



WORKER RIGHTS CONSORTIUM

**WRC ASSESSMENT
re PT DADA INDONESIA**

**PRELIMINARY FINDINGS AND RECOMMENDATIONS
MARCH 26, 2002**

CONTENTS

EXECUTIVE SUMMARY

Introduction

The Scope of this Preliminary Report

Findings and Recommendations

PRELIMINARY REPORT

Introduction

The Purpose and Scope of this Preliminary Report

The Allegations to be Assessed by the WRC

Members of the Assessment Team

Sources of Evidence

Assessment of Evidence and Law, and Recommendations

Appendices

EXECUTIVE SUMMARY

Introduction. This is the Preliminary Report of an Assessment of working conditions at an apparel and stuffed-toy factory in Indonesia that currently employs more than 3000 workers, most of whom are young women in their first industrial jobs.

The Korean-owned factory, called PT Dada, produces goods that bear the names and logos of over twenty-five Universities affiliated with the Worker Rights Consortium. The companies that buy college logo goods from PT Dada include Top of the World, Inc. and American Needle and Novelty, Inc. PT Dada also produces non-collegiate goods for several well-known U.S. manufacturers and retailers.

A six-person Assessment Team—including experts in labor rights and occupational health and safety from Indonesia, Australia, South Korea, and the United States—conducted interviews, gathered documents, and inspected the factory from February 17th through February 21st, 2002.

The Assessment Team sought evidence to affirm or disaffirm allegations that PT Dada fails to comply with WRC and University Codes of Conduct in areas such as health and safety, sick leave, annual leave, homework, maximum hours, overtime pay, medical benefits, verbal, physical and sexual harassment, and retaliation against the exercise of rights of association.

The Scope of this Preliminary Report. This Preliminary Report does not purport to set forth and weigh all the evidence gathered during the WRC's still-ongoing Assessment. Nor does this Preliminary Report purport to reach firm conclusions about whether there is final "proof" of PT Dada's compliance or non-compliance. There are the tasks of a subsequent Full Report. This Preliminary Report only assesses whether, at this time, there exists *substantial* evidence showing that there is a *substantial risk* of ongoing *irreparable harm* to workers' rights at PT Dada. Irreparable harm cannot be repaired at the time of the future Full Report, since, by definition, it is the type of harm that cannot be fully remedied by monetary or other compensation after the harm has

occurred. A substantial risk of ongoing irreparable harm calls for immediate action in order to safeguard worker rights that might otherwise be irretrievably lost.

The worker rights at issue in this Assessment are the rights set forth in the Codes of Conduct of the WRC and of affiliated Universities. These Codes generally require that licensees and their contractors comply with international labor law and with domestic labor law in the source country. Hence, this Preliminary Report assesses whether there is a substantial risk of ongoing, irreparable harm to rights contained in International Labor Law and Indonesian Labor Law, as well as those rights contained in the Codes that exceed legal requirements.

WRC Assessments do not purport to be comprehensive audits of the innumerable labor and employment rights enforceable by myriad courts and agencies at the domestic and international levels. A private monitoring team cannot accomplish that task in five days of on-site fact-finding. Rather, the WRC Assessment Team allocates its evidence-gathering resources to those code of conduct provisions (1) where there is reasonable cause to inquire into allegations of non-compliance and (2) that are assigned the highest priority by affected workers. The full WRC Protocols for initiating Assessments, establishing Assessment Teams, and conducting Assessments, can be found at www.workersrights.org.

Findings and Recommendations. For the reasons just stated, this Preliminary Report examines only the most important areas of potential non-compliance and the most severe types of potential harm to worker rights. It is therefore important to preface this summary of findings with an overall picture of PT Dada's compliance with worker rights.

PT Dada has made, and is making, an effort to improve its compliance with many labor standards and rights. The company has made actual progress in several areas, including provision of sandals to workers formerly required to work barefooted; removal of a supervisor who was responsible for repeated, serious cases of abuse, harassment, and retaliation against workers; upgrading the cleanliness of toilets and *mushola*, or Muslim prayer facilities required by Indonesian law; withdrawal of criminal charges of slander, which the company had previously brought against a worker for filing grievances about workplace conditions; and provisional agreement to reinstate two union leaders who the company had suspended for taking leave to attend a union-training workshop.

The company meets adequate standards of fire safety and machine guarding, and is making significant progress in several other areas of health and safety. The company appears to meet minimum wage laws pertaining to regular hours (although the company's compliance with overtime pay requirements is less certain).

The company's willingness to permit the WRC Assessment Team to interview managers and inspect the factory constitutes laudable compliance with a very significant requirement of the WRC and University Codes of Conduct.

It is true that almost all of these positive initiatives and achievements occurred only recently, after a spontaneous strike by all workers in July, 2001; after interventions by monitors from Adidas and other buyers; and after communication from the WRC which led to the initiation of a WRC Assessment. Nonetheless, PT Dada's desire to comply with Codes and laws seems genuine, as does its commitment to cooperate with the WRC in remedying non-compliance and improving working conditions. The company's above-mentioned withdrawal of criminal charges against one union leader and

its agreement to reinstate two others occurred shortly after the on-site visit by the WRC Assessment Team.

Although PT Dada's compliance with labor rights is following an upward trajectory, this Preliminary Report finds substantial evidence that PT Dada is not complying with several important worker rights in ways that risk irreparable harm to those rights. While the company has made some improvements in occupational health and safety and in workplace harassment, there is substantial evidence that many other working conditions in those and other areas do not comply with important provisions of WRC and University Codes. Although the company has remedied two or three past acts of retaliation against workers for exercise of their rights of association, there is substantial evidence of numerous other past and ongoing actions that risk irreparable harm to those rights. The five most severe instances of ongoing actions that risk irreparable harm are set forth below in this Executive Summary.

(We wish to re-emphasize that the findings in this Report are only preliminary findings. This Report states only whether, at this point in the Assessment, there exists *substantial evidence* of non-compliance posing a *substantial risk of irreparable harm*. Final conclusions about the ultimate "proof" or "disproof" of PT Dada's compliance require that the Assessment Team complete its fact-finding and weigh *all the evidence* that affirms or disaffirms all the allegations. A later Final Report will reach such final conclusions.)

The Preliminary Report sets out many detailed and urgent Recommendations for action by the company, working in cooperation with workers, unions, buyers, and monitors. At the same time, PT Dada faces intense competitive pressure from other contractors, and intense pressure from buyers to meet production deadlines.

- *It is therefore imperative that buyers and licensees assist PT Dada in implementing WRC Recommendations. Buyers and licensees, in their contracts with PT Dada, should share the necessary costs that PT Dada incurs in bringing the factory into compliance with applicable Codes of Conduct. Buyers and licensees should set production deadlines in a manner that accommodates the factory's efforts to implement the recommendations.*
- *It is equally imperative that buyers and licensees continue their orders with PT Dada and assist in implementing these Recommendations, rather than "cutting and running" to factories elsewhere.*

The company, its buyers, and other relevant actors should act with all due urgency to implement *all* the Recommendations in light of the fact that all the Recommendations in this Report are intended to avoid irreparable harm.

At the same time, the Preliminary Report finds substantial evidence that there is a risk of *particularly severe harm in five areas*. As it undertakes an urgent remedial program to implement all the Recommendations, therefore, the company should give *highest priority* to these five areas. The Findings and Recommendations in these five areas are summarized below.

The WRC has sought to consult with both of the licensees that are procuring collegiate goods from PT Dada, Top of the World and American Needle, and with

Adidas, concerning these five most urgent recommendations. Top of the World and Adidas have agreed, in principle, to encourage implementation of these recommendations. Top of the World has already written to PT Dada management, asking the factory to take immediate action to implement the WRC's recommendations. We are very encouraged by the constructive approach these two companies have taken in this case – though the ultimate test, of course, is whether necessary changes take place at the factory.

1. Punishing and Deterring Sick Leave:

Finding: There is substantial evidence that supervisors impose abusive punishments on workers who have taken sick leave, and wrongfully deter workers who wish to take sick leave. For example, the company punishes and deters sick leave by frequently requiring workers, on the day they return from sick leave, to stand erect without moving for periods of one hour to entire workdays. The punishment is designed to humiliate workers, and inflicts physical hardship on convalescing workers. It appears that such abusive punishment has diminished in recent months, but there is substantial evidence that it has not ended. This abusive physical punishment is severely exacerbated by the dangers of heat stress, described in the second finding below.

Recommendation: The Assessment Team concludes that a sick worker is irreparably harmed if denied sick leave, and a returning worker is irreparably harmed if punished in a humiliating or physically injurious manner. There is sufficient credible evidence to warrant a Recommendation that management take strong measures to ensure: that supervisors do not inflict humiliating and physically injurious punishments on workers returning from sick leave, whether or not the worker gave proper notice prior to taking the leave; that supervisors do not sanction or penalize workers in any manner upon the worker's return from sick leave taken after proper notice; that supervisors do not discourage or pressure workers from taking sick leave when the worker gives proper notice; that the supervisor or manager who receives a doctor's letter should sign, date, and file the letter, and provide a copy of the signed and dated letter to the worker; and that supervisors and managers do not deny sick leave based solely on their personal judgment about whether a doctor's note is forged but instead communicate with the doctor to confirm whether the note is valid. In order to dispel workers' fear of taking legitimate sick leave, PT Dada managers should publicly announce to all workers, verbally and in writing, that managers and supervisors will not engage in any of these enumerated practices.

2. Danger of Severe Heat Stress:

Finding: There is substantial evidence that several elements of the working environment pose significant risks of illness or even fatality as a result of heat-related disorders, including dehydration, exhaustion, fainting, heat cramps, salt deficiency, heat exhaustion, and heat stroke. Many workers at PT Dada

experience dizziness, exhaustion, dehydration, and fainting. The factory is located, of course, in a tropical climate, with extended periods of severe heat and intense humidity. The factory has no air-conditioning and only a few small fans (some malfunctioning) in its very large production areas. Ventilation in the factory is poor and air circulation is weak. Even the factory clinic, where many workers seek to recuperate during the workday, has no air-conditioning. Many workers are required to stand in one position, doing repetitive tasks, throughout the workday. The vast majority of PT Dada workers are very young women of slight stature. The majority of women workers in Indonesia suffer some degree of iron deficiency anemia and are, thus, susceptible to rapid fatigue. PT Dada workers take their drinking water from large plastic bins containing hot water provided by an outside contractor. The water is sometimes discolored, malodorous, and distasteful. (Other, comparable factories in Indonesia provide cool, bottled water). Taken together, these conditions create high risks of severe heat stress and heat-related disorders.

Recommendation: Heat stress and heat-related disorders potentially cause illness and fatality, which clearly constitute severe irreparable harm. Hence, aggressive means must be taken to reduce the interior temperature and humidity—especially before the oppressively hot “dry season” sets in—and to act quickly if workers show signs of heat stress.

The company should continually monitor interior climate in all sections. All feasible measures should be taken to reduce heat loads in areas where the temperature exceeds 91°F (33°C). Temperatures of 95°F (35°C) and higher are unacceptable. Under such heat, the body’s thermoregulation processes begin to break down, particularly when workers are unable to rest or move to cool areas.

Before the dry season, the company should repair broken fans and install additional fans and exhaust systems, to increase air circulation. The company should air condition the factory clinic for the benefit of workers suffering heat stress, fever, dehydration, or other illnesses. The company should make cold or cool water readily available and should encourage workers to drink as often as possible. All episodes of fainting or delirium should be treated with the assumption that excessive heat is a contributing factor. Supervisors, workers, and clinic staff should be trained to recognize dehydration, exhaustion, fainting, heat cramps, salt deficiency, heat exhaustion, and heat stroke as heat disorders.

Pregnant workers are more susceptible to heat. Sustained heat stress poses a significant reproductive hazard. Pregnant workers should be given frequent rest breaks and removed from hot work areas without diminution of wages and benefits.

As soon as feasible, the company should insulate, renovate, and install vents in the factory roof. The roof, however, appears to be made of asbestos cement sheet. The company should immediately determine whether this is so, and take all necessary precautions to prevent asbestos-related illness during and after the renovation process.

3. *Homework:*

Finding: There is substantial evidence that PT Dada supervisors often require workers to continue their work at home, after working their regular and overtime hours in the factory. The wage for homework is calculated by piece-rates which are far too low to enable workers to earn the statutory minimum wage or to earn PT Dada's hourly wage rates for regular work, let alone statutory and company rates for overtime work. Record-keeping of homework is inadequate, and the company often pays for homework through transactions that do not appear on pay stubs. (Managers testified that they are unaware that PT Dada workers do homework.)

Recommendation: There is substantial evidence that supervisors' ongoing imposition of mandatory homework poses a risk of irreparable harm, because, in the absence of adequate record-keeping, workers may never be able to obtain full compensation for any violations of overtime wage requirements. The company should ensure that no supervisors or managers require workers to do homework against their will. If workers voluntarily choose to do homework, the work should be paid at the same overtime rates as the company pays for work inside the factory. A worker's hours and pay for voluntary homework should be recorded and listed on pay stubs in the same manner as overtime work inside the factory.

4. *Freedom of Association:*

Finding: There is substantial evidence that PT Dada has engaged in many serious acts of interference, intimidation, and retaliation against workers seeking to organize those unions that are not favored by managers. These acts include interrogation, demotion, suspension, and threats of job loss and plant closing. One of the most severe acts of retaliation was the company's "solitary confinement" of a union supporter over a two week period in late 2001. The worker was required to spend her workdays—ranging from eight to twelve hours—working alone in a small, windowless, unventilated storage space. She was placed under guard, and permitted to obtain food and water only erratically and, on some days, not at all. While engaging in such acts of retaliation against the supporters of two unions disfavored by managers (SBSI and SPBDI), the company provided support to a favored union (SPSI). During lengthy and sometimes menacing interrogations by managers or supervisors, workers were told to break with the two disfavored unions and become members of the favored union. The company permitted supervisors and line leaders, during working time, to pressure or force their subordinate workers to sign the favored union's membership form. The company is now deducting union dues from many workers who unwillingly signed the SPSI membership forms. It is true, as already mentioned, that shortly after the WRC Assessment Team's on-site visit, the company reinstated two union leaders and withdrew a criminal complaint against a third. While praiseworthy, these actions do not remedy numerous other instances of past and ongoing interference with workers' rights of association.

Indeed, they do not suffice to fully remedy the company's earlier adverse actions taken against the three union leaders themselves, since they do not fully dispel the wider climate of fear created by those adverse actions.

Recommendation: Retaliation and intimidation against workers for engaging in associational activity poses a risk of irreparable harm, in light of the fact that workers' freedom of association is irretrievably lost once an organizing campaign is suppressed and union supporters driven from the factory. The company should cease all such threats and acts of intimidation, retaliation, and interference. In light of the severity and number of past threats and acts, the company's highest officers should make both verbal and written communications to all workers, stating that the company has engaged in such threats and acts in the past, but will not do so in the future. (This is a common remedial order in domestic and international labor law systems, in cases of serious and repeated threats and retaliation. This recommendation is intended to dispel any lingering atmosphere of intimidation.)

In light of the extensive evidence that managers and supervisors have required workers to sign SPSI membership forms, the company should not continue to base its dues check-off on its current list of SPSI membership. SPSI should be required to solicit new signatures from any workers who wish willingly to become SPSI members, without intimidation or interference with voluntary choice. SPSI, like SBSI and SBPDI, should sign up members without intimidation, without assistance from the company, and without the use of the company's supervisory or managerial infrastructure.

