



WORKER RIGHTS CONSORTIUM

**VIOLATIONS OF INTERNATIONAL
LABOR STANDARDS AT ARNESES Y
ACCESORIOS DE MEXICO, S.A. DE C.V.
(PKC GROUP)**

FINDINGS, RECOMMENDATIONS AND STATUS

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I. Introduction

This report details the findings, recommendations and status of the Worker Rights Consortium (WRC) investigation concerning allegations of violations of international labor standards at Arneses y Accesorios de Mexico, S.A. de C.V. (Arneses y Accesorios), a producer of automobile wire harnesses owned by the Finnish multinational corporation, PKC Group, and located in Ciudad Acuña in the Mexican state of Coahuila.

The WRC initiated its investigation at Arneses y Accesorios in December 2012 in response to a complaint lodged by the Comité Fronterizo de Obreras (Border Committee of Women Workers, CFO), a nonprofit advocacy organization based in Mexico, on behalf of a group of Arneses y Accesorios workers. The complaint alleged violations of workers' rights of freedom of association and collective bargaining and acts of gender discrimination through sexual harassment of female employees.

The WRC's inquiry found, on the basis of overwhelming evidence, that, since August 2011, PKC management at Arneses y Accesorios has carried out a series of actions that have violated international labor standards by denying workers the opportunity to exercise their right to freely join a union in order to bargain collectively with their employer. PKC has thwarted its employees' efforts to choose their own union to negotiate a collective bargaining agreement by, among other actions, colluding with a local affiliate of the *Confederación de Trabajadores de México* (Confederation of Workers of Mexico, CTM), a labor organization that has a history of acting as a "protection union" by assisting employers in blocking independent unionization efforts; interfering with a union election; and terminating employee union activists in retaliation for their union activities.

The WRC's inquiry also documented instances of gender discrimination in the form of *quid pro quo* sexual harassment by PKC managers at Arneses y Accesorios. Women workers provided credible testimony that Arneses y Accesorios managers pressured them to engage in sexual relations in exchange for promotions or other work benefits.

The WRC found that the actions of PKC's management represented serious and clear-cut violations of international labor standards as embodied in the conventions of the International Labor Organization, as well as the codes of conduct of several of PKC's customer firms. The WRC sought information from PKC's North American management in the United States and its global management in Finland regarding the allegations assessed in this report: First, in February 2013, in the process of conducting our investigation in Mexico and, second, in May 2013, while preparing this report, a preliminary copy of which the WRC shared with the company. Unfortunately, PKC refused to either cooperate with the WRC's investigation or respond in substance to this report.

The remainder of this report outlines the WRC's findings and recommendations for remedial action at Arneses y Accesorios. It is the WRC's hope that PKC will act on these recommendations and fully remedy the violations that have occurred.

II. Allegations

The complaint lodged by CFO in December 2012 alleged violations of labor rights in the following areas:

- Freedom of Association: That Arneses y Accesorios violated workers' right to freedom of association and collective bargaining by:
 - Signing a so-called "protection contract" with the CTM in August 2011, without workers' knowledge or consent, as a means of preventing workers from exercising their rights to organize a union of their choosing and bargain collectively.
 - Subsequently, carrying out a campaign of harassment and intimidation calculated to prevent workers from exercising their rights to join a union of their choosing, including conveying to workers—through captive audience meetings and other means—the threat that joining the Mineros union would lead to the closure of the factory and the loss of workers' livelihoods.
 - Manipulating a union election held in October 2012, with the purpose of ensuring that the CTM retained legal authority to represent workers by, among other actions, rehiring former employees on short term contracts and pressing these workers to vote for the CTM.
 - Carrying out a retaliatory mass dismissal of workers who were known leaders of the Mineros union during December 2012.
- Gender Discrimination through Sexual Harassment: That female workers have been pressured by factory managers to engage in sexual relations in exchange for better pay and work positions and have been threatened with retaliation, including suspension, if they did not agree; and that PKC management did not act on worker complaints which reported such acts of sexual harassment.

III. Sources of Evidence

The WRC's findings are based on the following sources of evidence:

- Interviews with more than forty current or former PKC workers, all of whom were interviewed offsite.
- Review and analysis of relevant documentary evidence, including the collective bargaining agreement between the CTM and the company, employee lists used in the October 2012 union election, legal papers submitted by the Mineros union to Mexican government agencies, and materials posted in the workplace or distributed in the plant by Arneses y Accesorios and the CTM.
- Review and analysis of relevant international human and labor rights standards.

IV. Terms of Reference

This memo reviews labor compliance by Arneses y Accesorios in reference to the core labor standards of the International Labor Organization (ILO), the United Nations entity that is the primary standard-setting body internationally for worker rights. In 1998, in its Declaration on Fundamental Principles and Rights at Work, the ILO identified “core” labor rights that are applicable to all its member states, including Mexico, regardless of whether they have been ratified by a given state:¹

- the right of freedom of association (ILO Convention No. 87);
- the right to organize and bargain collectively (ILO Convention No. 98);
- equal employment opportunity and non-discrimination (ILO Convention Nos. 100 and 111);
- prohibition of forced labor (ILO Convention Nos. 29 and 105); and
- prohibition of child labor (ILO Convention No.138)

These standards are applicable to all employers in Mexico, including Arneses y Accesorios.

V. Findings of Violations of Freedom of Association

The WRC found overwhelming evidence that PKC engaged in a series of actions which prevented workers from exercising their associational rights to form and join the union of their choice and engage in collective bargaining.

