

Rev
Ø

OUTSHEA
Ø 3

922005-3
MT
②

**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)
AND INTERNATIONAL BROTHERHOOD OF TEAMSTERS (IBT)
June 15, 2005**

Petition 2005 AR Case# 003-CP-05

by AFL-CIO & IBT
WR El Salvador

From: Anne Knipper [Aknipper@aficio.org]
Sent: Wednesday, June 15, 2005 4:58 PM
To: FN-USTR-FR0441
Cc: Elizabeth Drake
Subject: "2005 Annual GSP Review - Petition"

Attached are the AFL-CIO petitions.

Anne Knipper
AFL-CIO
Washington, D.C.
Tel: 202-637-5220

Information Required Under 15 CFR part 2007

1. Petitioner: AFL-CIO
2. Country: El Salvador
3. Section of Law Warranting Review: 19 U.S.C. §2462(b)(2)(g) and 19 U.S.C. §2462 (c)(7)
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 and the IBT petition 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.

yes FOA
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. The petitioners incorporate by reference the documented violations of workers rights in past petitions filed in 2001, 2002, 2003 and 2004.

Throughout this period, the USTR has failed to fully implement the GSP instrument in a manner consistent with its legally binding mandate conferred by the U.S. Congress. This failure to fully implement the workers' rights conditions of the GSP has allowed the GOES to continue to refuse to amend its labor law to comply with international labor standards, to fail to apply its existing labor law with serious intent, and to allow past worker rights violations to go unremediated. As a consequence, El Salvador has experienced a continuation of serious and systematic violations of worker rights in 2004, which this petition summarizes.

Labor Laws and Enforcement Mechanisms are Inadequate to Protect Fundamental Workers' Rights

Salvadoran labor legislation has not been updated significantly since the 1994 reforms, in spite of ample reports and evidence on deficiencies in the existing laws. However, the problem does not solely rest with faulty laws.

An investigation by Human Rights Watch released in December 2003 underscores the deficiencies of both the Salvadoran legal regime for protection of workers' rights, and the administrative and judicial mechanisms for enforcing these laws.¹ The HRW investigation, based on extensive field research, draws attention to structural deficiencies in labor laws, including: weak protections against anti-union suspensions and dismissals;

¹ Human Rights Watch, *Deliberate Indifference*.

no explicit protection against anti-union discrimination in hiring; obstacles to union registration; and suspensions to circumvent labor law protections.

These deficiencies in Salvadoran labor law have also been extensively documented by the U.S. State Department, the International Labor Organization (ILO), and the international trade union movement. In its June 2003 comments on labor rights in the CAFTA countries, the AFL-CIO summarized some of the defects in Salvadoran labor law identified by these institutions, including: insufficient protection from anti-union discrimination, obstacles to union registration, restrictions on the right to organize at the industry level, limits on the rights of public employees, and restrictions on the right to strike.

The Human Rights Watch report also documents the systemic failure of the Salvadoran Labor Ministry and judicial system to enforce national laws and regulations that protect workers' rights to freedom of association and collective bargaining. The report shows that labor inspectors often fail to follow proper procedures, especially preparation of an *Acta* (record) of an inspection visit. Workers are frequently denied the opportunity to participate in inspection visits, and sometimes inspectors refuse to provide workers and union representatives with copies of *actas* as legally required. The Labor Ministry generally is derelict in enforcing inspection orders and exercising its power to impose sanctions on employers, and often refuses to rule on matters within its jurisdiction. In some cases, the Labor Ministry openly tolerates or participates in illegal actions by employers such as coercing employees to sign resignation letters. In addition, the Labor Ministry erects obstacles to unions' legal registration.

Labor courts are characterized by delays and burdensome procedural requirements that inflict heavy costs on workers and often prevent them from seeking justice. Witnesses are not protected against employer retaliation. There are no procedures to obtain jurisdiction over employers who fail to appear in court and cannot be found. Even when a judgment is obtained, it is often impossible to enforce it. Employers – including the government – frequently disregard court orders to reinstate fired workers with no legal consequence.

In summary, some of the key structural weaknesses in El Salvador's labor law and enforcement are:

1. The failure of the GOES to ratify ILO conventions governing freedom of association – ILO Convention 87 concerning Freedom of Association and Protection of the Right to Organize (ILO Convention 87) and ILO Convention 98 concerning the Right to Organize and Collective Bargaining (ILO Convention 98).
2. Legislation does not require immediate reinstatement of workers fired or suspended for legal union activity, including the immediate reinstatement of fired trade union leaders. In addition, legislation does not prohibit employers from discriminating in hiring with regards to workers who have been involved in union organizing, or are suspected of such activity.

FOIA

3. The current minimum of workers required by law to form a union is excessive (35 workers). Additionally, the requirement that six months pass before workers whose application to establish a trade union is rejected can submit a new application serves as a deterrent to freedom of association. The failure to explicitly allow workers in independent public institutions to form industry-wide unions; and the failure to allow all public sector workers, with the possible exception of the armed forces and the police, to form and join trade unions, is unacceptable.
4. The Ministry of Labor of the GOES does not fulfill its legal obligation to enforce national labor laws or abide the legislation governing its operations. The Labor Inspectorate does not consistently and in an unbiased manner conduct inspections, upon request, on any matter legally within its jurisdiction or determine compliance with, or violation of, the law in question; prepare official documents at the conclusion of each inspection and provide all parties a copy of the these inspection results; conduct reinspections to verify that an employer has remedied all identified violations within the allotted time period, and finally, does not utilize the sanction process in the case of clear violations conducted by an employer.
5. The Ministry of Labor's Labor Directorate does not uphold its legal duty to facilitate the formation of labor unions by abiding by its obligation to provide workers fifteen days to remedy any legal defects with a union registration petition or fully investigate and allow workers to respond to employer claims regarding founding union members' eligibility for membership.

Despite repeated criticism from the U.S. State Department, the ILO, the international trade union movement and independent human rights advocates of these serious defects in both labor law and practice in El Salvador, the government has not begun to take the steps needed to afford workers their internationally recognized worker rights. In order to meet GSP eligibility requirements, the government of El Salvador must make immediate progress in reforming its labor laws to meet international standards and must undertake major reforms of its enforcement system to ensure that the Labor Ministry, the courts, and other government officials work to defend the exercise of labor rights rather than undermine it.

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

Case of Acajutla Dock Workers - STIPES

In El Salvador's principal port, Acajutla, where approximately 1,200 workers are employed, attempts to unionize late last year were thwarted by blatant anti-union retaliation. Almost all workers who voted to join the newly formed union were

↳ reprisals

1
Case

immediately fired.² The El Salvador Labor Ministry's response has demonstrated its tacit acceptance and seeming complicity in this anti-union behavior.

