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CORPORATIONS AND HUMAN RIGHTS

FREEDOM OF ASSOCIATION IN A MAQUILA IN GUATEMALA

I. INTRODUCTION

A two-person Human Rights Watch delegation traveled to Guatemala in January 1997. The visit focused on reports of the discriminatory treatment of trade unionists at the assembly plants there of the U.S.-based corporation Phillips-Van Heusen (PVH), and allegations of obstacles posed by the company and the Guatemalan labor ministry to the union's recognition for purposes of collective bargaining. Principally at issue in the latter was the union's claim to have secured the membership of more than one-fourth of the total workforce: Guatemalan law requires employers to negotiate with unions in such circumstances, but the company challenged the union's membership claims. Human Rights Watch determined to undertake the inquiry into the underlying issue of freedom of association in the two PVH plants in Guatemala plants in response to requests by the union there, their international supporters (notably the U.S./Guatemala Labor Education Project), and the company itself.

A preliminary two-day visit was made by Human Right Watch consultant Kenneth Anderson, an experienced human rights investigator, in November 1996. Professor Anderson concluded that there was evidence of anti-union discrimination, but was unable in that short time to determine whether the union's claim to have one-fourth of the workforce was well founded. In a preliminary finding he reported that he had seen no documentation to sustain the required 25 percent showing. Likewise, he was unable to assess the proceedings then underway in the labor ministry to resolve the matter. It was subsequently determined to conduct a more extensive inquiry. The cooperation of the company was a factor in going forward with this research. The chief executive officer of the Phillips-Van Heusen (PVH) corporation, Bruce Klatsky, a member of the Human Rights Watch Board of Directors, strongly supported a fact-finding visit by the organization and pledged his company's full cooperation with such a visit. This was subsequently forthcoming, as impromptu requests were made while in Guatemala to review personnel records, payroll information, and to meet extensively with managers at PVH's consolidated plant; these requests were granted without hesitation. Similarly, the company's implicit pledge to consider Human Rights Watch's findings carefully, however critical they might be, was an element in the background of this initiative.

Human Rights Watch's findings serve a broader purpose than the immediate focus of the investigation. This report helps identify ways in which forms of discriminatory treatment that are seemingly minor—when contrasted with physical abuse, threats of violence and illegal dismissals—may still undermine the right to free association of workers. The report highlights the need for safeguards against acts of anti-union discrimination. At the same time, the report seeks to provide guidance to employers with the will to remedy such abuses, by identifying a range of discriminatory measures that are less readily perceptible beyond the shop floor than the gross abuses—mass dismissals, arrests, "disappearances," murders—that make the headlines. The identification of indicators of such abuses, as well as possible remedies, is in turn proposed with a view not just to remedy the particular situation described in the case study here, but with a view to encouraging PVH and other corporations that have played a leading role in the formulation of human rights-based codes of conduct to deepen their implementation.

It can be expected that corporations will expand their global production in the years to come. A number will seek to establish and enforce standards to be observed by their wholly owned operations, contractors, subcontractors, and licensees. The codes of conduct developed by some of these corporations, notably PVH, Liz Claiborne, Levi Strauss, Reebok (to name only a few) in the garment and footwear industries, are an advance in this regard. However, this report highlights the need for greater safeguards of international standards on freedom of association in overseas assembly plants, particularly where national mechanisms for the protection of labor rights are flawed. It is the hope of Human Rights Watch that issues addressed here will be viewed far beyond the particular case study examined and the burgeoning overseas assembly sector of Guatemala's industrial establishment.

The practices documented in this report underscore the need for the companies that have taken a leadership role to ensure that the principles formulated by senior management are implemented in the workplace in a way that will increase respect for their workers' human rights. This is a particular challenge when a company is opposed to unionization but commits itself, as PVH has done, to express that opposition strictly through lawful means. Given the importance of the rights of free expression and association, codified in the International Covenant on Civil and Political

Rights and International Labor Organization Conventions No. 87 and 98, it is critical that corporations carefully evaluate and, if need be, revise their practices in situations where organizing and collective bargaining efforts are taking place. To this end, Human Rights Watch is calling for greater attention by concerned executives in the corporations that have already made genuine advances in introducing human rights considerations into their operations. In addition, we hope these findings sound an alarm for those who have not.

A particular goal is to encourage those companies that already make real efforts to promote and to implement human rights-oriented codes of conduct, to take further steps to introduce practical safeguards so that freedom of association in the workplace is truly unfettered. To this end, this report draws upon Guatemalan law, international human rights law, and the human rights provisions of international labor law, and in particular the practical observations and decisions of the supervisory bodies of international labor law. It encourages a greater familiarity with the terms of human rights protection as enunciated in international labor law, notably the principle enunciated by the International Labor Organization's Committee on the Freedom of Association that "The right to bargain freely with employers with respect to conditions of work constitutes an essential element in freedom of association...." (Paragraph 782 of the *Digest of Decisions and Principles of the Freedom of Association Committees of the Governing Body of the ILO*).

The overall environment at the now consolidated PVH plant contrasted favorably with other plants visited by Human Rights Watch with respect to restrictions on workers' freedom of expression. At two other plants visited by Human Rights Watch, workers seemed to be operating under greater tension and pressure. At the PVH plant visited, workers appeared to have more liberty at their workstations and to be less intimidated by managers. This was reflected in both the demeanor of workers during Human Rights Watch's walks and conversations in production areas—workers seemed free to talk, smile—and in our observation that workers' had posted photocopied sheets of union slogans, notably "We want an agreement," above many of the workstations. Both observations had earlier been made by Human Rights Watch delegate Kenneth Anderson after his visit to Camosa II in November 1996, and union members confirmed that managers had not opposed their posting of union signs at their workstations. Human Rights Watch was also twice present when union supporters took part in brief, pre-planned sessions in which slogans such as "we want an agreement" were chanted; a routine which managers said they had determined to tolerate and which union members said had not generated retaliation.

Also notable was that PVH workers had free access in and out of the facility during the fifteen minute morning break and the lunchtime break when groups of workers congregated outside the plant. Union organizers—non-company employees—had uncontested access to this public space and engaged in lively discussion with PVH employees. Elsewhere in the *maquila* sector, workers require a pass from a high-level manager to leave their premises at any time during the work day. The tolerance of workers' rights to free expression and this aspect of freedom of association is extremely rare, if not unique, in Guatemala's maquila sector and much to the credit of PVH.

The physical conditions of the PVH facility, like the larger issue of working conditions, fell outside of the scope of the Human Rights Watch inquiry, as well as being an area in which the organization has no particular expertise. The delegates did, however, observe that the combined PVH facility in Guatemala City is amply lighted and seemingly well-ventilated, and workstations were equipped with ergonometric chairs and other equipment such as floor pads for those operators who stand. In addition, there are numerous water coolers on the floor.

The company's employee welfare programs were also beyond the scope of the inquiry but, these too, were widely viewed by independent observers as exceeding the norm and arguably at the forefront of the maquila sector. Managers expressed pride to Human Rights Watch in the company's support for a lunch room, at which the PVH subsidized hot lunches; a store, at which workers could make subsidized purchases; a clinic providing free medical attention on the plant's premises (which we were told is to include dentistry in the near future); a provision for interest-free loans; and generous provisions for ad hoc payments to be made to staff members or their families in the case of deaths and other family emergencies. Human Rights Watch was also informed by managers and by some of the workers interviewed, both in and outside the union, of additional benefits. These included Christmas baskets before the

year-end holiday; 700 school bags with school supplies for workers with children; an annual children's Christmas party; and company sponsored activities on such occasions as Mother's Day.

Methodology

The Human Rights Watch team carried out a nine-day inquiry in which documentary evidence from the union, the company and the labor ministry was examined, numerous interviews were carried out and experts in Guatemalan and international labor law were consulted. At the labor ministry Human Rights Watch reviewed, page by page, the complete dossier on the union's collective bargaining proposal in the ministry's files. Team members interviewed the minister of labor and the inspector general of labor. Human Rights Watch spoke individually and privately with twenty-nine union workers. Some of these interviews were arranged by union organizers. Other union members asked Human Rights Watch directly for meetings immediately after the team members addressed a union meeting to explain the purpose of their investigation and answer questions. The team also met with ten non-union workers suggested by the company individually and in private. The team visited the PVH plant formerly known as Camosa II, and now expanded to house also the workforce of the former Camosa I plant, on three separate days, interviewing senior personnel, reviewing personnel files, and interviewing non-union staff. At the plant the team interviewed the senior officials, including the head of personnel and the head of production, as well as those with similar responsibilities at the former Camosa I plant. The company freely gave Human Rights Watch access to whatever documents and officials it sought. The team also met with labor lawyers, informed observers, and other maquiladora owners and managers as well. The names of all the employees interviewed, apart from the managers speaking to Human Rights Watch on the record, have been withheld.

Phillips-Van Heusen's Statement Accepting Human Rights Watch Recommendations

On Tuesday, March 11, 1997 Human Rights Watch presented a summary of its findings and its recommendations to Phillips-Van Heusen's Chief Executive Officer Bruce Klatsky, in New York. The recommendations presented were those set out in this report. After our presentation, he said that he accepted the recommendations and that he would act upon them promptly. He said he was traveling to Guatemala the following week and would move ahead in their implementation. The following morning, March 12, the company informed Human Rights Watch by fax of its formal response. The document, which is included in full as an appendix, said the following:

> We invited Human Rights Watch to examine our operations in Guatemala and accept their findings and recommendations. The Human Rights Watch report describes how the general environment in Guatemala, the Guatemalan Government, union supporters, and personnel in our company all contributed to a climate which is contrary to our standards....Given this climate, and Human Rights Watch's finding that the requisite 25 percent of our workforce may support unionization, we have determined to recognize and negotiate with the union.

Human Rights Watch welcomes this decision by Phillips-Van Heusen, as setting a new standard for others in the corporate community who have pledged to incorporate human rights concerns into their operations. The measures proposed, Human Rights Watch hopes, will increase respect for human rights in Guatemala. In addition, it will challenge others throughout the overseas assembly industry to act with similar commitment. We also hope effective measures to protect freedom of association will become an increasing part of consumer expectations in the global marketplace.

II. SUMMARY

Law and Standards

Guatemalan labor affairs are regulated by the Constitution of the Republic of Guatemala, the Labor Code, ministerial accords, and a variety of regulations. This body of national law, in addition, explicitly recognizes that

international labor law to which Guatemala is party takes precedence over national legislation. Guatemala is a party to the principal instruments of international labor law that provide human rights protections of particular relevance to labor. These include the Freedom of Association and Protection of the Right to Organize Convention (1948) and the Right to Organize and Collective Bargaining Convention (1949). Guatemala is also party to the International Covenant on Civil and Political Rights, by which "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests" (Article 22(1)).

The constitution and the labor code establish the protective nature (*la tutelaridad)* of labor law, by which the labor ministry and its different units are bound to engage in the active protection of worker's rights. An aspect of this legal duty is the promotion of negotiation between workers and employers. Guatemalan labor law is also informed by the constitutional principle (article 106) that in cases of doubt in the interpretation of the law in labor affairs, "the interpretation will be made in the manner most favorable for the workers."

In situations in which a union's members number more than one-fourth of the workforce, Guatemalan law requires the negotiation of collective agreements on conditions of employment—should a legally recognized union request this. This is an absolute requirement. Article 51 of the labor code requires negotiations whenever the objective criteria it establishes are met: that a registered trade union has organized over 25 percent of the workforce. The Phillips-Van Heusen operation in Guatemala is registered there as Camisas Modernas, S.A.; the union, the Sindicato de Trabajadores de Camisas Modernas, S.A, is better known by its Spanish acronym, STECAMOSA. The union of the PVH plants Camosa I and Camosa II, which has had legal status since 1992, claimed to have achieved the requisite 25 percent membership in September 1996 and petitioned to begin collective bargaining (the two plants were combined into one in January 1997).

Negotiating to Negotiate

The company, believing that the union's membership claims were inflated, appealed to the labor ministry to verify the union's membership. The proceedings that followed, in which the minister of labor and inspector general of labor themselves took a direct part, should have facilitated the prompt determination of the facts of the case. The verification of the strength of the union's membership, the sole issue of contention, should have been a simple process. The actual process was not—nor did it lead to the determination of the facts.

Guatemala's top labor officials summarily halted the determination process on November 11, 1996, when the labor ministry declared that it was unable to determine the union's membership. Abdicating its responsibilities, the labor ministry closed its own proceedings and invited the union, and the company, to take their concerns to the labor courts. The union did so. However, as Guatemala's labor courts are not known for providing effective remedy in such cases, the prospects for the success of the union's efforts are limited.

Collective bargaining agreements are uncommon in Guatemala's industrial sector, and there are no such agreements in the maquila sector. The procedure for the initiation of such negotiations is, however, generally straightforward. If a union's membership has recently been submitted to the labor ministry, through the filing of its official list of members with the appropriate office of the labor ministry, a union's membership numbers may be accepted without further question and a company may be instructed to initiate negotiations. The STECAMOSA union, however, had last provided its membership list to the labor registry on August 30, 1995. An updated list of members, including new members approved by the union's September 1, 1996 general assembly and claimed to bring the union's membership in excess of the requisite 25 percent, was not formally registered with the labor registry until over six weeks later. This lengthy delay, explained by the union as designed to protect union members from anticipated harassment by the company, complicated the union's ability to have its membership strength accepted without challenge.

A registered trade union can legally negotiate with an employer whatever its numbers, and indeed Guatemalan law requires the labor ministry to encourage this. However, if an employer challenges a union's claims to have

organized one-fourth of the workforce—the threshold at which a company is compelled to begin negotiations—the labor ministry can assess the actual membership of the union. Certain norms for trade union organization established in the labor code, such as the maintenance of official record books as well as the records of yearly registration with the ministry's labor registry, may provide sufficient information on membership without recourse to a formal count. The presentation of such documents, however, does not in itself preclude further challenge to a union's status. At the same time, the failure to present such documentation at the time a petition to negotiate is submitted does not invalidate a union's claim to a certain membership, so long as the documentation is later submitted or membership can be proven by other means.

The Question of Numbers

The relevant labor ministry dossier opens with a formal request by the union, on September 2, 1996, to initiate collective bargaining on conditions of employment with the company. The petition includes a draft collective agreement to be delivered by the labor ministry to the company, for response within thirty days. The union's petition, in accord with established procedures, states simply that its membership exceeds one-fourth of the total workforce, that a draft collective agreement is proposed as a basis of negotiation, and that it is prepared to initiate such negotiations. Attached to this was a certified statement of relevant sections of the minutes of the union's September 1, 1996, general assembly. Notably absent from this statement was the text of the minutes on agenda item 4, the assembly's consideration of the applications of new members, ratification of their membership, and the union's actual strength after the membership drive.

Guatemalan labor norms and the STECAMOSA internal statutes identify new members whose applications have not yet been approved as members "ad-referendum": they become full-fledged members after they have been welcomed to the union at a general assembly and their membership is announced and approved by this body. Generally it is only after their candidacy is ratified in this form that their names are registered with the labor ministry. Similarly, in establishing a quorum for such assemblies, only those whose membership has been ratified by the previous general assembly are counted in determining whether the required quorum is present. Complicating the union's case, and providing the initial basis for the company's challenge to it, was the document's summation of the assembly as having reached a quorum, there being present "one hundred and twenty of the one hundred and thirty-five members the union has."

One hundred and thirty-five, the total membership prior to the welcoming of new members in the September 1 assembly, fell short of the one-fourth required. Accordingly, these summary minutes became the cornerstone of the company's challenge. The company subsequently maintained that the entire workforce numbered 664, a figure the labor ministry did not question: 25 percent, then, would have been 166. Human Rights Watch subsequently confirmed that the union had stated in its full general assembly minutes (recorded in its ministry-approved record book) that its membership on the conclusion of the general assembly had reached 177. Human Rights Watch, upon examining the full set of membership files, concluded that the union could well have claimed a total of 189 signed-up members at that time (that it did not was attributed by union leaders to their having failed to reconfirm several members' intentions to stay with the union in the last days of the drive). None of this information, however, was made available to the company or the labor ministry, on the grounds that it could have served to subject union members to harassment.

The decision not to refer to the total number of union members in the initial petition to negotiate reflected the advice of the union confederation with which the STECAMOSA workers were affiliated (the Guatemalan Confederation of Trade Union Unity, CUSG). The delay in registration of the updated list of members and the reluctance to turn over union records appears also to have reflected this advice, and the lack of advice.

Contributing to the union's reluctance to disclose its membership list was the evidence, which Human Rights Watch subsequently confirmed, that known union members were, in fact, being subjected to prejudicial treatment that had led many to quit the company. According to the company, union and labor inspectorate, forty-six of the 131 union members registered with the labor ministry as of August 1995 had quit the company by August the following year: an attrition rate of 34 percent. This contrasts with company information from past years citing a turnover of from 2

percent to 5 percent overall. Equally striking was the significant number of union members who left the company—or signed letters withdrawing from the union—in the months before and in the two weeks after the union's September 2 petition. Thirteen are known to have resigned in August alone, including eight from Camosa II's most unionized section, the finishing department. Human Rights Watch confirmed the resignation of nineteen union members from the finishing department during the first nine months of 1996, although the total appears to have been even higher. Union sources claimed twenty-four members in finishing had resigned in this period, while company personnel records reviewed by Human Rights Watch showed the resignation of thirty of its staff between November 1995 and October 1996.

A further element in the union's reticence to reveal its membership, apparently reflecting both the past and recent turnover in the union's executive and a lack of legal advice, was that the union simply had not maintained all of the official record books that it should have. Although Human Rights Watch examined the official records of its general assembly and executive committee meetings (bound volumes numbered and registered with the labor ministry), it was surprised to find that the third of four official volumes required, a membership ledger (*libro de asociados*), had not been registered and maintained. As a consequence, it was not available to present to labor inspectors when requested. This alone might well have justified a decision by the labor ministry to carry out a formal count of the union's members.

A Recourse to Form Over Substance

The union responded promptly but ineffectually to answer the challenge to its petition, handicapped by its initial failure either to have registered its membership as of September 1996 or to have an up-to-to-date membership ledger. Union leaders made further efforts to provide documentation to the labor ministry, but found little cooperation: the labor inspectorate rejected an updated list as without standing, for example, on the grounds that it had not been formally registered, stamped and sealed by another labor ministry office, and labor inspectors did not examine the original membership forms, although these were available. The following week, on October 18, the union formally registered the updated membership list, which was stamped and sealed with the labor registry of the General Labor Office, providing the names and personal information on a total of 177 union members. This certified list, in turn, was declared without standing on the grounds that it had not been registered before the company's petition of September 23. As a consequence, it was never considered a substantive element in the determination of the facts of the union's membership.

The Ministry of Labor can, under Guatemalan law, take into account any and all forms of evidence in its deliberations. To fail to do so in a matter concerning a union's efforts to engage in negotiations is to default on its obligations to protect workers' rights. The recognition of the registration of the October 18 list, in this procedure, would not in any event have represented the end of the requested verification procedure. The list was, however, an indicator that the union's proposal to negotiate was well-founded, and that the administrative procedure to determine its merits should not be cut short. A physical count of the membership, conducted under conditions negotiated with the two parties (but which could ultimately be imposed by the ministry) was well within the scope of the ministry's prerogatives and had, in fact, been accepted as desirable by both sides.

The union's updated list was rejected as the basis for the labor ministry's proposed count of the union's members. Labor inspectors determined, moreover, to conduct a count of members under conditions that would have subjected individual union members to unfair pressures, given the context of the union's efforts: union members were to have been called into the personnel office of the Camosa II plant one by one, to be questioned by a labor inspector in the presence of company and union officials. This was described by union members as precisely the procedure used when workers are called in for disciplinary reasons and was generally seen as intimidating and unfair. As a consequence, the union expressed its disagreement with the process, and formally proposed an alternative. The alternative, however, was not formally considered.

The labor ministry inexplicably departed from normal procedures in the immediate aftermath of the union's having registered its official list with the labor registry. The ministry made no formal response to the union's proposal

for an alternative procedure for a count of the membership, although this was tabled in a meeting with the deputy minister of labor and sent subsequently to the company. The ministry did not encourage further discussion of procedures for a count and proposed no further measures to implement a count before it abruptly closed the case. Also, the ministry omitted the union's formal proposal to reconsider conditions for a recount from formal summations of the case. In subsequent documents closing the case, Minister of Labor Arnoldo Ortíz Moscoso and Inspector General of Labor L. Roberto Rodríguez declared, instead, that the union had flatly opposed a count of its members. This was a misrepresentation of the facts.

Deciding Not to Decide

Although the Ministry of Labor from the inception of the case was concerned solely with the question of the union's membership, it did not pursue a course of action by which the facts of this membership could conclusively be established. Rather, it accepted challenges made by the PVH company uncritically, refused to consider the merits of a verification procedure proposed by the union, refused to accept documentary evidence of union membership that had been registered with the General Labor Office and abruptly curtailed the procedure by declaring its inability to reach a conclusion.

The documentary record does not indicate that the labor ministry encouraged the negotiation of a collective agreement between the two parties. Quite to the contrary, the absence of such documentary material was reinforced by statements to Human Rights Watch by outgoing Minister of Labor Ortíz Moscoso that he had seen his role solely as that of an impartial mediator and, indeed, that he could not force the parties to negotiate or even indicate that they should do so. Similarly, and notwithstanding the filing of the union's membership list on October 18, Ministry of Labor documents concerning its petition continued after that date to reflect only the registration information of previous years. This pattern persisted even in the ministry's final resolutions on the case, by which the case was handed over to the courts, to the extent that erroneous official information already corrected in the file (a labor registry note that union members totaled a mere twenty-nine which had been promptly amended) was newly cited as fact. The labor ministry's determination to continue to cite such official memoranda was apparently intended to show that the union's claim was not serious, and that the information required for a determination of the actual membership was so impossibly tangled as to make the truth unattainable.

In sum, the labor ministry did not encourage and facilitate negotiation in its handling of the STECAMOSA petition, shirking its obligations under Guatemalan law to do so. This obstruction was achieved in part by unnecessary administrative obstacles, aggravated by an apparent unwillingness to resolve the disputed facts of the case, and compounded by what appears to have been an incorrect interpretation of the legal norms governing the admission of evidence into an administrative process under Guatemalan labor law.

