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Resolving Labour Issues in the Electronics Industry in Mexico

Brian Ganson

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Authors: Brian Ganson

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Resolving Labour Issues in the Electronics Industry in Mexico

In 2005, the Mexican labour advocacy organisation Centre for Reflection and Action on Labour Issues (CEREAL) and the National Chamber of the Electronic, Telecommunications and Information Technologies Industry (CANIETI) in Mexico began a dialogue to address highly contentious relations between workers and electronics manufacturers in Mexico supplying global brands. By 2009 parties were able to report meaningful progress in resolving labour grievances and working to prevent new ones. In 2013, however, the parties' ability to work together on structural issues remains in question. The relatively long timeframe encompassed by this case story allows reflection on the possibilities and challenges of addressing parties' fundamental concerns through consensual processes.

Introduction

In Mexico, it is broadly conceded that labour rights pose systemic challenges. There are gaps in national regulation of working conditions. Official unions can be heavily biased towards pro-government, pro-employer positions. Independent unions face discriminatory obstacles, including the use by many employers of false collective agreements called “protection contracts” with phantom unions that keep representative unions out of the workplace. Government enforcement of worker rights can be weak, and it is often impossible for workers to pursue claims through official processes.

Under these conditions, it is difficult for individual workers to advocate for their rights. At one point the head of one of Mexico's largest employer federations announced a plan to create a blacklist of workers deemed “conflictive,” the definition of which included trade union organizing, asking for higher wages, or seeking better working conditions. Widespread use of labour brokers and temporary contracts further undermine employees' bargaining power with large companies. Workers often find themselves unable to pursue claims for non-payment of social insurance or other benefits, health and safety issues, working hours, or their rights if terminated.

Even within such a challenging environment, marked improvement in the ability of workers to effectively resolve grievances with employers is possible. One example is the collaboration between the Centre for Reflection and Action on Labour Issues (CEREAL) and the National Chamber of the Electronic, Telecommunications and Information Technologies Industry (CANIETI). CEREAL and CANIETI overcame significant mutual mistrust to arrive at an

agreed-upon Grievance Escalation Process to review and resolve individual worker grievances with CANIETI member companies.

This positive engagement has provided benefits for thousands of workers over the years, yet tensions remain. There are perceptions from labour that, while some CANIETI members are committed to preventing labour rights violations, others may only begrudgingly take remedial action when problems are discovered, or refuse to cooperate at all. There are frustrations that many companies appear content with their privileged status under Mexican labour law and do not seem willing to become part of addressing the systemic concerns of greatest importance to CEREAL and other worker advocates.

This case story explores two questions in particular within this complex context. The first is how parties achieved a collaborative relationship despite a generally hostile labour-management climate around them. The second is how they manage a relationship that includes both cooperative and conflictual aspects. It draws on the experience of CEREAL and CANIETI to conclude that limited collaborative arrangements – as positive as they may be – are at risk of not being sustainable. Commitment to addressing broader socio-political realities at the root of parties' interests may be required if they are to be made more so.

Addressing a tense relationship in 2005

2005 saw the “Clean up your computer” report published by CAFOD (the official Catholic aid agency for England and Wales). It was part of a campaign to link global brands such as IBM, DELL and Hewlett Packard in the minds of consumers with workers facing discrimination in recruitment, abuse of short-term contracting, dangerous working conditions, excessive overtime and wages well below the legal minimum International Labour Organisation (ILO) core standards. The report included CEREAL documentation of such issues in the electronics industry in Mexico.

2005 also saw the publication of a Code of Conduct by the Electronics Industry Citizenship Coalition (EICC), an industry platform of leading electronics companies focused on responsible sourcing in global supply chains. In it global companies including those

highlighted by CAFOD and CEREAL committed to uphold the human rights of workers, and to treat them with dignity and respect as understood by the international community.

With protests in the streets, there was growing recognition on all sides of a need for action. Representatives of Hewlett Packard in Mexico reached out to CAFOD, eventually brokering a conversation between CEREAL and CANIETI. This led to the establishment of an industry-wide grievance mechanism managed by CEREAL and CANIETI for labour complaints by workers against companies that are members of CANIETI, using the EICC standards as a reference point. It is intended to address issues at an early stage, before they need to become the subject of mass public campaigns. As a first step, CEREAL brings labour complaints to the mechanism, and CANIETI facilitates a direct point of contact within the company that is the subject of the complaint. If direct dialogue fails to produce a satisfactory resolution, the mechanism offers third-party mediation. CEREAL agrees not to take legal action against a company or publish reports in the media related to individual pending cases.