Until September 2001, Acajutla port workers were employed by the state port authority, CEPA, which owned the port property and administered terminal operations. The union for port workers, the Sindicato de la Industria Portuaria de El Salvador (the Union of the Port Industry of El Salvador), was 50 years old.³ After September 11, 2001, the Salvadoran government placed the port under military authority for the first time in Salvadoran history. Shortly thereafter the government privatized the terminal operations, and dissolved the union.⁴

In response to deteriorating wages and working conditions, on December 6, 2004, 41 dockworkers voted to form the Union of Port Industry Workers of El Salvador (Sindicato de Trabajadores de la Industria Portuaria de El Salvador - STIPES).⁵ The next day, the newly formed union submitted its by-laws and legal documentation to the Labor Ministry. In a common practice to stall union recognition, the Labor Ministry delayed processing the union's by-laws due to small grammatical errors. On December 13, 2004, the Labor Ministry sent communication about the union to the private companies operating for CEPA. The following day, in an act of clear retaliation, the companies denied 34 of the 41 workers entry to their workplace, effectively terminating them.⁶

At the request of the union, the Labor Ministry conducted inspections of two companies on December 21, 2004 and January 7, 2005. In the first case, in the presence of Labor Inspector, the legal representative of Operaciones Portuarios Salvadoreños (OPSAL, S.A.) offered work to the two union representatives in exchange for them to sign a statement claiming that management had not violated the Labor Code in any way.⁷ The Labor Inspector did not include this offer in his inspection report. In the second case, the legal representative of REMAR, S.A. alleged that their company had not denied entry to the workers, but that CEPAL itself had denied entry. The Labor Inspector accepted this at face value and wrote in his report to "investigate CEPA's denial of entry." The results of both of these inspections demonstrated the Labor Ministry's tolerance of anti-union behavior.⁸

Finally, on February 14, 2005, the Labor Ministry denied legal recognition for the union, citing failure to meet the legal minimum number requirement, since 34 of the 41 workers were no longer employed by the companies.⁹ The union immediately appealed

² Centro de Estudios y Apoyo Laboral. (CEAL), June 10, 2005.

³ Bacon, David. *Globalization Run Amok: The Investigative Report of an International Trade Union Delegation to Central America*, March 17-21, 2005, p. 14.

⁴ Ibid, p. 14.

⁵ In El Salvador, unions must have a minimum of 35 members to be legally recognized. The U.S. State Department has criticized these "excessive formalities". (From U.S. Department of State, *2001 Country Reports on Human Rights Practices*). STIPES more than exceeded this already excessive legal minimum.

⁶ CEAL, June 10, 2005.


⁷ Ibid.

⁸ Ibid.

⁹ Bacon, David. *Globalization Run Amok: The Investigative Report of an International Trade Union Delegation to Central America*, March 17-21, 2005, p. 14.

the Labor Ministry's ruling, based on the aforementioned anti-union actions by management.

In recent months, anti-union behavior by employers has continued, with the tacit consent of the Labor Ministry. Several examples documented by the Salvadoran Centro de Estudios y Apoyo Laboral in a June 10, 2005 report follow:

- On April 15, Joel García, one of the six union founders who had not been terminated in the first round in December, was fired for refusing to sign a document stating that he was a temporary contracted worker.
- On May 4, 2005, four union leaders who had been fired initially were told that they could bring all of the 26 fired workers to the Labor Ministry to record their complaints. When the workers arrived, however, the Labor Ministry did record their complaints, but instead calculated the severance owed to each worker. The workers refused the severance because accepting it would be to legally accept their firing.
- The six union members who retained their jobs have received repeated pressure from the companies' administration to sign declarations that they had been pressured by the secretary general of the union to affiliate.
- On June 1, 2005, Juan Antonio Hernandez, a worker who had originally voted for the union, asked three union leaders to sign a letter verifying that he was no longer part of the union¹⁰ in order to receive employment from one of the companies (Operadora General, S.A. de CV). He presented the letter to the company, and was hired two days later.
-  The Chicago Tribune obtained a copy of an illegal "black list" containing the names of workers who had supported the union that had been circulating to all companies in the port.¹¹

Supporters from other unions and the Acajutla community protested against the illegal anti-union actions at the port in two public protests on April 25 and June 1.¹² To date, neither the companies nor the GOES have taken steps to restore the basic right to union representation at the Acajutla port.

Murder of Gilberto Soto – Flawed Investigation and Stalled Judicial Proceedings

Analysis of the investigation into the murder of Mr. Gilberto Soto and subsequent court proceedings provide serious cause for concern about the commitment of the GOES to conduct routine criminal investigations or enforce the law in a professional, impartial manner. Mr. Soto, a long time organizer with the International Brotherhood of Teamsters

¹⁰ Letter by Juan Antonio Hernandez, signed by union leaders, dated June 1, 2005. The letter states, "Through this letter, I revoke my membership from the Union Movement. You are witnesses that I have never participated in any meeting or activity of this movement. So that I can present this to CEPA and the companies that operate in CEPA, I hope that you will sign this letter. I hope that you understand since you all know that my work is my only source of income."

¹¹ Dellios, Hugh. "El Salvador Labor Issues a Snag in U.S. Trade Treaty," *The Chicago Tribune*, April 21, 2005.

¹² CEAL, June 10, 2005.

(IBT) based in New Jersey, was assassinated on November 5, 2004 at 6:00 p.m. in the city of Usulután, El Salvador. Mr. Soto was in charge of organizing port container drivers in the northeast of the U.S. and was a recognized leader in his community, involved in civic and religious activities that guided his life in the U.S. and kept him connected to his roots in El Salvador. In early 2004, Mr. Soto met with Denmark's Specialized Workers Union in Denmark (SID) Representative for Central America in New York City and based on this meeting the IBT and SID decided to collaborate on a joint project to document the systematic violations of worker rights by Maersk, one of the largest shipping companies in the world. Mr. Soto was just about to begin his organizing work, to meet with port workers in El Salvador, Honduras and Nicaragua and the truck drivers who haul Maersk containers, when he was shot along his torso by three unknown assailants. According to eyewitnesses, those responsible for pulling the trigger did not attempt to rob Mr. Soto, and fled immediately after the assassination, running to a car and a bicycle 100 yards away.

