

**Hypothetical Case for the
SIXTH ANNUAL INTER-AMERICAN HUMAN RIGHTS MOOT COURT
COMPETITION**

Pagura Workers' Union et al. Case

Alta Caledonia

I.

1. The State of Alta Caledonia is located to the north of Baja Caledonia, and is bounded on the east by the Pacific Ocean. It has a population of 40 million inhabitants. For the past 20 years, it has been governed by the Constitutional Party.
2. Like the rest of the countries in the region, Alta Caledonia has experienced a profound socioeconomic crisis which has produced a sharp increase in unemployment.
3. Armando Correa works in the Automac automobile factory in the city of Pagura, located in northern Alta Caledonia.
4. In November [2] ¹ 1999, Armando and 12 of his fellow workers began to demand that their employer improve working conditions after numerous workers suffered from intoxication, presumably caused by toxic materials used in the manufacturing process. The workers called for Automac to disclose the composition of these substances, and to provide its employees with protective gloves and boots, as well as equipment to protect their mouths and ears.
5. In view of the company's failure to respond, the workers filed a complaint on December 1, 1999 with the Arbitration and Conciliation Commission (CCA) of Pagura, which is the local public authority with jurisdiction over labor matters. In accordance with current regulations, the CCA is composed of representatives from the labor, business and government sectors. In proceedings before the CCA, the Automac workers requested information regarding the chemical composition and toxicity of the materials they handled, and the risks to which they were exposed. They also requested that, if the materials proved to be toxic, the company be ordered to adopt the appropriate safety measures.
6. The local CCA inspectors visited the factory on December 20, 1999 and took samples of the allegedly toxic materials.
7. The local CCA decided the claim one month later. It found, in general terms, that some of the substances used in the automotive manufacturing process could be toxic under certain handling circumstances. In its decision, the CCA declined to offer precise conclusions regarding the risks of the products examined. It asserted that, due to the fact

¹ Added after Questions and Answers period.

that they were dealing with chemicals that had only recently been placed on the market, its office did not possess sufficient technical resources to evaluate them definitively. The committee therefore ordered the company to adopt the safety measures that it deemed suitable for the prevention of possible harm to the workers. The company was advised that it would be subject to a fine and closure of its plant if it failed to comply.

8. Armando, dissatisfied with the CCA's response to the workers' petition, filed an *accion de tutela*" [this is a simple and prompt recourse within the terms of article 25 of the American Convention on Human Rights] on behalf of himself and his co-workers for the purpose of obtaining the required information regarding the production materials. He maintained in his claim that neither the company nor the CCA had provided the employees with sufficient information on the risks to which they were exposed by working in the plant, and that, consequently, the possibility that the danger of intoxication was real could not be eliminated. Furthermore, he requested that the manufacturers of the chemical products be required to disclose all of the information in their possession regarding the risks of handling the chemicals.

9. The judge rejected the workers' claim, finding that CCA's response was sufficient, considering the technical difficulties involved in conducting the chemical analyses. She added that the hazardous nature of the materials used in the manufacturing process had not been proven as a certainty. Likewise, she held that the CCA's order requiring the company to adopt appropriate safety measures was a sufficient guarantee of the workers' health, since the company would be liable for any damages. The judge also rejected the claim relating to the workers' request for information from the chemical manufacturers. The Court of Appeals upheld the judge's findings, and the Supreme Court affirmed the appellate decision on April 2, 2000.

II.

10. Several days after presenting their case before the CCA, the workers decided to organize a union and call for the company to negotiate a collective bargaining agreement that would cover safety and hygiene of working conditions, as well as a wage increase, occupational classifications, profit-sharing and the right of access to information. They decided to form the Pagura Workers' Union (UTP), and they registered the union with the CCA. Armando was the designated union representative.

11. Under Alta Caledonia's legislation, all workers' groups which fulfill certain requirements can register as labor unions, and thus obtain legal personality. Nevertheless, only those registered unions which also have bargaining agent status possess the legal capacity to enter into collective bargaining agreements and legitimately declare strikes.

12. Bargaining agent status is granted to trade-unions in Alta Caledonia by the national CCA, which is the highest administrative authority in this matter. An *ad hoc* committee of the national CCA evaluates the applications of registered unions and grants

bargaining agent status to that union which, consistent with the text of the relevant law, “proves to be the most representative of the sector.”

13. Although only the majority union has bargaining agent status, any legally registered union may challenge that union’s rights if it demonstrates to the CCA that it has acquired the representation of the majority of the company’s employees. The regulations indicate that, in order to evaluate a union’s level of representation, the following shall be considered: (a) the union’s continuous and immediate activity prior to its petition for certification as the majority union; (b) the number of members in the organization; (c) the results obtained in a workplace union representation election; and (d) its homogenous distribution among the different sectors of the company in question.

14. All unions with legal personality may also associate with other such unions in national confederations, without altering in any way the individual powers of each union, for the purpose of jointly articulating their policies of action.

15. When Armando informed the Director of the plant that the workers wished to negotiate a collective bargaining agreement, the Director told him that such an agreement already existed, having been recently negotiated with the Pagura Skilled Workers’ Union (UTO). This union is affiliated with the General Labor Confederation of Alta Caledonia, traditionally aligned with the Constitutional Party. Neither Armando nor his co-workers had been aware of the collective bargaining agreement’s existence; nor did they know any of the officers or members of the UTO.

16. In view of the situation, Armando, as representative of the UTP, requested the CCA’s authorization to hold a union election at the factory in which all of the employees would participate in order to settle the question of union representation. The CCA granted the request, and scheduled a date and time for the election.