Labour Perspectives – circa 2005

CEREAL is a project of the Mexican Province of the Society of Jesus that provides legal assistance, human rights education and labour organisation support to groups of workers; conducts research about working conditions; and promotes public awareness campaigns on labour issues. While CEREAL supports workers across a variety of sectors – including miners, electricians, oil workers, and teachers – it had a particular focus on the electronics industry, as it “was way behind other industries in looking at business models and human rights.”

CEREAL as an advocacy organisation was initially doubtful that much good could come from dialogue with the industry. Firms might use the dialogue as an excuse to continue to not deal directly with workers. Firms might be simply advancing their public relations without any real commitment to improving working conditions or respecting labour rights. CEREAL’s coordinator, Jorge Barajas, noted that CEREAL’s strategy did not include engagement. “We were very happy with a confrontational approach.”¹

¹ Salame p. 61

Encouraged by CAFOD in the UK with whom it had partnered on the Clean Up Your Computer campaign, CEREAL concluded that it risked little by entering into dialogue and seeing where it would lead. It decided it could use the opportunity to confront companies directly with its concerns. It also remained clearly committed to the agenda for which it was created: empowering workers to organise and act on their own behalves to ensure respect for worker rights and better working conditions. It would not compromise on advocacy in order to engage in dialogue.

One labour advocate found initially that “there was more willingness to engage coming from the international level than the national level.” It sensed that, “CANIETI’s position was, ‘Why are you saying these negative things? You’re ruining the environment for investment.’” But over time, “It became apparent that direct contact between CEREAL and the national-level brand representatives was useful.” An agreed-upon grievance mechanism had the possibility to provide relief to individual workers even as broader labour reform efforts continued.

Management Perspectives – circa 2005

CANIETI is an industry association made up of both global companies that have a presence in Mexico, and Mexican manufacturers that supply them. A key activity for CANIETI is to recruit new firms to come to Guadalajara and otherwise encourage investment in the industry. The sense among many CANIETI members was that CEREAL was trying to destroy the industry through its actions. “People in the industry talked about the NGO as evil. We thought CEREAL did not want jobs in Guadalajara, that they didn’t care about workers. Every week there was a new article in the paper. Given the legal and reputation risks that the negative media stories and reports regarding labour rights violations in the electronics industry highlighted, one representative said, “We were afraid the industry would be driven out of Guadalajara, like what happened to Nike in Asia.”

There was also a sense among some CANIETI members that CEREAL was not an authentic labour representative. It was felt that “CEREAL was not just providing advice to labourers, but was also misinforming them. Lawyers from CEREAL were driving the campaign,” remembered one industry representative. But other CANIETI members, among them the global brands such as Hewlett Packard, were concerned about the generally confrontational climate between companies and workers. Based on positive experience with civil society

advocates elsewhere, they thought that if they could get to know and understand CEREAL, they might have a more positive impact on labour relations more generally.

Sitting down with CEREAL created the opportunity to “learn about their approach and the issues they cared about, and realize that they were not the ‘monster’ they had been made out to be, but that they were working for the common good on issues also important to Hewlett Packard,” according to one member of the company’s team in Mexico. The feeling was, “If this worked, why not try something at a more institutional level? Why not tackle these issues more systematically and proactively?”²

From such thinking came the willingness of CANIETI and its member companies to develop the grievance process to help CEREAL mediate between workers and companies. Said one industry representative, “I remember people saying the NGO was evil – don’t talk to them. I said, this doesn’t make sense to me. I’m going to sit down with them. So that’s what I did.”

Over time, CANIETI and its members increasingly recognised their own interests in addressing the very real problems brought to its attention by CEREAL; it was not viable for an organisation that wanted to position itself globally as catalyst for developing the industry to ignore the labour issues of growing global interest and importance. While it cannot compel a member to do so, CANIETI increasingly strongly encouraged its members to meet with CEREAL and participate in the agreed process for addressing worker grievances.

Taking stock in 2009

CEREAL’s 2009 report on working conditions in the Mexican electronics industry gives some sense of the results of this first phase of collaboration between labour advocates and industry representatives. CEREAL reported some clear gains, in particular reductions in work-related accidents and progress in addressing non-discrimination in hiring by eliminating questions and tests for identifying pregnant women, people with tattoos, lawyers or law students, union members and homosexuals. CEREAL also emphasized a number of persistent challenges, including job stability, exposure to toxins, and freedom of association.

