AFL-CIO Petition to the U.S. Trade Representative to Remove El Salvador from Trade Benefits Programs due to Worker Rights Violations

12-02-02 [2003 A-R]

BEFORE THE UNITED STATES TRADE REPRESENTATIVE

PETITION TO REMOVE EL SALVADOR FROM THE LIST OF BENEFICIARY DEVELOPING COUNTRIES UNDER THE GENERALIZED SYSTEM OF PREFERENCES ("GSP")

SUBMITTED BY:
AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)
DECEMBER 2, 2002

Information Required Under 15 CFR part 2007
1. Petitioner: AFL-CIO
2. Country: El Salvador
4. Reason for Filing: The Government of El Salvador has not been and is not taking steps to afford internationally-recognized worker rights.

Introduction

The AFL-CIO petitions for the withdrawal of El Salvador's status as a beneficiary developing country pursuant to 19 U.S.C. § 2462(d) on the grounds that the Government of El Salvador (GOES) has not been and is not taking steps to afford internationally-recognized worker rights as defined at 19 U.S.C. § 2467(4). The actions of the GOES described herein demonstrate that El Salvador is not eligible to receive GSP benefits.

The Government of El Salvador continues to systematically violate workers' rights to freedom of association and collective bargaining. No significant progress has been made to address the systemic impunity of employers or the GOES itself, described in detail in the AFL-CIO's petition of 2000.

Violations of Freedom of Association and Collective Bargaining in the Private Sector

The GOES continues to tolerate worker rights violations in El Salvador's maquiladoras that produce apparel for export, principally to the US. The Government's response to media reports of massive safety and health violations in the maquilas has been either to deny the existence of a problem or to blame the unions. In September 2002, the media reported a massive chemical intoxication that affected 500 workers, the majority of them women, in the Olocuita free trade zone. The workers were evacuated from several factories and received medical attention for symptoms of chemical intoxication. Hoon's Apparel, one such factory where the poisoning occurred, had had a similar case of intoxication in July 2002. Backed by the Government, factory owners, with no investigation, attributed the intoxication to "mass hysteria," asserting that there were no toxic chemicals present in their factories. (1)

After the Red Cross and public hospitals confirmed the presence of toxins in the workers, factory owners along with Presidente Flores and the Comité de Emergencia Nacional (COEN) began accusing "groups whose interests lie in attacking maquilas" for the "acts of terrorism and sabotage." Specifically, local and US union leaders were blamed for the intoxication. In contrast, the report of the Government's Human Rights Procurator found that the intoxication reflected a failure on the part of the GOES to provide adequate workplace safety and health protections. The report specifically condemned the "grave irresponsibility" of government leaders including the Labor Minister and the Chief of the National Police who "rather than providing adequate information about what had happened, sowed confusion among the population by circulating irresponsible stories describing this intoxication as a case of 'mass hysteria' or as the result of a plot by US unions." (2)

In the apparel-producing maquilas, the violations of worker rights disclosed in a USAID-funded report by an investigative unit of the Ministry of Labor in July 2000 (3) continue.

In addition to safety and health problems, recent reports indicate the persistence of sub-standard working conditions including inadequate ventilation, excessive heat, denial of permission to drink water or use the restrooms, and abusive treatment. Threats of dismissal of anyone who attempts to form a union are reported, as is the use of blacklists to prevent union organizers from being re-hired in the maquilas. (4)

STTT and Tainan S.A. de C.V.

Another serious current case of worker rights violations in the maquilas concerns the TS2 factory in the San Bartolo free trade zone, owned by the Taiwanese multinational Tainan Enterprises and producing for the Gap and other U.S. retailers. In 2000, workers began organizing a section of the Union of Workers of the Textile Industry (STTT). The organizing effort faced a series of reprisals, including the firing of two union leaders on February 26 and continued efforts by management to force workers to join a company-sponsored union. The union asked the Labor Ministry for legal recognition on May 23 and finally received it on July 9. Union supporters continued to receive threats of dismissal and physical attacks.