A. Background

Collective efforts by workers to improve conditions at Arneses y Accesorios date back to the mid-1990s. With the support and guidance of the CFO, workers at the facility created “dialogue committees” to press management to address safety concerns and improve wages. At

¹ See ILO Declaration on Fundamental Principles and Rights at Work (1998) (“All Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions,”), available at <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>. In addition to its obligations under the Declaration, Mexico has ratified and is bound by ILO Conventions 29, 87, 100, 105, and 111. Moreover, Mexico recently revised its constitution to accord international treaties (which include ratified ILO conventions) the status of domestic law. See Political Constitution of the United Mexican States, Art. 1 (as revised June 10, 2011) (“In the United Mexican States, all individuals shall be entitled to the human rights granted by this Constitution and the international treaties signed by the Mexican State, as well as to the guarantees for the protection of these rights. Such human rights shall not be restricted or suspended, except for the cases and under the conditions established by this Constitution itself.”).

the time, the facility was owned by the U.S. corporation, Alcoa.

To advance its efforts, CFO secured the support of the United Steelworkers union (USW) and various U.S.-based religious and shareholder institutions. Among other steps, in 1996, workers from the plant, along with a delegation of religious shareholders and the USW, visited Pittsburgh, Pennsylvania in the United States, where Alcoa is headquartered, to present their grievances at an Alcoa shareholders meeting. Over time, according to CFO, the dialogue committees and shareholder pressure resulted in improvements in safety at the facility.

By 2007, however, CFO and a group of Arneses y Accesorios worker leaders determined that the progress they sought on labor standards could not be achieved without the legal authority to negotiate a collective bargaining agreement with the company. The CFO contacted the Sindicato Nacional de Trabajadores Mineros, Metalúrgicos, Siderúrgicos y Similares de la República Mexicana (National Union of Mine, Metal and Steel Workers Union of the Mexican Republic, SNTMMSSRM, known popularly as the “Mineros” union). The Mineros agreed to assist the workers in seeking formal union recognition and in July 2009 the Arneses y Accesorios worker leaders established a section of the Mineros federation.

At approximately the same time, in June 2009, Alcoa sold the division to which Arneses y Accesorios belonged, Alcoa Electronics and Electrical Solutions (AEES), to Platinum Equity, a U.S.-based private equity fund. Two years later, in August 2011, Platinum Equity sold AEES to PKC Group, its present owner. Throughout this period, the CFO and the Mineros federation continued recruiting Arneses y Accesorios workers as union members, holding organizational assemblies, and handing out leaflets at the facility.

B. Unlawful Installation of Protection Contract

The WRC found that Arneses y Accesorios unlawfully installed a so-called “protection contract” with the CTM and subsequently used this agreement to prevent workers from freely exercising their associational rights.

On August 31, 2011, just weeks after PKC signed an agreement to acquire the Arneses y Accesorios facility, the company signed a collective agreement (union contract) with the CTM covering the workers at the factory. The agreement was registered with the Mexican Federal Conciliation and Arbitration Board (CAB) on September 2, 2011. As discussed further below, the CTM is one of Mexico’s three largest labor federations that often function as “protection unions.” These organizations describe themselves as labor unions but, very often, function not to represent the interests of workers, but to protect the interests of the employers with whom they sign agreements by preempting the establishment of independent unions.

Prior to the contract’s submission, there was no process by which a majority of Arneses y Accesorios workers had the opportunity to choose or reject the CTM as the representative of the workforce. Nor is there any indication that Arneses y Accesorios workers were involved in any way in the contract’s negotiation or consented to its signing. Many of the agreement’s provisions simply restate Mexican law.

On November 28, 2011, the Mineros union filed a formal legal request for negotiations with PKC, known as an *emplazamiento*. PKC responded on December 11, stating that it would not negotiate any agreement with the Mineros sectional because it had already signed an agreement covering the workforce with the CTM. Arneses y Accesorios workers learned for the first time through this letter that they were covered by a union contract and that the CTM was their representative.

On January 31, 2012, PKC management directed workers to attend a series of assemblies (organized by shift) in the plant. The workers were shown a videotaped message from PKC's President for North American operations, Frank Sovis. In the taped message, Sovis explained that PKC management had arranged for Arneses y Accesorios workers to be represented by a union. He stated that "for over 25 years neither you nor Arneses have felt the need to have a union." However, he explained, "external groups are using tactics which threaten labor peace... and ... our assets." Therefore, "[w]ith the ultimate objective of protecting your rights, along with those of PKC," the factory had signed a collective agreement with the CTM. He explained that the company had selected CTM because of "their values and principles that are in line with PKC's, and understand the needs of our employers, our business, and our customers." During the assembly, workers were also told that the company would pay their union dues directly to the CTM instead of deducting them from workers' pay.

On February 3, 2012, the Mineros union filed a legal request for recognition as the Arneses y Accesorios workers' collective bargaining representative with the Mexican Federal Conciliation and Arbitration Board (Labor Board). When the Labor Board receives such requests, Mexican law requires it to set a date for an election where workers can choose their collective bargaining representative. On February 20, the Labor Board denied the Mineros' request, stating that the Mineros federation could not represent workers in the auto parts industry because it was only registered to represent workers in the mining, metal, and metal-mechanical industries. On March 13, the Mineros appealed this decision to the Collegiate Tribunal for Labor Matters for the First Circuit of Mexico.

On March 28, 2012, a Finnish investigative news program, *45 Minutes*, which airs on the Finnish television station, MTV3, broadcast a news story on PKC's activities in Ciudad Acuña.² The story included an interview with PKC CEO Harri Suutari, in which Suutari states that the CTM "is not a genuine union in the Finnish sense, but in Mexico it is." He also indicated that he understood that the factory signed the agreement with CTM without asking for workers' assent and that the company directly pays union member dues to CTM.

