

FINAL REPORT

Third Party Complaint; TexOps (El Salvador)

October 2, 2017



FAIR LABOR
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On February 10, 2017, the Fair Labor Association (FLA) received a Third Party Complaint from the Sindicato de Trabajadoras, Trabajadores, Sastres, Costureras y Similares (SITRASACOSI) (hereinafter SITRASACOSI trade union) at the factory Textiles Opico S.A. de C.V. (hereinafter TEXOPS) in El Salvador. TEXOPS has been a Participating Supplier of the FLA since June 2012.

The complaint alleged that TEXOPS breached policies and procedures agreed with the SITRASACOSI union to address potential retrenchments as well as other compliance benchmarks of the FLA Workplace Code of Conduct. The complaint specifically raised issues regarding implementation of the mentioned policies and procedures regarding terminations and retrenchments, lack of union representation of workers at the time of dismissal, changes to the bonus system, and dismissal of categories of employees that enjoy certain employment protections. The allegations raised by the SITRASACOSI union appeared to be in conflict with FLA compliance benchmarks regarding the Employment Relationship and Compensation Code elements.

The FLA reviewed the complaint from the SITRASACOSI union and on February 16 it accepted the complaint at Step 2 of the Third Party Complaint process. Under Step 2, TEXOPS had up to 45 days to make and assessment and develop

relevant remediation. Alternatively, TEXOPS could waive the 45-day period and agree to have the FLA designate an independent third-party to assess the situation and make remediation recommendations. TEXOPS chose to conduct an internal assessment of the allegations.

The complaint lodged by the SITRASACOSI union against TEXOPS was, to a significant extent, related to the application of the increase in the national minimum wage approved by El Salvador's Minimum Wage Council in December 2016, effective January 1, 2017. The increase, the largest minimum wage increase in the country's history, raised the minimum wage for apparel sector workers by about 39 percent, from \$210.90 per month to \$295.20 per month. The FLA has prepared an issue brief on this topic and circulated it to affiliates sourcing from El Salvador, stressing this new legal requirement and the imperative that suppliers based in El Salvador comply with this new minimum wage level.¹

ASSESSMENT BY TEXOPS

In conducting the internal assessment, TEXOPS relied on its Human Resources (HR) and Production teams. The HR

¹ "Legal Minimum Wages in El Salvador," February 2017, <http://www.fairlabor.org/report/legal-minimum-wage-increase-el-salvador>

team gathered relevant materials, such as written policies and procedures, minutes of meetings with the SITRASACOSI union, performance evaluations, and results of inspections conducted by the Ministry of Labor and Social Security. The assessment team also had access to key management and department leaders involved in the process of worker evaluation, approval of bonuses, and meetings with the SITRASACOSI union.

The main findings of TEXOPS' internal investigation were as follows:

1. In dismissing 75 workers (52 workers with the lowest ratings within production workers and 23 workers from the building and construction department), TEXOPS management did not follow the consultation and advance notice provisions embodied in the factory's Procedures Regarding Contract Termination (Procedimiento para Terminación de Contrato) jointly developed and agreed to by management and labor.² In particular, in conducting the retrenchment, management did not comply with Article 3.3.2 of TEXOPS' Procedures Regarding Contract Termination, which states that prior to taking a retrenchment action, management must hold "direct dialogue" with unions representing workers, or directly with workers in the absence of a union, to communicate to them the

2 The Procedures Regarding Employment Termination were developed as part of a remediation plan to address a finding from an FLA SCI Assessment at TEXOPS in 2013. See <http://portal.fairlabor.org/fla/go.asp?u=/pub/zTr5&tm=5&Rid=1484&Fdn=13&Fna=AA0000000313%5F2013%2Epdf>.

reasons for the reduction in force and to jointly analyze alternatives to "avoid or minimize the negative effects of a reduction in force." Further, Article 3.3.8 of the Procedures requires that workers to be dismissed receive a notice of 15 days.