Had the ministry acted dutifully to establish the facts, the question of the size of the union's membership would have been promptly answered. Insofar as the body of evidence examined by Human Rights Watch indicates that the union's strength as of September 2, 1996, in fact exceeded the one-fourth threshold, the Ministry of Labor's failure to verify the union's membership in effect obstructed the Camisas Modernas workers' rights to freedom of association.

Had the Ministry of Labor established the facts, as requested by both the company and the union, a precedent would have been set with which many Guatemalan and foreign employers in Guatemala's maquila sector would have been uncomfortable. Major manufacturers are on the record in expressing their opposition to trade unions in their plants; and few unions have established a foothold in this sector. Company spokesmen have described compulsory negotiations with unions as potentially crippling. Economic planners now in government may well have shared this discomfort. By refusing to enforce the law, the labor authorities maintained a status quo in which not one of Guatemala's overseas assembly plants operates with a collective labor agreement, and less than a handful tolerate independent trade unions.

A Background of Claims of Anti-Union Pressures

A recurrent theme in the history of union organization at Phillips-Van Heusen's Camosa I and Camosa II plants, since union organization began there in 1989 under an earlier PVH leadership, has been the claim of undue

pressure put upon employees to reject trade union membership, to relinquish such membership, or to resign from the company because of union involvement, or their outright dismissal.

As noted, there were positive practices at the PVH plants, with workers having free access in and out of the facility during breaks, the right to post signs calling for collective bargaining above their workstations, and a general climate of tolerance of workers' rights to free expression. However, Human Rights Watch found considerable evidence that union members at the two PVH plants had faced discriminatory treatment that included pressures to withdraw from the union or resign from the company. A pattern of discriminatory treatment of unionized employees was combined with implicit and explicit warnings of the vulnerability to the same treatment of other workers contemplating affiliation.

Administrative and court orders imposed to protect job stability forbid both arbitrary dismissals and certain changes in the conditions of employment, such as the involuntary transfer from one production operation to another. Such measures protect registered union officials at all times. Court injunctions may protect the entire workforce while unions are in a process of formation and in the course of labor disputes. However, the manipulation of the work available to a particular department, a particular workforce, or a particular individual, where wages are paid on piece-rate basis, may vitiate these orders by drastically reducing the individual worker's weekly income. Such radical changes in income were found to be particularly prevalent among union members at the PVH plants under study, which have been under an injunction protecting job stability since September 1992.

A disturbing pattern appeared in which many workers described having their incomes reduced to one half or quarter of the earnings they had regularly received at the same jobs in the years prior to joining the union. In such cases, workers whose employment was formally protected in law, some of them with up to seven years' tenure with Phillips-Van Heusen and records of numerous quality and production awards from the company, said they were being forced to leave to seek employment elsewhere.

Human Rights Watch concluded, on the basis of its review of individual cases and the overall pattern of resignations, that local company managers wanted these union members to resign, and that they had encouraged resignations through a pattern of discriminatory treatment of union members. This pattern of forced resignations appeared comparable to unlawful dismissals, in that the deprivation of income leading to resignation was seemingly orchestrated in response to trade union activity.

A principal condition of employment, the workers' ability to earn beyond the absolute minimum (Q17.60/day; about US $2.50), is in significant part subject to the discretion of the employer. Insofar as the base wage is not generally considered a living wage in Guatemala City, supplementary income earned on a piece-rate basis is the norm by which most employees bring their wages up to a reasonable level by the standards of the maquila industry. A range of conditions regularly arise, however, under which such high levels of production cannot be maintained regardless of the level of skills and commitment of individual workers. These include interruptions of normal production brought about by machine breakdowns, production delays at some other part of the plant, delay in the delivery of working materials, and other factors beyond an operator's control.

Workers whose incomes are threatened by such developments may be cushioned by the "protection" of income: a guaranteed payment at the level of the worker's average earnings. But unlike the routine protection of income for those who agree to transfer to new work responsibilities, protection for interruptions of production is largely left to the discretion of supervisors and to personnel policies.

The protection system in itself provides a means through which inequities in the piece-rate system may be addressed. However, the element of discretion in its implementation, and the lack of recourse by workers to arbitrary decisions in this regard, open the possibility of its inequitable application to the prejudice of union members. The failure to protect income above the base rate, adjusted to the previous level of average earnings, is a principal object of complaint by staff interviewed by Human Rights Watch, who maintain that it represents an instrument by which union members are treated in a discriminatory, punitive fashion.

Many of the union workers interviewed by Human Rights Watch complained that supervisors discriminated against them, particularly in the protection of income, but also in the delivery of working materials and in the speed with which machines were repaired. Workers described being criticized by supervisors and personnel officers for having joined the union, and then receiving inadequate or poor quality materials, being unjustly reprimanded for the quality of their own work, being assigned poor machines and being denied prompt and effective technical assistance when their machines broke down.

Another area in which major discretionary payments may be provided in a manner prejudicial to union membership is that of severance payments for resignation from the firm. While an injunction prevents the company from dismissing workers without a court order, inducements may be made to encourage resignations in the form of generous severance payments. Like the provision for compensatory protection of incomes for those detailed to new assignments or prevented from meeting production quotas by equipment breakdowns, the company's system of severance payments is two-edged. It may, on the one hand, provide workers a generous reward for years of service when retirement is truly voluntary. At the same time, disproportionate payments to union members for their resignation could be inappropriate inducements.

The combination of measures tending to severely cut union members' capacity to earn in the plant, and inducements for resignation, was the package described to Human Rights Watch by numerous union members, as well as some of the non-union members whom managers suggested Human Rights Watch interview. As noted, Human Rights Watch confirmed the resignation of nineteen union members from the finishing department during the first nine months of 1996, most of them longstanding company employees.

In spot checks of personnel records of union members who resigned in 1996, it was also possible to determine that high rates of discretionary severance payments were in fact made, although without a full review of compensation paid to staff who left the firm in 1996 this is not conclusive evidence of inducements having been offered to remove union members from the PVH work force. It does, however, given the high proportion of union members affected, give cause for concern and further investigation.

The significant numbers of resignations of union members from the company in the course of 1996, which union members attributed to the combination of inducements and cuts in earning power, were paralleled by a smaller number of withdrawals from the union. Human Rights Watch spoke with some of these individuals, as well as close friends and colleagues of other former union members. Human Rights Watch also reviewed a number of withdrawal letters, almost all of them produced on a computer printer, signed by union members in the immediate aftermath of the presentation of the petition to negotiate. The form and substance of union members' letters to renounce union membership, combined with their timing, suggested the company had prepared the letters and encouraged their signatures. This was a concern already raised by Human Rights Watch with company executives in November 1996, and they agreed to end the practice if it existed.

Threats of Violence

Human Rights Watch found that both the company and the union took threats of violence or perceived threats very seriously. This was in part a legacy of Guatemala's grim record over many years of government, private sector, and opposition violence in the context of labor disputes. Reports by several managers that they had received anonymous, late-night telephone calls to their homes or had been followed led the company in September 1996 to hire private security guards for two senior staff. These staff, who deal most directly with personnel issues, were for a time accompanied daily to and from their homes. The behavior of these plainclothes guards, in turn, as they waited outside the plant each day, was viewed as intimidating by union members interviewed by Human Rights Watch. Union activists also reported other forms of intimidation to Human Rights Watch: members of the union's executive committee reported incidents in which they were photographed and these were seen as cause for alarm. Union members' fear of violence continues to be described in relation to the background of trade union repression in Guatemala. A very real concern was expressed that the PVH union could be targeted for violence by others in the

private sector, particularly should PVH break ranks on union recognition with other manufacturers there.

III. RECOMMENDATIONS

The Minister of Labor should take the following steps with respect to the union's petition to negotiate:

1. The Minister of Labor should newly consider the merits of the petition of the union of Camisas Modernas, S.A., STECAMOSA, to initiate the negotiation of a collective agreement on working conditions with the employer.

2. This matter should be reconsidered on the ministry's own initiative, as earlier proceedings in this regard were suspended without cause, the sole matter of contention having been the strength of the union's membership in meeting the terms of article 51 of the labor code (by which a union's organization of over one-fourth of the workforce obliges an employer to negotiate).

3. A ministerial review of the substance of prior proceedings should consider all information relevant to the union's claim to have exceeded the one-fourth membership requirement under article 51, and its standing petition to initiate negotiations.

4. In making a determination, the ministry should take into account both the merits of the petition at the time it was made and subsequent developments. In this regard, the Inspectorate General of Labor should investigate reported patterns of discriminatory treatment prejudicial to union membership since that time, insofar as it may relate to subsequent resignations from the company by union members or pressures on staff to relinquish union membership.

5. Should the ministry be unsatisfied with the existing evidence of union membership upon revisiting the documentation available, a count of the union's members should be arranged so that the ministry may establish to its satisfaction the actual membership of the union.

6. Any count of the union's membership should take place in conditions in which workers are free to meet with labor inspectors without compulsion or intimidation; such counts should not take place in administrative offices of the employer or union offices.

7. The independence and integrity of a process to count union membership should be assured by the presence of independent observers, such as members of the Tri-Partite Commission for International Labor Affairs (Comisión Tripartita de Asuntos Internacionales de Trabajo) or the Bipartite and Tripartite Conciliation Commissions (Comisiones Bipartitas y Tripartitas de Conciliación), created by Ministerial Accord 001-97 of January 8, 1997, "for the non-judicial resolution of conflicts that arise between workers and employers in the Maquiladora Industry."

8. Any evidence of compulsion to force the resignation of union members since the union first submitted its draft agreement should be taken into account in the ministry's subsequent resolution of the matter of contention, the applicability of article 51. The ministry should use all of its faculties to ensure that the letter and intent of labor law are not subverted concerning the right of an organized workforce to negotiate with an employer.

To protect trade unionists in general from discriminatory treatment, the minister should instruct the General Labor Inspectorate:

1. To investigate with a view toward preventing employment practices in which trade union members suffer significant reduction in their incomes as a result of discriminatory practices.

2. In enterprises in which payment is calculated on a piece-rate basis to investigate payroll information on average weekly incomes of union and non-union members with a view to identifying patterns of discrimination.

3. To investigate as a priority payroll information on average incomes when allegations of discriminatory treatment are made, particularly in the course of labor conflicts and in periods in which enterprises are under court injunctions preventing dismissals without the permission of the courts.

4. To investigate patterns of resignations by union members from enterprises under injunctions that prevent dismissals without the approval of the courts, and allegations that major drops in income compelled such resignations.

5. To identify and investigate disparities in the compensation paid unionized and non-union workers upon ending their employment, including both those severance payments required by law and discretionary payments that may be made in accordance with a company's employment policies.

6. To examine as a priority company information on final payments made to all members of union executives and consultative councils upon their resignations.

The Phillips-Van Heusen company should:
With regard to the request by the union to begin negotiations of a collective agreement on working conditions:
1. In view of the Human Rights Watch findings that the union membership exceeded one-fourth of the workforce, sit down with representatives of the union as a legally recognized body, and discuss the best means to go forward with regard to its petition to negotiate.

2. Confirm the union's membership strength to the satisfaction of both parties, taking into account the union's most recent membership list as certified by the Ministry of Labor's labor registry. This should take place through union-company discussions, a renewed appeal to the Ministry of Labor to carry out a formal count or to rule on the basis of existing evidence, or other accelerated arrangements incorporating safeguards as an alternative to governmental inaction. If the Ministry of Labor does not renew its consideration of this matter, the company should decline to take refuge behind a dysfunctional governmental system for the protection of labor rights either by refusing to sit down with union leaders in their representative capacity or by doing nothing to resolve the present impasse until ordered to do so by a court or administrative authority.

3. Reaffirm the company's policy to eschew threats to close the operations in its Guatemala plant because of trade union organization. If the Guatemalan government fails to heed appeals to verify the union's membership, PVH should reconsider alternative ways of serving such a verification rather than threatening to withdraw from Guatemala.

4. Conduct a high level review of personnel policies at its Guatemala plant to ensure against the discriminatory treatment of trade union members, with a view to additional safeguards:

> a. Introduce safeguards into the piece-rate system of remuneration so that discriminatory treatment of union members can be promptly identified and remedied.
>
> b. Review the application of the system by which income is protected at a worker's average rate to identify and eliminate patterns of discriminatory treatment, so that certain sectors of the workforce are not unfairly subjected to the reduction of earnings to the minimum rate for extended periods.
>
> c. Introduce safeguards into income protection so that its discretionary implementation on the shop floor does not facilitate discriminatory treatment.

5. Identify and remove managers responsible for discriminatory practices, while informing the workforce of this and making public any disciplinary actions taken to suppress anti-union discrimination.

6. Provide compensation to staff who are feared to have been the object of discriminatory treatment.

7. Investigate and repudiate any alleged threat or harassment by supervisory personnel, taking into account the real fears generated by Guatemala's tradition of intimidation and violence against trade unionists. Repudiation should replace unqualified denial as the initial response to such claims, pending investigations in which those alleged responsible for such statements or actions should play no part.

The Government of the United States of America should:

1. More comprehensively scrutinize the protection of labor rights in Guatemala's oversees assembly (maquiladora) sector, and in particular production by United States-registered companies and those importing goods into the United States.

2. Provide more thorough information on the respect for rights to freedom of association and collective bargaining in the State Department's annual reports on human rights practices, as well as specialized reporting by the Departments of Labor and Commerce.

3. Encourage the Guatemalan government to take steps to ensure that the protections against anti-union discrimination now established in Guatemalan law and required by United States legislation for qualification for trade benefits under the General System of Preferences are implemented.

4. Maintain under review Guatemala's qualifications for trade benefits under the General System of Preferences, with particular attention to the functioning of the Ministry of Labor and its various offices in the implementation of labor law and regulations. Particular scrutiny should be given to the virtual exclusion of trade unions from the over 600 large plants in the overseas assembly sector—Phillips-Van Heusen is one of just five plants with unions—and the complete absence of collective agreements anywhere in this sector.

IV. BACKGROUND

While political violence declined in Guatemala in 1996 and the government took initiatives to address longstanding human rights problems, the legacy of extrajudicial executions, torture and disappearances that had decimated the trade union movement remains vivid. As recently as 1995 several trade unionists suffered threats and attacks, including incidents of kidnappings related to organizing efforts. Several of the PVH workers the Human Rights Watch team interviewed stated how seriously they took warnings from supervisory personnel of the risks of union activism in Guatemala.

The maquila sector of Guatemala employs some 80,000 workers. It is a dynamic sector of the Guatemalan economy and a draw for foreign investment. According to one commentator whom Human Rights Watch met with, from 1992 through 1997, only fourteen unions were established in the maquiladora sector of Guatemala. Despite the guarantees contained in the 1986 constitution and the labor code protecting the rights of free association and collective bargaining, only five still exist and not one of those unions has a collective bargaining agreement. Unionization and collective bargaining have been blocked by illegal mass dismissals of union supporters. Several activists and observers reported that the maquila industry maintains a computerized blacklist that identifies individuals as "undesirables." We heard repeatedly that employers regularly threatened to close down plants where workers formed unions. Workers in maquilas are even more vulnerable because of the transient nature of the sector itself. In Guatemala one frequent response to trade union organization and collective bargaining efforts has been factory closures and relocations.

The gender composition of the workforce has also affected unionization. We heard that employers play on the fact that often the women's family depends on the paycheck for basic sustenance. At the two other maquila factories briefly visited, the team was struck at how the workers did not have the ability to leave the plant during course of the day and the control that afforded employers determined to prevent unionization. These realities set the context for the union efforts at Phillips-Van Heusen.

A Background of Obstacles to Union Organization at Phillips-Van Heusen

The history of the union at the two PVH plants remains an intimidating factor for current and potential union members there. What happened to union leaders' rank and file in the first efforts to organize, in 1989, and again in 1992 is very much part of the collective memory of the plant; a wry tribute to the generally low turnover of staff there.

A 1994 study of the Guatemalan maquila industry by Kurt Petersen describes the PVH plants as having been "the jewels of the Guatemalan maquila industry," their relatively benign personnel practices, good pay and benefits (and low turnover) contrasted with other plants.[1] Petersen attributes both the 1989 union drive and the successful drive begun in 1991 to a number of factors, including the above-average conditions and low turnover at the plants, which "allowed workers to form strong and lasting bonds." At the same time, the control over employees' lives, regulating even access to bathrooms, was described as having been deeply resented.

In both earlier union drives, however, efforts were reportedly triggered by unilateral changes in working conditions, notably decreases without notice in piece-rate payments.[2] Petersen contrasts the company strategy in 1989, with much harsher action in 1992:

> In 1989, when workers first showed signs of unionizing, management responded with increased benevolence, providing them with a 'company store' and liberalizing its loan policy. This reaction, combined with the discharge of union supporters, defeated the union drive. In March 1991, the workers touched off the second union campaign.

[1] Kurt Petersen, *The Maquiladora Revolution in Guatemala* (New Haven: Yale University Press, 1995), pp. 108-9.

[2] Ibid., p. 111.

On the 1991 initiative, Petersen reports (citing his own interview evidence), that the plant manager had, on the same day the plant was served with an injunction (*emplazamiento*) to freeze the conditions of employment pending resolution of the labor issues, "allegedly offered the leaders of the organizing drive severance pay and additional $2,000 bribe to resign from the factory." Dozens of union supporters were subsequently said to have accepted such offers.[3] Other union staff were reportedly subjected to changing working conditions resulting in their inability to earn production bonuses. The company reportedly suspended its cafeteria and loan benefits, while creating "its own union and a Solidarismo association."[4] At the same time, allegations were made that a PVH personnel manager had warned union members that their conduct might well put their lives in danger.[5] It was perhaps as a consequence of the international uproar over the September 1991 shooting of a Camisas Modernas union leader, for which responsibility was never conclusively established, that the union's petition for legal recognition was acted upon, in 1992.[6]

On September 8, 1991, Aura Marina Rodríguez, one of the union's leaders, was wounded when a bullet grazed her as she was going home. The incident, in which Rodríguez lost part of one ear, was officially attributed to a stray bullet from a fight. Rodríguez subsequently maintained that armed men sought her at her home after the incident, however, leading her to go into hiding.[7] PVH responded to the incident by expressing concern for the injured worker, while denying that the shooting was in any way related to union activity (there was no serious claim that PVH had itself been involved). The incident was attributed to casual violence, citing U.S. embassy and Guatemalan police reports, and even the victim's family, as denying any political dimension. The company's public statements did not acknowledge the possibility that other private or governmental sectors with a record of anti-union violence might well have seen the PVH union drive as more threatening than did PVH itself.

V. INTERNATIONAL STANDARDS AND GUATEMALAN LAW

International Standards

[3] Ibid., 112.

[4] Ibid., p. 112.

[5] Petersen, op. cit., p. 112, states that "At least one of PVH's personnel managers issued death threats, claiming that 'everyone who is involved in the unions is going to die' and calling the union a guerrilla front" (citing Stephen Coates, "Made in Guatemala: Union Busting in the *Maquiladoras*," *Multinational Monitor*, November 1991). Further details on these allegations are provided in the June 1992 report of the US/Guatemala Labor Education Project, International Labor Rights Education and Research Fund, and the Religious Task Force On Central America, "The right to organize in Guatemala: The Case of Phillips-Van Heusen." This report identifies the manager by name, and adds that her threats were given special credence because she had "bragged that she was married to an army colonel." The same source claims a top PVH executive defended her character against the charge, but a week after an incident in which a union leader was shot and wounded the manager alleged to have made threats was dismissed.

[6] Ibid. Petersen notes that documentation requesting recognition of the union had been submitted to the labor ministry in March 1991, and that CUSG had claimed 150 members at the two plants as of September that year. The union had not, however, been recognized as of May 1992. Its recognition in September 1992 shortly preceded the review of Guatemala's qualification for United States GSP benefits.

[7] Ibid., p. 112. Petersen states in his account that "Rodríguez and her frightened coworkers are certain the incident was meant to deter formation of the union." Human Rights Watch has also reviewed the extensive correspondence between the company and the American Federation of Labor-Congress of Industrial organization (AFL-CIO) in that period *See*, for example, letter of Charles D. Gray, Director, Department of International Affairs, AFL-CIO, to Larry Phillips, Chief Executive Officer, Phillips-Van Heusen Company, August 10, 1992 and attachment.

The ILO's Convention no. 98, on The Right to Organize and Collective Bargaining, is binding upon Guatemala and provides fundamental guarantees for freedom of association that are both in consonance with and useful complements to provisions in the Guatemalan constitution and labor law in this regard.[8] Article 1 of the convention, cited in full in the labor ministry's 1996 edition of the labor code, sets out the basic requirements for protection of worker rights:

> 1.Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
> 2. Such protection shall apply more particularly in respect of acts calculated to:
> (a) Make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
> (b) Cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

The interpretation of ILO conventions, resulting in a form of international jurisprudence, has been undertaken by its supervisory bodies, notably the Committee on Freedom of Association. Another source of interpretation are the observations made by the ILO's Committee of Experts on the Application of Conventions and Recommendations, a body of independent technical experts appointed by the ILO's director-general that reviews and comments upon the regular reports on implementation of the conventions required of states parties.[9] The Committee on Freedom of Association, in considering the implementation of Convention 98, has declared that

> Protection against acts of anti-union discrimination should cover not only hiring and dismissal but also any discriminatory measures during employment, in particular transfers, downgrading and other acts that are prejudicial to the worker.[10]

Similarly, a considerable body of case law is cited by the Committee on Freedom of Association in its statement of the principle that "Acts of anti-trade union discrimination should not be authorized under the pretext of dismissals based on economic necessity." The Committee of Experts has considered "transfers, denial of promotion, downgrading, disciplinary measures, blacklisting, and deprivations or restrictions on remuneration and social benefits" as among the discriminatory measures within the scope of the convention.[11]

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[8] Citations of Convention No. 98 are taken from International Labour Office, *International Labour Conventions and Recommendations, 1991-1991*) (ILO: Geneva, 1992), pp. 524-525.

[9] *See* Hector Bartolomei de la Cruz, Geraldo von Potobsky, and Lee Swepston, *The International Labor Organization, The International Standards System and Basic Human Rights* (Boulder, Colorado.: Westview Press, 1996), p. 214, which notes that the supervisory bodies "have amassed a considerable jurisprudence" on protection against acts of anti-union discrimination," and summarizes this. For a summary discussion of the supervision of the implementation of the ILO's Conventions and Recommendations, see International Labour Office, *International Labour Conventions and Recommendations, 1991-1991*) (ILO: Geneva, 1992), pp. vii-viii. This notes that while the Constitution of the ILO, in articles 22 and 23, requires governments upon ratification of a convention to produce annual reports on its implementation "in law and practice," the Governing Body of the ILO has, over time, "decided to request reports on the 'basic human rights' Conventions very two years, and on others at four-year intervals."

