

REVIEW REGARDING THE NEGOTIATION OF A COLLECTIVE AGREEMENT BETWEEN GILDAN ACTIVEWEAR DOMINICAN REPUBLIC TEXTILE COMPANY INC AND SITRAGIL IN THE DOMINICAN REPUBLIC

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1. Introduction

This report reviews the process of affiliation and negotiation of a collective agreement between the company Gildan DORTEX and Sitragil Union (affiliated to the Federation CITA Sindical), pursuant to the terms of reference and contract among the parties: Fair Labor Association (FLA), Worker Rights Consortium (WRC) and Fundación Laboral Dominicana (FLD).

2. Methodology

The review was conducted between March 22 and March 27, 2010, using the following methodology:

- a. Review of the documentation from both unions and affiliation cards used by Sitragil to prove absolute majority of members (50% plus one) that allowed them to tackle the process of collective bargaining;
- b. Interviews to company representatives involved in the process of verification of the majority of affiliation and the process of negotiation and collective bargaining;
- c. Interviews to general secretaries of both worker unions: Sitragil and Sitragildan;
- d. Meetings with unions and federation representatives to which both unions of the company are affiliated: Sitragil-CITA Sindical and Sitragildan-Fedotrazonas;
- e. Interviews to workers affiliated to both unions;
- f. Random interviews to union members that achieved the majority for collective bargaining;
- g. Technical analysis was done on the legal process followed by Sitragil up to conquering a Collective Agreement on Labor Conditions with the company Gildan DORTEX.;
- h. Ministry of Labor consultation, specifically with the Department of Mediation and Arbitration that allowed us to collect assessment on the

incumbents, as well as precedents and possible resolution in similar instances.

3. Interviews to Gildan DORTEX's representatives

3.1 Regarding the verification process of Sitragil's majority affiliations

Three company representatives were interviewed: Human Resources Manager, Production Director, and Process Engineering Director. The three interviewed were part of the entire process of negotiations of the collective agreement.

Factory management describes the negotiation process as agile and devoid of major difficulties. The Human Resources Department was responsible for verifying the majority of the affiliation documents presented by Sitragil.¹ At the time the list of having majority was presented, the factory had 1052 workers on the payroll, establishing that 897 were suitable to be unionized; therefore the majority established to apply for a collective bargaining would not be less than 450 workers affiliated to the union.

The Human Resources Department indicates that despite being notified several times by Sitragil that it had reached the majority threshold, it was not until January 28, 2010, that Sitragil submitted a list which is validated through the review of the affiliated list and assures not to have taken the affiliation cards as a reference to validate them.

It is opportune to clarify that the list of affiliated only contains the names, and the Identification and electoral number for the affiliated worker, the affiliation card is the document that contains information regarding the affiliated individual and whose signature endorse his/ her affiliation to the union and authorizes to be represented in the company.

3.2 About the collective bargaining of the working conditions process, Sitragil-Gildan DORTEX

The negotiation of the collective bargaining took place between February 11 to February 26, 2010, as recorded in the minutes of the collective agreement. The following delegates participated in the negotiations:

For the Company:

- VP Senior Manufacturing
- Country Manager, assisting the VP Senior Manufacturing
- Human Resources Manager
- Process Engineering Director
- Production Director
- Gildan DORTEX Attorney

For Sitragil:

¹ See described process of the judicial analysis in subhead 7

- General Secretary, Sitragil
- Education Secretary, Sitragil
- CITA-Sindical President
- International Affairs Manager, CITA-Sindical.

The three company representatives interviewed, chosen as a sample (Human Resources Manager, Process Engineering Director, and Production Director) were present throughout the collective bargaining process. The Human Resources Manager headed the negotiation process and assumed the company representation, in addition to be the liaison between Gildan DORTEX and Sitragil².

The Production Manager and the Process Engineering Director that were interviewed, evaluate the process as agile; they expressed not to be experienced regarding this kind of negotiations; nevertheless, they conclude that they were carried out harmoniously, even in situations that implied some contradictions, related to the economic aspects, but agreements were always reached, after debating among the parts.

The Human Resources Manager evaluates the negotiations as successful, where by both parts agreed to yield in situations that were somehow controversial, up to reaching consensus agreements. She explains that the process became more agile, as they took advantage of one week off that the company was in temporary closing to carry out negotiations, since the delegates selecting process had expired for both parts.