The Team also recommends that the company cease all other forms of favoritism toward SPSI and, instead, act neutrally among the three unions in the factory. These remedies are difficult to ensure. The company should therefore strictly prohibit SPSI and its supporters, as it prohibits SBSI and SPBDI and their supporters, from having open use of the factory floor and use of the infrastructure of supervisors and line leaders *during work time* to solicit for the union, hand out membership forms, make pro-union or anti-union statements or speeches of any kind, and the like. If the company allows any such activities by one union, it must grant other unions equal access and time for identical activity. Otherwise, union solicitation on company property must be strictly limited to *break time* and to times when workers are on company property immediately *before and after work*. At the same time, the company is encouraged to provide *special break time* during which the three unions have equal opportunity to talk with workers and solicit new members.

PT Dada should ensure that all three unions are fairly represented in collective negotiations with the company, and that the desires of all workers be fairly reflected in any collective agreement(s). The PT Dada case may set a precedent for other Indonesian workplaces with multiple unions. It would be manifestly unfair if PT Dada, or other companies, could freeze substantial groups of workers out of representation in a pluralist system of labor relations. The latter would constitute a violation of the WRC and University Codes' requirements of free association and fair negotiation, and a probable violation of Indonesian and

International Labor Law. It would also cause irreparable harm, should the company sign a multi-year contract that does not reflect the desires and participation of substantial numbers of workers who were unrepresented in collective bargaining

In light of the difficulty of enforcing the company's compliance with workers' freedom of association, the Assessment Team further urges the formation of an "accountability team" that includes representatives of the WRC and of Indonesian non-governmental organizations with expertise in the area of labor rights. The company should grant reasonable access to the factory by the accountability team to ensure that the recommendations for protecting freedom of association are fulfilled. All activities of the accountability team must be fully transparent to all members of the team and to all workers, unions, and managers.

The activities of the accountability team should in no way preclude, limit, or displace the concurrent independent monitoring, oversight, and organizational activities of workers, unions, managers, and government officials. The accountability team must in no way displace the Ministry of Manpower in its sovereign role, but should instead work together with and in support of the effective and impartial implementation of labor rights by the Ministry of Manpower. Equally, the accountability team should take particular care not to displace the organizing, collective bargaining, and grievance functions of the three trade unions. Rather, the role of the accountability team is to ensure that workers and labor unions can exercise their rights of association and collective bargaining in an atmosphere free of interference, intimidation, and favoritism.

PT Dada should not file criminal complaints against workers who assert routine workplace grievances, regardless of whether or not the grievance statement is conveyed to government agencies or any other party. (PT Dada should not, of course, file criminal complaints against workers for engaging in any other associational activity as well.) After the WRC Assessment Team's on-site visit, PT Dada laudably agreed to withdraw its criminal complaint against the worker who filed the SPBDI statement that the company violated workers' rights. Although PT Dada does not have controlling authority over the police, the company should use its powers of persuasion to ensure that the police do not, in fact, engage in any further interrogations or other potentially intimidating activities predicated on the now-withdrawn criminal complaint.

5. *Structural Hazards:*

Finding: There is substantial evidence of two structural hazards which might cause serious injury or fatality and are therefore deemed high risk by occupational safety and health specialists. First, the factory roof is badly damaged and in parts there exists a significant risk of falling pieces of roofing materials. Second, the factory's cable lift is subject to possible metal fatigue or mechanical failure. The opening is not guarded by a sensor driven automatic gate. There is a risk of cable failure, which could crush workers underneath.

Recommendation: The company should immediately repair the parts of the roof at risk of falling or, pending repairs, should immediately install a false ceiling suspended below the roof to trap any falling materials. The roof appears to be made of asbestos cement sheet. If, upon examination, the company finds that the roof is made of asbestos, the company should take all necessary steps to ensure that repair of the roof does not expose workers to the hazards of asbestos dust. The factory should be closed while asbestos roofing is removed. Workers who do the repairs, whether employed by the company or a contractor, should wear protective clothing and absolute filtered cartridge respirators, should use wet cutting techniques, and under Bappedal regulations, should collect accumulated residue in marked bags and remove the bags to designated toxic waste sites. PT Dada's existing plan to phase out the existing goods lift should be expedited. The cable lift should be replaced with an automated system that has sensors and automatically closing gates.

PRELIMINARY REPORT

Introduction

This is the Preliminary Report of an Assessment of the working conditions at an apparel and stuffed toy factory in Indonesia. The factory currently employs more than 3000 workers, most of whom are young women in their first industrial jobs, and has at times employed close to 5000 workers.

The Indonesian factory, PT Dada-Purwakarta (“PT Dada”), located two hours southwest of Jakarta, is wholly owned by the Dada Company with headquarters in Seoul, Korea (“Dada Korea”). It produces caps and stuffed toys that bear the names and logos of over twenty-five Colleges and Universities affiliated with the Worker Rights Consortium. The companies that buy from Dada include Top of the World, Inc. and American Needle and Novelty, Inc. (“licensees”). PT Dada also produces non-collegiate goods for other major manufacturers (“buyers”).

The Worker Rights Consortium initiated this Assessment in response to allegations, which, if true, would constitute serious violations of Codes of Conduct of the WRC and its affiliated schools, including provisions of Indonesian and International Labor Law, which are incorporated in the WRC Code and in many University Codes. In light of evidence obtained during the Assessment, the WRC revised the initial allegations, as required by the WRC Protocols of Assessment.

The revised allegations, which are set out at length in the fourth section of this Report, include:

- a variety of unsafe, unhealthy, and unclean conditions, including significant risks of serious heat-related disorders;
- physical, verbal, sexual, and racial harassment;
- discrimination against religious practices;
- wrongful denial of sick leave and annual leave;
- excessive hours;
- mandatory homework at sub-minimum pay;
- failure to pay required overtime;
- breach of a contractual agreement settling a recent strike; and
- various forms of retaliation for exercising rights of association and speech, including physical punishment, interrogation, demotion and discharge, and criminal charges filed against workers who asserted grievances against the company.

A six-person WRC Assessment Team conducted on-site gathering of evidence in Indonesia from February 17th through February 21st, 2002. The Team members included a senior WRC staff person and five other distinguished labor specialists from Indonesia, Australia, Korea, and the United States. The Team conducted in-depth interviews of more than seventy (70) persons, including workers, supervisors, managers, buyer representatives, officers of domestic and international NGOs, and Indonesian legislators, administrators, police officers, and labor lawyers. The Team also reviewed transcripts and summaries of approximately 40 additional interviews conducted during

the previous ten months by WRC researchers. The Team also accepted written submissions of evidence from 7 witnesses. Hence, the Team reviewed evidence from a total of more than 117 interviews and submissions. The Team gathered extensive documents and statistics from corporate, union, and official sources, and participated in guided and unguided tours of the factory. Although the on-site evidence-gathering is done, the Team continues to gather evidence and closely monitor unfolding developments at PT Dada.

The Preliminary Report sets out many detailed and urgent Recommendations for action by the company, working in cooperation with workers, unions, buyers, and monitors. At the same time, PT Dada faces intense competitive pressure from other contractors, and intense pressure from buyers to meet production deadlines.

- *It is therefore imperative that buyers and licensees assist PT Dada in implementing WRC Recommendations. Buyers and licensees, in their contracts with PT Dada, should share the necessary costs that PT Dada incurs in bringing the factory into compliance with applicable Codes of Conduct. Buyers and licensees should set production deadlines in a manner that accommodates the factory's efforts to implement the recommendations.*
- *It is equally imperative that buyers and licensees continue their orders with PT Dada and assist in implementing these Recommendations, rather than “cutting and running” to factories elsewhere.*

The Purpose and Scope of this Preliminary Report

This Preliminary Report does not purport to address all the allegations or reach final conclusions about PT Dada’s compliance or non-compliance with WRC and University Codes (“the Codes”). Those tasks will be undertaken in one or more Full Reports that will be issued as the still-ongoing Assessment proceeds.

This Preliminary Report assesses the evidence gathered thus far, and makes Recommendations only where the Assessment Team finds there is:

- (1) substantial credible evidence of ongoing non-compliance, and
- (2) likelihood that such ongoing non-compliance creates a substantial risk of irreparable harm to the worker rights set out in the Codes.

These two criteria justify issuance of a Preliminary Report, for reasons that should be clear enough. “Irreparable harm,” by definition, is the type of harm that cannot be fully remedied, by monetary or other compensation, after the harm has occurred. Irreparable harm must be prevented rather than remediated after the fact. If there is a likelihood of ongoing and irreparable harm to worker rights, then the WRC must recommend immediate preventive measures in a Preliminary Report. If such irreparable harm is not prevented, then Recommendations for remediation in a later Full Report may be rendered hollow.

The Allegations

The WRC initiates a workplace Assessment in one of two ways. First, workers or other parties may file a complaint about conditions at one or more factories. Second, the WRC may, through its own research, find that an Assessment is warranted. The WRC initiated its Assessment of PT Dada through the second of these two mechanisms.

Prior to the Assessment, WRC researchers found that workers at PT Dada gave priority to the protection of several particular workplace rights and that there was reasonable cause to believe that PT Dada is not fully complying with those rights. The allegations of non-compliance are enumerated below. (It is important to emphasize that, once having uncovered these allegations and initiated an assessment, *the WRC requires its Assessment Team to undertake fact-finding with no pre-judgment about the validity of those allegations.*)

The WRC Protocols of Assessment provide that the allegations to be assessed may be revised in the course of the Assessment, in light of such factors as new evidence of potential non-compliance and of worker priorities. During its on-site gathering of evidence at PT Dada, the Assessment Team revised the allegations based on these factors.

The revised allegations are:

1. PT Dada endangers workers' health and safety with inadequate ventilation and air-circulation under conditions of extreme heat and humidity, with inadequate rest and snack periods, with inadequate water and bathroom facilities, with inadequate machine guarding, and with the structural hazards of a damaged roof and an unsafe cable lift.
2. PT Dada fails to provide workers with adequate personal protective equipment to safeguard against shock and other bodily injury, dust inhalation, and noise.
3. PT Dada has no ergonomics program although, in the absence of such a program, cap-making factories – both in general and in this instance – may yield very high rates of injury due to repetitive stress. Workers also risk musculoskeletal injury from unnecessarily dangerous and inefficient methods of material handling and high-impact work.
4. Workers suffer from stress and resulting physical and psychological symptoms, including depression, headaches, dizziness, cramps, and tingling sensations. Workers attribute this stress to the target system of production, prolonged standing or sitting in one position, repetitive motion over days and months, strict discipline and the unpredictable length and scheduling of overtime work and homework.
5. PT Dada has not complied with Indonesian laws requiring the establishment of health and safety committees. Workers are therefore unable to participate in health and safety decisions that are vital to them and that can increase both safety and efficiency.

The company also provides insufficient education and training in workplace health and safety.

6. PT Dada fails to provide full sick leave, annual leave, menstrual leave, and Jamsostek health coverage as required by Indonesian labor law; discourages workers from taking sick leave; and retaliates against them for taking sick leave.
7. PT Dada requires workers to do homework, and pays for such work at piece rates that do not meet Indonesian minimum-wage requirements.
8. PT Dada requires workers to work excessive overtime hours, fails to afford breaktime and food allowances during overtime hours, and fails to accurately record and pay for overtime hours.
9. PT Dada managers harass workers, physically, verbally, and sexually.
10. PT Dada discriminates against workers on the basis of race or nationality by harassing workers on the basis of their Indonesian ancestry.
11. PT Dada discriminates on the basis of religion by obstructing workers from fulfilling their Islamic obligations for prayer.
12. PT Dada affords no procedure for hearing or resolving workers' grievances.
13. PT Dada has breached its obligation to negotiate under the terms of a contractual agreement requiring the company to negotiate in good faith over food allowances and seniority stipends.
14. PT Dada refuses, or threatens to refuse, to negotiate with the workers' freely chosen representatives.
15. PT Dada has interfered with workers' freedom of association by retaliating against workers who support those unions that are disfavored by management, by means of demotion, discharge, denial of leave time, physical deprivations and punishments, surveillance, interrogation, threats, and other means.
16. PT Dada has interfered with workers' freedom of association and speech by unjustifiably initiating or threatening to initiate police investigations.

Members of the Assessment Team

The members of the Assessment Team are:

- Mark Barenberg, Professor of Labor and International Law, Columbia University, New York; Member, Board of Directors, Worker Rights Consortium, Washington, D.C.; Commissioner, International Commission for Labor Rights, Geneva; Member,

Industrial Relations Research Association; Member, United States/European Union/Japan Joint Committee on the Future of Labor Law.

- Melody Kemp, Occupational Safety and Health specialist, Brisbane, Australia; Member, Safety Institute of Australia; Author of *Occupational Health and Safety in Indonesia* (International Labor Organization, forthcoming), *Working for Life* (Isis International Manila 1999), and many other publications on occupational health and safety; health and safety consultant to the International Labor Organization, World Bank, Reebok Corp., and various other nongovernmental organizations; investigator of many production facilities in Indonesia; resident of Indonesia for over ten years.
- Ae Hwa Kim, Asian Monitoring Resource Center, Hong Kong Director of the AMRC project on Asian-based Transnational Corporations.
- Iman Rahmana, Chairman, Lembaga Informasi Perburuhan Sedane, Jakarta, Indonesia (LIPS) (Sedane Institute for Labor Information), an NGO that engages in research and education on labor rights, including occupational health and safety and freedom of association. In its activities, LIPS collaborates with Indonesian and foreign universities and non-governmental organizations, including, most recently, the University of California at Berkeley and the Maquiladora Health and Safety Network.
- Maria Roeper, Senior Program Associate, Worker Rights Consortium, Washington, D.C.
- Lucky Rossintha, Staff Attorney, Labor Division, Lembaga Bantuan Hukum, Jakarta, Indonesia (LBH) (Legal Aid Foundation), Indonesia's leading provider of legal aid and leading repository of expertise in the area of labor and employment law.
- Logistical support and coordination for the on-site assessment was provided by Agatha Schmaedick, a U.S. based consultant fluent in Bahasa Indonesian.

Sources of Evidence

The Assessment Team gathered evidence from the following sources:

- *In-Depth interviews* with over 35 production and supervisory workers, including nonunion workers, and supporters of each of the three unions that have members among the PT Dada workforce.
- *In-Depth interviews* with approximately 5 managers of PT Dada (Purwakarta), PT Dada (Indonesia), and Dada (Korea), including the President of Dada (Korea), the Personnel Manager of Dada (Indonesia), and the Production Manager and Personnel staff of PT Dada (Purwakarta).