On April 11, 2012, in response to criticism following the MTV3 report from Finnish trade union leaders and one of its major shareholders, Ilmarinen Mutual Pension Insurance Company, PKC issued a statement defending its actions. In the statement, the company acknowledged that the factory had signed the agreement with CTM in response to the organizing activities of the Mineros federation, but claimed it had done this in order to satisfy its employees' purported wish to not be represented by a union affiliated with the Mineros:

² The *45 Minutes* report can be viewed online at: <http://www.mtv3.fi/45minuuttia/jaksot.shtml/44-pkc-n-meksikon-menetelmat-herattivat-suurimman-omistajan/2012/04/1523959>.

PKC Group signed the acquisition agreement to buy the AEES companies in August 2011. It was also around this time that the Miners campaigning in Acuña intensified. In order to protect the rights of its employees, AEES accepted the execution of a collective agreement with the legally operating Confederation of Mexican Workers (CTM) labor union in September 2011. The effort to unionize the employees is being driven by external individuals and groups – not by the employees. Exercising the legal right to accept a contract with the CTM was seen as means to fulfill employees’ will not to be represented by a union that they did not want.³

With regard to its decision to sign the agreement with CTM without workers’ knowledge or consent, the company stated:

Mexican law allows unions to register as the employees’ representative irrespective of the will of the employees; in fact, the employees may never be asked their preference. Registration and certification of the union as the bargaining representative binds the employees to pay membership dues to the labor union whether they wish to join it or not.⁴

The statement also asserted that “PKC Group is complying fully with the Mexican laws and norms as well as with the freedom of association imposed by the International Labor Organization.”⁵

Far from fully complying with rights of association under the ILO, however, Arneses y Accesorios’ signing a collective agreement with the CTM constituted a clear-cut and serious violation of ILO Conventions 87 and 98. Convention 87 provides that “workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of *their own choosing* without previous authorization.”⁶ (emphasis added) ILO Convention 98 declares that “workers’ and employers’ organizations shall enjoy adequate protection against any acts of interference by each other or each other’s agents or members in their establishment, functioning or administration.”⁷

Arneses y Accesorios violated Conventions 87 and 98 by signing a collective agreement with CTM because, in so doing, it put in place a potent obstacle to prevent workers at the facility from exercising their right to establish and join an organization of their own choosing.⁸ Instead

³ PKC Statement, Apr. 11, 2012.

⁴ *Id.*

⁵ *Id.*

⁶ International Labor Organization, Convention concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Art. 2.

⁷ International Labor Organization, Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, 1949 (No. 98), Art. 1(2).

⁸ See International Labor Organization, “Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO,” Fifth (revised) edition (2006) [hereinafter ILO Committee on Freedom of Association Digest], paras. 309, 389, 868. The Freedom of Association Committee is the foremost international body charged with interpreting this right under ILO Conventions.

of respecting the rights of workers to choose their own labor organization, Arneses y Accesorios management selected workers' representatives for them.

Indeed, as PKC has openly acknowledged, Arneses management and the CTM signed the agreement entirely behind the backs of the workers whose terms of employment it governs. Workers did not learn of the agreement's existence until they sought to organize an independent union but were informed by management that they were barred from doing so because of the CTM agreement. Moreover, in its April 11, 2012 statement, PKC management openly acknowledged that the factory signed the agreement with CTM specifically to prevent workers' organizing with the Mineros.⁹

The conclusion that the CTM branch union at Arneses y Accesorios is a creature of PKC management, rather than an expression of workers' free choice, is further supported by evidence that factory management bankrolled the CTM's organizational efforts at the facility. The WRC obtained records of reliable provenance indicating that Arneses y Accesorios management made payments to the CTM totaling \$175,283.00 that were associated with the CTM's organization of the factory's workers. These payments, as detailed in a spreadsheet provided by a factory administrative staff person, include reimbursement for such items as airplane tickets, gasoline, hotels, car rental, laminated signs, food buffet, security guards, miscellaneous travel costs, and advertisements.

PKC's financial underwriting of the CTM's activities is a brazen violation of Article 98, as it defines the CTM's relationship to the company in terms of employer patronage, rather than worker representation. Because the appropriate role of a labor organization is to independently represent the interests of workers, accepting financial support from employers presents an inherent conflict of interest.

It is important to understand that there is broad consensus among human and labor rights experts that collective agreements signed under circumstances such as those that occurred at Arneses y Accesorios violate international labor standards. Indeed, the U.S. Department of State¹⁰, the International Trade Union Confederation¹¹, Human Rights Watch, and the Fair Labor

⁹ The company has asserted that it signed the agreement with CTM to "protect" the rights or interests of its employees. Even where well-intentioned, such acts of paternalism are specifically prohibited by Convention 98 because employer domination of workers' associational decisions and activities has an inherently corrosive effect on workers' ability to create and manage their own organizations. *See, e.g.*, ILO Committee on Freedom of Association Digest, para. 855.

¹⁰ *See, e.g.*, U.S. DEP'T OF STATE, HUMAN RIGHTS REPORT: MEXICO (2012) ("Protection (company-controlled) unions continued to be a problem in all sectors, and many observers noted that a majority of organized workers belonged to unrepresentative unions. Protection contracts are a violation of International Labor Organization Convention 87, regarding freedom of association. Officially sanctioned 'protection contracts'--formal agreements whereby the company created an unrepresentative union in exchange for labor peace and other concessions--were common in all sectors and often prevented workers from fully exercising their labor rights as defined by law. These contracts were often developed prior to the company hiring any workers at a new job site and managed without direct input from workers. Collective bargaining agreements resulting from protection contracts usually failed to provide worker benefits beyond the legal minimum and impeded the rights of independent unions to effectively and legitimately bargain collectively on behalf of workers.").

¹¹ ITUC, ANNUAL SURVEY OF VIOLATIONS OF TRADE UNION RIGHTS: MEXICO (2010, 2011), *available at* <http://survey.ituc-csi.org/Protection-contracts.html>.

Association (a major industry-backed monitoring initiative)¹², as well as many other nongovernmental organizations have cited the practice of employers in Mexico signing labor agreements without workers' knowledge or involvement as a grave violation of worker rights.