² Shift p. 53

Despite these ongoing issues, there were signs by 2009 that relationships between CEREAL and CANIETI member companies were more resilient and more capable of dealing with labour grievances. Over 1200 grievances per year were managed by the Grievance Escalation Mechanism in the first year after it came online in 2007. In advance of CEREAL's annual report profiling company labour practices, companies and CEREAL sat down together. The meeting provided a chance for companies to hear directly from aggrieved workers and an opportunity to respond to and address any allegations before the report was published. These improving relations meant that, by 2008, structural issues such as freedom of association and the use of temporary contracts and employment agencies had for the first time been put on the dialogue table.

Labour Perspectives – circa 2009

CEREAL was acutely aware that workers in 2009 continued to face uncertainty, employment instability, humiliating treatment and overwork. It summarized almost 4000 worker testimonies as well as other analysis in its report, "*Labour rights in a time of crisis.*" CEREAL noted that, on the one hand, some electronics companies used the economic crisis in Mexico to make the already very precarious labour conditions of the workers in this sector even worse; and on the other hand, even as they reactivated production and attracted new investments, to lower wages and shorten the length of temporary contracts. CEREAL calculated that the average daily wage in the industry was only enough to cover 60% of nutritional requirements; this amount does not cover other basic needs, like transportation, education, housing, or clothing. In the end, CEREAL concluded, it was the workers were the ones who had to pay the greater part of the costs of the crisis.

CEREAL also noted that not all the companies grouped in CANIETI had the same level of commitment to the Electronic Industry Citizenship Coalition standards, and that some still avoided dialogue with CEREAL. The motivation for some companies seemed not to be commitment to the rights and dignity of the worker, but that they were "still afraid of CEREAL and of CEREAL's company ranking."

More fundamentally, CEREAL stressed the still-unaddressed need not just to solve individual cases, but also to achieve structural changes in the global electronics industry. As long as

workers don't have full rights to freedom of association, it believed, the other violations of labour rights would be very difficult to solve.

Yet from CEREAL's perspective, the continuity of the dialogue from 2005 to 2009 all the same allowed the creation of an efficient mechanism to jointly document, communicate and solve cases of violation of labour rights, if companies were prepared to use it. Cases were being solved more rapidly. In the beginning the average time it took to solve a problem was one year; by 2009 it was only two months. CEREAL's overall conclusion as of 2009 was that it was clear that there were many issues outstanding, but the dialogue had not been in vain.

Management Perspectives – circa 2009

In engaging with CEREAL, industry representatives found value in understanding the issues without, as one brand representative put it, "having the press and the whole world looking at the industry and accusing it of abuse." Labour issues had not been part of CANIETI's agenda in the early years of the 21st century. But as global brands became increasingly wary of reputational risks, multi-national companies started implementing internal compliance groups and using incentives to compel suppliers to adhere to new codes of conduct. The process provided one way of showing that companies were taking their responsibilities seriously.

Companies took some comfort that they had succeeded in devising a process that not only addressed worker grievances, but did so without unnecessary complications. Before the process, said one industry representative, "Because CEREAL was making allegations, suppliers had to respond to their brands." Under the agreed process, CEREAL investigated grievances. In some cases it even counselled a worker that a complaint didn't fall under the law or EICC standards. In other cases CEREAL would seek to resolve the issue with factory management. Only when an issue could not be resolved directly would CEREAL communicate with CANIETI, where a respected representative would review the case and seek to mediate. And only if that process failed to resolve the issue would CEREAL solicit the support of the relevant international brand.

From one company's perspective, "The majority of problems are communication problems." The process therefore appeared to be a genuine opportunity to deal with problems on their

merits and at the most appropriate local level, rather than reacting to press or global brand inquiries in light of sensational stories.

There also appeared to be some genuine rapprochement between CEREAL and CANIETI member companies. One company representative said that, after meeting, “I understood the philosophy behind their work, and I realized that we want the same thing: to ensure better jobs for the community and respect for workers. We are properly aligned, I said to myself.” Through listening and sharing, he found that their goals for workers in the industry were perhaps not so different. Another company representative said the process let him say directly to CEREAL, “We want to create conditions so that the people feel respected and can be proud of the company they are working for.” The process let companies explain the steps they were taking to improve compliance with EICC standards.

Cooperation and conflict in 2013

Taking stock again in 2013, some positive aspects of the mechanism for cooperation worked out over the years by CEREAL and CANIETI are apparent. Positive engagement has provided tangible benefits for thousands of workers over the years.

Yet cooperation and conflict co-exist within the CEREAL/CANIETI relationship, and significant tensions remain. There are labour perceptions that, while some CANIETI members are committed to preventing labour rights violations, others may only begrudgingly take remedial action when problems are discovered. There are frustrations that many companies appear content with their privileged status under Mexican labour law and do not seem willing to become part of addressing the systemic concerns of greatest importance to CEREAL and others. This appears to be creating a gap in perceptions about the value and the future of the collaborative relationship.

