

Independent Investigation Report

Supertex El Salvador S.A. de C.V.

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Requested by:
Fair Labor Association

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I. Background

Between June 03 - 06, 2022 the Fair Labor Association (hereinafter, FLA) and FLA's Participating Companies, adidas, Under Armour, and Patagonia, (hereinafter, the Brands) received communications from the union federation *Federación de Asociaciones y Sindicatos Independientes de El Salvador* (hereinafter, FEASIES) in relation to Supertex El Salvador S.A. de C.V. (hereinafter, Supertex El Salvador Chalchuapa, Supertex or the factory). FEASIES alleged the illegal termination of two union leaders) from the union *Sindicato de Trabajadoras y Trabajadores de la Industria del Trabajo Textil* (SITTEX), as well as one former union leader and one 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). It appears that these four workers all were entitled to the legal protection known as "*fuero sindical*" at the time of their dismissal.

Both unions, SITTEX and SITRAIMES are trade unions (*sindicatos de industria*); according to FEASIES representatives SITTEX was formed on Sept 05, 2015, while SITRAIMES was formed on April 23, 2014; by then, both unions were formed with workers employed at other factories different than Supertex El Salvador Chalchuapa. Currently, only SITTEX has formed a branch at Supertex (directive seccional); while the presence of SITRAIMES at Supertex is through a general trade union board (directive general).

The SITTEX union branch at Supertex was established on May 29, 2022, and on that same date the first members of the union board were also elected. On June 2, 2022, at 12:20 pm, FEASIES submitted to the Ministry of Labor and Social Welfare (hereinafter, MOL) the documentation required for the legal registration and authorization of the new trade union. That same afternoon, the union leaders from SITTEX, Union Leader #1 and Union Leader #2, were dismissed by the factory.

That same day, two union leaders of SITRAIMES were also terminated: Union Leader #3, who served as union leader for the 2021-2022 period, and Union Leader #4, who was elected on April 23, 2022 (when the union's General Assembly was held to elect the new members of the union board). The MOL was informed of the election of the new members of the union board of SITRAIMES on May 9, 2022. Both (Union Leader #3) and (Union Leader #4) appear to have had *fuero sindical* protection at the time of their dismissals.

The FLA initiated the Third Party Complaint (hereinafter, TPC) on June 14, 2022, after having informed the Brands about the FEASIES complaint and its allegations. To that effect, FLA commissioned the Independent Consultant Francisco Chicas (hereinafter, the Investigator) to conduct a field investigation around the complaint allegations, with the purpose of determining if Supertex has observed relevant national laws, including required legal procedures, for the termination of the four union leaders, as well as its compliance with FLA's Workplace Code of Conduct and Compliance Benchmarks. In particular, the Investigator was asked to:

- 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 at the time of their dismissals;
- 2) Assess the current industrial relations situation at the factory between management and FEASIES and the SITTEX and SITRAIMES union sectionals (focusing on the process set up by the factory for the notification status and recognition of unions and workers' representatives; the existing communication protocols in place between management and unions; and the conflict resolution mechanisms available); and,

- 3) Assess the factory's policies, procedures, and practices concerning Terminations, Freedom of Association, Non-Discrimination, Performance Review, Discipline, and Grievance Mechanisms.

Supertex El Salvador Chalchuapa started operations in 2010 and produces sportswear. At the time of the field investigation the factory employed around 2,485 workers distributed in 3 different production plants, all located within the same industrial park in Chalchuapa Municipality, Santa Ana Department. The factory operates day and night shifts, with almost 90% of workers working in the day shift.

Approximately 85% of production is allocated to adidas, Under Armour and Patagonia. The production process includes: product development, sampling, storing of fabric and raw material, cutting, different embellishment processes (such as screen printing, sublimation printing, heat transfer, embroidery, and pad printing), sewing, quality inspection, packing, and exporting.

II. Methodology

Between June 19 and June 22, 2022, the Investigator gathered information pertinent to the investigation, through off-site interviews with terminated union leaders of SITTEX and SITRAIMES and current factory workers and union leaders of SITTEX, as well as FEASIES representatives, as detailed in the table below. Moreover, the Investigator conducted an onsite visit to the factory on June 21-22, which included interviews with workers, management, records review, and a physical inspection through the facilities.

