

Trade union situation at Sanmina SCI Systems de México

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About this document

This document describes the trade union situation at Sanmina SCI Systems de México (Sanmina), a supplier of Philips with five plants and more than 10,000 employees in Guadalajara, Mexico. It has been written in response to an information request from Jan Roodenburg and Lucianne Verweij from the corporate headquarters of Philips, who indicated that they would need more information regarding the situation at Sanmina SCI to respond to allegations about the violation of trade union rights by this supplier.¹ They also indicated that Philips would like to raise the problem of so-called 'phantom unions' in the Electronics Industry Code of Conduct (EICC) group to address it at the industry level. This document provides both additional information about the situation at Sanmina and general background information about the problem of phantom unions in Mexico. It is mainly based on information from the Mexican organisation CEREAL.

Trade union situation at Sanmina

The issue: a phantom union

Sanmina has a so-called phantom union, which collaborates with the management. While the trade union had not disclosed its existence to the workers themselves, all plant workers are automatically affiliated to it.² As of early 2008, this situation had not changed. Although such practices are relatively common in Mexico,³ they violate core conventions of the International Labour Organisation (ILO) and the OECD Guidelines for Multinational Enterprises. They also violate the article on freedom of association of the EICC.

Contacts between CEREAL and Sanmina

CEREAL has the possibility of engaging directly with the management of Sanmina about many issues. However, the management of Sanmina has excluded some issues from the discussions. CEREAL raised the issue of the trade union in 2005, but the company ended the conversation on that subject by indicating that no agreement would be reached on that specific point. Thus, there might still be a role for Philips as well.

Sources of information about the union

During research in 2007 and 2008, CEREAL asked more than 100 workers of Sanmina if they knew about the union in the company and in all cases received a negative answer. However, CEREAL has a copy of the contract in force between Sanmina and the union, which shows that all workers are affiliated to the union. On the basis of this information, it can be concluded that workers are automatically affiliated without even knowing about the existence of the union.

¹ SOMO, Philips Electronics – Overview of controversial business practices in 2007, Mar 2008, <http://somo.nl/publications-en/Publication_2476> (accessed Jul 2008), p. 5; VBDO, CSR voting advice: Discharge of executive board members, Aug 2007, <http://somo.nl/publications-en/Publication_2212> (accessed Jul 2008), p. 35.

² Cereal, New technology Workers: Report on Working Conditions in the Mexican Electronics Industry, 2006, p. 42.

³ See e.g. SOMO, Philips Mexicana – Summary report, 2006, <<http://www.companymonitor.org/download/publications/PhilipsMexicosummaryreport.pdf>> (accessed Feb 2007), p. 8-11.

Because they have not given their consent, the workers are in fact forced to belong to the union. CEREAL did not include the phantom union of Sanmina in its research report on the Mexican electronics industry of October 2007⁴ because it preferred to include some new information, but that does not mean that the problem has disappeared.

Trade union confederation

According to the contract of which CEREAL has a copy, the union is affiliated to the *Confederación Revolucionaria de Obreros y Campesinos* (CROC) and not the *Confederación de Trabajadores de México* (CTM), as Sanmina mentioned to Philips. The CROC is legally registered as a Mexican union confederation, but does not have a good reputation and is notorious for misrepresenting workers.

Background information about phantom unions in Mexico

Legal context

The Mexican law does not allow the existence of phantom unions that misrepresent the workers. In fact, the *Ley Federal del Trabajo* [Federal Labour Law] requires support from a minimum of 20 workers for registering a new trade union (Art. 364 and 366) and specifies that all unions have to provide the labour authorities a list of their current members every three months (Art. 377). This cannot be accomplished by a phantom union, because at the time the union is created, it does not have any members in the company. The first collective labour contracts with phantom unions are signed by the company and union representatives before the company hires any worker. In consequence, according to the law, this kind of unions is illegal.

Article 358 also establishes that nobody can be forced to belong or not to belong to a union. However, Article 395 states:

'In the collective labour contract, it can be determined that the employer will only accept as workers those who are members of the contracting union. (...) It can also be determined that the employer will dismiss members that quit or are renounced by the contracting union.'

Many collective labour contracts, including the contract of Sanmina, contain this so-called exclusion clause. This can give the union a lot of power over both the workers and the company. Still, an exclusion clause does not mean that workers can be forced to belong to the union.

As there is little information available about phantom unions, many people think that this type of unions is legal or that they cannot be avoided, and that the main problem is that they are not visible or have inactive members. Yet this is not true. Phantom unions are illegal and companies that make use of such unions may know about their illegality.

The illegal nature of these unions can be proven on the basis of any of the following criteria:

- ❑ The union leader is not a worker as required by the law (Art. 362);
- ❑ The union violates the law by not providing its current list of members to the labour authorities (Art. 337 sub 3);
- ❑ The union violates its own articles of association by not calling assemblies with the workers (Art. 371);

⁴ Cereal, Electronics multinationals and labour rights in Mexico, Oct 2007, <<http://www.business-humanrights.org/Documents/Cereal-Report-English-Oct-2007.pdf>> (accessed Feb 2008), p. 63-67.

- ❑ The union leaders are not legitimate because no elections are organised for their election (Art. 371);
- ❑ The union leaders do not give economic information to the workers about the union affairs (Art. 373).

Protection by labour authorities

Despite this, labour authorities often do not fulfill their obligations against the existence of this kind of unions, and even protect them by restricting the workers from having access to information about the contract or the representatives of the union. They do this by saying that they cannot interfere with the internal affairs of the union because they have to respect the right to freedom of association. Therefore they do usually not verify the number of union members or ask for the real list of union members. This is against the Federal Labour Law and also against the articles 2, 8 and 10 of ILO convention 87. The labour authorities also ignore the articles of the labour law that protect unionised workers against misrepresentation by their leaders, the misrepresentation consisting for example of not providing economic information to the workers and not organising assemblies or internal elections.

Challenging phantom unions

It is possible to dispute the collective labour contract signed by a phantom union through a count of the union members verified by the labor authorities. This is the same procedure all unions should in theory follow when they apply for registration, before signing a collective labour contract. Some groups of workers have had success against phantom unions following this procedure.

Nevertheless, in many cases it has taken several years of efforts by the workers and required the support of national and international organisations to succeed. In addition, workers risk that they are dismissed by the company or that the phantom union brings in new workers, as happened recently in a case of glass workers in San Luis Potosí.

The main problem is that phantom unions are corrupting labour authorities, companies, and other unions challenging them. This makes it very difficult for workers to defend their right to freedom of association. If workers of Sanmina would decide to form a new trade union, for example, their efforts might be frustrated by the labour authorities, making it almost impossible to succeed, even if the union founded by the workers legitimately represents their interests and meets all legal criteria and the phantom union operates in violation of the law.

Risks to companies themselves

Phantom unions can also pose risks to companies themselves because these unions can use many ways to prevent a company from ending their cooperation with a phantom union, even though the union is illegal. Phantom unions make use of the protection that the law provides to real trade unions and it can be very difficult for a company to prove that a phantom union is not legal if the company has signed collective labour contracts with the union for several years. Corrupt unions soliciting bribes from companies are not unheard of in Mexico. Thus, addressing the problem of illegitimate trade unions in Mexico would be in the interest of both the workers and the companies themselves.

For more information, please contact SOMO:

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