



WORKER RIGHTS CONSORTIUM

Interim Report: Worker Rights Consortium Inquiry into Allegations of Labor Rights Violations at Tarrant Ajalpan

September 15, 2003

Executive Summary

Overwhelming evidence, much of it not in dispute, supports the conclusion that Tarrant Ajalpan has violated Mexican law and the codes of conduct of its client brands and has done so in an unusually brazen fashion. The factory has illegally fired all of the leaders of a lawfully constituted worker movement, which was established to promote better working conditions at the facility and to organize an independent union. Tarrant Ajalpan has further illegally fired at least 150 other workers in a further attempt to prevent factory employees from exercising their associational rights. The situation at Tarrant Ajalpan threatens immediate and irreparable harm to workers; urgent action is necessary to prevent irreparable harm and end ongoing violations of worker rights. At a minimum, remediation must involve: 1) reinstatement, with back wages, of all fired worker-leaders, and all other workers fired since July 16; and 2) clear statements by factory management, written and verbal, to all employees, that workers at Tarrant Ajalpan have the right to join the union of their choice and that workers will not be punished or penalized in any way as a result of any choice they make in this regard.

Interim Report

The Worker Rights Consortium (WRC) is conducting an inquiry¹ into allegations of labor rights violations at Tarrant Ajalpan, a producer of denim clothing located in the town of Ajalpan in the State of Puebla in Mexico. The present document is an interim report on this inquiry, issued at this time because of the urgency of the crisis at this facility and because evidence identified to date is more than sufficient to warrant the conclusion that violations have occurred.

¹ This inquiry is preliminary to a formal investigation of Tarrant Ajalpan. The WRC has not determined whether to proceed with a formal investigation because we have not been able to confirm claims that Tarrant Ajalpan is engaged in the production of university logo merchandise. Because of the crisis situation at the factory, the WRC deemed it advisable to conduct an inquiry into the most urgent allegations without delay.

Tarrant Ajalpan is owned by Tarrant Apparel Group, a U.S. corporation, though Tarrant Apparel Group is apparently in the process of leasing this and other Mexican facilities to a business partner. Tarrant Apparel Group produces blue jeans for Levi Strauss, Tommy Hilfiger, Federated Department Stores, The Limited, Charming Shoppes/Lane Bryant, and Wet Seal, among other brands, and may also be a producer of university logo apparel (although this has not been confirmed). Prior to the events described below, Tarrant Ajalpan employed roughly 1,000 workers.

I. Complaint and Fact-Gathering

The WRC received a complaint from workers at Tarrant Ajalpan in August, alleging illegal firings of union leaders and supporters and additional violations of worker rights, including forced and uncompensated overtime, verbal abuse of employees and child labor. In response to this complaint, the WRC began a preliminary inquiry and conducted fact gathering in Puebla from August 20 through August 25. This fact-gathering involved interviews with twenty-four employees of the factory (including both employees who were recently fired and employees who are currently working at the facility), review of documentary records, an interview with the General Secretary of the government labor board in the City of Puebla², an interview with a representative of Tarrant Ajalpan management³, and review of relevant provisions of Mexican federal labor law. The WRC has focused, to date, on the allegations concerning illegal firings and related violations of associational rights, as these were the most urgent. Other allegations have not yet been assessed.

II. Background Events

The following is an outline of events that have taken place over the last twelve weeks at Tarrant Ajalpan and that are relevant to the allegations of labor rights violations. The facts listed in this section are not in dispute.

- On June 10, the majority of employees of Tarrant Ajalpan began a one-and-a-half day work stoppage (a “paro”) in protest of the factory’s non-payment of profit-sharing (“utilidades”) to workers (which is mandatory in Mexico for all profitable businesses that have been operating for more than one year) and other alleged violations of worker rights, including those allegations noted above.
- In response to the work stoppage, Tarrant Ajalpan management agreed to negotiate potential improvements in working conditions with a group of eight leaders, acting as a Comisión Negociadora (Negotiating Commission) on behalf of the large group of workers at the factory who participated in the stoppage and were seeking changes in working conditions. It is important to note that Mexican law explicitly authorizes the creation of such groups of workers for the purpose of

² Jorge Ramos Lobato, General Secretary of the Junta Local de Conciliación y Arbitraje in Puebla.

