



SUPERTEX (CHALCHUAPA)
REPORT ON THE STATUS OF REMEDIATION/CORRECTIVE ACTION PLAN
June 11, 2024

On June 2022, the Fair Labor Association (FLA) conducted a Third Party Compliant investigation (hereinafter “TPC”) at Supertex El Salvador Chalchuapa (hereinafter, the Factory or Supertex) based on a complaint filed by the union federation *Federación de Asociaciones y Sindicatos Independientes de El Salvador* (hereinafter, FEASIES). At the time of the investigation, Supertex was a supplier of FLA Member Companies, adidas, Under Armour, and Patagonia, (hereinafter, the Brands), which jointly represented approximately 85% of the Factory’s production.

The FEASIES complaint alleged several violations of workers’ right to Freedom of Association, including the alleged illegal termination of two union leaders from the union *Sindicato de Trabajadoras y Trabajadores de la Industria del Trabajo Textil* (SITTEX), as well as a former union leader and a newly elected member of the union board from the union *Sindicato de Trabajadoras y Trabajadores de Industria Maquiladora, de Comercialización, Servicios y Afines de El Salvador* (SITRAIMES).

The TPC investigation was conducted by the independent investigator, Francisco Chicas (hereinafter the Investigator) between June 14 and June 23, 2022. The Investigator was commissioned to examine the allegations in the FEASIES complaint:

1. Investigate the alleged illegal terminations of the four union leaders that occurred on June 2, 2022, and establish whether the workers were entitled to *fuero sindical* protection;
2. Assess the industrial relations at the Factory between management, FEASIES, and the unions SITTEX and SITRAIMES (focusing on the process set up by the Factory to notify of the status and recognition of existing unions and workers’ representatives at the Factory; the existing communication protocols between management and unions; and the available conflict resolution mechanisms); and,
3. Assess the Factory’s policies, procedures, and practices concerning Terminations, Freedom of Association, Non-Discrimination, Performance Review, Disciplinary System, and Grievance Mechanisms.

The Investigator gathered significant and consistent evidence to corroborate the illegal termination by the Factory of the four union leaders affiliated to SITTEX and SITRAIMES. The four union leaders were entitled to *fuero sindical* protection when the Factory took the decision to terminate their employment relationship.

Immediately after the TPC field investigation concluded and through the mediation of the Salvadoran Ministry of Labor, Supertex moved forward with the reinstatement of the four union leaders, all of whom were reinstated to their former job positions on July 1, 2022, with full back pay. This remedial action was well received by FEASIES and occurred even prior of the completion of the Investigator’s final report.

Although the core allegation filed by FEASIES was addressed even before the publication of the TPC investigation report, the Investigator found several non-compliances with local legal regulations and



FLA Workplace Compliance Benchmarks concerning Industrial Relations, Freedom of Association, and Compensation.

The Investigator's findings included the following issues:

1. The termination of the four union leaders was illegal, since the Factory did not follow the legal procedure to request judicial authorization for dismissal, in breach of Art. 47 of the Salvadoran Constitution, Arts. 2 and 8.1 of ILO's Convention C87, Art. 248 of Labor Code, and FLA Compliance Benchmarks FOA1.1, FOA.6, and FOA.7. The Factory management was not aware of their status as protected by *fuero sindical* at the time of their dismissal.
2. Along with the four union leaders, the Factory also dismissed other two workers. The Investigator found that the disciplinary actions in these cases were not sufficiently and reasonably managed, and no complete records of the disciplinary actions were found in the workers' personnel files.
3. The four union leaders and the other two workers were deprived of their right to be heard and to defend themselves before being terminated, which resulted in a) the charges against them not being communicated to them; b) the workers not being able to present witnesses or any other rebuttal evidence; c) the workers missed their right to appeal the final decision of the disciplinary procedure, and they did not have the chance to sign the disciplinary actions imposed. All these gaps contravened FLA Compliance Benchmarks ER.18.1, ER.18.3.1, ER.18.3.2, ER.18.3.3, and ER.18.3.4.
4. Calculation and payment of the severance provided or offered to these six workers was not in accordance with FLA Compliance Benchmark ER.15.4, as the annual payments of advance termination payouts previously paid to them are not included as itemized deductions in the final severance calculation when workers were terminated without cause. Also, the use of a settlement that records all forms of termination as resignations violates FLA Compliance Benchmark ER.16.1.
5. The need for more effective communication and training for workers on Freedom of Association and Collective Bargaining, as the communication and efforts carried out by factory have not been effective to ensure workers gain sufficient knowledge on such rights, and it contravenes FLA Compliance Benchmarks ER.1.2 and ER.4.
6. Limitations to workers to access a confidential grievance channel, in breach of Benchmark ER.17.2.
7. Gaps in the Factory's policies and procedures: a) FOA policy with no references to collective bargaining; b) no procedures to manage industrial relations; c) retrenchment procedure missing consultation with workers and d) the requirement for posting the retrenchment plan, fall under Compliance Benchmarks ER.1.1, ER.15.1, ER.16.2, ER.16.3 and ER.16.4.