On October 17, 2001, 109 workers from the unionized TS2 plant in Tainan were illegally suspended. A protest organized by the union caused Tainan to reinstate the suspended workers on November 4. STTT continued to organize and on April 18, 2002 presented evidence of majority support required to negotiate a collective bargaining agreement (the first case of collective bargaining in the Salvadoran maquilas). That same week, Tainan announced that it was shutting down its plants because its clients allegedly no longer wished to work with unionized workers. On April 26, 2002, Tainan began breaking down its machinery in the San Bartolo factory.

On September 13, 2002, a judge of the Fourth Labor Court declared Tainan's suspension of its employees' work contracts illegal. The workers, however, remain without a remedy.(5)
STIT and INSINCA, S.A.

On July 31, 2002, the administration of the INSINCA maquila suspended the contracts of 640 employees, all members of the Union of Workers of the Textile Industry (STIT) and proceeded to distribute severance pay, stating that the firm was undergoing a process of reorganization. The administration promised all workers that they would be re-contracted once operations began again but that they would be working under new labor conditions, which included the loss of annual bonuses and 25 days of vacation leave per year. The legal department of INSINCA instructed workers that in order to receive severance payments, they would have to sign a letter relieving the company of all responsibility. Many of the suspended workers were not re-contracted; those who were have lost the benefits they previously enjoyed.

INSINCA used the mass firing to undermine the union. In addition to the dismissal of hundreds of union members, 12 leaders of the STIT union were also denied access to the factory. INSINCA has refused to re-hire the union leaders.

Under Articles 36 and 37 of the Labor Code, reorganization of production to reduce costs does not constitute legal cause for suspending employees' individual labor contracts. Moreover, Article 47 of the Constitution and Article 248 of the Labor Code prohibit the firing or suspension of union organizers and leaders during their tenure and for one year thereafter. INSINCA's firing of union leaders directly violated these provisions.

STIT first appealed to the Labor Ministry, which produced no results; the Ministry's refusal to order an inspection is being appealed to the courts. A request to the Fourth Labor Court to declare INSINCA's action a lockout was also rejected. (6)

SELSA and Lido, S.A.

The Union of Empresa Lido, S.A. (SELSA) was founded on November 22, 1959 and won legal recognition on February 12, 1961. Clause 43 of the collective bargaining agreement between Lido and SELSA establishes that salaries will be reviewed during the first fifteen days of January each year. In 2002, Lido failed to do so and SELSA began direct negotiations with Lido. SELSA brought up several different proposals for increasing worker salaries; Lido did not raise salaries. During the subsequent conciliation period that followed the negotiations, Lido brought forth its own suggestions, including a 5% reduction in worker salaries, in clear violation of Article 30 of the Labor Code that prohibits the reduction of salaries without legal cause.

In order to pressure the company, SELSA organized a one-day work stoppage on May 6, 2002, in which 320 of the 350 workers in the factory participated. The following day, Lido locked out the 11 members of the union executive along with 25 SELSA-affiliated workers, and on May 9, five more affiliated workers were denied entry. In total, 43 union members have been locked out, clearly in retaliation for union activities.

Lido brought an action against the workers for illegal work stoppage, but the Second Labor Court ruled that a lockout had occurred. However, the union's request to the Third Labor Court to declare a lockout was rejected. The union also asked the Labor Ministry to extend the conciliation period and to investigate the company's denial of entry to the union members. SELSA relied on Article 47 of the Constitution, Article 248 of the Labor Code, and the collective contract with Lido, all of which state that union members cannot be fired, dismissed, or suspended except for legal cause previously established by a competent authority. Nevertheless, Lido continues to deny workplace access to the 11 union leaders.
and the 30 SELSA-affiliated workers.(7)

Violations of Freedom of Association and Collective Bargaining in the Public Sector

Over the past two years, the GOES has used public sector "modernization" programs financed by the Inter-American Development Bank (8) to undermine unions in the public sector, systematically violating collective bargaining agreements and targeting union leaders for dismissal.