³ Lic. Alberto Guerrero Olivares, an attorney for Tarrant Ajalpan

“defense of their common interests” (Articles 354 and 355 of the Mexican Federal Labor Law [Ley Federal de Trabajo]).

- On July 8, an agreement was reached between the eight leaders on the Comisión Negociadora and Tarrant Ajalpan management; the agreement, which called for a variety of improvements in working conditions, was signed by both parties and by the government labor board in Tehuacán (the Junta Local de Conciliación y Arbitraje – henceforth “JLCA Tehuacán”), which is empowered to mediate such disputes.
- On July 12, the workers coalition held an assembly (an “asamblea”), attended by roughly 400 workers, at which the workers decided formally to exercise their legal right to form a labor union. By this point, it was public knowledge that the eight leaders were involved in an effort to organize a union.
- On July 16, the factory summarily fired all eight leaders, citing no specific reason for the dismissals.
- On August 5, the factory began to fire additional workers, firing a total of at least 150 over a period of two weeks, citing insufficient orders.
- On August 7, the newly formed union filed for recognition as a union with the JLCA in the city of Puebla (the Puebla JLCA is a more senior body than the JLCA in Tehuacán and has jurisdiction). The application is pending. Roughly seven hundred workers signed their names to this petition. The name of the new union is Sindicato Único Independiente de Trabajadores de la Empresa Tarrant México, henceforth “SUITTAR”.

III. Conclusions and Evidence

The complaint to the WRC alleged that the dismissals of the eight leaders, and of the much larger number of workers in August, were illegal. The WRC was able to reach preliminary conclusions with respect to these two allegations, which are outlined below.

The firing of eight leaders on July 16

Through its preliminary inquiry, the WRC identified overwhelming evidence that the firings of the eight leaders on July 16 violated Mexican law and therefore also violated the codes of conduct of Levi, Tommy Hilfiger and other firms buying from Tarrant Ajalpan. The firings violated Mexican law concerning termination of employees and the reasons and procedures under which such terminations can occur and Mexican law protecting workers’ associational rights.

Mexican law concerning termination of employees only allows termination of individual employees for specific justified causes having to do with the employee’s behavior or job

performance (Articles 46 through 52 of the Mexican Federal Labor Law). (As will be discussed later, dismissals are also allowed under certain circumstances for economic reasons, but this is not relevant to the situation of the eight leaders since the factory does not claim an economic justification for those dismissals.) When an employer wishes to fire an employee for cause, the employer is legally obligated to provide the employee with a written explanation of the justification for the dismissal. Section 15 of Article 47 of the law states that “The employer must inform the worker in writing of the date and cause or causes of the termination. ... The lack of a written notification to the worker or the board [referring to the JLCA] will alone be enough to consider the termination unjustified.” The dismissed workers uniformly testified, and Tarrant Ajalpan’s representative acknowledged, that no written explanation was provided to any of the dismissed workers. Thus, on the basis of these facts alone, none of which are in dispute, there is no question that these firings were illegal.

It should be noted that Tarrant Ajalpan offered severance payments to the eight workers in exchange for an agreement to resign “voluntarily.” Five of the workers refused to sign and were dismissed. Three workers accepted severance and signed a resignation agreement. The firings are nonetheless illegal in all eight cases. All of the workers were told that, if they did not resign and accept severance, they would be fired and get nothing. The three workers who resigned therefore did so under threat of illegal dismissal, rather than voluntarily, as the law requires.