The table below shows a full list of the interviews that were conducted:

| OFF-SITE INTERVIEWS WITH WORKERS AND OTHER STAKEHOLDERS | | |
|--|--|---|
| Date | Interviewee(s) | Type of Interview |
| June 19 | FEASIES team: Union Promoter #1, Legal Adviser, Maquila Project Coordinator & Union Promoter #2 | Group in-person interview |
| | 4 terminated Supertex workers and union leaders of SITTEX and SITRAIMES ¹ (Union Leaders #1, #2, #3 and #4) + 2 current Supertex workers and union leaders of SITTEX (Union Leaders # 5 and #6) | Group in-person interview ² |
| ONSITE INTERVIEWS | | |
| Date | Interviewee(s) | Type of Interview |
| Between June 20 - 21 | Supertex team: General Manager, Administrative Manager, Commercial Manager and HR Manager | Opening meeting + Group interview after the opening meeting + Closing meeting (Also, frequent interactions with HR Manager during the onsite visit) |
| Between June 20 – 21 | 32 current Supertex workers | In-person individual interviews |
| TOTAL INTERVIEWS WITH CURRENT WORKERS (32 individual onsite interviews + 1 group offsite interview with 2 union leaders and current factory workers) | | 34 |
| TOTAL INTERVIEWS WITH FORMER WORKERS (1 group offsite interview with 4 former workers terminated in June 02, 2022) | | 4 |
| TOTAL INTERVIEWED WORKERS | | 38 |

From the sample of 32 current factory workers interviewed onsite, around 53% were female (17); this sample included workers from the different work departments of the three plants, all from the daily shift; most of them were randomly selected by the Investigator at the production floor, and just a few were randomly selected from the list of workers provided by management. This sample included two pregnant workers, one apprentice, two supervisors, and two new workers (less than three months of seniority).

Additionally, the Investigator reviewed the following records pertaining to this investigation:

| No | Document Description |
|-----------|---|
| 1 | SITRAIMES official union credential issued by the MOL, N° 4992, issued on Aug 18, 2021, registered at N° 33 of the Register Book of Professional Associations Boards, sheet # 277 F, under registry number 276 F. |
| 2 | Board Union registration request submitted to MOL by SITRAIMES, dated May 09, 2022, received by the MOL the same date. |
| 3 | MOL certification of SITRAIMES Union Board registration, certification dated June 08, 2022. |

¹ This count includes one female worker who was a former union leader of SITRAIMES.

² FEASIES, SITTEX and SITRAIMES representatives were all interviewed in the same group meeting.

| | |
|----|--|
| 4 | SITTEX request of union and board legal registration, dated June 02, 2022, presented to the MOL that same date. |
| 5 | MOL certification of constitution and registration of SITTEX Seccional Union at Supertex, certification dated June 08, 2022. |
| 6 | FEASIES letter submitted to Supertex HR Manager, informing about the existence of SITTEX and SITRAIMES, and requesting the reinstatement of the four terminated union leaders, dated June 08, 2022 |
| 7 | FEASIES request for the initiation of a Conciliation Hearing at the MOL against Supertex, dated June 15, 2022, received by the MOL the same date. |
| 8 | FEASIES request of a labor inspection the MOL against Supertex, dated June 15, 2022, received by the MOL on June 16, 2022. |
| 9 | Worker Rights Consortium (WRC)'s Report submitted to Supertex management, dated June 16, 2022. |
| 10 | Official MOL Notification to Supertex of Conciliation Hearing Appointment, dated June 21, 2022. |
| 11 | List of terminated workers during 2022. |
| 12 | Personnel files of four terminated union leaders (including termination letters, and records of calculation and payment of termination payouts). |
| 13 | Sample of personnel files of 12 workers (instances of termination with cause during 2022). |
| 14 | Factory's policies and procedures on Nondiscrimination, Freedom of Association, Termination and Retrenchment, Discipline, Performance Reviews, and Grievance System. |
| 15 | Sample of records of regular worker training (training material, lists of attendees and pictures). |
| 16 | Factory's internal regulations. |
| 17 | MOL Minute of Conciliation Hearing (Exp. S.S./CO/CONC/0169/06/2022), dated June 27, 2022. |

III. Investigation Results

1) Assessment of Alleged Illegal Terminations of Union Leaders

1.1) Assessing legality of terminations

SITTEX and SITRAIMES are legally constituted unions under Salvadoran law, and both are trade unions affiliated to the national union federation FEASIES. On April 23, 2022, SITRAIMES conducted a General Assembly with their affiliates, and from that assembly the union elected their new union leaders³. FEASIES provided the Investigator with a copy of an official certification issued by the MOL⁴ listing the names of all current union leaders of SITRAIMES, including Union Leader #4; this certification also confirms that the documentation for the union board legal registration was submitted to the MOL on May 09, 2022.

