

Case Study:

Antagonistic Collaboration: the Accord between CEREAL-GDL and the Electronics Industry in Guadalajara, Mexico

**Based on a study by Héctor Salazar Salame
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In 2005, through intermediation by the UK-based Catholic Agency for Overseas Development (CAFOD), CEREAL-Guadalajara (Centro de Reflexión y Acción Laboral) and electronics manufacturing firms with subsidiaries in Guadalajara launched what has come to be known as “the accord,” a dispute resolution mechanism between CEREAL-GDL and members of the business association CANIETI.

Following the release of its 2004 report *Cleaning Up Your Computer*, CAFOD met with electronics industry leaders in low and high-income countries to discuss the findings. In September 2005, CAFOD facilitated a meeting between electronics firms in Guadalajara that were members of the Electronics Industry Citizenship Council (EICC) and CEREAL-GDL.

As Anne Lindsay, CAFOD's Lead Analyst for the Private Sector notes: “We did not want CAFOD to act as an intermediary forever; we wanted firms to speak directly with CEREAL about the problems they had identified. It was important that brand executives could hear firsthand about the experience of workers in their supply chains...” Further, from CAFOD's perspective: “[g]iven CEREAL's aim of organizing workers it made sense that they should be talking to the companies directly about the problems that the workers faced as well as pursuing legal cases.”¹ CEREAL-GDL was reluctant to participate in the meeting at first.

In broad strokes, the accord is a dispute resolution mechanism through which CEREAL-GDL is able to present labor rights violations directly to firms. Until a case goes through the whole process, CEREAL-GDL agrees not to sue the companies involved or disseminate the case in the local or international media.

The Accord Mechanism

CANIETI is the electronics industry business association in Guadalajara that includes all electronics industry firms with subsidiaries in the city. Every member of CANIETI is required to abide by the accord. However, this does not include employment agencies since they are not officially part of CANIETI. Figure 4 describes the accord mechanism, which is comprised of four phases to dispute resolution.

Phase 1 -worker and factory management:

The first phase begins with a worker experiencing a perceived labor rights violation. If comfortable doing so, the worker brings the issue directly to their respective firm's management.

¹ Interview with Anne Lindsay, CAFOD Lead Analyst for the Private Sector, May and June 2011.

Note that the accord mechanism implicitly reflects the employment realities in the Guadalajara electronics industry, specifically that manufacturing firms are contracted by brand name firms to manufacture goods and are the largest employers in the Guadalajara electronics industry. As such, the first phase of the accord is targeted to manufacturing firms. Moreover, though third-party employment agencies are not directly included in the accord mechanism since they are not members of CANIETI, it is implied that firms are co-responsible for perceived labor violations caused by an employment agency. The majority of cases that arrive at CEREAL-GDL are related to wrongful termination, which by nature means that the worker and the firm could not reach a solution.

Phase 2 - worker and CEREAL-GDL:

If the issue is not resolved between the worker and firm management, in the second phase of the accord a worker meets with CEREAL-GDL to discuss the case. Implicit in this phase is that a worker is aware that CEREAL-GDL exists. Certainly firms do not refer workers to CEREAL-GDL if their issue is not resolved internally. If and when a worker meets with CEREAL-GDL, the organization is responsible for investigating the worker's claim and if it finds that his/her condition is violating stipulations in the electronics industry Code of Conduct or Mexican labor law, they may escalate the case directly to the factory management.

In cases related to wrongful termination, the first question CEREAL-GDL asks workers is whether they signed a resignation letter when they were laid off. If they did, then there is nothing more CEREAL-GDL can do for the worker given that firms are able to demonstrate that the worker left the firm on his/her own free will. If a worker was unjustly fired and did not sign a resignation letter, CEREAL-GDL advises the worker to begin a legal claim process. This action is contrary to the official accord mechanism, but responds to the reality that a firm could argue that the worker abandoned his/her post and deny that he/she was ever fired if a claim is not filed. Once the case is filed, CEREAL-GDL discusses the case with firm management.

