

## MISSION REPORT

### INVESTIGATION OF THIRD PARTY COMPLAINT REGARDING GILDAN-DORTEX

#### 1. Introduction

The Fair Labor Association entrusted me to conduct an examination and prepare a report concerning the third party complaint filed regarding Gildan-Dortex.

For that purpose, I traveled to Santo Domingo, Dominican Republic, arriving in the evening of Sunday, January 16, 2011, and remaining through Friday 21.

During my mission, I met with the Vice President of the Republic, Dr. Rafael Alburquerque and twice with the Minister of Labor, Dr. Max Puig, who was accompanied in both meetings by the Vice Minister of Labor, Lic. Pedro MI. Rodríguez Castillo, the Director of Labor, Lic. Valentín Herrera and the Director of Mediation and Arbitration, Lic. Luis Fco. Regalado Tavárez. These meetings allowed for long and fruitful exchanges of ideas that have been very useful in the conduct of the mission, as well as in the preparation of this report. Licenciados Herrera and Regalado Tavárez provided me with documentation available at the Ministry and a memorandum summarizing actions involving the Ministry regarding Gildan-Dortex that also contributed to my understanding of the issues. Therefore, I wish to express my appreciation to the Vice President, the Minister of Labor, and other officials of the Ministry for their help and support of my investigation. I should also add that the Vice President as well as the Minister of Labor indicated, responding to my suggestion, their willingness to attempt to engage in mediation to bring Gildan-Dortex closer to the unions in the enterprise, particularly SITRAGILDAN/FEDOTRAZONAS, who is the complainant in the third party complaint before the FLA. During the last meeting that I held with the Minister of Labor, Dr. Max Puig, he informed me that he would very soon initiate activities to this effect.

During my stay in the Dominican Republic, I traveled to Guerra, where Gildan-Dortex is located. There I held meetings with its Vice President and Country Manager, Mr. Javier Echeverría; its Executive Vice President for Corporate Citizenship, Mr. Rick Petersen; the Manager of Human Resources, Mrs. Vileika Ramírez; and with the legal counsel and legal representative, Licenciado José Cruz Campillo. These last two individuals provided me with copies of numerous documents bearing on the case, in particular lawsuits currently before the courts, the process of recognition of the majority status of SITRAGIL and the subsequent collective bargaining process.

I also visited the headquarters of the federation FEDOTRAZONAS, where I held a long meeting with its Secretary General, Mr. Ygnacio Hernández, and with Mr. Reynaldo Colporán, organizer of the Gildan campaign. Also present during this meeting was Lic.

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Joaquín Luciano, who provided me with detailed information on the status of the legal proceedings regarding the case. Ygnacio Hernández provided me with copies of all the documents that he had available and I deemed of relevance to the investigation. Separately, I met with the Secretary General of SITRAGILDAN, Mr. Santo Alejandro Ramírez, at my hotel. He was accompanied by union leader Julio César Parra Natera, who at the time was the subject of a process to strip away his immunity, which is discussed below. Discussion with these union leaders allowed me to better understand the tenor of the relations that Gildan-Dortex maintains in its factory with SITRAGILDAN, its leaders, its members, and in particular, about the incident at the end of 2010 that gave rise to the dismissal of seven workers and the process of stripping away immunity.

I also met with the leadership of SITRAGIL/CITA in their offices. Present were a number of leaders, among them its Secretary General, Mr. Rafael Castillo, Mr. Rafael E. Castillo, Licenciado Wilfredo Mejía, Mr. Antonio Mateo and the Secretary General of SITRAGIL, Anly Zapata.

I had a lengthy telephone conference with Leonardo Valverde and Lourdes Pantaleón, of the Fundación Laboral Dominicana (headquartered in the city of Santiago), and met twice with the local representative of the WRC, Sarah Adler Milstein, who provided me with copies of relevant information and subsequently sent me additional materials. I received interim comments from Scott Nova of the WRC, who subsequently sent me his Interim Report dated January 20, 2011; I also held a telephone call with Nova while I was writing this report.

For the preparation of this report I also had extensive documentation available, sent to me by the Executive Director of the Fair Labor Association, Jorge Pérez-López, prior to and after my visit to the Dominican Republic.

## **2. Regarding Facts Previously Confirmed and Additional Considerations**

At the time this expert initiated the task entrusted by the FLA, successive and well-documented reports had already confirmed facts and conduct relevant to this case. The following section recalls their basic content and adds a few considerations that may complement those previously informed.

- a. *Gildan-Dortex had incurred in repeated acts of anti-union action and discrimination, directed initially at preventing the organization of the SITRAGILDAN union (affiliated with the FEDOTRAZONAS federation) and subsequently – once the union was constituted – to disregard its condition as an actor within the company and prevent its continuous contact with employees and, more recently, to retaliate in the face of attempts by union leaders and affiliates to make their voice heard regarding the unilateral decision by the company to split their annual vacations.* The investigation conducted by Accordia Global Compliance Group and requested by the company itself, confirmed a number of these actions. Nearly all of the members of the Comité Gestor constituted to organize the union were subjected to anti-union

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statements, intimidation and threats (or alternatively, promises of favors and privileges) with the purpose of obtaining – as in many cases was achieved – their resignation from the committee or from employment itself, thus receiving their indemnities as if they were being dismissed. The company provided these employees with documents drafted by the company’s legal advisors to orchestrate the resignations; after they were signed, these documents were submitted to the Labor Ministry by the legal representative of the company. Vileika Ramírez, Human Resources (HR) Manager, stated to this expert that the documents were made available to employees only with the intention of assisting them in carrying out their voluntary decision to resign from their union responsibilities (with the instruction – stated by the above-mentioned person – *that they should not just sign them, but copy them fully in their own handwriting.*) It is obvious, in the opinion of this expert, that this “assistance” is not a legitimate form of assistance for employees to express their free will, but is quite the contrary, an act of flagrant anti-union interference.

The same behavior was confirmed just for some of the cases she investigated by Labor Inspector Emilse Mejía Adames. In her August 26, 2009 communication she did not issue a Notice of Violation against the company – she had previously issued a Warning Notice – as at the conclusion of the time period for the company to cease and desist with respect to intimidation acts, the employees who previously reported being subjected to such treatment confirmed that they were no longer subjected to renewed intimidation. This communication by inspector Mejía Adames would later be presented once and then again by the company and its representatives as exculpatory evidence, failing to point out that its text corroborates, rather than disclaims, the allegations in the well-documented and unchallenged Accordia investigation.

It goes without saying that the acts by Gildan-Dortex, very typical within the repertoire of anti-union activities, are flagrant violations of the norms that guarantee the right of freedom of association and have been considered as so by the ILO supervisory bodies on the application of international labor standards.

