



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT
re EMPRESAS T&M (DOMINICAN REPUBLIC)**

FINDINGS, RECOMMENDATIONS, AND STATUS REPORT

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Introduction

[Prior to reviewing this report, please read an important letter of clarification from the Worker Rights Consortium, available [here](#)¹.]

This is a report of a Worker Rights Consortium (WRC) labor rights assessment of Empresas T&M, an apparel manufacturing company in the Santiago Free Trade Zone in the Dominican Republic. The factory produces school uniforms for Halpern's School Uniforms, among other apparel products. These Halpern's uniforms are worn by students in several of the Catholic District School Boards that are members of the WRC's Ontario Catholic School Boards Affiliate.

This assessment was carried out as part of a WRC project to assist with the implementation and enforcement of the anti-sweatshop purchasing policies of a group of eight Catholic District School Boards in the province of Ontario, known as the Ontario Catholic School Boards Affiliate. The WRC made the decision to initiate an assessment at Empresas T&M after initial research indicated a likelihood of violations at the facility in several areas.

The investigation has consisted of the following: (i) off-site interviews with factory workers, conducted at random, during the period of February 15 – April 15; (ii) on-site interviews with managers and line supervisors, a review of factory records and written policies, and an occupational health and safety audit on March 2; (iii) the presentation of the WRC's findings and recommendations to factory management in late March; and (iv) follow-up dialogue with factory management regarding the recommended remedial actions during April and May.

The investigation identified a number of violations of the provisions of applicable labor rights procurement policies and of domestic law. Violations were documented in the areas of legally mandated terminal compensation and leave, occupational health and safety, overtime, and freedom of association.

Factory management was cooperative during the assessment process and agreed to take steps to address many, though not all, of the instances of non-compliance in each area.

The WRC will continue to monitor the situation at Empresas T&M, in order to verify the execution of commitments made by the company, to address any new issues that arise, and to press for full remediation in areas where management has not yet agreed to take all necessary steps. Subsequent reports will be issued as necessary.

The fact that this is the first completed WRC assessment at a facility producing uniforms for the Ontario Catholic Affiliate should not be taken to convey that the Empresas T&M factory is, by comparative standards, a particularly poor facility. The violations documented are, unfortunately, commonplace features of the global apparel industry.

¹ <http://www.workersrights.org/Freports/Letter to Ontario Catholic Affiliate 10-15-07.pdf>

Sources of Evidence

The findings presented in this report are based on the following sources of evidence:

- On-site interviews with senior managers
- On-site interviews with several line supervisors
- Off-site interviews with twenty-five Empresas T&M workers
- Review of factory documentation, including personnel policies, employment contracts, severance forms, and disciplinary records
- A factory walk-through and laboratory tests on occupational health and safety issues

Findings, Recommendations, and Status Report

The following sections outline the WRC's findings and associated recommendations for remedial action, as well as the status of remedial efforts, in each of the four areas where violations were identified.

1) Non-payment in full of legally mandated terminal compensation and leave

Findings

Dominican law requires that workers be paid severance and accumulated benefits upon termination of their employment. The WRC's review of factory payroll records revealed that Empresas T&M carries out a mass dismissal of production employees each year during the month of December; the workers are then re-employed the following January. Management confirmed this practice during the on-site interview. Workers are provided terminal compensation at the time of dismissal as if they had been employed at the facility for less than a year, although, according to management, most employees have been employed for substantially longer. As a result of this practice, the facility has paid employees less than the legal minimum in severance and accrued vacation pay.

Article 80 of the Dominican Labor Code establishes the following schedule for the payment of severance:

- For workers who have worked continuously for no less than three months, but no more than six months: six days of ordinary salary
- For workers who have worked continuously for not less than six months, but no more than a year: thirteen days of ordinary salary
- For workers who have performed no less than one year of service, but no more than five years of service: twenty-one days of ordinary salary for each year of service
- For workers who have performed more than five years of continuous service: twenty-three days of ordinary salary for each year of service

The documents reviewed during the compliance audit indicated that workers are paid annual severance each year during the course of their employment but are paid, each time, as if they had each worked for less than one year; per the schedule above, they are paid thirteen days of ordinary salary. However, most workers have worked for more than a year and a substantial number have worked for more than five years. As a result of the annual liquidation practice, by the time they leave the factory for good, workers employed for more than a year but less than five years are paid seven days per year of service less than they are entitled by law. Workers who have worked at the facility for more than five years are paid nine days per year of service less than the law requires.