Despite the arrest of the five suspects in the murder including Mr. Soto's mother in law, and the initiation of the judicial proceedings, significant doubt remains about the purity of the investigation and whether the responsible parties have truly been identified. El Salvador's Special Organized Crime Unit of the National Civil Police Force, which has been handling the case since it was removed from the jurisdiction of the Usulután police force, is renowned for its corruption and willful negligence in investigating other human rights violations that have occurred over the last decade.¹³ In the case of tracking down suspects in the killing of Mr. Soto, the police have been accused of torture to get confessions, behavior that is consistent with past practice according to human rights activists and former police officers.¹⁴ El Salvador's Human Rights Ombudsperson, Beatriz Carillo conducted a verification of the police's investigation, including looking into the claims of coerced confessions, and released her own independent findings on Monday, December 13, 2004. The report registers the following concerns with the investigation of the murder of José Gilberto Soto.

for here
①

A) Mismanagement of the crime scene

- Police officers handling the case did not meet the most elementary procedures stipulated in El Salvador's penal process code or international standards, such as those promoted by the International Criminal Investigative Training Assistance Program (ICITAP)
- Failure to safeguard the crime scene in a timely manner in spite of police presence at the crime scene. One of the police agents left the scene to look around for suspects and remained away from it for an hour even when superiors had ordered the preservation of the crime scene. Bystanders and people passing by contaminated the crime scene
- Police failed to register witnesses with the proper identification and contact information

¹³ Cite cases : Sr. Garcia Prieto, Kattia Miranda

¹⁴ Testimony in the Prensa Grafica: "Yo torturé... y casi maté"
<http://www.elsalvador.com/vertice/2004/051204/relato.html#>

- Crime scene tampering allowed for the altering of evidence. A police agent removed the bicycle that one of the murderers rode prior to the crime scene (before escaping) and placed it back in the crime scene before the investigator came, ruling out the possibility to obtain fingerprints and contaminating this evidence for use in the investigation.
- A technical evaluation of the crime scene was conducted a month after the incident after family members of the victim denounced the irregularities in the initial collection of evidence. Another bullet was found then, but the new evidence lacks credibility because the crime scene is a heavily trafficked area.

B) Irregularities in investigation and case management

- The original report that included testimonies from witnesses, visual inspection of the crime scene, and autopsy report did not lead to material or intellectual authors. In early December, less than a month after Mr. Soto's murder, officials from the National Civilian Police and Attorney General office, directed the media to Rosa Elva Zelaya de Ortiz, Soto's mother in law, as the intellectual author who contracted three gang members to carry out the murder.
- The judge handling the case ordered the arrest of Rosa Elva Zelaya de Ortiz based on one witness' testimony that was not signed by the witness. The judge also failed to contact this witness to verify the witness' identity or existence. The case was built on testimonies from "confidential sources" and "unidentified witness," and extra judicial confessions of detainees who were physically and psychologically tortured by the police. Police also raided a location owned by Mrs. Zelaya de Ortiz at a local market without a proper warrant. The Human Rights Ombudsperson's report concludes "...the irregularities and violations to constitutional guarantees and basic rights of Soto's mother in law have overshadowed the case and provided obstacles to obtain the 'real truth' effectively."
- Evidence collected was not properly protected to ensure it was unaltered before trial.
- Testimony from eyewitnesses in the area where the murder took place and neighbors who saw the people who followed Gilberto Soto for days before the incident were not used to identify the alleged murderers.
- The judge failed to order further investigation of the claims by the accused perpetrators that they had been tortured and coerced to provide testimony on the identity of the alleged intellectual author.
- The National Civilian Police's Division on Organized Crime and the Attorney General's Unit on Organized Crime both fail to explore the hypothesis relating the murder to Gilberto Soto's trade union activity. Prosecutors took no actions to investigate a political motive aside from adding letters from international unions and U.S. Embassy demanding further investigation on possible political links to the murder investigation's case file.
- The victim's sister alleges that prosecutors exaggerated the part of her testimony that briefly mentions that Gilberto Soto had marital problems to justify presenting the case as a personal issue rather than related to his trade union work.

to A (2)
 tort (1)
 threat (1)
 Fam (1)
 Police Force

C) Conclusions and recommendations

- The arbitrary, negligent and illegal manner in which the investigation of Gilberto Soto's murder has been conducted have impeded the identification of the objective facts or conclusions regarding the truth behind José Gilberto Soto's murder. This handling of the case has paved the way to total impunity for both the guilty parties as well as law enforcement professionals who have miscarried justice whether intentionally or unintentionally.
- The police omissions and negligence in the crime scene have perverted actual and future ability to verify evidence that could lead to solving the case in the future. The Human Rights Ombudsperson recommends that National Civilian Police and Attorney General further investigate the omissions and find those responsible for the administrative and judicial wrongdoings in the case, including building a case based on "secret informants."
- The report calls for further investigations by the National Civilian Police and Attorney General offices of the accusations of human rights violations during the information gathering procedures conducted with the detainees.
- The report reiterates the call for further investigation of the possibility that José Gilberto Soto's death was the result of an extrajudicial killing.
- Pertinent authorities failed to explore Soto's trade union activity as a possible motive, as recommended in a previous report in November by the ombudsperson's office. The December 13, 2004 report reiterates this petition.

The practices behind the investigation and identification of suspects in the Gilberto Soto case has led to a questionable judicial proceedings, according to the Human Rights Ombudsperson's office. In fact, as of the date of submission of this petition, the case has not gone beyond the preliminary stages of verifying whether the evidence against the alleged suspects is sufficient to bring the case to trial.

Even if the prosecutors in the case are correct in their claim that the murder of Mr. Soto is not linked to his activism around Maersk Sealand Industries, it is clear that taking a public stand to speak out against worker rights violations is not a fully protected right and can result in harassment, or worse. Days after the Soto murder, the Centro de Estudios y Apoyo Laboral (Center for Labor Study and Support or CEAL) placed a paid advertisement in Salvadoran newspapers decrying the act and calling for a full, independent investigation. Immediately afterwards, between the evening of November 13 and morning of November 14, 2004, CEAL's office was ransacked, their computers and communication equipment stolen and files reviewed and stolen. These two examples of the price paid by labor activists and the organizations engaged in the work of highlighting and remedying worker rights violations in El Salvador creates a backdrop of the environment in which workplace based organizing and efforts to exercise basic rights takes place.

fake

threat



Ongoing Worker Rights Violations in the Maquila Sector

The GOES continues to tolerate worker rights violations in El Salvador's maquilas that produce apparel for export, principally to the US. The situation has grown more severe in the period immediately leading up to and since the end of the Multi-Fibre Arrangement when employers have used the threat and reality of plant closure as a method to avoid legal obligations to their employees. The maquila industry in El Salvador has been most negatively impacted in the region in terms of factory closure and employment reduction as a result of the phase-out of international textile quotas. Employment in the garment industry declined in 2004 for the first time in a decade and the GOES puts the number of jobs lost in the first three months of 2005 at nearly 6,000¹⁵. Plant closures and massive lay-offs have resulted in violations of workers rights in a numerous cases, and the GOES has not acted to prevent, sanction or correct illegal actions carried out by private sector employers. Violations include forced resignation, non-payment of severance pay, social security and pension quotas for laid-off workers, and prolonged suspension of workers without salary.