- *In-Depth interviews* with approximately 10-15 union officials of the three unions with members among the PT Dada workforce, including 5 leaders of TSK-SPSI (“SPSI”), 3 of Garteks-SBSI (“SBSI”), and 3 of SPBDI.
- *In-Depth interview* with Mr. Bapak Sukoyo, Head of the Ministry of Manpower, Purwakarta Region.
- *In-Depth interview* with members of the labor committee, women’s committee, and population committee of the Dewan Perwakilan Rakyat Kabupaten Purwakarta (People’s Parliament of the District of Purwakarta) (DPRD).
- *In-Depth interview* with Dr. Arnes Sutardji, Head of JAMSOSTEK, Purwakarta Regional Office.
- *In-Depth interviews* with four police officers, Purwakarta Police Department (POLRES).
- *In-Depth interviews* with four members of Adidas’ Department of Social and Environmental Affairs, including managers of Adidas’ Indonesia and Singapore Offices and members of the Adidas’ Indonesia Standards of Engagement (SOE) Team responsible for factory inspection at PT Dada.
- *In-Depth interviews* with three representatives of the Friedrich Ebert Stiftung (FES), a nongovernmental organization providing worker training and education in Indonesia and seventy-nine other countries.
- *In-Depth interviews* with the Head and three Staff Attorneys, Lembaga Bantuan Hukum (LBH) (Legal Aid Foundation) Jakarta Branch, Labor Division; Bandung Branch, Labor Division.
- *Videotapes, transcripts, and summaries* of approximately 40 previous interviews of PT Dada workers, conducted by WRC researchers Bhumika Muchhala and Agatha Schmaedick from April, 2001 through February, 2002.
- *Written submissions of evidence* from 7 workers.
- *Document and statistic collection* from corporate, union, and official sources.
- *Document and statistic collection* from secondary sources.

Assessment of Evidence and Law, and Recommendations

This Preliminary Report does not purport to weigh all the evidence and reach firm conclusions about the truth of the allegations. Instead, this Report only discusses those allegations as to which there is, at this time, *substantial* evidence of *substantial risk* of

irreparable harm requiring *immediate* remediation. The purpose of this Report, therefore, is to prevent further harm that will not be remediable when the Full Report is issued.

The discussion of evidence in this section therefore should not be taken as a full picture of labor relations at PT Dada, or as finally “proven facts” about PT Dada. This section necessarily focuses on allegations of likely *non-compliance* by PT Dada of the most *serious* kind, namely, non-compliance that may pose a substantial risk of irreparable harm. However, in order to place these allegations and findings in perspective, the Assessment Team will provide a preliminary assessment of the overall picture of labor relations at PT Dada.

1. An Overall Picture of Labor Relations at PT Dada

The overall picture of labor relations at PT Dada can be divided into issues of “labor standards” and issues of “labor rights.” Labor standards encompass such substantive terms and conditions of employment as wages, hours, safety conditions, supervisory behavior, and the like. Labor rights include such fundamental rights as freedom of association, rights of collective bargaining, and rights to protest and to file grievances without retaliation or interference. Of the sixteen allegations listed above, the first eleven relate to labor standards, and the last five relate to labor rights.

Based on the substantial evidence gathered thus far, the Assessment Team finds that the managers of PT Dada are now making an effort to improve the labor standards raised in the first eleven allegations. To a large extent, the company’s ongoing effort results from a protest strike by the entire workforce in July, 2001; subsequent monitoring and recommendations by such buyers as Adidas; and the company’s anticipation of this Assessment by the WRC. PT Dada managers have now addressed some serious violations of labor standards occurring before the strike. Nonetheless, some serious problems in the company’s labor standards—as well as many less serious problems—have not yet been fully resolved by the company. These remaining problems are discussed below.

In the area of labor rights as distinguished from labor standards, PT Dada’s recent record is less heartening. In the aftermath of the July strike, three different unions claimed membership among the PT Dada workforce. There is substantial evidence that PT Dada has favored and possibly directly promoted the least assertive of the three, SPSI. At the same time, there is substantial evidence that PT Dada has engaged in a series of retaliatory and threatening actions to discourage membership in two other, legitimate unions, SBSI Garteks and SPBDI, and has obstructed legitimate organizational activities by them. Such retaliatory, threatening, and obstructive actions are serious violations of workers’ fundamental rights.

The Assessment Team wishes to emphasize the WRC’s commitment to working constructively with managers, buyers, workers, unions, the Ministry of Manpower, and any other relevant actors to resolve remaining problems of labor standards and prevent continuing harm to workers’ rights. The WRC is also strongly committed to maintaining jobs and production orders at PT Dada. The Assessment Team has already communicated these commitments to PT Dada managers, to the Ministry of Manpower, and to many licensees and buyers, including Top of the World, American Needle, and

Adidas. One buyer, American Needle, has not yet responded to the WRC's communication, but all other parties have stated that constructive cooperation with the WRC is welcome.

The WRC has also specifically sought to consult with Top of the World, American Needle and Adidas concerning the Assessment Team's five most urgent recommendations, outlined in the Executive Summary of this Report. Top of the World and Adidas have agreed, in principle, to encourage implementation of these recommendations and to discuss other recommendations with the WRC. Top of the World has already written to PT Dada management, asking the factory to take immediate action to implement the WRC's recommendations. We are very encouraged by the constructive approach these two companies have taken in this case – though the ultimate test, of course, is whether necessary changes take place at the factory. American Needle has not responded to written and verbal communications from the WRC.

The Recommendations in the following section suggest ways that all stakeholders in PT Dada can continue their efforts to remedy the remaining problems of labor standards, and can end the serious ongoing harm to workers' rights, without jeopardizing the company's competitiveness and level of employment.

2. Assessment of Evidence and Law, and Recommendations

Taking each of the sixteen allegations in turn, this section assesses the evidence and law pertaining to the allegations. Where the Assessment Team finds substantial evidence of a risk of irreparable harm to labor rights, Recommendations for remediation are set forth in boldface immediately following each such finding.

Allegation One: Workplace Environmental, Engineering and Structural Hazards

(a) Heat and Humidity. The PT Dada factory is located in a tropical climate with periodically extreme levels of heat and humidity. Except for administrative offices, the factory is not air-conditioned. There are few oscillating fans in the factory, and some are not functional. Excessive heat increases rates of accidents and illness and is potentially fatal. Interior climate also has profound effects on efficiency, productivity and attention.

Many workers stated that at times the heat is oppressive and some said that they had at times felt faint, dizzy, and exhausted, and had at times actually fainted.

In some areas of the factory the heat build up is particularly significant. Most of the hot areas are interior rooms, from which it is difficult to extract excess heat. One example is the section of the factory that has ranks of hot steam presses. The steam adds to the heat load by inhibiting maximal evaporation from the skin. To extract the heat would only result in heat build up in another section of the factory. The factory roof is not insulated, which intensifies the build up of heat in the factory.

According to the Ministry of Manpower, heat stress is one of the major occupational ailments in Indonesia. This is hardly surprising in the intensely hot and humid tropics. Factory premises are generally not purpose built or insulated, and rely on passive ventilation for heat loss rather than on systematic prevention of heat build up. In

addition, dress requirements for Indonesian women add to the risk of heat stress, as they may interfere with the body's natural heat regulation processes.

The body at work produces heat itself, so that the larger the number of employees the greater the need for proper interior thermoregulation. Although the PT Dada factory is large in scale, the 3000 workers are stationed closely together. In addition, the harder the work, the greater the heat production. Workers in the toy making section, for instance, could be regarded as medium to heavy grade workers as they perform high impact work—that is, they collectively produce more heat than those working in the factory's administrative offices (which are by contrast air conditioned).

Recommendation 1

Heat stress can potentially cause illness and fatality, which clearly constitute severe irreparable harm. Hence, aggressive means must be taken to reduce the interior temperature and humidity—especially before the oppressively hot “dry season” sets in—and to act quickly if workers show signs of heat stress.

The company should continually monitor interior climate in all sections. All feasible measures should be taken to reduce heat loads in areas where the temperature exceeds 91°F (33°C). Temperatures of 95°F (35°C) and higher are unacceptable. Under such heat, the body's thermoregulation processes begin to break down, particularly when workers are unable to rest or move to cool areas.

Before the hot and dry season, the company should repair broken fans and install additional fans and exhaust systems, to increase air circulation. The company should air condition the factory clinic for the benefit of workers suffering heat stress, fever, dehydration, or other illnesses. Until that is done, the company should allow production workers suffering such heat-related disorders to take refuge in the air-conditioned administrative offices.

The company should make cold or cool water readily available and should encourage workers to drink as often as possible.

All episodes of fainting or delirium should be treated with the assumption that excessive heat is a contributing factor. Supervisors, workers, and clinic staff should be trained to recognize dehydration, exhaustion, fainting, heat cramps, salt deficiency, heat exhaustion, and heat stroke as heat disorders.

Pregnant workers are more susceptible to heat. Sustained heat stress poses a significant reproductive hazard. Pregnant workers should be given frequent rest breaks and removed from hot work areas without diminution of wages and benefits.

As soon as feasible, the company should insulate, renovate, and install vents in the factory roof. The roof, however, appears to be made of asbestos cement sheet. The company should immediately determine whether this is so and, when undertaking renovations of the roof, take all necessary precautions against exposure to asbestos dust, as set forth below in Recommendation 5.

(b) Nutritional Supplements. PT Dada workers widely reported that they feel hungry and weak by mid afternoon, and many report gastrointestinal complaints. *See Table 1 attached as Appendix 1 to this Report.* The majority said that they ate only twice per day, some only once. Many said that they were too tired to eat when they got home,

so would go straight to bed without eating. The food they can afford to buy is not sufficient to maintain hard work for the full day without additional supplements.

Food for the workers is provided by local vendors, who are permitted to set up a food market in the company grounds each day. Worker testimony indicated that they can purchase a meal comprised of rice, protein (usually in the form of a soy product), and vegetables for Rp. 2,000-2,500 per day. Meat or chicken raised the cost to Rp. 3,000-3,500. While this may be sufficient for a sedentary worker, it may not be sufficient for those expending more energy as demanded by some tasks in the factory.

In 1990, the Jakarta Office of the International Labor Organization collaborated with several factories in the Jabotbek area in an investigation of the relationship between food and productivity. The factories experimented not only with food but with iron supplements, in recognition that the majority of women workers in Indonesia suffer some degree of iron-deficiency anemia and are, thus, susceptible to rapid fatigue. The ILO concluded that by giving workers morning and afternoon snacks—even simply a sweet biscuit or piece of fruit in addition to the iron supplements—productivity improved by over 20% on average. The company's failure to provide modest food supplements appears, therefore, to be a false economy.

Recommendation 2

The company should provide each worker with twice daily snacks and break-time to eat them, in the form of biscuits or fruit, in keeping with the cleanliness required by the work process.

(c) *Water and Bathroom Facilities.* Many workers testified that the company's drinking water was hot and, at times, yellow in color, malodorous, and intolerably tainted in taste. Indonesian law requires that company-provided drinking water be "colorless, odorless, and tasteless." *See Regulations of the Minister of Labour No. 7 of 1964, Article 8.* The company provides workers with hot drinking water, which is supplied by a contractor. Large plastic bins of water are placed at regular intervals and workers are able to fill personal bottles on demand. The water's heat may be evidence of the contractor's effort to provide potable water. In hot working conditions, however, cool to cold water is essential in order to prevent serious heat stress, as discussed above. Managers report that workers may have access to cold water in the dispensers in the factory's administrative offices. Signs on those offices, however, denied access to all but office staff, and the Assessment Team did not observe any of the 3000 production workers attempting to use the small dispensers in the administrative offices. A sample of water taken by the Assessment Team indicates that the flavor of the water is tainted, perhaps by the plastic or the tanks in which the water is delivered to the factory.

The existing source of water is grossly insufficient to meet the demands for washing as well as drinking water, as confirmed, perhaps, by the fact that the wash faucets were turned off when the Assessment Team left the factory. PT Dada is currently installing another water tower. Investigations have shown that a significant aquifer exists under the grounds.

Indonesian law requires that company-provided lavatories are cleaned three times each day and are in fact clean, odorless, ventilated, and sufficient in number. *See Regulation of the Minister of Labour No. 7 of 1964, Article 3.* Many workers testified

that factory toilets were dirty, that many did not function, and that workers were forced to queue for long periods of time. The Assessment Team observed that there were in fact far too few toilets, requiring workers to queue. PT Dada officials stated that new toilet blocks were to be built in the near future. Existing toilets are inadequately ventilated, which may lead to the accumulation of odors and the proliferation of moulds. The toilets are cleaned by special cleaning staff, and at the time of visit, were of an acceptable standard of cleanliness. Several workers testified that the toilets were cleaned only in anticipation of the WRC Assessment.

Recommendation 3

Other factories comparable to PT Dada supply their workers with bottled water. PT Dada should supply its workers with bottled water in sufficient quantities to fully meet their needs for drinking and washing. In light of the dangers of heat stress discussed above, the drinking water should be cold or cool. The company should provide sufficient amounts of water for washing and sufficiently quick access to such water, to ensure that workers are able to wash before prayer in their allotted break time, as discussed further below.

Additional toilets should be constructed as soon as possible. All toilets should have windows or ceiling ventilation and be well lit. Specialty bins for the disposal of sanitary napkins should be installed to reduce the risk of toilets being clogged by such materials.

(d) Noise and Inhalation Hazards. These problems are discussed, and remedial Recommendations are set forth, below in the sections on facemasks and ear plugs.

(e) Machine and Electrical Guarding. PT Dada has taken significant steps to ameliorate major machine and electrical hazards. New sewing machines all have integral finger guards. PT Dada has already made significant progress in guarding most machines and retrofitting two-button systems to machine presses.

Cutting blades have been guarded using effective retractable guards and jigs. In addition, as noted above, workers had been issued metal mesh gloves to guard against accidental injuries.

In the main production area, electrical circuitry is neatly done, with wires held in reticulated conduits following the beams. There exist a minimal number of wires and cabling on the floor—a very positive thing in a factory as dependent on electricity as PT Dada.

However, guards for some machines and electrical wires are still needed. Some of the presses have unguarded electrical wiring at foot level, vulnerable to accident and damage. Some fly wheels require interior guards to prevent nip point injuries. Workers operating drill presses are vulnerable to accident in case of inattention or fatigue.

The machines in the embroidery section are electronic and computer-controlled. A fire in that section would be electrical and not carbon-based as in other sections of the factory. This section therefore poses special fire hazards and calls for specialized extinguishers which are not currently installed.

The toy making section is characterized by shorter and slower sewing runs; and the pressure foot on sewing machines has much closer set tongues, so that the risk of

injury is less. Some older machines, in both the toy and cap areas, do not have finger guards. Virtually all the machines in use in the toy making area are old, and may soon be replaced. Hence, attrition may ameliorate the problem of machinery without finger guards.

The domed metal hot hat press also needs attention. That job is likely to become automated, but now work is done using large unwieldy cotton gloves to protect against the heat (some 150⁰ C). This machine also has a stop control that is in an inconvenient position situated near the floor. In case of emergency burns, where flesh may be stuck to the dome, it would be hard for the worker to reach the emergency stop easily.

The safety of contractors is also relevant, when it places the safety of all employees at risk. One of the contractors brought in to build a new water tower was using oxy-acetylene welding gear. Gas cylinders were left standing unchained and unsupported.

Recommendation 4

In the future, preference should be given to ‘buying safe’. That is, tenders for any new plant and equipment, especially sewing machines, should contain specifications for safety devices.

All exposed wiring should be covered with removable guards for ease of repair and maintenance. The company should ensure that the factory is adequately earthed so that static electricity does not build up excessively. All exposed machinery parts such as flywheels or revolving gears should be guarded with heavy metal mesh or similar materials to prevent accident.

All gas cylinders should be housed in carts or tied, to avoid the risk of propulsion accidents in the event that a cylinder falls. A simple high tensile steel wire enclosure at the back of the premises should be built to house contractors’ cylinders.