The final report was posted on FLA's website on August 23, 2022¹, and the Brands were encouraged to submit a Corrective Action Plan (CAP) as soon as possible. According to the records shared by the Brands to FLA, the Brands submitted the initial draft of the CAP to Supertex on August 24, 2022, for review and engagement in the TPC remediation phase. The Brands engaged with the Factory on the

¹ See full report [here](#)



remedial actions suggested in the TPC investigation report. The first draft of the CAP was submitted by the Brands to the FLA in January 2023.

FLA identified that, other than the reinstatement of the four union officials, the Factory had not made sufficient progress in the implementation of FLA’s recommendations. In February 2023, the FLA shared with the Brands additional comments and actions required to fulfill the remedial expectations set through the TPC investigation process.

FLA kept ongoing communication with FEASIES to inform them of the status of the TPC investigation process but also to verify the information that FLA was receiving from the Factory through the Brands. FEASIES updated FLA about some challenges that the union leaders were facing in the engagement with Supertex management: obstacles to set up a constructive dialogue through the “*mesas de diálogo*” and the lack of a plenty recognition as workers representatives. Some of the issues reported by FEASIES could have been categorized as limitation to workers’ free exercise to their Freedom of Association rights. Therefore, FLA encouraged the Brands to focus primarily in addressing the issues concerning Freedom Association and Industrial Relations highlighted in the investigation report, in particular to invest in trainings to upper and middle management on Freedom of Association, which must be facilitate by an independent labor expert, and to set up clear rules for the operation of the “*mesas de diálogo*” following FLA’s recommendations.

In September of 2023, the Brands submitted to the FLA the technical proposal to hire the independent labor expert Ena Nuñez, who was engaged to implement an orientation and capacity building program for management, supervisors, and Human Resources staff on the right of workers to freedom of association. The scope of the expert role included to provide support to Supertex in setting up the rules and conditions for a constructive engagement dialogue with SITRAIMES and SITTEX. The training plan was successfully and fully executed between October 2023 and February 2024. In turn, all the workers were also trained by Management on Freedom of Association rights.

Finally on March 22, 2024, the FLA received from the Brands the most recent CAP updates and its supporting documentation. And above its FLA’s analysis and conclusion of the information submitted and a report of the status of the implementation.

ISSUE TYPE	SUGGESTED COMPANY PLAN OF ACTION	FACTORY REMEDIAL ACTIONS IMPLEMENTED	IMPLEMENTATION STATUS
Freedom of Association	<p>Draft and disseminate throughout all plants a verbal and written statement on Freedom of Association that includes: i) Top management commitment to respect the exercise of all workers’ rights to Freedom of Association and Collective Bargaining; ii) Top management commitment to not retaliate against workers involved in union activities, and to protect them in case they suffer any form of retaliation; and, iii) Recognition of SITTEX and SITRAIMES as legitimate and legal unions with presence at the factory.</p> <p>This statement should be available in Spanish, and content to be agreed upon or</p>	<p>Between October and November 2022, Supertex’s legal counsel, Julio René Fuentes conducted a training for 16 management and supervisory staff on “principal elements of the employer-union relationship.” The FLA recommended implementing a stronger, independent, and more robust training plan on workers Freedom of Association rights.</p> <p>On late 2023, the experienced and Third-Party labor expert- Ena Núñez- implemented a training plan on Freedom of Association for 94 staff members, including supervisors,</p>	Completed