The WRC identified strong evidence that Tarrant Ajalpan fired these eight leaders because of their efforts to advocate on behalf of the workers’ coalition and their efforts to organize a union. Therefore, in addition to violating Mexican law concerning termination of employees, these firings are also in violation of Article 9 of the Mexican Constitution which states that the right to freedom of association cannot be denied in any way and Articles 133, 357 and 358 of the Federal Labor Law, which provide further protections for associational rights. The timing of these eight terminations (which occurred simultaneously on July 16), the identity of the workers terminated (the entire leadership of the work stoppage and the Comisión Negociadora) and Tarrant’s failure to provide the workers with any justification for their termination, together constitute an overwhelming prima facie case that the terminations were related to the workers’ exercise of their associational rights. In addition, the WRC heard credible and mutually corroborative testimony from several workers currently employed at Tarrant that factory supervisors boasted after these dismissals that they were deserved punishment for the fired workers’ union activities.

In his interview with the WRC, Tarrant’s representative cited several different justifications for the firing of the eight leaders, all having to do with alleged misbehavior by the workers. Two of his allegations, even if true, would not have constituted grounds for dismissal under Mexican law. The third allegation, that the workers had refused to do their assigned work, was not supported by any evidence supplied by Tarrant and was contradicted by testimony from other workers in the facility. Thus, the only plausible conclusion is that the justifications offered were pretexts. In any event, as explained

above, since no justification was offered to workers at the time they were dismissed, the firings were illegal *regardless* of the motivations involved.

The firing of roughly 150 workers on August 5 and thereafter

Through its preliminary inquiry, the WRC also developed overwhelming evidence that these dismissals violated Mexican law and therefore also violated the codes of conduct of Levi, Tommy Hilfiger and other buyers. The firings violated Mexican law concerning termination of employees for economic reasons and Mexican law protecting associational rights.

The WRC heard credible and mutually corroborated testimony from workers that strongly supports the conclusion that these dismissals were motivated, at least in part, by anti-union animus on the part of management. This is a violation of the Mexican constitution and of statutory law, as noted above.

Specifically, workers testified that managers and supervisors made statements – during and after the August dismissals – that these dismissals were a punishment for, and were caused by, workers’ decision to form a union. Workers testified that these statements were made both to individual workers and in group meetings with managers which workers were required to attend. This testimony was consistent across all workers interviewed. It was highly specific and detailed as to the language used and the individual managers and supervisors making the statements. The statements cited in this testimony included the explicit and repeated assertion that workers were fired because of the union and that the workers who were fired got what they deserved. Workers also testified that threats were made prior to these dismissals – specifically, threats that workers who participated in the union *asamblea* would be fired. In addition, although the official reason given to most workers when they were fired was excess production relative to demand, several workers testified that they were told at the time of dismissal that their union activities were the reason why they, specifically, were terminated.

This testimony, the timing of the events, and the failure of the factory to follow legally mandated procedures for these dismissals (as described below), constitute convincing evidence that management’s purpose in dismissing these workers was, partially or wholly, to punish past union activity and discourage further unionization efforts.

These dismissals were also illegal in terms of the procedures employed. Even were management motivated solely by economic concerns, rather than anti-union animus, these firings would still be in violation of multiple provisions of Mexican labor law governing the procedure and the conditions for the termination of employees for economic reasons.

As noted above, Tarrant Ajalpan’s official justification for these dismissals, presented to workers at the time they were dismissed, was excess production relative to demand, and management’s resulting desire to trim the workforce. Mexican law, however, does not allow for the termination of employees on this basis. Article 434 of the Mexican Federal

Labor Law stipulates that termination of all or part of a workforce is only allowable in cases where the business faces circumstances so grave and irreversible as to make such terminations an absolute necessity (bankruptcy, the death of the owner, natural disaster, etc.). In cases of excess production, a business wishing to reduce payroll must place workers on *temporary* suspension, rather than dismiss them. Under temporary suspension, workers retain all of their employment rights and enjoy the legally enforceable right to return to work when economic circumstances improve (Articles 427 and 432). Tarrant Ajalpan's admitted reason for these terminations is itself therefore a violation of the law.

Mexican law requires that any partial termination or suspension be carried out in order of seniority (last hired, first terminated or suspended). The WRC has reviewed employment records of employees who have been dismissed and employees who remain in the factory. The evidence demonstrates that Tarrant Ajalpan has also ignored its legal obligations in this area (Articles 428 and 437).