The company should make or procure a jig for use with the hot hat press. The jig could be made by sandwiching several hat parts between a wooden base and metal pattern with guide hole. The jig should be spring loaded so that it holds parts securely.

The company should procure heat resistant gloves that are closer fitting than the ones currently used. These gloves—which are likelier to be sourced in Korea than in Indonesia—should be issued to all workers using hot processes.

There is a major risk of an electrical fire in the embroidery area. Appropriate higher-capacity extinguishers should be installed alongside the standard ones now in place.

The health and safety provisions of subcontractors should be stated clearly in the subcontract in order to protect the health and safety of PT Dada workers as well as those of subcontractors.

(f) Structural Hazards. There is substantial evidence of two structural hazards which may cause serious injury or fatality and are therefore deemed high risk by occupation safety and health specialists. First, the factory roof is badly damaged and in parts there exists a significant risk of falling pieces of roofing materials. Second, the factory’s cable lift is subject to possible metal fatigue or mechanical failure. The opening

is not guarded by a sensor driven automatic gate. There is a risk of cable failure, which could crush workers underneath.

Recommendation 5

The company should immediately repair the parts of the roof at risk of falling or, pending repairs, should immediately install a false ceiling suspended below the roof to trap any falling materials. The roof appears to be made of asbestos cement sheet. If, upon examination, the company finds that the roof is made of asbestos, the company should take all necessary steps to ensure that repair of the roof does not expose workers to the hazards of asbestos dust. The factory should be closed while asbestos roofing is removed. Workers who do the repairs, whether employed by the company or a contractor, should wear protective clothing and absolute filtered cartridge respirators, should use wet cutting techniques, and under Bappedal regulations, should collect accumulated residue in marked bags and remove the bags to designated toxic waste sites. PT Dada's existing plan to phase out the existing goods lift should be expedited. The cable lift should be replaced with an automated system that has sensors and automatically closing gates.

Allegation Two: Hazards Warranting Personal Protective Equipment

(a) Footwear (for hazards of shock and foot injury). A principal grievance by workers, until recently, was the company's prohibition against footwear in the factory. Workers testified that, without footwear, they were exposed to electric shock and other injuries to their feet. The Assessment Team's observations indicated that the factory was earthed, but obtained insufficient evidence to conclude that the earthing was adequate. Indonesian regulations do not specify the construction of a ground loop, and many factories have problems with static build up or incompetent circuitry, although the circuitry and floor wiring at PT Dada appeared sound. The floors are hard and cold and would be uncomfortable over long periods of time, particularly for those standing, if shoes were prohibited. In addition, current methods of material handling present a risk to feet, as cartons and trolleys are heavy when loaded. Recently, apparently in response to worker protests and communications from the WRC, PT Dada allowed workers to wear sandals in the factory. Sandals may be sufficient to prevent shocks from flooring but may not protect workers against other risks, such as collision with machines, trolleys, or falling objects.

(b) Face Masks (for hazards from inhalation of dust and other particles). The frequency of cough indicates the presence of irritant dust, or of chronic respiratory illness, which is common in Indonesia. However, the two are synergistic, in light of the fact that airborne dust will increase the severity of chest infections by increasing the body's immunological reactions. Irritant dust needs to be reduced by ventilation. Any effort to close fire doors to prevent movements of dust into new sectors will only serve to concentrate dust levels. Some machines do produce dust and those should be ventilated at source, so that the dust has no opportunity to enter the working environment. There are two jobs that may require breathing protection: work in the stuffing area of the toy division, where irritant acrylic dusts are not controlled, forming large billows that cover

the floor; and work in the section where air brushing is done. On the days the Assessment Team inspected the factory, the air brush workers wore 3M charcoal filter masks which are appropriate to the task. The stuffing workers wore fabric masks which are sufficient to prevent large fibres entering their lungs. The area is sufficiently hot, however, to make such masks uncomfortable. The stuffing floor has overhead extraction fans, but dust is too heavy to be extracted in this manner. With the exception of those working in stuffing and air brushing, masks are generally not needed for two reasons: There is no hazard, and the hazard if it existed would not be prevented by white fabric masks. They are in most cases simply hot, uncomfortable, and unnecessary.

(c) Ear Plugs (for hazards from excessive noise). Indonesian regulations specify a standard of 85dBA for workers exposed to noise. That is, workers should not be exposed to noise in excess of 85dBA for an eight hour day without hearing protection. (The decibel scale is logarithmic, so that an increase of 3dB indicates a doubling of the noise level.) In the embroidery sections, levels of 87-88 dBA were found using a standard sound level meter. In this area workers had been given ear plugs and were found to be using them. Prior to the company's provision of hearing protection, workers were given training by personnel of the 3M corporation who provide education in hearing and respiratory protection in Indonesia. This may explain the high compliance level among embroidery workers. The company uses one old machine to destroy waste materials prior to disposal. The company assured the Assessment Team that this machine will soon be decommissioned. The machine produces noise levels measured at 84dBA, which may cause hearing damage and tinnitus, even though the level does not exceed the regulatory standard.

(d) Protective Gloves (for hazards from machinery). PT Dada has already made significant progress in guarding most machines. However, some guards are still needed, and these are discussed below in the section on machine guarding. The company had appropriately issued workers with metal mesh gloves of the kind used by meat workers to guard against accidental injuries. These gloves are especially important where proper machine guarding has not yet been implemented.

Recommendation 6

As a general matter, in order to improve health and efficiency, personal protective equipment is far inferior to appropriate reengineering and reorganization of machinery and workplace arrangements. That is, best practice in occupational safety and health calls for systemic prevention of hazards. The use of personal protective equipment is a measure of last resort, and is generally an indicator of systemic hazards. The following Recommendations regarding personal protective equipment should be read with this in mind.

The company should allow workers to wear footwear that protects not only against flooring shock but also against shock and injury caused by collision with machinery and falling objects. Sandals are insufficient for these purposes.

The company should continue to provide masks to workers in the stuffing and air brushing sections.

Inhalation hazards, however, are not substantially addressed by face masks. The problem should be addressed by systemic improvements in ventilation and exhaust mechanisms. The current system may extract heat from certain locations in the factory, but for purposes of dust extraction, it merely wastes electricity. Each machine's intake and output nozzles should have extraction ventilation at source and dust suppression measures should be used (wet sweeping, fine sprays, etc). Ventilation at source prevents dust from entering the factory environment. Dust of the sort that is prevalent at this factory (especially in the stuffing section) needs to be extracted laterally or downwards. If feasible, stuffing should be relocated to an upper floor or mezzanine so that dusts can be extracted downwards.

The company should provide hearing-protection training to all workers, should provide earplugs to all workers in specified hearing protection areas, which should be signposted as such. The company should encourage supervisors to enforce hearing protection and to model good behavior by wearing ear plugs; should provide new ones biweekly; and should encourage workers to use the ear plugs. The company should give special hearing-protection training to the workers operating the old pressing machine, should require those workers to operate the machine only intermittently, should provide them with ear muffs, and should signpost the area as a hearing-protection area.

The company should provide metal mesh gloves to all workers operating cutting machines which have a blade. As with inhalation hazards, however, noise and machine hazards should be addressed primarily thorough engineering and organizational changes, which are set forth above.

Allegation Three: Ergonomics, Materials-Handling, and High-Impact Tasks

(a) Ergonomic Hazards. Workers in both hat and toy making sit and stand for long periods, inducing considerable fatigue. Those sitting are perched on wooden stools without any back support or padding. Workers reported having to bring in their own cushions. Workers testified that managers and supervisors consider them lazy if given back supports or cushions and that managers and supervisors believe that discomfort induces diligence. (Indonesian law requires that all seated workers be provided with back rests and that all standing workers be provided with seating facilities for periodic relief of muscle strain. *See Regulation of the Minister of Labour No. 7 of 1964, Article 9.*)

In fact, the body does not work in that way. It needs periods of rest to recuperate and detoxify the build-up of lactic acid that results from unrelieved muscle contraction. The muscles supporting the spine, for instance, do sustained work in the absence of back rests and thus begin to ache. In addition, without back rests the body tends to flex forward, restricting oxygen intake and rapidly increasing the degree and extent of muscle fatigue. Workers doing standing tasks indicated daily leg pain and discomfort. As with seating, standing induces great fatigue on legs and postural muscles.

All the workers interviewed indicated that they experienced back pain and high levels of general fatigue, which would be expected by observing the tasks being performed. Twenty of the twenty-six workers interviewed by the occupational safety and

health specialists on the Assessment Team indicated that they experienced back pain on a *daily* basis.

Much materials handling done by workers in the factory entails unnecessary strain and energy.

Pregnant women suffer excessive back pain as the developing fetus causes shifts in their centers of gravity. In addition, sitting or standing tasks provide an extra challenge for the circulatory system, as the body tries to pump blood back to the heart against both gravity and the pressure caused by the fetus against major blood vessels.

A table of ergonomic-related symptoms found at PT Dada is attached as Appendix 2 to this Report.

Recommendation 7

Indonesian law requires that “work be arranged so as not to cause muscle-strain, over-fatigue of other health hazards.” *See Regulation of the Minister of Labour No. 7 of 1964, Article 9.* The company should implement a system of job rotation to mitigate the effects of repetitive motion and unchanged postures of standing and sitting. The details of job rotation should be a subject-matter of collective bargaining between the company and its unions. The company should undertake a comprehensive ergonomic assessment of the factory and should implement ergonomic standards for each workstation, as recommended by a certified consultant. The company should provide thorough ergonomic education to each worker, including information and discussion about the ergonomic risks and safeguards for each workstation.

Chairs in the factory should be fitted with back rests, as required by Indonesian law. (Back rests might well be fabricated in the factory.) Back rests should support the lower spine, that is, where the natural inward curve of the back is located. Workers, such as sewers, who are compelled to sit for long periods, should be allowed to retrieve their own materials in order to get some postural relief. Standing workers should be given seating for periodic relief of muscle strain as required by Indonesian law. Pregnant workers in particular should be provided chairs with back rests and should be permitted to alternate sitting and standing tasks.

(b) Materials Handling and High-Impact Tasks. There is substantial evidence of three major problems in materials handling at PT Dada. First, workers are forced to drag rather than wheel carts carrying finished or partially finished products, because the carts’ wheels are too small and therefore become congested with waste materials. Also, the nylon fabric on many carts is torn, allowing goods to fall out onto the factory floor. Second, workers move cartons by hand in the storage area rather than by trolley, perhaps because the trolleys are not appropriately sized for the narrow pathways between stacks, because of mismatch in floor height, or because of poor training. Third, the stuffing section of the toy division requires the manual gathering of fiber for stuffing which is then fed into the pressurized extrusion machines, repetitive forceful movements to jam stuffing into toy limbs using high pressure injection and manual force, and repetitive lifting. Excessive manual handling, repetitive lifting of heavy materials, and repetitive forceful motion strain workers’ muscles, risk musculoskeletal injury, and waste time.

There is also substantial evidence that certain repetitive high-impact tasks in the toy division, such as hammering, twisting, and stripping wire, create a risk of Carpal Tunnel Syndrome.

Recommendation 8

The risk of irreparable harm caused by materials handling and high-impact work can be substantially reduced by a combination of measures. Passive conveying systems should replace manual handling as much as feasible, under the advice of specialists such as those in the technical wing of the Ministry of Manpower or other consultants under the direction of that Ministry. Implementation of a job rotation system to alleviate muscle strain and repetitive motion disorders should be a subject of collective bargaining in the current round of negotiations between PT Dada and its unions, as already stated in Recommendation 7. Workers should be trained in the proper use of manual handling equipment. The wire framing and stuffing sections of the toy division require redesign under the direction of ergonomics specialists. Existing carts should be replaced with new carts with large rotating castors. A lever-driven press, with a handle long enough to maximize mechanical advantage, should replace the manual hammering by workers seated on the floor to secure joints in the toy division.

Allegation Four: Physical and Psychological Effects of Stress

There is substantial evidence that workers suffer from low to moderate degrees of stress and experience the symptomatology of stress only occasionally. The symptoms are both physical and psychological, including depression, headaches, dizziness, cramps, and tingling sensations. For purposes of this Report, stress can be defined by the engineering notions of strain, tension, and pressure; each of these engineering notions has both bodily and psychological analogues.

Workers attribute their stress to the target system of production, prolonged standing or sitting in one position, repetitive motion over days and months, stringent discipline, and the unpredictable length and scheduling of overtime work and homework. Occupational safety and health studies conclude that the body can in fact suffer stress as a result either of incessant demands such as repetitive work or inactivity such as long periods of sitting or standing.

In addition to the Team's in-depth interviews, twenty-six workers completed a written survey of stress-related symptoms. A full table of the survey is attached as Appendix 1 to this Report.

Most of the workers (20 of 26) surveyed reported that they felt *pusing* (the Indonesian term for dizziness or confusion) and many experienced headaches and menstrual disturbances, although these symptoms were experienced occasionally rather than frequently. Only a minority of those surveyed reported that they were frequently under pressure, but in-depth interviews revealed that this was a more widespread experience. In the survey, as well as in interviews, workers cited target rates, and the conflict between meeting targets and producing at high quality, as a great source of stress. Almost all workers cited a conflict between high targets and high quality.

As a general matter, when workers report the sensation of pins and needles (*kesemutan*), this could be symptomatic of either nerve damaging chemicals or circulatory disorders due to ergonomic stress. The former does not exist at PT Dada, but the latter does. Workers believe that sitting or standing for long periods is responsible for *kesemutan* and they are possibly correct.

The high rate at which women workers experience menstrual disorders could also imply a significant degree of anemia or ergonomic stress. Menstrual difficulties are generally ameliorated by bodily movement.

Recommendation 9

The company should replace the inefficient and needlessly stressful target system with some other, more rational system of pay and incentives, as may be negotiated between PT Dada managers and unions. Many of the other potential causes of stress (such as harassment and intimidation) and strain (such as ergonomic factors) are addressed in recommendations given above and below.

Allegation Five: Health and Safety Committees and Training

Indonesia's Safety Act of 1970 was the first national act to define responsibilities under law for occupational safety. Before 1970, acts and regulations were largely relics of the Dutch colonial era. Article 10 of the Act requires that enterprises employing over 100 workers, with assistance from the Ministry of Manpower, should form a safety and health committee, which ensures the participation of workers in safety and health activities. The 1987 Act and implementing regulations specify that the plant level safety expert should act as secretary to the committee. While the Ministry of Manpower certified that PT Dada had a safety and health committee in 1996, the company does not have a functioning committee now. This was attested to by both managers and workers. PT Dada also provided the Assessment Team a copy of their health and safety policy.

Workers and managers confirmed that fire and safety trainings, as well as evacuations, are held four times per year, in accordance with the Act of 1970.

Recommendation 10

A workplace health and safety committee should be established through the workers' free and fair election of worker representatives, and future elections of committee representatives should be held on a periodic basis. All workers should be afforded training courses in occupational health and safety inspection and awareness. Worker representatives serving on the health and safety committee should receive particularly intensive training of this kind. The committee should meet at least four times a year. The committee should, among its other activities, implement and oversee ongoing health and safety worker education programs or induction training. A copy of the company's written safety and health policy should be provided to all workers. The representative structure and function of the health and safety committee should not interfere with the rights and privileges afforded trade unions under the Indonesian Labor Unions Act of 2000 (no. 21). That Act requires that trade unions be independent of the company and authorizes trade

unions to represent their members in all union activity. Health and safety matters are lawful terms and conditions of collective bargaining agreements.