According to what the Human Resources Manager indicates, the crisis initiates from the company announcement of the collective agreement; while, it provoked the Sitragildan union reaction, alleging disinformation about the process³ so much in reference of obtaining 50% plus1 of affiliation; so as the collective agreement; likewise worker complaints began, regarding his/her name appearance in Sitragil affiliated members list, arguing some of them that they had not affiliated⁴

The Human Resources Management expresses that they recommend workers to approach Sitragil and clarify any situation and reiterates the company's position to respect freedom of association and the workers rights to affiliate or not to a union, this information is corroborated by the interviewed workers. It is important to point out that the collective bargaining agreed by Sitragil and Gildan DORTEX is posted at the company cafeteria room bulletin board, for all workers acknowledgment. Likewise, during the interview, the human resources management reports having completed sessions with workers on the most relevant aspects contained on the collective agreement.

² See Appendix 2, Minute No.001 containing a collective bargaining on working condition meeting minute between Gildan DORTEX/Sitragil dated February 11, 2010

³ In subhead 7 we refer to the legal notifications between Sitragildan and Gildan DORTEX

⁴ Legal repercussions, in subhead 7

In reference to the conflict that has generated the acquisition of 50% plus 1 of the affiliations by Sitragil and the Sitragildan's position, the human resources manager indicates that such position is not surprising. She argues that since its inception the union has chosen for the presentation of grievance and complaints to the Ministry of Labor⁵ and indicates that nowadays strong contradictions exist between both unions, spreading offensive flyers, accusing each other and even managing to hold strong discussions between the parties

4. Interviewing Sitragil

Positions of the General Secretary, Sitragil affiliated workers and n CITA-Sindical Federation representatives

An initial meeting was held with the Sitragil General Secretary and through him FLD requested a meeting with some union members and representatives of CITA-Sindical Federation, to which Sitragil is affiliated and whose delegates were an active part of the collective bargaining process.

About the affiliation process, the general secretary, its members, and CITA-Sindical indicate that the affiliation process was arduous, that they were making workers home visits and promoting the union and the affiliations. CITA indicates that they did not get involved in filling out cards process for Sitragil affiliations; instead it was worker union members who gathered from affiliated the cards to obtain 50% plus one. They indicate that part of the strategy to obtain affiliates was to conduct promotional activities in public places, encouraging workers to affiliate to the union; in addition they were distributing flyers at the bus stops of the company.

In order to obtain the recognition of 50% plus one of the Sitragil affiliated, they indicate that they had to submit the affiliated list to the company twice, due to some difficulties⁶, which where overcome, successfully obtaining approximately 460 affiliations and assure that its membership continues to grow.

The CITA-Sindical Federation representative explains in detail the process that was followed prior to the collective bargaining, defining it as a transparent and law abiding. Tells that prior to collective agreement, they held an Statutory Amendment Assembly, where representativeness aspects were modified, since it was turning out to expensive to gather more than 200 workers. The Assembly, from the approval of this modification, is constituted by approximately 33 delegates, representing working areas. So, with the presence of approximately 28 delegates from a total of 33, discussed and approved on November 21, 2009 the list of demands to be submitted by Sitragil to Gildan DORTEX in the collective bargaining. Likewise, as stated in the company

⁵ Referring to the complaint filed by Sitragildan against Gildan activewear Dominican Republic textile company inc to the office of Mediation and Arbitration of the Ministry of Labor dated February 19, 2010 reporting violations to the labor law.

⁶ See clause 7 with juridical analysis of the process of obtaining majority.

provided documentation, the negotiation committee for collective agreement was chosen.

They report that the collective bargaining was notified to the Ministry of Labor, but that they did not send any representation to monitor the process, because they considered that absence of conflicts between the parts that their presence was not absolutely necessary.⁷ CITA-Sindical and Sitragil expressed that they do not have anything to question about the process; they consider it to be successful, and assume the achievement of significant gains for workers and express their vocation to claim the collective agreement over any particular interest.

About conflicts that have arisen as a result of Collective Agreement; their position is strong, have accused Sitragildan of having intentions to harm the image of the Union and the Federation, also questioned it along with Fedotrazonas (federation that is affiliated Sitragildan) about the role they play as trade unions, accusing them of having alliances with international organizations promoting companies closure in the country, so investments are driven toward North American territory.

About Affiliation Cards and worker complaints, they express that they have information on some worker complaints, nevertheless they attribute it to two basic reasons: Some workers, after the conflict has begun between Sitragil and Sitragildan have felt fearful and have denied their affiliation to Sitragil and another reason attributes it to Sitragildan, to which they accuse of doing a bad move to Sitragil, infiltrating a Sitragildan affiliated to Sitragil to damage the affiliation process. Anyway, they express that it is necessary that the people who complain that their signature have been forged, must submit the documents to prove it, since this it is a very delicate accusation.

Concerning the accusation that there are workers that are affiliated to both unions; the CITA-Sindical representative, expresses that those who have dual affiliation will be expelled from Sitragil⁸. Some of the Sitragil affiliated present at this meeting, expressed surprise that this situation had arise, because they affiliated voluntarily to the union.