FEASIES also provided the Investigator with a copy of the official union credential issued by the MOL, which demonstrates that Union Leader #3 was part of SITRAIMES union board from May 13, 2021, to April 25, 2022⁵.

FEASIES also provided the Investigator with a copy of a second official certification⁶ that demonstrates that on June 02, 2022, SITTEX submitted to the MOL the documentation for its legal registration as a trade union branch at Supertex; this certification lists four names of current union leaders, and the Investigator corroborated that Union Leader #1 and Union Leader #2 are listed as part of the union board⁷. The MOL acknowledged receipt of the documentation presented by FEASIES for the union and board legal registration at 12:20 pm of June 02⁸.

³ SITRAIMES request to register new union board, dated May 09, 2022, presented to the MOL that same date.

⁴ MOL certification of SITRAIMES union board registration, certification dated June 08, 2022.

⁵ Official union credential issued by the MOL, N° 4992, issued on Aug 18, 2021, registered at N° 33 of the Register Book of Professional Associations Boards, sheet # 277 F, under registry number 276 F.

⁶ MOL certification of constitution and registration of SITTEX Seccional Union at Supertex, certification dated June 08, 2022.

⁷ The other two union leaders included in this certification are identified as Union Leader #5 and Union Leader #6, both are current workers at Supertex, and they participated in the group interview with FEASIES and the other terminated union leaders of SITTEX and SITRAIMES carried out on June 19.

⁸ SITTEX request of union and board legal registration, dated June 02, 2022, presented to the MOL that same date.

According to Art. 47 of the Salvadoran Constitution and Art. 248 of Labor Code the legal protection of *fuero sindical* protects union leaders from termination, demotion and suspension, and if the employer is seeking to implement any of those actions a special procedure should be initiated before the labor courts in order to request and obtain judicial authorization. The protection of *fuero sindical* is applicable during the time the union leaders are on duty and even up to one year after their duties as union leaders have ceased.

As previously mentioned, Union Leader #3 is a former union leader of SITRAIMES. She ceased her duties on April 25, 2022, which means that she was still covered by the protection of *fuero sindical* at the time of her termination on June 02.

In the case of Union Leaders #1, #2 and #4, they are union leaders in service and already had such condition at the time of their terminations on June 02, 2022; hence, they were also entitled to the *fuero sindical*.

Supertex management alleged they were not aware that these four workers were union leaders at the time of their termination, as they had not received any formal notification from the MOL. However, based on second paragraph of Art. 248, the *fuero sindical* is in force since the moment the union presents the documentation requesting the union and/or the union board registration, regardless the employer has been notified or not about the union formation, or board registration.

As previously mentioned, SITRAIMES renewed its union board on April 23, 2022, and submitted the corresponding documentation to the MOL on May 09, 2022. Similarly, SITTEX submitted the documents on seccional union formation and board election at 12:20 pm of June 02, 2022; and the terminations of Union Leaders #1 and #2 occurred that same date, but after 3:00 pm⁹; by then, both workers were already entitled to the *fuero sindical*.

In light of the above explained, the terminations of the four union leaders (Union Leaders #1, #2, #3, and #4) were not legal, as all of them were covered by the legal protection of *fuero sindical*.

It is worth noting that on June 08, 2022, Union Leaders #5 and #6 (who are current factory workers) delivered a letter to the HR Manager in which the General Secretary of FEASIES informed Supertex about the existence of SITTEX and SITRAIMES at the factory, as well as of the status of union leaders of the four terminated workers (specifying that Union Leader #3 is a former union leader with *fuero sindical*), and asked for the four workers reinstatement. According to the Union Leaders #5 and #6, the HR Manager received the letter but a couple of hours later she gave it back to them and refused to acknowledge receipt.

Supertex management commented that they did receive such a letter, but they were confused because it was not an official MOL notification; they claimed they do not know what FEASIES is, and they were not sure how to react to the petition of an unknown entity. They assured they had never heard about the existence of unions at the factory before. To this respect, FEASIES, SITTEX and SITRAIMES confirmed that they had never informed the management about their presence at the factory until they presented that letter, and that the Union Leader #3 remained silent about her union affiliation during the year she acted as union leader due to the fear of potential anti-union discrimination.