As international labor law expert Lance Compa has written:

[U]ndemocratic unions in Mexico ... exist on paper and nominally hold collective contracts with employers, but serve only the interests of employers and corrupt individuals who administer these paper unions for their own pecuniary gain. Real trade unionists call them "protection unions" because they protect employers from authentic self-organization and free collective bargaining by workers. Experts have estimated that some 90 percent of all collective agreements filed with the Mexican labor department are fraudulent "protection contracts" (*contratos de protección*) or "pretend contracts" (*contratos simulados*) meant only to block real unions from forming.¹³

Human Rights Watch documented a notable instance of unlawful protection unionism with numerous similarities to the current situation at PKC at another auto parts manufacturing facility in Coahuila (which was then owned by Alcoa and subsequently acquired by PKC) in 2003:

Legitimate labor organizing activity continued to be obstructed by collective bargaining agreements negotiated between management and pro-business unions. These agreements often failed to provide worker benefits beyond the minimum standards mandated by Mexican legislation, and workers sometimes only learned of the agreements when they grew discontented and attempted to organize independent unions. Yet when workers sought to displace non-independent unions, they ran the risk of losing their jobs. For example, efforts to form independent unions in factories that produced for the Alcoa corporation in Piedras Negras, Coahuila failed in October when management fired independent union leaders elected in March in one plant, as well as a slate of independent candidates who had announced their intention to run in future union leadership elections in another plant.¹⁴

PKC has sought to defend its conduct by suggesting that, although the CTM is not a legitimate union by Finnish standards, the Arneses-CTM contract is legitimate in the Mexican context. This is not correct. As discussed above, ILO Conventions 87 and 98—which were plainly violated in this case—are as applicable and binding in Mexico as they are in Finland. It is true that corruption within the Mexican government has led to government entities facilitating

¹² Fair Labor Association, *Freedom of Association: Monitoring Against Protection Contracts in Mexico* ("The use of 'protection contracts' in Mexico to limit workers' right to freedom of association and collective bargaining is an endemic practice that contravenes ILO's Conventions 87 and 98 and FLA Workplace Code of Conduct and Monitoring Benchmarks."), available at http://www.fairlabor.org/sites/default/files/freedom_of_association__mexico.pdf.

¹³ AMERICAN CENTER FOR INTERNATIONAL LABOR SOLIDARITY, JUSTICE FOR ALL: THE STRUGGLE FOR WORKER RIGHTS IN MEXICO (2003) (hereinafter *Justice for All*), available at <http://www.solidaritycenter.org/files/SolidarityMexicofinalpdf111703.pdf>.

¹⁴ See HUMAN RIGHTS WATCH, *WORLD REPORT 2002*, available at <http://www.hrw.org/legacy/wr2k3/>.

the practice of protection contracting.¹⁵ However, the fact that a government entity may be willing to assist an employer in carrying out an activity that violates workers' core labor rights does not excuse the employer—particularly an international corporation familiar with international labor rights norms—exploiting such assistance in order to carry out such violations.

C. Anti-Union Harassment and Intimidation in Lead-Up to October 2012 Union Election

The WRC documented serious violations of labor rights during the run-up to the union election held by the Labor Board at Arneses y Accesorios in October 2012.

On July 4, 2012, the Ninth Collegiate Tribunal for Labor Matters of the First Circuit, an appellate court, ruled in favor of the Mineros union's challenge to the Labor Board decision barring it from representing workers at Arneses y Accesorios. The Tribunal ordered the Labor Board to proceed with hearings to determine whether an election should take place. It also stated that the jurisdictional objection raised by the Board should be dealt with in post-election proceedings.

Beginning on July 31, 2012, the Labor Board held a series of hearings on the Mineros' petition for an election. On October 15, following a series of procedural objections by the CTM, the Labor Board issued a decision setting an election for three days later on October 18.

During the lead-up to this election, in August, September, and October 2012, Arneses y Accesorios management waged an aggressive campaign to prevent workers from voting in favor of the Mineros union. The practices documented by the WRC during this period included the following:

i. Directing the Issuance of Anti-Union Threats to Employees

PKC management convened mandatory meetings for factory supervisors and team leaders in which managers instructed supervisors and team leaders to convey anti-*Mineros* messages to their fellow employees. In particular, management instructed the team leaders to convey to workers that, if the Mineros won the union election, the factory would close and workers would lose their jobs. The leaders were additionally told to convince workers that the Mineros is a violent organization.

A team leader testified to the WRC that the manager of Plant 2 at Arneses y Accesorios, Jorge González, held frequent meetings prior to the election in which he conveyed such messages as, "We should be with the CTM because the company didn't need the Mineros and the CTM had been contracted for this reason. If you want to be out of work, then go with the

¹⁵ As Professor Compa has written, local Labor Boards in Mexico tend to "favor official, pro-government, pro-employer unions against independent organizations chosen by workers. . . . The iron triangle of government, employer, and official union control over workers' organizing and collective bargaining still prevails in most jurisdictions, especially in states with high concentrations of maquiladora factories." See *Justice for All* at 15.

Mineros, if you want a good work environment you need to pick the CTM. The Mineros are violent and beat people up.”

When certain team leaders defended the rights of the Mineros to form a union, Mr. González responded by stating: “Wake up, you are not thinking with your head, you are thinking with your heart.” González instructed team leaders to spread this information to the operators and repeat to the operators often “that we needed to be with the CTM if we wanted to keep our jobs.”

Numerous supervisors and team leaders in turn conveyed the messages dictated by PKC management to workers through small-group and individual conversations. One machine operator reported that he was told by his group leader the day before the election that their supervisor had told the leaders to spread information to the workers that the Mineros were “trouble-makers” and if the latter won the election, the factory would close and they would lose existing benefits such as gift certificates for food purchases and attendance bonuses.

