



Joint Public Communication

to the Office of Trade and Labor Agreements (OTLA) of the United States

under the North American Agreement on Labor Cooperation (NAALC)

regarding effective enforcement of labor law related to conduct by the Mexican multinational company Grupo Comercial Chedraui in its Mexican operations

submitted by

A handwritten signature in black ink, appearing to read "Ricardo F. Icaza".

Ricardo F. Icaza, President
United Food & Commercial Workers (UFCW) Local 770

/s/ Benedicto Martinez

Benedicto Martinez, Director of Organizing
Frente Auténtico del Trabajo

A handwritten signature in black ink, appearing to read "Roxana Tynan".

Roxana Tynan, Executive Director
Los Angeles Alliance for a New Economy

/s/ Benjamin Cokelet

Benjamin Cokelet, Executive Director
Project on Organizing, Development, Education, and Research (PODER)

November 12, 2015

I. BACKGROUND

Based in Veracruz, Grupo Comercial Chedraui is the third-largest retail chain in Mexico, with 35,000 employees selling food, clothing, general merchandise, electronics and other consumer goods in more than 200 stores throughout the country. Chedraui's Code of Ethics promises to "treat our employees, customers and suppliers with dignity and justice, without abusing our level of authority." However, its actions in Mexico betray this promise by violating several NAALC labor principles without facing effective labor law enforcement.

II. VIOLATIONS

The NAALC Labor Principles require:

- Freedom of association and protection of the right to organize
- The right to bargain collectively
- Minimum employment standards
- Elimination of employment discrimination
- Prevention of occupational injuries and illnesses
- Compensation in cases of occupational injuries and illnesses

A. Freedom of association and collective bargaining:

1. Protection Contracts.

In its 2014 report to Mexico's securities regulation commission, Grupo Comercial Chedraui declared "Our associates in Mexico are affiliated with 28 different unions and labor relations with each one of these are governed by 233 collective bargaining agreements, which are negotiated independently with each union. . . . these contracts are negotiated annually with respect to salaries and biannually with respect to benefits."¹

However, these are "protection" unions selected by management, not chosen by employees. They are so-called because they are meant to "protect" the company against genuine union representation.

Interviews with Chedraui employees at several stores in the Federal District confirm that most do not even know that a union is in place in the store or that a collective bargaining agreement exists. They have no knowledge or involvement in collective bargaining. In fact, no collective bargaining takes place. One interviewed worker said, "Yes, there is a union – it is in the Human Resources office."

¹ See Grupo Comercial Chedraui, "Reporte anual que se presenta de acuerdo con las disposiciones de carácter general aplicables a las Emisoras de valores y a otros participantes del mercado, por el año terminado el 31 de diciembre de 2014," at page 33, available at http://www.bmv.com.mx/docs-pub/infoanua/infoanua_605157_2014_1.pdf

These protection unions dominate Mexico's labor relations system. Labor law scholars have estimated that some 80 percent of Mexico's collective bargaining agreements are protection contracts.² Protection unions guarantee labor peace in exchange for union dues paid directly by companies to these sham unions. Protection contracts generally restate statutory minimum requirements, and are simply routinely updated to reflect any statutory changes without any authentic negotiations.

Trade union seats on the tripartite Conciliation and Arbitration Boards that are supposed to protect workers' organizing and bargaining rights are captured by the same protection unions that benefit from the system. This is a clear violation of the NAALC's requirement of "fair, equitable and transparent" administration of labor law by "impartial and independent" tribunals

2. Transparency

Mexico's 2012 labor law reform purported to require public availability of collective bargaining agreements. Agreements are supposed to be accessible at the website of the labor department, but those of Chedraui are incomplete and those that are found are five to ten years old.

Repeated requests by independent trade unions and allies for copies of Chedraui's labor contracts have been unavailing. In the past month, researchers from PODER, one of the signatories to this complaint, have spent an estimated 30 hours trying to find Chedraui labor contracts at websites that are supposed to make them available, and physically visiting offices of Conciliation and Arbitration Boards where labor contracts are supposed to be deposited and publicly available. These efforts have been fruitless.

The labor law reform also required election of union officials. Chedraui workers have not had any opportunity to vote for union officials, since in general they are not even aware that they have union officials.