Threat

MINISTO

Industrias Textiles Cuscatlán, S.A. de C.V. (INTECU)

CASE 1

Case 3

On 12th April 2005, the human resources manager of INTECU informed the Labor Ministry that due to a lack of orders employment contracts would be suspended, effective the following day. The Labor Ministry was not informed of the number of workers to be suspended, nor of the length of time of the suspension. When the workforce of 450 presented for work on 13th April, noone was allowed onto the premises.

The Salvadoran Labor Code stipulates in Articles 36 and 44 that an employer may suspend work contracts for up to 9 months with no prior notice to workers, if materials are not available and if the cause is beyond the control of the employer. Other than 3 days compensated at 50% of their base wage, workers are not entitled to a salary throughout the suspension period even though they remain under the employ of the company. Whenever suspension is deemed necessary by the employer, intervention of the Labor Ministry must always be solicited in order for the cause and responsible party to be identified. If responsibility is found to be with the employer, workers must be given 30 days notice of the suspension and cannot be suspended for more than 90 days (Arts. 37 and 42). The procedures for suspension in El Salvador have been heavily criticized by the international labor rights community on the basis of the high degree of discretion afforded for determining cause and responsibility, and the consequent lack of protection that the legislation grants workers in the face of coerced resignation¹⁶.

In the INTECU case, workers were suspended on 13th April, before the Labor Ministry conducted an inspection of the facility to determine cause. To date, workers have not been provided with results of the investigation, nor has the Labor Ministry acceded to a formal request by the Sindicato de Trabajadores de las Industrias Textiles

¹⁵ New York Times, Mill Closings Hit Hard in Central America, Ginger Thompson, 25 March 2005

¹⁶ Human Rights Watch Indiferencia Intencionada: inacción del gobierno de El Salvador en la protección de los derechos de los trabajadores December 2003.

(STIT) to apportion responsibility. STIT requested results from the 13th April inspection on 19th April. The only response has been that the Labor Ministry is not empowered to make decisions as to responsibility. This response from the Labor Ministry is contrary to Labor Code obligations, and in the similar case of Anthony Fashion (see below) STIT won a ruling that determined the Labor Ministry does in fact have this power and obligation.

From the beginning of the suspension period, workers have requested that the employer terminate their contracts so that they may collect severance and find employment elsewhere – if this does not happen, they will be forced to resign and will not be entitled to severance.

After filing suits with the Labor Ministry, Attorney General (Procuraduría General de la República) and General Prosecutor (Fiscalía General de la República) for debts owed to the Social Security (ISSS), State Pension Fund (AFP Crecer), Social Housing Fund (Fondo Social de Vivienda), and the Agriculture Bank (Banco Agrícola), the workforce engaged the mediation services of the Human Rights Ombudsperson's Office (PDDH) and participated in a hearing at the Legislative Assembly during which INTECU's owner agreed to terminate worker's contracts on June 2nd if no work was available by that date. Rather than abide by the guarantees made, however, in the week of 6 June management proceeded to offer workers 40% of their legally mandated severance in exchange for withdrawing their demands with the local authorities.

Average length of service at INTECU is five years. 450 workers are owed up to and beyond US\$600 in severance each. Amongst the workers suspended are pregnant women. While this situation continues, they are not free to work elsewhere, have no health coverage, and are not entitled to pensions. To make matters worse, INTECU stopped paying workers' quotas to the Salvadoran Social Security Institute and pension fund in November of 2004, despite having made the deductions from the worker's paychecks. A worker loan system administered through the factory with the Banco Agrícola has also been abused by the company, which was not paying off worker loans despite making the necessary deductions from workers. This latter situation has been resolved, while debts accumulated with public sector institutions have not been settled.

INTECU maintains that the suspension is temporary for legal reasons meanwhile press reports cite the closure of INTECU's as an openly planned business strategy. This is a blatant case of labor impunity, aided and abetted by the Salvadoran labor authorities.¹⁷

Evergreen Industries S.A. de C.V. Case ①

Since November 2004 the Evergreen Industries factory has been engaged in a process of massive retrenchment due to a reduced number of orders, totaling approximately 300 workers.

The Salvadoran labor code stipulates that workers who are laid-off without just cause are entitled to a severance package that includes pro-rated payment of one month's

¹⁷ New York Times, Mill Closings Hit Hard in Central America, Ginger Thompson, 25 March 2005

salary for each year of service given (Article 58), accumulated annual bonus (Article 202) and accumulated annual vacation pay (Articles 177, 187). If the worker does not receive this package immediately upon withdrawal from employment, it is assumed that a conflict exists and the worker is legally empowered to request that the labor authorities convene the employer to attend a mediated meeting with the worker to determine an outcome. If the employer does not present him/herself at the mediated meeting, or a mediated outcome is not reached, the worker will be assisted by the judicial authorities to file a suit before a labor court, and a ruling will be determined.

In the case of Evergreen, workers identified for layoff are illegally requested to sign an agreement stating that they are willing to receive their severance in monthly installments. 33 workers laid off between 17 February and 4 March 2005 have filed suits with the labor courts, on the basis that this arrangement is both illegal and unacceptable to them. In the process of filing the suit, it materialized that some workers have not had their pension quota deposited in the state pension fund (AFP Crecer) from the factory despite having had their quota deducted from previous pay packets

This situation is one of great concern to Evergreen's workforce, and should be to the GOES. Workers often sign agreements with management, such as the one regarding severance pay in installments for fear that they will not receive anything if they exercise their right to fair and legal treatment. When there is the danger that the factory may soon cease production entirely, this fear is even greater, and is further exacerbated for workers who are laid-off when few workers remain - how will they receive future installments if the factory disappears? In addition, requiring a worker to return to his/her former workplace once a month to collect a payment presents both financial and social obstacles. Unfortunately, the GOES has done nothing in this case.

STIT and INSINCA, S.A.

Case ①

Case ⑤

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 with reduced benefits, including 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. The company has not even made the pro-forma efforts required by the law to either acknowledge the illegal firing, by paying workers the thirty days salary they are owed for every year of employment, or to make the firing of the union leaders legal by exploiting the loophole of paying the union leaders salaries and benefits for one year until their terms expire, technically maintaining them as employees, but outside of the workplace. The GOES has failed to protect workers effectively against anti-union dismissals in the case of INSINCA.

STIT first appealed to the Labor Ministry, which produced no results; the Ministry's refusal to order an inspection was appealed to the courts. A request to the Fourth Labor Court to declare INSINCA's action a lockout was also rejected.¹⁸ As of December 2004, no progress has been made against this case and the union is effectively crippled to represent the workers at the worksite.