For the sake of brevity, we will come back to these norms later on in this report. Among many similar statements, the Committee on Freedom of Association stated in paragraph 858 of its Digest of Decisions and Principles,<sup>1</sup> “as regards allegations of anti-union tactics in the form of bribes offered to union members to encourage their withdrawal from the union and the presentation of statements of resignation to the workers, as well as the alleged efforts made to create puppet unions, the Committee considers such acts to be contrary to Article 2 of Convention No. 98, which provides that workers’ and employers’ organizations

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<sup>1</sup> *Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, Fifth (revised) edition. Geneva, ILO, 2006.

[http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@normes/documents/publication/wcms\\_090632.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/publication/wcms_090632.pdf)

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shall enjoy adequate protection against any acts of interference by each other or each other's agents in their establishment, functioning or administration."

The previously gathered information relating to the Gildan-Dortex case shows a systematic attitude on the part of the company and its representatives to deny acknowledgement of SITRAGILDAN as one of the unions – even if a minority union – having a role in the company. Documented information provided to this expert by the Secretariat of State for Labor illustrates the fact that in the various mediation efforts requested by SITRAGILDAN, the company's representatives invariably stated that they attended these mediations – when they did so, as in other instances they did not attend at all – "out of respect for the Ministry," denying SITRAGILDAN the right to petition.

It is particularly notable that on more than one occasion, the company disregarded the legal personality of the SITRAGILDAN union, arguing that only a union that affiliates 50% + 1 of workers can raise an "economic conflict" (Article 396 of the Labor Code) with respect to actions brought up by SITRAGILDAN, for example, violation of hours of work or of safety and health, pretending not to be aware that under the general understanding of labor law, the latter constitute "conflicts of rights" rather than "economic conflicts." Similar allegations can only be attributed to an attitude of evasion, as one cannot reasonably assume – and this expert does not make such assumption – that those who made this argument were ignorant of the law (it should be noted that Article 396 of the Labor Code has significant implications relating to this case, which will be analyzed in a subsequent section).

The discredit of the union also translates into a permanent disinterest in admitting and considering the union's positions, claims and petitions, which reached one of its most critical manifestations in the incident that occurred in late November 2010, when the company unilaterally split annual vacations, with an immediate first tranche of 7 or 8 days and a second tranche to be determined at a later date. This decision, which was not agreed by the affected employees, was challenged by SITRAGILDAN and several employees (Article 177 of the Labor Code of the Dominican Republic states that vacations may only be fragmented "...by an agreement reached between employee and employer...", a formulation that indisputably requires individual agreement). Given the dissatisfaction among employees, the HR Superintendent came forward to explain the measure to employees. A number of employees approached the HR Superintendent to listen to the explanation and make their disagreement heard, resulting in work being interrupted for a few minutes (about 20 minutes in total); after this exchange, employees were instructed to return to their work, which they did immediately.

The company deemed this incident as an illegal work stoppage, stated that the leaders of the action had been identified, and proceeded to terminate 7 employees without payment of severance, concurrently requesting the Labor

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Court to strip the immunity of SITRAGILDAN leader, Julio César Parra Natera.  
*Of the 7 terminated employees, 6 were affiliated with the SITRAGILDAN union.*

Julio César Parra Natera stated to this expert that at no time was there either the intention or an action of *stopping work*, but rather the workers were seeking to be informed or to express themselves, and that the incident did not last more than about 20 minutes. Whatever the characterization of the incident, an objective observer would conclude that the termination of 7 employees and the attempt to remove a union leader for an episode of such short duration and little relevance – lacking violent manifestations or other reprehensible conduct – constitutes *a reaction of unacceptable disproportionality and asymmetry*. In a case where a management measure of questionable legality was being questioned, it is even more so an unacceptable reaction.

The focus of the terminations makes it evident that the adopted measure was intended to retaliate against the union, consistent with policy of not tolerating any actions or claims by SITRAGILDAN. *In the opinion of this expert, this is a seriously reprehensible act, in addition to being unjustified and unwarranted, that can only be remediated by the reinstatement of the terminated employees and the retraction of the request for the removal of the union leader's immunity.*

- b. *After unsuccessful attempts to prevent the organization of SITRAGILDAN, a separate process is initiated within Gildan-Dortex to organize a second union (SITRAGIL) affiliated with the union federation CITA. At the end of November 2009, SITRAGIL, which by this time had completed its establishment and registration process, declares it has affiliated 50% of all employees and demands Gildan-Dortex to initiate collective bargaining proceedings. After rejecting on two separate occasions SITRAGIL's request, arguing that the register of affiliated employees included names of persons not currently employed or whose personal information did not match employee records, on February 2, 2010, Gildan-Dortex informed SITRAGIL that "they have confirmed that 460 affiliates of SITRAGIL are in fact employees eligible to form a union...," thereby satisfying the requirements of Article 109 of the Labor Code, regarding collective representation of company employees, and declaring that they are willing to negotiate a collective labor agreement. The willingness of Gildan-Dortex to accept SITRAGIL as the majority union through a simple check of the names of affiliated company employees would be in itself surprising, except if it is considered as a component of the strategy of Gildan-Dortex to halt any and all actions by SITRAGILDAN to consolidate itself as the representative union and request the negotiation of a collective labor agreement. Gildan-Dortex could not have ignored the existence of a union previously created in the company (SITRAGILDAN) that had already concluded its formal establishment (even earlier than SITRAGIL). Besides, a union that, informed of SITRAGIL's actions and the company's receptiveness to them, had expressed to the company, through a document delivered on December 2 by a bailiff, its opposition to the recognition of SITRAGIL as a majority union (and to any subsequent negotiation) affirming at that time that SITRAGILDAN "had affiliated a majority of the*

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employees.” At about the same time, reservations regarding the legitimacy – so to speak, authenticity – of SITRAGIL were expressed by FLA, WRC, the International Textile, Garment and Leather Workers Federation, the AFL-CIO Solidarity Center and the Maquila Solidarity Network.