Using civil service reforms enacted in December 2001, the Executive gave last minute notice of dismissal to 15,664 public employees. At the same time, the number of workers on temporary contracts was increased. A report by the Government's Human Rights Procurator pointed out numerous human rights violations in the retrenchment process, including use of dismissals for disciplinary purposes without due process, re-contracting of dismissed workers to perform their previous jobs with reduced pay and benefits, and targeting of union leaders for dismissal. (9)

Worker Rights in the Health Care Sector

The government of El Salvador's continued assault on trade union freedoms in the health sector has sparked significant social protest. On November 9, as many as 300,000 people marched in San Salvador to support health care unions that are striking to protest the privatization of public hospitals. Shortly thereafter, the National Assembly rejected the President's arguments and approved a decree halting the privatization of public health services. (10)

The Salvadoran government's efforts to privatize the public hospital system, violating the rights of health care workers and their unions, have provoked continuing conflict. In July 1999, workers affiliated with the Sindicato de Trabajadores del Instituto Salvadoreño del Seguro Social (STISSS) were fired in violation of their collective agreement. STISSS began a work stoppage, which continued after more workers were fired in November. Doctors organized in the Sindicato de Médicos del Instituto Salvadoreño del Seguro Social (SIMETRISS) joined the stoppage and eventually more than 10,000 doctors, nurses, and workers honored the strike. President Flores militarized work sites and fired 221 more workers. On March 10, 2000, government representatives and union leaders established a "Reform Council of the Health Sector" to elaborate reform based on principles of equity. The Council presented a series of proposals to President Flores in December, which were ignored.

In February 2001, a labor court ruled that the firing of the 221 workers in 1999 was illegal and ordered the government to re-hire them. On July 5, 2001, the Supreme Court upheld the ruling of the lower court and ordered the government to re-hire the workers with six months' back wages. To this day, the Government of El Salvador has not complied with that order. (ILO, Committee on Freedom of Association, Report No. 324, Case No. 2077.)

In January 2002, riot police evicted STISSS members from their offices in violation of the union's collective agreement. At the same time, SIMETRISS denounced the illegal firing of 10 union doctors. In September, STISSS called a one-day strike against the privatization and illegal firings; in response, 30 STISSS members were fired. The union declared an indefinite strike and riot police forcibly and violently evicted STISSS members and leaders from several hospitals.

On October 8, a labor court declared the ISSS strike illegal based on a strict interpretation of the Constitution. The Supreme Court refused to hear an appeal. On October 15, President Flores unveiled his ISSS privatization plan and 50,000 doctors, nurses, and healthcare workers took to the streets in the first "White March" against the plan. On October 17, the Salvadoran Legislative Assembly passed the

"State Guarantee of Health and Social Security" outlawing the privatization of healthcare and the electricity generation sector and on October 23, 200,000 workers participated in a second "White March." STSEL union activists from the electricity generation sector joined the strike, demanding that neither healthcare nor electricity generation be privatized and adding to a hunger strike that began on October 23. On November 9, hundreds of thousands joined in a third "White March" while police arrested several union leaders.

More than 30 leaders of the strike have received anonymous death threat calls from a caller who identifies himself as part of the "Comando de Exterminio" or Extermination Commando. Death threats such as these are an echo from the violent past in El Salvador. (11)

STSEL and CEL

The Union of Electrical Sector Workers (STSEL) is an important union comprised of four sections, each with a collective contract. Three of these contracts are with entities that have taken over energy distribution (GESAL, ETESAL, and Duke Energy); the fourth is with the parastatal Rio Lempa Electricity Commission (CEL). Between 1992 and 1999, re-structuring of the electricity sector has had an important impact on working conditions, and STSEL has played a key role in defending labor rights in this sector.