The cumulative effect of the practice is substantial. One worker whose file was reviewed during the on-site review of records had been employed at the facility in 1989. As a result of being liquidated on an annual basis, as if she worked at the facility for fewer than twelve months each

time, we can estimate the worker would be underpaid in severance roughly 165 days of ordinary salary if she were to be dismissed as of the time of this investigation.²

The practice of annual liquidation has similar implications for the payment of accumulated vacation pay. Articles 177 – 180 of the Dominican labor Code sets out the following requirements for the provision of vacation days to workers:

- For workers who have performed less than a year of service continuously, vacation days are to be provided according to the following schedule:
 - More than five months: six days
 - More than six months: seven days
 - More than seven months: eight days
 - More than eight months: nine days
 - More than nine months: ten days
 - More than ten months: eleven days
 - More than eleven months: twelve days
- For workers who have worked continuously for no less than one year, but no more than five years: fourteen days per year of service
- For workers who have worked continuously for more than five years: eighteen days per year of service

Workers at Empresas T&M are generally provided vacation days and paid for unused vacation days as if they have been employed for just over eleven months. However, as noted, most workers have been employed for more than a year and a substantial number have been employed for more than five years. Those who have been employed for more than a year have been underpaid for unused vacation days at a rate of two days per year; those who have worked five years have been underpaid for unused vacation days at a rate of six days per year. As in the case of severance, the cumulative effect is that workers are underpaid for weeks, or in some cases, months, of unused vacation days.

Recommendations

The WRC recommended that Empresas T&M undertake the following remedial actions with respect to this issue:

- Cease the practice of annual liquidation and instead pay all legally mandated terminal compensation (including severance, unused vacation days, and other accrued benefits) upon the actual departure date of the worker from the facility.

² This individual's employment file included documentation showing an initial start date of August 4, 1989. However, the employee file included severance forms for only 1999 – 2006; thus the documents don't establish that she was employed continuously between 1989 and 1999. It is possible she left and returned to the facility during this period. Assuming the worker was employed continuously only from 1999 – 2006, the worker would have been cumulatively underpaid by an amount equal to 72 days of ordinary salary.

- Provide retroactive payment to workers at the time of their actual departure from the factory for unpaid accumulated severance and vacation pay resulting from the historical practice of annual liquidation.

Company Response and Further Developments

While acknowledging some of the problems associated with this practice, factory management expressed that this issue is difficult to address because it has been the norm in the garment and textile industry for many years and it has come to be expected by the workforce. Management reported that some efforts – in which T&M management participated – have been taken in recent years to address the issue in a zone-wide manner, but these efforts have failed. Management stated that it would like to abolish the practice – in part due to its own financial considerations – but that it believed it could not do so on its own, given the norms in the industry and peer pressure among factories. In light of these concerns, the WRC recommended as an interim step that the factory give workers the choice of whether to be severed annually or at the end of their employment at the facility. Management ultimately responded positively, indicating that it will give workers such a choice at the end of the calendar year.

With respect to the retroactive payment of unpaid terminal compensation, management requested additional time to consider the issue and expressed that it believed legislation by the Dominican legislature addressing the issue would likely be forthcoming, which might alter the responsibility of employers throughout the country. Since a change in policy would not have a significant impact on the workforce until the end of the calendar year, the WRC agreed to revisit the issue with management in the fall. During the summer, the Dominican Congress did issue a new law on the issue of annual liquidation. The law, enacted July 18, 2007, amounts essentially to amnesty for employers that have practiced annual liquidation for all terminal compensation owed to workers up until January 1, 2005. The law states “The employers that paid employee benefits annually to their workers are free from all civil or employment-based responsibility with respect to years of service for their employees until the first of January 2005.” The language of the legislation makes clear that the reason for its enactment is the “economic crisis that has affected the country since 2002” and the need for the “preservation of sources of employment and conservation of jobs.”