They explain that the financial resources that have been used to finance Sitragil affiliations promotion activities, was provided by CITA-Sindical, and that workers were not requested neither contributions, nor union fees, as they consider that workers prefer not to join a union where fees are charged. One of present members expressed the advantages gained by workers in the collective agreement and even report that there have been fewer company layoffs, more tolerance after Sitragil existence and the collective agreement signed.

⁷ Whether that there were contradictions between Sitragil and Sitragildan, these had not been notified to the Ministry of Labor of the Dominican Republic at the time of signing the collective agreement

⁸ The trade unions statutes provide in which cases a member may be expelled or not, with the due justification, since the union can be liable to accountability to the courts if it is found that the expulsion was carried out for not justified or valid reasons

At the end of the meeting, we individually interviewed ten people from those called by Sitragil; four of them did not appear in the company provided list of Sitragil affiliates, although express in the interviews to be its members, one of the Sitragil affiliated interviewees, preferred to remain anonymous.

5. Interview to Sitragildan

General Secretary, Sitragildan affiliated workers and Fedotrazonas-Sindical Federations representatives' positions.

Regarding the affiliation process the Sitragildan General Secretary position is in agreement with those of Fedotrazonas representatives, obtaining majority for the collective bargaining, and the agreement.

They indicate that the process was not transparent; affiliations were carried out by Sitragil leaders with a workers' list which they claim was given to them by the company, although they do not have documented evidence. The Sitragildan General Secretary supports this position as he understands that only the company has factory workers' personal information.

Sitragildan does not claim to have an affiliated majority. They indicate that Sitragil has not reached a real majority either, as it used fraudulent means to do so.

In a meeting with FLD, Sitragildan affiliated workers expressed that there are about 141 Sitragil affiliated workers that are actually on Sitragildan affiliated workers list, as we checked in their records. In the other hand, Sitragildan also presented documentary proof regarding Sitragil affiliated workers who claim that the signatures appearing on the affiliation documents have been falsified. At the end of the meeting, 10 workers were interviewed called by Sitragildan who argued that although they appear as Sitragil affiliated members, the affiliation cards' signatures are not theirs. These workers presented a copy of their personal identification documents to prove the difference in signature.

Regarding the collective bargaining between Gildan DORTEX and Sitragil; Sitragildan and Fedotranzonas affiliated express that it is not true that Sitragil held an assembly to inform about the union's positions going into the negotiations and that Sitragil affiliates are not aware of the topics discussed in the negotiations and in the agreement. They state that workers knew about the agreement after it was made public by the company in the factory.

They argue that the affiliation process was accelerated because the company was concerned that Sitragildan was getting close to the majority and needed to enter into collective bargaining and they decided to propel Sitragil as a union affiliated union to Cita-Sindical. They question Cita-Sindical as a federation that organizes workers with companies' support and creates collective agreements that are comfortable for management. They make reference to preceding situations in other companies in free trade zones where

they are convinced the same situation has occurred with the mentioned Trade Unions Federation.

5. Direct Interviews with Workers

During the week from March 22 to March 27, 2010, at the time when gathering information about this case, approximately 66 randomly interviews were completed from which, 46 corresponded to worker interviews in the factory from four shifts: A, B, C and D; 20, outside of the factory. Of the 66 interviewed, 16 of them were contacted without Sitragil affiliation cards and 50 were contacted using the affiliation cards as a verification resource of Sitragil affiliation.

The sample selection procedure used in the factory was as follows: Of the total of Sitragil affiliation cards supplied by the company, approximately 477,⁹ we randomly selected 12 cards for every shift, seeking to cover 10 % of the members. The information supplied in the affiliation card was confirmed in the company's payroll. With a guide of questions, we interview the workers and use the affiliation cards to verify the information recorded.

The interviews were a great challenge, not always the information that was appearing in the affiliation card matched with the one in the payroll, this was implying that the workers could not be located in the positions and shifts that appeared on the cards. Although this situation was not generalized, we can affirm that it was important, since it delayed the process for the completion of the review in an agile way.

The explanation to this situation corresponds partially to the fact that some workers which shift had been changed after they were affiliated; in other cases due to time restraint it was not possible to confirm the location of those with the Human Resources Department.

It is important to clarify that the interviewed that appeared anonymous, correspond to workers that were interviewed randomly, to cover part of those who could not be located with the information shown in the cards at the moment of the interviews.

⁹ The number of workers reported to the Ministry of Labor was 460 affiliations in order to prove the majority for the collective bargaining Sitragil/Gildan DORTEX, nevertheless the company list given for this verification process was 477.