In 2001, CEL launched a campaign to weaken the union. On September 24, CEL fired a union leader, Mario Roberto Carranza Hernandez. Under Salvadoran law, Hernandez, as a union leader, would normally be protected but on September 20, 4 days before the firing, the chief of the Department of Social Organizations in the Ministry of Labor classified Hernández as a confidential employee, without completing a number of the legally required procedures.

On November 12, CEL fired six workers, including a member of the union executive, from the central offices. On March 19, 2002, eight affiliated workers were fired from the hydroelectric plant. On April 1, three workers were fired from CEL, two of them union leaders. In total, 23 members including five executive members were fired as part of the campaign. In addition, CEL pressured workers to disaffiliate from STSEL, resulting in the withdrawal of 48 members between December 14, 2001 and April 15, 2002.

The attack on STSEL accelerated with the firing of its General Secretary, Alirio Romero, and the General Secretary of the CEL section, Sará Isabel Quintanilla, on October 18, 2002. These actions clearly violate Article 47 of the Salvadoran Constitution, Articles 204 and 208 of the Labor Code, and the collective contracts. (12)

SITEAIES and the Militarization of the International Airport

The Union of Workers of the International Airport of El Salvador (SITEAIES), representing workers at the international airport under a collective bargaining agreement with the airport authority (Comisión Ejecutiva Portuaria Autónoma - CEPA), has for several years conducted a public campaign opposing the government's plans to privatize the airport. Based on studies, the union has argued that the airport generates important income for the state and is a model of efficiency in the region. It has also pointed out the deficiencies in the services already provided by private contractors at the airport.

On September 23, 2001 at 11:00 p.m., Salvadoran Armed Forces and specially trained police assault forces entered the airport without prior warning and proceeded to disarm airport security personnel. They informed the workers that they had been fired and instructed them to leave the airport. The next
day, the same forces denied entrance to airport personnel who worked in maintenance and loading zones. All of these workers were SITEAIES members. Military officials accosted individual workers, demanding that they renounce their membership in the union. Workers were told to pick up their severance checks, indicating that they had been terminated. On September 25, the head of the armed forces at the airport informed workers that only those in maintenance could return and that the 157 employees in loading were suspended. The suspended workers included 92% of the unionized cargo and security workers, while only 54% of non-unionized workers were suspended. (13)

CEPA refused to respond to the union's inquiries and requests to meet. On September 24, SITEAIES asked the Labor Ministry for an investigation and a declaration that CEPA was engaging in a lockout. The inspection, conducted on September 27, documented a series of anti-union actions including threats and denial of access to the union office; however, the Ministry refused to draw a legal conclusion or take any further action. The union also presented its claim that the employer was conducting an illegal lockout to a Civil Judge in Zacatecoluca on 24 September, basing its claim on Article 558 of the Labor Code and requesting a ruling within 24 hours as required by Article of 562 of the code. On September 28, the judge informed the union that the court would conduct an "inspection" of the airport (a procedure not contemplated in the Labor Code). Finding that the airport was operating, albeit with military personnel, the judge declared on October 1 that airport management had not violated the law. SITEAIES appealed the decision but the appeal was denied. On October 12, heavily armed soldiers and police attempted to break up a union assembly being held on the airport grounds but away from its operating areas.

Meetings between SITEAIES and the Labor Minister, Jorge Isidro Nieto, as well as with the Comisión Ejecutivo Portuaria Autónoma (CEPA) on October 17-19 were inconclusive. The head of CEPA did not attend the meetings. CEPA, however, offered compensation for all workers affected by management actions, essentially recognizing the illegality of those actions. The union, on the other hand, insisted that conditions return to normal and that workers return to their original positions at the airport.

The union filed a complaint with the ILO Committee on Freedom of Association, which asked the government to investigate the case. (14) Likewise, the government's Human Rights Procurator, in a report dated December 20, 2001, concluded that CEPA had illegally interfered with union activities and requested that the dismissed workers be reinstated with back pay.