1.2) Assessing disciplinary and termination processes followed

Information gathered from interviews with the terminated union leaders and the factory's management indicates that during the afternoon of June 02, 2022, the four workers were called to

⁹ The four terminated workers entitled to *fuero sindical* protection explained that their terminations took place between 3:30 pm and 3:40 pm. Supertex HR Manager –the responsible one of communicating the terminations to the four workers– commented that she does not remember the exact time of the dismissals, but it was at around 3:00 pm or after.

the HR Management office, one by one, and then the HR Manager communicated them their terminations, based on “restructuring”¹⁰; in addition to the four union leaders, two other workers not involved in union activities were also terminated that same afternoon based on restructuring. Each worker was asked to sign a settlement, a document named “*acción de personal*” which serves to record the termination, and a check with payment of termination payouts.

The two union leaders of SITTEX (Union Leaders #1 y #2) and the other two workers that are not union affiliates signed the termination records mentioned above and took the paycheck provided by management; while the other two union leaders of SITRAIMES (Union Leaders #3 y #4) refused to sign and to accept payment of termination payouts, alleging the illegality of their dismissals. The two union leaders who accepted the payment explained that they felt pressured, as the HR Manager told them that if they did not accept the payment at that moment “they would be leaving the factory with nothing in their hands”.

During the onsite visit to the factory, the factory management explained that the real reason behind the terminations of these six workers (four union leaders and two non-unionized workers) was that they were providing loans with interests to other workers, which is banned as per the factory’s Internal Regulations¹¹. Management also explained that the decision of not communicating the accusations to the terminated workers was made in order to protect the workers who acted as witnesses from potential acts of retaliation by the accused workers.

This investigation did not intend to assess whether the management’s allegations (on the workers lending money to other workers) were correct or not, because the core point here, at least around the terminations of union leaders, has to do with the existence of the *fuero sindical*: as established before, these four terminations were not legal since the management did not follow the special procedure to obtain judicial authorization before proceeding with the dismissals. Even in cases of termination with just cause (for example, when workers commit a severe fault that automatically leads to the immediate termination), if the involved workers are covered by *fuero sindical* the employer has to initiate a special procedure to obtain the authorization for dismissal.

While the Investigator did not assess whether the six terminated workers were actually lenders or not, this investigation did assess the way the internal disciplinary and termination processes against the four union leaders and the other two workers terminated the same afternoon were handled; in that regard, the following gaps were found:

- None of the six workers were informed about the faults attributed to them; as a result, they did not have the opportunity to defend themselves: they were not heard and did not have to opportunity to present witnesses or other rebuttal evidence; they were not given the chance to present an appeal of final management termination decision either.
- The six workers’ personnel files were missing documentary evidence of the disciplinary procedure followed against them: there were no records of the procedure initiation, communication of charges, references to collected evidence to support the accusations or the final termination decision.
- The workers were not asked to sign the disciplinary actions that ended up with their termination, and such terminations were without cause.
- The current factory’s disciplinary system does not differentiate between minor or severe faults; also, there is no clarity on how each type of fault would be treated; for example, which faults would be sanctioned with a verbal or written warning, which ones with suspension, and which ones with termination. Hence, the current system for managing discipline exposes a risk of discretionary imposition of sanctions.

¹⁰ The Investigator asked management to explain what the restructuring implies, as a mode of termination, and they explained it is used in cases of reduction of client’s production orders or when changes to operations or processes lead to the elimination of some positions.

¹¹ The Investigator corroborated that Art. 69 section 13 of the factory’s Internal Regulations approved by MOL does indeed prohibit workers from providing loans. Most of the workers interviewed were aware of this prohibition.

- Incorrect categorization of the terminations, as they were motivated by a disciplinary procedure –according to management–, but the factory handled them as “restructuring”.

The Investigator asked management whether they could show the evidences they had to sustain the accusations against the union leaders of being money lenders, and the only one pieces of evidence presented were two short transcribed notes of testimonies provided by two workers: in the first note one of the union leaders (Union Leader #4) is pointed out to have lent money to another worker (amount not specified); the witness who signed the transcribed testimony also declares that she acted as the intermediary, since the union leader and the worker who received the loan did never got in touch.

In the second note, another union leader (Union Leader #1) is pointed out of having lent USD \$20 plus USD \$4 of interest, the beneficiary of the loan is the same person who acted as witness, and she signed the translated note. This witness also indicated that the accused is known for providing loans.

Out of the above indicated testimonies, the factory did not provide additional evidence: there are no more testimonies to sustain the accusations against these two union leaders, and no evidence at all was presented in the case of the other two union leaders, or the other two workers terminated that same day and that are not union affiliates.