	<p>in consultation with SITTEX and SITRAIMES unions, as well as using different channels to disseminate the statement. Please send to a draft statement for our review/consideration.</p>	<p>coordinators, etc., and 121 managerial/administrative staff members. Training content included, but was not limited to: Supertex's FOA commitment, union responsibilities, and duties as workers' representatives. All management positions were present during the sessions, including General Country Manager, HR & Compliance Manager among other management representatives.</p> <p>Brands shared with the FLA a copy of the training plan and evidence of its execution.</p> <p>During the training, Supertex reinforced its commitment to respect the exercise of all workers' rights to Freedom of Association and recognized the legitimate and legal status of the three union organizations with presence in the Factory.</p>	
<p>Freedom of Association</p>	<p>In consultation and coordination with the unions, commission a 3rd party expert trainer to draft and deliver Freedom of Association training sessions for workers and managerial positions. Content may include explanations on union and union federation definitions under the law, their legal functions, and the difference between a union and the "communication Committee" or "emergency brigades".</p>	<p>Between January and March 2024, phase two of the training program was implemented. One hundred percent of all workers were trained on Freedom of Association rights. These trainings were conducted by HR staff under the supervision of Ena Núñez, who validated the information shared with the workers and guided the trainers throughout this process. Ena participated as an observer in three periods of the process: the initial, middle, and final stages.</p> <p>Union members joined the training sessions as observers and had the chance to interact with workers aiming to present their union organizations.</p> <p>After the training, workers are better informed of the role and representation that a union exercises in favor of workers interests.</p>	<p>Completed</p>

<p>Freedom of Association</p>	<p>Update the current Freedom of Association Policy to include: i) recognition of the right to form or join associations (including unions), ii) reference on the right to collective bargaining ensuring there are adequate conditions for workers to freely exercise their associational rights if they desire so. iii) The company neutral approach on workers forming and joining a union and no interference of union activities iv) Nondiscrimination of any kind to workers that join or are in a union in all aspects of employment including recruiting, hiring, payment, employment decisions, discipline, dismissals, treatment, etc v) The right for the union to function independently vi) Sanctions for supervisors or managers that communicate anti-union messages or that harass workers that are in a union or wanting to join one. Policy needs to be endorsed and signed by top management. Policy should also detail procedures to manage Industrial Relations. Policy should be communicated in local language.</p>	<p>Supertex's Freedom of Association policy was updated in August 2023. Part of the content of the training for the workforce included explaining Supertex's policy governing Freedom of Association. The updated version of this policy includes a number of the improvements suggested by the FLA, but there are still some areas that can be improved related to:</p> <ul style="list-style-type: none"> i) The company has a neutral approach on workers forming and joining a union and no interference in union activities. ii) The right for the union to function independently. <p>The Factory argues that Ena Núñez reviewed the FOA policy as part of her engagement and training preparation. For the upcoming cycle of reviewing Factory's bylaws, it is highly recommended to make sure all FLA suggestions are incorporated.</p>	<p>Completed</p>
<p>Freedom of Association</p>	<p>Develop policies and procedures on Industrial Relations that outline the framework for: i) a healthy relationship/communication between management and any workers' organizations with presence at the factory; and ii) steps for conflict resolution, including dealing with relevant industrial actions, such as work stoppages, demonstrations, strikes, by ensuring compliance with workers' rights. It is recommended that management engage with an external independent third party for the policy/procedures development.</p>	<p>In February 2024, Supertex's Industrial Relations Policy was issued. Supertex expresses its commitment to establishing and maintaining positive employer-labor relations with the workforce and their representatives. The policy aims, among other objectives, to improve dialogue and bargaining with unions and worker representatives; and to develop an open engagement with worker representatives.</p> <p>Steps for consultation and communication with worker representatives to face critical business areas such as mass layoffs or even a factory closure are now part of this policy.</p>	<p>Completed</p>
<p>Freedom of Association</p>	<p>Supertex Chalchuapa management to continue to engage with SITTEX and SITRAIMES permanently and regularly. Dialogue should be moderated, at least during the first quarter since the implementation of these corrective actions, by an external independent mediator approved by the union, the factory, and customers that wish to do so. Applicable rules on meeting frequency and protocols applicable to the dialogue sessions should be agreed by the union and the factory with the mediator's participation.</p>	<p>At the initial stages of the remediation phase, the FLA was alerted by FEASIES of some situations that represented limitations for the worker organizations to engage positively with Supertex management. They complained about the location of the meetings and the wage deduction of union leaders were facing because of their participation in the "mesas de diálogo". These and other issues were resolved by the Factory and the engagement has turned into a good and trusting industrial relationship. Meetings are taking place every two</p>	<p>Completed</p>