[10] International Labour Organisation, *Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO, 3rd edition* (ILO: Geneva, 1985), paragraph 544, p. 100.

[11] Ibid, citing Committee of Experts, *General Survey*, 1994, paras 211 and 212.

Convention no. 87, the Convention concerning the Freedom of Association and Protection of the Right to Organise, by which Guatemala is also bound, establishes fundamental principles by which workers' and employers' organizations are to give expression to freedom of association.[12] Of particular relevance to the situation of trade unions in the maquila sector are provisions by which union's are to be free from outside interference:

> Article 2: Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.
> Article 3: .... (2) The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Guatemala's congress has also ratified the ILO's Convention no. 154, the 1981 Convention concerning the Promotion of Collective Bargaining, although at the time of writing the Ministry of Foreign Relations had reportedly not yet forwarded the instrument of ratification to the ILO.[13] This convention, which came into force in 1983, provides authoritative standards by which to interpret Guatemalan law requiring the promotion of collective bargaining. The convention defines, in article 2, its use of the term "collective bargaining" as extending

> to all negotiations which take place between an employer, a group of employers or one or more employers' orgnisations, on the one hand, and one or more workers' organisations, on the other, for-
> (a) determining working conditions and terms of employment; and/or
> (b) regulating relations between employers and workers; and/or
> (c) regulating relations between employers or their organisations and a workers' organisation or workers' organisations.

Part II of Convention no. 154, on promotion of collective bargaining, declares in article 5 that measures shall be taken to promote collective bargaining. Such measures are to have as their aims, among others, that

> (a) collective bargaining should be made possible for all employers and all groups of workers in the branches of activity covered by this Convention;
> (b) collective bargaining should be progressively extended to all matters covered by subparagraphs (a),
> (b) and (c) of Article 2 of this Convention.

In addition, of particular relevance to the union experience of the Phillips-Van Heusen plants, the complete absence of collective agreements in Guatemala's maquila sector, and the labor ministry procedures discussed further below, is the convention's aim (d): "[that] collective bargaining should not be hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules."

The recognition of unions for purposes of collective bargaining, in turn, is the object of recommendations by the ILO's Committee of Experts that elaborate upon the terms of Convention No. 98. In the case of STECAMOSA, the union at the PVH plants, the union had already been legally recognised as a union in 1992, and so was qualified as a

[12] Citations of Convention No. 87 are taken from International Labour Office, *International Labour Conventions and Recommendations, 1991-1991*) (ILO: Geneva, 1992), pp. 435-437. In its preamble, the General Conference of the International Labour Organisation recalls that the preamble to the constitution of the ILO "declares 'recognition of the principle of freedom of association' to be a means of improving conditions of labour and of establishing peace"; that the Declaration of Philadelphia reaffirmed that "freedom of expression and of association are essential to sustained progress"; and that the General Assembly of the United Nations, in its Second Session, "endorsed these principles" and requested the ILO to develop one or several international conventions in this regard.

[13] The Guatemalan Congress approved the convention by Decree no. 34-95, which appeared in the official gazette, *El Diario de Centroamérica* on May 25, 1995. Citations of Convention no. 154 are taken from International Labour Office, *International Labour Conventions and Recommendations, 1991-1991*) (ILO: Geneva, 1992), pp. 1222-1225. See also ILO Recommendation No. 163, of June 3, 1981, "..concerning the Promotion of Collective Bargaining," in ibid., pp. 1226-1228.

bargaining agent. At issue, however, were the provisions in Guatemalan law by which a company could itself be compelled to recognise, and to bargain with, a lawfully established union. Paragraph 294 of the Committee of Expert's "General Survey...on the Application of Conventions and Recommendations" offers the following guidance:

> The procedures for recognizing the representative trade union(s) may be "voluntary", that is to say determined by a bipartite or tripartite agreement, or they may correspond to well-established practice; they may also be "compulsory", that is to say procedures for which statutory provision is made, and oblige the employer to recognize one or more trade unions under certain conditions...[14]

It remains to note that principles and recommendations published by the ILO's Committee on Freedom of Association offer further guidance on the matter of recognition of trade unions which is relevant to the situation in the maquiladora sector in Guatemala. The committee's statement in paragraph 782 of its *Digest* of principles and recommendations establishes certain essential principles adhering to freedom of association in the labor context:

> The right to bargain freely with *employers* with respect to conditions of work constitutes an essential element in freedom of association, and trade unions should have the right, through collective bargaining and other lawful means, to seek to improve the living and working conditions of those whom the trade unions represent. The public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof. (....)[15]

Finally, In considering the principle of the recognition of "the most representative organizations," the committee recommends, in paragraph 822 of its *Digest*, that "Recognition by an employer of the main unions represented in his undertaking, or the most representative of these unions, is the very basis for a procedure for collective bargaining on conditions of employment in the undertaking.

Guatemalan Law

Tutelaridad

Guatemalan labor affairs are regulated by the Constitution of the Republic of Guatemala, by the labor code, ministerial accords, and a variety of regulations. This body of national law, in addition, explicitly recognizes that international labor law to which Guatemala is party takes precedence over national legislation.[16]

[14] International Labor Conference, 69th Session, 1983, *Freedom of Association and Collective Bargaining, General Survey by the Committee of Experts on the Application of Conventions and Recommendations* (Geneva: International Labour Office , 1983), para 294, p. 97.

[15] Op. cit., International Labour Organisation, *Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, 3rd edition, (Geneva: ILO, 1985), paragraph 782, p. 159.

[16] The Constitution of the Republic of Guatemala of May 31, 1985 came into force on January 14, 1986; citations in the 1961 labor code (Codigo de Trabajo, Decreto numero 1441, in force August 15 1961), refer to the Constitution of 1956. Citations of the Labor Code in this report are from the labor ministry's annotated and updated edition of May 1996, including cross-references to the Constitution of 1985 that is now in force.

The constitution, in article 103, establishes "the protective nature of labor law" ("*la tutelaridad de las leyes de trabajo*....").[17] The labor code, in turn, is founded on a principle of "protection": a responsibility on the part of the labor ministry and its diverse departments to engage in the active protection of the rights of labor, not simply to serve as an impartial arbiter between the employee and the employer.

The labor ministry is also charged with promoting negotiation between workers and employers. The constitution's article 106 declares that "the State will foment and protect collective bargaining."[18]

In its last paragraph, article 106 provides that in cases of doubt on the interpretation or scope of legal, regulatory or contractual matters in labor affairs, "the interpretation will be made in the manner most favorable for the workers."[19] The fourth preambular paragraph of Decree Number 1441, by which the 1961 labor code is promulgated, sets out the principles of labor law on which it is founded. Most notably, labor law is defined as a right that is protective of workers, compensating for their economic disadvantage," and "granting them a preferential juridical protection."[20] This is again made explicit in the labor code's article 17, which declares that in the interpretation of the code and other labor legislation, it is fundamentally "the interest of the workers" that must be taken into account.[21]

In the same spirit, the labor code's article 211, in its chapter concerning trade unions, requires the executive, through the labor ministry and under the responsibility of the minister of labor and social welfare, "to bring about and put into practice a national policy of the defense and development of trade unionism." To this end, the ministry is actively to collaborate with unions so that they can better carry out their activities, while promoting the development of the trade union movement.[22]

The constitution also stipulates, in article 46, that international law supersedes domestic legislation. Article 102 of the constitution, concerning minimal social rights and labor legislation, in paragraph (t), declares that "The State will be a party to international or regional conventions and treaties that concern labor matters and will provide workers better protection and conditions. In such cases, what is established in such conventions and treaties will be considered as part of the minimum rights enjoyed by the workers of the Republic of Guatemala." The labor ministry's official 1996 edition of the labor code, updated and annotated, provides usefully cross-referencing between articles of the code and relevant international agreements to which Guatemala is party.

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[17] The original Spanish is: Articulo 103. Tutelaridad de las leyes de trabajo. Las leyes que regulan las relaciones entre empleadores y el trabajo son conciliatorias, tutelares para los trabajadores y atenderán a todos los factores económicos y sociales pertinentes....

[18] The relevant text of Articulo 106 follows: "Irrenunciabilidad de los derechos laborales. Los derechos consignados en esta sección son irrenunciables para los trabajadores... Para este fin el Estado fomentará y protegerá la negociación colectiva. Seran nulas ipso jure y no obligarán a los trabajadores, aunque se expresen en un contrato colectivo o individual de trabajo, en un convenio o otro documento, las estipulaciones que impliquen renuncia, disminución, tergiversación o limitación de los derechos reconocidos a favor de los trabajadores en la Constitución, en la ley, en los tratados internacionales ratificados por Guatemala, en los reglamentos u otras disposiciones relativas al trabajo."

[19] "En caso de duda sobre la interpretación o alcance de las disposiciones legales, reglamentarias o contractuales en materia laboral, se interpretarán en el sentido mas favorable para los trabajadores."

[20] The full sentence in this preambular paragraph declares that "El Derecho de Trabajo es un derecho tutelar de los trabajadores, puesto que trata de compensar la desigualdad económica de éstos, otorgándoles una protección jurídica preferente."

[21] "[S]e debe tomar en cuenta, fundamentalmente, el interés de los trabajadores en armonía con la conveniencia social."

[22] Article 211, states that the executive, through the Ministry of Labor and Social Welfare, "debe trazar y llevar a la practica una politica nacional de defensa y desarrollo del sindicalismo"; and in its paragraph b) : "Debe colaborar con los sindicatos en la major orientacion de sus actividades y procurar activamente que el movimiento sindical se desarrolle en forma armónica y ordenada."

The Obligation to Bargain Collectively Under Guatemalan Law

As noted, Guatemalan labor law declares the negotiation of collective agreements as a goal to be promoted by the state, in fulfillment of international standards. Special provisions are made in article 51 of the labor code that govern situations in which a union's members number more than one-fourth of the workforce. In these situations, the negotiation of collective agreements on conditions of employment is required by Guatemalan law, should a union request this. The union of the Phillips-Van Heusen plants Camosa I and Camosa II, which has had legal status since 1992, invoked article 51 to this end following a membership drive culminating in its general assembly of September 1, 1996.

Article 51 concerns any employer whose workforce is over one-fourth unionized in a particular enterprise (or center of production). In such circumstances, an employer "is obliged to negotiate a collective agreement with the respective union, when the latter requests this." This is an absolute requirement: article 51 requires negotiations whenever the objective circumstances it defines exist. No special procedure must be followed to establish these objective conditions, although a series of rules are set out in article 51 which elaborate upon its terms. For example, the percentage of union members referred to (one-fourth of the workforce) is to be calculated on the basis of the total number of workers at the enterprise in question. The negotiation of the collective bargaining agreement, in turn, is to be undertaken by the delivery of draft agreements to the relevant party, through the medium of the Inspección General de Trabajo (General Labor Inspectorate; hereafter labor inspectorate) so that discussions can begin, either directly or with officials of the labor ministry as intermediaries.

The labor ministry's procedures for the implementation of the Labor Code's norms concerning collective bargaining, in particular article 51, are set out in Governmental Accord no. 221-92.[23] The preamble to these regulations refers to Guatemala's obligations under ILO Convention No. 98, concerning trade union rights and collective bargaining, to adopt measures to stimulate and foment the development and use of procedures of voluntary negotiations between organizations of workers and employers. The preamble further notes that the Constitution of Guatemala requires the state to foment and protect collective bargaining, that the labor code establishes the measures to that end, and that these regulations further develop these provisions.

Absent from these detailed regulations is any reference to challenges to the merits of a union's claim to have attained the one-fourth membership level cited in article 51, or to procedures by which these are to be resolved. The regulations, in line with the labor ministry's constitutional obligation to foment collective bargaining, do not belabor a distinction between trade unions that represent more or less than a quarter of the work force, as indeed the ministry's legal obligation is to promote negotiation in any case. Procedures are set out by which it is to be established that the two parties are qualified to negotiate, but these concern the legal status of the parties that are to negotiate, and the consultative process by which a draft agreement is to be approved by a union. The regulations provide no guidance on the labor ministry's procedure for the determination of a union's membership strength.

The functions of the Ministry of Labor and Social Welfare, and its operational unit, the Inspección General de Trabajo (IGT), General Labor Inspectorate (hereafter, labor inspectorate), are set out in the labor code. Article 274 declares that the ministry:

> has charge of the direction, study and resolution of all matters concerning labor and social welfare and must take responsibility for the development, improvement and application of all legal dispositions concerning these matters, that are not within the jurisdiction of the courts, principally those that have as a direct object to determine and harmonize the relations between employers and workers.

[23] Acuerdo Gubernativo numero 221-94, May 13, 1994, Reglamento para el Trámite de Negociación, Homologación y Denuncia de los Pactos Colectivos de Condiciones de Trabajo de Empresa o Centro de Producción Determinado, signed into law by President Ramiro de Leon Carpio on May 13, 1994; published in the *Diario Oficial* May 18, 1994, and in force on May 19, 1994. The regulations concern the procedures to be followed by dependencies of the Ministry of Labor and Social Welfare (Ministerio de Trabajo y Previsión Social).

Article 278, in turn, provides for the labor inspectorate, through its inspectors and social workers, to take responsibility to ensure that employers and workers and labor unions:

> comply with and respect the laws, collective agreements and regulations in force that govern conditions of employment and social welfare or that are issued in the future.

The labor inspectors, a principal arm of the agency, have extensive powers and obligations. empowers and obligations set out in article 281. Clause (e) empowers the inspectors to intervene in all labor difficulties and conflicts of which they are aware, whether arising between employers and workers, solely between the former, or solely between the latter, with a view to preventing their development, or achieving their non-judicial resolution, if they have already begun; at the same time, they can question the personnel of an enterprise without the presence of the employer and without witnesses on any matter relative to the application of legal standards. The leeway for inspectors to meet with workers outside the presence of employer representatives allows for determinations to be made without interference by possible outside pressure.

Establishing The Strength of Union Support Under Guatemalan Law

Guatemalan law does not set out specific procedures through which the membership of a union is to be assessed by the labor ministry. Certain norms for trade union organization that are provided for in the labor code may serve to fill this need without recourse to a formal count. These include a union's official record books and membership registries (*libros de actas, libros de asociados*) which are maintained in accordance with procedures established in the labor code, as well as requirements for an annual reporting of updated membership lists to the labor ministry's Departamento de Registo Laboral (hereafter labor registry), a part of the ministry's Direccións General de Trabajo (General Labor Office). The presentation of such documents, duly updated, would not in itself preclude further challenge to a union's status by an enterprise that was reluctant to negotiate. Conversely, according to experts in Guatemalan labor law, the failure to present such documentation at the time a proposal to negotiate is made does not invalidate a union's claim to a certain membership, so long as adequate documentation is later submitted or membership can be proven by other means.

Any question of a union's actual membership that arises in the course of labor disputes or, as in the Phillips-Van Heusen case, in a proposal to initiate collective bargaining, may ultimately be resolved by the Inspectorate General of Labor. The labor ministry's obligation to facilitate and encourage such negotiations and to resolve questions of fact concerning the bases on which such negotiations are conducted is at the crux of this case. It concerns the implementation of article 51 of the labor code. Article 51 states:

> Every employer who employs in an enterprise or specific center of production...the services of more than one-fourth unionized workers, is obliged to negotiate a collective agreement with the respective union when the latter so requests.
>
> To this end the following rules must be observed:
> a) The percentage referred to in the above paragraph should be calculated from the totality of workers who provide services to such an enterprise or specific center of production.
> b) If within the same enterprise or center of production there are various unions, the collective agreement should be negotiated with that which has the greater number of workers directly affected by the negotiation, in which case it [the union] may not agree to conditions that are less favorable for the workers than those contained in the contracts in force within the same company or center of production; and
> c) When an enterprise or center of production is concerned that by the nature of its activities employs workers pertaining to different professions or callings, the collective agreement should be negotiated with the group of unions that represents each of the professions or callings, so long as they are in agreement. Should they not reach an agreement to this end, the union corresponding to each profession

or calling can request the negotiation of a collective agreement with it to determine the conditions relative to that profession or calling within the enterprise or production center in question.

A further clause concerns the procedure by which negotiations are to be initiated and conducted and an agreement is to be reached, as well as provisions to address situations in which negotiations are deadlocked:

> For the negotiation of a collective agreement on conditions of employment the respective union or employer will present its proposal to the other party, for its consideration, by means of the nearest administrative labor authority, so that it may be discussed directly or through the intervention of an administrative labor authority or any other friendly arbitrator. If thirty days have elapsed after the petition has been presented by the respective union or employer, and the parties have not reached complete agreement regarding its provisions, any of the parties may go to the labor courts and present the corresponding collective conflict, in order that the point or points over which there is disagreement may be resolved. For this purpose, if possible, the confirmation of the points which have been agreed upon will be presented together with the statement of petition, specifying in this the matters upon which no agreement has been reached. If it is impossible to present said confirmation, the points on which agreement has been reached and the points on which no agreement has been reached must be stated in the statement of petition, in order that the Court of Conciliation may prove these facts.
>
> The proceedings followed in this case will be the ones contemplated in Title Twelve of this Code.

In general, the letter and spirit of Guatemalan labor law requires the state to encourage negotiation between recognized unions and employers. Article 51 does not require a union to prove its membership. However, if an employer challenges the assertion that the union has the requisite 25 percent support, it is the labor ministry's responsibility to verify that the conditions required by law have indeed been met. Insofar as a company is unwilling to engage in collective bargaining negotiations without compulsion, the union's efforts to oblige negotiations under article 51 should be encouraged by the good faith efforts of the labor ministry to determine whether the union's basis to do so was well-founded.

VI. THE LABOR MINISTRY'S ROLE

The STECAMOSA Petition to Negotiate

The union's petition to negotiate followed the general form required by law, according to labor law experts. The union presented its request to the labor ministry stating that it had gathered the support of 25 percent of the workforce and included a draft document that was to be the basis of negotiations with the company. The union submission did not and was not required to give details on its membership beyond its declaration that it had exceeded one-fourth of the workforce. On September 1, the union of workers of the two Phillips-Van Heusen plants in Guatemala City, Camosa I and Camosa II, held an assembly as the culmination of a months' long membership drive. The leadership declared at that extraordinary general assembly that the union's membership had passed the 25 percent threshold required for negotiations under article 51, and that a petition to this effect, if approved by that assembly, would be submitted to the labor ministry and the company. The assembly gave its approval and the submission was made the following day.

The labor ministry's dossier on the STECAMOSA petition to initiate collective bargaining begins with a formal request by the union, on September 2, 1996, to initiate collective bargaining on conditions of employment with the company. The petition, in accord with established procedures, submitted a draft collective agreement to be delivered by the labor ministry to the company. A response by the company was required within thirty days. The union's petition, again in accord with established procedures, stated simply that its membership exceeded one-fourth of the total workforce, that a draft collective agreement was proposed as a basis of negotiation, and that it was prepared to initiate such negotiations. The union informed Human Rights Watch that it delivered a copy of the draft agreement to Camisas Modernas legal representative Yvonne de Sevilla on the afternoon of September 2; the company was formally provided

a copy of the petition by the Labor inspectorate on September 6. In the labor ministry's subsequent handling of the case, efforts were made to establish the company's total number of personnel and the total union membership as of September 6.

The documentation provided with its petition to negotiate included no precise detail on the union's membership on which the calculation of one-fourth the workforce was based. A certified statement of relevant sections of the proceedings of the union's September 1, 1996, general assembly was attached to the union petition filed with the ministry but did not cover all agenda items. Notably absent from this statement was the text of the minute on agenda item 4, the assembly's consideration of the applications of new members, ratification of their membership, and the union's actual strength after the membership drive. The union was not required to give such details on its membership as part of its petition to negotiate, but its failure to do so was both misleading and to its disadvantage. The result was that the sole reference to an actual membership number was to the basis on which a quorum was identified: the number of members formally inducted as of the previous general assembly.[24] Complicating the union's case, and providing the initial basis for the company's challenge to it, was the document's summation of the assembly as having reached a quorum based on a total membership of just 135:

[24] The abbreviated record identifies point one as having been the opening of the meeting; point two, the approval of the draft agenda; point three, the reading of the minute of the previous general assembly, and indicates the next only as "FOURTH: ....." Point five declares the following:

> The Secretary General informs the assembled that we have the right to request the negotiation of a collective agreement on conditions of employment in conformity with the first paragraph of article fifty-one (51) of the Labor Code, as we have a trade union organization that is functioning in accordance with the law with juridical personality and representation recorded in the respective registries and we constitute the percentage of members that is required by the law. On this basis, the decision to request the negotiation of the Draft Collective Agreement on Conditions of Employment was submitted for the consideration of the Assembly..."

> First the Secretary General welcomes the participants attending and confirms that there are one hundred and twenty of the one hundred and thirty-five members the union has, who constitute a legal quorum to carry out this assembly so that the latter is opened.[25]

Similar language and a reference to the figure of 135 members appears in the minutes of the general assembly of July 27, 1996, which did not consider the matter of new membership.[26] Guatemalan labor norms and the STECAMOSA internal statutes identify new members whose applications have not yet been approved as members "ad-referendum": they become full-fledged members after they have been welcomed to the union at a general assembly and their membership is announced and approved by this body. Generally it is only after their candidacy is ratified in this form that their names are registered with the labor ministry. Similarly, in establishing a quorum for such assemblies, only those whose membership has been ratified by the previous general assembly are counted in determining whether the required quorum is present.

One hundred and thirty-five, the total membership prior to the welcoming of new members in the September 1 assembly, fell short of the one-fourth required. Accordingly, the summary minutes became the cornerstone of the company's challenge. The company subsequently maintained that the entire workforce numbered 664, a figure the labor ministry did not question: 25 percent, then, would have been 166.