Gildan-Dortex, represented by its Human Resources Manager, Vileika Ramirez, on December 14, 2009, acknowledged awareness of said opposition and added that Gildan “...will not oppose the negotiation of collective agreements regarding working conditions ... requested of them *if and when it is irrefutably demonstrated, and our company has verified, to comply with all requirements established in Article 109 of the Labor Code.*”

This reasonable conditioning (*irrefutable evidence and subsequent verification*) in no way conforms with the decision by the company shortly afterwards to accept the majority representation of SITRAGIL by means of a single check that the names of affiliated employees are in fact employed and eligible for affiliation. It could hardly be argued that the mere presentation of a list of employees constitutes *irrefutable evidence* of affiliation. Even less so, that the verification of those listed are actually employed by Gildan would constitute the *subsequent verification* to which the company had committed. Particularly in a case such as this one, in which another union was disputing representation and *had presented a formal challenge to the recognition of SITRAGIL’s majority*, and in which prestigious international organizations had eloquently expressed warnings to Gildan. In a case such as this, the company should not have granted this acknowledgement without requiring an impartial and objective verification from a third party of unobjectionable independence, as to which of the two unions – if any – possessed the alleged condition. The argument expressed by the company in various subsequent instances that a more rigorous investigation (regarding which union held the majority representation) may have been seen as an act of interference, is not a serious one, and in no way acceptable. On the contrary, there could have been interference – and certainly there was – in accepting, under questionable circumstances and despite warnings, the majority status of one of the unions without complying with the logic Gildan-Dortex imposed on itself in the December 14 note: *irrefutable evidence and subsequent verification*.

This evident transgression – of good sense and good faith – had close connections with previous actions, current actions and actions that would occur in the future. *Previously*, with actions aimed at preventing the creation of SITRAGILDAN and continued anti-union activities in detriment of SITRAGILDAN, actions that have been reliably documented (as in this case), combined with warnings from diverse sources. *Later*, with the *fictitious* negotiation of a CBA, to which we will devote the next section, that constitutes, in the opinion of this expert, *the core and keystone of this case. During its entire course*, to conclude, with the questionable status of CITA and its affiliated unions, so eloquently discussed by the WRC in its January

20, 2011, Interim Report,<sup>2</sup> on page 5 and subsequent pages, to which I refer readers for the sake of brevity (in the following section, this expert's report will provide additional supporting elements). In such an active context, the complacent conduct by Gildan-Dortex with regards to SITRAGILDAN can only be interpreted as an eloquent manifestation of Gildan's strategy, a strategy – as discussed below – difficult to conceal.

A subsequent investigation by the Fundación Laboral Dominicana (FLD) confirmed the lack of authenticity of this process. Among many other valuable points, FLD's report brought into evidence that 62% of SITRAGIL's registration cards in the random sample selected (covering 10% of all employees) were not acknowledged by the employees that supposedly were members, who denied being affiliated with SITRAGIL. Due to negligence – or bad faith – Gildan-Dortex bestowed majority representation and agreed to a CBA with a union that did not hold the majority representation, *thereby causing gross damage to the majority of company employees* (depriving them of their right to authentic representation of their interests); causing injury to SITRAGILDAN, the union that aspired to the majority position usurped by SITRAGIL, and doing the same with respect to *the principles and values of freedom of association, rights that the Dominican Republic, by virtue of its ratification of ILO Conventions 87 and 98, is obligated to guarantee*.

### **3. Regarding the Negotiation of a Collective Bargaining Agreement**

In the present case, Gildan-Dortex entered into a collective bargaining agreement with *erga omnes* application with a union that alleged representation that – as is clear today – it never possessed.

Information and testimony regarding the virtually covert nature of the negotiations are numerous –the employees, SITRAGILDAN, and third parties (among them FLA and WRC) became aware of the negotiations after they had concluded – and therefore I will not dwell on such a level of unjustifiable discretion.

The lack of representativeness of SITRAGIL at the time of initiating negotiations with Gildan-Dortex by itself determines the nullity of the CBA as an instrument with general application. In the judgment of this expert, however, this lack of representation is just one of the factors determining its nullity, but perhaps not the most grievous one. In his view, this CBA is a *fictitious* instrument that does not meet the required minimum conditions to be recognized as such, as it is not the product – as is proper in the case of collective bargaining – of a *bilateral interchange about the determination of labor and employment conditions between parties in a situation of relative negotiating balance*, but rather a product of an atypical exercise – outside of the realm of authentic collective labor relations – I

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<sup>2</sup> *Workers Rights Consortium Assessment re: Gildan Dortex (Dominican Republic)*, Interim Report, January 20, 2011. [http://www.workersrights.org/freports/WRC\\_Interim\\_Findings\\_re\\_Gildan\\_Dortex%201-20-11.pdf](http://www.workersrights.org/freports/WRC_Interim_Findings_re_Gildan_Dortex%201-20-11.pdf)

would dare call **rewarded or compensated unilateralism** (a choice of terms that I propose to justify below).

The following will be examined: the conditions for the negotiations; the negotiation process and in particular its peculiar duration; and finally, its contents.

*a. Conditions for the negotiations*

According to information collected by the expert, the negotiation was conducted at the Quality Inn Hotel in Santo Domingo. The costs of the negotiation were borne by the company, with the HR Manager leading the negotiation process for the company, controlling the agenda, *and playing the mediation role between the company and the general secretariat of the union*. Lic. Cruz Campillo assumed responsibility for drafting all agreed upon clauses.

SITRAGIL presented a draft or list of demands to start the negotiations that, as explained by company representative Lic. Cruz Campillo, was based on negotiations that another union affiliated with CITA had conducted with Industrias San Miguel del Caribe, S.A. The company, Lic. Cruz Campillo explained to me, deemed that it was not appropriate to negotiate based on an agreement in a different sector of the economy, and requested to conduct the negotiations based on a list of demands drawn up by Gildan-Dortex based on the collective bargaining agreement at Hanesbrands Dos Ríos Textiles – a factory in the same industrial sector as Gildan-Dortex – and this was accepted. Take note that in the initial stages of the process, *it was the company that determined the integral basis for the negotiation*.

*b. The duration of the negotiation process*

Examining the situation from the viewpoint of duration/schedule of negotiations, they lasted 15 days. In terms of local experience, and experiences elsewhere, this is an unusually brief period of time – almost unexplainable – for reaching agreement during a first collective bargaining negotiation (as I was informed, the negotiation of the “model” contract – the Hanesbrands agreement – had taken between four and five months of negotiations; this time frame is normal – more or less -- for this type of negotiation).

If such speedy negotiation is perplexing, more so is what emerges from examination of the transcripts documenting the negotiation process, full copies of which were provided to me by Gildan-Dortex. The entire negotiation process took place in four meetings, held on the following dates: February 11, 18, 24 and 26. We will review each one, with regard to time span and contents:

- i. The first meeting took place on February 11, 2010. Its content was entirely formal. The meeting commenced at 4:20 p.m. and concluded at

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5:45 p.m. The negotiators were introduced, it was agreed that the union negotiators would receive paid leave during the negotiation process, communication channels among the parties were established, and an agenda for future meetings was presented. The first substantive meeting was scheduled for February 18, 2010 at 4 p.m. and the clauses to be discussed on that occasion were proposed (a total of 14 clauses, according to the document).