TEXOPS management recalled that management and the SITRASACOSI union maintained a dialogue since April 2013, when the union organization was established at TEXOPS. It was in the context of dialogue with the union that TEXOPS revised a number of its policies and procedures, including those related to termination of contracts. TEXOPS management further stated that it felt compelled to act swiftly to readjust its labor force because of the confluence of two trends: (1) the softening of orders for its products; and (2) the significant increase in minimum wages effective January 1, 2017, which affected the competitiveness of the factory.

On January 17, management contacted SITRASACOSI union leaders to request an extraordinary meeting to discuss issues surrounding the implementation of the new minimum wage. At the meeting, which was held on January 20, management explained the economic emergency arising from the impact of the recently approved minimum wage increase and the imperative for the company to take action to terminate the contracts of 75 workers in order to maintain the commercial viability of the company. Minutes of the meeting indicate

that although the parties discussed issues related to the wage increase, and the union representatives signed a document dated January 20, 2017 indicating that they had attended said meeting, their signature did not signify that they agreed with the retrenchment decision taken by management or considered that management had met the consultation and advance notice requirements of the retrenchment procedures. A follow-up meeting including top management of TEXOPS and union leaders was held on January 23. At this meeting, management again set out the economic reasons for the worker dismissals and union leaders restated their contention that management had not followed the factory's procedures regarding personnel reductions and retrenchment and called on the factory to reinstate about 30 individuals affiliated with the union who were the subject of the dismissals. The minutes of the meeting were signed by management and union representatives.

2. The aforementioned dismissals of 75 workers occurred without management sharing with union representatives a list of workers selected to be terminated. Sharing of such a list is required by Article 3.3.4 of TEXOPS' contract termination procedures.

The 75 workers dismissed fell into two groups: (1) 23 workers in the construction and maintenance department, a department that management sought to eliminate

altogether because it had become redundant once the factory completed its construction program; and (2) 52 production workers rated as lowest in terms of performance in the following departments: finished product warehouse, raw materials warehouse, cutting, printing, printing/sublimation, general production (sewing, finishing and packing), and quality control. The methodology for determining the level of performance of each employee was set out in a document developed by management titled "Procedures for the Evaluation of Production Personnel." Ten criteria included in this document used by TEXOPS management to evaluate workers, and the weight of each (out of 100 percent), are as follows:

- Tenure (5%)
- Disciplinary measures (10%)
- Attendance/absences (5%)
- Timeliness in arrival (10%)
- Quality (AQL) (20%)
- Fulfillment of production goals (15%)
- Respect of peers and superiors (10%)
- Teamwork (10%)
- Following of instructions (10%)
- Number of processes/machinery the worker can operate (5%)

TEXOPS gathered data on each of the above measures for each worker and aggregated them to develop an overall score for each worker. The scores prepared by management - which have been shared with the FLA -- were not conveyed to the SITRASACOSI union or discussed with its representatives prior to applying them as the basis for taking the dismissal actions.

3. Pursuant to Article 3.3.6 of TEXOPS' contract termination procedures, certain classes of workers receive preferential treatment with respect to dismissals, that is, they are exempted from dismissals. These categories of workers include: pregnant women, women breast-feeding their children, workers who are the sole earners in their households, disabled persons, persons undergoing medical treatment for chronic illnesses, persons near to meeting requirements to retire or to obtain a title or a training diploma within the factory, and workers over 40 years of age, among others.

Although the complainants alleged that one of the dismissed workers was pregnant, that person did not inform management and did not come forward to take a pregnancy test in order to qualify for the preferential treatment, as required by factory procedures. No workers in the special categories listed above were part of the dismissal.

4. Concurrently with the implementation of the change in the minimum wage, TEXOPS management overhauled the system of pay bonuses. TEXOPS reasoned that changes to the nature of orders from their customers – fewer long-run orders for “commodity” products, and a much larger share of short-term orders for specialty products – required recalibration of the bonus system, which had become skewed over time, tending to reward workers in a small – and declining -- number of production lines doing long runs, versus the bulk of the workers who were in lines with short-run orders

where earning a sizable bonus was very difficult if not impossible.