ANTHONY FASHIONS:

case 11 case 6

Anthony Fashions opened in 1998 in the San Bartolo free trade zone. On December 20, 2002, the company announced that it was suspending production. The company failed to pay salaries and end-of-year bonuses to its 700 workers. The back wages (but not the bonuses) were paid on December 30, and on January 6 the company announced that it was closing permanently. At the same time, the company was reorganized under a new name. Anthony Fashion also failed to pay legally required bonuses and pension and social security contributions for the 13 months prior to its shutdown. The workers have filed 320 complaints in the labor courts for the unpaid contributions. The Labor Ministry provided the workers with documentation of the unpaid social security contributions (\$260,000) and pension contributions (\$120,000), but refused to provide them with documentation of unpaid bonuses, without which the workers were unable to pursue their legal claims against the company.

Labor inspectors showed workers a copy of a letter from a representative of the factory owner to the Labor Minister requesting that neither the workers nor their union be given the documentation that they requested to pursue their legal cases. The letter reads, in part:

It is important to tell you that unscrupulous people are using the media to generate negative propaganda against my representative [Anthony Fashion]; said people are supposed trade unionists who have nothing to do with the company that I represent, as they do not even work there; it is for that reason that I ask you to order your assistants to use appropriate discretion with respect to information that this company gives to this Ministry, because said information falling into evil hands would cause the situation of the company to become even more complicated and arrive at a point where the business was unable to pay for itself.

¹⁸ Ibid.

The refusal to provide information to workers about their unpaid bonuses was reiterated on January 17 by the Vice-Minister, who threatened sanctions against labor inspectors who had given information orally. This was a clear violation of the workers' legal right to access to a copy of the inspection results.

On March 19, the Attorney General of the Republic informed the union that 298 individual cases were in danger of being dropped because the owner of the company was outside the country and could not be served. The union explained that it had not been able to take legal action to place an embargo on the company's property because of the Labor Ministry's refusal to turn over information to the Attorney General. Despite a promise by the General Labor Inspector to provide the information, the union soon learned that the plant's equipment was being sold to other free zone companies. The union has appealed to the National Assembly for assistance in compelling the Salvadoran Ambassador to the US to track down the owner of Metrix Computer Cutting.¹⁹ According to a December 2003 Human Rights Watch Report and evidence collected by CEAL, the workers' criminal complaint against the company for wrongfully withholding their bonuses was dismissed for lack of evidence.²⁰ There is a clear link between the government's willful negligence to inform the union representative who had called for a third inspection of its occurrence on January 10, and the impunity enjoyed by Anthony Fashions. The fact that workers did not have access to the January 10, 2003 inspection report made it more difficult to substantiate the charges regarding unpaid bonuses, those allowing Anthony Fashions to flee the country and thus escape its legal liability.

Anthony Fashions, throughout the history of its operations in the San Bartolo Free Trade Zone, was known as one of the most severe violators of labor standards and basic working conditions. While the company deducted social security payments from the workers' salaries, they had not paid them over to the Social Security Administration since July 2001. Prior to the closing in December 2002, more than 50 cases had been filed in the Public Prosecutor's Office by pregnant workers from Anthony Fashions who had not been able to obtain health care services through the Social Security Health Care System because their employer had failed to pay in the worker and employer contributions. In the Labor Ministry there were numerous individual cases brought against the company by workers for such concerns as failure to pay wages, failure to provide health certificates to attend medical appointments, etc. Despite the hundreds of complaints filed against Anthony Fashions, there were no measures taken against the company while it was open, leaving even less recourse for workers once it was closed. As stated by Human Rights Watch, "(The Government's) failure to prosecute these cases vigorously, report evidence of such violations immediately to the ISSS for investigation, and create a mechanism so that affected workers can obtain timely access to clinics violates workers' right to health."²¹

¹⁹ CEAL, *Actualización de estado de casos de violaciones a los derechos laborales en El Salvador*, May 2003

²⁰ Human Rights Watch, *Deliberate Indifference: El Salvador's Failure to Protect Worker Rights*, December 2003

²¹ *Ibid.* p. 25

The Labor Ministry, in the case of Anthony Fashions, has failed to allow worker participation in inspection visits, provide workers with inspection results necessary for holding the employer responsible, rule on matters within its jurisdiction, or report to social security authorities evidence of social security law violations. This case vividly demonstrates the failure of the labor authorities to focus in on egregious violators and to seek corrective measures prior to the incidence of more severe violations or complete loss of the employment source, as was the case with Anthony Fashions.

SELSA and Lido, S.A.

Case 7

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 were locked out, clearly in retaliation for union activities. Lido's general manager, Roberto Quiñonez explained to a labor inspector,

On May 6, 2002 (workers) were asked who wanted to work and who supported the action of the union (the work stoppage), the latter being those who would not be allowed to enter (the workplace)...(T)he 41 workers (can) make use of their labor rights and file corresponding actions before the competent authorities, as no possibilities exist of their reinstallation.²²

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 continued to deny workplace access to the 11 union leaders and the 30 SELSA-affiliated workers.²³ In cases filed by the forty one barred union members to the Labor Ministry, two times labor inspectors conducted

²² Ibid. p. 33

²³ Id.

inspections but reported no findings, failing to rule on the alleged violations of Lido of the union members rights.

After more than two years the 11 SELSA union leaders continue to be locked out from the workplace. While the company has recognized that the leaders cannot be dismissed and has paid the salaries of the union leaders, they have refused to allow the workers to enter their work site or to represent the members in any way. Payment of severance to the thirty union members was made contingent on workers signing resignations and waiving all claims against the company. The 11 union leaders have been unable to conduct grievance resolution, meet with workers or management, or attend to workplace-based concerns since May, 2002. They have attempted to maintain a dialogue with their employer, though as of this date there has been no progress in gaining re-entry to the workplace. The union leaders state that with no effective union leadership and representation inside the work site the company has committed other types of abuses such as to allegedly coerce members to resign from the union or to violate the clauses of the collective bargaining agreement. While the Labor Ministry has stated that they are taking a special interest in the case, as of August 2003, they had been unable to obtain a solution to the case. The only discussions of re-entry to the workplace were suggestions that the leaders return in two or more groups over a period of some months. Even this "flexible" application of the obligation not to dismiss union leaders as stipulated in Article 47 of the Constitution of El Salvador has not been implemented at this time.