On February 26, 2002, SITEAIES and CEPA reached an agreement in which 64 workers would be allowed to form a cooperative that would be contracted by CEPA for baggage handling. These workers are now working their same jobs as before but for less pay and without job security. On March 8, Human Rights Watch sent a letter to the President of El Salvador urging the President to ensure that union members at the airport can exercise their right of association and requesting a thorough investigation of the anti-union actions. However, SITEAIES worker activists are still being pressured to resign, as evidenced by threats received on July 5 and August 13 of this year. (15)

Obstacles to Legal Recognition and Massive Firings at the Ministry of Finance

The Salvadoran Ministry of Labor's repeated actions in denying legal recognition of SITRAMH (Sindicato de Trabajadores de Ministerio de Hacienda), the Finance Ministry workers' union, points out two distinct problems: first, impediments to the formation of unions in the public sector and second, the retaliatory firing of union members.

The use of legal formalities by the GOES to deny legal recognition to worker organizations has been condemned repeatedly by the ILO. (16) Yet the GOES continues arbitrarily to block union requests for recognition. In May 2001, a group of employees of the Finance Ministry held a general assembly to
constitute their union, SITRAMH. On May 15, 2001, the group presented a request for legal recognition of the union to the Ministry of Labor, which under law had 30 days to review it. On June 26, the Ministry issued a document rejecting the union's application. This document was full of errors, including mistakenly referring to union members as workers of the Ministry of the Interior rather than the Ministry of Finance. On June 27, SITRAMH appealed the Ministry's denial of recognition; the Ministry responded with a second rejection. The Ministry argued that the Labor Code did not apply to employees of the Finance Ministry and that the Constitution prohibits the formation of unions by public sector workers. The Constitution does prohibit certain categories of public employees to strike. But, Article 47 of the Constitution explicitly recognizes the right of all workers to form unions.

Starting in December 2001, massive firings of Finance Ministry workers occurred as some 217 positions were eliminated. Included among those fired were 14 constituent members of SITRAMH and 14 members of the existing Association of Finance Ministry Employees (AGEMHA). Other AGEMHA executive members were moved from permanent to contract positions. (17)

Firings of Members of SITINPEP

The Union of Workers of the National Institute of Public Employee Pensions (SITINPEP) was also affected by the Government's restructuring plans. During 2001, the Institute developed plans for cutbacks in personnel without consulting the union, in violation of clauses in the collective bargaining agreement that require the union to be provided with this information and despite numerous information requests. In December, the Institute announced the elimination of 150 positions (100 more than the Assembly had authorized). Of 92 employees who received dismissal notices, 55 were union members, including three former union executive members whose tenure was protected under Article 47 of the Constitution and Article 248 of the Labor Code. INPEP followed these dismissals with a campaign of intimidation intended to persuade the remaining union members to renounce their membership. Of 135 union members, 55 were fired, 29 accepted severance, and 12 gave up their membership, leaving only 49. (18) The Human Rights Procurator's report on INPEP cites numerous violations of the collective bargaining agreement, the Institute's regulations, the Constitution and the Labor Code. (19) Likewise, the ILO Committee on Freedom of Association has asked the GOES to ensure that INPEP management respects the collective bargaining agreement and has requested an investigation into the firings. (20)

Child Labor

Despite protections in Salvadoran law, child labor continues to be a serious problem. There are an estimated 440,000 working children, and at least 60,000 children ages 10-14 provide part of the necessary income for their families' survival. Protective legislation has had little impact in the face of poverty, for "in El Salvador the laws and regulations concerning child work are widely disregarded by poverty-stricken families and unscrupulous employers, even when work is hazardous and clearly forbidden by law." (21)