- ii. The second meeting was held on February 18, 2010; the meeting commenced at 4:10 p.m. and concluded less than three hours later (at 7:01 p.m.). During this time span, in addition to many formal clauses, the general principles for the interpretation and application of the agreement were agreed upon (7 sections); so were the rights and obligations of the parties involved, among them critical management faculties of the employer (8 sections), obligations of the employer, employees and union (including the agreement not to conduct collections, protests, shutdowns, strikes, acts of sabotage, or dissemination of propaganda of any kind); the facilities provided to the union for the exercise of its responsibilities, union immunity and anticipated loss thereof (this last point is established in a lengthy clause setting out the conditions under which a leader may relinquish immunity protection); the conditions for granting the Christmas bonus; hygiene norms, wellbeing and industrial safety (11 sections and two additional paragraphs); accommodations for employee meals and transportation and employee participation in the management of both services; provision of dinner and breakfast for the night shift; maternity leave regulations, working hours – the oft-mentioned 4x4 system – and its payment scheme, overtime and night work. Finally, the concluding sections of the collective bargaining agreement were agreed, among them the commitment to peace offered unilaterally by the union, the term of the collective agreement (three years), procedures for complaints and conflict resolution and the creation of a Bilateral Commission to channel union–company relations (the parties agreed that no judicial, or extra-judicial proceedings would be initiated until all steps in the alternative resolution process created by the agreement had been exhausted). All of this, as stated in the transcript, was agreed in two hours and fifty-plus minutes of meetings, during which 15 pages were transcribed capturing the respective clauses. As the transcription of the clauses alone would have taken up a good portion of the reported duration of this meeting, it is safe to assume that either the clauses were already written prior to the meeting or that the signatures were added at a later time. *It is not necessary to look at the situation too critically to note that it would have been extremely difficult for there to have been substantive debate, alternative proposals, exchange of ideas, discussions and disagreements about topics so crucial to the interests of the company, the union, and*

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*each and every employee. In the aforementioned context of these “negotiations,” it is obvious that the company imposed those conditions.*

- iii. The third meeting, held on February 24, 2010, had a duration just 15 minutes longer than the previous one (between 4:20 p.m. and 7:26 p.m.) In addition to the points agreed to be discussed at this meeting, *Gildan-Dortex indicated that it was proposing the introduction of the following clauses: 1. Payment of benefits in the event of employee death; 2. Paid leave.*” There was unanimous approval of clauses regarding non-working days (holidays), paid vacations, contribution for costs of funerals for relatives of workers, benefits in the event of employee death, (proposed by the company), compensation for matrimony, leave for union activity (including fares, paid leave for matrimony, death, or giving birth by wife or concubine (set as one day less than the agreement used as a model), *union dues* (the company agrees to pay the union DR\$60 (60 Dominican pesos) for each worker eligible to belong to the union (that is, eligible to join a union, whether or not they have affiliated), a contribution for the celebration of International Labor Day, meals and travel expenses, complementary health insurance, contribution for the Christmas festivities. At the end of the transcript, there is a brief statement titled “SITRAGIL Proposals” to be taken up at the last meeting – scheduled for Friday, February 26 – dealing with “Scholarships” (it is noted that a counteroffer needs to be developed to counter the offer presented by GILDAN) and “payment of rent for union offices” *probably one of the very few not proposed by Gildan.*
- iv. The last meeting took place on February 26, 2010. It commenced at 9 a.m. and concluded at 2:25 p.m., at which time the work of the negotiating committee was declared as concluded. During this meeting agreement was reached on rules regarding annual vacations, payment of employee benefits in the case of employee resignation, the creation of an Education Fund, the contribution for rental of union offices and *pay increases for all three years!* (Including determination of workers to receive the increases, increase percentages and disbursal method). It was also made clear that pay increases would be calculated using the base salary, without including overtime, night shift incentives, production bonuses, Christmas bonus or any other worker compensation. Under the rubric “other approved clauses,” *there was text amending the faculties of the employer to state that “the employer may terminate employment contracts as provided by the law without the intervention or authorization of the union” and that the employer may carry out temporary “shut downs” as required by operational company needs without the need to consult or obtain previous authorization from the union*” (undoubtedly, these clauses were not added at the behest of the union, and their discussion did not take up much time). The members of the Union Council who would hold *fuero sindical* were defined, as was

the term of the collective agreement. As stated in the transcript, all of these agreements – plus the statements of mutual recognition added at the end of the transcript – were made, transcribed (and evidently, signed) in those 5 hours and 25 minutes.

*c. Critical evaluation of the agreement with regards to its content.*

Only a few clauses that were agreed upon come from a model that differs from the one chosen by Gildan-Dortex, namely the Hanesbrands CBA. Such is the case with regard to the surprising clause requiring payment by the company of “compensation for union dues...for each employee eligible to belong to the union...” (Section 4.06), which can be found in the CBA between Industrias San Miguel del Caribe, S.A. and the union in this company, affiliated to the same union federation as SITRAGIL (CITA). The original list of demands presented by SITRAGIL (later substituted by a list elaborated by the company based upon Hanesbrands’ CBA) aimed to collect from the company “a compensation of RD \$150 for each employee working for the company.”

While Gildan-Dortex initiated negotiations based on a CBA currently in effect at Hanesbrands (henceforth HBCBA), it selectively chose clauses from the mentioned CBA.

In effect:

1. It eliminated the provision in the HBCBA that establishes that the rights of the company cannot be contrary to the CBA “in its letter and spirit” and that the exercise of these company rights “may ... in no way cause damage or injury to its employees.”
2. It eliminated a clause relating to freedom of association (IV2 of the HBCBA) that establishes the commitment of the company not to “discriminate against the union or any of its members for their participation in union activities, and to respect the freedom of association guaranteed by the laws of the Dominican Republic and International Conventions ratified by the Dominican Republic.”
3. Section 5.13 omits some rights and benefits which were agreed in the HBCBA for expectant and recent mothers; for example, the accumulation of the three daily breaks into a single period of one hour for lactation, the granting of one full workday for pediatric consultation, and the provision of a one-time amount of RD\$1500 for expenses related to childbirth or the post-partum period.