Management Perspectives – circa 2013

Many industry representatives say that in spite of the difficulties building trust – particularly between the Mexican suppliers and CEREAL – they are mostly pleased with the outcomes of the engagement process and the Worker Grievance Redress Mechanism. One industry

representative said the mechanism has allowed for a more objective look at worker grievances to determine if they are singular or indicative of a bigger problem. Said one, “There is an agreed process to follow. Communication with workers and the NGOs has improved a lot and each one of us has a role to play in solving the problems.” This has enabled the tougher, more systemic issues such as freedom of association and temporary workers to be put on the table. One session involving 15 companies, 6 NGOs (including CEREAL), 2 temporary agencies, two chambers of commerce, and government representatives resulted in a series of recommendations for possible projects for the EICC to undertake in cooperation with regional organizations.

A global brand representative noted the impact of the improved relationship with CEREAL on relationships within the industry, saying, “It’s an opportunity to establish outreach with the vendors about compliance with labour standards.” The process has also been one catalyst for the industry association’s efforts to collaborate on training for others inside and outside the industry, particularly small and medium-sized enterprises which face problems of both capacity and commitment. With the outsourcing companies, global companies believe they can exercise collective leverage on those suppliers to prevent and manage labour grievances more effectively.

At the same time there remains division of perspectives among CANIETI’s own members. Maintaining that worker facilities and the treatment of labour are comparatively “much better” in the electronics industry than in other industries, one brand representative said that the Grievance Escalation Mechanism is merely an addition to internal grievance mechanisms that were already in place and working well. At best, this stakeholder said, the new mechanism offers her company a chance to “show CEREAL the good practices we have.”

Another CANIETI member emphasized that companies provided important benefits to workers, including a canteen for workers who couldn’t go home for lunch as well as transportation. Others note the overall improvements in the industry over time and the responsibility that employers feel and the pride that they take in providing a work environment that is demonstrably better than in other industries.

When asked about expanding the scope of discussions to include systemic issues such as freedom of association that are of greatest importance to labour advocates, one industry stakeholder suggested that, instead, CEREAL should turn its attention to other industries and promote the mechanism as a model of good practice. “The process is working fairly well as it is,” he said. “I wouldn’t want to change it. I think CEREAL could be more proactive about looking at other industries. For example, shoes, clothing, tequila production – our city has a lot of lines of business. We should promote good basic practices in these other lines of business.”

Labour Perspectives – circa 2013

Felipe Burgueno Gonzalez, the International Liaison at CEREAL, noted that, “We have had many advances in human rights since we started the dialogue several years ago, and the relationship has grown in trust and closeness. However, it is necessary to make further progress on issues that we have not yet worked on very deeply, such as freedom of association and decent wages.”³

From CEREAL’s perspective, low wages, lack of freedom of association and temporary employment remain not only problems in their own right, but also contribute to an enabling environment for discriminatory practices, humiliating treatment, sexual harassment and toxic exposure. Workers live in fear and receive wages that are not even sufficient to provide enough to eat. They receive only a very small proportion of the price of finished goods, even as industry margins are more than healthy. “There’s been a backward leap in the quality of work,” said Cereal Coordinator Jorge Barajas at the time of CEREAL’s 2011 report.

CEREAL sees a need for genuine unions that can fight for greater job security and better wages. Bad policy and failure to regulate market dynamics leave workers practically defenceless against the huge presence and influence of transnational corporations. “It’s important to realize that jobs have to be dignified, and that we should avoid the situations described in this report: salaries that aren’t sufficient to feed people, unstable jobs and a fear of demanding respect for our labour rights,” said Barajas.

³ Shift p. 53

Labour representatives also sees a need for companies to accept and implement their obligations as set out in the UN Guiding Principles on Business and Human Rights. “While there’s discussion, there’s also tension, and this has been quite frustrating,” said one. “Some companies have been proactive and quick to solve cases, while others still drag their feet.” Some companies still will not publicize the grievance mechanism within their factories, leaving it to workers to find out about it from friends or publicity at bus stops.

CEREAL underlines that the EICC should be strengthened to meet the ILO’s four core labour standards, as it does not give workers the right to join independent unions or negotiate improved working conditions unless already required by local laws. This effectively undermines the impact of the EICC standards for many electronics workers, and means that the entire Grievance Escalation Mechanism is built on a deficient foundation. To build a true partnership, companies would need support labour market reforms in Mexico, rather than advocating for changes – such as the new Mexican labour law introduced in November 2012 – that failed to address Mexico’s non-compliance with its ILO obligations and actually reduced worker rights in some areas.

