated workers had before⁴⁰. Any severance paid following termination is not counted against lost wages and terminated workers are not liable for its return.
2. Refrain from new firings and other retaliatory acts based on union or collective activity, family bond, or friendship with those workers exercising their associational rights.
3. Acknowledge the establishment of the SITRAPETRALEX Union Board and establish regular, weekly dialogue with its members. A different schedule of meetings can be determined upon agreement between the union and management after three months. Management and union should discuss and agree on:
 - a. a grievance procedure available to all workers in the factory
 - b. access by union leaders to the factory outside of working hours
 - c. re-instatement and compensation as stated above for all other terminations involving union members between October 2014 and March 2015, with the exception of union members who were fired for a legitimate cause that the factory can prove.
4. Issue, with the union, a joint letter, in Spanish, to all Petrallex workers expressing respect for their associational rights in the factory.
5. Implement a continuous training program about freedom of association that includes the participation of all workers, supervisors, middle management,

⁴⁰ Due to the conditions under which the terminations took place, lost wage payment would also apply to those workers that received their severance. As rightfully indicated by the ILO's Freedom of Association Committee, even if the law allows severance payment for terminations without cause, if the real motive of the termination was their union affiliation, such payment in said severance is not a sufficient protection against that anti-union discrimination act [Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO; Geneva 2006, par. 791].

and managerial positions. Investigators recommend the initial

implementation of this program is led by an independent professional with the expertise on this topic who is acceptable to both management and union.

6. Revise the company's current freedom of association and collective bargaining policy to comply with the FLA's Compliance Benchmarks and buyers' Codes of Conduct.
7. Comply with all STSS resolutions, especially those related to cases of anti-union discrimination complaints, except where the above recommendations are more stringent or impose a higher standard.

To affiliated companies:

1. In collaboration with Petrallex management, and following consultation with the union, develop a remediation plan consistent with the FLA's recommendations to the factory in this report.
2. Verify the reinstatement and payment of lost wages of the terminated workers referred to above, ensuring that seniority is respected.
3. Verify through an independent assessment (and public report) the implementation of the remediation plan after six months. Thereafter, regularly monitor a) factory's termination practices so that to prevent future worker firings motivated by anti-union animus; b) the workplace environment to ensure it allows for the free exercise of associational rights.
4. Establish direct lines of communication with SITRAPETRALEX union leaders and FITH for the purpose of tracking implementation of the remediation plan.
5. Utilize technological communication platforms (text messages, email, free phone lines, etc.) to empower workers at Petrallex so that they can express their concerns to the brands about labor conditions, but especially about freedom of association issues.
6. Communicate to all workers, via a letter in Spanish, the commitment to respect freedom of association and collective bargaining rights. Letters should also note that the organizing or establishment of a union is by itself not a reason for reducing orders to a supplier.
7. Communicate by letter to the highest levels of the Honduran government and the Honduran Manufacturers Association (Asociacion Hondurena de

Maquiladores) support for intensive and ongoing efforts to protect the right of workers to organize and bargaining collectively.

VIII. Annexes

Annex A: Sources of Information

Interviews off-site	Group interview: 3 FITH union leaders, 5 SITRAPETRALEX union leaders fired in March 2015, 1 SITRAPETRALEX union member also fired in March 2015, Regional Labor Director, San Pedro Sula and Labor Affairs Officer from the STSS San Pedro Sula regional office.
	4 phone interviews with affiliated workers, non-affiliates and union leaders.
	Several phone interviews with FITH and SITRAPETRALEX union leaders.
	Interview with Evangelina Argueta, CGT coordinator.
	Interview with Lucía Rosales, former Regional Labor Director, STSS San Pedro Sula (2006-2008 period).
	Interview with the Chief of the Labor Inspection Office in San Pedro Sula.
	Phone interview with Arnoldo Solís, General Director, AHM.
Documentation gathered outside of the factory	SITRAPETRALEX's provisional Union Board establishment and election minutes, June 24, 2006.
	Transcript No 31/Dos/2009, recognition and registration of legal personality of SITRAPETRALEX, issued by STSS on October 20 2009.
	Certified copies of SITRAPETRALEX ordinary general assembly meeting minutes for the union leaders election, October 12, 2014.
	Transcript No 336/2014, SITRAPETRALEX Union Board registration, issued by STSS on November 27, 2014.
	Certified copies of the SITRAPETRALEX ordinary general assembly meeting minutes for the union leaders election, December 4, 2014.
	Transcript No 029/2015, SITRAPETRALEX union board registration, issued by STSS, February 25, 2015.
	Professional Risks Technical Commission, Instituto Hondureño de Seguridad Social, San Pedro Sula, Job Relocation Judgment No CTRP SPS 313-13.
	15 termination letters of union leaders, union members, union leaders' relatives, all fired in March 2015.
	Formal request from FITH sent to the Regional Labor Director in San Pedro Sula on March 2015, requesting their intervention in the Petralex