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4. The Gildan/SITRAGIL CBA does not include the Employee Motivation Recognition Program included in Section V.14 of the HBCBA.
5. Section 6.09 of the Gildan/SITRAGIL CBA recognizes the same paid leaves as the HBCBA (marriage, death of a close relative, childbirth), although in the new agreement *one fewer day is provided for each of these leaves* in comparison with those in the HBCBA.
6. The Gildan/SITRAGIL CBA does not provide for the creation by the union of a Credit and Multiple Services Cooperative for the benefit of employees, with an initial contribution by the company; such facility is included in section VI 14 and subsequent sections of the HBCBA, with up to a maximum of RD\$400,000 provided by the company.
7. **The keystone:** While in the HBCBA – section IV.7 – the company commits to act as an agent of the union, deducting union dues as established by the union from employees affiliated with it who have consented to such deduction, section 4.06 of the Gildan/SITRAGIL CBA establishes that the company will pay the union “for compensation of union dues, the sum of sixty Dominican pesos (RD\$60) for each worker eligible to belong to the union” (50% for SITRAGIL and 50% for CITA). This clause, due to its relevance, merits further commentary provided below.
8. In section 4.07, relating to union leave, in addition to minor differences, the company agrees to provide RD\$10,000 to each designated union executive related to attendance at Conventions and International Assemblies, “to assist in the acquisition of airfare to attend...” (SITRAGIL/CITA authorities informed me that they had requested full reimbursement for such costs, but the company had not agreed).
9. **Salary increases.** Section 5.02 of the Gildan/SITRAGIL CBA, regarding salary increases, differs from the previous agreement with respect to the salary increase percentages and how they are applied. In the Gildan-Dortex agreement the increases are 4%, 5% and 5% for direct employees and 7%, 5% and 4% for indirect employees for 2010, 2011 and 2012. As counsel for Gildan-Dortex explained to me, increases to the minimum wage granted biannually by the Comité Nacional de Salarios do not normally apply to Gildan, because employee compensation, including production bonuses, is normally above the minimum (this was confirmed by SITRAGILDAN leaders who are less clear on the cause of this circumstance). Therefore, the increases provided in this section of the CBA are practically the only salary increases for Gildan employees during the three years.

If we take into account that, as informed by the Central Bank of the Dominican Republic, the evolution of consumer prices – inflation – during the year preceding this agreement, was 5.76% and in the year 2010 it had

increased to 6.24% (expectations for the current and coming year are for inflation not to be any lower than in 2010), *the successive increase of 4%, 5% and 5% are not improvements, rather a cumulative loss of the purchasing power of wages.* As with the other clauses in the agreement – including those granting a certain right to workers – the clause on salary increases was imposed by the company and agreed together with several others in the last negotiating meeting, which took place on February 26. SITRAGIL does not appear to have attempted to negotiate higher increases; had it attempted this (according to universal experience in the matter of collective bargaining), it would have resulted in long and successive discussion sessions, not exempt from confrontation and conflict, as happens in debates over wages. *The evidence suggests that the apparent negotiation, not just of this crucial clause – but of other clauses as well – did not give rise to any true debate (the time frames of the process do not permit any other conclusion).*

In addition, as another manifestation of unconcealed unilateral actions, Gildan-Dortex kept out of this purported exercise of negotiation and exchanged the possibility for revision of the rest of the components of economic compensation. Some are of great importance, for example, the so-called “production bonus.” In the context of the circumstances of this case, it is not surprising that SITRAGIL did not request their discussion.

10. Sections 6.03, 6.04 and 6.05 of the Gildan/SITRAGIL agreement relate to Compensation for Marriage, Contribution for Funeral Expenses for Family Members and a Contribution for Funeral Expenses for Employee Death, also included in the HBCBA. The monetary grants are larger in the new agreement, although these are benefits only payable upon contingency (marriage or death).
11. As in the HBCBA, section 6.06 establishes the payment of Labor Benefits in the event of employee death to surviving family members, in an amount higher than that established by law – both agreements set the amount at the value of payments for notification of intention to dismiss and retirement assistance – with both the HBCBA and the Gildan/SITRAGIL CBA stating that this benefit *constitutes a company initiative* “aimed at granting employee families a greater benefit than that established by law, to ease the difficult moment they are going through ...”

This expert has attempted to describe with the utmost detail the time spans and contents of the alleged negotiation to express his opinion that it *was an impossible negotiation, a non-existing negotiation, a fictitious negotiation.* The company drives the process, imposes the list of demands, mediates, chooses the clauses that would remain, those that would be deleted or for which the level of protection would be reduced, agrees to the rights it is interested in assimilating from those recognized by the CBA of a competitor (not necessarily in the same

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measure), fixes salary conditions (which in no way appear to benefit employees), drafts the clauses of the agreement ... all in a time frame that can only be explained by the **unilateralism** it exercised during this process. Thus, an agreement that includes dozens of complex provisions affecting important interests of the parties whose negotiation would have required exchange, deliberation, debate confrontation and even conflict – then endless hours of negotiation that, in practice, normally occur during several months of bilateral exercises – is concluded (not taking into account the formal meeting) in three meetings spanning fewer than 12 hours (in labor terms, one and a half workdays, including the material task of transcribing the long texts).

This consented **one-sidedness** has a *generic* explanation – the orientation of CITA and the fact that Gildan-Dortex had facilitated its introduction into the company – and one determining *specific* explanation: at *Gildan-Dortex, union dues are not paid by employees affiliated with the union, but are paid by the company*. In addition, Gildan does not only pay union dues for affiliated employees, but for all employees eligible for affiliation. Therefore, we are dealing with **compensated unilateralism** that irreparably and radically disqualifies the resulting agreement.

The inferences are obvious: if the primary means of financing unions (in addition to other possible resources) is the dues paid by its members, *the company has established itself as an almost exclusive source of financing, grossly violating Article 333, subsection 5 of the Labor Code,<sup>3</sup> the principle of union purity and of non-interference-, that governs in the Dominican Republic by virtue of Article 2 of ILO Convention 98, timely ratified by the Dominican Republic*. Of course, in view of such a remarkable provision, SITRAGIL does not need to identify or request the authorization to make deductions from the salary of its affiliates – as I was informed by Vileika Ramírez, Gildan-Dortex discontinued this practice, when the “CBA” went into effect – as there is no deduction to make or employees that need to be distinguished for purposes of deducting dues.

During consultations held by this expert, he was informed that this type of clause is not generally found in the practice of collective bargaining in the Dominican Republic, just found in agreements involving unions affiliated to CITA (it is present, for example, in the agreement between Industrias San Miguel del Caribe, S.A. and the Autonomous Union of Employees of the San Miguel del Caribe Company/CITA, a copy of which is in the hands of this expert) in its section 4.06, which establishes the same amount as in the Gildan/SITRAGIL Agreement for each employee “eligible to belong to the union.”

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<sup>3</sup> Prohibits employers “from interfering in any manner with the creation or administration of unions or supporting them by financial or any other means.”