[25] The same language appears in the corresponding point of the full minute of the general assembly of September 1, 1996 as recorded in the union's official record book (libro de actas) for the minutes of general assemblies. This record, which was reviewed by Human Rights Watch, is registered with the labor registry as no. 00484, with 200 numbered pages, on January 26, 1996. These volumes must be purchased in a prescribed format, with numbered pages and a tamper-proof binding, to be presented for registration before entries are made to the responsible office of the labor ministry. There each page is stamped by a ministry official, and the first and last pages are stamped and signed, with an indication of the volume's registration number within the ministry records, the number of pages, and the date of registration. The intent is to ensure that entries are made consecutively as a formal record of the union's affairs. Article 225 of the labor code, "Obligations of unions," stipulates in a) that unions "Maintain the following books, duly stamped and authorized by the Administrative Department of Labor [now the General Labor Office, Dirección General de Trabajo]: of acts and accords of the General Assembly, of acts and accords of the Executive Committee, of the registry of members and of accounting of income and expenses."

[26] "The Secretary of Organization...personally counts the participants and establishes that there were one hundred twenty-five present of the one hundred thirty-five that the union has duly registered, declaring the session opened with the existence of the quorum required by law." This general assembly focused on "information about the resignations of members of the Executive Committee and the Consultative Council," and elections to replace them. Officers who had resigned included the secretary general, the finance secretary and two members of the Consultative Council, Celia Elisve Rodríguez Alvarez and María Luz Lopez. The resignation of the secretary general, Carmelo Zacarías was noted in a letter of June 10, 1996 from Camisas Modernas manager Yvonne de Sevilla to the Inspector General of Labor, which also noted the resignation of finance secretary Ana Silvia Najarro and Celia Elisve Rodríguez Alvarez.

Collective bargaining agreements under article 51 are not common in Guatemala's industrial sector, and are, indeed, without precedent in the maquila sector. The procedure for the initiation of such negotiations is, however, generally straightforward. If documentation of a union's membership has recently been submitted to the labor ministry, through the filing of its *padrón*, or official list of members with the labor registry of the General Labor Office, a union's membership numbers may be accepted without further question and a company may be instructed to initiate negotiation. Unions are required to update the registration of their membership lists on a yearly basis (and may at any time do so). There is no legal requirement that these lists include the signatures of those registered. The list as a whole is presented for registration on the authority of the union's elected leadership, which in turn bears legal responsibility for its accuracy.[27]

The STECAMOSA union had last provided its membership list (of 131 members) to the labor registry on August 30, 1995. But the updated list of members, including the new members approved by the September 1, 1996 general assembly, was not formally registered with the labor registry until over six weeks after that date. This tactical decision, taken to protect union members from feared harassment by the company, complicated the union's efforts to show they had organized over 25 percent of the work force. This decision did not, however, alter the legal standing of these members or the union with respect to its petition to initiate negotiations. It was a lost opportunity on the part of the union to oblige the labor ministry to move promptly in pressing Camisas Modernas, S.A. to proceed to a negotiation process. The union's failure to register its new membership prior to the presentation of its petition to invoke article 51 could have been promptly remedied, had the labor ministry encouraged and facilitated this (it did not).

That the summary minutes referred expressly to "the 135 members the union has" at the opening of the general assembly was misleading and unhelpful to the union's case, in that it did not reflect new members who had not yet been ratified by the assembly. The decision not to refer to the total number of union members reflected the advice of the union confederation with which the STECAMOSA workers were affiliated (the Guatemalan Confederation of Trade Union Unity, CUSG). While not in itself improper, it clouded the matter and encouraged a dispute over numbers. The reference to a strength of just 135 members would dominate the official record of proceedings until the ministry abruptly brought them to a close without resolution.

Phillips-Van Heusen's Response

PVH responded to the petition to begin negotiations by arguing that it was not compelled to do so under article 51 because the union had not met the requirement of having organized one-fourth or more of the workforce. The company's challenge to the union petition, filed on September 23, 1996, pointed to the general assembly minutes as constituting an acknowledgment by the union that its total membership, in going into its request for negotiation was, in fact, just 135. The minute was presented as evidence that the union's membership did not reach the threshold of one-fourth of the workforce, the total level of which the company declared to be 664. On this basis, the company's legal representative (personnel manager/deputy manager Yvonne de Sevilla) requested the labor ministry to confirm this as fact and to ratify its contention that the company was under no obligation to negotiate.[28]

[27] Article 225 e) of the labor code requires unions "To send annually to the same Department a list of all of its members, which should include their first and family names, their identity card numbers and their corresponding professions or occupations or, if it concerns employers unions, the nature of the economic activities that they conduct in that capacity."

[28] Letter, signed Yvonne Noguera de Sevilla, Sub-Gerente y Representante Legal, Camisas Modernas S.A., to the Inspector General de Trabajo, re. Adjudicacion no. 1,859-96, September 23, 1996. The letter, which was incorporated into the case dossier, declares that Camisas Modernas had 664 employees, and attached payroll and Social Security records to this effect.

The union responded promptly but ineffectually to clarify the matter, handicapped by its failure either to have registered its membership as of September 1996 with the labor registry, or to have an up-to-to-date membership ledger, certified by the labor ministry—a matter discussed further below. Although failure by STECAMOSA to meet its procedural obligations to maintain accurate and current books under the law did not affect the extent of union support, in fact, it did affect the ability of the labor ministry to verify the union membership's claim. In October, members of the STECAMOSA Executive Committee took part in a number of meetings in the offices of the labor inspectorate and at the Camosa II plant, in which the union's submissions were rejected as without standing largely on matters of form (although they were attached to the dossier). The CUSG legal advisor was not present at these proceedings. A list of 170 members, provided by union delegates on October 8, 1996, was described in the minute of that meeting: it was "not registered in the General Labor Office, nor [does it bear] the seal or signatures of unionized workers, nor is it stamped or signed by the General Labor Office."[29] There is no requirement in law, however, for such information to be stamped and registered to be considered in labor proceedings of this kind. The documentation presented, regardless of form, did provide labor inspectors—and the company—with preliminary information to the effect that the union would, in fact, be able to prove a membership of over one-fourth of the workforce (which if the latter was confirmed to number 664 would have been 166).[30] The following week, on October 18, the union's membership list was formally registered with the General Labor Office's labor registry, identifying a total of 177 union members.

The delay in the registration was attributed by the union in part to its concerns that to do so prior to the initiation of the proposed negotiations would have jeopardized the union's case, by exposing its membership to reprisals by Camisas Modernas, SA. At the same time, union officials told Human Rights Watch that the formal registration of its membership with the labor registry was delayed by developments at Camisas Modernas following the announcement that the union had demanded the right to negotiation. The union maintains that it held off finalizing its membership rolls until it could confirm with each registered member an intention to stand firm as a union member after September 2, as pressures to withdraw from the union increased. As evidence to this effect, Human Rights Watch was shown the membership applications of twelve individuals indicating that they were union members as of September 2, but who the union said it had excluded from the lists prepared for the labor ministry, including the October 18, 1996 official list. Claims that union members were subjected to intimidation, improperly encouraged to withdraw from the union, or offered exceptional severance payments should they leave employment are discussed further below.

What is beyond dispute is that a significant number of union members left the company or signed letters withdrawing from the union in the months before and in the two weeks after the union's September 2 petition. As

[29] In its summary of the evidence presented at the October 8 meeting, labor inspectors referred to the 1995 Labor Registry list, of 131 union members, and that it had been established that only 85 were still employed by Camisas Modernas, S.A.

[30] There is disagreement on the documents actually made available for consultation at the October 8 meeting. Union delegates who attended the meeting told Human Rights Watch they had taken with them copies of the over 200 membership applications from which the membership lists were compiled (which Human Rights Watch subsequently examined), but that labor inspectors had said it was unnecessary to consult them. Inspector General Roberto Rodríguez maintains that the union's delegates never declared they had these documents with them at official meetings, and that had they done so this would have been reflected in the record of the meetings (the *actas*), which they had in fact signed. (Human Rights Watch interview, Guatemala City, January 16, 1996, with Inspector General of Labor Roberto Rodríguez.) The official minutes of the October 8 meeting indicate, somewhat ambiguously, only that the union delegates "present for review in this proceeding the authorized and legalized lists that the union has..." The delegates are also cited in the official minutes as having requested, in virtue of the company's representative having been made privy to the updated membership information, "that reprisals not be taken against the other members." The official record of each meeting or similar initiative by the labor ministry is prepared upon its conclusion and signed by the participants, in this case representatives of the labor inspectorate, the union and the enterprise, as an accurate reflection of the proceedings. The meeting was attended by labor inspectors Walter Mansilla Peralta and Hugo Leonel Morales Tello. Inspector General Rodríguez is not identified in the minute as having attended the October 8 meeting. Article 281 (j) of the labor code, concerning the prerogatives of labor inspectors, states that "The act as issued have complete validity insofar as they are not demonstrated clearly to be inexact, false or biased."

noted, forty-six of the 131 union members registered with the labor ministry as of August 1995 had quit the company by August the following year: an attrition rate of 34 percent (in contrast to an overall turnover estimated by managers at no more than 2 to 5 percent). Human Rights Watch confirmed the resignation of nineteen union members from Camosa II's finishing department alone during the first nine months of 1996, although the total appears to have been higher. Union sources claimed twenty-four members in the finishing department had resigned in this period, while company personnel records on this highly unionized department, that were reviewed by Human Rights Watch showed the resignation of thirty of its staff between November 1995 and October 1996.

Human Rights Watch identified thirteen union members who quit the firm in August 1996 and seven who left between September 2 and 15. Others submitted formal letters withdrawing from union membership in the latter period. The significant flux in membership precisely in the weeks immediately before and after 1 September, reflected in the more than 200 membership forms examined by Human Rights Watch (and, based on a much smaller sample examined, in the company's personal records), makes the delay in the presentation of a firm membership list to the labor registry understandable.[31]

An updated list of the union's members as of September 2, 1996 was registered with the labor registry on October 18.[32] The list provides the personal data normally provided in submissions to the ministry's labor registry, including the date on which each member joined the union or reconfirmed his or her prior membership with a new application form; these dates and other personal data were subsequently cross-checked with each (signed) application form by Human Rights Watch. Only those members whose membership had been approved by September 2, 1996 were included.[33]

Human Rights Watch spent eight hours reviewing over 200 union membership forms in an effort to determine the union's actual membership levels since 1995, and the accuracy and the integrity of the union's records.[34] Human Rights Watch compared each form with the name listed on the padrón and checked to see that the information (including name, *cédula*, and date of joining the union) provided on the application matched the information on the padrón. While there were certain minor discrepancies in the personal information provided in some of the documentation, such as errors in which numbers were transposed, the forms seemed a genuine record of the union's membership. Of the 189 forms which were signed and dated as of September 2, 1996, the Human Rights Watch review

[31] A union may submit updates to its membership rolls to the labor registry at any time. A reluctance to regularly submit such information, however, has been attributed by union leaders and labor lawyers to a lack of confidence that such membership information will not be made available to employers where union members are targeted for discriminatory treatment or outright dismissal.

[32] The list, which was copied to Human Rights Watch, was accompanied by a letter of October 17, 1996. The list, according to union officials interviewed by Human Rights Watch, included seven members whose membership documentation was on file at the time of the October 8 meeting, but who had not at that time been personally contacted to confirm their intention to remain in the union. These officials explained that the provisional list of 170 presented at the October 8 meeting had subsequently been updated to reflect the confirmation of their membership.

[33] In its review of the original membership records (including application forms from 1995 and 1996), Human Rights Watch confirmed that application forms dated no later than September 2, 1996 were on file for each of the 177 individuals identified on the registered list. Full details of employment, place of birth, identity card numbers, home addresses, and signatures were provided on these forms; in many cases, it was possible to cross-check personal information and signatures of union members provided in both 1995 applications and in the 1996 forms used during the union's drive to increase and confirm its membership base.

[34] While most of the membership forms reviewed dated from the first eight months of 1996, many were of members who were validating their earlier registration with the union; this was confirmed by a review of some of the 1995 forms. Members' 1996 forms were often clipped to earlier records, thus facilitating a comparison of signatures and personal data.

found three that were substantially incomplete, included information that was inconsistent with other records examined; were unsigned; or could otherwise be considered invalid. Human Rights Watch believes that the forms were accurate and reflected more than the 25 percent support required under the law. On this basis Human Rights Watch believes that the STECAMOSA union did have the necessary support from the labor minister to compel collective bargaining.

Human Rights Watch also examined the union's official records of its general assemblies and executive council meetings, both of which date only from January 1996, at which time these volumes were registered and authenticated by the labor ministry. According to the union, and the official record of its general assemblies, a strength of 177 was already established, and announced, at the general assembly of September 1, 1996. The union said it was unprepared at that time, however, to make its membership public due to what it described as "the anti-union" position of the company. The full minutes of the September 1, 1996 general assembly described the membership drive of the preceding period, as well as what the union executive committee presented as its net result: a contingent of 177 union members, more than enough to meet the goal of one-fourth of the workforce. The text of the relevant paragraph follows:

> Fourth: the Secretary of Organization reports that a process of consciousness raising is being carried out with all of the workers of the enterprise so that they join the union and exercise their right of freedom to form trade unions, that this has been done because of the anti-union attitudes of the company and because there have been changes in personnel with regard to the contracts of employment which have obliged us to have the workers who were affiliated previously fill out new application forms to ratify their affiliation and that the new members fill their applications to join and that in consequence at the time of holding this assembly there are one hundred and seventy-seven workers registered with the union who have signed the corresponding applications to join the union. Continuing, the list of members is read and the welcome to the new members is given, with those present informed that this list containing the names of one hundred and seventy-seven members will be sent to the General Labor Office for its corresponding registration, because the list presented in 1995 does not reflect the present reality of the union.

The exclusion of this paragraph from the summary minute submitted with the union's petition appears to have been a strategic error, whatever its stated rationale. While the union's anticipation of measures by the company to take advantage of full disclosure may have been a real concern, it was also clear that the union feared making known the names of likely waverers, who could at any moment renounce their membership, by too hastily producing a final list for registration at the culmination of its membership drive. Human Rights Watch's review of the union membership, as noted, revealed a particularly high rate of resignations from the plant by union members and leaders in the months immediately preceding the presentation of the petition.

The Official List and the Proposed Official Count

The list of 177 members registered on October 18 by the labor registry was not taken into account in subsequent labor ministry deliberations. As noted, this certified, updated list had, to the knowledge of Human Rights Watch, accurately reflected the membership at the time of the union's most recent general assembly, on September 1, 1996, at which members *ad referendum* were inducted into the union. Human Rights Watch's review of membership records was also able to confirm that the membership list registered on October 18 had duly reflected confirmed withdrawals from the union between September 2 and October 17 as well as the rash of resignations by union members from the company in this period.[35]

[35] The union membership registered on October 18, 1996, was in Human Rights Watch's assessment, adjusted in good faith by union officers to reflect only those members whose affiliation and current employment had been confirmed as of the days immediately preceding October 18, 1996.

The labor ministry's resolutions on the STECAMOSA petition to negotiate did not reflect the union's October 18 membership entry in the labor registry until December 4. On that date, Labor Minister Ortíz Moscoso met with representatives of the union, who raised the matter of the union's registered membership once more. In a questionable interpretation of legal principles in the minister's resolution of that date, the document was said to have been excluded from consideration on the grounds that it had not existed prior to the challenge having been made by Camisas Modernas, S.A. to the union's request to negotiate:

> Considering: That in fulfilment of the dispositions that regulate due process, this Ministry, in considering the petition that is resolved today, gave an audience to the Union of Workers of Camisas Modernas, Sociedad Anónima, which organization limited itself to declaring that on October 18 this year it presented to the Department of Labor Registry (an entity distinct from the Inspectorate General of Labor) a new list of members with 177 members, a matter that for the purposes of the resolution challenged and this resolution can have no legal effect, in that it is a general principle of law that every resolution must take in account only what existed at the moment in which the request that was its origin was presented, in this case September 23, 1996, the date at which the petitioner requested the verification of the number of members comprising the union in question.

In a telephone interview with Human Rights Watch on March 13, 1997, former Labor Minister Ortíz Moscoso asserted that he was unable to introduce the additional evidence of the union strength as of September 6 into the dossier without himself violating the procedures governing his ministry. He said that the union entered the process basically admitting that it had insufficient numbers, an apparent reference to the summary minute of its general assembly. He said further that he had himself suggested to the company that the union's October 18 registration with the ministry showing 177 members be added to the file on the case, but that the company vigorously and aggressively opposed this, precluding this step. The union could, he asserted, request that a new proceeding be opened, or take the matter to the courts.

This would have been appropriate if the purpose of the proceedings had been highly formal in nature. The proceedings in question were, instead, of an administrative nature. As such, especially under labor law the process should have been subject to amendments, corrections and additions at any time, with a view to establishing the facts under consideration. The labor code's principle of *tutelaridad*, or protection, of labor rights has already been discussed. A further guiding principle, also set out in the preamble to the labor code, is that labor law is "realistic and objective," an important distinction setting it apart from the emphasis on procedure in other Latin American legal traditions. The norm in civil courts, for example, is that facts are without standing if they have not been established in a formal procedure; to wit, the saying "What is not in the dossier is not in the world" ("Lo que no está en el expediente no está en el mundo"). In labor law, however, in accord with the principles of "objectivity and realism," the facts must prevail over any deficiency in the form. Although the principles of objectivity and realism should minimize formalism in the implementation of Guatemalan labor law, the labor ministry's rejection of documentation exemplified the preeminence of form over substance in the deliberations.

The substance consisted, precisely, of the facts of union membership as of September 6, 1996. In effect, the October 18 document, duly certified by the union officials legally qualified to represent the union in its affairs as of September 2, could have been accepted as a sworn affidavit whether or not it was registered with the General Labor Office prior to September 6—or September 23. That it was certified as such by the Ministry of Labor's own labor registry on October 18 was, at bottom, a confirmation of this status for the purposes of this case. It certified, on the responsibility of the union's executive committee, information concerning the standing of its membership as of September 2, 1996; as such, its admissibility at any stage of this administrative procedure would not appear to have violated principles of administrative law. The minister's resolution further disparaged the registration by stressing that the labor registry was an office separate from the labor inspectorate. The offices, both under the labor minister, are just down the hall from each other (Human Rights Watch visited both).

Equally to the point, the ministerial resolution's identifying the date of the company's challenge, September 23, as a cut-off for the admissibility of evidence, disregarded the ministry's own obligation to apply the law with regard to the union's original petition to negotiate. While the company petition might reasonably have been considered jointly with a ministerial inquiry on its own initiative, there was in fact no such inquiry. By subordinating consideration of the union's petition, including the exclusion of substantiating evidence, to the subsequent challenge by the company, the ministry appears to have engaged in both procedural irregularities and apparent partiality. The labor ministry had a primary obligation to consider matter underlying the company challenge: whether, in fact, the company was in breach of article 51 of the labor code in its refusal to discuss or negotiate an agreement with the union. The establishment of the facts supporting the union's proposal in this regard should have drawn upon all information available then and at the time of the inquiry: not just records duly registered in the labor registry, the courts, or in other fora prior to the company's counter-claim on September 23.

The Ministry of Labor could, it seems, take into account any and all forms of evidence in its deliberations; indeed, not to do so in a matter concerning a union's efforts to engage in negotiations in accordance with the law would appear to be an abdication of its obligations to protect workers' rights. The recognition of the registration of the list, in this procedure, would not in any event have represented a conclusion of the verification procedure requested: it did, however, indicate that the union's proposal to negotiate was well-founded, and that the administrative procedure resulting from this should not be cut short. A physical count of the membership, conducted under conditions negotiated with the two parties (but which could ultimately be imposed by the ministry), was well within the scope of the ministry's prerogatives and had, in fact, been accepted as desirable by both sides.[36]

The minister's exclusion of evidence had other consequences: the rejection of updated lists threatened to skew any recount of union membership, depending whether labor inspectors were to call only names from out-of-date lists in the count. Labor inspectors charged with this task, however, declared that the count would be based on the 1995 list. The initial proposal for a count was made on October 14, 1996, when Labor Inspector Hugo Leonel Morales Tello visited the Camosa II plant and met with union delegates and the company representative in the administrative offices there. The thrust of the latter was to order a recount of union members, "taking into account that their affiliation should have been prior to the date of notification of the Draft Collective Agreement....on September 6 this year." The inspector in turn indicated the time and place of the recount: 10:45 am on October 16, 1996, in the management offices of Camosa II.

The company was advised in the October 14 document that it must make available payroll and social security records from the month of August in the course of the inspection, and permit the employees who are members of the union from Camosa I and Camosa II to be present in the Camosa II plant for the count (it agreed to do so). The union, in turn, was instructed:

> a) To make available the list of workers affiliated to the union duly stamped and registered by the General Labor Office, which should be prior to the date of notification of the Draft Collective Agreement of Conditions of Employment, that is prior to September 6, 1996;
> b) To make available for their review the Books that are established by Article 225 (a), with the exception of the book of Accounts, and this union is advised that it should inform its members so that they take part in the recount procedure...

[36] While Guatemalan labor law leaves unions' internal affairs largely up to a union's own rules and membership, certain procedures are envisaged for the supervision, for example, of a strike vote. With respect to Convention 98, the ILO's Committee on Freedom of Expression, in an opinion on the voluntary character of collective bargaining and recognition of trade unions by employers, relating to situations in which such negotiations may require a majority of workers, said the following:

> The competent authorities should, in all cases, have the power to proceed to an objective verification of any claim by a union that it represents the majority of the workers in an undertaking, provided that such a claim appears to be plausible. If the union concerned is found to be the majority union, the authorities should take appropriate conciliatory measures to obtain the employer's recognition of that union for collective bargaining purposes.

The document ends with an admonition to both parties that failure to comply "with just one of these requirements will result in this dossier, with a reference to the respective noncompliance, being forwarded to the courts..." Given the consistently negative record of the labor courts in the defense of labor rights, this offered little prospect of a prompt and fair resolution of the matter.