5.1 Population interviewed directly in and out of the factory

Description		Anonymous (Within total)	No. of Interviewed
1	Interviewed in the factory with affiliation cards	7	34
2	Interviewed in the factory randomly, without affiliation cards		12
3	Interviewed at Sitragil	1	10
4	Interviewed at Sitragildan		10
	Total Interviewed	8	66

In the case of workers interviewed at the meetings held with the unions and their federations, the interview selection was by open notification. At the end of every meeting, it was informed to the attendance the interest of complete ten individual interviews for each organization. On a voluntary basis, we interviewed 20 workers. Of this total 16 had Sitragil affiliation cards. Four (4) argued to be affiliated to Sitragildan and to appear in Sitragil's list, that is to say of double affiliation, three argued to be affiliated to Sitragil, but they do not appear in the affiliation list supplied by the company for this verification and one (1) anonymous person

5.2 DORTEX Unions affiliated workers, interviewed directly, out of the factory

Description		Interviewed at Sitragil	Interviewed at Sitragildan
	Number of interviewees	10	10
Status of the interviewed			
1	Affiliated to Sitragil with affiliation cards	6	10
2	Dual affiliation Sitragildan/Sitragil		5
3	Express to be affiliated to Sitragil and do not appear on affiliation cards	3	
4	Anonymous	1	

Observing previous tables, the total of interviewees with affiliation cards, is constituted by 50 workers of whom 16 were interviewed in the unions and 34 in the factory.

For the purposes of the following analysis, we will take as a sample 50 workers that were interviewed directly and from which we have their affiliation cards to Sitragil

From the total of 50 cards used in the interviews, 31 workers, corresponding to 62 %, argued that they had not filled out affiliation cards and that the signatures that appear at the end of it, do not correspond to theirs. Nineteen (19), 38 %, claim to be a Sitragil affiliated. On the other hand, five (5)

of the interviewees who turn out to be Sitragil affiliated say that they are Sitragildan affiliated¹⁰.

5.3 Interviews with workers at Gildan Activewear Dominican Republic Textile Company Inc. with Sitragil affiliation cards.

Interviewees Description		No. of Workers	%
1	Confirm Sitragil affiliation	19	38%
2	Registered at Sitragil affiliation cards, but deny their affiliation and assure that the signature in the card is not theirs.	31	62%
Total workers interviewed with Sitragil affiliation cards		50	100%

While these workers were interviewed, the following information was gathered:

- From the 31 workers who turn out to be registered in Sitragil and that sustain not to have filled or signed the affiliation cards, agree that only heard rumors within the factory of the existence of a union. They argue not to have taken part in any meeting, nor assembly ever. They do not know the Union Board General Secretary. They also claim that they found out about the Collective Agreement through Human Resources that summoned for a meeting to report on the most important aspects of the Agreement.
- Only Sitragildan affiliated workers, who turn out to be Sitragil affiliated expressed to know about the existence of Sitragil, some of them know about what they call recreational activities, carried out by Sitragil to get members.
- Eight (8) of 31 workers who turn out to be Sitragil affiliated and claim not to be part of it, provided a copy of their identity documents as proof that their signature is not the one that appears in the cards that contain their information. Another ten (10) showed their documents and / or signed on paper to prove that it is not their signature the one that appears in the records.
- Eight (8) of 19 Sitragil affiliated workers interviewed, expressed to have had the opportunity to participate in Union meetings, other interviewed members say that due to work and family issues they have not been able to attend. The same number of people assures that the affiliation problems that have arise, it has been because people are afraid after having signed the card and deny their affiliation.
- Eleven (11) of 19 Sitragil affiliated interviewed; admit to have known the list of demands and the collective agreement after it was signed. A minority claims that they heard about it through the union leaders and

¹⁰ See Appendix 8 containing an interviewees list during the Sitragil verification of affiliation process and Gildan DORTEX/Sitragil collective bargaining process

most of them, like other factory workers, through the announcement done by Gildan DORTEX's Human Resources Department.

6. About information gathered randomly in the factory.

Although the interviews were made based on a guide, these random interviews outside of the affiliations cards records constituted an element to measure workers perception regarding the situation generated by the affiliation or not affiliation to Sitragil, the gathering of affiliates to reach majority, the collective bargaining and subsequently the Collective Agreement on Working Conditions.

12 Gildan DORTEX workers were interviewed, that were not preselected in the sample, 7 of which were anonymous. Following is a summary of their statements, initiating in the process of gathering members until the signed collective agreement Gildan DORTEX and Sitragil was made public.