In the WRC’s view, it is unfortunate that the Dominican Republic has enacted legislation retroactively absolving employers of long-standing legal and financial obligations to their workers. The new law does not, in our view, alter the obligations of employers under applicable codes of conduct and anti-sweatshop policies to pay workers the amount they are due as a result of years of illegal annual liquidation. However, given the fact that the law now exists, chances are minimal that Empresas T&M can be compelled to provide unpaid terminal compensation and vacation days based on work performed at the factory prior to 2005. The WRC will continue to recommend that Empresas T&M provide back pay relative to obligations incurred after January 1, 2005, and will pursue further discussions with factory management on this issue in view of the recent legislative change.

Going forward, the WRC will conduct follow-up monitoring to ensure that workers are given a choice as to whether to be liquidated at the end of the year, and that workers who choose not to

be liquidated are provided with vacation days and eventual terminal compensation at a rate commensurate with each employee's length of employment at the factory post-2004.

2) Occupational Health and Safety

Findings

The WRC's compliance assessment identified the following problems with respect to occupational health and safety (OHS):

- *Drinking water does not meet potable water standards:* The WRC commissioned a laboratory test of water samples taken from two of the facility's drinking fountains. The samples were analyzed by an independent Santiago laboratory, Garcia y Garcia. In the case of one of the two samples, the test found excessive levels of aerobic microbacteria; the levels found were 4.7 times normal values. The laboratory concluded that "the water is not fit for human consumption."

The issue of water quality was also identified in interviews with workers. Several workers commented that the drinking fountain water is poor and that they are afraid to drink it, and that they therefore feel the need to purchase bags of water which are sold at or outside of the facility. During the factory inspection, it was noted that, in addition to the drinking fountains, large thermoses of bottled water were available to workers in the production rooms on the day of the visit. While the reason for the provision of bottled water may have been related to the quality of the water of the drinking fountains, if the thermoses are not always available and/or workers have not been instructed to refrain from using the drinking fountains, this is not an adequate solution to the issue.

- *Lack of toilet paper and soap in restrooms:* During the factory inspection, it was observed that the facility's restrooms lacked both toilet paper and soap. This was the case for each of the four restrooms checked. Worker interviews revealed that the lack of proper hygienic materials is a major concern of workers and a persistent problem. Workers stated that the restrooms are usually stocked only once during the week – typically at the beginning of the week – and are seldom restocked when the materials are exhausted during the week. As a result, workers reported that they have to bring their own toilet paper to work. Few workers bring soap to the workplace, and even if some do, it is a clear health hazard for any workers not to have access to disinfectants prior to returning to work.
- *Unsecured elevator:* During the inspection it was observed that a cage elevator lacked a guard or other proper apparatus to secure materials during movement. The elevator was located in an area in which falling objects could potentially hit workers operating the elevator or individuals nearby. Prior to the factory walk-through, factory management indicated that it is aware of the problem and that plans are underway to install a proper railing or guard.

The WRC's OHS review indicated that the facility has strong labor rights compliance in a number of areas: the facility has a credentialed health and safety officer and maintains a

physician on-site, proper records are kept of workplace injuries, and the first-aid kits are well-stocked.

Recommendations

The WRC recommended that T&M undertake the following remedial actions with respect to occupational health and safety:

- *Regarding drinking water:* Take each of the facility's drinking water fountains out of use. The fountains should remain out of use until proper filters are installed or other corrective actions are completed, and tests indicate that the water provided by each fountain is safe. Given that the factory is located in one of the oldest buildings in the free trade zone, and given that some of the drinking fountains themselves appeared to be very old, it is possible that significant renovations will be necessary. In the meantime, the facility should continue to make water from other sources available to workers free of charge at all times.
- *Regarding restrooms:* Stock each restroom facility with toilet paper and soap at all times. The WRC recommended a system in which the responsibility for maintaining supplies is delegated to a specific person whose job description includes this task as a priority. Also, storage facilities should be accessible so that workers can quickly obtain the needed materials if they are missing at a given time.
- *Regarding the unsecured elevator:* A guard or door should be installed in the elevator immediately.