Similarly, a mechanic reported that in the morning on the day of the election, he was pulled aside with about 15 other new mechanics in the mechanics’ working area. In this meeting, Miguel Angel Chillo, the mechanics’ supervisor, stated that “We should vote for the CTM, and to think about the future because we would be fired if we voted for the Mineros...”

ii. *Captive Audience Meetings and CTM Union Workshops During Paid Working Hours*

PKC plant management arranged “captive audience” meetings which employees were required to attend during regular work hours (on paid company time) or on Saturdays (with PKC providing them with full overtime pay). Most workers reported that such meetings and trainings were conducted generally over a half-day period.

During these meetings, CTM representatives or outside facilitators showed video clips and media coverage that depicted the Mineros as violent and conveyed anti-Mineros messages, including that voting for the Mineros would cause the factory to close or for workers to lose benefits such as bonuses and gift certificates for groceries. The CTM representatives in these workshops also offered to pay certain personal expenses for workers, including electric and water bills, and legal costs, such as those associated with registering marriages and divorces.

Workers testified that PKC human resources staff identified workers they wanted to attend the meetings based on whom the former perceived could be convinced to vote for the CTM and instructed team leaders to inform these workers that they must attend. The meetings were generally held in small groups of 15-30 workers per workshop. Participation was mandatory for those workers selected to attend.

Several Mineros supporters reported that they were not allowed to attend these meetings even though they had requested to do so, both so that they could obtain overtime pay for attendance and so that they might hear and balance management’s anti-Mineros messages. These

workers reported uniformly, however, that they were told by their supervisors or team leaders that they could not attend the meetings because they supported the Mineros.

One worker stated that his supervisor told him, “You are Mineros 100%. I’m not going to send you.” Another worker was told by his supervisor that the latter were told to pick people to attend the meetings that they thought could be convinced to vote for the CTM or people “who were afraid.” Another employee was told by his supervisor, “You know I can’t send you to the workshops, because you are with the Mineros.”

These trainings and meetings were held in an office in the town of Acuña and in the cafeteria in the Arnese y Accesorios factory. Workers reported that they were provided free meals and refreshments at these workshops. Participants reported being shown video footage and newspaper clips of violent conflicts involving the Mineros unions at other workplaces and being told negative messages about the Mineros and their leadership, particularly the union’s secretary general.

One worker from Arnese y Accesorios’ Plant 3 reported that “They told us if the Mineros won, the factory would close and if the CTM won then the factory would stay open.” Several participants reported that they were brought to these meetings in the same company buses that provided them with regular transportation to and from the Arnese y Accesorios factory.

iii. Anti-Mineros Messages Played in Plant Cafeteria during Break Times

Workers reported that anti-Mineros messages were played on the televisions in the plant cafeteria during workers’ half-hour break times. Several workers noted that such messages were primarily conveyed through advertising spots that were run specifically during these break times by the local employers’ association in Acuña and which delivered anti-Mineros messages such as “the Mineros are offering unrealistic goals, don’t be fooled. Sincerely, the employers of Acuña” or another which stated that “Acuña has been distinguished by maquilas with no unions. Hope for the best very soon!”

iv. Providing the CTM with Access to Employees during Working Hours

Workers uniformly reported that CTM representatives were given unrestricted access to the plant during working hours to have one-on-one conversations with workers, in which they would promote the CTM and offer workers goods, services and discounts (such as help with reducing or getting credit on utility bills and housing payments). Workers reported that CTM representatives had free access to all production areas and regularly visited the plants in groups of two or three, speaking to employees individually in their work areas during working hours without objection from PKC’s management.

Conversely, Mineros representatives report that they were never allowed access to the factory. The Mineros representatives did not formally request access from the company, but PKC management’s actions—including refusing to allow even current employees to participate in in-

plant meetings if they supported the Mineros —made it clear that Mineros representatives would not be allowed inside the facility.

PKC management also discouraged workers from having contact with the Mineros even offsite. When Mineros organizers began conducting house visits offsite prior to the election, workers report that they were discouraged from speaking with the Mineros by notices posted inside the factory that instructed workers who felt threatened by these visits to report them to the management.

v. Discrimination and Punishment for Wearing Mineros T-shirts

Workers reported that during the final days leading up to the election, workers wearing Mineros t-shirts were not allowed on the company busses, which workers ride to and from work. A worker testified that he overheard the bus drivers receiving instructions over the radio system one day before the election stating that they should not allow workers on the company buses if they were wearing Mineros t-shirts.

Workers who wore Mineros t-shirts in the facility reported being harassed by factory managers. For example, workers employed in Plant 3 on the second shift reported that ten workers who wore Mineros shirts were called to the plant human resources office, questioned about why they were wearing the shirts, and instructed to take them off or to put work vests on over them.

Several workers reported that managers and supervisors warned them that they should not wear Mineros t-shirts inside the plant. One worker, for instance, was approached by a PKC human resources manager in Plant 4 who sat down next to him during meal times on the day he wore a Mineros t-shirt. He noted that the manager had never before sat next to him during meal periods. The manager asked the worker why he was wearing a Mineros shirt. The manager told him, “The Mineros just want to take union dues and they are worthless... Aren’t you ashamed?” Another worker stated that his coworker told him about being questioned about her Mineros shirt by a manager who said, “We’ll see on the day you are fired if your ‘friends’ will support you.”