CEREAL notes that some very few companies in Mexico are taking steps to enable and support effective labour representation in the workplace. Yet this only underlines what is clearly possible but that the others are declining to do. Reflecting on his experience visiting the Philippines, Barajas noted a “frightening similarity” between temporary workers’ problems there and in Mexico.⁴ While companies may be willing to address clear violations of local law in the agreed grievance process, it’s less clear that their global interests and priorities are genuinely aligned around worker rights and dignity.

So from the labour perspective the dialogue is at some level at an impasse. CEREAL’s primary interest is not to optimize a grievance mechanism, and it is certainly not CEREAL’s principal objective to be in the business of administering one. Rather, CEREAL’s core concern is to empower workers to organise and assert their internationally-recognized rights within the workplace. It remains unclear whether the dialogue process can be a path towards meeting this fundamental interest.

⁴ Paterson p. 1

Analysis: Possibilities and challenges of consensual processes

The electronics industry in Guadalajara continues to grow, with investment increasing 7% and registered exports increasing 15% in 2012 alone. So does conflict between labour and management as new laws are passed that disfavour organised labour, wages continue to deteriorate and workers who try to organise their colleagues into authentic unions and assert their rights face retaliation. In the broader Mexican society, reported violence against worker advocates – including torture and killings – are on the rise.

Within that difficult context, CEREAL and CANIETI have developed a complex relationship. They have forged a process that they can both commit to in order to raise and resolve individual labour grievances that assert violation of the industry's own code of conduct. They can increasingly sit at a table and at least discuss structural challenges in the Mexican labour market. Yet many CANIETI member companies see a situation of good practice and progressive improvement across the industry, while CEREAL sees a crisis for Mexican workers who live in fear and cannot survive on the wages they are paid. And when the parties leave the table, at least some CANIETI members advocate for laws that further weaken worker protections, while CEREAL continues to fight for full compliance with international labour and human rights standards by Mexican lawmakers and the industry.

CAFOD and Hewlett Packard helped facilitate the relationship between CEREAL and CANIETI by emphasizing to their respective colleagues common interests and therefore the ability to work with the other side towards achieving them. Through dialogue a working trust developed as parties saw that they could count on the other to implement an agreed process, creating space for the grievance mechanism and its successful implementation.

Yet from an outsider's perspective, it appears that the working trust among companies and worker advocates may be fragile and tentative if parties do not share a common sense of the norms and values which should apply when evaluating the appropriateness, legality or ethics of company actions or inactions. Without this common vision, there is also little to protect Mexican workers or industry against the broader socio-political dynamics of labour-management conflict, which remain volatile and have the potential to become more so. Whereas parties looking back at the early stages of the engagement process expressed cautious optimism, now many are as likely to express some degree of fatigue or frustration.

It is hard to see such an arrangement as fundamentally in balance. While CEREAL is on a trajectory towards higher labour standards and adherence to them, it finds value in a process that gives more immediate relief to at least some workers. But it believes that companies should and could take immediate action to come into compliance with well-articulated international norms, and that they should be compelled to do so. Measured against its fundamental interests, the need for the grievance mechanism and CEREAL's own role within it is indicative of a failure of the larger process of labour reform in Mexico, not a success.

Companies for the most part appear to see the grievance mechanism as a solution, helping them meet the expectations of global stakeholders and lessening the number of expensive-to-defend cases before labour tribunals. CANIETI so far has admitted only the requirement of compliance with Mexican labour law as incorporated by reference in the EICC, not the ILO standards to which Mexico is bound by treaty and the Guiding Principles on Business and Human Rights explicitly reference.

The arrangement between CEREAL and CANIETI may therefore only represent the temporary intersection of paths that at least for now do not imagine the same destination and for some parties may not even be headed in the same direction. For those in Mexico who believe in stable labour-management relationships within a framework of global human rights, renewed leadership, greater urgency and a different quality of engagement may be required.

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AUTHOR INFORMATION:

Brian Ganson is Senior Researcher, Africa Centre For Dispute Settlement, University of Stellenbosch Business School, and Senior Fellow, Center For Emerging Market Enterprises, The Fletcher School, Tufts University. His research and consulting work addresses various aspects of business operations in complex environments, including company management and leadership, multi-stakeholder approaches to risk mitigation and conflict prevention, and the role of neutrals. Contact: Brian@Ganson.org

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