In the particular case of the two terminated workers that are not union leaders, it is worth to consider that, even when the local law allows employers to terminate workers with no reasons, and upon payment of severance, the FLA Compliance Benchmarks requires employers to maintain proper and accurate records in relation to termination; also, employers shall have practices that embody a system of progressive discipline up to termination, and such system should be applied in a fair manner; finally, employers are requested to keep written records of all disciplinary actions taken. However, the factory did not provide the Investigator with evidence that such standards have been followed during the termination of these two workers.

According to what management explained, the reasons behind the terminations were not communicated to the dismissed workers in order to ensure confidentiality during the investigation process.

1.3) Miscalculation of Termination Payouts

After reviewing the records on calculation of termination payouts provided or offered to the four union leaders and the other two workers terminated on June 02, the Investigator found that the factory does not calculate and pay termination payouts as required under FLA Compliance Benchmarks¹². The factory provides all workers with annual in-advance payments of termination payouts (severance), but without ending the employment relationship. However annual payments of advance termination payouts previously paid are not included as itemized deductions in the final severance calculation when workers are terminated without cause. This means that the final severance calculation is based on the last working year (or fraction of the year) only, instead of multiplying the total years of service by the last legal minimum wage in force, and then deducting all advance payments of termination payouts previously provided to the workers.

With respect to termination records, the Investigator noted that the factory is using the same template of settlement, regardless of the mode of termination. This settlement includes the following statement: “*I [the worker] terminate the employment relationship (...)*”. This way of recording all forms of terminations is not accurate, since this statement is only applicable to resignations, but not to the terminations with cause or without cause (including retrenchment). Hence, it is recommended that the factory prepares settlements that describe the actual way of terminating the

¹² On this topic, the FLA has recently released a brief in which the FLA recommends its affiliates to ensure that their suppliers are properly calculating and paying severance, in the way explained in this section.

employment relationship. The Investigator did not find evidence indicating that this way of recording terminations is used to avoid the payment of severance.

As indicated before, there are no records available on the disciplinary procedure that ended up in the termination of the six workers dismissed the afternoon of June 02, and such terminations were handled as “restructuring”; hence, the six workers were entitled to the payment of severance, as their terminations fall under the category of terminations without cause.

1.4) Legal Actions Followed by FEASIES

With respect to the terminations of the four union leaders, FEASIES requested a labor inspection and also initiated a conciliation procedure, both before the MOL. The Investigator reviewed the letters submitted by FEASIES to the MOL to request the initiation of the two legal actions¹³.

During the first day of the onsite visit (June 21), Supertex El Salvador Chalchuapa received the legal citation to attend the conciliation hearing requested by FEASIES. Management explained that was the first official communication they received from MOL in relation to the union's existence. The MOL scheduled this hearing for June 27.

Before this report was completed, the Investigator learned that the conciliation hearing took place on June 27 with the participation of FEASIES and Supertex representatives; the factory lawyer attended the hearing and expressed Supertex's commitment to reinstate the four union leaders. According to the agreement reached, the reinstatement would take place on July 01, 2022, and the four workers would be returning to positions with the same working conditions and benefits, and also with back pay of loss wages¹⁴. Before this hearing, and during the time of the field investigation, the MOL had not conducted any procedure; hence, the Investigator did not consider it relevant to interview MOL representatives as part of the investigation.

On July 04, FEASIES confirmed the reinstatement of the four union leaders, with back pay of owed salary, by submitting a request to the MOL to withdraw the conciliation procedures, as Supertex had complied with the agreement of reinstating the union leaders with back pay of salary.

The Investigator also asked management whether their legal advisor played any role when the factory made the decision of terminating the four union leaders; management responded that no, and reiterated that they were unaware of the workers' status of union leaders; management commented they unilaterally decided to proceed with their terminations after knowing that they were leaders, since it is considered a violation of the internal regulations. Hence, the Investigator did not see the need for interviewing the factory's lawyer either.

2) Assessment of Current Industrial Relations at the Factory

As previously indicated, Supertex management assured they had never heard about the existence of unions on their premises. They also commented that when they received the before-mentioned FEASIES letter on June 08, they had no clarity of what FEASIES is, what a union federation is and its role, and how to deal with them.