TEXOPS management chose to overhaul the production bonus system and to incorporate the new minimum wage increase into the new bonus system. TEXOPS took the position that as the pay bonus system was not required by national law, therefore it could be changed by management provided the legal minimum wage requirement was met. TEXOPS did not consult with workers or with the union about the new bonus system, although at the mentioned meeting between TEXOPS management and union leaders on February 20, management stated that henceforth, the level of bonus would be \$5 per week or \$20 per month. Worker's compensation would be \$295 per month, the minimum wage, plus the possibility of earning a bonus of \$5 per week, to a maximum of \$315 per month. The basic compensation, and the compensation after the bonus, both meet the minimum wage required by national law.

The SITRASACOSI union requested that the Ministry of Labor conduct an inspection at TEXOPS with respect to the legality of the new bonus system and its interplay with the statutory minimum wage increase. On February 9, 2017, Ministry of Labor officials conducted an inspection at the factory and issued a report that concluded that TEXOPS was in violation of Article 30 of the Labor Code and Article (A) of Executive Decree No. 2 dated September 16, 2016, which prohibit

actions that directly or indirectly reduce workers' salaries, deeming that the previous system of bonuses was part of the salary under the doctrine of acquired rights pursuant to customary practice. Also, the Ministry of Labor stated that the factory breached Article 29(1) of the Labor Code by owing workers production bonus payments corresponding to the first three weeks of 2017, a period before an official communication to the workforce of the change in bonus system. In a re-inspection conducted on March 3, the Ministry of Labor ratified the above conclusions. TEXOPS has appealed the decision by the Ministry of Labor and the new bonus system remains in place. At this time there is no timeline when the Ministry would rule on the appeal.

REMEDIATION PLAN

TEXOPS management has developed a remediation plan to address the findings of its own internal investigation. The remediation plan includes the following actions:

1. Re-engage in a dialogue with representatives of the SITRASACOSI union. Keep record of agreements and points for further discussion.
2. Through a process of dialogue with the SITRASACOSI union, develop procedures that regulate hiring activities, disciplinary procedures, and modifications to procedures regarding termination of the employment relationship that would define a role for union organizations in such procedures, all consistent with national law, the FLA Workplace Code of

Conduct and Compliance Benchmarks, and Customers' Codes of Conduct.

3. Train all personnel of the HR Department on policies and procedures, and ensure that the rationale and content of the policies and procedures are well understood.
4. Ensure that all workers, supervisors, middle management and upper management are trained continuously on freedom of association.
5. Develop a procedure that ensures that all workers are informed about changes to the bonus system and are aware of how they will be affected prior to the implementation of changes to that system.

FLA ASSESSMENT AND NEXT STEPS

Compliance benchmarks associated with the FLA Workplace Code of Conduct require suppliers to inform workers about work rules, including compensation, and also to communicate and consult with workers with regard to workplace rules, policies, and practices.

Among the issues raised by the TEXOPS Third Party Complaint are communication requirements in Employment Relationship (ER) compliance benchmark ER 16.1, which requires employers to inform workers about workplace rules, health and safety information, and laws regarding workers' rights with respect to freedom of association, compensation, working hours, and any other legally required information, and the FLA Code through appropriate means, including by posting in local language(s) throughout the

workplace's common areas; Compensation (C) compliance benchmark C 17.1, which requires employers to make every reasonable effort to ensure workers understand their compensation, including bonuses they are entitled to at the work place and under applicable law; and compliance benchmark ER 25.1, which requires that workplace rules, policies, and practices be communicated to all workers in the local language or language spoken by workers if different from the local language. Moreover, with respect to consultation, compliance benchmark ER 25.2, requires that employers have a clear and transparent system of worker and management communication that enables workers to consult with and provide input to management. This might include suggestion boxes, workers' committees, designated spaces for worker meetings, and meetings between management and workers' representatives.