Labor Inspectors Hugo Leonel Morales Tello and Walter Mansilla Peralta went to the Camosa II plant on the morning of October 16, where the count was to have taken place in the administrative offices. The company, the previous day, had circulated a notice to employees announcing the inspector's visit,

> for which they will be called only to the office of personnel, where they are to indicate yes or no as to whether they were members of the union prior to [September 6]. At the same time those who were not members of the union can make this known to the inspectors.[37]

The provision in law for inspectors to interview workers in private might well have offered a means to establish the objective conditions of the union's membership with a view to giving force to article 51. This course was not, however, taken by labor inspectors. The conditions of the scheduled count, at which labor inspectors were to have interviewed workers one by one as they were called into the personnel office, in the presence of the company's officials, were a serious concern of union officials. A background of intimidation had been described by union delegates in their October 8 meeting with labor inspectors; this was a primary basis given by these union representatives for the objection to the proposed procedure.[38]

The Union's Counter-Proposal and Failed Count

In a petition of October 15, the union requested the withdrawal of resolution no. 7247 ordering a count, issued the preceding day by the General Labor Inspectorate, citing a range of legal arguments in challenging the procedures that it was to have set in motion (the petition also challenged the contents of the act of October 14, 1996 by which resolution 7247 was communicated to the union). Of immediate urgency, the petition requested the suspension of the proceedings announced for October 16, at which time a count of union members was to have been conducted. The union would a week later (October 23) set out a proposal for an alternative procedure in a meeting with the deputy minister of labor; this proposal, discussed further below, was never formally incorporated into the adjudication process, nor was it the basis for discussions by which an acceptable procedure could have been agreed to.

The union's petition of October 15 took issue with, among other things, the inspectorate's persistence in founding its consideration of the actual strength of the union on long outdated records, rather than in a review of current membership records at the time a formal recount was to be taken. The October 14 inspectorate resolution had, indeed, reflected an apparent presumption that the union had not achieved the membership level asserted, by stressing the evidentiary value of the 1995 registry and by repeating and failing to correct an erroneous report from the labor registry presenting an even lower number (which referred to twenty-nine members). At the same time, the inspectorate wrongly characterized the absence of signatures on the informal list presented in an early meeting at the ministry as invalidating that list.

[37] Circular of October 15, 1996 included in the labor ministry's case file, headed Gerencia General, Camisas Modernas, S.A., advising staff of the labor inspectors' visit.

[38] This was reiterated to Human Rights Watch by several members of the union executive, jointly and in individual interviews.

The labor inspectorate, on the basis of a technicality that was the ministry's own fault, did not even consider the merits of the union's October 15 petition at the time or subsequently. The number of the resolution was held to have been misstated in the petition: the labor inspectorate had in the usual manner spelled out the number, then given it in numerals: these, however, did not match in the ministry document. The numerals, twice repeated, identified the resolution as no. 7247; the number in words, however, was seven thousand two hundred forty-two. The labor inspectorate, however, rejected the petition on the grounds that resolution no. 7247 had been issued.[39] In subsequent summations of the case, the ministry added further that the nature of the resolution in question was such that it was not subject to challenge.[40]

The petition added that there is no legal provision in Guatemalan law requiring a confirmation of membership must be based on the last membership list filed with the General labor Office (of which the labor registry is a part). The latter is a yearly, not monthly, obligation of unions. As a consequence, the union protested that the labor inspectorate could not reasonably take as a basis for a recount for the purposes of the proposed negotiations the content of the previous year's membership list, but rather "that it should take into account the membership registry that the union presents at the moment such a recount is carried out." Three days after presenting the petition on October 15 [41], the union did, in fact, file its updated membership list with the labor registry.[42] The list reflected the rash of resignations of union members from the company in the weeks after the collective bargaining proposal was presented, as well as the withdrawal of some others who had been union members at the time the original petition was submitted.

The October 15 petition also correctly noted that article 51 of the labor code, on which the proposal for the negotiation of a collective agreement was founded, does not establish a procedure by which the 25 percent union membership could be confirmed. Inspector General Roberto Rodríguez verified to Human Rights Watch that there was no regulation prescribing the procedure with which to conduct a recount.[43] The procedure invoked by the Inspectorate General of Labor was, however, the procedure generally used by that office. It was described by labor lawyers consulted by Human Rights Watch as normal, if unfair, for labor inspectors to require union members to go before the personnel manager or other similar plant officials in confirming membership. At the same time, the union's procedure in delaying the formal registration of its 1996 list with the labor registry appears to have been correct.

[39] The official record of the October 14, 1996 meeting refers to labor inspectorate "resolution number seven thousand two hundred and forty two (7247)" (the discrepancy in the numbers was the cause of subsequent confusion; the labor inspectorate maintained that the number was 7242). The seventh "Considering" paragraph in the labor inspectorate's resolution of November 11, 1996, states the following: "That on October 15 this year, the *senoras* representing [STECAMOSA], presented a "Petition to Revoke" [Recurso de revocatoria] resolution number 7247....; A petition that was rejected in virtue of there being no resolution in the dossier identified as No. 7247 and that the act in question was not susceptible to challenge. Effectively, by reviewing the petition it was determined that it was possible that the petitioners may have intended to challenge resolution No. 7242, that also was not subject to challenge."

[40] In its article 275, the labor code provides a procedure by which the accuracy of what is reflected in its resolutions, or their legality, may be challenged with a view to their being revoked or modified. The *recurso de revocatoria* must be resolved by the ministry within eight days, by revoking, confirming or modifying the resolution in question. It is unclear on what grounds the ministry declared the resolution in question as by its nature not susceptible to challenge, particularly to the extent that the petition addressed both matters of fact and law.

[41] The petition is date stamped as received by the labor inspectorate on October 15, 1996.

[42] The union's letter accompanying the revised list of membership as of September 2 was dated October 17, 1996; the registration of the list in the labor registry was dated October 18, 1996.

[43] Human Rights Watch interview with Inspector General of Labor Roberto Rodríguez, January 16, 1996.

Although the union's formal petition to halt the proceedings was not accepted, the inspection was, in fact, halted when, on the morning of October 16, it became clear to the inspectors present at Camosa II that the union would not cooperate. In their formal minutes of the affair,[44] the labor inspectors noted that the company had issued orders to its various departments to permit employees to take part without restrictions and with pay. The inspectors also noted that the company had informed them that the previous day a notice had begun to circulate, apparently from the union, advising employees not to participate (a copy of the notice as attached to the case dossier). On the part of the union, the record declared that

> They stated....that they were duly informed of the motive of this procedure and with this respect indicated that they had reached a consensus in which the workers affiliated to the union are not in accord with the recount fixed for this day because of a years-long situation in which reprisals are taken against union members, and on the other hand we have the right to inform the members of the situation in which we find ourselves[.] [T]his is the explanation of the circular that was distributed in Camosa One and Camosa Two, at the same time we want to mention that a petition to revoke the resolution was communicated to us with a date of October 14 this year to the Inspectorate General of Labor, a simple copy of which we provide to be attached to this minute.

The labor inspectors subsequently decided to suspend the proceedings.

Selective Accounting

In contrast to the questioning of union membership, the figures for the total number of employees of the plants Camosa I and Camosa II, based on payroll and Social Security records as of August 30, 1996, were not challenged by labor inspectors.[45] The figure of 664 staff accepted at that time remained the basis for the calculation of the 25 percent union membership throughout the case. Labor inspectors are not believed to have excluded any employee named in the August 30 records although a significant number of staff left the company in August 1996.[46] At the same time, the union's claims during a meeting of October 8 that twenty-three names on the payroll records were immediately recognized as those of people who had left the company, and that the union was not permitted to comprehensively review the records or to challenge particular names on the list, were not taken into account by the ministry. Again, the overall impression received by Human Rights Watch was that information favorable to the union's petition to initiate collective bargaining with PVH was discounted, set aside or ignored by labor ministry officials.

The labor ministry's procedures also changed in the immediate aftermath of the union's having registered its official list with the labor registry. A series of formal meetings, called by the labor ministry, were inexplicably held without the normal, and required, official minutes (the *acta*) by which official procedures are normally documented. Formal procedures were represented by Labor Minister Ortíz Moscoso and Deputy Minister Rivas Sanchez as informal measures to mediate between two parties in conflict, rather than to reach a determination on matters of fact and law.

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[44] Adjudicacion No. 2009-96, October 16, 1996.

[45] The precise dates of the records consulted by labor inspectors in order to determine staffing levels are also glossed over in the labor ministry's summing up of the case. The case dossier includes the records of the Instituto Guatemalteco de Seguro Social (IGSS, the Guatemalan Institute of Social Security) for the period July 29 to August 25, 1996. See, for example, Adjudicacion No. 2009/95, October 8, 1996, which refers to IGSS and payroll lists as the basis for its conclusions on staffing levels as of August 30, 1996.

[46] A possible further discrepancy on total numbers of staff employed in the two plants emerged in the inspection report filed by two inspectors of the labor inspectorate who visited the Camosa II plant on September 19, 1996. The inspectors met with the personnel manager (*Gerente de Personal*), Yvonne de Sevilla as well as two representatives of the union. Their report gave the plant's "total number of workers" as 313; insofar as Camosa II had the significantly larger workforce of the two plants (Camosa I was said to have 300 or fewer employees) the statistics on total staff provided for purposes of opposing the union's request for negotiations under article 51 may require further explanation.

These included the October 23 meeting at which the union had sought to agree procedures with labor officials for a count of its members.

A memorandum of October 23, 1996 from Deputy Minister Rivas Sanchez, for example, was the sole record of an important meeting called by Minister Ortíz Moscoso (who in the event, did not himself attend).[47] The memorandum notes that the meeting was scheduled to bring together the union and the company, "with a view to mediating in the situation established." The company is said to have excused itself from attending, "as a consequence, it said, of the union having impeded a recount of its members." The meeting was important, however, not least because the two representatives of the union were accompanied by their lawyer, Lic. Alfaro Mijangos, and efforts were made to correct what appeared to have been fundamental misrepresentations of the union's position in earlier labor ministry documents. In conclusion, Deputy Minister Rivas Sanchez declared his willingness to continue mediating in the matter and agreed to circulate the memorandum of the discussion to interested parties.[48]

The principal clarification, which should have been reflected in the adjudication, was the union's statement that it was not opposed to a count but that this should not be conducted under what the union asserted was "pressure." The union's criticism of the procedure initially proposed was that it exposed its members to what it claimed was unacceptable intimidation. The minutes did not reflect this criticism. A detailed alternative procedure for a count was proposed by the union and summarized in Deputy Minister Rivas' memorandum. The union submitted an alternative venue for the count, proposing that neither union officers nor company officials be present, and requested certain guarantees that employees would be shielded from intimidation.[49]

[47] The document, headed "Pending: Labor Problem at the Camisas Modernas, S.A. Company," sent by fax on October 23, 1996 on Ministry of Labor headed paper, was a memorandum addressed, in this order, to Camisas Modernas, S.A.; Lic. Eduardo Palomo Escobar; Sindicato de Camisas Modernas, S.A.; Lic. Juan Francisco Alfaro Mijangos. Although it formed a part of the dossier of the case examined by Human Rights Watch, it did not constitute a formal *acta* in the numbered record of the adjudication, in line with the emphasis on mediation in that discussion.

[48] A proposal not reflected in the memorandum of October 23, according to participants interviewed by Human Rights Watch, was that the count procedure be monitored by mutually agreed observers, possibly members of the Tripartite Commission on international labor issues established under the peace process (Comisión Tripartita de Asuntos Internacionales de Trabajo). That the memorandum was sent to the Tripartite Commission as well as to union and company representatives tends to support these allegations.

[49] The union's counter-proposal on procedures was summarized as follows:
4.1 That it take place outside the Company premises, proposing as an alternative the headquarters of the Power Workers Union.
4.2 That it be made eight days after the Company provides notification of agreement.
4.3 That in order to carry out the count, permission be granted to all employers to be absent with pay;
4.4 That during the count neither personnel of confidence of the Company (Managers and Supervisors), nor Officials of the Union be present.
4.5 That the Company agrees to permit the count and abstains from adopting conduct that affects the workers.
4.6 That the company make no announcement with respect to the count, limiting itself to providing the permission requested for participation in the count which will be notified solely by the Union.
4.7 That the process be carried out by Labor Inspectors, who should accept as identity documents only *La Cédula de Vecindad* (municipal identity cards) or drivers licenses.

Although the proposal was tabled with the deputy minister and sent subsequently to the company, the union received no formal response. The labor ministry barred any further discussion of procedures for a count and made no further effort to carry one out. According to union officers, union lawyer Juan Francisco Alfaro Mijangos telephoned Deputy Minister Rivas one week after the meeting to ask whether the union's procedural proposal had been accepted. He was reportedly informed that the company had refused to accept a count on such terms, on the grounds that it would be a "show" (the union, for example, proposed that the count be held in a union hall). This information was not reflected in subsequent formal documents of the labor ministry. The union's formal proposal to reconsider conditions for a recount was, finally, omitted from formal summations of the case initiated with the September 2 union petition. In subsequent documents closing the case, Labor Minister Ortíz Moscoso and Inspector General of Labor Rodríguez declared flatly that the union had opposed a count of its members.[50] This was a misrepresentation of the facts.

The Ministry of Labor and Social Welfare

The ministry did not pursue a course of action by which the facts of this membership could conclusively be established. Rather, it accepted challenges made by the Phillips-Van Heusen company uncritically, refused to consider the merits of a verification procedure proposed by the union, refused to accept documentary evidence of union membership that had been registered with the General Labor Office, and abruptly curtailed the procedure by declaring its inability to reach a conclusion.

In a resolution of November 11, 1996, the Inspector General of Labor summarized the record of previous meetings and procedures concerning the company's challenge to the union petition to negotiate, and declares the labor ministry's role in the affair at an end.[51] The introduction of the document frames the issue strictly in terms of the company's challenge to the union's strength:

> The matter at hand is the resolution of the petition filed by the Camisas Modernas, S.A. to determine whether the union of this company has more than 25 percent of the workers unionized, and therefore, if such company is required to negotiate a draft of the Collective Bargaining Agreement.

[50] Concerning the efforts to conduct a count, the summation of November 11, 1996, declares that the union had opposed the scheduled count of October 16, without reference to subsequent interventions concerning the conditions of such a count. *See* Inspección General de Trabajo, Asunto: Representante legal de Camisas Modernas, S.A. solicita se realice encuesta para determinar el numero de trabajadores de la empresa y numero de Trabajadores afiliados al sindicato. ....Adjudicación 2009-96, signed by Inspector General of Labor Lic. L. Roberto Rodríguez. The final document in the dossier (ref. OARS/ra, 1796/C19/1996), signed by Minister of Labor Arnoldo Ortíz Moscoso and Deputy Ministry Oscar Augusto Rivas Sanchez on December 4, 1996, rejecting a request to reopen the case, summarizes the matter of the count even more starkly: "when the Inspectorate General of Labor attempted to carry out the recount of the unionized workers, the labor side indicated that it did not agree to this and did not agree to its being carried out."

[51] Inspección General de Trabajo, Asunto: Representante legal de Camisas Modernas, S.A. solicita se realice encuesta para determinar el numero de trabajadores de la empresa y numero de Trabajadores afiliados al sindicato. Adjudicación 2009-96, signed by Inspector General of Labor Lic. L. Roberto Rodríguez.

Its point of departure is set out in an initial clause, that "On September 6, 1996 under adjudication No. 1859-96, the Labor Inspector General's Office served Camisas Modernas, S. A. a draft of a Collective Bargaining Agreement presented by the union of such company," followed by a series of clauses setting out a summary of the proceedings, and highlighting the confused nature of the information reviewed. This done, the inspector general declares the concerned parties free to take the matter to the courts, meaning that the labor ministry's role in the matter was deemed to be completed.[52] Further consideration of the case was left up to the courts—although Guatemala's labor courts had no record of prompt, independent, or effective resolution of such cases.

Notwithstanding the registration of the union's membership on October 18, Ministry of Labor documents concerning its petition continued after that date to reflect only the registration information of previous years. The ministry also referred in its concluding resolutions on this matter to the repetition of information which its own departmental units had clarified as mistaken. In this respect, a memorandum of October 2, 1996 was placed in the dossier from the ministry's Departamento Nacional de Proteccion de Trabajadores, indicating that the last official registry of STECAMOSA indicated that it had just twenty-nine members. This is corrected in a memorandum in the dossier from the same office, of October 17, 1996, which states simply that it is to correct the information provided previously; the last official list presented to the labor registry for registration was, in fact, of 131 members.[53]

The labor ministry, by citing both the uncorrected figure of twenty-nine and the 1995 list of 131 continued to represent the union's claim as either mischievous or not serious; and to indicate that the information required for a determination of the actual membership was so impossibly tangled as to make the real truth unattainable. An example is the summation of the case signed by Minister of Labor Arnoldo Ortíz Moscoso and First Vice-Minister Oscar Augusto Rivas Sanchez on December 4, 1996, rejecting a petition to revoke the resolution to close the case.[54] In this

[52] The concluding paragraphs follow:

WHEREAS, pursuant to the provisions of article 51 of the Labor Code, an employer employing the services of more than a fourth of the unionized workers is required to negotiate a collective bargaining agreement with the union, when it requests this. The same norm establishes several rules to be observed in the negotiation of collective agreements, among them, that if within thirty days of filing the application the parties have not reached an agreement, either party may go to the labor courts to open proceedings concerning the collective dispute in question.

WHEREAS, under article 274 of the Labor Code, the Department of Labor and Social Security is responsible for the direction, study and resolution of all matters in connection with labor and social security and for monitoring, applying and improving all such provisions regarding these matters; provided, however, that such are not within the jurisdiction of the courts. In the present case, it has clearly been established that the procedure to follow is jurisdictional, which prevents the Inspectorate General of Labor from pronouncing upon the substance of the matter;

THEREFORE, this Labor Inspector General's Office based on what is stated above, and pursuant to article 203 of the Political Constitution of the Republic of Guatemala, articles 51, 274, 374 and 378, second paragraph, of the Labor Code and article 57 of the Law of the Judicial Organ,

RESOLVES:

a) To inform the parties of the result of the actions carried out by the Labor Inspector General's Office and

b) To authorize them to apply to the applicable jurisdictional organization in order to obtain any statement available at law.

[53] Oficio no. 006-96, Departamento de Proteccion de los Trabajadores, al Inspector General de Trabajo, October 17, 1996.

[54] Guatemala, Ministerio de Trabajo y Prevision Social, resolution 1759/C19/1996, December 4, 1996, signed and stamped by Ministro de Trabajo Arnoldo Ortíz Moscoso and Vice-Ministro Oscar Augusto Rivas Sanchez. The resolution was a response to a petition by Camisas Modernas, S.A, to revoke Resolution 7828 of November 11, 1996, "through which the request of the Company mentioned is resolved, concerning the determination whether the Union of Workers of Camisas Modernas, S.A., groups more than 25 percent of the workers of that Company and as a consequence, if there is an obligation to negotiate the Collective Agreement on Conditions of Employment that union promotes." While the company sought the ministry's ratification of its position, that the union did not pass the 25 percent threshold, the union sought the firm support of the ministry in its demand for negotiations.

instance, the presentation of information already established by labor authorities as having been considered only as a consequence of the ministry's own error, while excluding the union's legally registered list of October 18, violates the labor ministry's fundamental obligations to protect workers' rights and to promote collective bargaining.

> Considering:
> That on examining the records of the case it is found that the Act of the Extraordinary General Assembly of the union...indicates that the union has 135 members; that in the Act of October 7 of the same year...it is shown that the representatives of the union in question themselves indicated to the Inspectors on duty that they did not have at their disposition the list of members of the union; that in the act of October 8 of the same year....the Labor Inspectors established that the employer provided for their review the payroll list and the [Social Security] records, with a total of 664 workers. That at the same time, in that act, it was established that the list of union workers was of 131 members, but that only 85 of them were working and members of the union; that the Union also presented an additional list of workers that did not meet legal requirements; that, in addition, according to the reform of the Department of Worker protection of October 2 this year, the last list of members of the Union has 29 members; and finally, that as established in the Act of October 16, 1996...when the Inspectorate General of Labor attempted to carry out a recount of the unionized workers, the labor side indicated that it was not in accord with this and did not agree to its being carried out; all of which results in there being a reasonable and well founded doubt concerning the number of members of the Union, which justifies the conclusion of the resolution that it is challenged concerning this them;

In sum, the labor ministry did not encourage and facilitate negotiation in its handling of the STECAMOSA petition. A review of the dossier compiled by the labor inspectorate on the intended negotiation further suggests that the labor ministry abdicated its responsibilities to determine whether the union had the requisite membership under article 51 to compel collective bargaining. This obstruction resulted in part from unnecessary administrative obstacles, reinforced by what appears to have been a misinterpretation of the legal norms governing the admission of evidence into an administrative process. The exclusion of the October 18 list, as a certified affidavit concerning membership as of September 2, was prejudicial to a determination of the facts.

The union's membership records might reasonably have been requested and examined as a first step toward establishing the facts. This would have been consistent with the Ministry of Labor's obligations to facilitate and promote negotiation. The union's membership could have been promptly established had the ministry acted dutifully. Because the evidence examined by Human Rights Watch indicates that the one-fourth threshold had, in fact, been passed at the time of the petition, the ministry's actions had the effect of denying the union the opportunity to begin collective bargaining.

Had the Ministry of Labor established the facts, as requested by both the company and the union in question, a precedent would have been set with which many Guatemalan and foreign employers in Guatemala's maquila sector would have been uncomfortable. Major manufacturers are on the record in opposition to trade unions in their plants and few unions have established a foothold in this sector. Company spokesmen have described compulsory negotiations with unions as potentially crippling. The labor authorities' maintenance of the status quo meant that not one of Guatemala's overseas assembly plants operates under a collective labor agreement.

VII. DISCRIMINATION AGAINST UNION MEMBERS AND SUPPORTERS

Forcing Withdrawal from Unions "whatever the means employed"

A recurrent theme in the history of union organization at Phillips-Van Heusen's Camosa I and Camosa II plants, since union organization began there in 1989 under the previous PVH senior management, has been the claim of undue pressure put upon employees to reject trade union membership, to relinquish such membership, or to resign from the company because of union involvement. Some union sympathizers also were reported to have been dismissed

outright when union organization began. Article 10 of the Labor Code stipulates that "It is prohibited to take any form of reprisal against workers with the end of partially or totally impeding their exercise of the rights granted in the Constitution, this Code, its regulations or other labor or social welfare legislation, or because they had exercised or attempted to exercise them."[55] Similarly, article 62 of the code prohibits employers, in its paragraph c), from "Forcing or attempting to force workers, whatever the means employed, to withdraw from unions or legal groups to which they belong or to join one or the other."