Allegation Six: Leaves and Other Benefits

(a) Sick leave. Indonesian law requires companies to provide leave to sick workers. *See Elucidation of Government Regulation No. 21 of 1954, Article 3 (Supp. State Gazette No. 542).* There is substantial evidence that PT Dada workers may suffer irreparable harm as a result of supervisors' punishment of workers for taking sick leave and discouragement of workers from taking sick leave.

Many workers independently and credibly testified that supervisors frequently inflict such punishment. Several workers testified that such punishment was inflicted as recently as February, 2002. On the day they return from sick leave, workers are often required to stand erect, either at the front of the work area or alongside their line leader, for periods ranging from thirty minutes to a full workday. Several workers in a single department – up to five or six – may have suffered this punishment at any one time. Workers testified that they believe this practice is designed to humiliate workers, as well as to cause physical distress.

The physical stress of this punishment is not minor in a large factory that has few fans and no air-conditioning (except in certain managerial rooms), that is located in a tropical climate with severe heat and humidity, and that has a young female workforce that likely suffers widely from anemia and other forms of malnutrition. Several workers testified that this punishment was particularly harsh precisely because workers who had just returned from sick leave were often weakened further by their illness. There were several reports that convalescing workers fainted during their punishment.

Several workers also testified to other forms of punishment inflicted on workers returning from sick leave, including, among others: demotion to more menial jobs; requirements to stay in the factory at the end of the workday and to request permission to leave after all other workers left; requirements to work extraordinary overtime hours; and requirements to clean the factory after other workers had left for the day.

Many workers testified that they were punished upon return from, or pressured beforehand not to take, sick leave even when they presented the company with the required doctor's letter before taking their leave. Many workers also testified that, on many occasions, they gave their doctor's note to a supervisor before taking sick leave but upon return to work were told by the supervisor that the letter had been lost.

Managers testified that supervisors had punished workers for taking sick leave or denied or discouraged workers from taking sick leave only when workers had failed to provide the required doctors' letter or when supervisors and managers suspected that workers had forged or altered doctors' letters. Managers conceded that supervisors had required returnees to stand and to perform tasks that were not part of the workers' ordinary work; but managers testified that they had sought to end these supervisory practices after the July 2001 strike.

Recommendation 11

The Assessment Team concludes that a sick worker is irreparably harmed if denied sick leave, and a returning worker is irreparably harmed if punished in a humiliating or physically injurious manner.

There is sufficient credible evidence to warrant a Recommendation that management take strong measures to ensure: that supervisors do not inflict humiliating or physically injurious punishments on workers returning from sick leave, whether or not the worker gave proper notice prior to taking the leave; that supervisors do not sanction or penalize workers in any manner upon the worker's return from sick leave taken after proper notice; that supervisors do not discourage or pressure workers from taking sick leave when the worker gives proper notice; that the supervisor or manager who receives a doctor's letter should sign, date, and file the letter, and provide a copy of the signed and dated letter to the worker; and that supervisors and managers do not deny sick leave based solely on their personal judgment about whether a doctor's note is forged but instead communicate with the doctor to confirm whether the note is valid. In order to dispel workers' fear of taking legitimate sick leave, PT Dada managers should publicly announce to all workers, verbally and in writing, that managers and supervisors will not engage in any of these enumerated practices.

(b) *Annual Leave.* Indonesian law provides workers with twelve days of paid annual leave. The law gives the employer some, though not total, discretion over the timing of the annual-leave days requested by workers. *See Government Regulation No. 21 of 1954, Articles 2-6 (State Gazette No. 37 of 1954).* Managers testified that the company gave workers eight days leave for Lebaran (the Indonesian term for certain days of Ramadan), leaving four days of leave for each worker annually. Workers testified that two of the eight days of leave allocated for Lebaran were in fact national holidays (Tak Bir and Idul Fitri) which independently entitle workers to days off and should therefore not count as days of annual leave.

The Assessment Team need not resolve this question in this Preliminary Report, because workers will not have been irreparably harmed if the Team's Full Report finds that the company failed to comply with the law of annual leave. If the Full Report so finds, then workers can be compensated and "made whole" with additional days of leave or with a payment of full wages for the days of annual leave missed by the worker.

This general conclusion does not apply, however, to situations in which workers request leave not for ordinary vacation, but rather for special occasions that will be forever lost to the worker if leave to attend is denied by the company. Workers also testified to a variety of hindrances to exercising their right to take annual leave. The company denies annual leave after a review of an employee's attendance records for the preceding year. According to some employees, the company bases its denial on the absolute number of days missed, regardless whether the days were excused absences by reason of illness, authorized and legally entitled annual leave, or otherwise.

A further allegation, that workers are denied annual leave days requested to allow participation in certain union activities, is addressed below in the discussion of interference with rights of association.

Recommendation 12

The loss of opportunity to attend special occasions constitutes irreparable harm. This applies to leave for marriage, for death in the family, and for other occasions of comparable gravity. For leaves of this nature, the company should apply the rule that workers retain six, rather than four, days of annual leave after subtracting the days of leave granted for Lebaran (Ramadan). If the Full Report finds that workers in fact retain only four valid days of leave, then any excess days granted to workers in the period between the Preliminary and Full Reports can be deducted from future leave.

The Assessment Team also concludes that the number of days absent in the previous year is not a legitimate grounds for denial of statutorily granted days of annual leave under Indonesian law, whether those absences were excused or unexcused. PT Dada should not continue to use this criterion.

(c) Menstrual leave. Indonesian law provides that workers shall be entitled to two days of paid leave per month upon request, for the pain or discomfort of menstruation. *See Act No. 1 of 1951, Article 13 (State Gazette No. 2 of 1951).* Officials of the Ministry of Manpower with authority to interpret and apply Indonesian labor law advised the Assessment Team that companies must grant such requests without further inquiry by the company. That is, the worker's statement that she needs or wants menstrual leave is sufficient to trigger the company's obligation to give two days of leave.

PT Dada does not afford menstrual leave to women who request it, but instead provides a monthly menstrual allowance of 16,000 rupiah. This is half of the base wage an employee earns in two full days of work. More important, this practice fails to comply with Indonesian law, summarized in the preceding paragraph.

Recommendation 13

In light of the fact that Indonesian law grants fully paid menstrual leave for reasons similar to the grant of sick leave, the loss of paid menstrual leave equally constitutes irreparable harm, akin to the irreparable harm caused by loss of sick leave discussed above. PT Dada should conform to the Ministry of Manpower's interpretation of Indonesian law. At their own choosing, workers may waive their right to menstrual leave, but only if PT Dada does not pressure, discourage, or punish workers to interfere with their voluntary choice between taking leave and full compensation for waiver of that entitlement.

(d) Jamsostek Benefits. Indonesia's "Jamsostek" program is a social security program that covers a variety of social benefits, including pension, workers compensation disability, death, and health benefits. Broadly speaking, in the area of health benefits, the Jamsostek law requires that employers provide or make available full medical care for workers and their families. Employers and workers are required to make payments into a government fund to finance such medical care.

(1) Inadequate medical treatment. Workers testified that the medical treatment provided or referred by PT Dada does not adequately meet their health needs. A chief administrator of the Jamsostek program testified that, as a legal matter,

companies adequately meet their workers' health needs if the company provides an in-house clinic or if the worker receives medical care at certain government-certified clinics and hospitals. According to this official, the worker may not challenge the adequacy of the care so long as it is provided in an employer-run clinic. The official also stated that the quality of care in government clinics and hospitals is monitored in the process of government certification of those health-care providers. The Assessment Team has not yet been provided with substantial evidence showing that the company provided medical care that failed to meet these criteria. The criterion that insulates any employer-run clinic from scrutiny, however, seems unreasonable. Nonetheless, the Assessment Team has not yet been provided sufficient evidence to make the complex judgment whether medical treatment in the company's clinic fell below any particular standard of adequacy within the norms of Indonesian health care. Although the overall medical treatment in the company clinic may not be subject to challenge, the clinic must meet the minimal condition that it employ trained personnel.

Recommendation 14

The company's clinic must employ personnel trained in occupational health. In light of Indonesia's dearth of both training capacity and trained personnel in this field, including occupational health nurses, the company should itself ensure that clinic staff are provided with adequate training.

(2) Denial of outside medical treatment to workers falling ill during the workday. Several workers credibly testified that the company denied or discouraged their requests to leave work in order to seek medical care outside the factory, when illnesses arose during the workday. For example, when workers request to leave the factory because they feel unable to continue their work, managers and supervisors order them instead to rest in the factory's small prayer room or in the factory clinic. After workers have briefly rested, supervisors order them to continue working.

Several workers testified that they were required to return to work after serious injury rather than allowed to seek hospital care (particularly after puncture of workers' fingers by sewing needles, which in some cases break and lodge inside the worker's finger). The Safety Act of 1970 requires managers to keep records of all workplace accidents. Managers showed the Assessment Team accident reports and medical records for the cap division but not for the toy division. The cap division records appeared facially comprehensive and included reports of hospitalization for surgical removal of needles. The Assessment Team has not yet received sufficient evidence to confirm whether some accidents are unreported or untreated.

Recommendation 15

The company's denial of requests to visit outside doctors or to go home when workers become ill during the workday may cause irreparable harm, if the workers' illness is aggravated by continued work or can be better treated in outside clinics than in the company clinic. In these cases, the company should grant workers' request to leave work, should not discourage or pressure workers who wish to do so, and should pay workers for the hours worked that day before falling ill.

(3) Failure to Provide Jamsostek Cards. Several workers testified that Jamsostek contributions were deducted from their paycheck for their years of employment with PT Dada, but they were not issued Jamosostek cards (Kartu Pemeliharaan Kesehatan). Since workers must have cards to obtain health care for themselves and their spouses and children, some of these workers were forced to make large medical and drug costs out-of-pocket, notwithstanding their contributions. A Jamsostek administrator testified that PT Dada's Jamsostek contributions were paid in full, and that cards should have been issued to PT Dada's employees. He stated that bureaucratic delay, mistakes, or confusion in the delivery and receipt of cards might account for the workers' complaints.

Recommendation 16

A worker who does not receive a Jamsostek Card as a result of bureaucratic error, delay, or confusion may be irreparably harmed by the inability to get adequate health care. Although the Assessment Team was not provided sufficient evidence to determine whether the company is responsible for any delay in the workers' receipt of Jamsostek Cards, it is the company's responsibility to ensure that each worker is provided with adequate health care. Therefore, the company, the three unions, and Purwakarta Jamsostek administrators should cooperate in an initiative to ensure that all eligible workers receive their Jamsostek Cards without undue delay and to educate all workers about Jamsostek eligibility, benefits, and procedures.

Allegation Seven: Homework

Many workers gave credible testimony that they were required to take work to their homes and were paid piece rates for the completed work. Several workers independently testified that the company paid 1 to 3 rupiah per piece for homework and that this rate yielded an hourly wage far below the minimum wage for overtime and, indeed, far below the minimum wage for regular hours. Some workers testified that their homework hours were not recorded at all for purposes of calculating monthly overtime earnings or were grossly undercalculated. Several testified that homework wages were in fact paid in a transaction that was wholly separate from the company's payment of wages and that were not recorded on wage stubs for in-factory work.

PT Dada managers testified that they did not require homework and knew of no instances of homework. Adidas' SOE team and the regional Ministry of Manpower testified that they were unaware of any homework at the PT Dada facility. It was not clear whether Adidas or the Ministry had made comprehensive inquiries about homework at PT Dada.

The Adidas representatives testified that homework flatly violated its Code of Conduct. The Ministry of Manpower stated that homework was not regulated under Indonesian law.

Even if the performance of homework itself is unregulated by Indonesian law, there is no reason why homework required by an employer should escape statutory requirements of minimum regular wages, minimum overtime wages, and record-keeping. If employers were not required to meet statutory wage and record-keeping requirements

for homework, this would provide an obvious means for employers to evade these requirements altogether. These practices are violations of provisions in the WRC Code and many University Codes against exploitative or abusive labor practices.

Recommendation 17

Insofar as workers are required to do homework and their hours are not properly recorded, then workers may suffer irreparable harm. Any future Recommendation that the company pay statutory minimum wages for such work could not be implemented retrospectively in light of the failure to keep records. Workers would have great difficulty proving the number of hours of homework. The company should ensure that no supervisors or managers require workers to do homework against their will. If workers voluntarily choose to do homework, the work should be paid at the same overtime rates as the company pays for work inside the factory. A worker's hours and pay for voluntary homework should be recorded and listed on pay stubs in the same manner as overtime work inside the factory.

Allegation Eight: Wages and Hours

(a) Excessive Hours and Failure to Pay Overtime Wages. Indonesian law imposes a maximum of 54 hours of work per week. *See Decision of the Minister of Manpower No. 608 of 1989.* The employer can apply to the Ministry of Manpower for a waiver of that ceiling and an increase to a maximum of 70 hours per week. *See Instruction of the Director General of Industrial Relations Development and Manpower Protection, No. 3 of 1976.* Indonesian law imposes a maximum of 7 hours per day. Hours in excess of that "straight-time" amount must be paid at overtime wages that are 150 percent of regular wages for the first hour of overtime per day and 200 percent for all additional hours. *See Decision of the Minister of Manpower, No. 72 of 1984, on the Basis for the Calculation of Overtime Wages, Article 4.* The maximum permissible hours per day, including overtime, is 9, although employers may also apply to the Ministry of Manpower for a waiver of that ceiling. *See Decision of the Minister of Manpower No. 608 of 1989, Article 5; Instruction No. 3 of 1976, supra.*

Several workers testified that they frequently worked days as long as eleven or twelve hours and occasionally worked days as long as fourteen or fifteen hours. Some testified that they had worked as long as twenty-four hours at a stretch when the company was facing a production deadline imposed by buyers. Many workers testified further that they were not paid fully for their overtime hours. A majority of workers interviewed were unable to explain how their overtime hours were counted and recorded and their overtime wages calculated.

Managers denied that the company had ever required workdays as long as these, and insisted that the company did not impose such work hours now even if it might have in the past. Managers stated that they were now often caught between buyers' deadlines, on the one hand, and buyers' Codes of Conduct on the other. Managers testified that they felt compelled to follow the buyers' Codes and work shorter hours, even if this put them at a competitive disadvantage vis-à-vis rival companies.

The company showed the Assessment Team documents appearing to show scrupulous record-keeping of hours. There is no way of knowing, however, whether the

records accurately reflected actual hours worked per day or per week. While workers' testimony of excessively long hours seemed credible, the workers did not produce their own written or contemporaneous notes or reconstructions of their total hours worked per day or per week. In the absence of such notes or credible reconstructions of daily or weekly hours, the Assessment Team is unable to calculate whether workers were properly paid for their overtime hours. Further evidence-collection by the Team may permit an evaluation of this allegation in the Full Report.

Recommendation 18

While the Assessment Team cannot yet reach firm conclusions about whether PT Dada fails to pay accurate overtime wages, the Team can firmly conclude that workers are inadequately informed and educated about the manner of calculating and recording their regular and overtime hours and wages, and therefore unable to monitor the accuracy of their own monthly earnings. As with the problem of homework discussed above, this information failure may cause irreparable harm, to the extent that many workers will be unable to retrospectively prove their overtime earnings should the Full Report conclude that there is a pattern of under-recording of hours and underpayment of overtime. The company should educate workers about the methods for recording, calculating, and paying overtime wages, and should make these methods transparent. In light of the limited literacy of some workers at PT Dada, this education requires more than a written notice. Some form of group meetings and presentations, verbal explanations, full opportunities for workers to ask questions, and provision of clear answers by supervisors or managers is required.