Over the years, TEXOPS has enhanced its communication, awareness raising, and consultation with workers on a range of matters vital to the enterprise, including through the work of an ombudsman or mediator who guided a process of labor-management dialogue from July 2013 to October 2014. The suggestion to establish the figure of an ombudsperson at TEXOPS emerged from the recommendations of an independent expert engaged by the FLA in the context of a safeguard investigation into the freedom of association environment conducted in 2013-2014.³ Under the guidance of the ombudsperson, TEXOPS management and the SITRASACOSI union established a dialogue process which, inter alia, oversaw the development and refinement

³ http://www.fairlabor.org/sites/default/files/documents/reports/texops_final_3.20.14_eng.pdf

of many policies and procedures that were jointly agreed by management the union, among them the mentioned Procedures Regarding Employment Termination. However, TEXOPS management failed to consult with workers and with the SITRASACOSI union with regard to the development of the "Procedures for the Evaluation of Production Personnel," which contain the all-important criteria to evaluate workers and ultimately serve as the basis for identifying those workers who might be subject to retrenchment. This is a critical oversight, as discussion of the criteria and agreement with the SITRASACOSI union would have allowed the union to comment on the adequacy and objectivity of each criterion.

TEXOPS management has provided the FLA with a listing of all 936 production workers in January 2017 and the score for every worker with respect to each of the 10 performance criteria as well as a composite score. The listing is divided by production departments, and workers are listed within each department ranked in ascending order of performance ranking. The table below shows the total number of workers in each department and the number of workers retrenched from each department based on their low performance scores. Thus, the retrenchment affected 5.5 percent of production workers (52 out of 936) in addition to 100 percent of the 23 workers in the construction and maintenance department, a department that was eliminated. The information contained in this listing suggests that management based the selection of workers to be retrenched on the established criteria and there is no evidence of discriminatory practices in the determination of worker to be retrenched.

DEPARTMENT	NUMBER OF WORKERS	NUMBER OF LOW PERFORMING WORKERS RETRENCHED
Warehouse -- finished products	25	3
Warehouse -- raw materials	66	3
Cutting	48	6
Printing	8	1
Printing -- sublimation	34	3
Sewing, finishing, packing	680	33
Quality control	75	3
TOTAL	936	52

TEXOPS management also failed to comply with the advance notice and consultation requirements in Article 3.3.2 of TEXOPS' contract termination procedures. As has been stated by TEXOPS management in its own report, TEXOPS management requested a meeting with the SITRASACOSI union to discuss many of the issues covered by this report on January 17; the first – and only – meeting between the parties was on January 20. The SITRASACOSI union did not deem this meeting to fulfill the requirements of Article 3.3.2 of the contract termination procedures

Finally, TEXOPS management did not consult with the SITRASACOSI union with respect to the change in the system of pay bonuses and did not provide advance information of the changes to workers and their representatives. The SITRASACOSI union's negative reaction to the change in the system of bonuses was evident in the formal challenge by the union of the conformity the actions with national law in the form of a request for an inspection by the Ministry of Labor. As has been discussed above, the Ministry of Labor found that the changes violated aspects of the Labor Code and of Executive Decree No. 2 of September 16, 2016. Management has appealed the decision by the Ministry of Labor.

The FLA recommended that TEXOPS management take a number of remedial actions listed below. Remedial actions taken by management in response to the recommendations are also provided below.

1. Engage a third-party ombudsperson/mediator to guide a robust dialogue between management and the SITRASACOSI union. There is precedent for such intervention at TEXOPS. The ombudsperson/mediator should develop terms of reference for the dialogue, including frequency of meetings, agenda, note-taking, agreed minutes and so on. The ombudsperson/mediator should also develop rules for communications – internally and externally – by the parties.