The ILO Committee on Freedom of Association has identified numerous examples of employer conduct that constitutes prohibited “interference” with the right of freedom of association, as protected by ILO Conventions 87 and 98, including imposing pressure, instilling fear, and making threats that undermine workers’ exercise of this basic right.¹⁶ The practices described above violate Conventions 87 and 98 in at least two ways:

First, Arneses y Accesorios managers’ use of specific threatening messages – in particular that the factory would close if workers did not vote for the CTM – was plainly

¹⁶ See International Labor Organization, “Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO,” Fifth (revised) edition (2006) [hereinafter ILO Committee on Freedom of Association Digest], paras. 35, 67, 514, 638, 682, 772, 780, 781, 786, 787, 803, 810, 837, 839, 858, 863, 864, 865. For a concise summary of forms of interference identified by the ILO Committee on Freedom of Association, see Human Rights Watch, “A Strange Case: Violations of Workers’ Freedom of Association in the United States by European Multinational Corporations,” 10 (September 2010) [hereinafter Human Rights Watch: A Strange Case], http://www.hrw.org/sites/default/files/reports/bhr0910web_0.pdf.

calculated to, and did, have the effect of instilling fear and a sense of futility among workers. The threat of closure was conveyed by managers to team leaders (who were eligible to vote in the election), with the instruction that they relay this message to their fellow workers, as well as in obligatory captive audience meetings. These messages amounted to a threat that if workers did not go along with management's demand to support the CTM, the company would terminate them and they would lose their livelihoods. The threat of retaliatory termination has long been recognized as a form of employer interference with the right of freedom of association as protected by Conventions 87 and 98.¹⁷

Second, the WRC finds that Arneses y Accesorios unlawfully denied workers an opportunity to make a free choice with respect to union representation by dominating and restricting workers' access to information. Arneses y Accesorios' practice of forcing its employees to repeatedly sit through lengthy presentations of anti-Mineros/pro-CTM views, while at the same time denying its employees similar opportunities to hear pro-Mineros views from workers who were Mineros supporters or union representatives, created an environment incompatible with respect for freedom of association. Just as we would not consider a political election free and fair if the incumbent administration required voters to sit through sessions of propaganda against its challengers, while at the same time preventing voters from hearing the latter's views, Arneses y Accesorios' domination of its workers' access to information violated basic norms of free and fair elections, and, therefore, free choice of union representation.¹⁸

In sum, the WRC concludes that the combination of threatening messages and the employer's domination of workers' access to information undermined workers' ability to make a free decision with respect to union representation during the election held on October 18, 2012.

D. Management Manipulation of Election through Short-Term Rehiring of Employees

The WRC gathered evidence suggesting that Arneses y Accesorios management rehired former employees on short-term contracts for the purpose of padding the CTM's vote in the election.

During September 2012, in the period leading up to the October union election, Arneses y Accesorios management rehired—on 28-day contracts—employees who previously had worked

¹⁷ See, e.g., International Labor Organization, Committee on Freedom of Association, *Complaint against the Government of Mexico presented by Trade Union of Employees of the Electrical Component Manufacturing Company of Mexico S.A. of C.V. (STEMCEM)*, Case No. 2393.

¹⁸ For a discussion of the analogy between union elections and political elections, see HUMAN RIGHTS WATCH, DISCOUNTING RIGHTS: WAL-MART'S VIOLATION OF US WORKERS' RIGHT TO FREEDOM OF ASSOCIATION 73, 76 (May 2007) [hereinafter Human Rights Watch: Discounting Rights], available at <http://www.hrw.org/sites/default/files/reports/us0507webwcover.pdf>. Note that the ILO Committee on Freedom of Association has held, in the context of a complaint against the United States, that the failure to "guarantee access of trade union representatives to workplaces, with due respect for the rights of property and management, so that trade unions can communicate with workers, in order to apprise them of the potential advantages of unionization" is incompatible with respect for freedom of association as required by ILO Conventions 87 and 98. See International Labor Organization, Committee on Freedom of Association, *Complaint against the Government of the United States presented by the United Food and Commercial Workers International Union (UFCW), the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the International Federation of Commercial, Clerical, Professional and Technical Employees (FIET)*, Report No. 284, Case No. 1583 (1992).

at the factory and directed these employees to vote for the CTM. The WRC estimates that at least 50 workers were rehired during this period.

One of these workers testified that that he had been terminated in August 2012 but was called back to work at Plant 4 in September, along with roughly 30 other workers. The worker reported that during his first week back at work, all new employees were called over the plant's public address system to attend a meeting in the factory's conference room at which they were told, "The other union is trying to insert itself, but you have to vote for the CTM because if they [the CTM] don't win you will be fired. The CTM is from Arneses. We are counting on you. There is no need to vote for the other union, because the CTM is already here and you will have more benefits if the CTM wins." This worker stated that there was not enough work for the 30 workers who were hired in Plant 4 to do, that they spent most of their work shifts "walking around" the plant, and it was clear that they "were only there to vote in the election."

E. Mass Retaliatory Dismissal in December 2012

The WRC gathered evidence that after the October 2012 election, Arneses y Accesorios carried out a mass firing of employees which targeted supporters of the Mineros union.

Between December 14 and December 20, Arneses y Accesorios dismissed approximately 100 workers. The company has asserted that the dismissals were routine layoffs carried out according to the personnel needs of the facility. For the following reasons, however, the WRC concludes that these dismissals were carried out in retaliation for workers' union activities:

First, the fired workers were informed by supervisors, team leaders and coworkers before being terminated that all Mineros employee leaders would be fired in December. Among the workers who provided testimony to the WRC on this issue:

- One worker stated that in the end of November 2012 his team leader told him that his supervisor had informed him that all the "red bellies," referring to supporters of the Mineros union, who wore red t-shirts, would be getting "kicked out." This worker stated that his coworkers did not talk to him during the weeks leading up to his firing in December "because people told me that it was known that [I] was with [the Mineros] and was going to be fired."
- A Mineros supporter reported that several days before he was fired his team leader told him that, "You are all going to be fired on Friday, because you went to the meetings or did house visits with the Mineros."
- Another worker stated that on the day he was fired, a supervisor leaving the facility told him that he was going to be terminated, because all the other Mineros supporters in his shift had been fired and "you are going to be fired for supporting the Mineros [too]."
- Another worker stated that a family member who was in a management position at the facility told him that "all of you who were out in front with the Mineros are going to be fired." The worker stated that he had been identified as a Mineros supporter since he regularly wore a Mineros t-shirt to work.