The current factory's management system designed to manage freedom of association is basic. Out of the policy that recognizes the workers' right to form or join associations (including unions) there are no other policies and procedures to manage industrial relations: specifically, the factory is missing protocols for recognizing unions and workers' representatives, communication protocol with worker organizations, or conflict resolution mechanism. Actually, the current factory's FOA

¹³ The letter to request the conciliation hearing was presented to the MOL on June 15, and the letter to request the labor inspection was presented on June 16.

¹⁴ MOL Minute of Conciliation Hearing (Exp.S.S./CO/CONC/0169/06/2022), dated June 27, 2022.

policy does not include a reference to the right to collective bargaining. Management reiterated they never foresaw the need to establish such procedures, as they had never heard about the existence of unions at the facilities.

During the closing meeting the management expressed a commitment to comply with the local laws; they also said that if they have to dialogue with the unions they will do so. But at the same time, the management commented that they could initiate the special procedure to request authorization to terminate the four union leaders accused of providing loans.

During the offsite interview with FEASIES and SITTEX and SITRAIMES representatives, the union leaders talk about their concerns as worker organizations, around working conditions at the factory. The main concerns expressed by the union leaders are related to verbal abuses by some production managers and some supervisors; they also commented that the factory does not pay the first three days of medical leave, and that in some occasions that there is no work due to external factors, they receive payment of salary, but they have to “compensate” that time by working on a different day (on Saturdays) without payment.

FEASIES and the union representatives expressed their willingness to start a dialogue table to discuss the issues highlighted above.

Given the fact that this would be the first time that Supertex is dialoguing with legally formed unions at its premises, it is worth setting out some actions that can help during this process, with the goal of ensuring healthy industrial relations; the details of the proposed actions are presented in the “Recommendations” section below.

3) Assessment of Other Factory Policies, Procedures, and Practices

In addition to assess the legality of the terminations of union leaders and the current state of industrial relations at the factory, the terms of reference applicable to this investigation also require an assessment of the factory’s policies, procedures, and practices concerning Terminations, Freedom of Association, Non-Discrimination, Performance Review, Discipline, and Grievance Mechanisms.

3.1) Nondiscrimination and Freedom of Association

Through the revision of the factory’s written policies and procedures, the Investigator noted that the Non-Discrimination policy recognizes the union affiliation or participation in union activities as one category for which workers could not be discriminated. In practice, the Investigator did not find any evidence of discrimination against workers who exercise their associational rights. It is not possible for the Investigator to conclude that the terminations of the four union leaders were based on anti-union animus; out of the fact that the terminations were not properly sustained and documented, and that they occurred the same day that two union leaders registered their status as union leaders before the MOL, the Investigator could not gather other pieces of evidence indicating that those terminations were motivated by discrimination.

Union Leaders #5 and #6 commented that they have not experienced any form of exclusion or restriction to their rights, not even after they showed themselves as union leaders, when presenting the FEASIES letter to the HR Manager, on June 08. Their co-workers are free to speak with them as usual, supervisors are not exercising excessive vigilance on them, or telling other workers not to talk with them, as it typically occurs in cases where a given management attempts to exclude workers involved in union activities. Their working conditions, including compensation/benefits have not changed either.

In addition to the gaps previously identified (on FOA policy missing reference to collective bargaining, and lack of procedures to manage Industrial Relations), the Investigator noted some important issues with respect to the workers lacking knowledge on FOA. Despite written policies

have been posted, and Supertex explains all new workers the factory's policies and procedures during the orientation training, including Freedom of Association, and ongoing refresh training is delivered annually among workers, the Investigator found the following issues during the onsite interviews with 32 workers:

- 27 out of 32 workers (84%) responded they do not know or do not remember what the Freedom of Association policy is; from the remaining 5 workers, two responded they remember this policy from the training sessions provided at the factory, and 3 workers said they have seen either Brands' Codes of Conduct (that includes FOA) or the factory's FOA policy posted.
- Being aware that workers might not be related with the "FOA policy" concept the Investigator also asked workers whether the factory has explained them their right to join or participate with associations, including unions; in this case, 8 workers (25%) responded that yes, they have been talked about such right at the factory, while 9 workers (28.12%) commented that participating in unions is prohibited at the factory; 7 workers (21.88%) did not know what a union is, and the remaining 8 workers (25%) confused unions with emergency brigades or the Communication Committee.

The above results indicate that there is room for improving workers' knowledge on FOA; specially, when it is a unionized workplace; since the bias and misconceptions some workers have around FOA and unions in general exposes a risk of leading to conflicts between workers and union members; and the management is called to ensure there are adequate conditions for workers to freely exercise their associational rights, if they desire so.