Status of Remedial Action: TEXOPS management and the SITRASACOSI union agreed to the appointment of Mrs. Ena Núñez as ombudsperson/mediator between the parties. Mrs. Núñez convened the first meeting of the dialogue table on July 28; the immediate plan is for the dialogue table to meet approximately every two weeks during an initial period. On August there were three meetings, held on August 10, 16 and, 21.

2. Among the first issues to be addressed by the dialogue table is the fate of the workers who were dismissed in January 2017. While there is no evidence that the selection process discriminated against union members, management did not follow communication and consultation procedures embodied in its own rules and in the FLA compliance benchmarks.

Status of Remedial Action: All minutes of the dialogue table meetings held in July and August show that addressing the issue of remediating the dismissal of workers that occurred in January was prominent in the dialogue.

3. Production workers who were dismissed and are interested in being reemployed at TEXOPS should be reinstated at the seniority level they held at the time of dismissal and granted back pay net of the severance pay they received. As these workers were rated low with respect to their performance, TEXOPS should provide these workers with retraining so that they are able to improve their overall performance rating.

Status of Remedial Action: TEXOPS management and the SITRASACOSI union agreed during the dialogue table meeting held on August 10 to the reinstatement, with back pay, of nine production workers affiliated with the union who expressed interest in returning to work at TEXOPS. The nine reinstated workers returned to work at TEXOPS on August 14, to the same jobs that they held prior to

the dismissal. The returning sewers were assigned to the training center for two weeks to refresh their skills. Six production workers dismissed in January who did not wish to return to work at TEXOPS were granted a payment of one additional month of pay; the payments were made on August 25.

4. With respect to the building and construction department workers who were dismissed, and for whom there are no positions available at TEXOPS, the factory should pay them an additional 15 days of salary since they did not receive the required two-week dismissal notice. In order to minimize the adverse impact of the dismissal on these workers, TEXOPS should pay them an additional four weeks for a total of six weeks and also help them in securing other employment by helping them to train for other jobs, improving their educational level, and/or recommending them for employment opportunities with other employers.

Status of Remedial Action: TEXOPS management and SITRASACOSI negotiated over the future of the 13 dismissed building and construction workers during several meetings of the dialogue table. At the August 21 meeting, the two sides agreed to a formulation whereby each of the dismissed workers would receive payment of three months of salary and one worker (who was a member of the union) would be reinstated; the reinstatement was effective August 28.

5. A well-respected external organization or third party expert on freedom

of association should be engaged to deliver training on this subject to workers, supervisors, middle management and upper management.

Status of Remedial Action: To be discussed at the next meeting of the labor-management dialogue table, with guidance from the mediator.

6. TEXOPS management should organize and deliver training to management and workers on policies and procedures regarding worker evaluations, compensation, and contract terminations.

Status of Remedial Action: To be discussed and agreed by the labor-management dialogue table.

7. TEXOPS should commit to abide and implement immediately final decisions by the Ministry of Labor regarding the bonus system. TEXOPS should keep the FLA informed of the results of the appeal process.

Status of Remedial Action: The appeal process before the Ministry of Labor is continuing its course. The union's position is that management should abide by the resolutions of the Ministry of Labor regarding the bonus system. However, a final decision by the Ministry of Labor is essential for remedying the situation. TEXOPS management and SITRASACOSI will take up this issue during future meetings of the labor-management dialogue table.

CONCLUSION

The FLA is pleased that this Third Party Complaint led to the relaunching of a broad labor-management dialogue at TEXOPS, guided by an ombudsperson/mediator who has the respect of all parties. Management and the SITRASACOSI union, skillfully guided by the mediator, were able to reach agreements on the range of difficult issues that arose from management's decision to retrench workers in January 2017. The FLA recognizes the good will evidenced by management and the union in the negotiations and calls on both parties to continue and strengthen the dialogue at the factory.

The FLA points out that there is some unfinished business related to finalizing factory policies and procedures governing retrenchment, compensation and workers job performance that should be tackled by the parties as soon as possible in order to avoid the repetition of some of the issues that arose earlier in the year. The dialogue table is the appropriate vehicle to make progress on these matters.