Mexican law also sets forth detailed procedures that a business must follow if it wishes to suspend workers for economic reasons. Most importantly, the business must request and obtain the approval of the JLCA (the government labor board), prior to suspending the employees. The JLCA in Puebla confirmed, in an interview with the WRC, that Tarrant Ajalpan neither requested nor received this approval.

As in the cases of the eight leaders fired in July 16, the workers fired in August were offered the alternative of "voluntary" resignation with severance. Many accepted; some did not. The dismissals were illegal regardless of whether resignation forms were signed. As noted above, it is illegal for management to use threats of summary dismissal in order to compel workers to resign.

(It should also be noted, though it is of secondary importance, that the amount of severance paid by Tarrant Ajalpan to employees who agreed to resign was in many cases substantially less than the amount to which workers would have been legally entitled had the terminations been legitimate.)

IV. Remediation

At a minimum, remediation of the violations reviewed above requires immediate reinstatement of all Tarrant Ajalpan employees fired between July 16 and the present, with back wages. Reinstatement must be granted to employees regardless of whether they accepted severance at the time of their dismissal. It is appropriate for workers who did accept severance and are reinstated to repay this severance, but the terms of repayment must be negotiated with the workers' chosen representatives and must not place an unreasonable financial burden on any workers. In most cases, this will require repayment over a substantial period of time.

It is imperative that reinstatement be granted, and the terms negotiated, without delay. Workers, particularly those who resisted pressure to resign and therefore received no severance, are, along with their families, suffering severe economic hardship. We have received testimony, for example, that the children of some workers are unable to begin the school year because the workers have no money to pay fees and other costs. Delay in a case such as this threatens irreparable harm to workers and cannot be tolerated.

Unfortunately, despite the clear illegality of these dismissals, workers cannot rely on Mexican government authorities to mandate reinstatement or to do so in a timely fashion. The JLCA in Puebla, in response to a legal demand for reinstatement filed by the eight leaders, originally announced that, due to a backlog of cases, no consideration of the Tarrant Ajalpan case could be made until December of this year. Apparently due to the public scrutiny the case has generated, the JLCA recently found a space in its schedule and has announced a hearing for October 15 – a date that is still three months after the date of the firings. There is no indication that any concrete action will be taken in October and the track record of the JLCAs with respect to the enforcement of worker rights in these kinds of cases is extremely poor. Thus, if the workers are to be reinstated in a timely fashion and if irreparable harm is to be averted, the brands that do business with Tarrant Ajalpan will have to act to enforce their codes of conduct.

It is also important to understand that illegal firings of this type affect not just the workers who lose their jobs, but also those who remain employed. Such dismissals have a severe chilling effect on the entire workforce, sending a clear message that workers who exercise their associational rights are jeopardizing their jobs and the well-being of themselves and their families. Meaningful remediation, therefore, also requires measures to counteract this chilling effect. At a minimum, this requires that management provide written and verbal assurances to all workers, through public postings and announcements, that the factory respects the right of workers to make a free choice about unionization, that workers will face no penalty and no reward for the decision they make or for any legal union activity, and that any manager or supervisors who threatens or coerces a worker will face severe discipline. In addition, brands must closely monitor developments subsequent to reinstatement to make sure that coercive means are not employed to discourage unionization in the weeks and months ahead.

Finally, there has been some intimation by officials of a union known as the FROC-CROC that this union represents the workers at Tarrant Ajalpan and that there is a collective bargaining agreement in place. Different officials of the JLCAs in Puebla and Tehuacán have provided conflicting information as to whether this is the case. None of the employees interviewed by the WRC had ever heard of a union or a collective bargaining agreement at Tarrant Ajalpan, until recent comments made by the FROC-CROC in the midst of the current labor dispute. Workers' pay receipts confirm that no union dues have ever been deducted.