Such admissions by managers are among the most persuasive forms of evidence that terminations of employees are motivated by retaliation on the part of the employer.

Second, the conclusion that these firings were retaliatory in nature is supported by powerful statistical evidence. The approximately 100 workers terminated during the period in question included fully 26 of the 32, or 81.25%, of workers whose names were publicly listed as official election observers for the Mineros. By contrast, the terminations affected less than 5% of the plant's overall workforce. It is implausible that this proportion of the union's leadership could be eliminated in a layoff of this size as a matter of mere chance.

Any possibility of such a coincidence is eliminated when one considers that: (1) the terminated union leaders were spread across various occupations and locations throughout the Arneses y Accesorios facilities; (2) these workers were among the most visible Mineros supporters in the facility; and (3) the firings took place less than two months after an election in which management aggressively campaigned against the Mineros union.

Third, the available evidence undermines any claim that the layoffs actually were necessitated by business conditions. Although the terminated workers were told that they were being laid off because the company no longer needed their services, employees reported that they saw no significant dip in overall production during this period and, most damningly, that the company replaced the fired workers shortly after their terminations, and continued to hire new employees throughout January 2013.

Fourth, dismissed workers from various plants and shifts reported that Arneses y Accesorios managers placed heavy pressure on them to quickly accept severance payments at the time of their dismissal. Workers reported that managers in some cases told them that they should accept the severance payment because if they did not there would be no guarantee that the funds would be available at a later date. One worker who refused to sign a severance agreement was told by a human resources manager that he would not be given a letter of recommendation unless he agreed to sign the documents management prepared.

PKC's actions in this regard are consistent with those of an employer seeking to preempt claims of unlawful termination by having employees waive such claims through the acceptance of severance benefits, a practice that is commonplace in the Mexican maquiladora industry. Under Mexican labor law, a fired worker who accepts a severance payment forfeits the right to sue for reinstatement based on unjust dismissal.¹⁹ Note, however, that international labor law jurisprudence establishes that the acceptance of severance should not prevent workers from obtaining full remedies for retaliatory dismissal, including reinstatement with back pay.²⁰

¹⁹ Federal Labor Law, Art. 48.

²⁰ See, ILO Committee on Freedom of Association Digest, para. 791 ("It would not appear that sufficient protection against acts of anti-union discrimination, as set out in Convention No. 98, is granted . . . where employers can in practice, on condition that they pay the compensation prescribed by law for cases of unjustified dismissal, dismiss any worker, if the true reason is the worker's trade union membership or activities.").

In summary, there is overwhelming evidence that Arneses y Accesorios management targeted union leaders for dismissal in the wake of the October 2012 union election. Such retaliatory terminations violate ILO Convention 87's guarantee of workers' right of self-organization and Convention 98's requirement that "workers shall enjoy adequate protection against acts of antiunion discrimination in respect of their employment" including "acts calculated to—b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities."²¹

VI. Findings on Gender Discrimination through Sexual Harassment

The WRC gathered credible evidence that women workers were subjected to *quid pro quo* sexual harassment in the workplace by an Arneses y Accesorios supervisor. Such harassment is a form of gender-based discrimination.

The WRC reviewed written testimonies gathered by a researcher from the AFL-CIO from four female workers from Arneses y Accesorios. WRC investigators subsequently interviewed two of these workers, who provided detailed testimony consistent with their earlier statements. All four workers worked in Arneses y Accesorios' Plant 3, during the night shift, and all four reported being harassed by the same supervisor, Felipe Rivera. As a production supervisor, Rivera has the authority to approve time off for illness, distribute work among employees, and suspend or otherwise discipline the workers under his supervision, including the affected employees.

One of the workers whom the WRC interviewed reported that in the Spring of 2012, Rivera approached her at her work station and offered to move her from her then-current position, where she earned 120 pesos per day, to the cutting department, where she would be paid 135 pesos per day, if she agreed to go out with him. The worker declined. At another point, Rivera offered to pay her overtime if she went on a date with him after work. The worker refused again.

Nevertheless, Rivera persisted in making such offers to this employee on a daily basis through Spring 2012. Over time, Rivera's actions became more aggressive, walking by the worker's station two or three times a day and touching her on her hips and waist area. The worker asked him to stop touching her, but Rivera persisted, continuing to touch her in this way on six more occasions, ceasing only when she emphatically demanded that he stop.

Thereafter, the worker reported, Rivera ceased to speak to her and began to retaliate against her, denying her requests for permission to take leave for personal matters. He also stopped offering her overtime hours. The worker reported that she is aware of other female workers in her work area who were the subject of similar sexual harassment by Rivera.

Another worker testified to the WRC that, over a period of two to three months, Rivera asked her out virtually every time he spoke with her at work. The worker refused his advances on

²¹ International Labor Organization, Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, 1949 (No. 98), Art. 1(1).

each occasion. Nevertheless, Rivera continued to proposition her, causing the worker to feel increasingly uncomfortable at work.

This same worker testified that she was aware of instances involving other workers in which Rivera propositioned them in the workplace, accompanying his advances with threats that, if the worker did not accept, he would suspend or terminate the employee, or send her to the Human Resources department.

It appears that senior management of Arneses y Accesorios has been aware of Rivera's harassment of women workers for a number of months, but has not taken meaningful action to address the problem. According to second-hand reports, a woman who was a victim of Rivera's unwanted advances showed PKC's human resources staff inappropriate text messages that Rivera had sent her and complained about his behavior, but that nothing was done as a result.