There were striking positive practices at the combined PVH plant. First, unlike two other maquilas we visited, the workers at PVH had free access in and out of the facility during the fifteen minute morning break and the thirty minute lunchtime when groups of workers congregated outside the plant. Union organizers—non-company employees—had uncontested access to this public space and engage in lively discussion with Phillips-Van Heusen employees. There were both unarmed uniformed private security and personnel of the PMA (the mobile military police) armed with automatic weapons at the doors of the plant, but aside from allegations of intimidation by additional private security personnel retained briefly in 1996 to protect two senior managers, who in turn had allegedly been threatened by union sympathizers, there were no reports that regular security personnel harassed union organizers or those workers talking with them.

A number of union workers had posted signs above their machines within the PVH plants. These signs, calling for collective bargaining and justice, appeared in clusters in several departments. In addition, there was also brief, pre-planned "chanting" — at the appointed hour, workers would briefly blow whistles, chant and bang on equipment to demand a collective bargaining agreement. Human Rights Watch representatives were in the plant during two of these demonstrations. No workers complained that management had disciplined them for their participation in these actions. We believe that this tolerance of workers' rights to free expression and free association is extremely rare, if not unique, in Guatemala's maquila sector and we credit this commitment by PVH. Indeed, the openness with which many workers revealed their union sympathies suggests a limit to their fears of intimidation.

However, notwithstanding the guarantees in Guatemalan and international law, Human Rights Watch found considerable evidence that union members at the two PVH plants had faced discriminatory treatment that included pressures to withdraw from the union or resign from the company. A pattern of discriminatory treatment of unionized employees was combined with implicit and explicit warnings by supervisors and, in the Camosa II plant, senior personnel officials, that other workers contemplating affiliation would be vulnerable to similar treatment. This pattern of discrimination and intimidation is outlined below.

Protection from Arbitrary Dismissals and Discriminatory Actions

Overall statistics on staff turnover at the PVH plants suggests a remarkable stability in the work force. In 1994, turnover was estimated at just 5 percent yearly at Camosa I and just 2 percent at Camosa II. The departure of unionized staff, in contrast, was at a rate of about 34 percent between August 1995 and August 1996. The union's registered membership as of August 1995, for example, was confirmed in September 1996 to have suffered the loss of 46 members; their resignations from the two plants were confirmed by both the company and the union in its meetings with labor inspectors (see above). Most of these staff had resigned from Camisas Modernas after years of service. The pattern of resignations from the highly unionized finishing department of Camosa II is discussed below.

When questioned about an increased number of voluntary departures in September, the personnel manager told Human Rights Watch that between twelve and fifteen employees had left that month compared to the monthly average of between two and five. In discussing the increase in August and September, she indicated that "People who left don't feel comfortable because they heard too many negative comments. People left because they don't want to cope with the tension." She also said that it was difficult for the company to hire new employees because new people "saw too much tension at the plant and felt uncomfortable."

[55] The labor ministry's 1996 edition of the labor code, in a footnote to article 10, cites article 1 of the ILO's Right to Organize and Collective Bargaining Convention (1949), also known as Convention number 98, noting that Guatemala has ratified this convention.

Guatemalan law provides some special mechanisms by which workers may be protected from discriminatory treatment or reprisals for involvement in trade union activities. Such measures may be invoked when union organizing committees have been founded and efforts to recruit members and to seek legal recognition are under way, or in the course of labor conflicts. While these legal protections are backed by minimal penalties for offending employers, and there is a poor record of enforcement of provisions for the reinstatement of workers dismissed in violation of these orders, they do provide some basic protection for a workforce's exercise of freedom of association.

The labor code, in article 209, stipulates that workers cannot be dismissed for participating in the formation of a union, granting them a right of job security and stability (*inamovilidad*) for a certain period, during which time they cannot be removed from their post or dismissed without a court order. Union leaders registered with the labor ministry, moreover, receive special protection, their job security guaranteed under these conditions from the time their election is reported to the ministry until they cease to serve as officials; union officials are issued credentials by the labor ministry identifying them as such and employers are duly notified of their status.

Mechanisms to further protect union organization include orders of *emplazamiento,* injunctions by which the courts may protect the work force from arbitrary dismissal (requiring a court order to dismiss staff for cause), and orders halting involuntary transfers to new assignments. Such measures have been in force at the PVH plants since the legal recognition of the union in 1992.

Administrative and court orders to protect job stability forbid both arbitrary dismissals and certain changes in the conditions of employment, such as the involuntary transfer from one production operation to another. However, the manipulation of the work available to a particular production line, a certain work force, or a particular individual, when wages are paid on piece-rate basis, may vitiate these protections by drastically reducing an individual worker's weekly income. Such changes in income were found to be particularly prevalent among union members at the PVH plants under study.[56]

In a disturbing pattern, many workers interviewed by Human Rights Watch described having their incomes reduced to one quarter or half of the earnings they had regularly received at the same jobs in the years prior to joining the union. In such cases, workers whose employment was formally protected in law, some of them with up to seven years' tenure with PVH and records of numerous quality and production awards from the company, said they were being forced to leave to seek employment elsewhere. In some cases described by workers in interviews, supervisors appear to have subjected union members to what might be described as a workbench "lockout": although they remained formally employed, work orders evaporated and their production, and income, plummeted. Union members cited the practice of being assigned to poorly functioning machines that lowered their ability to produce; or to broken machines which seemed to be a very low priority for repair. Evidence collated by Human Rights Watch on personnel movement, in turn, confirmed that a very high proportion of union members had, indeed, left the plant in the course of 1996—numbers greatly disproportionate to the company's normal staff turnover.

[56] The obligation of states party to ILO Convention 98 to investigate and provide redress to anti-union discrimination, as well as the difficulty posed the worker in providing such treatment, is addressed in recommendations of the ILO's Freedom of Association Committee. Recommendation 740, for example, notes that:

> The existence of basic legislative provisions prohibiting acts of anti-union discrimination is not sufficient if these provisions are not accompanied by effective procedures ensuring their application in practice. Thus, for example, it may often be difficult, if not impossible, for a worker to furnish proof of an act of anti-union discrimination of which he has been the victim. This shows the full importance of Article 3 of Convention No. 98, which provides that machinery appropriate to national conditions shall be established, where necessary, to ensure respect for the right to organize.

Op. cit., ILO, Committee on Freedom of Association, p. 149. See also recommendation 741: "Respect for the principles of freedom of association clearly requires that workers who consider that they have been prejudiced because of their trade union activities should have access to *means of redress* which are *expeditious, inexpensive* and fully impartial," and 742: The existence of legislative provisions prohibiting acts of anti-union discrimination is insufficient if they are not accompanied by efficient procedures to ensure their implementation in practice."

Dismissals for trade union activism—and forced resignations—are violations of Guatemalan labor law as well as international labor conventions to which Guatemala is party (and which are considered integral parts of Guatemalan labor law). Protection against acts of anti-union discrimination, moreover, extends beyond the extreme cases of outright dismissal. As noted, articles 10 and 62, respectively, of the Guatemalan labor code prohibit either reprisals for union activities or pressures, "whatever the means employed," intended to force workers to withdraw from unions. As noted above, the ILO's Convention 98 (Right to Organize and Collective Bargaining Convention, 1949), which Guatemala has ratified and which is extensively excerpted in the labor ministry's annotated edition of the Labor Code, spells out in article 1, paragraph 2, that protection against anti-union discrimination:

> shall apply more particularly in respect of acts calculated to -
> (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
> (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

The jurisprudence of the ILO's Committee of Experts, also cited above, has established that the acts of discrimination prohibited extend considerably beyond hiring and firing: transfers, downgrading, disciplinary measures and restrictions on pay are among the examples cited in the rulings of the two committees.

Similarly, the ILO's Committee on Freedom of Association has commented on the need for increased safeguards to prevent dismissals and other discriminatory acts as a consequence of union members enormous vulnerability to such acts:

> Since inadequate independent safeguards against acts of anti-union discrimination, in particular against dismissals, may lead to the actual disappearance of trade unions composed only of workers in an undertaking, additional measures should be taken to ensure fuller protection for leaders of all organizations, and delegates and members of trade unions, against any discriminatory acts.[57]

The reference to discriminatory treatment—even short of dismissals—leading to the actual disappearance of a union is particularly relevant in the case at hand: on no less than three occasions since a union organizing committee was first established at the Camosa I plant, the STECAMOSA union has lost its leadership (by dismissals and resignations of leaders in 1989 and 1992, and subsequently by resignations). Its membership, in turn, was dispersed through dismissals, resignations and by the relinquishing of union affiliation in circumstances in which the severe reduction of earnings appears to have been a critical factor. The latest efforts to obtain the recognition of the company for purposes of negotiation are only the latest in a series in which discriminatory measures appear to have been implemented in direct response and in proportion to the union's success in mobilizing the work force.[58]

The question posed is whether the measures alleged in the cases of particular union members and groups of members (as, for example, the finishing department of Camosa II), can, first, be confirmed to have occurred, and second, determined to have been a discriminatory response to trade union activism. The jurisprudence of the Committee on Freedom of Expression in interpreting Convention 98 provides substantive standards by which to measure allegations of discriminatory treatment, but gives little guidance on the evidentiary requirements by which these standards can be applied. The committee's consideration of reprisals for strike action, however, may provide a useful analogue. As one leading authority notes,

> the Committee has found it difficult to accept as a coincidence unrelated to trade union activity that heads of department should have decided, immediately after a strike, to convene disciplinary boards which, on the basis

[57] International Labor Organization, Committee on Freedom of Association, Recommendation 700, p. 142.

[58] See above.

of service records, ordered the dismissal not only of a number of strikers but also of the members of their union committee.

The same logic might similarly be brought to bear upon the analysis of the resignations of significant numbers of union members from the plant at precisely the time of a major union initiative to negotiate a collective agreement. Similarly, a management decision at such a time to drastically reduce the work force of a department identified as a union stronghold requires particular examination. In questioning the disproportionate departure of union members from employment, it may also be necessary to consider whether economic grounds have been provided for such measures, and whether such grounds can be deemed to have been the pretext for discriminatory measures.

The Human Rights Watch inquiry found that the court injunctions and administrative protection orders designed to stabilize conditions of employment at times of heightened union activity can readily be circumvented by the system of piece-rate payment. PVH had been under an injunction of this kind (an *emplazamiento*) since the legal recognition of the union in 1992. This system can yield drastic reductions in income as a result of production factors and management decisions that are neither communicated to nor subject to the control of the workforce. The reduction of earning power, in turn, directly related to the resignation of union members during 1996.

Human Rights Watch concludes, on the basis of its review of individual cases and the pattern of resignations, that representatives of the company at the factory level encouraged resignations through such a pattern of discriminatory treatment of union members. As such, forced resignations appear comparable to unlawful dismissals.

Equal Protection?

A court injunction limiting dismissals may be intended to preserve conditions of employment pending resolution of a labor dispute. In practice, however, a principal condition of employment, the workers' earnings beyond the absolute minimum (Q17.60/day; about US $2.50) is left to the discretion of the employer. Insofar as the base wage is not generally considered a living wage in Guatemala City, supplementary income earned on a piece-rate basis is the norm by which most employees bring their wages up to a reasonable level by the standards of the maquila industry. A range of conditions regularly arise, however, under which sufficiently high levels of production cannot be maintained regardless of the level of skills and commitment of individual workers. These include interruptions of normal production brought about by machine breakdowns, production delays at some other part of the line, the delay in the delivery of working materials, and other factors beyond an individual worker's control. One option available to companies to compensate for these changes in working conditions is to "protect" workers by guaranteeing their earnings at the level of their previous average income during these interruptions.

"Protection" of earnings may also be ordered by the personnel department or a particular supervisor when a worker undertakes a task outside his or her usual area of responsibility, or complies with a request from the management that legal constraints make strictly voluntary. Most significant of the latter are those situations in which a manager seeks the transfer of a worker to a new operation: such transfers, under the *emplazamiento* (injunction), must be voluntary. At the same time, such transfers often require an operator to develop new skills, so that an operator will have to work for some time before reaching the production level at which the base pay is surpassed and earnings rise to what is considered a living wage. Compensation for such obstacles to a worker's full earning potential may thus avoid penalizing a worker for agreeing to take on a new assignment at which production levels will, initially, be lower. Both managers and union workers described the norm for protection of income in such cases of transfer as a period of four to six weeks.

However, unlike the routine protection of income for those who agree to transfer to new work responsibilities, protection for interruptions of production are largely left to the discretion of supervisors—and to policies of the personnel department to which workers are privy only through observation of the consequences. Each worker has a daily work sheet at his or her workstation, on which supervisors mark inactive time: when, for example, the flow of materials is interrupted, or when a machine breaks down. They can indicate on this sheet that income for the time in question is protected. Protection of income can also be ordered when an employee must go to the Instituto

Guatemalteco de Seguro Social (IGSS, Guatemala Social Security Institute) for medical attention; this, too, according to worker interviews, is at the discretion of supervisors (all workers continue to receive their base pay at such times).

In interviews with Human Rights Watch, many workers alleged that plant superiors discriminated against union members in determining whether to protect income. Some workers also claimed that supervisors had systematically favored non-union workers in the delivery of working materials, and in the speed with which broken machines were repaired. For example:

- A union section coordinator in a unit of the sewing department told Human Rights Watch that when she returned from medical leave she was given a machine that was barely functioning. Her wages went down to the minimum level and the supervisor would not "protect" her time. She had to constantly ask for a repair technician. Finally, a mechanic did attend to the machine but never repaired it in a way that allowed her to attain a high rate of production and earnings.

- A union member said recent problems in her rate of production and capacity to earn were a consequence of being assigned a defective machine. While this was indicated on her time sheet ("maquina mala"), her payment was not adjusted in compensation. For three days, repairmen had ignored her, giving other machines priority. Then the operators went on their annual Christmas holiday, when she returned on January 6, the machine was still out of commission. She believes she had an operational machine at the time of this interview only because [the operator next to her] had resigned, and his machine was free. "So I sat down at his machine on the 6th." She said other workers in her unit who have observed the problems she has had have told her she should might as well quit.

Managers told Human Rights Watch that the system of repairs was geared to respond promptly to machine breakdowns, with mechanics often going immediately to do so when line supervisors light the red light bulbs spotted around the shop floor which signal breakdowns. Asked about complaints of days-long delays, they said that these were rare, and that it was a top priority to avoid them, as it meant production was held up and workers were under-utilized.

Most union member's descriptions of discriminatory practices were presented as what they saw as the preferential treatment of others:

> "The fact is that the company, that is the chiefs and supervisors, always have their favorites.... When there is little work, all are stuck at the minimum, but it turns out that some are paid more.... We look at each other's pay slips and we raised this with the supervisor. He said 'Yes, I give preference, to those who don't answer back.' He has his favorites, and told our co-worker that if she joined [the union] she would be treated badly."

Human Rights Watch requested basic information on rates of payment at the two PVH plants, and was given a breakdown of average wages from the pay period covering the last two weeks of November 1996. The average worker at Camosa I was said to have received a daily income equivalent to US $10.89 during this period; the average worker at Camosa II earned $11.61 per day.[59] These figures highlight the impact of discriminatory treatment on the earnings of union members.

[59] This partly typed and partly handwritten fact sheet noted that payment averages cited did not include overtime, Christmas bonuses or vacation bonuses. Pay scales were also set out distinguishing the sliding wage scales determined by the individual workers' achievement of production goals (identified as 100

Unionists described discriminatory treatment to Human Rights Watch in terms of the way in which supervisors and managers dealing with personnel issues interacted with workers on the personal level; treatment they attributed to their union membership ranged from shunning and outright hostility to severe economic penalties, and often a combination of the two. Where senior personnel officers were identified in interviews as having singled out particular workers for poor treatment, problems with supervisors on the shop floor were said to have been accentuated. The loss of income was the primary concern expressed; a penalty exacerbated insofar as questioning rates of payment on which their pay slip is calculated or working conditions depend in large part on each individual's relation to their supervisor and personnel officers. Workers interviewed said that supervisors' use of their authority to "protect" income in such circumstances meant that the income of workers who are "in" with the supervisor was routinely protected, but not so that of union members, who were in disfavor.

- Human Rights Watch interviewed one woman who told us she had her 100 percent production award apron and was earning Q400 or more a week ($57) before joining the union. Her earnings went down subsequently. She is now making about Q230 per week ($32), while working Saturdays and overtime during the week to raise her income; the last week before we spoke she made only Q207 ($29).

- Another woman described being cut off from help in resolving daily problems because she was in the union. "When someone is not a member, they keep them from talking to us. They frighten people. They don't call us to meetings. They marginalize us. They ignore us. They treat us like people who don't exist. They give the work to others. They find errors frivolously. The intention is to drive people to desperation."

- "Our production went way down after they changed the cloth used, from Q350 [$50 per week] to Q90 [$12 per week]. [The production manager] said there would be protection of our wages for two weeks, as it was new work. But the supervisor said 'Why do you think I'll protect you if this is the same work. In personnel they already told me you are a liar.' When I went to see [name withheld] and [name withheld], it was the same. As if I didn't exist. Another time I went to personnel to ask a favor of the [name withheld], and she pretended not to see me; she began to dance, as if I wasn't there, she turned on the radio. Before they knew of my membership, they were very nice. 'How is the baby?' After the agreement [was presented] they knew."

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percent). The chart indicates that the average income of the 567 "timeworkers" was $11.18. Just 3.5 percent, a total of 16 workers, were producing below the minimum standard, but were "paid at minimum," $5.33 daily. The 100 percent goal was exceeded by 28 percent of the workforce (129 workers), with earnings at 100 percent of $14.16 daily. Seventy percent of the workers (322) were within the 34 percent to 99 percent efficiency range, with earnings of $11.55 daily for those at 79 percent and $12.86 for those at 90 percent.

- "I want to get my compensation, for them to pay me my time at 100 percent and I'll leave. I was at Camosa I from the first day. Now I'm almost wasting my time. There is favoritism. When there are extra hours to be worked, they give preference to others. They are trying to make us desperate. If they want me to leave, they should pay me off."[60]

The piece-rate system provides numerous opportunities for arbitrary decisions at the supervisory level. Some examples drawn from interviews of union members follow:

- "When [name withheld] comes she doesn't say 'good morning.' She greets some workers but ignores others. She has her people. When we are transferred to a new assignment we are not given a ticket to protect [our income], but yes, this is done for others." This interviewee did, however, maintain that since the union had presented its petition to negotiate, the behavior of the supervisors had improved. "Before we were frightened, in part because it was so hard to find alternative work, there was a blacklist. They offered to pay us our time [compensation based on years of service] so that we would resign."

- An operator told Human Rights Watch that [the production manager] used to greet her but is now very cold. She has been on her line for six months, but has seen the level of production drop. She is now a 'floater,' filling in on different operations, so she never learns. She had three days last week without work, as they shifted work to others. She is earning only some Q150 a week (US $21). Her supervisor had questioned her about her union membership.

[60] This union member had in her first years at Camosa I worked on a number of lines as an operator and was well paid. Since the mid-1996, she said she is earning no more than Q140 ($20) per week; with no opportunity for extra hours, and that this is not enough to survive.

- "I've worked in Camosa II for five years, but was taken off my machine two years ago because they said I went to the IGSS [the Social Security hospital] too much; I needed to go every fifteen days for a period of two months, and then once a month. The supervisor said I spent too much time, although [name withheld] in personnel said he should be patient. Now I work on a machine that is one-of-a-kind, and one day there is work, the next nothing; I've just had two weeks without work. I have been earning only Q130 [$18 per week] for the past two years. Previously they had treated me with moderation, without bad words. After September, [name withheld] shouted and became hysterical."[61]

- "For two weeks, I was shifted to work correcting sewing errors, at the minimum wage; at that time, I was completing a *bulto* [a packet or bundle of work, a standard production unit], and had completed four production *tickets* [a stick-on label representing part of the production quota]. While doing the repair work, I wasn't sure whether to turn in the tickets on the unfinished bulto. After two weeks I noticed that my pay check went down, and when I returned to production, I explained this to the supervisor. She said 'These are old tickets. This doesn't count for anything.' And she took them and tore them up, threw them into the wastebasket. She also has favorites. I've seen the pay slips of others who do the same work with no more production, and they are higher. It may be because she saw me in the street with members of the union executive."

Another instrument of discriminatory treatment reported by union members was the periodic misuse of the exacting system of quality control, by which the identification of production errors may require an operator to reexamine bundles of dozens of items. Repeated quality errors, in addition, result in formal warnings and a trip to the personnel office where workers are required to sign a formal disciplinary form which goes in their file. The workers interviewed expressed an appreciation for the need for very high quality work in the plant, and a pride in their abilities in this regard: some of them described in detail the quality awards and the "100 percent" production award aprons they had won over the years for their work. The concern expressed with the system, however, is not only with the tension of speed v.s. quality which workers face daily, but with what some workers maintain were arbitrary rejections of top quality work as a means to punish and deter union membership. A number of union members maintained that quality control was sometimes a pretext to punish those who had joined the union and a tool to discourage other workers who had not.

In July 1996, according to workers in the unit that sews cuffs and sleeves in Camosa II, the issuance of reprimands of union members for lapses in quality increased (one of the four operators particularly affected, they said, was not a union member). Requirements to recheck every piece in the bundles accordingly reduced their production and earnings. They maintained that union members were cited for numerous production errors by quality control, by their account unjustly and punitively. The workers linked these citations in part to the poor quality of materials that they had been given to sew and the failure to protect their income when previous errors required correction.

Three other unionized workers from the same sewing unit separately described problems of unfair quality control rejections, as well as with the quality of the production materials reaching them. In the most recent case, the sleeves to which cuffs were to be attached had consistently been cut too long, requiring extra work to compensate; the supervisor had denied protection of their earnings in adjusting to this change in the operation, claiming "that's the way the cloth comes." For these women, the injustice was compounded when errors at an earlier stage in the production process resulted in their work being sent back for checking and correction ("the errors come from way back; they reject them only when they get to us.)"

The production unit at Camosa II that sewed cuffs and sleeves is just one of the units in the plant that had a particularly high concentration of union members. We interviewed six operators from this section separately, and received remarkably consistent accounts of what these workers described as persistent discriminatory treatment. Workers there described being criticized by supervisors and personnel officers for having joined the union, and as a

[61] This interviewee showed Human Rights Watch her last two pay slips; one totaled Q137 ($19), the other Q107 ($15), after deductions. Loans, IGSS payments, and installment payments on purchases through the Solidarismo store are deducted through the payroll. In the pay slips examined, deductions did not represent significant sums.

result receiving poor quality materials, being unjustly reprimanded for the quality of their own work, being assigned poor machines, and being denied prompt and effective technical assistance when their machines broke down.