A series of sectoral assessments by the ILO's International Program for the Eradication of Child Labor (IPEC) illustrate the problems faced by child workers. In the fishing industry, for example, most child workers work 7-8 hours per day. About 20% also attend school, but only 4% complete ninth grade. (22) They are hired on daily contracts, usually verbal, and the majority are paid cash and/or a share of the catch at the end of the day. (23) The majority of child workers believe that the payment they receive is never enough. Children are exposed to serious physical hazards ranging from shark attacks to use of explosives. (24) Worker rights are unprotected as there are no unions and the labor contracts are volatile and short in duration.
In the harvesting of sugar cane, child labor is pervasive, with nearly 70% of the workers under 14. (25) Most are paid cash for a workday that begins at 6 a.m., followed by school for those who attend. (26) Other IPEC studies describe the difficulties faced by child laborers in the urban informal economy, domestic service, (28) and garbage scavenging. (29) A study on commercial sexual exploitation of children and adolescents found that nearly 40% start commercial sexual relations before the age of 14. (30)

Conclusion

This petition demonstrates that systematic and serious violations of fundamental worker rights continue in El Salvador. The GOES has repeatedly failed to comply with its international obligations to respect and enforce workers' rights. The GOES has:

- Provided no remedies for repeated acts of anti-union discrimination, retaliatory firings, and illegal lockouts of union activists in the maquilas; and
- Allowed public sector agencies to undermine unions - in some cases taking advantage of public restructuring and privatization plans to do so - by refusing to recognize a legitimate union, pressuring workers to disaffiliate from their union, breaking up union meetings, targeting union activists for suspension, and illegally locking out union members by forcibly evicting them from the workplace.
- Failed to remedy and even denied serious health and safety lapses in the maquiladoras producing for export;

Through delays, refusals to provide effective remedies, and active animosity the GOES has directly aided private exporters in denying their workers freedom of association and the right to organize and bargain collectively. The GOES has also directly violated public sector workers' rights, thus dragging down standards for all Salvadoran workers and the Salvadoran labor market as a whole. All of these actions provide ample evidence that the GOES has not been and is not taking steps to afford its workers their internationally recognized worker rights. Accordingly, El Salvador's GSP benefits must be withdrawn. Ineligibility for these GSP benefits should also disqualify El Salvador from benefits under the Caribbean Basin Economic Recovery Act and the Caribbean Basin Trade Partnership Act.

Footnotes

1) See Centro de Estudios y Apoyo Laboral (CEAL), Recopilación de las principales violaciones a los derechos laborales en El Salvador relacionados a políticas antisindicales, reducción del estado y libre comercio en detrimento de los intereses de los trabajadores, September 2002.
2) Procuraduría para la Defensa de los Derechos Humanos. Informe Especial de carácter preliminar de la Señora Procuradora para la Defensa de los Derechos Humanos sobre el caso de intoxicación masiva de trabajadoras y trabajadores ocurrida en la Zona Franca Internacional, ubicada en el municipio de Olocuila, departamento de La Paz, los días 5 y 8 de julio de 2002, para. 6.1(d), available at www.pdhd.gob.sv/casomaqu.htm
5) CEAL, Recopilación de las principales violaciones
6) Id.
7) Id.
9) Informe Especial de la Señora Procuradora para la Defensa de los Derechos Humanos sobre la supresión de plazas en el sector público, ocurrida por consecuencia de la aprobación, sanción, promulgación y vigencia de la Ley del Presupuesto General de la Nación (2002), de la Ley de Salarios

11) CEAL, Recopilación de las principales violaciones
12) Id.
13) Letter from Human Rights Watch to Francisco Flores, President of El Salvador, 8 March 2002.
15) CEAL, Recopilación de las principales violaciones
17) CEAL, Recopilación de las principales violaciones
18) Id.
19) Expedientes de la Procuraduría para la Defensa de los Derechos Humanos No. 01-0946-01 y No. 01-0023-02 sobre el caso de INPEP.
23) Id., pp. 32-33.
26) Id., pp. 31, 26-27.