There is substantial evidence, however, that PT Dada fails to comply with Indonesian laws on maximum hours per day and per week, on at least an occasional basis. Again, it is theoretically possible for PT Dada to retroactively compensate workers monetarily for hours worked in excess of daily and weekly maxima set forth in Indonesian law. In the absence of record-keeping that can be monitored by workers informed of their rights, however, workers may not be able to prove these damages retroactively and may therefore suffer irreparable harm. PT Dada must therefore adhere strictly to the limits on daily and weekly hours summarized above, and must include information about maximum daily and weekly hours and methods of recording daily and weekly hours in the educational program recommended in the previous paragraph.

(b) Break time: Indonesian law requires that employers afford workers a half-hour break for every four hours of working time. Employers are also required to grant a one-hour break between the end of the regular work day and the start of overtime hours.

Many workers credibly testified that they were not granted a one-hour break between the end of regular hours and the start of overtime and were not always afforded breaks every four hours during periods of overtime.

The regular work-day at PT Dada officially begins at 7:30 a.m. and ends at 3:30 p.m., with one break from 12:00 to 1:00. Workers testified, however, that they were required to return to the factory floor by 12:45, thereby reducing their break to 45

minutes. Several workers also testified that they were required to be at their workstations and to begin work by 7:00 rather than the stated starting time of 7:30.

Hence, there is substantial evidence that workers work at least an additional 45 minutes without additional pay. For the same reason, there is substantial evidence that many workers routinely have regular workdays of 7 hours and 45 minutes, exceeding the statutory maximum by 45 minutes.

Recommendation 19

The company should pay workers for actual time worked, including for the half-hour before 7:30 and the fifteen minutes before 1:00, when workers are required to work during those periods. The company should grant a one-hour break between the end of regular hours and the start of overtime hours. The company should allow workers to freely choose whether or not to take the one-hour break between the end of regular hours and the start of overtime hours.

Although these problems of time and pay for breaks are potentially compensable by future payment, they may cause irreparable harm in light of the apparent failure to maintain records of such breaches by the company.

Allegation Nine: Harassment

(a) Physical Harassment. Two workers testified that supervisors hit workers with rulers and other objects. This testimony was not corroborated by the testimony of other workers and managers. Several workers, however, corroborated that occasionally supervisors had physically menaced workers by shaking and swinging their fists, by loudly and suddenly hitting worktables, and by kicking workers' equipment. After the July strike, managers responded to workers' complaints by transferring one of the supervisors responsible for many of these incidents out of PT Dada. As described below in the discussion of Allegation Sixteen, however, there is substantial evidence that other supervisors subjected one worker to severe physical isolation and deprivations.

(b) Verbal Harassment. A large majority of workers interviewed testified that they experienced or witnessed one or more incidents of serious verbal harassment by supervisors. On occasion, supervisors screamed at workers, referring to them as "lazy" and "stupid" and as "dogs" and "imbeciles." Supervisors also shouted Korean obscenities referring to sexual acts. The discussion below of Allegation Ten, relating to race discrimination, recounts the substantial evidence that verbal harassment also took the form of racial abuse.

(c) Sexual Harassment. Many workers testified that the largely male complement of supervisors flirted with the largely female workforce. Several workers testified that such flirtation sometimes crossed the line into unwanted physical touching or "massaging" of shoulders, thighs, and buttocks. In this context, it is important to note that PT Dada's female workers are very young, are often inexperienced in industrial work or in work of any kind away from their families, and are largely Muslim women for whom physical modesty and restraint is fundamental.

Recommendation 20

The evidence suggests that severe, sustained physical, verbal, and sexual harassment does not occur at PT Dada, but that there are occasional acts of serious harassment. This pattern of harassment violates WRC and University Codes as well as contemporary legal standards prohibiting discrimination. As a member of the International Labor Organization, Indonesia is bound by the ILO Declaration on Fundamental Principles and Rights at Work (86th Session, June 1998). One of the fundamental rights set forth in that declaration is freedom from discrimination in all forms. *Id.*, Article 2(c). It is true—and praiseworthy—that PT Dada has recently taken positive action by transferring the most frequently culpable supervisor out of the facility, as urged by representatives of Adidas. PT Dada has also recently instituted a suggestion box that serves as a crude complaint mechanism, as described in the discussion of Allegation Twelve below. The Assessment Team concludes that more proactive efforts and more robust mechanisms of grievance and dispute resolution, as set out in the Recommendation 23 below, are necessary to avoid potentially irreparable forms of harassment.

Allegation Ten: Race Discrimination

Several workers testified that they experienced or witnessed race discrimination in the form of verbal harassment directed at Indonesians as a group. Korean managers sometimes shouted such phrases as “You lazy Indonesians!,” “You stupid Indonesians!,” or “You Indonesian dogs!” at workers. Workers are deeply offended and insulted by these outbursts, however occasional.

Recommendation 21

PT Dada must act proactively to safeguard against this very serious and irreparable form of racial harassment. These safeguards can be implemented through the same measures taken to prevent and remedy other forms of serious verbal harassment, as set forth in Recommendations 20 and 23.

Allegation Eleven: Religious Discrimination

Indonesian law requires employers to provide a facility (*mushola* or “small mosque”) for workers to fulfill their daily Islamic prayers. Workers testified that, until shortly before the visit by the WRC Assessment Team, the *mushola* provided by PT Dada was unclean and smelled overpoweringly of a nearby bathroom. The facility has now been repainted and, at the time of the WRC visit, the bathroom was clean.

Workers also testified that they were given insufficient time for their daily prayers. In relation to the needs of a Muslim workforce of over 3000 workers, allotted break time is short. Workers’ religious obligations require that they cleanse before prayer, but PT Dada’s water faucets have been slow and unreliable, causing many workers to rush, miss, or resignedly skip their prayers.

Recommendation 22

PT Dada has very recently begun to refurbish its water supply system. It should take the occasion to ensure that workers are not impeded from meeting their religious obligations by reason of faulty cleaning facilities, limited or unclean bathroom facilities, intolerable odors from bathroom facilities near the *mushola*, insufficient break time, or otherwise. Workers' failure to fulfill their religious obligations is irreparable.

Allegation Twelve: Insufficient Grievance and Dispute Resolution Procedures

Until the July 2001 strike, PT Dada afforded workers no formal complaint mechanism. Apparently under recommendations from an Adidas team that monitored the factory after the strike, PT Dada installed a suggestion box. When the WRC Assessment team asked whether the factory had a grievance and dispute resolution mechanism, PT Dada managers testified that the suggestion box serves as a complaint mechanism. The managers showed the Assessment Team a management logbook that categorizes the nature of suggestions and of management's response to the suggestions. The log book indicates that managers do in fact read the suggestions and respond to them, and that many suggestions are in the nature of worker complaints about conditions in the factory. Nonetheless, the suggestion box is an insufficient device for grievances and dispute resolution.

Recommendation 23

A suggestion box is hardly a substitute for a grievance system. In light of the fact that some complaints may entail irreparable harm to workers – such as complaints that applications for sick leave are denied or punished or that workers' religious obligations cannot be fulfilled in the allotted facilities and break times – PT Dada should implement a more robust mechanism for filing grievances, protecting workers against retaliation for filing grievances, resolving disputes, and remedying violations of company policy, collective bargaining provisions, codes of conduct, and law. These mechanisms should include proactive programs of training and systemic monitoring to prevent such problems as the pattern of occasional harassment identified in Recommendations 8 and 9 above. In light of imminent negotiations between PT Dada and its unions, this Report will not presume to specify the appropriate grievance mechanisms and proactive programs for PT Dada's workforce. Such mechanisms are core subjects of collective bargaining and should be determined by the parties who are most vitally affected by them.

Allegation Thirteen: Breach of Agreement to Negotiate

The July 2001 strike was resolved through a "tripartite conference." In that conference, managers and worker representatives negotiated a settlement under the auspices of local government officials (affiliated with the regional parliament or DPRD). The settlement was embodied in a written agreement signed by representatives of the company and the workforce. The settlement afforded workers certain new benefits. It also contained a provision requiring the company and worker representatives to further

negotiate the issues of additional food allowance and seniority stipend before January 2002.

On February 2, 2002, PT Dada issued a written statement asserting that the company's current economic situation does not permit the company to grant additional food allowance and seniority stipend. Representatives of all three unions in the factory – SPSI, SBSI, and SPBDI – testified that they have not negotiated with management over matters of substantive terms and conditions of employment since the July strike settlement. Managers, however, provided the Assessment Team with a document stating that negotiations of the food allowance and seniority stipend had occurred in late 2001. The document is signed by managers and by officials of one of the unions, SPSI. Officials of the Ministry of Manpower stated that if managers and worker representatives have in fact not negotiated these issues in good faith, then there is cause for some form of intervention by the Ministry.

Recommendation 24

Based on the evidence gathered thus far, the Assessment Team is unable to conclude whether PT Dada has negotiated in good faith with the SPSI over food allowance and seniority stipend. This question may be resolved by the Ministry of Manpower. In addition, these matters are subjects of bargaining in the general round of contract negotiations scheduled for the next three months. Additionally, as recommended below, PT Dada should ensure that no group of workers be denied representation in collective negotiations. For these reasons – and in light of the fact that workers can later be compensated for any underpayment of these monetary allowances and therefore will not suffer irreparable harm prior to negotiation of increased allowances – the Assessment Team concludes that PT Dada and the workers' union representatives should address these matters as part of the general round of contract negotiations scheduled during the next three months, in accordance with Recommendation 24 regarding rights of representation and bargaining.

Allegation Fourteen: Refusal to Bargain with Workers' Chosen Representatives

Indonesian law provides strong protections for union formation and union activity. *See Labor Unions Law, No. 21 of 2000*. This law explicitly protects the rights of workers who choose to join minority unions, that is, unions that represent less than a majority of a company's workforce. *See Law No. 21 of 2000, Article 5(1), Article 14 (2)*. Hence, Indonesia's system of labor relations is a "pluralist" system, in contrast to a system, such as that of the United States, based on "exclusive representation." Under United States law, the union that has the support of a majority of workers in a bargaining unit is the exclusive representative of all workers in that unit, including the majority who support the union and the minority who do not. The exclusive representative has the authority to negotiate a single contract for all workers, and other unions are prohibited from representing sub-groups of workers. In a pluralist system, by contrast, workers may choose to organize multiple unions in a single workplace. All of the unions freely chosen by workers have the right to represent their respective members.

The Indonesian Labor Unions Law of 2000 grants wide authority to majority and minority unions to represent their members. Law No. 21 of 2000 (articles 1, 2 and 4) states that all unions are entitled to “struggle for, defend, and protect the rights and interests of workers,” including the authority to “act as the representatives of the workers” and to “negotiate collective labor agreements”. The broad, open-ended language of the 2000 Act indicates that the authority of minority as well as majority unions is inclusive of all major union activities, including rights of organization, bargaining, grievance-processing, and group protest.

In their interviews with the WRC Assessment Team, PT Dada managers voiced a variety of opinions about their legal obligations toward the three unions in the factory – SPSI, SBSI, and SPBDI.

The President of Dada-Korea stated that PT Dada would have to negotiate contracts with all three unions, although PT Dada would not negotiate multiple provisions as to specific matters that, for technological or organizational reasons, require a single program across the entire factory.

Personnel staff of PT Dada Purwakarta subsequently stated that the SBSI and the SPBDI had not yet completed the legal formalities for registration and recognition as union representatives for PT Dada workers.

The chief Personnel Manager of the Jakarta Office of PT Dada – to whom the officials of Dada Purwakarta and Dada Korea seemed to defer on this matter – subsequently stated that PT Dada would negotiate with the SPSI and would not negotiate separate contracts with SBSI and SPBDI. He based this view on the assertion that SPSI had the support of a majority of PT Dada workers, although he seemed to acknowledge that SBSI and SPBDI had in fact completed their registration and recognition formalities. (As discussed below, many witnesses challenged the view that SPSI has the voluntary support of a majority of workers. The WRC Assessment Team takes no position on which, if any, of the three unions at PT Dada is a majority union and which are minority unions). He also stated that PT Dada acknowledged the right of SBSI and SPBDI – as, by his count, minority unions – to participate or consult with SPSI in some unspecified fashion in the formulation of contract demands prior to negotiations.

In their interview with the Assessment Team, officials of the Ministry of Manpower stated that, since the enactment of the Labor Unions Law in 2000, the issue of bargaining rights in Indonesia’s pluralist system had not yet arisen in any concrete case presented to the Ministry. To their knowledge, although there are approximately forty different unions in Indonesia today, workers had organized and registered more than one union in only one factory (and there were not multiple contracts in this factory or any other). It is not clear whether a single union had yet negotiated a contract in the one factory (other than PT Dada) in which more than one union was registered.

Although no concrete case was known by or presented to the Ministry of Manpower, the Ministry officials offered the Assessment Team their interpretation of the Trade Union Law on the matter of multiple unions in a single workplace. The officials stated that registration and recognition of multiple unions was indeed lawful. The Ministry also stated that all three of the unions at PT Dada had successfully completed the legal process for gaining registration and recognition – contrary to the assertion by personnel staff at PT Dada-Purwakarta. The officials further stated their view that the

majority union in a workplace had the right to negotiate and enter a collective contract with a company's management.

In their view, minority unions have three options. First, the minority unions can exercise rights of consultation with the majority union prior to that latter's negotiation of the contract ("following the lead" of the majority union). Second, the minority unions may lawfully seek management's consent to negotiate separate collective contracts for their own members, although the law does not require management to bargain with the minority unions. Third, the multiple unions are permitted to agree among themselves to enter into a coalition to bargain together to reach a single contract with management on behalf of the members of all the unions.

In addition, in a hearing conducted on February 22, 2002—subsequent to the Assessment Team's interview with Ministry officials—the Ministry acknowledged a minority union's right to negotiate on behalf of individual workers to resolve grievances charging the management with violations of labor law. (In that case, the Ministry did not address the question whether management is required to enter into a collective contract with minority unions, or whether management is required to negotiate over the full spectrum of terms and conditions of employment with the minority union, as distinguished from negotiations over workers' complaints that the employer has violated statutory or contractual provisions.) Indeed, that case involved a dispute at PT Dada. The Ministry ruled that PT Dada should negotiate with one of the unions which the Ministry currently considers a minority union at PT Dada, namely the SBSI, over the grievance of two SBSI members. This case is described more fully below. (Again, the WRC Assessment Team takes no position on which, if any, of the three unions at PT Dada is a majority union and which are minority unions. The relevant point in this instance is that the Ministry has taken the position that, as a general matter, a minority union has a right to negotiate on behalf of its members to resolve grievances.)

At the time of writing this Preliminary Report, officials of SPSI had expressed their intention to engage in collective negotiations with PT Dada-Purwakarta. Officials of PT Dada-Purwakarta had expressed their intention to bargain only with SPSI, with a view to reaching agreement by May, 2002. However, officials of SBSI had already submitted a proposed collective contract to PT Dada, PT Dada officials had told SBSI that a response to the proposal would be forthcoming, and SBSI is still awaiting PT Dada's response. SPBDI had not formally stated its bargaining position, although officials and members of SPBDI suggested they might seek to join a bargaining coalition with one or both of the other unions.