- One worker in cuffs and sleeves told Human Rights Watch that shortly after it became generally known that she had joined the union, the head of personnel approached her and demanded her reasons for joining an organization that would "only stir things up." Following this discussion, the employee maintains, she received more difficult pieces of material to sew. The worker's complaints to her immediate supervisor went unanswered. This affected her ability to meet production quotas and reduced her weekly earnings to between Q140 and Q150 ($20 to $21). It became nearly impossible for her to earn beyond the base rate.

- A member of the union executive told us she had been making Q350 or Q320 ($50-$45) a week in 1994, but after she began asking for union leave in 1995—the law provides for six paid days a month for union work—the chief of production moved her to a different machine and production line. She said the production manager told her "You've been absent a lot. I can't put you anywhere better." She had previously been earning at 100 percent of the production goal, but subsequently found herself earning just Q100 to Q105 ($14 to $15) a week. She was put on cuffs and sleeves, earning about Q120 ($17) a week. She is now getting more work, and earning some Q220 ($31) per week.

The overriding concern expressed by union members was that their union membership was continually a factor in their relationship with supervisors and personnel officers, ranging from their work assignments and the repair of their machines to the protection of their incomes when things went wrong elsewhere in the production process.

Camosa II plant manager Robert Byrd told Human Rights Watch that company policy was to eliminate any discriminatory treatment. Asked if there was preferential treatment for those who reject the union, in terms of work flow or higher paying work, he said that reduction in work and pay may respond, for example, to changing styles, as in a shift from two-pocket to one-pocket shirts. As to favoritism,

> I can't say it doesn't happen. But we have seminars in which supervisors are instructed to be fair and honest. To treat everyone alike. If there is any problem we say bring it to your supervisor.
>
> If there is any favoritism, it would be more likely at the level of the work distributor. The distributor, an assistant to the supervisor, matches up the work; when a person completes a bundle, he gives [the new work] out.

The protection system in itself provides a means through which inequities in the piece-rate system may be addressed, particularly as they arise as a consequence of the fluid nature of the production process and its inevitable interruptions. The element of discretion in implementing the protection system, and the lack of recourse for workers facing arbitrary decisions, however, opens the possibility of prejudice against union members. The failure to protect income above the base rate, adjusted to the previous level of average earnings, is a principal object of complaint by staff interviewed by Human Rights Watch, who maintain that it represents an instrument through which union members are treated in a discriminatory, punitive fashion.

Voluntary Severance

Another area in which major discretionary payments raise the possibility of prejudice to union members is that of severance payments for resignation from the firm. While the injunction prevents the company from dismissing workers without a court order, workers can be induced to resign with generous severance payments.

Managers described the provision of voluntary severance payments to Human Rights Watch as a routine company policy. All staff who depart voluntarily are said by managers to receive both the severance payments required by law, which include, among other elements, a proportion of the yearly bonus (the *aguinaldo*, normally equivalent to one month's salary), and a discretionary payment based on the worker's average monthly salary and years of

employment with the company. Departing workers receiving "100 percent" severance benefits (average monthly salary x years of service x 100 percent) receive more or less the equivalent of one month's average pay per year of service. All workers who resign are, we were told, given at least 50 percent of this sum as severance pay in addition to the legal requirements. Workers whose resignation was actively sought by the company, as in situations in which production was to be reduced, may be offered more generous severance payments at the discretion of the company management.

While some (unionized) workers are alleged by union officers to have been paid off beyond the "100 percent" level, Human Rights Watch has not found documentation to substantiate this claim. The personnel department at Camisas Modernas maintains meticulous computerized personnel records, including printouts in the files of each departing worker indicating the calculation of the final benefits required under Guatemalan labor law. A separate record system is maintained in which the record of actual payments made to departing workers is filed, including the company's often generous bonuses based on years of service. Human Rights Watch was given full access to these records, although time constraints made a comprehensive review impossible.

Like the provision for compensatory protection of incomes for those personnel detailed to new assignments or prevented from meeting production quotas by equipment breakdowns, the company's system of severance payments is two-edged. It may, on the one hand, generously provide workers who leave as a result of changing personal circumstances a cushion with which to support their families as they readjust, or indeed provide funds with which to open a small shop or buy a building lot (both were goals described to Human Rights Watch by union members. On the other hand, disproportionate payments to union members who resign could be improper inducements.

A combination of measures tending to severely cut union members' capacity to earn in the plant, while inducements for resignation are tendered, was the package described to Human Rights Watch by numerous union members, as well as some of the non-union members who managers suggested Human Rights Watch interview. The use of such measures was reportedly most widespread in the finishing department of the Camosa II plant.

Pressure to Resign: the Camosa II Finishing Department

Under the court-issued protective injunction, the shutting down of a part of the plant's operations for transfer out of the plant may not lead to outright dismissal of employees, without the permission of a court. But if work on which employees depend to go beyond base pay is eliminated, withheld or transferred, resignations are inevitable. One production unit, Camosa II's finishing department, was a principal stronghold of union membership as early as 1995. A major reduction in its workforce ensued in the course of 1996, accelerating in the weeks before and after the union's petition for negotiation was submitted. The union contends that this reduction was more than a coincidence. While economic and cost cutting considerations may have been involved in the company's calculations, the effect on union support was devastating.[62] The means by which this was carried out, despite the terms of the injunction that forbade outright dismissals, was reportedly three-fold:

[62] Changes introduced in a firm's production process with the intent of eliminating a trade union, on a pretext of economic criteria, would violate Guatemalan law and international rights standards. Recommendation 748 of the ILO's Committee on Freedom of Association, for example, makes clear that the Right to Organize and Collective Bargaining Convention (Convention 98), protects workers from both dismissals and other prejudicial treatment by reason of their union membership, and that such treatment should be punishable:

> No person should be dismissed or prejudiced in his or her employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment.

Similarly, Recommendation 705 addresses a firm's recourse to subcontracting as an anti-union device, with specific reference to its use to justify the dismissals of union leaders. The principle enunciated might equally apply to measures to force resignations of trade unionists:

> *Subcontracting* accompanied by dismissals of union leaders can constitute a violation of the principle that no one should be prejudiced in his or her employment on the grounds of union membership or activities.

First, finishing workers were given a reduced work load, despite the plant's relatively unchanged overall production levels, with consonant dramatic reductions in the income of finishing staff. Finishing workers interviewed by Human Rights Watch described a drop in their weekly incomes in the course of 1966 from averages of over Q400 per week to the minimum, less than Q200 per week. The reduction of work to be done in the department, according to some union members, was a result of the sending of some Camosa II products for finishing to contractors in San Pedro Sacatepéquez and, indeed, the removal of equipment for this purpose from the Camosa II plant.[63] While Human Rights Watch was unable to confirm this claim, Phillips-Van Heusen management later told us that Camosa II's finishing work had, in fact, been reduced in part by eliminating some of the finishing work on San Pedro Sacatepéquez's production that had previously been done in Camosa II. Contractors in San Pedro, we were told, were now doing finishing work on their production that had previously been sent to Camosa II.[64] This was consistent with claims by union sources that finishing frames, tables and other equipment were physically removed from the Camosa II plant in September, immediately after the union presented its petition to negotiate, and taken to San Pedro.

[63] Union leaders maintained that on September 2, 1996, equipment from Camosa II's finishing department was dismantled and removed from the factory. They maintained that drivers of the trucks into which the equipment was loaded later told them that it was delivered to PVH contractors in San Pedro Sacatepequez.

[64] Plant managers told Human Rights Watch that PVH's yearly production in Guatemala was pegged at 300,000 dozen shirts. Of these, 100,000 were produced in the wholly owned Camosa plants (now a singled consolidated operation). Another 100,000 were produced by contractors in the town of San Pedro Sacatepequez, some fourteen kilometers from the Camosa plant, although this production process was supervised and supported by the Camosa plant and PVH managers. The full production process for the final 100,000 was contracted out to two Guatemala city maquilas. The Cardiz plant, run by Carlos Arias, president of the association of maquila owners Vestex, was said to produce an annual quota of 60,000 dozen shirts; a Korean-owned plant, CMC, produced the balance. Carlos Arias was also described as the licensee who produced PVH shirts for the domestic Guatemalan market. La Vaughn Seay, Human Rights Watch interview, Guatemala City, January 20, 1997.

A second measure adversely affecting finishing workers was that the protection of income during "down time" in the finishing department was largely eliminated. At the same time, opportunities to increase income through overtime, working through lunch hours and breaks and on Saturdays—the means by which many workers obtain even minimal production payments above the base rate—were unavailable to workers who were not provided material to work with, operable machines or specific assignments. In the most extreme cases described to Human Rights Watch, workers maintained they were told that they might as well lie down under their workbenches, as they would not be given any work.[65] This practice was attributed specifically, but not exclusively, to the head of the finishing department: workers said that in the period before and after the union's petition he would regularly tell them there was no work, that they were not to touch the materials, and that they could sleep on the floor. More commonly, workers in such a case would be sent home with pay at the base rate. Another union member stated that she was told by a supervisor that there would be "no extra hours if you are a member."

Finally, finishing workers were offered generous severance payments for voluntary resignations. A union member who works in the finishing section told Human Rights Watch that as early as in March 1996 managers had talked to unionized finishing staff, and offered 100 percent severance to those who resigned (by her account, some who accepted the offer were then compensated with less than what was promised). A union official maintained that from June 1996 the finishing manager increased the pressure on union members, in practice dividing finishing staff into union and non-union groups, and withholding work from the former. According to another union member, this manager told his staff that "they shouldn't be in the union." The pressure of income reduction, by this account, combined with the inducement of severance payments to result in a rash of resignations by the end of August 1996.

According to personnel records, the finishing department had a roster of eighty-two employees in October 1995: a year later there were only fifty-two finishing department workers. Human Rights Watch confirmed the resignation of nineteen union members from the finishing department during the first nine months of 1996, most of them longstanding company employees. The total may have been higher: union sources claimed that twenty-four members in finishing had resigned in this period. Eight of the workers identified by Human Rights Watch quit in August 1996, in the final month of the union membership drive; four resigned in the two weeks that followed the union's presentation of its petition to initiate negotiations. We were also able to confirm that of the fifteen finishing workers whose service record was known, one had worked for PVH since 1988, two since 1989, and the others had joined the company between 1990 and 1993. In a spot check of records of severance pay, Human Rights Watch confirmed in the several cases examined that 100 percent compensation for years of service was recorded.

While Camosa II's finishing department was hardest hit by resignations during and immediately after the union drive, Human Rights Watch received information on other resignations of union members. Although the total may have been higher, thirteen union members are known to have quit in August (including the eight finishing workers cited above), some in the last week before the union's September 1 general assembly.

[65] Human Rights Watch interviews with Camisas Modernas, S.A. workers, Guatemala City, January 17 and 20, 1997.

Human Rights Watch was also aware of a significant reduction of staff in at least one other unit at Camosa II, the cutting department, which had relatively few union members. In this case, too, work previously done to prepare materials for or from San Pedro Sacatepequez contractors was being done outside the Camosa plant. A non-union member, who has worked in the cutting department for five years, said that her department supervisor had called staff together before Christmas to inform them that there was not enough work, and that those who wanted to leave could do so with 100 percent severance payments.[66] Human Rights Watch did not confirm the total number of resignations of non-union members during 1996, but found the overall pattern of unionist resignations disturbing.

Protecting Our People

The piece-rate system and the provision for discretionary payments under company policy provide a powerful means to reward, punish, or otherwise single out employees deemed cooperative or non-cooperative. Managers told Human Rights Watch that it was, indeed, company policy to look out for the welfare of "our people" by protecting workers' income in certain circumstances by authorizing payment based on an average of previous earnings, by loans, grants for medical emergencies, and other staff welfare programs, and finally, by providing generous severance payments. At the same time, management viewed the union as alien to its workforce, and damaging to the company family.

Some managers told Human Rights Watch that they were especially careful not to mistreat unionists and they claimed that non-union workers were treated more harshly and with more scrutiny than union supporters. The production manager at Camosa II denied that union members were treated unfairly, for example, while offering the generalization that union members "feel that they can do anything they want. They feel like they can shout at the boss and be absent all the time."

According to the production manager, the company policy is "to be as fair as possible, to avoid confrontation, even though the union people try to provoke supervisors. One time a union member cursed a supervisor. I called the union head and said that you complain when management uses this tone [with workers]. When they wore T- shirts, provoking supervisors, yelling, blowing little whistles, clamoring for negotiations, our policy was to let them do what they wanted, let them alone, we didn't even pay them any attention." She went on to say that "the union people don't feel like they are part of the family, they feel separate, they have gone against the company." She characterized union supporters as "lazy people who want to bad-mouth the company."

The personnel manager at Camosa II stated that the company has a "union problem. We have to live with it, but we don't have to have confrontation. Union members think that because they are in the union they can ignore the rules." Human Rights Watch saw no evidence that union members were either prone to absenteeism or uncooperative or inefficient members of the work force—to the contrary, we were shown production awards won by many of the union members interviewed. In rebutting charges of discriminatory treatment by supervisory personnel, she indicated that, as the company's legal representative, she was the only company official who had the list of union supporters and that no other supervisors knew who was included on the list. She denied ever discussing the names on the list with supervisors, although workers told us their supervisors had told them that personnel had alerted them to the union members in their units. At the same time, since many union members had previously worn union T-shirts into the plant or had posted signs above their machines, union membership, the list aside, was after September 1996 hardly secret.

[66] This worker, who attributes her reluctance to join the union to her family's advice "that it was a bad idea to get involved in such problems," said she was happy with the treatment given her by the company. She was, however, feeling isolated as the cutting department had become so small; from a level of about forty-five staff three years before to just twelve. At present "there are hardly any union members" in the unit. The manager reportedly promised to protect the incomes of staff at their previous average for six weeks. In her own case, this allowed her to continue earning some Q450 a week ($64), rather than dropping to the minimum base wage of less than Q150 ($21).

We heard similar comments attributed to the two managers by workers. One worker told Human Rights Watch that the production manager at Camosa II had called a meeting after the union's request to negotiate in which she said the union leaders "want to be bosses. They want to control the company." "They are lazy. They don't want to work." Other workers gave Human Rights Watch similar accounts of small meetings called by the production manager in the aftermath of the September petition. At the same time, union members claimed to have been the object of particular verbal abuse because of their affiliations. A union member described having been called into the personnel office to be chewed out for having been rude to a colleague: she said the production manager and personnel manager had both taken part. One manager is alleged to have called her a "pig," and closed the session by declaring that "Respect for others is peace and the preservation of one's teeth" ("El respeto al derecho ajeno es la paz, y la conservación de sus dientes").[67]

Other workers described management actions, particularly in Camosa I, to shield the workforce from contact with the union members of Camosa II, while implying that the union could threaten their safety (although there is no record of union violence there). Several union members from Camosa I, for example, noted that the plant manager there had called staff together when workers from Camosa II came to visit outside the plant, telling them not to be intimidated by the union group. When union members went to Camosa I from the other plant, for example, employees were told they would be let out early, and that "we will accompany you." While described by non-union interviewees as a thoughtful measure to reassure them, such actions also served to stigmatize union membership (which would not in itself be a violation of rights standards); however other interviewees saw the shepherding of staff by managers as a deliberate measure of intimidation, particularly in a context in which being seen with a union organizer could be viewed as a black mark against a particular worker. It was the combination of stigmatization and the unilateral protection of those not in the union from those who were that may have shaded into intimidation in violation of the right to freedom of association.

An inter-plant union visit, organized after the "pact" was presented in September, was in fact aborted by the cutting short of the work day and the evacuation of the Camosa I plant. A non-union worker from Camosa I, interviewed by Human Rights Watch at the suggestion of management, described plant manager Anthony Mim's reaction when he learned that a delegation of Camosa II union members was coming by bus to Camosa I to meet with colleagues at the factory door after work:

> Anthony wasn't there earlier, but arrived in a rush. It seems he was warned that the union members were on their way. He quickly called together all the supervisors to the administrative offices and told them. When they came out, Anthony told us that to avoid problems, we should leave rapidly. So we left early, all of us went out. People who had planned to work overtime until 6 p.m left. When the others got there, there was hardly anyone still there. We left all together at the same time, with the supervisors, like it was an emergency. Anthony said he didn't want any of his workers to find themselves with problems. 'Now we're not going to leave at six, but we're going make this an emergency departure.'[68]

Another account of the same incident, by a union member, explained that when the Camosa II people came, "the lights went out, and we were taken out of the factory."

At the same time, in contrast to some managers at Camosa II, who were described by union members as openly antagonistic to union members, the Camosa I management was reportedly respectful of union members and not openly

[67] This interviewee also noted that the conversation was taped; she and others interviewed said that it was a normal personnel practice, with or without the employee's permission, to tape record disciplinary interviews.

[68] "Ya no nos vamos a salir a las seis, vamos a salir de emergencia." The same interviewee noted that on a later occasion, when the Coca Cola union brought its mariachi band to the plant at the end of the work day, the work force left normally, without excitement ("tranquilo"). At the close of the interview, she expressed concern about the future of the plant: "There are rumors that they are going to sell. We've talked to Anthony [Camosa I manager Anthony Mims], who said he would stay. We have confidence. But often this has happened. After so many years working in the company, one becomes fond of it."

discriminatory. One union member from Camosa I, who had joined the union early in 1996, stressed that the personnel manager there had treated her well, "though she knew I was in the union." The same employee described the management there as particularly sensitive and responsive to issues of concern to the staff, citing the rapid action taken after a brief work stoppage in December 1996 (to protest a change in the manner in which Christmas bonuses were calculated) as a case in point (bonuses were reportedly recalculated in accord with the formula used in previous years). At the same time, this worker noted that "all of the leadership of the union at Camosa I resigned" and believed that the company "had bought off the leadership" (it was unclear whether this was a reference to the resignations in December 1991 of the last of the original union executive, or the resignations of four union leaders in June 1996).

While the general picture given of the Camosa I management style was one of fair-minded paternalism in staff relations, some measures ostensibly "to protect" employees may have constituted undue interference in these workers' access to union information and members. Protection, in turn, may well have shaded perceptibly into a form of intimidation. At a meeting of members of a section at Camosa I, for example, called in early January by the supervisor, workers were reportedly advised that "If you have a problem, talk to me about it. Talk to me and not to other people." According to a staff member who described participating in the meeting, no mention was made of the union, but staff were told "Don't sign anything. Be careful." (*"No vayan a firmar. Con cuidadito."*) This would, in many contexts, be considered a reasonable sharing of views and information: in the Guatemalan context, however, some workers saw it as intimidation.

In several interviews with non-union staff introduced to Human Rights Watch by managers, a contrast was further drawn between the management styles of the two plants. A union member from Camosa I explained that when plant manager Anthony Mims spoke to them of the union, he said joining was a matter for us to decide. "We can't stop you from doing what you want. If you are badly treated, I will support you." Staff from Camosa I, however, at the time of the interview, had just one week of experience working in the consolidated plant in what was previously Camosa II. A non-union member said the contrast was notable:

> At Camosa I some of our co-workers said they were afraid to join the union. The head of personnel came and said it was up to us to decide. If you want. She went to each section and said we shouldn't be afraid. Not whether it was good or bad. This was some months ago, when our coworkers from here [Camosa II] began to visit. The difference here is with the people in charge. There is a lack of communication between the managers and the workers, although there are better facilities here. Many people here are unhappy. It could be the head of personnel. People are afraid of her. It could be a matter of character. This affects the rest. Because the people here are very different from [those of Camosa I].[69]

A union member, also newly transferred from Camosa I, expressed almost the same view to Human Rights Watch; while the management at Camosa I had been respectful, the situation at the expanded Camosa II plant was a new experience, and "many of the workers, who are very humble people, cry when they are criticized." A Camosa II worker, in turn, told Human Rights Watch that the normal procedure when people were called in to personnel to be chastised "was for several of the chiefs to gang up on the person called. So they leave crying."

[69] Asked how she had been selected to meet with Human Rights Watch, this interviewee said that before Christmas 1996 a meeting had been called of her work section at Camosa II and asked to pick a representative. She was chosen by her co-workers. In contrast, no representative process were described in the selection of non-union workers to meet with the delegation from the Camosa II workforce. Similarly, while Camosa I reportedly held fairly regular meetings of employees of the various production areas, in which workers could discuss production and other issues with managers, such meetings were not a routine at Camosa II before the consolidation. Camosa II manager Robert Byrd told us an Employee Action Committee Meeting was envisaged as a means for two-way communication between management and staff. These were described as weekly meetings with management, with worker representatives drawn at random from a box. Nine or ten a week were to serve at any one time, with three chosen each week for three week periods. It was unclear when the Action Committee concept was introduced, and whether it was in fact operating: other managers said there was no regular forum in which managers had open discussions with work units or the whole staff as a group. There was no tradition of "open meetings," although Mr Byrd stressed that "The Action Committee doesn't limit the 'open door' policy. People can at any time ask to see the production manager or me."

A June 1995 mission by the Inter-Faith Center on Corporate Responsibility had noted, in a report on its findings that was provided to PVH, that particular concern was expressed by workers about the deputy manager/ personnel manager of Camosa II, Yvonne de Sevilla. In describing the treatment of personnel, or "associates" in the PVH lexicon, Fr. La Mar emphasized that "Sra. Sevilla is seen as especially intimidating," and concluded that she is feared and seen as the bottle neck to improved relations in the plant. Obviously much personal power rests in her hands."[70] Before her promotion to deputy manager (while retaining her position as personnel manager), and legal representative of the firm in dealings with the labor ministry, Sra. Sevilla had been head of personnel, an assignment apparently dating to 1989.

Company personnel have also obliquely acknowledged that past personnel practices had been problematic, as in the following dialogue with plant manager Robert Byrd:

> Q Managers have been accused of abusive treatment of union members—and others. How have senior managers responded to this?
>
> A [The Camosa II personnel officers] were left on their own under the previous manager, who wasn't oriented to the PVH policies. They dealt with most personnel issues. [Name withheld] has come a long way in learning how to handle people. She never mistreated anyone intentionally. She's tough. [Abusive treatment] may have occurred two years ago. She doesn't make people cry.

