

From:

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To:

Gloria Blue
Executive Secretary,
Trade Policy Staff Committee
Attn: Section 1377 Comments
Office of the United States Trade Representative
1724 F Street, NW
Washington, DC 20508

Re: Recent Developments in El Salvador's Telecom Sector -
Dominican Republic-Central America Free Trade Agreement (DR-CAFTA)

Dear Ms. Blue:

Please find below our comments related to practices in the telecommunication sector committed by the Government of El Salvador (GOES) that are of particular concern to the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO).

Comments:

On April 2, 2003, communications workers petitioned the Ministry of Labor of El Salvador (“MOL) to register the Industry Union of Communications Workers (SITCOM). The union was formed on March 23, 2003 by thirty-five telecom workers, all of whom were employed in one of four companies: the Telecommunications Company of El Salvador, S.A. de C.V. (CTE); *Radio Clave*, a radio station; Telecommunications and Electric Services (SETELCOM); and Electrification and Communications, S.A.,¹

Upon receipt of the petition, the MOL notified employers and sought to confirm the [union] founders’ status as employees and . . . the principal activity of [each] company,” as required by law.² On May 22, 2003, based largely on the responses from the respective companies, the MOL rejected the union’s petition. It cited three key reasons for the rejection: 1) SITCOM failed to fulfill the requirement that an industry-wide union include workers from at least two companies engaged in the same activity;³ 2) the union’s provisional president was not employed by CTE at the time of union formation; and 3) four members were “employees of confidence” and, therefore, ineligible to unionize alongside other workers.⁴

On May 30, 2003, SITCOM petitioned the MOL seeking reversal of its decision. The union argued that all four companies in which the petitioners are employed were, and still are, engaged in the same primary activity of communications. The union also criticized the MOL for not giving the union an opportunity to rebut the companies’ responses to the registration request.⁵

On June 26, 2006, the Department of Administrative Appeals of the Supreme Court of Justice determined that the MOL’s denial of the union’s petition for registration without merit. However, on September 14, 2006, the MOL issued a resolution rejecting the union’s legal status (“personalidad jurídica”), in direct contravention of the Supreme Court’s decision. SITCOM asserts the MOL’s reasoning is based on non-credible information and / or an insincere effort to verify the information. An appeal was filed with the MOL on September 18, 2006, demanding that the MOL comply with the Supreme Court’s decision. The MOL responded on November 15, once again rejecting the legal status of SITCOM. In so doing, the MOL used the same arguments that were deemed to be without merit by the Supreme Court. As explained below, those arguments have no factual merit.

¹ Resolution from the Ministry of Labor to Angel Edgardo Moreno Guardado, provisional president, SITCOM, May 22, 2003.

² Resolution from the Ministry of Labor to Angel Edgardo Moreno Guardado, provisional president, SITCOM, May 22, 2003.

³ Labor Code, article 209.

⁴ 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.

⁵ Petition for reconsideration from Angel Edgardo Moreno Guardado, provisional president, SITCOM, to Jorge Isidoro Nieto Menéndez, Minister of Labor, May 30, 2003.

1. *Criteria for an “Industry-Wide Union”*

The MOL 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.’”⁶ In reaching its conclusion, the MOL 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 or messages are also included. Radio and television broadcasting studios and stations are classified in [another] group.⁷

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.”⁸ 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.⁹

Thus, the MOL 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 MOL asserted that “*Radio Clave[’s]*, . . . principle activity is broadcasting, an activity classified under the group . . . ‘Radio and Television Transmissions,’” rather than “communications,”

⁶ Resolution from the Ministry of Labor to Angel Edgardo Moreno Guardado, provisional president, SITCOM, May 22, 2003.

⁷ 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.

⁸ 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].

⁹ 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.

under the 2002 guidelines, “Radio and Television Transmissions” is explicitly cited as a “telecommunications” activity.¹⁰

In addition, the former general secretary of the El Salvadoran Association of Telecommunications Workers (ASTTEL), who assisted in the SITCOM organizing drive, asserted 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.¹¹ The MOL failed to identify the main activities of these two companies in its rejection of SITCOM’s registration petition.

2. *Minimum Number of Workers to Form a Union*

The MOL also found that SITCOM failed to meet the mandatory minimum of thirty-five workers to form a company union at CTE. It 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.¹² 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 MOL concluded that SITCOM only had thirty founding members—five workers short of the mandatory minimum required for union registration.¹³

The workers strongly disagree with the MOL’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, therefore, should not have been qualified as “employees of confidence.”¹⁴ 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

¹⁰ 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].

¹¹ Telephone interview with Luis Wilfredo Barríos, ex-general secretary, El Salvadoran Association of Telecommunications Workers, July 16, 2003.

¹² 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.

¹³ Resolution from the Ministry of Labor to Angel Edgardo Moreno Guardado, provisional president, SITCOM, May 22, 2003.

¹⁴ Telephone interview with Luis Wilfredo Barríos, ex-general secretary, El Salvadoran Association of Telecommunications Workers, July 16, 2003.

company. While the MOL 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 MOL has held a number of meetings with the union officers and their advisors they continue to refuse to issue the SITCOM legal registration. Labor Ministry officials, including the Labor Minister himself, have suggested 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. There is a legal prohibition barring the same workers from attempting to form another union for 6 months after an attempt to form a union is made. 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 MOL in order to gain recognition.

Previous Related Case

Many of the telecommunications workers involved in this case were in the enterprise-level union – SUTTEL -- and remember the 1999-2001 struggle to obtain recognition of their union. Indeed, they were forced to conduct three General Assemblies, had to sue the MOL for failure to recognize the union, and obtained a Supreme Court order to be recognized before they could represent workers in CTE-Telecom. At that time, the SUTTEL case was subject of a GSP petition and an ILO complaint. The ILO found the requirements for the formation of a union to be this to be excessive and arbitrary. Unfortunately, the GOES refused to implement the ILO's recommended reforms. Moreover, the MOL provided false information to the ILO in order to avoid complying with the ILO recommendations to reinstate two SUTTEL union leaders.

Conclusion

The GOES has repeatedly failed to comply with its international obligations to respect and enforce workers' rights. The GOES has:

- Provided no remedies for repeated acts of anti-union discrimination and retaliatory firings and harassment of union members and officers; and
- Continued to take advantage of public restructuring and privatization to refuse to recognize a legitimate union, pressuring workers to disaffiliate from their union, breaking up union meetings, and targeting union activists for suspension.

Through delays, refusals to provide effective remedies, and active animosity the GOES has directly aided private enterprises in denying their workers freedom of association and the right to organize and bargain collectively. 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 in the telecom sector.