Company Response

In response to the above recommendations, factory management made the following commitments or reported the following actions in this area:

- *Regarding drinking water:* Management reported that it undertook activities to clean all of the facility's drinking fountains and installations, and in one case replaced a fountain. Management reported that new tests were carried out at each dispenser and all tests concluded that the water quality was acceptable. Management committed to continue regular testing and to keep all test results on file.
- *Regarding restrooms:* Management reported that it has taken new measures to monitor the dispensing of materials to ensure that paper and soap are replenished expediently and the facilities are kept in clean condition.
- *Regarding the unsecured elevator:* Management reported that the broken elevator was fixed and upgraded to a better mechanism to ensure worker safety.

3) Forced overtime

Findings

Applicable codes of conduct and procurement policies, as well as domestic law, require that all overtime performed by workers be voluntary.

Management acknowledged that this is the intended policy of the facility. However, evidence gathered during the assessment indicated that the performance of overtime is sometimes not voluntary at the Empresas T&M facility. Nearly half of the workers interviewed reported that they have felt pressured or have witnessed others being pressured to perform overtime or reprimanded for not performing overtime. A number of workers said that were aware of individuals who were called to the administration office in response to their electing not to perform overtime. Several workers said they were aware of cases in which individual workers were then kept under strict supervision and in some cases subsequently terminated for this reason. Some workers reported that they believed they would be fired if they refused to work overtime.

It appears that the use of pressure and reprimands to get workers to perform overtime was not universal. Roughly half of workers reported that they did not feel pressure. Thus, it appears that there are individual supervisors who were acting improperly in this area. It also bears noting that while some of the instances of pressured overtime reported by workers occurred in the weeks prior to the WRC's assessment, it appears that instances of forced overtime – and overtime work in general – were more prevalent twelve to eighteen months ago.

Additionally, the interviews conducted with supervisors indicated that the process by which workers' consent to perform overtime is sought does not adequately ensure that consent is voluntary. The supervisors interviewed described a process in which they announce to the workers in their module on a given day that there is overtime work to be done and that the workers then, collectively, make a decision regarding whether the entire module will perform the overtime. This process of group decision making, as described by the supervisors, does not adequately provide individual workers with the opportunity to say no. The supervisors and management also confirmed that there is no written document by which workers acknowledge that overtime work is being performed voluntarily; instead, the entire process is verbal. There is also no moment in which individual workers indicate their individual consent, even verbally. The strictly verbal and group-decision process creates pressure to perform overtime work, even in the absence of any overt pressure or threat conveyed by supervisors.

In discussing the issue of overtime with the WRC, management commented that it is the company's policy to avoid overtime and that overtime is typically only performed when the completion of an order in time for a shipping deadline is in jeopardy. This is consistent with the assessment's finding that overtime is performed less frequently at Empresas T&M than at other facilities in the region.

Recommendations

The WRC recommended that Empresas T&M undertake the following remedial actions with respect to the issue of voluntary overtime:

- Ensure that all supervisory and managerial personnel understand that it is the company's policy that all overtime work be performed on a strictly voluntary basis. It should be made clear that no worker should be the subject of reprisal for any decision he or she makes and that the decision to perform overtime is to be made by each worker individually, notwithstanding the desires of other workers in the module.
- Implement a policy by which workers signal their individual desire to perform overtime on each occasion in which it is offered by signing a written form. Training should be provided to supervisors on the implementation of such a policy.
- Issue a statement to the workforce, both verbally and in writing, explaining the company's policy on overtime and making it clear that workers have the right to decline to perform overtime work and will not suffer reprisal for any decision they make.

Company Response

In response to the above recommendations, factory management reported the following:

- The factory's human resources manager has conducted a reorientation meeting for all supervisors regarding the rights of workers in the area of overtime in which it was made clear to supervisors that they must never oblige workers to work overtime.
- The factory will institute a new procedure whereby any extra hours required after 6:30 pm on weeknights or past 12:00 pm on Saturdays shall be performed only with prior written acceptance by workers.

While ideally the factory would seek written consent from workers for all overtime worked, including overtime between 5:00 and 6:30 pm on weekdays, the WRC views the factory's stated new policy as an acceptable compromise. If implemented effectively, this procedure will serve as an additional check to ensure that any excessive overtime is performed voluntarily, while not burdening supervisors and managers with the task of seeking written permission when short amounts of overtime are requested. The WRC will continue to monitor the situation to ensure that these measures are implemented effectively and workers are free to decline overtime work.

4) Freedom of Association

Applicable codes of conduct and procurement policies, as well as domestic law, require that workers' right to freedom of association be respected. This includes the right to associate freely with trade unions.