If a worker comes to CEREAL-GDL with a complaint unrelated to wrongful termination, then the organization follows the accord mechanism by discussing and investigating the case before bringing it to the attention of a firm's management. Importantly, when the accord was first developed, CEREAL-GDL staff met with firm managers to discuss every single case. This approach drained significant staff time. In turn, today, CEREAL-GDL consolidates a group of cases and presents them all at once during meetings with firm managers.

Phase 3: CEREAL-GDL and CANIETI:

In the event that CEREAL-GDL and a firm's management do not agree on a resolution, the former may escalate the case to CANIETI. The business association discusses the case with the respective firm management and serves as a mediator in the event that the latter does not accept wrongdoing. Critically, some firms, for example EMS firms Benchmark and USI typically refuse to participate in the accord. In these cases, CANIETI has historically reached out to these firms and required that they dialogue with CEREAL-GDL directly or through a discussion mediated by CANIETI.

Phase 4: CEREAL-GDL and Brand Name Firms:

If a mediated dialogue does not resolve an issue, CEREAL-GDL can escalate the case to the brand name level. If the issue cannot be resolved at this level, then CEREAL-GDL, per the accord, is allowed to publish the case in its annual report and/or in the local or international media. In general, CEREAL-GDL respects the accord in regard to media. However, it has been less rigorous with publishing cases still being discussed through the accord or that have been closed through a negotiated settlement in its annual reports.

To sum up, the accord establishes a dispute resolution process by which a worker's claim is escalated through channels beginning with the worker's employer. The structure of the accord largely reflects employment dynamics in the Guadalajara electronics industry. Specifically, it implicitly considers that a worker is laboring for a manufacturing firm, which assumes responsibility for workers hired through employment agencies. Ultimately, if CEREAL-GDL is unable to reach a settlement directly with a manufacturing firm, CANIETI and brand name firms become involved in the process. Markedly, CANIETI pressures reluctant manufacturing firms to participate in the accord. Ultimately, the discussion of how the four phases of the accord are implemented in practice highlight that the process is generally adhered to by the parties involved. Important caveats include: some firms pertaining to CANIETI are reluctant to actively engage with CEREAL-GDL; CEREAL-GDL advises workers to file legal claims immediately in cases of wrongful termination; and CEREAL-GDL publishes open or closed cases in its annual reports. The next subsection analyzes why the accord actors participate in this dispute resolution mechanism.

Motivations for Participating in the Accord

Per the discussion of the accord phases, there are four primary actors: 1) workers; 2) firms located in Guadalajara; 3) CEREAL-GDL; 4) CANIETI; and 5) brand name firms. Key points regarding why each is motivated to participate in the accord follow.

Workers: Workers are motivated to participate in the accord because it presents an opportunity to resolve a case more quickly than the legal claims process. This observation, of course, comes with the caveat that many workers would rather not engage with CEREAL-GDL or make known labor violations for fear of firm reprisal. Once a worker comes to CEREAL-GDL, so long as they have not signed a resignation letter in the event of a wrongful termination, they are by default engaged in the accord. However, CEREAL-GDL does not contact firm managers unless a worker agrees that it should do so. As the process moves forward, CEREAL-GDL assures that workers are kept abreast of negotiations with firms.

Guadalajara Firms: The motivation for firms located in Guadalajara to engage with the accord is to keep cases out of the media, CEREAL-GDL reports and ostensibly to reduce legal suits and the resources required to litigate them. Based on the discussion in Chapter 3 regarding the relationship between local managers of firm subsidiaries located in Guadalajara and their respective headquarters in high-income countries, it can be posited that achieving the aforementioned goals keeps them in good standing with their international headquarters which have an interest in avoiding negative press regarding poor labor conditions and labor rights

violations. A major caveat to this is the fact that there are some firms that have historically not engaged with CEREAL-GDL. Per the organization, these firms include suppliers of raw materials and electronics components to contract manufacturers, and some contract manufacturers like Benchmark and USI. Notably these firms are not part of the EICC and in some cases do not have internal codes of conduct.