Force
Threat

In its examination of this case, the ILO Committee on Freedom of Association reached the following conclusions. First, it determined that the Labor Ministry had no authority to declare the May 7 work stoppage illegal. Second, in view of the ruling of the Second Labor Court that no strike had occurred on May 7, the Committee found it plausible that the company had retaliated against the locked-out workers for anti-union motives, and asked the government to obtain a prompt judicial resolution of this question. With respect to the government position that strikes are prohibited during the term of a collective bargaining agreement, the Committee stated that such a prohibition must be compensated by the availability of rapid and effective mechanisms to resolve disputes that arise over the application of the conflict. The Committee also asked the government to promptly investigate the union's claims that its members had been pressured to drop their legal claims. Finally, the Committee requested that the government allow the union leaders access to the workplace.²⁴ To date the Ministry of Labor has not yet complied with the ILO resolution of March 2003 on the SELSA case.

6
00
No change from 2004

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

700
The ILO has recognized that labor law in El Salvador violates freedom of association rights for workers employed by the State. At its November 2002 meeting, the Committee made the following recommendations in Case No. 2190 [see 329th Report,

²⁴ ILO, Committee on Freedom of Association, Report No. 330, Case No. 2208, paras. 599-605.

para. 492]: “The Committee strongly urges the Government as a matter of urgency to ensure that the national legislation of El Salvador is amended so that it recognizes the right of association of workers employed in the service of the State, with the sole possible exception of the armed forces and the police.”

Over the past three years, the GOES has used public sector “modernization” programs financed by the Inter-American Development Bank²⁵ 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.²⁶

No change from 2004

STSEL and CEL

— case ① case 8

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, 2001 CEL fired six workers, including a member of the union executive board, 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

²⁵ See Public Services International, *The IDB, The World Bank, Labor Rights and Health Care Privatization in the Americas*, July 2001, pp. 1-21, available at www.world-psi.org

²⁶ *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 (2002), y de las reformas a la Ley del Servicio Civil*. 6 February 2002, available at www.pddh.gob.sv/supresion.htm

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.²⁷ As of this writing the union leaders had not been reinstated.

No change from 2004

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.²⁸

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

²⁷ Id.

²⁸ Letter from Human Rights Watch to Francisco Flores, President of El Salvador, 8 March 2002.

“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.

Threat
①

Meetings between SITEAIES and the Labor Minister, Jorge Isidro Nieto, as well as with the Comisión Ejecutive 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.²⁹ 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, 2002³⁰

No change from 2004

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.³¹ Yet the GOES continues

²⁹ ILO, Committee on Freedom of Association, Report No. 328, Case No. 2165, paras. 231-235, 243, 249-251.

³⁰ CEAL, *Recopilación de las principales violaciones*

³¹ See ILO Committee on Freedom of Association, *Complaint against the Government of El Salvador presented by Communications International (CI)*, Report No. 313, Case(s) No(s). 1987 (1999).

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.³² As of December 2004, the situation has not changed for employees of the Ministry of Labor, who still want to form a union but have no hope that under the current legislative structure that this will be possible, and certainly without repercussions in the form of firings, for those that push the issue.

No change from 2004

Firings of Members of SITINPEP

Case 9

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 136 union members, 55 were fired, 29 accepted severance, and 12 gave up their membership, leaving only 49.³³ 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.³⁴ Likewise, the ILO Committee on Freedom of Association has asked the GOES to ensure

³² CEAL, *Recopilación de las principales violaciones*

³³ Id.

³⁴ 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.

that INPEP management respects the collective bargaining agreement and has requested an investigation into the firings.³⁵

No change from 2004

SITCOM and SUTTEL:

case 10
case 10

On April 2, 2003, communications workers petitioned the Ministry of Labor to register the Industry Union of Communications Workers (SITCOM). The union was reportedly formed by thirty-five workers from the Telecommunications Company of El Salvador, S.A. de C.V. (CTE); one from the radio station, *Radio Clave*; one from Telecommunications and Electric Services (SETELCOM); and one from Electrification and Communications, S.A, on March 23, 2003.³⁶

Afterwards, the ministry notified the four employers and sought to confirm “the [union] founders’ status as employees and . . . the principal activity of [each] company,” as required by law.³⁷ On May 22, 2003, based largely on the companies’ responses, the Ministry of Labor rejected SITCOM’s petition. The ministry cited three key reasons for its rejection: SITCOM failed to fulfill the requirement that an industry-wide union include workers from at least two companies engaged in the same activity;³⁸ the union’s provisional president was not employed by CTE at the time of union formation; and four members were “employees of confidence” and, therefore, ineligible to unionize alongside other workers.³⁹ Based on these factors, the ministry found that the workers failed to form an industry-wide organization and fell short of the mandatory minimum number of workers required to unionize.⁴⁰

On May 30, 2003, SITCOM petitioned the Ministry of Labor to reverse its decision. The petition asserted that all four companies for which SITCOM workers are employed were, and still are, engaged in the same primary activity of communications. It also criticized the ministry because it did not give the union an opportunity to counter the companies’ official responses to their registration request.⁴¹ At this writing, the Ministry of Labor has yet to respond to SITCOM’s petition.

³⁵ ILO Committee on Freedom of Association, Report No. 328, Case No. 2165, paras. 236-242, 245-248, 251.

³⁶ Resolution from the Ministry of Labor to Angel Edgardo Moreno Guardado, provisional president, SITCOM, May 22, 2003.

³⁷ Resolution from the Ministry of Labor to Angel Edgardo Moreno Guardado, provisional president, SITCOM, May 22, 2003.

³⁸ Labor Code, article 209.

³⁹ Labor Code article 206 prohibits “mixed unions, that is, those comprised of employers and workers.” In refusing to count four alleged “employees of confidence” as SITCOM affiliates, the Ministry of Labor liberally interpreted this prohibition to bar mixed unions of “employees of confidence” and workers.

⁴⁰ Resolution from the Ministry of Labor to Angel Edgardo Moreno Guardado, provisional president, SITCOM, May 22, 2003.

⁴¹ Petition for reconsideration from Angel Edgardo Moreno Guardado, provisional president, SITCOM, to Jorge Isidoro Nieto Menéndez, Minister of Labor, May 30, 2003.

The Ministry of Labor, in this case, denied union registration based on the employers' versions of events and did not investigate the matter or seek workers' views. Furthermore, the ministry relied on outdated international guidelines when it concluded that SITCOM failed to fulfill the criteria to qualify as an industry-wide union.