In-depth off-site interviews with a substantial number of workers revealed there is pervasive fear among workers at Empresas T&M regarding the exercise of their associational rights, particularly with respect to association with a union. Workers feel, nearly universally, that employees who seek to join a trade union will be subjected to retaliation by factory management. Specifically, workers reported that they believed that any worker who sought to join a union would be fired.

The following are examples of representative quotes from worker interviews, in response to being asked what they believed would be the response of company management if they decided to join a union or participate in union activities: “There would be a negative response because they don’t like unions and if they found out that workers talked of a union they [the workers] would be fired.” “They would fire the workers because they don’t like unions; they say that unions are bad for workers.” “They would fire me and put me on a list so that I would not be able to find work in another factory.” Roughly 90% of the workers interviewed made statements along these lines. In explaining the reasons they believed workers would be subjected to retaliation for associating with a union, workers cited comments made by supervisors and suggested that it was common knowledge in the free trade zone that such a response would occur.³

It is important to recognize that the views of workers with respect to what they believe would be the response of their employer are shaped not only by their experience in their current workplace, but by their experiences with past employers and with the apparel sector at large. Thus, the supervisory staff at a given factory is not necessarily to blame for the fear workers may feel with respect to the exercise of associational rights. In this case, it does appear that some individual supervisors at Empresas T&M have made inappropriate comments to workers and potentially undertaken inappropriate actions with respect to the employment of individual workers. Yet, even in the absence of such actions, it would be incumbent upon the management of a supplier factory to create an environment in which workers can meaningfully exercise rights of association, should they choose to do so, and to ensure that the workforce is disabused of the view that any such effort by workers would be met with a negative response. In this case, Empresas T&M management confirmed that no training has thus far taken place with supervisory staff specifically regarding the topic of freedom of association, nor has the topic of freedom of association been specifically addressed in orientation for workers at the facility (although there is reference to freedom of association in the written company policy handbook).

Recommendations

The WRC recommended that Empresas T&M undertake the following actions with respect to the area of freedom of association. Note that the following recommendations refer to actions that would be appropriate as positive steps to take even in the absence of the finding of violations in this area, simply as proactive measures to ensure workers understand their associational rights:

³ Workers also referred to a specific incident, roughly two years ago, at one of the facilities affiliated with Empresas T&M in which a group of workers who had recently associated with a union were paid money in exchange for resigning from the factory. The alleged incident proved difficult to investigate in depth.

- Issue a statement to workers, both verbally and in writing, to the effect that the factory will respect the free choice of workers to associate with a union, or not associate with a union, and that no worker will be the subject of reprisal for any decision he or she makes. There should be an outside observer present during the issuance of the statement.
- Arrange for training for production and supervisory workers regarding workplace rights – with a special focus on freedom of association, among other issues – by a credible outside non-governmental organization with expertise in these issues.

Company Response

In response to the above recommendations, factory management agreed to make a statement to workers through the facility's public address system, reinforcing the company's policy on freedom of association, which is as follows:

We recognize and respect the legal right of Freedom of Association of the workers, including the affiliation or not, with any organization.

Management noted the company's policy has been conveyed previously, including through presentation in the employee's handbook and prior public announcements to the workforce. Given that these reported measures were not successful at conveying to workers that the right specifically to join a trade union would be respected at the facility, the WRC recommended that the factory issue a statement that specifically references the right to join a union. Management did not agree to do so, preferring to stick with the language of its existing written policy.

Management did not agree to an outside training process on freedom of association. The WRC agreed to defer discussion of the topic until a later date.

Since there is not, to the WRC's knowledge, presently any ongoing effort by workers in the factory to unionize – the occasion in which the specific content of messages sent by management to workers is of greatest import – the WRC did not press the issues of a revised statement or the training. As a practical matter, it is difficult to meaningfully remediate violations of workers' associational rights in the absence of an effort by workers to exercise these rights. For this reason, the WRC did not feel it was fruitful to pursue these matters with a reluctant management at this time. However, if in the future it becomes evident that there is interest on the part of workers in organizing a union at the facility, it will be imperative that management fully implement the steps recommended above. The WRC will continue to monitor the situation in order to ensure that these measures are taken if such a situation arises.