Mexico has ratified ILO Convention 87 on Freedom of Association, making it part of national law. But the ILO itself has found that the protection union/protection contract system runs afoul of the Convention's requirements.³

The continued existence of a protection union system with no employee choice of representative or voice in collective bargaining in Chedraui's more than 200 workplaces in Mexico evinces a sustained and recurring failure of Mexico to effectively enforce laws that are supposed to protect these rights. Such laws begin with the constitutional

² See, for example, Graciela Bensusán et. al., "Contratación colectiva de protección en México: Informe a la Organización Regional Interamericana de Trabajadores (ORIT)" (2007).

³ See ILO, 364th Report of the Committee on Freedom of Association, Case No. 2694, Complaint against the Government of Mexico, paras. 729-759 (2012, at http://www.ilo.org/wcmstp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_183430.pdf).

guarantee of freedom of association and continue with relevant provisions of the 2012 labor reform law on worker voice in union affairs and transparency in labor contracts.

B. Minimum employment standards

Interviews with Chedraui employees reveal that the company permits persons to work helping customers inside stores and in parking areas. These workers receive no salary, but rather subsist on tips. They are not covered by Social Security or workers' compensation, and their hours are not regulated. This practice also implicates prevention of occupational injuries and illnesses and compensation in cases of occupational injuries and illnesses.

C. Elimination of employment discrimination

Interviews with Chedraui employees confirm that the company systematically asks female employees and applicants if they are pregnant.

By continuing failure to effectively enforce labor laws on union organizing and collective bargaining, discrimination, minimum labor standards, workplace health and safety and workers' compensation for employees of Grupo Comercial Chedraui, Mexico has failed to meet its obligations under the NAALC to:

- ensure that its labor law and regulations provide for high labor standards;
- continue to strive to improve those standards;
- promote compliance with and effectively enforce its labor law through appropriate government action;
- ensure that its labor law proceedings are fair, equitable and transparent;
- provide that parties may seek remedies to ensure the enforcement of their labor rights.

III. Statement of Jurisdiction

A. NAO Jurisdiction

OTLA jurisdiction to review this submission is authorized by Article 16(3) of the NAALC, granting each NAO the power to review public communications on labor law matters arising in the territory of another Party, in accordance with domestic procedures. This submission involves labor law matters arising in Mexico.

B. Ministerial Review Jurisdiction

Article 22 of the NAALC empowers the Secretary of Labor of the United States to

request consultation with the Secretary of Labor of Mexico regarding any matters within the scope of the NAALC. The matters raised in this submission are within the scope of the NAALC.

C. ECE Jurisdiction

Under Article 23 of the NAALC, an Evaluation Committee of Experts is authorized to analyze patterns of practice of a Party in the enforcement of child labor laws, anti-discrimination measures, minimum employment standards, occupational safety and health, and to make recommendations on these matters. These matters are raised in this public communication.

D. Dispute Resolution Jurisdiction

Under Article 29 of the NAALC, an Arbitral Panel is empowered to consider persistent pattern of failure to effectively enforce child labor laws, occupational safety and health standards, and minimum wage standards and to require payment of a fine by the offending government, or suspension of NAFTA trade benefits for companies and industries in which labor rights violations occurred. These matters are raised in this public communication.

Trade-Relatedness

The matters raised in the submission are related to a situation involving workplaces, firms, companies, or sectors that provide goods and services traded between the United States and Mexico. Many of the products and merchandise sold in Chedraui are traded between the two countries.

IV. Action Requested

Petitioners ask for the following actions by the United States:

- Investigation of Chedraui's violations of NAALC labor principles and the effectiveness of labor law enforcement in connection with such conduct;
- Public hearings in California as part of the investigation process;
- Consultations between two secretaries of labor in each country on the matters raised in this submission;
- Such consultations to lead to an action plan for halting the violations of workers' rights by Chedraui in Mexico;
- As appropriate and as permitted under the NAALC, formation of an Evaluation Committee of Experts (ECE) if sufficient progress is not made through ministerial consultations;

- As appropriate and as permitted under the NAALC, formation of an arbitral panel to deal with outstanding disputes that have not been resolved through ministerial consultations or by an ECE.

Respectfully submitted,



Ricardo F. Icaza, President
United Food & Commercial Workers (UFCW) Local 770

/s/ Benedicto Martinez

Benedicto Martinez, Director of Organizing
Frente Auténtico del Trabajo



Roxana Tynan, Executive Director
Los Angeles Alliance for a New Economy

/s/ Benjamin Cokelet

Benjamin Cokelet, Executive Director
Project on Organizing, Development, Education, and Research (PODER)