		<p>months at the Factory premises, and union leaders participating in the regular meetings are granted full compensation for the time they are investing in the engagement with Supertex management.</p> <p>Ena Nuñez has also acted as a mediator/ observer in the “<i>mesas de diálogo</i>” and has also recommended some action as best practices. Four sessions have been completed: October 6, 2023, February 7, 2024, and the last one on April 15, 2024.</p>	
Freedom of Association	<p>As part of the regular dialogue with the union representatives consult with the union on matters that concern the union, the workers, or that have any impact on working conditions, including rules applicable to the provision of union facilities for union leaders. Please send an SOP, terms of engagement, for review.</p>	<p>With the guidance of Ena Núñez, Supertex has set up the rules and conditions for the functionality of the “<i>mesas de diálogo</i>.” Meetings are being tracked and followed through, as recommended. Last dialogue table was held on February 7, 2024, and the agenda included topics related to working conditions and worker and union representatives’ concerns. The “<i>mesas de diálogo</i>” have become a channel for conflict resolution and remediation of labor disputes.</p>	Completed
Disciplinary System	<p>All future terminations should be properly documented. Terminations with cause should have the corresponding disciplinary procedure followed, and faults attributed to the terminated workers should be recorded as well (including incriminatory evidence). During the disciplinary procedure workers should be informed of all accusations, and they should be given the right to defend themselves.</p>	<p>The Termination policy was updated, and based on that revision, worker terminations are being properly documented. Terminations with fault are now required to comply with the updated procedural steps added to the disciplinary procedures after the TPC investigation. The new change to the disciplinary system includes, for example, an appeal process. Supertex also shared with the FLA a matrix for the refreshment for staff members of the updated disciplinary system and some examples that process followed by plant and Human Resources staff.</p> <p>The disciplinary process was mentioned at Ena’s presentation regarding Freedom of Association.</p>	Completed

Disciplinary System	<p>Review disciplinary policies and procedures to ensure that future disciplinary procedures enable workers with the right to be heard and defend themselves. The new disciplinary system should include: i) a requirement for recording all disciplinary actions on workers' personnel files; including procedure initiation, communication of charges, references to collect evidence and final decision / case final recommendations. ii) Establish how the disciplinary process will be documented by the HR department Supervisors or managers cannot only allege "bad attitude" or "lack of commitment", they will need to state and include a concrete action that the worker perform as to obtain the measure. iii) to communicate charges or faults attributed to the workers; iv) requirement to provide workers with the opportunity to defend themselves and present rebuttal evidence and present appeal of final management termination decision if applicable. Specify how to raise an appeal, whether in writing or orally, and if the appeal shall be stated in the disciplinary action form or via another separate document v) sign all disciplinary actions imposed; and v)a categorization/differentiation of faults by severity (e.g., minor faults, serious faults), and to determine which disciplinary actions will correspond to each type of faults (i.e. which faults would be sanctioned with a verbal or written warning, which ones with suspension, and which ones with termination) and embody a system of progressive disciplinary advancements up to termination.</p>	<p>Supertex revised its Disciplinary System. The improvements principally led: (1) to design an appeal process, (2) to create or update the formats to keep record of the imposition of a disciplinary sanction, (3) to redesign the flow chart process, including steps, responsibilities and time, for the investigation and sanction of misbehaviors by workers; and (4) ensure workers sign all disciplinary action imposed.</p> <p>Supertex shared evidence that corroborated its efforts to properly communicate and train management staff, supervisors, and workers on the updates to the disciplinary system.</p> <p>There is no specific evidence that the updated disciplinary system has been formally discussed with the union representatives The Factory is planning in the coming days to schedule a meeting with the union sectional representatives to go over the disciplinary system in more detail.</p>	Completed
Disciplinary System	<p>HR team to receive (including Head of Department) training on how to properly conduct fair and objective disciplinary procedures avoiding the risk of discretionary imposition of sanctions. Trainings must be performed, documented and workers must be assessed on the trainings content as to measure retention of knowledge. Proof of trainings and training evaluations must be recorded. Ideally, this training should be provided by an external independent third party expert.</p>	<p>Internal training processes were implemented on October 27, 30, and November 15, 2023. In addition, Ena Núñez trained Supertex's Human Resources team on Freedom of Association and recommendations on fair and objective disciplinary procedures were also covered other labor rights.</p>	Completed