According to interviewees opinions, which were not documented and verified by FLD, this process is the result of an agreement between the company and Sitragil's general secretary. They assume that the affiliation process was done with a list that the company provided to the general secretary to fill out cards with the 50% plus one of the suitable workers to be unionized, then, only the Company Human Resources Department has the personal information of all and in this way initiate a collective bargaining that even if it brings some benefits for the workers, it does not harm at all to the company. Workers interviewed assure that the process of collective bargaining was not known in the company.

Interviewees assure that after closing the factory for a week, they returned to work and it was then that the Human Resources Department summoned for a meeting to inform them that the company and the Sitragil had signed a collective agreement on working conditions. This comment was also confirmed in worker interviews that turn out to be Sitragil affiliated.

Regarding the problems that have arisen with affiliation cards, interviewees argue that after the collective agreement was announced, someone began to circulate a list with the names of Sitragil affiliated and that it was when the problem occurred. Some people found their names on the list, without ever having filled out an affiliation card and word spread out among the workers in other shifts. Later on, during in one of the meetings held by Human Resources, where by the announcement the company's position to respect workers' rights to join or not to join an union, workers challenged the Human Resources representatives regarding the issues of the list with the names and signatures and Human Resources separated themselves from the process, ensuring that such information should be provided by the Union, ratifying that the company does not involve in the affiliation process of any of the existing unions. They assure that much dissatisfaction is in relation to the disinformation that rules over the affiliations to the union. Also some people commented that they do not wish to participate in any of the unions and want to find the mechanism to verify whether or not they appear on Stragil affiliation list and as getting out of such list.

Regarding these testimonies, we would verify that people are really demanding information related to affiliations to Sitragil, as the information that we received comes from rumors. During our stay at the plant, dozens of people who were not part of the sample approached us to ask if we had the affiliated list, because they wanted to verify the truth of these rumors. Some of them more flexible, while others annoyed; but generally speaking, it became clear that a real problem exists around the affiliation process and Sitragil reported obtained majority to achieve the negotiation and the Collective Agreement

7. - Analysis of union formation and registration legal process, obtaining majority, negotiation and collective agreement Sitragil-Gildan DORTEX

7.1 Union formation and registration verification process

Performing a comparative analysis of the actions executed by Sitragil for the union formation and what is established in the Labor Code of the Dominican Republic, we could verify that everything about the Stragil union formation and registration to the Ministry of Labor; was done in adherence the dispositions established set out therein.

This was verified throughout the analysis of the following documents provided by the company:

- a) **General Assembly Act.** The Labor Code of the Dominican Republic provides for the establishment of an union that there must be a minimum of twenty (20) employees who are members, and verified this by this act that such assembly was conducted under the requirements of Article 358 and that the union made the necessary activities for the operation thereof, such as the approval of the bylaws, election of board members, and the first commissioners, complied with the provisions of Article 373 of that code. The notification of the formation of Stragil union and Board was made by act No.750/2009 dated September 4, 2009.
- b) **Union Registration.** Once fulfilled with the previous requirement proceeded to register the union to the Ministry of Labor, and we understand that this department did an objective study and adjusted to the law of such application and of the documents provided, since it was registered and through it acquired legal capacity to act.

7.2 Process of obtaining majority

As we could ascertain the process of reporting majority was formally open on November 25, 2009, through a communication sent by Sitragil to the company, notifying the award of 50% plus one. Likewise, by correspondence dated December 1, 2009, the company requested Sitragil, time to check the supplied information and on December 4, 2009 informed to Sitragil, that according to the review, Sitragil was not fulfilling with the conditions established

by the Labor Code of the Dominican Republic, to initiate one collective agreement on working conditions.¹¹

In the same order, on December 2, 2009, Sitragildan notified to the company, opposition to negotiation and signing collective agreement with Sitragil, "because this organization does not represent the legitimate interests of the company workers majority"¹². The company notified back to Sitragildan that the company "will not oppose the negotiation of collective agreement on working conditions with the organization, which formed under the protection of what is enshrined in Arts. 373 and following of the Labor Code so requested, when it had authentically demonstrated and our company verified that it fulfills with the requirements established in the article 109 of the Labor Code¹³ of the Dominican Republic"

On December 17, 2009, for the second time, Sitragil reiterates to Gildan DORTEX, through legal notification, obtaining a majority and attached the affiliated list and affiliation cards, indicating their names, identification and electoral number, and signatures¹⁴. The company also notified Sitragil, that " the following anomalies where found after reviewing of Sitragil supposed active members: repetition of names and electoral identities of alleged members, names and electoral identities numbers that do not match the list notified by the union and names of people that are not company employees", therefore, do not meet the conditions set by the law to opt for collective bargaining¹⁵.