Threats of Violence

Human Rights Watch heard little to suggest that threats of violence were a prominent feature of the dispute between the union and management at Camisas Modernas, S.A. That threats of violence continue to be described as part of the relationship seems due to the background of trade union repression in Guatemala, and to a lesser extent alleged threats attributed to a PVH manager five years ago. Human Rights Watch found that both the company and the union took threats of violence or perceived threats very seriously. Senior managers cited suggestions of threats to their own colleagues. The personnel manager at Camosa II told Human Rights Watch that in September 1996 she began to receive anonymous late-night telephone calls at home. She also said that one of the outside union organizers had asked a worker for her home address.[71] Camosa II plant manager Robert Byrd told Human Rights Watch that he, too, had received several suspicious calls at his home, in which callers hung up after a threatening silence, and one in which a caller had said, "You'd better be careful," in English.

When a celebration of the union's anniversary was held on September 23, 1996, in which a mariachi band from the Coca Cola union took part and an international delegation of trade unionists was present, management reacted with concern when it appeared that one of the foreign visitors had taken the production manager's photograph. This same manager stated that she had been followed by a man on a motorcycle when she was travelling between Camosa I and II. Because of these incidents, the company decided to hire private security guards to accompany the two senior staff dealing most directly with personnel issues back and forth to their homes and on when they traveled during the day. The security guards also remained on duty near the entrance to the plant during the day.

The plainclothes guards retained for personal security in October 1996, in turn, were viewed with concern by union members interviewed by Human Rights Watch. These observers separately described what, from their perspective, had been intimidating behavior. Union members said the men, usually just two in number, would persistently attempt to eavesdrop on the small knots of workers that gather outside during breaks and the lunch hour, and would audibly report larger gatherings on their walkie-talkies. They were equipped with walkie-talkies (or cell-phones), and had revolvers under their suit jackets: interviewees insisted not only that they had seen the guns, but that the security men had ostentatiously displayed their weapons, pulling back their jackets, in an intimidating manner.

[70] Fr. Joseph P. La Mar, MM, Interfaith Center on Corporate Responsibility, "Visit to PVH Corporation's Camosa I and II Maquilas," June 20, 1995, p. 6.

[71] The individual cited for asking for her address, flatly denied this in an interview with Human Rights Watch.

Company spokesmen, in turn, denied that the security men had engaged in the surveillance or intimidation of union members in the street and said they had not been armed. Robert Byrd told us, for example, that he never saw them with weapons.

The fact that guards assigned to provide security for two senior company officials were left on their own to interact with workers at a time of heightened tension over the union contributed to a combustible atmosphere. Human Rights Watch investigator Kenneth Anderson found the presence of these armed guards troubling and recommended that while security is an serious issue in Guatemala, they should not be armed. In response the company notified Human Rights Watch in late November that the guards would be removed. They remained for an additional two weeks and were then withdrawn.

Union activists reported other forms of intimidation to Human Rights Watch. Members of the union's executive committee reported other incidents in which they were photographed and these were seen as cause for alarm. The union's acts and accords secretary told Human Rights Watch that in November 1995, immediately after a union meeting, an unidentified man took her photograph from a car. She described this as unmistakable, in that there was a flash ("un flashazo"). Although it could not be determined who had taken the photograph, or why, the incident was considered sufficiently alarming by the union to be reported to the Human Rights Procurator. The account serves, in any case, to illustrate the climate of the current labor discussions.

Another member of the union's executive committee told of being photographed by a man in a van as she was leaving a meeting at the labor ministry in July 1995. The van pulled away after the photograph was taken. The worker filed a complaint with the human rights ombudsman's office. The complaint, however, was not followed up on. The same worker reported that after this incident, she observed different men observing her home from a distance on three occasions.

One worker interviewed by Human Rights Watch told of an incident that she was involved in outside of Camosa II with a manager. A worker had ordered floral arrangements to be dropped off outside the plant for a funeral service. A vendor said to this worker, “The manager is bringing these flowers for you, for the union.” She told us that she responded, “They'll need more than two arrangements because there are a lot of us in the union. It would be better to send these flowers to [two names withheld].” Sometime later, by this account, a manager came out and told the worker, "Be careful, little one, because we could make it true that these flowers are for you." The worker reported that she told the manager that she didn't mean anything by her comment, that she was simply angry. The manager, according to the worker, said "Do you have the courage necessary to kill even a fly? You'd better be careful."

Another worker interviewed by Human Rights Watch told of an incident that occurred with his supervisor in the finishing department (whose name is known to Human Rights Watch). On the final day of the union drive, when asked by his supervisor what he was doing outside the plant, the worker replied,"I'm here supporting my union." The supervisor allegedly responded, "At other companies people have been kidnapped and sometimes been found dead. Be careful." The union man complained to the company that this was a form of intimidation. He told us that immediately after the exchange the worker conveyed the information to several co-workers who urged him to convey it to a union organizer. He said he felt that the supervisor intended to intimidate him or discourage him from continuing with the movement.

An act of intimidation by a personnel officer, with a view to forcing a friend to relinquish her union membership, was described to Human Rights Watch at the end of a long discussion concerning the interviewee’s own direct experiences. Her account of the fear experienced by her friend provides a useful insight into the context of the union's efforts, even if providing only heresay evidence of the action described. By this account, her friend had been called into the personnel office in late October, 1996, challenged about her union membership, and warned that the personnel chief knew every move she made. She apparently signed on the spot a prepared letter of withdrawal from the union. The description of the fear, and the shame she felt in being so afraid, is testament to the context in which labor organization takes place today in Guatemala.

She was called into the office, after the union demand. She then signed a letter of resignation, and in the bathroom told [a union leader], "I resigned. I don't want to know anything about the union." [Name withheld] had told her "I know everything that goes on. Even if you start planning, I know." She says she is so afraid. She said "why should I take the risk? I'll end up in a ravine with my mouth full of green flies. Who would take care of my children. Who would care for my children. I'm so afraid of what they told me in the office. I'm shocked even with myself. It's better to be apart from this."

While it has not been possible to confirm this account in full, the manner of the testimony, the existence of other accounts of direct pressures to withdraw from the union, and the documentary record of computer-generated letters to this effect (some of them from individuals without electricity in their homes) are elements that should be taken into account in its assessment. Human Rights Watch was able to confirm that the individual had, in fact, informed a union official that she "did not want to be involved" with the union, but did not see the letter of withdrawal.[72]

Human Rights Watch was also alert to the possibility that union organizers may have acted in an intimidating manner with respect to others who were not part of the union, but found little evidence to this effect. In interviews during our brief November 1996 visit, some of the non-union staff introduced by managers to our delegate objected vehemently to visits to their homes by union members and outside organizers seeking to persuade them to join the union. Several complained that the union had obtained their home addresses by means of getting them to sign up for a raffle. Some of the ten non-union members interviewed by Human Rights Watch in January 1997, again introduced to us by managers, also referred to home visits. One described a visit as having irritated her, but the general picture presented of house visits—a traditional organizing tactic—and other efforts by union members to promote membership was not one of deliberate or perceived intimidation, although some of those interviewed suggested that other workers may have been intimidated:

- One of the non-union interviewees said she did not believe people were afraid to say they didn't want to join the union. She said she knew the union carried out house visits to try "to convince" people to join the union, and that she wasn't afraid of this, but that in her own case, when she saw a person was going to her house one Saturday she had gone to a neighbor's house and waited for the visitor to leave before going home. Asked why, she said she was irritated because she had already told them she didn't want to join.

- Another non-union member said some others feel the union might pressure them to join, but that she discounted this; "no one is going to take you by the collar and make you join the union.

- A non-union member with two years experience said she had spoken to union members, and that they had gone to her house. She said she didn't know the union's rules or the benefits joining might have, so she didn't join.

- A worker at Camosa I said that when union members stood in front of the factory door, wanting to explain what they were doing, he had simply said no, he didn't want to be involved and that he had walked on. He said to Human Rights Watch "I walk alone. I go to work alone. I leave alone," and that he doesn't agree with the union.

Although one fight was reported away from the company premises in 1996, in which a union member and a non-union member were reportedly involved, the exact facts of this matter could not be established by Human Rights Watch. At the same time, neither managers or union members identified this incident as a consequence of pro- or anti-union intimidation during our January visit. Indeed, plant manager Robert Byrd tended to discount charges of intimidation by union members of their workmates as a major concern:

[72] Another union member said "pressures increased after the Draft Proposal was put forward. Meetings were called at the end of November of all personnel, divided in groups. The purpose was to explain why we don't need a union. 'There is no need.' They also called the most timid [into the office]."

Q Are you aware of cases of intimidation by the union?
A There was one case of two boys in a fight, after mutual accusations; they were called in; but the fight was off the company premises, outside our jurisdiction. I can't tell of any intimidation.

Prof. Anderson also received complaints from several staff who said they had been asked to sign something at the entrance to a dance which the union had subsequently used to claim they were members. The union denied this, and in Human Rights Watch's subsequent review of membership records we found it implausible that anyone could have inadvertently filled out or signed the detailed two-page membership forms used by the union at least since 1995. One of the ten non-union members interviewed at length by Human Rights Watch in January 1997 repeated the allegations "that they tricked us." She said "they made us sign a paper when we went to a party," but made clear that this had been in 1989, at Camosa I. She also claimed that she was one of the union members subsequently forced to resign, in early 1992, as a consequence of her union membership, but was allowed to return to work after "repenting" (see below). None of the other non-union members interviewed made similar claims either concerning the early years of the union's organization drive or the 1996 membership drive.

Human Rights Watch received documentation concerning just one case in which an employee who was initially registered as a union member (whose fully completed and signed membership form was also reviewed), claimed subsequently in a letter, produced on a computer printer, to have been compelled to join the union. This is discussed further below, in a review of the series of letters of resignation from the plant or withdrawal from the union before and after the draft collective agreement was presented.

Threats of Plant Closure

The appeal to workers not to join the union on economic grounds was another theme of worker interviews, although in recent months there were no reports that company managers threatened that the company would leave Guatemala rather than negotiate with the union. After Human Rights Watch representative Kenneth Anderson raised worker concerns regarding such statements and rumors in November 1996, an explicit pledge was made by international PVH executive Robert Crocco in a letter dated November 27, 1996 to Kenneth Roth, executive director of Human Rights Watch, "We are staying in Guatemala, rumors to the contrary." That notwithstanding, local managers were alleged to have told workers since then that union negotiations "would break the company," and told union members that "you will be out on the street; you'll be leaving for the street." The production manager and personnel manager at Camosa II, in particular, were identified as having threatened the jobs of union members in the months after the September 2 petition. According to one union member's account: "In the months before the Draft Proposal, [the personnel manager] warned workers that they would lose their jobs, that the union's activities were 'illegal.'"

Similarly, PVH employees expressed concern about the explicit or implicit threat of being blacklisted for further employment in the maquila sector, a long standing concern at the PVH plant. Again, when this concern was raised by Human Rights Watch in November 1996, a constructive response was received from company executives. PVH said by letter that henceforth letters of recommendation concerning outgoing personnel would indicate only their dates of employment and the work performed; Human Rights Watch saw copies of this regulation posted on the walls of the Camosa II plant during its January 1997 visit. While it remains to be seen whether union members who leave the plant are, in fact, able to find subsequent employment without the obstacle of a blacklist, workers continued to express concern to Human Rights Watch that they might face such reprisals. One union member told us that a supervisor was alleged to have said that "People who get themselves into the union are not going to find work when they leave" in late 1996.

Vulnerability of Union Executive Committee Members

A particular challenge faced by union members has been the vulnerability of members of its executive board (and the consultative council members who play a back-up role to them). The last member of the executive committee named as the union sought recognition in March 1991 (most of them from Camosa I) had, according to one report,

resigned by January 1992.[73] One non-union member, who was one of the workers whom managers suggested Human Rights Watch interview, described her own experience during the organization drive at Camosa I, and said she was herself forced to resign—or dismissed— in 1992:

> She began by saying that she had been "fooled" into joining, eight years before, and that she and others had subsequently been "dismissed" because the leaders of the union had provoked it by demanding recognition. "So they were dismissed." When asked to confirm that they had all been dismissed, she said "No, we resigned from the company." Asked why, she said it was "because of being in the union." "One day the union leaders left. They abandoned us. We arrived in January and they were gone." She said that "They [the company] talked to us again, and they told us that yes we could come back. The boss [*la jefa*] gave us a chance to join again. I repented for having committed an error."[74]

[73] Op. cit., GLEP et al, "The right to organize in Guatemala...", p. 6. The same source reports that after the resignation of the two last members of the executive over the Christmas break in December 1992, managers called 28 union supporters to a meeting on January 7, 1992 and offered them severance pay for their resignations. By this account all 28 resigned.

[74] Human Rights Watch interview, Camosa II, Monday January 20, 1996. Human Rights Watch was subsequently able to confirm that the interviewee had initially been hired at Camosa I in October 1989; a new application for employment with only minimal details entered was on file documenting her reemployment in March 1992. The personnel file did not indicate the reason for her having left the plant earlier in 1992.

Two of the union leaders who resigned from the company, in June 1996, had previously described economic pressures on them to a human rights delegation to the plants the year before. In his report, Maryknoll Fr. Joseph P. La Mar, who met managers and staff on behalf of the Inter-Faith Center on Corporate Responsibility, cited pay records that documented dramatic drops in income of four workers who "happen to be members of the Executive Committee of the Union." They included Carmelo Zacarias Morales, the union's secretary general, who had previously been earning Q400 per week, but whose more recent pay slips showed earnings of Q120.16, Q124.35, Q95.72 and Q173.52; this was attributed to the assignment of a poorly operating machine. Similarly, Celia Elisve Rodríguez, a member of the union's Consultative Council, was reported to have seen her income drop from a norm of Q225 per week to weekly salaries of Q84.25 and Q142.06 at the time of Fr. La Mar's visit.[75] Human Rights Watch subsequently found that the labor ministry file concerning the union's petition to negotiate includes the company's report on the resignations. A letter to the labor inspectorate from Sra. Seville, deputy manager of the plant, dated June 10, 1996, reports the resignations of the union's secretary general, Carmelo Zacarias Morales; its finance secretary, Ana Silvia Najarro; and consultative council member Celia Elisve Rodríguez Alvarez (the letter did not mention the resignation of Maria Luz Lopez, a second Consultative Council member who resigned nor did PVH give any explanation for the resignations).

Union Members' Letters Relinquishing Union Membership

The significant numbers of resignations of union members from the company in the course of 1996, which union members attributed to the combination of inducements and cuts in earning power, were paralleled by a smaller number of withdrawals from the union. Human Rights Watch spoke with some of these individuals, as well as close friends and colleagues of other former union members. Human Rights Watch also reviewed a number of withdrawal letters, almost all of them produced on a computer printer, signed by union members in the immediate aftermath of the presentation of the petition to negotiate. The form and substance of union members' letters to renounce union membership, combined with their timing and allegations of discriminatory treatment and possible reprisals against union members, was a concern already raised by Human Rights Watch with company executives in November 1996. At that time, Human Rights Watch representative Kenneth Andersen recommended an immediate halt to the involvement of management in the preparation of union members' letters to renounce their membership. While the company did not directly acknowledge that this occurred, international executives responded to this recommendation by ordering that PVH will not facilitate workers' renouncing union membership. "Workers will write their own letters of resignation or if illiterate, will dictate their letters in the presence of a witness."[76]

Human Rights Watch received further testimony from workers in January 1997 of pressure by personnel officers to sign prepared letters withdrawing from the union, although these concerned incidents prior to our November 1996 visit. However, in light of the finding of widespread company encouragement of union members to resign from the union or quit the company these letters take on a more serious character as part of a broader campaign. Copies of letters relinquishing union membership were provided to Human Rights Watch by the union, which kept some of these in its membership records; and by the company. We were also able to examine others in our review of sample personnel files, made possible without restriction by the plant's personnel department. Some examples of the wording of these letters follow:

[75] Fr. Joseph P. La Mar, MM, Interfaith Center on Corporate Responsibility, "Visit to PVH Corporation's Camosa I and II Maquilas," June 20, 1995, p. 7. The same source reports a reduction in the income of Monica Felipe Alvarez, who was then the organization secretary and is now secretary general as having been reduced from a norm in the range of Q250 to Q280 per week to Q130, attributed to her being assigned "a machine that needed constant repair." Victoriana Pilar Perez, secretary of acts and accords then and at the time of writing, was said to have seen her income reduced from Q350. per week, with recent pay slips of Q120.16. and Q 152.02, which was attributed to a lack of work assignments. This was confirmed to Human Rights Watch by Victoriana Perez, who said her earnings in 1994 had averaged Q320 to Q 350 per week; she said her earnings had gone down to Q120 per week for much of 1995 and until May 1996, when the situation had improved. She said her current earnings, averaging around Q220 per week, have still not caught up with her earning levels before she had become active in the union.

[76] Robert Crocco's letter to Kenneth Roth, November 27, 1996.

- A Camosa II worker since January 1992 joined the union in August 1996 and submitted a computer-generated letter withdrawing from the union in November 1996 "for personal problems and/or matters, asking your understanding." ["por problemas y/o asuntos personales, esperando su comprensión.] According to union membership records, she subsequently rejoined the union.

- Another union member who withdrew from the union shortly after its September 1996 petition was presented, and who later rejoined, according to union membership records, presented her letter of withdrawal on paper from a yellow legal pad—paper that is not widely used in Guatemala. Although handwritten, the language, apart from spelling errors, was similar to that of the computer generated letters. This employee had joined the union in August 1996. Her letter of withdrawal, dated September 17, 1996, declared that:

  > By this means I address you to present my irrevocable resignation from membership in the union for personal reasons thanking you to not take into account my name, signature, and identity card number which you now have as I have no further interest in continuing with you.[77]

- Another letter of withdrawal from the union, also drafted on a yellow legal pad, and dated November 1996, was presented by a union member who had worked at Camosa II since 1993 and had joined the union in August 1996.

[77] The spelling in the Spanish original of the uncommon word *irrevocable*—was *irrevacable*, suggesting that it was unfamiliar to the signatory and that the text may have been dictated.

> I am addressing you to request the return to me of the form I signed with my information. Due to my irrevocable decision to resign from the union that you represent from today my motives are personal...[78]

In two cases known to Human Rights Watch, union members who relinquished their membership were transferred to improved positions; one gave promotion as the reason for withdrawing from the union in a letter to the union, while another indicated to Human Rights Watch that he had come to see that the company was treating him well and that the demands made in the union's negotiating petition were unnecessary. Former union colleagues claimed that withdrawal from the union had been a condition of preferment, but this view could not be verified.

In one case, an employee claimed, in a letter cited below, that her affiliation with the union had been involuntary. Human Right Watch reviewed the signed membership application of this individual, which included her home address, identity card number and other details. This notwithstanding, the same individual subsequently signed a computer-generated letter of September 4, 1996 stating that union members had made her sign the union application and asking that her name be removed from the list of union members:

> on Monday 2 September at the time of my leaving work, some people from the union approached me, who made me sign a sheet through which I became a member of it. In this regard, I do not authorize the appearance of my name as a member of the union.

In reviewing the two documents, Human Rights Watch concluded that the signatures were the same. While the nature of the two-page application form and the personal information entered on it made it difficult to imagine it having been filled out and signed inadvertently, the allegation that this was done under pressure was not corroborated further. The language, format and computer printing of the letter may imply improper interference by company personnel in this worker's decision to withdraw from the union, or alternatively, assistance by the personnel office to respond to a employees' spontaneous request for assistance.

Asked for insights into the rash of resignations from the union immediately after it sought to negotiate with the company, Mr Byrd responded that "People resigned because they saw the truth; people wrongly claimed credit for what the company had done for them; they could see the positive results" of the company policy."

Union Members' Letters of Resignation from the Company

Formulaic letters of resignation from the company may not in themselves be unusual in industry, particularly where an injunction permits only voluntary resignations without a court order. In one case examined, for example, from February 1996, an employee's personnel file includes a form letter to the labor court requesting authorization for her to end her employment.

In spot checks of personnel records of union members who resigned in 1996, it was also possible to determine that high rates of discretionary severance payments were in fact made; without a full review of compensation paid to staff who left the firm in 1996, however, this is not conclusive evidence of inducements having been offered to remove union members from the work force at PVH. It does, however, given the high proportion of union members affected, give cause for concern and further investigation. Some examples of resignation letters from the company follow:

- An employee of three year's tenure, who had joined the union in June 1995 and left the Camosa II plant in February 1996, signed the following:

> I respectfully address myself to you to inform you of my decision to retire from the company because of personal problems, indicating to you that my resignation is irrevocable from today.

This individual, according to personnel records, had been employed three and a half years and qualified for legally required severance pay of less than Q700 ($100.). This was the figure of severance pay given on the records filed with

[78] Irrevocable in this letter was also misspelled (as *irrebocable*).

the Ministry of Labor. The separate ledger on additional payments reports her actual severance pay, including the discretionary supplement based on her time employed, at 100 percent: nearly Q4,400 ($657).

- An almost identical letter of resignation was on file for an employee who joined the work force in August 1991, as a folder, and joined the union in 1995. She resigned at the end of January 1996. Her legally required severance pay, according to personnel records, was just Q600. ($85). Her actual severance pay after four and a half years of service, in accord with the company formula, was nearly Q6,000. ($857.).

- Another folder, an employee with nearly seven years tenure, who joined the workforce in May 1989, joined the union in June 1995. Her computer-generated letter of February 1996 presented her "irrevocable resignation." She was awarded a severance payment of nearly Q9,500. ($1,357.).

- A packer, who had joined the company in mid-1992 and the union in June 1995, resigned from the company on August 21, 1996. In her computer-generated letter she declared that "due to personal problems," she was obliged to resign. Human Rights Watch did not review the record of her final severance payment.

In its January 1997 visit to the Phillips-Van Heusen facilities, the matter of letters signed by union members with apparent company assistance was again raised. Camosa II plant manager Robert Byrd, was asked about letters withdrawing from the union that appeared to be form letters produced on a computer printer, and responded that "There was no computer printout from this factory with a form letter. Not in Camosa II."

A disturbing similarity in the texts and presentation of most of the letters examined would have suggested strongly that the company had provided more than casual assistance in their drafting, computer entry, and printing for signature, even had employees interviewed not claimed that members were handed printouts ready for signature. Human Rights Watch noted, for example, that similar wording was used in letters of resignation from the firm on file in the personnel dossiers of departing union members. These letters of resignation, on the basis of a casual examination, were produced on the same computer printer and in a similar format to the union withdrawal letters. As part of a larger pattern of harassment they are especially disturbing.

VIII. APPENDIX

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Human Rights Watch

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