The Investigator did not have evidence indicating that the factory has deliberately sent negative messages around unions and FOA among workers; as the majority of interviewed workers confirmed FOA is not a topic that managers or supervisors talk about at the factory (except during training). Only one worker commented that some years ago she heard that a group of workers had been terminated for being involved in union activities, but she did not provide more details about this situation (e.g., in which year this happened, how many workers were terminated, names).

3.2) Termination & Retrenchment

Previously, it was found that the factory: illegally terminated four union leaders with miscalculation of their severance pay, as well as an inaccurate settlement used to record all forms of terminations. Besides this, the Investigator also noted that the Retrenchment procedure does not include: i) a requirement for the management to consult with workers or workers' representatives before making final retrenchment decisions; ii) a requirement for elaborating and posting a retrenchment plan for the workers consultation.

It was found that the issue related to miscalculation of severance is applicable to all cases of termination without cause, as a result of providing in advance payments of annual severance to the workers, as the factory uses the same formula for calculating termination payouts of all workers. Similarly, the use of the same settlement template is applicable to all terminations, and it was not only the case of the four union leaders terminated in June 02.

3.3) Discipline

When assessing the terminations of the six workers dismissed on June 02, the Investigator pointed out some gaps in the factory's disciplinary system (section 1.2). Those gaps were related to: not providing workers the right to defense, disciplinary actions not properly documented in workers' personnel files, and not signed by the workers.

In this respect, the sections of the Internal Regulations applicable to the disciplinary procedure (Arts. 93 – 96) do not include a requirement to record all forms of sanctions, such as suspensions and terminations; also, these provisions lack the recognition of the right to defend and be heard during the imposition of a disciplinary action, as well a requirement to inform workers on the charges or faults attributed to them.

After reviewing the disciplinary procedures, the Investigator also noted that the current factory's disciplinary system does not differentiate between minor or severe faults; also, there is no clarity on how each type of fault would be treated; for example, which faults would be sanctioned with a verbal or written warning, which ones with suspension, and which ones with termination. Hence, the current system for managing discipline exposes a risk of discretionary imposition of sanctions.

3.4) Grievance System

The reviewed Grievance policy and procedure include a reference of all available grievance channels, including steps and timeframes of the procedure to use each channel; the Grievance policy includes a statement of nonretaliation.

During the interviews with workers the Investigator found that workers have sufficient knowledge of at least one available grievance channel; the suggestion boxes and the open-door policy with immediate supervisors were the channels the workers know the most; some workers also mentioned the Communication Committee, and the HR Management. The factory has also assigned notice boards where resolutions to anonymous grievances are posted.

However, the Investigator found that Plant 03 is missing a confidential grievance channel: there is no suggestion box here, and interviewed workers of this plant were unaware of the new app Wovo; and even when some of the interviewed workers commented they could go to HR office in Plant 01, or even use the suggestion boxes available there, these channels are not totally accessible to them, because of the distance between the two plants. Furthermore, despite the fact that the Wovo App is available for all workers (including workers at Plant 03), the lack of knowledge shown by workers from this plant makes this grievance channel ineffective.

Also, the Investigator noted that some workers who reported having experienced day-to-day work issues in the past have opted for not reporting such issues to the management; the Investigator did not find evidence of retaliation against workers who have used the grievance channels; however, it is noted that there is a need to continue encouraging workers to use the available grievance channels.

3.5) Performance Review

The Investigator reviewed the procedure and the form used during the worker performance reviews, which are run quarterly among all workers. No evidence of subjective or unfair criteria was noticed; workers did not express any complaint about the process for running the performance reviews, and they confirmed supervisors conduct the reviews with their participation, and they are given the chance to provide feedback on the performance review outcomes.

IV. Conclusions

On June 02, 2022, Supertex terminated one current union leader and one former union leader of SITRAIMES, and two current union leaders of SITTEX; all of these four workers were protected by *fuero sindical* at the time of their terminations. As a result, the terminations were illegal, since the factory did not follow the special 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 C87¹⁵, Art. 248 of Labor Code, and FLA Compliance Benchmarks FOA1.1, FOA.6, and FOA.7.

¹⁵ Convention ratified by El Salvador on September 6, 2006. Based on Art. 144 of the Salvadoran Constitution, all international treaties and conventions ratified by the State become laws of the Republic.