No change from 2004

Criteria for an "Industry-Wide Union"

The Ministry of Labor determined that CTE was a member of the communications industry, but that the other three companies employing SITCOM members were engaged in "activities different from 'communications.'"⁴² In reaching its conclusion, the ministry relied on a 1989 definition of "communication" set forth in the United Nations' "International Standard Industrial Classification of All Economic Activities" (ISIC):

Communication services rendered to the public whether by post, wire or radio and whether intended to be received audibly or visually. Services for the exchange or recording of messages are also included. Radio and television broadcasting studios and stations are classified in [another] group.⁴³

However, this definition has been revised twice since 1989. In the latest revision, from 2002, the categories of "telecommunication services," "pay telephone services," "radio beacon and radar station operation," "other telecommunication," and "radio and television programme transmission," that were separate and distinct categories in 1989, have been combined into one class under the heading "telecommunications."⁴⁴ According to the 2002 criteria:

This class ["telecommunications"] includes: transmission of sound, images, data or other information via cables, broadcasting, relay or satellite; telephone, telegraph and telex communication; transmission (transport) of radio and television programmes; maintenance network; internet access provision; public pay-telephone services. This class excludes . . . production of radio and television programmes, whether or not combined with broadcasting.⁴⁵

⁴² Resolution from the Ministry of Labor to Angel Edgardo Moreno Guardado, provisional president, SITCOM, May 22, 2003.

⁴³ Resolution from the Ministry of Labor to Angel Edgardo Moreno Guardado, provisional president, SITCOM, May 22, 2003; United Nations Department of Economic and Social Affairs, *International Standard Industrial Classification of All Economic Activities* (1989), ST/ESA/STAT/Ser. M/4/Rev. 2, E.68.XVII.8, group 7200.

⁴⁴ United Nations Department of Economic and Social Affairs, *International Standard Industrial Classification of All Economic Activities* (2002), ST/ESA/STAT/Ser. M/4/Rev. 3.1, E.03.XVII.4; United Nations Department of Economic and Social Affairs. *Correspondences for ISIC Rev. 3.1 code 6420*. (No date). Available: <http://unstats.un.org/unsd/cr/registry/regso2.asp?Cl=17&Co=6420&Lg=1> [July 16, 2003].

⁴⁵ United Nations Department of Economic and Social Affairs, *International Standard Industrial Classification of All Economic Activities* (2002), ST/ESA/STAT/Ser. M/4/Rev. 3.1, E.03.XVII.4, class 6420.

Thus, the ministry based its rejection of SITCOM's status as an industry-wide union on an obsolete, narrow definition of the communications sector. Had the ministry applied the 2002 standard, it may have led to union registration. For example, whereas the ministry asserted that "*Radio Clave*[s], . . . principle activity is broadcasting, an activity classified under the group . . . 'Radio and Television Transmissions,' rather than 'communications,' under the 2002 guidelines, 'Radio and Television Transmissions' is explicitly cited as a 'telecommunications' activity.⁴⁶

case 1
In addition, the former general secretary of the El Salvadoran Association of Telecommunications Workers (ASTTEL), who assisted in the SITCOM organizing drive, asserts that both SETELCOM and Electrification and Communications, S.A, are companies formed by former CTE workers and are regularly contracted by CTE to perform projects and services. He argues that these smaller companies, which "perform the same work as CTE" are, like their "mother corporation," also part of the communications industry.⁴⁷ The ministry failed to identify the main activities of these two companies in its rejection of SITCOM's registration petition.

Minimum Number of Workers to Form a Union

The labor ministry also found that SITCOM failed to meet the mandatory minimum of thirty-five workers to form a company union at CTE. The ministry noted that CTE had submitted a document "proving the termination of the individual labor contract" of the provisional president of SITCOM on February 1, 2003—roughly seven weeks prior to the union's founding assembly. CTE also asserted that the union included two "group leaders," one "supervisor," and an "assistant"—four "employees of confidence," who were barred from unionizing with CTE workers.⁴⁸ Another three workers were disqualified because they did not work for CTE and, therefore, according to the ministry, were not communications workers. By excluding these eight workers from the initial thirty-eight founding members of SITCOM, the ministry concluded that SITCOM only had thirty founding members—five workers short of the mandatory minimum required for union registration.⁴⁹

The workers strongly disagree with the ministry's conclusions. According to the former general secretary of ASTTEL, the "employees of confidence" actually perform the same jobs as the other workers, have similar work contracts, are not managers and,

⁴⁶ United Nations Department of Economic and Social Affairs, *International Standard Industrial Classification of All Economic Activities* (2002), ST/ESA/STAT/Ser. M/4/Rev. 3.1, E.03.XVII.4; United Nations Department of Economic and Social Affairs. *Correspondences for ISIC Rev. 3.1 code 6420*. (No date). Available: <http://unstats.un.org/unsd/cr/registry/regso2.asp?Cl=17&Co=6420&Lg=1> [July 16, 2003].

⁴⁷ Telephone interview with Luis Wilfredo Barríos, ex-general secretary, El Salvadoran Association of Telecommunications Workers, July 16, 2003.

⁴⁸ El Salvadoran labor law, however, does not define "employees of confidence." See Report from Orlando Zelada, supervisor, Department of Industry and Business Inspection, to the head of the Department of Industry and Business Inspection, September 7, 2001.

⁴⁹ Resolution from the Ministry of Labor to Angel Edgardo Moreno Guardado, provisional president, SITCOM, May 22, 2003.

therefore, should not have been qualified as “employees of confidence.”⁵⁰ In the case of the provisional president’s labor contract termination, CTE allegedly withheld the worker’s salary until he agreed to tender a “voluntary” resignation. The former ASTTEL general secretary explained, “The provisional president was pressured because of his salary. He gave in and signed a ‘voluntary’ resignation, [back]dated . . . so it did not fall after the union’s formation.” Afterwards, he received his back pay and severance. Since that time the other two provisional leaders of the SITCOM union have also been dismissed by the company. While the Labor Ministry officials have stated in meetings with the union officers that they enjoyed the protection from dismissal under Article 47 of the Constitution, they have not been reinstated nor has the GOES been effective in obtaining their reinstatement.

While the Labor Ministry has held a number of meetings with the union officers and their advisors they have still not made a final resolution on the petition to revoke the rejection of legal recognition. Labor Ministry officials including the Labor Minister himself have made numerous suggestions to the union officers that they form another union, conduct another General Assembly and try again to obtain a new legal status. However, should the workers decide to hold another General Assembly the founders of SITCOM would not be able to participate as founders of a new union, since there is a legal prohibition for 6 months after an attempt to form a union is made, for the same workers to attempt to form another union. As a result the workers would be forced to seek out new founding members, elect leadership different from the leaders they chose in the SITCOM attempt and present all of the paperwork again to the Labor Ministry in order to possibly gain a new recognition. Many of these telecommunications workers came from the workplace based union SUTTEL and remember the 1999-2001 struggle to obtain recognition of their union in which they were forced to conduct three General Assemblies, had to conduct a lawsuit against the Labor Ministry for failure to recognize the union and had to obtain a Supreme Court order to be recognized before they could begin union representation in the CTE-Telecom, after the 1998 privatization process. At that time the SUTTEL case was subject of GSP petitions as well as an ILO complaint.