As with any rule prohibited by law – in this instance, I reiterate, Convention 98, which is current law in the Dominican Republic and Article 333, subsection 5, of the Labor Code – the subject clause is undeniably null. *With one special feature: if the lack of validity of this particular rule contributes to explaining the absence of negotiations and real interaction – the unilateralism we have pointed out above – its nullity is not limited to just one provision, but is projected throughout the entire document that, as explained above, is not truly a collective agreement.*

Suffice it to say – just as an additional consideration -- that the circumstances of the negotiation process discussed above confirm *ex-post* what the establishment and accreditation of SITRAGIL permitted to predict *ex-ante*: this is not an independent union, and a union that is not independent cannot (and *should not*) participate in the collective negotiation process. This has been stated by the Committee on Freedom of Association, when in paragraph 966 of the Digest of Decisions and Principles of the Committee on Freedom of Association expresses that “... the participation in the collective negotiations and signing of agreements derived thereof, necessarily implies *the independence of the signing organizations with respect to the employer or employing organizations, as well as public authorities*. Union organizations may participate in negotiation if and *when they demonstrate the effectiveness of this Independence.*” In addition, paragraph 967 states that “...the determination of eligible organizations to sign collective agreements, must meet two criteria: *that of representation and independence*. According to the Committee, the organizations that meet these criteria, should be declared as such, by an entity that offers a guarantee of independence of objectivity.” In the case at hand, SITRAGIL has *neither demonstrated independence nor representativeness*, depriving the Agreement that emerged from its relations with Gildan-Dortex of a sense of reality.

#### **4. Regarding Current Legal Proceedings**

With regards to legal proceedings currently in process, it should be pointed out that Gildan-Dortex – despite its rigorous obligations to remediate – *has not been willing* and, to a certain extent, *is not able to respond to them before the courts*.

This expert maintains that Gildan-Dortex *has been unwilling* to respond to legal proceedings because by doing so it brings out the following circumstances:

- a. In the so-called “acción de referimiento,” Gildan-Dortex strongly opposed the acceptance of SITRAGILDAN’s claim and the resulting suspension of the implementation of the Collective Bargaining Agreement, claiming that “...suspension of the collective agreement would cause injury and disturbance to 941 employees that, retroactive to February 20, 2010, have been benefitting from the terms of the collective agreement...” and that “...the work environment within the company would be altered by accepting such an anomalous request... causing suspicion, confrontation, and a possible production interruption, which could translate into considerable losses to Gildan Textile” (this is Gildan’s allegations,

*taken from the judgment rendered during this proceeding).* Once again, it might be said that this is evidence of disinterest and bad faith in satisfying remediation obligations, if one did not wish to attribute to it a flagrant ignorance of the law. Gildan-Dortex could not ignore that a basic principle of Labor Law is the so-called “minimum standard rule,” which proclaims that neither the employer on its own nor the parties’ individual agreement can establish labor conditions below the minimum standards established by law and any applicable collective agreements, yet *there exists no impediment to introduce or maintain higher conditions.* Thus, even if hypothetically the implementation of the agreement was suspended, Gildan-Dortex could have prevented a “critical situation” by maintaining, without harm (to employees and to third parties), the rights that the collective agreement – hypothetically suspended – already granted workers.

*It is evident that if Gildan-Dortex, instead of opposing the request to suspend the collective agreement (a request that was described by the company as “aberrant”), would have stood by its commitment to maintain – even with the suspension of the agreement – the improved conditions that said agreement granted employees, the verdict of the magistrate might have been different.* Consider that the magistrate states in her ruling that this request could not be granted for the mentioned reason, expressed in the supplementary SITRAGILDAN document, which limits its claims to the suspension of clauses “...that are detrimental to the workers...” excluding those that favor them. As the magistrate expresses, “... the supplementary document should make reference to aspects considered by both parties involved in the proceedings... (and) cannot modify the claims presented in the initial suit and hearings ...” as it would violate the rights of the other party. An early expression by Gildan-Dortex of its will to maintain such benefits would have mitigated some of the concerns about the suspension of the agreement and would have impaired neither the rights of defense nor the rights of third parties.

- b. Within the legal action brought on by SITRAGIL against Gildan-Dortex for noncompliance with the CBA, the counterclaim by the latter had no grounds to proceed, despite the fact that Gildan-Dortex had at this time (if it did not have it at a much earlier time) clear consciousness of the false representation incurred by SITRAGIL. The company did not firmly demonstrate the falseness and did not use the instruments of proof at its disposal (false affiliation registers, testimony of affected employees, reports of calligraphic experts, etc.) and limited its evidence to a copy of the Fundación Laboral Dominicana study,<sup>4</sup> which did not identify the specialists who conducted the investigation, did not include their signatures, and was not intended as evidence with probative value. The defense should have used this report as an element to build its own defense and not utilize it as evidence, since that was not its intention when it was conceived. In any case, to provide consistency to their allegations and better support the claim of falsehood (which they failed to do), they should have provided evidence to support the FLD investigation, such as

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<sup>4</sup> The FLD report is available at <http://www.fairlabor.org/images/stories/fairlabor/FLD-GildanReport.pdf>

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an authenticated document from this institution, accounting for its authorship and authenticity, backed-up with testimony from the authors.<sup>5</sup> These actions were not taken by the Gildan-Dortex defense, and it is hard to believe that they ignored that this is what is required in a trial. Without impugning SITRAGIL's false representativeness (a representativeness Gildan-Dortex inexcusably accepted), Gildan-Dortex sought to turn the court into the agent who would determine with historic and retroactive effect (and, without even providing evidentiary proof to enable the court to do this), if SITRAGIL had in fact, at the time that the *fictional* CBA was signed, sufficient representativeness to negotiate. Needless to say, the rules of procedure of the Dominican Republic – closely analyzed by this expert – do not attribute this function to the judicial system, a function that, as supported by the scientific literature regarding this matter, should be exercised – if so requested – by the Labor Department or any other independent institution commissioned by the parties involved to do so.

*Too many deficiencies, too many oversights to believe that they were only a product of ignorance.*

I call attention to the fact that Gildan-Dortex has not exercised its right to appeal this sentence (an appeal on which, in any case, not many expectations can be placed). When consulted, Mr. Cruz Campillo stated that they have not exercised this right because it would require that they pay in advance twice the amount of the settlement.