	case.
	Formal request sent by SITRAPETRALEX's union President to the Inspection Office Chief in San Pedro Sula, demanding an inspection to investigate worker firings at Petrallex.
	STSS, "visit to Petrallex" inspection minutes, March 4, 2015.
	STSS, Notification record from Regional Labor Office of San Pedro Sula, dated March 9, 2015
	STSS, "visit to Petrallex" inspection minutes, March 16, 2015.
	STSS, Notification record from Regional Labor Office of San Pedro Sula, dated March 24, 2015
	STSS, "closing minutes" by parties' decision of Conciliatory Administrative Proceedings, File Number: RACL-0501-CONC-07985-15, RACL-0504-CONC-07986-15, RACL-0501-CONC-07987-15, RACL-0501-CONC-07988-15, y RACL-0501-CONC-07990-15.
	Public Review of U.S. Submission before the Office of International Labor Affairs (OTLA), under CAFTA-DR Chapters 16 and 20.
Interviews in situ	28 worker interviews (including 2 security guards).
	7 supervisor and department chief interviews.
	Interviews with the General Manager, Human Resources Manager, Plant Manager, Production Manager, Human Resources Coordinator, Occupational Health and Safety Chief and legal advisor.
Documents reviewed at the factory	19 personnel files of Petrallex workers fired between November 2014 and March 2015.
	List of new hires between Jan 2015 and March 2015.
	Consolidated termination list (Jan 1, 2014 thru March 31, 2015).
	Freedom of Association and Collective Bargaining policy.
	Termination and Worker Retrenchment policy.
	Termination and Worker Retrenchment procedures.
	"Contract Termination" format.
	Compliance with duties and labor rights Training Manual.
	Freedom of Association and Collective Bargaining Module (Presented by CIMCAW-MECOMAQ project)
	Settlements issued by the Human Resources Manager for 19 fired workers between November 2014 and March 2015.
	Termination letters from 3 union leaders fired between November 2014 and 1 union leader fired in March 2015 who accepted severance pay.
	Bank transfer of liquidation payment of 2 union leaders fired in November 2014 and 1 union leader fired in March 2015.

Annex B: Transcript No 31/DOS/2009, entry of recognition and inscription of juristic personality of SITRAPETRALEX



SECRETARIA DE ESTADO EN LOS DESPACHOS DE
TRABAJO Y SEGURIDAD SOCIAL
Dirección General del Trabajo

TRANSCRIPCION

No. 31/DOS/2009

La Infrascrita Secretaria Administrativa de la Dirección General de Trabajo, **TRANSCRIBE:**
El Asiento de Reconocimiento e Inscripción de la Personalidad Jurídica del **"SINDICATO DE TRABAJADORES DE LA EMPRESA PETRALEX S. DE R.L." (SITRAPETRALEX)**, del Tomo IV del Registro de Organizaciones de Trabajadores que literalmente dice: **"FOLIO No. 639 INSCRIPCION 639.- REGISTRO DE ORGANIZACIONES DE TRABAJADORES.- 1.- NOMBRE DE LA ORGANIZACIÓN: "SINDICATO DE TRABAJADORES DE LA EMPRESA PETRALEX S. DE R.L." (SITRAPETRALEX), 2.- DOMICILIO: VILLANUEVA, DEPARTAMENTO DE CORTES; 3.- FECHA DE INSCRIPCION: 07 DE MAYO DEL 2007; CLASIFICACION: EMPRESA O BASE; OBSERVACIONES: LA PERSONERIA JURIDICA LE FUÉ OTORGADA EL TREINTA DE ABRIL DE DOS MIL SIETE.- S.F. María Ubaldina Martínez.- Jefe del Departamento de Organizaciones Sociales"**.

Extendida en la ciudad de Tegucigalpa, Municipio del Distrito Central, a los veinte días del mes de octubre del dos mil nueve.


María Ubaldina Martínez
Secretaria Administrativa



cc:arch.
MUM/np.