In addition, workers who provided statements to the AFL-CIO investigator stated that Rivera's behavior was observed on the factory floor by numerous employees and reported to PKC management, but the management had done nothing to discipline Rivera or prevent these incidents from reoccurring. Indeed, one of the workers stated that she personally reported this sexual harassment to a Human Resources manager named "Nelson," after witnessing multiple incidences of sexual harassment involving multiple employees, but that this manager took no action.

The WRC was also informed that a local television news reporter filed a story on sexual harassment at Arneses y Accesorios in August 2012, after receiving information from a male employee who was disgusted by Rivera's conduct and apparent impunity. Yet, to the WRC's knowledge, Rivera remains in his position at the company to this day.

Quid pro quo sexual harassment as described here is a violation of workers' right to be free from discrimination based on gender, as defined in ILO Convention 111, Art. 1(1). Such conduct is likewise prohibited under the United Nations Declaration on the Elimination of Violence Against Women (General Assembly Resolution 48/104), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women.

VII. Recommendations

The WRC recommends that PKC take the following corrective actions without delay to restore the rights of workers at Arneses y Accesorios:

1. Immediately reinstate all workers who were dismissed in retaliation for the exercise of their associational rights with full back pay and interest to the time of dismissal and no loss of seniority.²² The employees to be reinstated should include, but not be limited to, the 26 election observers fired in December 2012 and those union leaders previously dismissed in

²² See, ILO Committee on Freedom of Association Digest para. 837 ("No one should be subjected to anti-union discrimination because of legitimate trade union activities and the remedy of reinstatement should be available to those who are victims of anti-union discrimination.").

retaliation for the exercise of their associational rights.²³ Given the evidence of duress discussed above, these workers must not be denied reinstatement on the grounds that they accepted severance upon termination. However, when workers are reinstated under such circumstances, it is appropriate that the amount of severance benefits they were paid at the time of their dismissal be credited against the sum provided to them for back pay and interest.

2. Reach an agreement with the CTM for the termination of the “protection contract” between PKC and the CTM. There is a precedent for such remedial action in a similar case in Mexico and it is legal under the Mexican Labor Code.²⁴
3. Take the following steps to expedite a fair and transparent new election for union representation at Arneses y Accesorios:
 - a. Immediately cease preferential treatment of the CTM, including allowing the CTM to hold workshops for workers during paid company time and providing preferential access to the workforce during working hours. The company should provide the Mineros union with equal access to the workforce under the same conditions available to the CTM.
 - b. Immediately instruct all supervisors, managers or team leaders to cease informing workers that the factory will close or benefits will be revoked if the Mineros win the election, and cease pressuring workers to vote for the CTM. PKC should discipline any team leaders, supervisors or managers that so attempt to influence workers’ votes. In addition, the management should ensure that no anti-Mineros messages or videos are played on site in the cafeteria or elsewhere in the facility and should cease funding anti-Mineros advertisements through the local employers’ association or any other mechanism.
 - c. Ensure that the CTM ceases any efforts to coerce or bribe workers to vote for the CTM through financial or legal assistance. Any benefits such as legal or financial assistance must be clearly provided to all workers and steps should be taken ensure that workers know that access to such benefits is not conditioned on their voting for either union.
 - d. The voting list for the election should be provided to both unions with complete information including all the relevant ID numbers and the dates of any dismissals or rehiring for any inactive employees. Such list should be provided to the two unions at least 15days before the election so that they may review the lists and raise any objections prior to the election.

²³ Previous retaliatory dismissals include Juan Carlos Palomino Cansigno who served as the Alternate Secretary of Organization, Propaganda and Statistics for the Executive Committee of Section 307 who was dismissed on 28 April 2012 and has a pending lawsuit for reinstatement.

²⁴ See WRC Investigation of Kukdong/Mexmode in Puebla, Mexico, available at <http://workersrights.org/Freports/Kukdong.asp>.

- e. Ensure that supervisors and management do not prevent workers from voting in the election. Determinations of which workers are on the voting lists and are eligible to vote should be left to election officials.
4. Provide Mineros representatives with equal rights to represent and recruit union members at Arneses y Accesorios, include comparable access to the factory for Mineros organizers and representatives. In addition, PKC should immediately cease any disciplinary actions, intimidation or harassment of workers for exercising associational rights such as wearing Mineros t-shirts or handing out Mineros flyers.
5. Work with the Mineros union and a mutually agreed-upon third party to implement training for both workers and managers on workers' rights of freedom of association.
6. Issue a statement to the workforce, both verbally and in writing, stating that workers at Arneses y Accesorios have the right to join a union of their choosing and that management will in no way interfere with this decision or take any adverse action in response to any decision a worker makes in this regard. The WRC is willing to assist PKC in developing appropriate language for such a statement.
7. Establish an effective disciplinary policy with respect to violations of freedom of association and take meaningful disciplinary action against those supervisors and managers responsible for harassment, intimidation and retaliation against workers who attempt to exercise associational rights. Progressive discipline should be applied to any supervisor or manager who violates workers' rights to freedom of association.
8. Cease all acts of interference with workers' decisions regarding collective representation. Specifically, refrain from expressing any opinions to workers regarding attendance at union meetings and trainings and refrain from posting or distributing any propaganda disfavoring a particular union.
9. Establish an effective disciplinary policy to prevent sexual harassment in the workplace, providing for discipline of any supervisor or manager who engages in sexual harassment. PKC should terminate any supervisors or managers who have been found to engage in sexual harassment, including Plant 3 manager Felipe Rivera. The WRC is willing to assist PKC in developing an appropriate sexual harassment policy and implementation program.
10. Cooperate with recognized local experts to provide training for workers and supervisors to develop a sexual-harassment-free workplace. The WRC is willing to assist the PKC in identifying appropriate experts to conduct such training.