- c. Finally, with respect to the proceedings seeking to annul the CBA filed by SITRAGILDAN against Gildan-Dortex and SITRAGIL – proceedings still in their preliminary stage – a reading of Gildan-Dortex's defense provides evidence, once again, of the lack of interest on the part of the company in complying with its remediation obligations and with seeking the annulment of the agreement. It is not the case that Gildan assumed a “neutral” stance (recall its commitments regarding the remediation obligations imposed by the FLA and WRC<sup>6</sup>). On the contrary, Gildan-Dortex defended the authenticity of the agreement and the consistency of its contents, *avoiding any reference to the by then well established falseness regarding the representativeness of SITRAGIL*. Could Gildan have done better in complying with the remediation obligations? At least, it could have accepted SITRAGILDAN's claim, acknowledging the false representativeness of SITRAGIL, based on the FLD's investigation results. *In light of prior behavior, these reticent actions should not be surprising.*

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<sup>5</sup> This absence did not go unnoticed by the presiding judge, who stated in the rulings that “...the defendant, in order to support the possible annulment of the agreement concluded with ... SITRAGIL submitted a report related to a review of the negotiations of the collective bargaining agreement between Gildan... and SITRAGIL... which does not indicate who elaborated the report is not recorded, due to the fact that it is not signed by the person responsible for collecting the data, which is why it is not deemed as irrefutable evidence.”

<sup>6</sup> Copies of the recommended remediation by FLA and WRC, along with company responses, are available as annexes 2 and 3 to the FLA “Interim Report: Third Party Complaint Regarding Gildan-Dortex,” January 11, 2011. [http://www.fairlabor.org/images/stories/fairlabor/Gildan\\_Report\\_011011.pdf](http://www.fairlabor.org/images/stories/fairlabor/Gildan_Report_011011.pdf)

To conclude this section, let us recall that at its start, this expert stated that Gildan-Dortex is unwilling, but to some extent is unable, to comply with some of its remediation obligations, at least in the legal arena.

We have seen what they would have been able to do, but have not done, which leads us to conclude that *they have not had the will to act*. Let us now add that *they would have been unable* – and will be unable – to argue against the most outrageous factors that make for the nullity of the CBA (its fictitious nature, unilateral actions by management, the provision regarding financing of the union which violate numerous principles and norms, among others), as they would be prevented from doing so by one of the oldest and most conclusive legal axioms which states: *nemo turpitudinem suam allegare potest*, that is, that no person can argue his own turpitude, or *nemo turpitudinem suam allegans auditor*, that is, that no person alleging his own turpitude is to be heard.

In the last section of the report, this expert will discuss actions that Gildan-Dortex is able to perform to remediate, to the extent possible, its transgressions (to international conventions, national laws, and the obligations imposed by the FLA Code of Conduct). Before doing that, I will attempt to summarize these violations.

## 5. Regarding Norms that Gildan-Dortex Has Violated

Gildan-Dortex has violated Articles 1 and 2 of ILO Convention 98, as it has engaged in systematic and recurring acts of anti-union discrimination to the detriment of SITRAGILDAN, its leadership and its members, and of interference, as many of its actions are among those that “are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers...” It has also violated Convention 87 in general terms, as its actions have been contrary to the observance of the principle of Freedom of Association, and in particular its Article 2 and related articles, as it has obstructed the right of workers to form organizations of their own choosing and, in particular, to organize their activities and formulate their action plans (the right of SITRAGILDAN and its affiliates to bargain collectively has been manipulatively denied).

Gildan-Dortex has violated Articles 107 and 109 of the Labor Code of the Dominican Republic as, knowingly, it recognized the representativeness of a union that did not meet the requirements, while denying the same to another one that sought representativeness, without giving the opportunity for the latter union to demonstrate it met the requirements.

It has also violated most of the paragraphs of Article 333 of the Labor Code of the Dominican Republic, as it has demanded workers not to associate with a union and has induced workers to associate with another (para. 1), has retaliated against workers for their union activities and has dismissed them because they belonged to a union (paras. 2 and 3), has declined to enter into negotiations toward a collective agreement with SITRAGILDAN (para. 4), *has intervened in the formation of a union and has supported it financially* (para.

5), has refused to deal with the legitimate representatives of workers (para. 6), and has used intimidation, threats and other forms of coercion against SITRAGILDAN and its affiliates to impede or create obstacles for their exercise of the rights embodied in the law for their benefit (para. 7).

Gildan-Dortex has violated the following FLA Compliance Benchmarks (revised November 6, 2006):

- **FOA.1 (General Compliance Freedom of Association:** Employers shall comply with local laws, regulations and procedures concerning freedom of association and collective bargaining);
- **FOA 3 (Employer Interference and Control:** Employers shall refrain from any acts of interference with workers' organizations, *including acts which are designed to establish or promote the domination, financing or control of workers' organizations by employers*);
- **FOA.7 (Employer Interference/Favoritism:** Employers shall not interfere with the right to freedom of association by favoring one workers' organization over another);
- **FOA.5 (Employer Interference/Constitution, Elections, Administration, Activities and Programs:** Employers shall not interfere with the right of workers to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programs);
- **FOA.10 (Anti-Union Violence/Harassment/Abuse:** Employers shall not in any way *use violence against, threaten, intimidate, harass or abuse workers seeking to form or join workers' organizations or workers participating or intending to participate in union activities, including strikes*);
- **FOA.12 (Anti-Union Discrimination/Dismissal, Other Loss of Rights, and Blacklisting:** *The employer shall not engage in any act of anti-union discrimination*, i.e., shall not make any employment decisions which negatively affect a worker, based wholly or in part on a workers' union membership or participation in union activity, *including the formation of a union*, previous employment in a unionized facility, participation in collective bargaining efforts or participation in a legal strike. Employment decisions include: hiring; termination; job security; job assignment; wages; bonuses; allowances; all other forms of compensation and benefits (social security, retirement, health insurance, etc.); promotion; downgrading; transfer; (vocational) training; discipline; and assignment of work and conditions of work including hours of work, rest periods, annual holidays with pay, and occupational safety and health measures. The use of blacklists used to contravene the exercise of the right to freedom of association, for instance blacklists based on union membership or participation in union activity, also constitutes anti-union discrimination);
- **FOA.19 (Right to Collective Bargaining/Good Faith:** Employers and worker representatives shall bargain in good faith, *i.e. engage in genuine and constructive negotiations and make every effort to reach an agreement*);
- **FOA.20 (Right to Collective Bargaining/Exclusive Bargaining and Other Recognized Unions:** Employers shall bargain with any union that has been recognized by law or by agreement between the employer and that union, provided such agreement does not contravene local law, as a – or the exclusive – bargaining agent for some or all of its workers);

- FOA.23 (**Right to Collective Bargaining/Validity of Collective Bargaining Agreement:** Collective bargaining agreements that have not been negotiated freely, voluntarily and in good faith *shall be considered not applicable*. Provisions in collective bargaining agreements that contradict national laws, rules and procedures or offer less protection to workers than provisions of the FLA Code shall also be considered not applicable);
- FOA.24 (**Rights of Minority Unions and their Members:** Trade unions not recognized as a bargaining agent of some or all of the workers in a facility shall have the means for defending the occupational interests of their members, including making representations on their behalf and representing them in cases of individual grievances, within limits established by applicable law);
- FOA.27 (**Restoration of Worker Rights/Reinstatement:** Workers who have been unjustly dismissed, demoted or otherwise suffered a loss of rights and privileges at work due to an act of union-discrimination shall, subject to local laws, *be entitled to restoration of all the rights and privileges lost, including reinstatement if they so desire*).