The case of SUTTEL-SITCOM, the telecommunications union has been reviewed by the ILO which points to this case, as one example of the excessive and arbitrary requirements for the formation of unions. These legal requirements constitute another impediment to workers in their attempts to unionize and collectively bargain. In response the ILO's resolution, the government has refused to implement the recommended reforms to these requirements. Moreover, the Ministry of Labor actually provided false information to the ILO in order to avoid complying with the ILO recommendations to reinstate two SUTTEL union leaders.

Most recently, in May 2004, union members of SUTTEL, accused employers at the former state enterprise ANTEL, currently owned and operated by CTE-TELECOM, of violating their fundamental rights at work, including harassment for union organizing and unpaid overtime. According to union leaders cited in the Salvadoran press, anti-union

⁵⁰ Telephone interview with Luis Wilfredo Barríos, ex-general secretary, El Salvadoran Association of Telecommunications Workers, July 16, 2003.

pressure by management is so severe that workers who are not affiliated to the union fear conversing with a leader or member of SUTTEL because “if rumors start about you wanting to join it will be known by all – up to the highest boss. The company and its anti-union actions impede the development of free unionism. Workers are intimidated, meddled with and terrorized.”⁵¹ In addition to anti-union pressure, the company is requiring that its employees work over eight hours a day without paying overtime and does not cover workers’ per diem when they travel to other counties for work.

No change from 2004

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.”⁵² A report from the UN High Commission for Human Rights’ Committee on the Rights of the Child issued on June 4, 2004 noted with concern “that child labour continues to be widespread in El Salvador. The Committee is particularly concerned about the high number of child domestic workers, who are vulnerable to abuse and hindered in continuing their education, and about children working in sugarcane plantations and in other hazardous conditions.” In response, the UNHCHR Committee recommended that the GOES take a key action also called for in the increased protection of adult workers, to strengthen the labor inspectorate, financially and technically.⁵³

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.⁵⁴ 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.⁵⁵ 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.⁵⁶ Worker rights are unprotected as there are no unions and the labor contracts are volatile and short in duration.

⁵¹ Co-Latino Newspaper, “Trabajadores de TELECOM Denuncian Arbitrariedades”, May 13, 2004

⁵² ILO, International Program for the Elimination of Child Labor (IPEC) Country Profile: El Salvador, p.1, www.ilo.org/public/english/standards/ipecc/timebound/salvador.pdf

⁵³ UNHCHR Committee on the Rights of the Child, 36th Session, Concluding Observations: El Salvador, June 4, 2004

⁵⁴ IPEC, *El Salvador/ Trabajo Infantil en la Pesca: Una Evaluación Rápida*, (March 2002), pp. 17-18, www.ilo.org/public/spanish/standards/ipecc/simpoc/elsalvador/ra/pesca.pdf

⁵⁵ Id., pp. 32-33.

⁵⁶ Id., pp. 25-31.

In the harvesting of sugar cane, child labor is pervasive, with nearly 70% of the workers under 14.⁵⁷ In 2003, at least 5,000 workers in the sugarcane industry were children. Most are paid cash for a workday that begins at 6 a.m., followed by school for those who attend.⁵⁸ As a June 2004 report by Human Rights Watch on child labor in the Sugarcane industry documents, children's health and safety are not guaranteed in sugarcane cultivation, and plantation foremen turn a blind eye to the fact that children as young as eight cut cane.⁵⁹ IPEC studies describe the difficulties faced by child laborers in the urban informal economy,⁶⁰ domestic service,⁶¹ and garbage scavenging.⁶² A study on commercial sexual exploitation of children and adolescents found that nearly 40% start commercial sexual relations before the age of 14.⁶³ On sexually exploited and trafficked children, the UNHCHR Committee expressed concern about the lack of effective GOES programs to address this problem, including a lack of information on assistance and reintegration programs for children who have been subject to sexual exploitation and trafficking in El Salvador.

The issue of children domestic workers has also received increased attention, as sobering statistics and seeming GOES indifference are noted by international observers from the UNHCHR to Human Rights Watch. In El Salvador, 95 percent of the estimated 21,500 domestics aged 14 to 19 are girls and women. These girls may labor 12 hours or more, up to six days a week, for wages of \$40 to \$100 a month. They are particularly vulnerable to physical abuse and sexual harassment from members of the household in which they work. The Salvadoran labor code excludes domestics from many of the most basic labor rights, notably the eight-hour workday and the 44-hour work week guaranteed other workers. Domestics commonly receive wages that are lower than the minimum wages in other sectors of employment. ~~The exclusion of all domestic workers from these rights denies them equal protection of the law and has a disproportionate impact on girls and women.~~⁶⁴

Carden

Conclusion

Ben

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:

⁵⁷ IPEC, *El Salvador/ Trabajo Infantil en la Caña de Azucar: Una Evaluación Rápida* (February 2002), p.20, www.ilo.org/public/spanish/standards/ipec/simpoc/elsalvador/ra/cane.pdf

⁵⁸ Id., pp. 31, 26-27.

⁵⁹ Human Rights Watch, *Turning a Blind Eye* (June 2004)

⁶⁰ IPEC, *El Salvador/Trabajo Infantil Urbano: Una Evaluación Rápida* (February 2002), www.ilo.org/public/spanish/standards/ipec/simpoc/elsalvador/ra/urbano.pdf

⁶¹ IPEC, *El Salvador/Trabajo Infantil Doméstico: Una Evaluación Rápida* (February 2002), www.ilo.org/public/spanish/standards/ipec/simpoc/elsalvador/ra/domestic.pdf

⁶² IPEC, *El Salvador/Trabajo Infantil en los Basureros: Una Evaluación Rápida* (March 2002), www.ilo.org/public/spanish/standards/ipec/simpoc/elsalvador/ra/garbage.pdf

⁶³ IPEC, *El Salvador/Explotación Sexual Comercial de Niñas, Niños y Adolescentes: Una Evaluación Rápida* (March 2002), www.ilo.org/public/spanish/standards/ipec/simpoc/elsalvador/ra/sexexp.pdf

⁶⁴ Human Rights Watch, "No Rest: Abuses Against Child Domestics in El Salvador," January 15, 2004

- 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;

MINISTO

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. Finally, the U.S. Government sends a profoundly troubling message to the international community by rewarding the GOES for its failure to adhere to international labor standards with inclusion in the Central American Free Trade Agreement – Dominican Republic (CAFTA-DR). By neglecting to recognize that violation of worker rights is practice tacitly encouraged the GOES as a development strategy, the U.S. Government undermines its stated commitments to respect for worker rights as a primary concern in CAFTA.