Finally, on January 28, 2010, Sitragil notified once again to the company an invitation to collective bargaining, attaching an affiliated list, presenting a negotiating commission and invitation to negotiate¹⁶. The company answered to this invitation that " based on the review of the list and the affiliation cards for the active members of the union, the Company has verified that 460 members of the union, are in fact their employees with vocation to be part of an union as provided in the labor Code of the Dominican Republic¹⁷," according to this the company accept to attend the meeting conducted by the union, towards beginning negotiations for a collective agreement of working conditions and propose the first meeting for February 5th, 2010.

Reviewing the documents and comparing them with the opinions expressed by the Human Resources Department, we asses that the verification of the majority (50% plus 1 affiliated process), was not conducted with the rigor that warranted the fact that before Sitragil had provided Gildan DORTEX, two lists containing data irregularities, and also Sitragidan had reported opposition

¹¹ According to information contained in Act No.466/2009 dated December 17, 2009 sent by general secretary Sitragil to Gildan DORTEX, page 3

¹² Act No.674/2009 dated December 2, 2009, sent by general secretary Sitragildan to Gildan DORTEX page 2

¹³ Correspondence on December 14, 2009, inserted in act No.1058/2009 dated December 15, 2009 sent by Gildan DORTEX to Sitragildan, page 4

¹⁴ Act No.466/2009 dated December 17, 2009, sent by Sitragil to Gildan DORTEX pages 15 and 16

¹⁵ Act No.42/2010 dated January 12, 2010, sent by Gildan DORTEX to Sitragil, pages 3 to 9

¹⁶ Act 28/2010 dated January 28, 2010, sent by Sitragil general secretary to Gildan DORTEX pages 4 to 19

¹⁷ Act No.96/2010 dated February 2, 2010, sent by Gildan DORTEX to Sitragil, pages 3 and 5

to collective bargaining and the company had informed the commitment to negotiate with the union that obtained authentically and reliably majority. Therefore, in front of a sensitive environment, it becomes absolutely necessary to approach the process with the accountability and transparency that the circumstances deserve.

On the other hand, given the fact that there was a history of disagreements between unions, Sitragil and Sitragildan and the fact that Gildan DORTEX, had been legally notified of this and its legal implications that such actions could cause them in the future, the company had to, in response to this request and to the Labor Code of the Dominican Republic principle VI that states: "In terms of labor, rights must be exercised and the obligations undertaken in accordance with rules of good faith. It is unlawful the abuse of rights", equally, to notify Sitragildan the reasons why accepted on negotiating a collective agreement on working conditions with Sitragil, even if the Labor Code of the Dominican Republic does not cover the procedure to carry it out.

And considering that on February 19, 2010, Gildan DORTEX, was summoned by Sitragildan to the Office of Mediation and Arbitration of the Ministry of Labor of the Dominican Republic, for reasons related to violations to labor laws and there, Gildan DORTEX was informed by Sitragildan/Fedotrazonas' attorney, that Sitragildan possessed the established majority and that they would be notifying the company an invitation to start negotiations of a collective agreement¹⁸, and being at these moments negotiating already a collective agreement with Sitragil, it was in good faith, that Gildan DORTEX inform Sitragildan about the process.

Regarding to the irregularities found and verified by FLD team on the cards filling and members signatures, we can assess the legal implications that can generate the fact that workers registered in those cards confirm that the signatures that appear with their names were not made by them. In this sense, workers can sue Sitragil for forged signatures and repair of damages caused by this action, as it is established by the Penal and the Civil Code of the Dominican Republic, situation that could have been avoided if a verification of majority had been done in conformity with what normally is established, that in situations of struggle, request the intervention of a neutral entity, that might be the Ministry of Labor.

7.3 On Collective Agreement on Working Conditions Negotiation we could verify the following:

As it is foreseen by the Labor Code of the Dominican Republic, a labor union can only performon collective agreements on working conditions, if the authorized representative of the workers whose professional interests affects the collective agreement. A negotiation of a collective agreement can only be done by representatives of all company workers, as long as the union has among its members, the absolute majority of those workers. (See Articles 107 and following Labor Code of the Dominican Republic)

¹⁸ Communication sent by Lic. José Cruz Campillo, Gildan DORTEX lawyer to Javier Echeverria and Vileyka Ramírez dated February 19, 2010. page 2

We can infer that collective bargaining requires a company workers absolute majority. Now then, on who should verify the union absolute majority, our Labor Code leaves to the will of the parties to request or not the intervention of the Ministry of Labor for this purpose, depending on the environment in which these negotiations are being developed.

Sitragil, as trade union in compliance with provisions of our Labor Code of Work for the collective bargaining on working conditions, presented to the company, among other things, the following documents:

- a. Identity cards and the workers union members list required for 50% plus one of all company employees.
- b. Delegate's general extraordinary assembly Minute
- c. Negotiating committee list notification
- d. Bargaining list of demands.
- e. Request to initiate negotiations.
- f. Collective agreement approval by Assembly.