CEREAL-GDL: The organization would rather workers be, by default, treated justly and protected by institutions such as independent trade unions that can ensure workers' voices are heard and that their rights are collectively protected. When CAFOD presented CEREAL-GDL with the opportunity to dialogue directly with firms, CEREAL-GDL expressed concern that firms would utilize a dialogue to further circumvent listening to workers directly. Moreover, the organization believed that firms were interested in the dialogue simply as a means to protect their image, and were not genuinely interested in improving working conditions. On the other hand, CEREAL-GDL understood the dialogue as an opportunity to express its concerns directly to firms.² If anything, as encouraged by CAFOD, the organization did not have much to lose by attempting the dialogue approach. Ultimately, as Jorge Barajas, coordinator of CEREAL-GDL notes:

“we weren't looking for [a direct discussion] with firms. We were very happy with a confrontational approach. The dialogue approach is very European and we learned it from [CAFOD] and we saw that it had results... this was a surprise, a discovery for us.”

CANIETI: The motivation for CANIETI to engage with the accord can be posited to be similar to those of Guadalajara firms. As a key promoter of the electronics industry in Guadalajara, CANIETI conducts activities to encourage new firms to come to Guadalajara. A prospective firm could ostensibly reconsider locating in the city given negative media stories and reports regarding labor rights violations in the electronics industry to which they could be vulnerable. Against this backdrop, in cases where a CANIETI member refuses to meet with CEREAL, CANIETI has historically intervened and pressured the firm to meet with CEREAL-GDL.

Brand Name Firms: Brand name firms are ostensibly motivated to engage with the accord as they are the last point of contact before CEREAL-GDL has the green light to publish the case. Like Guadalajara firms, some brand name companies refuse to engage with CEREAL-GDL. Firms that do not have a subsidiary in Guadalajara are not part of CANIETI and therefore are not technically under the purview of the accord. CEREAL-GDL states that whether a brand name company engages in the accord can largely depend on the person in a position to discuss a case with the organization. For example, a recent staffing change at Dell's headquarters decreased the company's willingness to discuss cases with CEREAL-GDL.

Impact of the Accord

There are three possible impacts the accord can have. First, through the accord, the resolution of a legal claim can be reached more quickly. A unique dataset that Salazar Salame compiled of cases undertaken by CEREAL-GDL between 2008-2010 suggests that whereas a legal claim may take upwards of two years to resolve, cases negotiated through the accord are closed within six

² These observations are based on an internal CEREAL-GDL memo, which includes a pro and con list of dialoging directly with firms.

months. Moreover, the data suggest that through the accord dispute resolution mechanism workers tend to receive a higher percentage of their due severance in cases of wrongful termination.³

As related to this discussion, the second type of impact the accord can have is that an individual worker's case is resolved. While such a result is positive, similar to the discussion of educating one worker at a time, solving one worker issue at a time does not hold much promise for firm-wide labor condition improvements. In some cases, firms will acknowledge that a particular case affects other workers, but will refuse to act beyond responding to the particular worker(s) that brought the case to CEREAL-GDL. For example, recently workers at a contract manufacturing plant were being forced to work *tiempo por tiempo* hours. Following the implementation of the accord process, the firm agreed to exempt the worker that highlighted the practice to CEREAL-GDL from the practice, as well as any other workers that requested an exemption from this illegal labor practice. In other words, the firm refused to make a firm-wide decision to desist from the practice.

The third type of impact the accord can have is facilitating firm-wide changes in working conditions. To date there has been one such case, but it is a mixed result. Last year a group of workers sought CEREAL-GDL's assistance because the employer they worked for had given uneven salary increases within the workers' division, in what amounted to favoritism. The firm fired all of the workers that met with CEREAL-GDL with the result that CEREAL filed a legal claim against the firm. However, the firm restructured its internal labor market, establishing a structured system for seniority and promotions within the division.

Overall, the accord is an example of antagonistic collaboration between electronics industry firms and a local NGO. Moreover, it is in part a result of a market response to the collective action problems caused by CEREAL-GDL to local firms. In this context, it is critical to highlight that in 2009, firms in Guadalajara launched a certification scheme to monitor employment agency hiring and operational practices. Could this lead to firm or industry-wide changes in employment practices, or is it a means for firms to further deflect criticism of their low-road labor practices?

³ Note that these results are not statistically significant given a small sample of cases. Yet, the trends are clear and are supported by CEREAL-GDL's experience working in this sector for over a decade.