## 6. Regarding the Legal Facts of the Case and the Conclusions

The case underlying this report consists of a series of anti-union activities undertaken by local management of Gildan-Dortex, with the objective of impeding the formation of SITRAGILDAN. When these efforts failed, management sought the introduction of a union that was at least accommodating, the uncritical acceptance of a majority that was questionable and was questioned (and whose lack of representativeness was later fully proven), *and the quick conclusion of a collective bargaining agreement that is not really so*. It is null because of the lack of representativeness of one of its parties and of the unreality of the alleged bargaining that took place. The agreement is in fact the expression of management's unilateral will, which allowed the company to prevent an authentic expression of union rights. **Unilateralism that is rewarded** through a clause that is a most clear and flagrant manifestation of interference and of violation of the principle of union purity.

Such radical and irreparable nullity will not be realized until there is a sentence issued by a court that reaches such conclusion. This will not occur so long as Gildan-Dortex continues to not fully cooperate and the legal actions pursued by SITRAGILDAN do not come to a conclusion, *supported by a consistent effort of challenge and presentation of evidence*. As mentioned above, there are some actions in which Gildan-Dortex cannot take the lead before the courts. *because doing so would mean that it would have to argue against its own transgressions and the illegality of many of its acts, that is to say, against its own clumsiness*. It would be fitting, therefore, to expect at a minimum, that Gildan-Dortex would promptly denounce the existing CBA and concentrate its efforts on reaching an agreed termination of the CBA with SITRAGIL, at least with respect to those clauses that constitute flagrant violations of the principles of freedom of association and non-interference.

Meanwhile, *not only is it possible, but it is also absolutely necessary, to immediately carry out actions to establish, through independent and unobjectionable agents and objective and*

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*transparent means, the true representativeness of the unions present in the factory.* I hold the view that, even with the challenged CBA in place, the determination of representatitiveness is urgent and unavoidable for the following reasons:

- a. The questioning of the representativeness – more to the point, the confirmation of the falseness – by a recognized and prestigious institution as is the Fundación Laboral Dominicana.
- b. Questioning of representativeness by SITRAGILDAN before and after the company's action and this union's frequent allegation that it had reached the higher level of representativeness (50% + 1) which, if true, would have disqualified the majority claim made by SITRAGIL.
- c. The need to establish the titularity of such representation, even if the CBA with SITRAGIL were to remain in place. There are other acts to be performed by a union that require establishing representativeness beyond the negotiation of a collective bargaining agreement. For example, Article 396 of the Labor Code of the Dominican Republic requires that a union meet the same representativeness condition as for the negotiation of a collective bargaining agreement in order to raise an economic conflict. It is true that it is not possible to initiate an economic conflict action for the purpose of modifying provisions of a collective bargaining agreement that is in effect (Article 398 of the Labor Code), but “*a contrario*” it is possible to do so with respect to all issues – there are many -- not covered by that CBA.
- d. Moreover, the mentioned Article 398 of the Labor Code sets out the aforementioned restriction to modify an extant CBA “*except otherwise agreed.*” It would therefore be possible *even to revise the collective agreement, as it addresses the direct interests of workers, negotiating with the union that has the greatest representativeness*, so long as for the time period when the pact with SITRAGIL is in effect, whatever is agreed would be more favorable for workers, as no one would have genuine interest in questioning agreements of this nature. *Gildan-Dortex, as a component of remediation, should express its willingness do to so.*
- e. Surprisingly (or perhaps, as expected ...) neither of the parties has pointed out that it is essential to know the number of affiliates of each union since, as set out in the last part of Article 390 of the Labor Code of the Dominican Republic, “...in instances where in one enterprise more than one union or more than one professional or branch union operate, the “*fuero sindical*” is distributed proportionately among the different unions according to the number of dues paying members of each one.”

The Committee on Freedom of Association has pointed out once and again the need for frequent, impartial, and objective verification of the majority character of a union. Thus, paragraph 960 of the mentioned Digest of Decisions and Principles of the Freedom of Association Committee states that, “If a union other than that which concluded an agreement has in the meantime become the majority union and requests the cancellation of this agreement, the authorities, notwithstanding the agreement, should make appropriate representations to the employer regarding the recognition of this union.” Meanwhile, paragraph 962 states that, “Where, under the system in force, the most representative union

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enjoys preferential or exclusive bargaining rights, decisions concerning the most representative organization should be made by virtue of objective and pre-established criteria so as to avoid any opportunities for partiality or abuse” and further ahead (paragraph 970) states, “If there is a change in the relative strength of unions competing for a preferential right or the power to represent workers exclusively for collective bargaining purposes, then it is desirable that it should be possible to review the factual bases on which that right or power is granted. In the absence of such a possibility, a majority of the workers concerned might be represented by a union which, for an unduly long period, could be prevented – either in fact or in law – from organizing its administration and activities with a view to fully furthering and defending the interests of its members.” It is important to point out the significance of the decisions of the supervisory bodies of the ILO in interpreting national norms absent rules to the contrary in domestic law.<sup>7</sup>

Finally, this expert reiterates his view that it is indispensable that *as an early demonstration of its will to remedy its violations of international conventions, domestic law of the Dominican Republic, and a notable number of provisions of the Code of Conduct of the FLA, Gildan-Dortex immediately reinstate the workers dismissed as a result of the incident associated with the split of the vacation period and desist in its efforts to strip the immunity of SITRAGILDAN leader Julio Cesar Parra Natera.*

Paris, France, February 7, 2011

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<sup>7</sup>*Derecho internacional del trabajo y derecho interno. Manual de formación para jueces, juristas y docentes en derecho*, directed by Xavier Beaudonnet. Turín: Centro Internacional de Formación de la OIT, 2009. In particular, First Part, Chapter 1.II, “La utilización interpretativa del derecho internacional del trabajo” (pp. 25 ff); Second Part, Chapter 1.IV.C. “La utilización de los convenios y las recomendaciones como instrumento de interpretación o fuente de inspiración” (pp. 64 ff) and Chapter 2 II.B.1.c, “La Labor del Comité de Libertad Sindical y su relevancia para jueces y operadores jurídicos nacionales” (pp. 86 ff).