Indeed, in individual interviews with the Assessment Team and in large-group meetings, many workers expressed their desire that they be represented in collective negotiations by a negotiating committee in which each of the three unions had equal representation.

Recommendation 25

At this time, it is impossible to predict whether the three unions at PT Dada will form a single coalition to bargain with management or whether they will seek to bargain in some other configuration. Hence, the Assessment Team makes the general recommendation that PT Dada ensure that all three unions are fairly represented in collective negotiations with the company, and that the desires of all

workers be fairly reflected in any collective agreement(s). The PT Dada case may set a precedent for other Indonesian workplaces with multiple unions. It would be manifestly unfair if PT Dada, or other companies, could freeze substantial groups of workers out of representation in a pluralist system of labor relations. The latter would constitute a violation of the WRC and University Codes' requirements of free association and fair negotiation, and a probable violation of Indonesian and International Labor Law. It would also cause irreparable harm, should the company sign a multi-year contract that does not reflect the desires and participation of substantial numbers of workers who were unrepresented in collective negotiations.

Allegation Fifteen: Interference With Workers' Right of Association

Many workers credibly and vividly described instances of retaliation for, and interference with, their effort to organize unions not favored by PT Dada managers. Such retaliation and interference violate workers' right of association. That right is strongly and repeatedly protected in Indonesia's Trade Union Law of 2000. *See* Law No. 21 of 2000, Articles 5, 9, and 28. In fact, under that law, it is a criminal felony to intimidate, retaliate against, or interfere with workers in the exercise of their rights of association. Such acts are also violations of WRC and University Codes and International Labor Rights, including ILO Conventions No. 87 and No. 98, both of which have been ratified by the Indonesian government.

The evidence of retaliation and interference will be comprehensively presented and weighed in the Full Report. For purposes of this Preliminary Report, this section sets out sufficient evidence to establish that there is substantial credible evidence of irreparable harm to workers' right of association. Among the many accounts offered by workers and independently corroborated by co-workers are the following:

- One very young worker was sequestered during the workday and ordered to work in a small, windowless storage space over a period of two weeks in October, 2001. This sequestration or "solitary confinement" occurred during severely hot and humid weather, in a space without air conditioning or fans. She was provided opportunities to obtain food and water only erratically, and on some days was denied such opportunities altogether. On some of these days, she was required to work twelve hours. The conditions of her sequestration were so harsh that the person assigned to guard her reportedly broke down crying and occasionally provided water against orders from superiors.

Even if this sequestration were not motivated by the workers' exercise of her rights of association, it would constitute a severely abusive case of physical harassment under the Codes, under Indonesian and International Labor Law, and under a variety of other general laws protecting individuals' bodily integrity and personal freedom.

There is, in any event, substantial evidence that the sequestration was motivated by anti-union hostility.

The worker herself declined to give testimony to the Assessment Team. Notwithstanding this, the Assessment Team was able to reconstruct and verify the facts of her case from numerous sources, including public documents secured by various NGOs and public agencies, and the independent corroborating testimony of numerous co-workers and supervisors.

The worker in question had been a highly visible participant in the July 2001 strike. She was elected to serve as one of several representatives—and as the only female representative—of all the striking workers in tripartite negotiations among workers, managers, and officials of the Regional Parliament. She was also elected as the leader of an independent union in the factory, the SPBDI, newly formed by a group of rank and file workers around the time of the strike.

Starting shortly after the strike, supervisors repeatedly warned her that she was a “troublemaker” who risked the “consequences” of causing “problems” for the company. Two days after the strike, she was interrogated about the strike by a manager, who called her an “agitator” and shouted obscenities at her on the factory floor in the presence of many other workers.

These threats were followed over the next several months by further repeated threats against her and by a series of transfers and demotions that, among other things, prevented her from developing ties with other workers. The threats and adverse actions against her occurred at the same time that managers engaged in a series of interrogations and threats directed at other strike participants and worker-leaders, a sample of which is described below.

The series of threats and adverse actions against her culminated in her two-week sequestration and physical deprivation, which ended with her suspension and the beginning of discharge procedures on October 30, 2001. On the morning of October 30th, she and other officers of SPBDI, following the proper procedure for union recognition, presented management with the letter of union registration issued by the Ministry of Manpower and a list of grievances. That afternoon, several managers called her into an office and told her she was suspended.

Only after her final discharge did managers produce a “report” – a single-page document – seeking to justify her earlier transfers, demotions, and suspension, as well as her final discharge, with the assertion that she had done “poor work.” The charge of “poor work” was neither specified nor documented.

Indeed, another one-page document—supplied, apparently unwarily, by PT Dada managers themselves—contains direct evidence of the company’s motivation. The document, dated July 28, 2001, eleven days after the strike, is a one-page “warning letter.” The document is a form letter, with no typewritten facts or allegations that might justify or explain the “warning.” Handwritten in Korean across the top margin of the document – underlined and in characters three times the size of the typewritten font used in the rest of the document – are the words “PROTEST INSTIGATOR” and “DISOBEDIENT.” In the middle of the page, evidently in the worker’s own handwriting, is the single sentence, “Before I go home after finishing my

workday, I must ask permission because of this problem.” (This rote, self-disciplinary statement was manifestly dictated by management.) The nature of “this problem” is not specified, other than the circular reasoning provided by the letter’s final handwritten phrase in Korean, “Goes home after work without seeking permission.” Co-workers testified that on July 24th a manager had verbally accused her of committing this offense on July 22nd. But the co-worker further testified that they were baffled by the charge. They testified, credibly, that on July 22nd, and routinely on other days, they left work at the same time she did and that neither she nor they were required to seek permission before going home. If this testimony is true, as it appears to be, the worker in question was required for the first time, by means of the warning letter, to commit herself to the rule that she must seek permission before going home and was simultaneously accused of violating that rule.

Many other workers testified that management required particular workers to seek permission to go home at the end of the workday only as a form of punishment or reprisal. That is, the requirement was not a stated or routine work rule whose violation could be characterized by managers and punished as “poor work”—the only grounds later given for this worker’s discharge—but rather was a form of punishment itself.

Hence, there is substantial evidence that PT Dada, in its July 28th warning letter, sought to intimidate the “PROTEST INSTIGATOR” by charging her with violation of the non-existent rule of “seeking permission to go home” and forcing her to “agree” to that rule as punishment in the future. This explanation of the letter is corroborated by three other pieces of evidence, in addition to the co-workers’ testimony just summarized: First, management supplied no earlier warning letter that might have indicated that, before July 28th, the company had imposed the unusual, punitive rule requiring her to “seek permission to go home.” Second, the July 28th warning letter makes no reference to any earlier infraction or earlier imposition of that punitive rule. Third, the letter closely followed the strike; the worker’s connection to the strike was clearly on the manager’s or supervisor’s mind; and the letter used the identical word—“instigator”—that a manager had shouted at her two days after the strike and nine days before the date of the letter. Even if, counterfactually, the warning letter accurately reports that the worker in question violated a valid company rule that she seek permission before going home, the scrawled label of “PROTEST INSTIGATOR” is substantial evidence of the anti-union hostility of PT Dada managers toward this worker – hostility that manifested itself on several other occasions, including her two weeks of sequestration; the multiple instances of manager’s interrogation about her union activity; threats against and denunciation of her union activities; and her suspension and potential discharge on the same day she and others gave SPBDI’s letter of registration to management.

PT Dada has taken no action to reinstate this worker.

- Many workers independently and credibly testified that in September and October, 2001, and at other times since the July 2001 strike, they were called

into managerial offices and interrogated by at least three different managers about their participation in either SBSI or SPBDI. Managers told workers that SBSI and SPBDI were illegitimate “political” organizations encouraged by outside agitators and would force the factory to close. (In the Assessment Team’s interview of PT Dada managers, the managers repeated that SBSI was a political organization that used outside agitators to stir up trouble at the factory.) In fact, both SBSI and SPBDI are fully registered trade unions recognized by the Ministry of Manpower.

- Workers also corroborated each others’ independently proffered accounts that, during these interrogation sessions, managers demanded that they renounce their membership in those two unions and instead join SPSI. Managers threatened workers with discharge, demotion, transfer, and other adverse actions if they did not do so, and in numerous cases managers followed through on their threats. Several workers reported that they faced continuing pressure from managers and supervisors after the interrogation sessions. Two workers testified that managers asked them to serve as informants and provide managers with information about which co-workers supported SBSI and SPBDI.

There is substantial evidence that management showed favoritism toward SPSI in a number of other ways. Many workers reported that the company allowed or encouraged supervisors and, in some cases, line leaders to distribute to all workers forms for joining SPSI and for authorizing PT Dada to deduct SPSI dues from workers paychecks. Almost uniformly, workers testified that they understood that they would be fired or demoted or otherwise adversely affected if they did not sign the forms. Many workers reported that, as a result, they were unwilling members of SPSI. Many workers stated further that, as a result of company pressure, they were members of both the SPSI and one of the other two unions in the factory. Some workers testified that, although they were unwilling members of SPSI, they nonetheless hoped or expected that SPSI would bring sufficient benefits to workers to make their dues deduction worthwhile.

Further, managers testified that the SPSI union had revived after the July, 2001 strike; that SPSI had the support of ninety percent of the workers in the plant as demonstrated by their authorization of dues deduction; that a preexisting 1998 contract between former SPSI leaders and PT Dada was still in effect; and that the new, post-strike leadership of the SPSI had negotiated with PT Dada and had freely reached agreement to extend the contract beyond its February 2002 expiration date until May, 2002.

After the Assessment Team’s interview with managers at the factory, managers called the SPSI leaders from the factory floor into a conference room for interviews with the Assessment Team. (The managers did not call supporters of SBSI or SPBSI into the conference room for interviews.) The SPSI leaders testified that, after the strike, managers had shown them the pre-existing SPSI-PT Dada collective agreement, but that they did not currently possess copies of the contract. Further, SPSI leaders testified that they had no

knowledge of the collective agreement before managers showed them the preexisting collective agreement, and to this day had no knowledge of the origins of that agreement.

This testimony was difficult to square with managers' testimony that these new SPSI leaders had fully and freely negotiated an extension of the very contract of which they possessed no copies. The testimony also strongly suggested that managers, rather than the new SPSI leaders, had initially uncovered and sought to revive the preexisting SPSI-PT Dada agreement. In any event, the preexisting collective agreement that managers brought to the attention of the new SPSI leaders largely consisted of so-called normative terms, that is, terms that reiterated rights already guaranteed by statutory mandate.

- As recently as early February, 2002, managers told supporters of SBSI that the plant would close if they continued their union activities and that the workers would be held responsible for the closing. Managers also reprimanded SBSI supporters for purportedly calling the WRC to come to the factory. This charge was entirely unfounded. Many other workers testified that, immediately prior to the WRC Assessment Team's arrival in Purwakarta, supervisors told them that they should not reveal the company's "secrets" or "problems" to the WRC and that such revelations would lead to loss of production orders and jobs. Several workers reported that they were deterred by these warnings from granting interviews to the WRC Assessment Team or that they had knowledge of many workers who were similarly deterred. Hence, there is substantial evidence that such intimidation not only discouraged associational activity. It also severely chilled workers' most fundamental right to present grievances and evidence to public and private investigators, such as the WRC Assessment Team, who seek to redress other violations of workers' rights.
- There is substantial evidence that the company was motivated by anti-union hostility when it suspended two leaders of SBSI after they attended labor-education programs conducted by a highly respected NGO, the Friedrich Ebert Foundation ("FES," its German acronym).

The Assessment Team questioned PT Dada managers and officials of the Ministry of Manpower about the suspension of these two workers. Shortly after the Assessment Team's interviews, the Ministry of Manpower facilitated discussion between PT Dada and the workers in question. The company provisionally agreed to reinstate the workers. The company's remedial agreement is laudable. However, it remains important to recount the events surrounding the workers' suspension, for three reasons. First, the company's agreement to reinstate the workers remains provisional at the time of writing this Preliminary Report. Second, the events surrounding the workers' suspension are part of the larger context for understanding PT Dada's other actions and motives toward union supporters. Third, any illegitimate

intimidation caused by those suspensions may have lingering effects that require remediation.

On February 3rd, 2002, the SBSI union received an invitation from FES to attend a workshop on Monitoring and International Codes of Conduct scheduled for February 11th through February 15th. SBSI designated two workers to request leave from PT Dada to attend the workshop. The two workers, Efi Yuniati and Siti Zubaedah, are union leaders and members of the SBSI negotiating team.

On February 4th, Efi and Siti showed the FES invitation letter to their supervisor, who advised them that PT Dada would deny any request for leave to attend the workshop because the workers had not filed the request 30 days in advance of the requested leave time. During the next two day, FES faxed another copy of the invitation to PT Dada, retaining a record that the fax had been successfully transmitted, and spoke by telephone to PT Dada officials. PT Dada told FES that the company would not permit the workers to attend the workshop because the workers had not given 30 days notice.

On February 6th, 2002, officials of SBSI sent a fax to PT Dada requesting leave for the two workers to attend the FES training, and retained a record that the fax had been successfully delivered. The following day, Efi and Siti were interrogated by a PT Dada manager. The manager blamed them for “calling the WRC to come to the factory” and for “chasing buyers away.” The manager told them, “It will be your own fault if people are fired.”

On February 9th, 2002, Efi and Siti filed a written request for leave to attend the workshop. As the reason for the leave, the workers wrote “education” on the company form. On the same day, the factory Personnel Manager denied their request.

Efi and Siti attended the FES workshop from February 11th through February 15th. On February 16th, they returned to the factory. PT Dada personnel presented Efi and Siti with a letter of suspension and demanded that they sign it, but the two workers refused.

In their testimony to the WRC Assessment Team on February 18th, PT Dada managers offered three reasons for denying the leave and suspending the workers for taking the leave. First, the workers had failed to give 30-days notice. Second, the request for leave was filed by the SBSI rather than by the workers themselves. Third, the company had a high volume of production orders.

The WRC Assessment Team recognizes that it is frequently difficult to determine, in any particular instance, whether managers were motivated by anti-union hostility or instead by their articulated legitimate reasons. In this instance, however, the evidence points strongly toward an anti-union motive for the denial of leave and subsequent suspension. The three legitimate motives offered by PT Dada managers are each contradicted by the managers own statements; and PT Dada managers made numerous anti-union statements and threats to Efi and Siti, as well as to other workers, during the period in question. Indeed, it is rare for labor tribunals and monitors to be presented

with such strong, direct evidence of anti-union motives for a suspension or dismissal.

First, the PT Dada managers testified that leaves for education or training are exempt from the 30-days notice requirement. They stated that the requirement of 30-days notice applies to requests to take days of annual leave that are intended for purposes other than education and training. As stated above, on the company's form for requesting leave, Efi and Siti had written that "education" was the purpose of the leave. It is true that the company form is pre-labeled as a form for requesting annual leave in general and not education leave in particular. But that formality does not outweigh the fact that the workers had clearly apprised the company that the actual purpose of the leave was education and training. Indeed, the company had already been made aware of that purpose by three earlier written notices: the FES invitation presented by the workers to the company; the additional copy of the FES invitation sent to the company by FES itself, and the written request from SBSI. Company officials nonetheless indicated several times that they would deny the request to attend the training even before the workers filed their written request for education leave.