However, the extraordinary General Assembly to amend the statutes of Sitragil, presented in previous list, where it is stated that the same one will be amended for the purpose to establish that due to the large number of its members the General Assembly be formed with the delegates, FLD has not prove of whether they complied with the provisions of Article 351 and following of the Labor Code and by Article 84 of Regulation 258-93 which provides that "the amendments to the bylaws that are introduced after the registration of the union, must be communicated to the Secretary of Labor State (Ministry of Labor) within five days following the modifications, attaching two authentic copies of the amendments and the Assembly minutes where they were approved.

Regarding the opinions issued by both alleged as Sitragil supposed affiliated member as well as Sitragildan's, referring to the lack of knowledge of Sitragil Assemblies, we can infer that this is because these Assemblies were held prior obtaining the majority of 50 % plus one, where as recorded in the minutes, the majority for having them was obtained with not fewer than 18 members. Therefore, Assemblies participation list made by Sitragil from its formation up to the Assembly approval and signing of the collective bargaining, and from which we have proof, do not exceed in any case a participation superior to 50 members.

The collective agreement is the culmination of a process, which begins even before submitting the list of demands and continues the same day that the collective agreement is signed. This process involves several stages, including prior to the list of demands, the following ones to the presentation of those, the phases of the actual bargaining, drafting and signing the contract, and finally its implementation and administration.

In this sense, we can say that they fulfilled the formalities required by law for the enforcement and validity of the collective agreement, since all parties

reached agreement on all controversial points and the subsequent approval on behalf of the most representative organisms of the company and the union, in force at the moment of the facts. In addition, the agreement was discussed and approved in a record time of 15 days, which breaks with what is normally established in our country.

From this perspective, **we might conclude that the whole process from the formation of the union up to the signing of the collective agreement, was brought in line as set forth in the Dominican labor laws and the agreements that have been approved and ratified by our country, however,** and bearing in mind that the workers representation to negotiate a collective agreement by a workers union **will depend on the authorization or not authorization that they give to belong to an union**, then it is worth stopping and determine whether such authorization to belong to it, was really granted by those who most benefit or harm, to workers. Since **the nullity of an act that causes another to be considered valid result in the nullity of the subsequent acts.**

The irregularities found and verified in Sitragil affiliated of workers affiliation cards, constitute the fundamental fact that questions the transparency of the process and therefore its validity.

8. About the consultation made to Department of Mediation and Arbitration of the Ministry of Labor of the Dominican Republic.

During this process, a visit to the National Direction of Mediation and Arbitration of the Ministry of Labor took place. At this meeting we were informed that the country was experiencing relatively frequent cases of this nature and states that the Ministry of Labor can not establish official positions on these issues, since the process of mediation and arbitration must be requested for one or the parties in order that the department could intervene.

They narrate their experiences concerning similar cases, arguing that addressing solutions have cost them a lot of time and effort. Refer the case of Group M in Santiago, which litigation lasted more than 8 years and a more recent case in the Industry San Miguel del Caribe, Kola Real in Santiago Rodríguez, Dominican Republic, as similar cases, where the confrontation of two unions within the factory and the positions that called as "rigid" on behalf of the company did not help to solve the problem successfully¹⁹.

Admits that there are trade union sectors, mainly the trade union federations, which fall in this type of conflicts historical contradictions among its leadership, but on the other hand are the companies that hire law firms that instead of advising them to comply with the law, advise them to address processes that can be categorized as legal, but have different purposes. Explains that there are professionals who are dedicated to guide companies,

¹⁹ Records rest in their respective jurisdictions of the Court of Labour of the Dominican Republic.

especially foreign investment, to evade compliance with rules and laws, instead of supporting them to conform to them.

In conclusion through this consultation we were able to gauge the complexity of Gildan DORTEX process and the need to develop practices in the search of viable, creative and consensual solutions

9. Final Considerations and Recommendations

The FLD team wishes to frame its views regarding Gildan Activewear Dominican Republic Textile Company Inc and the conflict generated by the negotiation and signing of a Collective Agreement on Labor Conditions with Sitragil within several considerations set out earlier in this report:

- Taking into account the number of jobs that Gildan DORTEX generates and the need of the country for stable employment opportunities.
- Taking into account the high level of manufacturing technology that Gildan DORTEX has introduced in the Dominican market.
- Taking into account that during the process of worker affiliation to Sitragil and verification of absolute majority for the purpose of negotiating a collective agreement on labor conditions we identified and verified significant irregularities pointed out in the current report.