It is, unfortunately, not unusual in Mexico's system of government and company-controlled unions for workers to be officially "represented" by a union they have never heard of and whose officials they have never seen. Companies in some cases sign

contracts with unions before factories open, contracts which generally provide no remuneration, benefits or protections to workers beyond the minimum required by law and which workers never see. Although patently illegal, such practices are rarely questioned by the JLCAs. The problem of bogus unions being imposed on workers, and of government collusion in this process, is well documented and well known to all observers of the Mexican labor scene.

In the case of Tarrant Ajalpan, if there is a collective bargaining agreement, it was signed without the knowledge or consent of the workforce and is therefore illegal. The company, the FROC-CROC and/or the JLCAs may nonetheless seek to use such a contract as a basis for denying the Tarrant Ajalpan employees the right to be represented in negotiations with management by the SUITTAR union (the new union the workers have formed). It is also quite possible that the Puebla JLCA will reject SUITTAR's application for union recognition – although the law mandates approval of any application supported by the signatures of twenty or more employees. (In this case, the union submitted the names of roughly 700 employees.) It is therefore imperative that buyers make it clear to both Tarrant Ajalpan and the government of Puebla that they want to see Mexican labor law faithfully enforced and that the right of the workers to choose their own union must be respected.

V. The Response of Brands Sourcing from Tarrant Ajalpan

Prior to publication of this report, the WRC contacted two of the brands that have recently produced goods at Tarrant Ajalpan in order to make sure the brands were aware of the conflict and of the facts of the case and to determine what action, if any, they are taking. Levi Strauss and Tommy Hilfiger both stated that they knew of the alleged violations. Tommy Hilfiger, however, failed to provide any information concerning its response to the situation and the WRC is unaware of any constructive action this brand has taken.

Levi Strauss reported to the WRC that it has demanded of Tarrant Ajalpan's parent company that the factory cooperate with an investigation by a Levi-appointed third-party monitor and that the factory reinstate the eight fired leaders. According to Levi, the parent company refused these demands, despite being informed by Levi that this would preclude the continuation of their business relationship. On this basis, Levi reports that it has informed the parent company that no future orders will be forthcoming to Tarrant Ajalpan or any of its other production facilities.⁴

The SUITTAR union and non-governmental organizations in Mexico, Canada, the U.S. and Europe that are advocating on behalf of the fired workers have expressed concern that Levi was too hasty in deciding to sever ties with the factory – arguing that this approach does not resolve the problem of the fired workers and that Levi should not have

⁴ Specifically, Levi reports that Tarrant's parent company, after being informed that cooperation was essential if the business relationship were to continue, told Levi that, in view of this condition, they did not wish to continue producing for Levi.

decided to end the relationship without conducting its own on-site investigation and interviewing the fired workers. The WRC has learned that Levi, partly in response to these concerns, has agreed to take a number of additional steps, including sending a representative to meet with the fired workers, contacting other brands that buy from Tarrant Ajalpan to inform them of Levi's concerns and the actions it is taking, and writing to Mexican government officials to press for enforcement of Mexican law with respect to the cases of the fired workers and the associational rights of all Tarrant Ajalpan employees. Levi has also stated in conversations with the WRC that the company will continue to work on this case and would consider reinstatement of orders at Tarrant Ajalpan if the factory ends violations and implements proper remediation.

The WRC recognizes the strong position Levi has taken with Tarrant Ajalpan's parent company. Levi's communication to the Mexican government is also an important and constructive step. At the same time, we believe that Levi has a responsibility to do everything it can to end violations and repair the harm workers have suffered and that the present intransigence of Tarrant Ajalpan and its parent company are not reason for Levi to cease its efforts in support of remediation. Factory managers sometimes respond slowly to pressure from buyers and in some cases it takes heavy pressure from multiple buyers over an extended period of time to produce a positive response. The WRC therefore urges Levi to follow through on all of the commitments it has made to take further action and to remain involved in this case. We hope Levi will ultimately play a key role in bringing about the reinstatement of the illegally fired workers and an end to violations of associational rights at Tarrant Ajalpan, and at that point will be able to resume a productive relationship with the factory.