At the time of the union leaders' terminations, the factory management was not aware of their status as protected by *fuero sindical*, and according to management the motivation for the dismissals was related to disciplinary issues. In the aftermath of this noncompliance, the reinstatement of the four union leaders on July 01, 2022 was a positive and welcomed action from Supertex.

Along with the four union leaders, the factory also dismissed the other two workers not involved in union activity. The termination decision in these six cases was the result of a disciplinary procedure – according to the management's version of events; however, the Investigator found that the disciplinary actions had not been sufficiently and reasonably sustained, and no complete records of the disciplinary actions were found in the workers' personnel files.

Furthermore, the six workers were deprived of their right to be heard and defend themselves, since the charges were not communicated to them; as a result, the workers could not provide witnesses or any other rebuttal evidence, they missed the 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. The reason given by management for why it did not communicate the terminations' motivations to the workers was to ensure confidentiality during the investigation process.

Calculation and payment of the severance provided or offered to these six workers was not in accordance to Compliance Benchmark ER.15.4, as the annual payments of advance termination payouts previously paid 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 a resignation violates FLA Compliance Benchmark ER.16.1.

The Investigator also identified the need for more effective communication and training for workers on Freedom of Association and Collective Bargaining, since the actual communication and efforts carried out by factory has not been effective to ensure workers gain sufficient knowledge on such rights, and it contravenes FLA Compliance Benchmarks ER.1.2 and ER.4.

The absence of a suggestion box at the time of the onsite visit, plus the lack of knowledge of the Wovo App from workers at Plant 03, limits the workers' chances to access a confidential grievance channel, in breach of Benchmark ER.17.2. The gaps identified in the factory's policies and procedures (FOA policy with no references to collective bargaining, no procedures to manage industrial relations, retrenchment procedure missing consultation with workers, or a 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).

V. Recommendations

Based on the investigation results the Investigator provides the following recommendations for remediation:

Recommendations for Supertex Management

1) Elaborate and disseminate throughout all plants a verbal and written statement 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.

This statement should be elaborated and distributed in Spanish, and its content should be agreed with SITTEX and SITRAIMES, as well as the different channels to disseminate the statement. The Brands and the FLA should also be able to review and provide feedback to the statement content.

- 2) Provide specific FOA training to workers, supervisors and managers, including explanations of what a union and a union federation is, their legal functions, and the difference between a union and the Communication Committee or emergency brigades. It is recommended that training sessions are provided by an independent external third party, in consultation with the unions.
- 3) Supertex El Salvador 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, the FLA and the Brands. 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.
- 4) Regularly 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.
- 5) All future terminations with cause should be properly documented, and the corresponding disciplinary procedure should be followed, and faults attributed to the terminated workers should be recorded as well (including incriminatory evidence); during the disciplinary procedure workers should be informed all accusations, and they should be given the right to defend themselves. The discipline management system (policies and procedures) should be updated in the terms indicated in the following recommendation.
- 6) Review current policies and procedures on Discipline to ensure that future disciplinary procedures followed provide workers with the right to be heard and defense themselves; the new disciplinary system should include: i) a requirement for recording all disciplinary actions on workers' personnel files; ii) to communicate charges or faults attributed to the workers; iii) requirement to provide workers with the opportunity to sign all disciplinary actions imposed; and iv) a categorization of faults by severity (e.g., minor faults, serious faults), and to determine which disciplinary actions will correspond to each type of faults.
- 7) Management to provide training to HR team, including Head of Department on how to properly conduct fair and objective disciplinary procedures. Ideally, this training should be provided by an external independent third party expert.
- 8) 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. In the case of previous terminations, the factory to review terminations without cause for the last 12 months since the date the factory receives this report, and to pay back amounts owed to the terminated workers.
- 9) Stop using the current settlement template for all forms of termination; language used in settlements should reflect the actual reason for termination in each case.
- 10) Implement a confidential grievance channel at Plant 3 and provide communication to the workers on the newly established channel.
- 11) Update current policy on Freedom of Association to include a reference to the right to collective bargaining.
- 12) 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 creation.

13) Continuously encourage workers to use the available grievance channels, by reinforcing communication of the non-retaliation policy.

14) Update current retrenchment procedure to include a requirement for: i) consulting with workers' representatives before making a final retrenchment decision; and ii) a requirement for developing and posting a retrenchment plan for workers to consult it.

Recommendations for the Brands

The Investigator recommends the Brands to follow up the implementation by Supertex of all corrective actions listed in the above recommendations, and to regularly monitor the status of future industrial relations at the factory.