Termination	For the case of annual advance termination payouts, calculate payment of termination payouts by multiplying all length of service for the last valid legal minimum wage in force and deducting from the total all in-advance payments of termination payouts provided to the workers in previous years. Refer to the FLA issue brief on the subject.	Supertex revised its Termination policy and also put in place new procedures governing the calculation and payment of workers' severance. The changes are in alignment with FLA Workplace Compliance Benchmark ER, 15.4. The factory is currently implementing the new calculation of workers termination payouts.	Completed
Termination	Stop using the current universal settlement template for all forms of termination. Develop termination settlement templates where the language used in settlements reflect the actual reason for termination in each case. HR team to use the appropriate template/ correct categorization of terminations, describing the actual way of terminating the employment relationship. Factory should maintain proper and accurate records in relation to termination.	Supertex developed new formats for documenting different forms of termination, with and without cause. It will be highly recommended to continue these efforts and to have separate formats for a voluntary resignation, for example.	Completed.
Termination	Update current retrenchment procedure to include a requirement for: i) consulting with workers or workers' representatives before making a final retrenchment decision; and ii) a requirement for developing and posting a retrenchment plan for workers to consult it.	In May 2024, Supertex conducted the most recent update of its Retrenchment Policy. Supertex has in place a comprehensive document with concrete procedures for managing mass layoffs. As part of the steps, the Policy now includes the requirements for consulting with worker representatives and the requirement for developing and posting the retrenchment plan.	Completed
Grievance System	Implement a confidential grievance channel at Plant 3 and provide communication to the workers on the newly established channel.	A suggestion box is now available at plant #3, and workers were informed of this grievance channel. Supertex continues to implement the WOVO platform to support its grievance system for the workforce. Examples of the grievances managed through WOVO were shared by the Factory.	Completed
Non-retaliation	Continuously encourage workers to use the available grievance channels, by reinforcing communication of the non-retaliation policy.	Management reinforced Supertex's non-retaliation policy with on-the-spot worker trainings. Supertex has expressed its commitment against any type of discrimination, abuse, and retaliation. The Factory shared evidence of its efforts to continue communication with the management, supervisors, and workers around this topic.	Completed

In addition to the regular communication with the complainant to provide updates on the remediation phase, FLA set up a call on May 20, 2024, to review with FEASIES the CAP updates and the evidence submitted by the Brands. FEASIES' comments highlighted the following:



1. FEASIES acknowledges the quick response from the Factory and the Brands in the reinstatement and back pay of the four union leaders from SITTEX and SITRAIMES.
2. There has been a significant improvement in the industrial relations with Supertex management, resulting in constructive dialogue and the creation of a space for positive communication and resolution.
3. Supertex has invested in creating a safer space for workers to exercise their freedom of association rights, including granting facilities for the unions and their representatives to exercise their union activities.
4. FEASIES encourages Supertex management to share with them the revised version of the new policies and procedures that have been drafted or updated as part of the corrective actions suggested in the CAP, so that FEASIES can contribute not only to a transparent and trustful engagement, but also to contribute to see the union sectionals as allies for the correct implementation of Factory's by law. This request focuses on getting access to the Termination, Industrial Relations and Freedom of Association policies and procedures, including a deeper understanding of the changes implemented in the grievance system.

Conclusions and Next Steps

The FLA acknowledges the efforts and commitment showed by the Brands across all the investigation and remediation process. Efforts that led, in the first instance to the immediate reinstatement of the four union leaders, even before the investigation report was finalized.

It is also valid to recognize that the other sustainable remediation actions took more time to fully meet FLA's expectation to consider them completed, nevertheless the Brands working jointly with the Factory kept the conversation and agreements on going for over a year and a half until there was a satisfactory compliance and implementation of the TPC investigation recommendations.

The unlawful dismissal of union leaders at Supertex became in an opportunity for the Factory to review and address other practices that potentially put in risk the worker Freedom of Association right. FLA encourages the parties to continue their efforts to build and maintain a constructive and trusting engagement with FEASES, SITTEX and SITRAIMES.