17. Three days prior to the election, the employer hired 20 new workers who, together with the management personnel (another 20 people) voted in the election, even though this was expressly prohibited by national labor laws.²

18. The election was held on January 15, 2000. The UTO and the UTP were the only participants. Despite the aforementioned irregularities, Armando’s charisma helped the UTP easily to win the election with 67% of the votes, compared to 30% in favor of the UTO. 3% of the ballots were blank votes. Of the 605 employees who were eligible to vote, 574 actually voted.

19. Nevertheless, the CCA resolved on January 27, 2000 that the UTP had not demonstrated that it represented the majority of the workers at the plant. The CCA stated in its resolution that the vote demonstrated only the “sympathy” of the workers with the

² The state's legislation prohibits workers who are hired within a week prior to elections from participating in the elections. It also prohibits management personnel from voting. (Added after Questions and Answers period).

UTP at that particular moment, and that this circumstance was insufficient to demonstrate the sustained representation of the majority of the workers. The committee emphasized that the UTO had been the plant's representative union for the past 50 years, during which time it had participated in the General Labor Confederation of Alta Caledonia. The CCA also stated that, at the time of the election, the UTO had 130 members at the plant, which was three more than the UTP had. It further noted that some employees had not voted, and that the UTP was a newly-formed union which did not participate in any national confederation. As such, the CCA refused to certify the UTP as the representative authorized to negotiate the collective bargaining agreement, and continued to recognize the UTO as the workers' representative.

20. According to the labor laws, the UTP cannot again petition to be certified as the majority union until two years have elapsed from the time the CCA's decision was issued.

21. In his capacity as UTP representative, Armando challenged the CCA's decision before the labor court.

22. The Pagura labor court judge upheld the CCA's decision, and the Court of Appeals affirmed the labor court judge's decision. The appellate court upheld the validity of the CCA's decision by underscoring that the labor union system in Alta Caledonia was "characterized by a plurality of associations and the unity of its representation." The Supreme Court affirmed the appellate court's decision on March 30, 2000.

III.

23. On February 3, 2000, Armando and his 12 colleagues initiated a strike as a sign of protest against the CCA's January 27th decision denying the petition to recognize the UTP's bargaining agent status. During the demonstrations that accompanied the protest, certain property of the company was destroyed.

24. [The same day,]³ the strike was declared illegal by the Ministry of Labor. The next day, Automac fired the 13 striking workers, including Armando, in spite of the fact that he was registered with the CCA as a representative of the UTP. The employer alleged that the strike was illegitimate, that all of the union's complaints were unfounded, and therefore that the dismissals were justified.

25. Armando and his co-workers petitioned the labor court for their immediate reinstatement to the company. They maintained that the dismissals were contrary to the free exercise of trade union rights, and that the UTP strike could not be considered illegal since it is essential for a labor union to be able to manifest its grievances by exercising the right to strike, particularly during the union's formative stages. They further alleged that, in Armando's case, his rights as the representative of a trade union had been denied.

³ Added after Questions and Answers period.

The labor court of first instance and the Appellate Court, citing the unanimous jurisprudence of the superior courts and the Supreme Court, rejected the petition. The decisions held that only legally authorized unions may declare strikes, and that, “participation in an illegal strike constitutes just cause for dismissal.” The decision was affirmed by the Supreme Court on March 24, 2000.

Proceedings before the Inter-American Commission on Human Rights (IACHR)

26. On April 7, 2000, the 13 workers submitted a complaint to the IACHR. Armando Correa presented the complaint in his own name and in his capacity of union officer representing the Pagura Workers’ Union. The other 12 employees also complained as injured parties. The petition alleged that the State of Alta Caledonia had violated articles XI and XIV (para. 1) of the American Declaration of the Rights and Duties of Man; articles 8, 13, 16, and 25 of the American Convention on Human Rights; and article 8 of the “Protocol of San Salvador” with respect to:

- the denial of the petition made by Armando and his co-workers to obtain information relative to the chemical composition and toxicity of the materials used in the automotive manufacturing process, and the accompanying risks;
- the failure to recognize the Pagura Workers’ Union as the majority union and to grant it the corresponding bargaining agent status; and
- the dismissal and subsequent denial of reinstatement of the 13 workers.

27. In a Report adopted in July 2000, the Commission declared the case admissible and placed itself at the disposal of the parties with a view to reaching a friendly settlement. The attempts at friendly settlement were not successful, and on October 10, 2000, the Commission adopted a Report according to the terms of article 50 of the American Convention. In its Report, the Commission found that the acts denounced by the petitioners were in violation of articles XI and XIV (para. 1) of the American Declaration of the Rights and Duties of Man; articles 8, 13, 16, and 25 of the American Convention on Human Rights; and article 8 of the “Protocol of San Salvador”.

Proceedings before the Inter-American Court of Human Rights

28. On January 10, 2001 the Commission referred the case of *Pagura Workers’ Union and Others* to the Inter-American Court of Human Rights. On February 5, 2001 the Court notified the State of Alta Caledonia of the filing of the Commission’s application with the Court. In its application, the Commission alleged the same violations as those found in its Article 50 Report.

29. The Inter-American Court has scheduled a hearing for oral arguments on the preliminary objections of the State and on the merits of the case.

Relevant Instruments

Alta Caledonia is a State party to the following treaties:

1. The Charter of the Organization of American States, ratified in 1965.
2. The American Convention on Human Rights, ratified in 1972 without reservations; declaration of acceptance of the contentious jurisdiction of the Inter-American Court of Human Rights, deposited in 1979, without reservations.
3. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador", ratified in 1993, without reservations.
4. International Covenant on Economic, Social and Cultural Rights, ratified without reservations in 1986.
5. International Covenant on Civil and Political Rights, ratified without reservations in 1986.
6. International Labor Organization Conventions 87 and 98.

The new Regulations of the Commission and Rules of the Court apply in this case.