FLD makes the recommendations below in the spirit of offering avenues that would permit clarification and resolve the existing conflict while respecting fundamental human and labor rights as well as preserving the prestige earned by the company Gildan DORTEX in the international market and recognition by certifying organizations.

1. That the process of obtaining a majority of affiliations presented by Sitragil to the company be declared null, as there is sufficient evidence to confirm that a significant number of workers registered as affiliated with the union are not aware of how their names appeared on the list of affiliates and confirm that the signatures that appear in the affiliation register used by Sitragil to obtain an absolute majority are not theirs. **This action would preserve the fundamental right of workers to affiliate or not affiliate to a union, also claim those workers whose rights were violated through the use of their names for unauthorized purposes, made even graver by the falsification of signatures in public documents.** FLD makes this recommendation, given the fact that the legally established procedure for dealing with the invalidity of the agreement is clarified in the Courts of the Dominican Republic; however, in an effort to find a speedy and harmonious resolution, we are recommending that it be resolved through consensus among the parties, which is subsequently notified to the Ministry of Labor
2. That Gildan Activewear DORTEX, maintain the gains and benefits obtained by the workers through the collective negotiations with Sitragil as they are benefits already granted. (Salary increases, bonuses related

to marriage or death, Christmas bonus and others about which workers have been informed)

3. That Gildan DORTEX takes a leadership role in a process of concertation among the parties involved in the conflict. Gildan should create a negotiation instance that also includes as mediator an institution that is recognized and has the approval of the parties in the conflict. This negotiation instance would take up conditions under which the legally constituted unions, acting in good faith and in a transparent manner, would conduct their affiliation processes in pursuit of a majority of the workers in an ethical and legal manner consistent with obligations and rights of association. The commitment of the company to preserve the rights of workers of Gildan DORTEX and to abide by the principle of neutrality with both legally-registered unions is essential. During this process, a procedure whereby workers whose affiliation is irregular are informed and given the means to affiliate or not to affiliate with the union of their choice without interference from any of the parties should be discussed and agreed.
4. That a period of three months be established for the aforementioned negotiations, during which time period the following issues associated with the conflict will be clarified:
 - Make transparent the affiliation register of the unions through a process of verification of registration records by the workers themselves supported by a neutral organization or some other entity agreed by the parties.
 - Reach agreement on treatment of additional benefits achieved by Sitragil for the union and for the workers of Gildan DORTEX embodied in the collective agreement Sitragil/Gildan-DORTEX as they were not obtained in a situation where there was a real majority of affiliated workers.
 - Agreement among both unions, federations, and the company to respect the right to promote unionization according to domestic law without violating the right of workers to join or not join a union and the right of the company to insist that labor activities be held during the time periods established by law and without interference with its normal operations.
 - Agreement between the company, the unions and the relevant federations involved in the conflict to respect the 50% plus one threshold. Once one of the unions reached this threshold through a good faith effort, a process of verification of majority would be instituted by one or more institutions that the parties deem to have credibility and moral solvency.
 - Agreement among the unions and relevant federations involved in the conflict to refrain from using defamatory means to confront ideas and positions espoused by others, consistent with the understanding that both organizations are working on behalf of the collective welfare of workers of the company, an enterprise that provides workers with the opportunity to earn a living and jobs in a country with a high unemployment rate.

5. That Gildan DORTEX commit to train its workers, supervisors and managers on the right to associate and on conflict management and resolution, thereby contributing to the creation of an environment of labor peace and full exercise of the rights of the company as well as of workers without adversely affecting the performance of the company's operations.
6. That Gildan DORTEX start a campaign within the factory to promote respect for the workers rights and compliance with labor obligations, thereby promoting a more favorable environment for improving the competitiveness of the factory and projecting a corporate image consistent with the values of Gildan DORTEX which have been questioned since the conflict broke out and has adversely affected the image of the company and the business climate in the Dominican Republic.
7. That Gildan DORTEX play a leadership role in promoting a prompt and transparent resolution of the conflict through democratic means such a dialogue and concertation, becoming a national and international reference to achieve harmonious and viable solutions that benefit the company and its workers.

10. Conclusion

We conclude this report stating that it has been a challenge and a great responsibility for the Fundación Laboral Dominicana, Inc. to review this very complex process. We reiterate that the conclusions of this report are the result of objective and transparent analysis of the facts before us, for which we take full responsibility.

Similarly, the recommendations offered reflect the consensus of our team, based on technical, professional, ethical, impartial, and responsible analysis, and independent of any interpretations that may be made by others. The recommendations seek to promote harmonious resolution of the conflict consistent with the obligations of workers and their inalienable rights and the prosperity of Gildan DORTEX.