



CAO Conclusion Report - Harmon Hall-01/Mexico

This report summarizes CAO's dispute resolution process in relation the IFC-supported Harmon Hall English Language Schools in Mexico.

BACKGROUND

The IFC investment

Harmon Hall is a chain of English Language schools in Mexico with a network of 101 schools. Harmon Hall is an IFC client, and is 60 percent owned by Nexxus Capital Private Equity Fund III L.P (Nexxus), a private equity fund that targets investments in middle-market Mexican companies, and is in turn an IFC client. Nexxus' share of the company was acquired in April 2008.

IFC provided an equity investment to Harmon Hall consisting of two components: (i) the purchase of the founding shareholders' shares; and (ii) a capital increase to finance the company's expansion plans for an 18 month period. IFC provided a US\$7.9 million direct equity investment. The project was approved in July 2010 and is classified as a Category B project.

The complaint

In December 2011, CAO received a complaint from a former teacher at Harmon Hall. Following correspondence with the first complainant, CAO received further information and complaints from eight other complainants. In the course of CAO's engagement with Harmon Hall, the total complaint count rose to 17, as additional teachers came forward. About half of the complainants were currently employed by Harmon Hall and another half were former employees.

The complainants raised concerns regarding employment rights, benefits, compensation, and fair and respectful treatment for workers employed by Harmon Hall. Specifically, the complainants contend that working conditions, wages, and working hours are contrary to Mexican employment law and regulations. The

vast majority of the complainants requested for their identities to remain confidential.

CAO ASSESSMENT

After determining the case eligible, CAO began an assessment of the complaint in February 2012. The purpose of the assessment process is to clarify the issues and concerns raised by the complainants and to help the parties determine whether and how they might be able to resolve the issues in the complaint. CAO does not gather information in order to make a judgment on the merits of the complaint.

To start the assessment process, a CAO team travelled to Mexico to meet with the complainants, Harmon Hall and Nexxus representatives. Private and confidential telephone conversations and face-to-face meetings were held with 17 teachers from three schools in two cities, as well as with some of the schools' administrative staff.

The assessment trip was followed by a series of separate conversations about the teachers' concerns and possible management responses, both with management and individual complainants. This "shuttle diplomacy" approach was necessary to protect the identities of teachers who had requested confidentiality.

DISPUTE RESOLUTION PROCESS

CAO initiated a dispute resolution process as both the complainants and management agreed to work with CAO in a collaborative process. Both complainants and management agreed that remedial actions would need to address the following **systemic areas of concern**:

- Respectful treatment: The need for teachers to be treated professionally and with respect by school management.
- Teachers' role and work program: Clarification around exact delineation of the teachers' roles and responsibilities.
- Clarification of which teachers' tasks are compensated by the hour: The need for clarity on what tasks, e.g. sales activities or administrative tasks, teachers will be compensated for.
- Contracts: That teachers should be provided copies of their employment contract and that contract renewals be conducted in a fair and transparent manner.
- Moving from self-employed ('asimilados') to employee ('nomina') status: Concerns about the company's use of self employment, or 'asimilados' contracts, questions about the legality of this process under Mexican Labor Law, and the need for clear guidelines as to when and how teachers move from the 'asimilados' status to employee or 'nomina' status with access to benefits.
- Wage levels: A sense of erosion of wages and benefits over several years. Some teachers expressed frustration about not having received a raise for three years despite inflation.
- Availability of information and effectiveness of communication: The need to clarify and provide access to information about teachers' entitlements and obligations, including how bonuses and social security is calculated, and more transparency in management decision making processes.
- Grievance mechanism: Teachers fearing possible reprisal (e.g. fewer classes being assigned) for bringing up concerns with school directors.

Individual cases

In addition to the above systemic concerns, several of the complainants had individual, more personal concerns that required further explanation or action. In some cases, the company's newly available ombudsman service, contracted through an external provider, offered an adequate avenue for addressing such concerns. In other cases, CAO brought company and complainants together through a mediated dialogue.

Nature of engagement

Due to the complainants' request for confidentiality, joint meetings between management and complainants were not possible. Hence, CAO continued with a shuttle diplomacy approach to seek outcomes for key areas of concerns that were mutually satisfactory to the parties.

Monitoring phase

After the remedial actions document was substantively finalized in June 2012, the CAO team stayed involved monitoring implementation of agreed items for an additional 11 months, while in parallel addressing individual concerns that teachers had raised.

DISPUTE RESOLUTION OUTCOMES

The CAO convened process led both to a series of systemic management actions by Harmon Hall in response to the complainants' concerns and to some positive outcomes resulting from individual concerns.

Systemic changes implemented by the company include: targeted training of its staff; the development of job descriptions; class assignment methodologies; making available information materials; and strengthening the company's complaints response. These actions are summarized in Table 1 below. The full remedial actions document is available on CAO's website, www.cao-ombudsman.org.