Second, the PT Dada managers testified that requests for leave must be filed by the workers themselves and not by their unions or other organizational representatives. But the documentary evidence is clear: Efi and Siti personally signed and filed the company form for requesting leave – the same form on which they indicated that "education" was the purpose of the leave. The fact that their union also filed a leave request, of course, does not negate the workers' personal request.

Third, the PT Dada managers testified that business was too busy to grant leaves to the two workers. But during the period in which the workers attended the FES training, PT Dada managers repeatedly articulated an entirely different reason for denying the leave. On the second day of the FES training, February 12th, 2002, the company sent Efi and Siti a letter stating that the workers must return to work immediately because they had not given a clear reason for their absence. This letter is puzzling because, as summarized above, the company had already received three written notices – from FES, from SBSI, and from the workers – clearly stating that the purpose of the leave was to attend the FES training. On the following day, February 13th, FES and the two workers sent by fax, retaining a record that the fax had been successfully transmitted, a *fourth written notice* clearly stating the same purpose for the leave. Nonetheless, on February 14th, the company apprised the workers that their continued absence would be considered a resignation because the workers had not provided the company with a reason for the leave. On February 16th, the company gave written notice that the workers were suspended *on the sole ground that the workers had not supplied a clear reason for their absence*.

The key points that emerge from this narrative are: (1) Twice during the workers absence, the company told the workers that they need apprise management of their reason for the leave. (2) The company's *sole*

contemporaneous (as opposed to post hoc) reason for imposing a de facto suspension (i.e. automatic “resignation”) was that the workers had failed to give a clear reason for their absence. (3) Before and during the FES training, the workers twice gave clear written notice that the reason for their leave was to attend the FES educational program; and FES and SBSI gave three written notices of the same clear reason for the leave. Therefore, it is very difficult to credit PT Dada’s later statements that a high volume of production orders was the reason for the suspension of the two union leaders.

As stated above, these contradictions in the company’s own statements occurred in the context of numerous anti-union interrogations, statements, and threats directed toward Efi and Siti as well as other workers and union officials.

Hence, while it is imaginable in *retrospect* that the company *could* have suspended the workers on the grounds of high production orders or disobedience of an order not to leave work, there is substantial evidence that these were not the *actual contemporaneous motives* of the company, but instead that the company *actually* acted on anti-union motives. In the law of anti-union discriminatory suspensions, it is the employer’s *actual motive at the time of the suspension* that counts, not *post hoc* reasons, regardless whether the *post hoc* reasons might seem objectively legitimate ground for suspension in the eyes of a fact-finder or other third-party observer.

In any event, the substantial evidence of numerous other instances of anti-union intimidation and retaliation recounted above provides sufficient basis for the following recommendation.

It is true, as already mentioned, that shortly after the WRC Assessment Team’s on-site visit, the company reinstated two union leaders and withdrew a criminal complaint against a third. While praiseworthy, these actions do not remedy numerous other instances of past and ongoing interference with workers’ rights of association. Indeed, they do not suffice to fully remedy the company’s earlier adverse actions taken against the three union leaders themselves, since they do not fully dispel the wider climate of fear created by those adverse actions.

Recommendation 26

There is substantial evidence that the company has interfered with workers’ exercise of their right of association, in violation of WRC and University Codes, Indonesian Labor Law, and International Labor Law. The following acts constitute interference with that right: Physical sequestration and deprivation inflicted on a union leader; threats of plant closing, loss of jobs, discharge and demotion; actual discharge and demotion; interrogation of workers about their preferences among unions and their union activity; threats and intimidation aimed at inducing workers to renounce their membership in SBSI and SPBDI and to join SPSI; encouragement of the post-strike leadership of SPSI to “revive” and extend the ostensibly pre-existing collective agreement; allowing SPSI supporters but not SBSI and SPBDI supporters to solicit membership in the union on company property during work time and to use the network of supervisors and line leaders to

campaign for one union and against other unions; denunciation of SBSI and SPBDI leaders as illegitimate political or outside agitators; and denial of requests for leave in order to attend union education and training. As discussed in the next section, the company also retaliated against and intimidated workers by initiating criminal investigations against them.

This kind of interference with rights of association is potentially irreparable. Once workers are chilled in exercising these rights or a climate of fear is created among co-workers who witness such intimidation or favoritism, it is extremely difficult if not impossible to dispel the fear and intimidation. Also, once workers' effort to form and mobilize an association is preempted by fear, intimidation, favoritism, and defeat, it is very difficult to revive such efforts, and the workers' right of association is irretrievably damaged.

The Assessment Team therefore recommends that the company cease all such threats and acts of intimidation, retaliation, and interference. In light of the severity of past threats and acts, the company's highest officers should make both verbal and written communications to all workers, stating that the company has engaged in such threats and acts in the past, but will not do so in the future. (This is a common remedial order in domestic and international labor law systems, in cases of serious and repeated threats and retaliation.)

In light of the extensive evidence that managers and supervisors have required workers to sign SPSI membership forms, the current membership rolls on which the company bases its dues checkoff cannot be credited. The SPSI should be required to solicit new signatures from any workers who are willing members of the SPSI, without intimidation or interference with voluntary choice. That is, the SPSI, like the SBSI and SBPDI, should sign up members without assistance from the company and without the use of the company's supervisory or managerial infrastructure.

The Team also recommends that the company cease all other forms of favoritism toward the SPSI and, instead, act neutrally among the three unions in the factory. These remedies are difficult to ensure. The company should therefore strictly prohibit SPSI and its supporters, as it prohibits SBSI and SPBDI and their supporters, from having open use of the factory floor, as well as use of the infrastructure of supervisors and line leaders, during work time to solicit for the union, hand out membership forms, make pro-union or anti-union statements or speeches of any kind, and the like. If the company allows any such activities by one union, it must grant other unions equal access and time for identical activity. Otherwise, union solicitation on company property must be strictly limited to break time and to times when workers are on company property immediately before and after work.

In light of the difficulty of enforcing this recommendation, the Assessment Team further urges the formation of an "accountability team" that includes representatives of the WRC and of Indonesian non-governmental organizations with expertise in labor rights. The company should grant reasonable access to the factory by the accountability team to ensure that the recommendations for protecting freedom of association are fulfilled. All activities of the accountability

team must be fully transparent to all members of the team and all workers, unions, and managers.

The activities of the accountability team should in no way preclude, limit, or displace the concurrent independent monitoring, oversight, and organizational activities of workers, unions, managers, or government officials. The accountability team must in no way displace the Ministry of Manpower in its sovereign role, but should instead work together with and in support of the effective and impartial implementation of labor rights by the Ministry of Manpower. Equally, the accountability team should take particular care not to displace the organizing, collective bargaining, and grievance functions of the three trade unions. Rather, the role of the accountability team is to ensure that workers and labor unions can exercise their rights of association and collective bargaining in an atmosphere free of interference, intimidation, and favoritism.

Allegation Sixteen: Abuse of Legal Process Against Union Supporters

There is substantial evidence that the company filed a criminal complaint, thereby initiating a police investigation against one worker, because she signed a written statement asserting a routine workplace grievance. Her written grievance stated that PT Dada violated workers' rights. In addition to presenting the statement to PT Dada managers, she provided a copy to the Ministry of Manpower, the government agency authorized to receive worker complaints, and to other governmental authorities.

The company's criminal complaint not only constitutes retaliation against the one worker who was thereby subject to police interrogation and potential imprisonment. It also chills other workers from filing legitimate grievances, in light of the chance of facing the same frightening response. This is particularly true in light of the widespread problem in Indonesia of harassment of citizens, particularly dissident citizens, by police officers who are relatively unconstrained by the rule of law. This problem has been recently detailed in the 2002 Annual Human Rights Report issued by the U.S. State Department. Many of the young women workers who comprise the PT Dada workforce testified to their reluctance to assert grievances against PT Dada's workplace practices, based on their overwhelming fear of police intimidation and retaliatory criminal complaints.

In interviews with the WRC Assessment Team, PT Dada managers and Purwakarta police officers described the police investigation. On October 30, 2001, officers of SPBDI presented PT Dada managers with a written grievance, stating that PT Dada had violated basic worker rights. The letter was signed by one worker, a leader of SPBDI. Subsequently, PT Dada complained to the Purwakarta police department that the worker had violated Act 310 of KUHP (Kitab Undang-Undang Hukum Pidana). Act 310 is a Dutch colonial law that was neither formally received into Indonesian law nor stricken from Indonesian law after independence.

Act 310 has frequently been used to block dissident speech in Indonesia and is therefore a longstanding target of the Indonesian democracy movement. The law criminalizes "attacks" on the "honor" and "reputation" of another person. PT Dada complained that the worker had attacked the honor and reputation of PT Dada managers

by filing the written workplace grievance and sending a copy to the Ministry of Manpower and other government agencies.

In interviews with the WRC Assessment Team, officers of the Purwakarta Police Department stated that a person cannot be convicted under Act 310 if the statement that constitutes the alleged “attack” is true. (This is similar to the “truth defense” against charges of libel and slander in many legal systems.) Nonetheless, the same police officers testified that their investigation sought to gather evidence only on the question whether the honor or reputation of PT Dada managers had been damaged by the worker’s grievance, and not on the question of the truth of the worker’s statement. The testimony of PT Dada managers corroborated that this was the full scope of the police investigation. Managers testified that the Purwakarta police held a two-hour meeting with managers to discuss the criminal complaint. Managers testified that the police sought information about damage to the company’s reputation but did not seek information about the truth of the workers’ grievance—the truth, that is, about whether there were worker rights violations at PT Dada.

If the Purwakarta police were investigating the criminal complaint in good faith, they would seek evidence of *both* (1) the potential damage to the managers’ reputation *and* (2) the truth of the worker’s statement that workers’ rights had been violated. The police investigated, and stated that they intended to investigate, only the former and not the latter. However, as mentioned above, the police officers conceded that evidence of the second element is necessary to prove or disprove the criminal complaint under Act 310.

As a clear matter of law, then, the police should have conducted a full investigation of the violation of worker rights alleged in the worker’s statement, in order to determine whether the statement was true and therefore not a violation of Act 310. The fact that neither the police nor the company expected that such an investigation would be undertaken raises a strong doubt about whether the criminal complaint and the police “investigation” were *bona fide* or were instead a means of harassing a worker who filed a workplace grievance, as well as a means of intimidating other workers who might consider filing such grievances.

There is equally strong doubt whether applying Act 310 to routine workplace grievances complies with (a) the Indonesian Labor Unions Act of 2000, which, in the strongest terms, prohibits anyone from “intimidating” workers who wish to assert their rights (indeed, the Act of 2000 makes it a criminal felony to intimidate workers for exercising their labor rights), or (b) ILO Conventions No. 87 and 98 on Freedom of Association, both of which have been ratified by Indonesia. When asked whether either of these labor laws overrides the use of Act 310 against workplace grievances, the Purwakarta Ministry of Manpower stated that it did not have jurisdiction to render an opinion about the proper scope of a criminal law such as Act 310. At the same time, the Ministry acknowledged that, if a criminal case were prosecuted against a worker under Act 310, the worker might indeed ask the criminal court to dismiss the prosecution on the grounds that that vague colonial statute is overridden by the later and more specific Labor Unions Act of 2000 or Indonesia’s ratification of ILO Conventions No. 87 and 98.

There is even stronger grounds for concluding that the Act of 310 is overridden by the ILO’s 1998 Declaration on Fundamental Principles and Rights at Work, which includes the most robust codification of the right of association embodied in International

Law. That Declaration is binding on Indonesia whether or not Indonesian law purports to recognize the right of association as broadly stated in the Declaration.

In any event, the “Freedom of Association” contained in the WRC Code and in University Codes is properly interpreted to prohibit the company’s actions in this instance – that is, the filing of criminal charges of defamation in retaliation for a worker’s assertion that the company is violating worker rights. Any other result would give employers a powerful weapon to penalize a worker’s exercise of her right to assert grievances, one of the most fundamental worker rights. It is not surprising, therefore, that the United States Supreme Court has ruled, precisely, that workers’ rights of association and speech override the use of defamation law to penalize workers’ routine filing of grievances because “such suits might be used [by employers] as weapons of economic coercion” with the ill effect of “dampening the ardor of labor debate.” *Linn v. United Plant Guard Workers*, 383U.S 53 (1966). The WRC and University Codes should codify this simple logic.

Recommendation 27

PT Dada should not file criminal complaints against workers’ statement of routine workplace grievances, regardless whether the statement is conveyed to government agencies or any other party. After the WRC Assessment Team’s on-site visit, PT Dada has laudably agreed to withdraw its criminal complaint against the worker who signed the letter stating that the company violated workers’ rights. Although PT Dada does not have controlling authority over the police, the company should use its powers of persuasion to ensure that the police do not, in fact, engage in any further interrogations or other potentially intimidating activities predicated on the now-withdrawn criminal complaint.

APPENDICES

The following two appendices are based on 26 in-depth interviews conducted by the WRC team Health and Safety Expert. Interviews were conducted in small groups and included workers from various manufacturing sections of PT Dada. Workers were asked

to indicate on an outline of a figure where they experienced daily pain and discomfort. Workers were also asked a series of open-ended questions in relation to workplace health and safety, and to complete a table with various symptoms and possible indicators of occupational ill health.

Appendix 1.

Table of Symptoms

Symptom	Every day/ Frequently	Occasionally	Rarely	Attributed by the worker to? (number in brackets indicates number of similar responses)
Headache	2	18	2	Work makes me tired, noise, Not enough sleep (3), smell from press, not enough rest, afraid of making mistakes because of the speed of work. Target system. Different colours.
Dizziness, confusion.	5	20		Glare, smell of the fabrics, noise (2), too much work. Too many problems (2). Target system (4), too many different fabrics. Sewing is hard. Afraid of making mistakes and they are blamed. Achieving quality (2)
Pins and Needles	6	11	2	Long Time standing, (6) pressure, too long sitting (5). Using coloured fabrics.
Cough	1	11	2	Air is not good, dust (6), From the burning of fabrics an from cutting cotton thread (2). Machine smells.
Itch or red skin/rashes	1	11	1	Materials, allergy to sizing (5), tough fabrics (3) Hairy fabrics. The seating.
GI Tract disturbances	4	7	4	Eating late (10), too little with too little rest time afterwards. No breakfast.
Menstrual Disturbances	1	20	1	Standing, sitting too long, periods are not successive. Effects my health. Work is too rapid. Cramping. Normal when bleeding.
Cramps/muscles soreness.	2	2	6	Personal weakness, work too fast
Other (specify)	1 (eyes) 2 (legs) 1 (back)	1 (eyes).		Too long on my feet Colours too bright (2). Not enough walking a round.

Appendix 2

Ergonomic-Related Symptoms Table

PART OF THE BODY	NUMBER	SECTIONS	SITTING	STANDING
Headache	7		Yes	Yes
Hands	13	Checking Embo. Inspection	Yes	Yes
Back	20	Sewing, stuffing, helper, QC	Yes	Yes
Legs	16	Stuffing, checking Embo, QC, Inspection, Helper	No	Yes
Shoulders	17	Sewing, checking, stuffing, inspection		Yes
Eyes	4	Checking, QC	No	Yes
Arms	4	Sewing, stuffing	Yes.	Yes