Table 1: Summary of Remedial Actions

ISSUE	REMEDIAL ACTION
Respectful treatment	<ul style="list-style-type: none"> • A web training program on communication for directors, academic coordinators, teacher trainers and master teachers.
Teachers' role and work program	<ul style="list-style-type: none"> • Redefined teachers' job descriptions in order to maintain a greater degree of transparency and to ensure that employees understand what is, and is not, required of them.
Clarification of which teachers' tasks are compensated by the hour	<ul style="list-style-type: none"> • Teachers will be compensated for extra help sessions whenever an established validation system is adhered to. • An additional half hour (per course taught) will be paid to cover administrative tasks. • No compensation for time taken for teacher training/tests, however such tests should directly translate into professional development opportunities, such as the ability to teach more advanced classes, and higher earnings potential. • Discounts given to teachers for taking TOEFL (Test of English as a Foreign Language) tests, an employment requirement.
Contracts	<ul style="list-style-type: none"> • All employees were provided with a copy of their employment contract.
Moving from self-employed ('asimilados') to employee ('nomina') status	<ul style="list-style-type: none"> • Management's strategy is to employ as many teachers as possible on "nomima" rather than "asimilados" contracts. A policy to this effect has been implemented and communicated to teachers.
Wage levels	<ul style="list-style-type: none"> • Management clarified its aim to ensure teachers receive four to ten times Mexico's daily minimum wage. Wages will be strictly aligned with a transparent matrix that links individual teacher wage levels to the levels of classes taught, performance, and class levels to relevant qualifications (a combination of training and tests taken and relevant experience). Subsequently, the wage level will be inflation-linked when the market benchmark allows.
Availability of information and effectiveness of communication	<ul style="list-style-type: none"> • Management acknowledged the need for greater sensitivity when implementing and announcing changes. • Clarification of the calculation and payment of teachers' social security contributions via a direct communication to staff.
Grievance Mechanism	<ul style="list-style-type: none"> • To provide an independent mechanism for receiving and addressing any future employee concerns, management initially hired a third-party ombudsman service provider. In February 2013, this was replaced by a strengthened internal complaints response. • In addition, a class assignment methodology has been released for application in all schools: how classes were assigned had been a significant source of anxiety among teachers.

Over the past year, the complainants, specifically current teachers, have commented that they have seen some real improvements with respect to the concerns that they had raised. They have expressed caution, however, hoping that changes will be implemented across the board, and last beyond the involvement of CAO.

Outcomes of individual cases

The individual concerns were addressed either through the company's new grievance mechanism, or via CAO-convened mediation that led to a resolution of complaints in all but two cases.

Ending employment: Three of these individual cases related to the way the employment relationship had ended:

- One case was resolved in mediation to the complainant's satisfaction as a former teacher and the management member who had overseen the end of his working relationship had an open discussion about what happened, and about sources of miscommunication in the course of the transaction.
- In another case, an employee leaving the company was concerned that he would receive all the benefits due to him upon departure. The case was resolved after initial miscommunication was removed and the teacher received his due benefits. Learning from the experience, and to build trust, the company is adjusting their standard forms to make explicit their commitment to pay all the benefits that are due to the outgoing employee.
- A third case related to a dispute between a former teacher and management about whether the adequate amount was paid out as the employment relationship ended. This was an ongoing court case, which the parties attempted to resolve through CAO-mediated dialogue. During the mediation process, both parties could not reach an amicable agreement and they resolved to continue having the case addressed in the Mexican courts.

Cases handled by the company's ombudsman service: Two cases came to CAO after CAO's assessment phase was concluded, and after there was broad agreement on the remedial actions document. These cases related to individual concerns at two different schools, both about how classes were assigned and about respectful treatment of teachers. The complainants channeled their concerns through the company's newly hired external ombudsman service and they were resolved through this service to the complainants' satisfaction.

Questions about the company's social security contributions and other benefits: One current teacher raised concerns about the way that social security contributions were calculated by the company and paid to the Mexican authorities. The company reviewed the claim and clarified the process of calculating the social security contributions. However, the company did not accept liability for inaccurate payout by the Mexican authorities. The teacher expressed her satisfaction with the company's explanation and findings; hence the case was successfully resolved.

Case of a former employee: One former employee contacted CAO with a range of concerns about the company's past, particularly the legality of the actions of its former owners. Upon being presented with the process options open to complainants, the complainant did not choose to participate in the dispute resolution process. As a result, the case will be transferred to the CAO's Compliance function for appraisal.

Next steps

CAO's dispute resolution function is concluding its involvement in this case. The complaint as it relates to the two unresolved cases – one relating to employee benefits at the end of the employment relationship, and one relating to past actions of the company - will be transferred to CAO's compliance function for appraisal of IFC's role. This is standard practice as per CAO's Operational Guidelines

for complaints that are not amenable to, or cannot be resolved through, dispute resolution.

LESSONS AND INSIGHTS

Some key outcomes were achieved through the process with the parties, and the case also yielded some valuable lessons and insights, in particular related to the constraints of a “shuttle diplomacy” approach to facilitate dialogue between the parties.

Constraints of “shuttle diplomacy”

Building trust and relationships through direct interaction is typically at the heart of sustainable mediation outcomes where the parties will have an ongoing relationship.

In this case, however, direct interactions were not possible in the majority of cases, as the level of trust between teachers and management was so low that the complainant teachers continued to request confidentiality throughout CAO’s involvement in the process. This made it impossible for CAO to convene any direct dialogue between company management and the complainants, and CAO relied entirely on shuttle diplomacy and one-on-one dialogue with different complainants in handling this case.

The use of shuttle diplomacy did not only pose logistical challenges, it also meant that the parties could not build trust directly through listening to the other side’s point of view, and understanding what motivated their actions.

Advantages of strengthening grievance redress at the company

To help the parties address any future concerns in a mutually satisfactory way, the company initially hired an external and confidential ombudsman service for its staff to use. The complainants who used the service were satisfied that the service addressed their needs.

In February 2013, however, the company discontinued the service, opting instead to strengthen its own employee grievance mechanism, modeled on the company’s external client grievance mechanism. Complaints or concerns now go directly to its quality assurance function, and are copied to Nexxus, the main shareholder. The company reports wide use of the mechanism.

Further, the company has attempted to address some of the most common causes of mistrust and conflict by setting up methodologies for class assignments, and strengthening the network of academic coordinators to act as a trusted go-to for teachers with any concerns.

Trust and relationship building, however, are likely to remain a management challenge going forward that will continue to require concerted efforts on the part of the company.