WORKER RIGHTS CONSORTIUM ASSESSMENT
re UNIQUE GARMENTS, SWAZILAND

FINDINGS AND RECOMMENDATIONS
NOVEMBER 9, 2004

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REPORT OF WORKER RIGHTS CONSORTIUM ASSESSMENT AT UNIQUE GARMENTS, MATSAPHA, SWAZILAND

Introduction

This is a report of an Assessment of Unique Garments International Ltd. (henceforth, "Unique Garments"), an apparel factory located in Matsapha, Swaziland that employs roughly 600 workers. The factory is a producer of collegiate licensed sportswear for Reebok, under the label Heisman by Reebok, as well as non-licensed apparel for Reebok, Champion, Children's Place, and other brands. The factory is owned by the Taiwan-based Yell Steel Group.

The WRC undertook an Assessment of labor practices at Unique Garments in response to a complaint made on behalf of workers by the Swaziland Manufacturing and Allied Workers Union (SMAWU). The complaint alleged violations of worker rights primarily in the areas of freedom of association and improper use of temporary and contract employee status.

During the period of July 30 through August 4 of 2004, a WRC Assessment Team, comprised of local experts in the area of human rights, women's rights, and Swaziland labor law, as well as WRC staff, carried out onsite gathering of evidence. The process included extensive interviews with factory employees, management, and government authorities charged with enforcing Swaziland law, as well as the collection and analysis of documents concerning the alleged violations.

The WRC can report that, upon being presented with preliminary findings and recommendations by the Assessment Team, Unique Garments management acted promptly to rectify the most pressing violations identified. Because of the cooperative behavior exhibited by factory management, substantial remediation was achieved in a matter of days without the necessity of intervention by buyers or WRC affiliate universities.

While the factory has not reached compliance with all legal obligations, given the significant progress made to date, there is good reason to expect that remaining problems within the factory will be addressed through constructive dialogue between factory management and worker representatives. The WRC will continue to monitor the situation and may issue further findings and recommendations as circumstances require.

It should be noted that the WRC also received, and responded to, complaints from SMAWU on behalf of workers at two other factories in Matsapha, Swaziland. These two Assessments are addressed in separate reports.

Sources of Evidence

In the course of its investigation, the Assessment Team gathered evidence from the following sources:

- Interviews with approximately 18 current employees of Unique Garments. The interviews were conducted outside of the factory in a location chosen by workers.
- A meeting with the senior management of Unique Garments.
- Meetings with the staff and officials of the Swaziland Manufacturing and Allied Trades Union (SMAWU), as well as the leadership of the Swaziland Federation of Labour.
- Interviews with representatives of the Swaziland Textile Exporters' Association (STEA).
- A meeting with the Commissioner of Labour of Swaziland.
- Discussions with the President of the Industrial Court of Swaziland.
- A meeting with an official of the Swaziland National Provident Fund (SNPF).
- A review of information provided by the Conciliation, Mediation, and Arbitration Commission (CMAC) of Swaziland.
- Analysis of Swaziland labor and employment laws.
- Collection and analysis of relevant documents, including legal briefings, arbitration proceedings, and correspondence.

Allegations Assessed in this Report

Based on preliminary research by WRC staff, a number of potential violations of law and of college and university codes of conduct were identified for investigation by the WRC Assessment Team. The concerns and allegations were as follows:

- *Freedom of Association*: That the factory failed to adhere to a legally binding arbitration award requiring it to recognize the union chosen by a majority of employees.
- *Improper Use of Temporary and Contract Worker Status:* That Unique Garments has violated Swaziland law by keeping workers on probation for longer that the law allows, and by reclassifying workers who had formerly enjoyed permanent status as contract workers.
- *Nonpayment of Benefits:* That the factory collected but failed to remit employee contributions to the Swaziland National Provident Fund.

The WRC's findings with respect to each of these areas of potential noncompliance are outlined below, as are recommendations for remedial action and the response of factory management.

FINDINGS, RECOMMENDATIONS AND STATUS REPORT

Freedom of Association

Allegation

That the factory failed to adhere to a legally binding arbitration award requiring it to recognize the union chosen by a majority of employees.

Finding

The Assessment Team found that the factory refused to recognize a union, in violation of domestic law.

The Swaziland Industrial Relations Act of 2000 (revised 2002) stipulates the rights of employees to join trade unions. The law provides that during any instance in which 50% +1 of the employees in a given workplace have demonstrated the intent to become members of a trade union, the employer is obligated to recognize the trade union in question and commence negotiations toward a collective bargaining agreement.[1] The same law also establishes a framework for resolving labor relations disputes.[2] Under this framework, the final resolution of any unresolved dispute is reached through either a ruling of the Industrial Court or through binding arbitration under the auspices of the Conciliation, Mediation, and Arbitration Commission (CMAC).

With respect to Unique Garments in particular, the factory's obligations are further detailed by a Memorandum of Agreement signed on August 12, 2003 by representatives of the Swaziland Textile Exporters Association (STEA), of which Unique Garments was and is a member, and the two unions that represent employees in the textile and apparel industry.[3] This agreement builds on the framework established in the Industrial Relations Act by detailing the process of binding arbitration as a final stage to resolve disputes concerning union recognition. The agreement establishes that, during instances in which a union has submitted a recognition application and the employer wishes to challenge the union's right to be recognized, the parties shall submit to a "verification count" to determine whether the union enjoys the required 50% + 1 support through a review of affiliation documents conducted by a mutually agreed upon arbitrator/ mediator. If either party wishes to challenge the results of the verification count, it may trigger the final stage in the process, a secret ballot election conducted by the agreed upon arbitrator/ mediator. The agreement makes clear that "the validity of the

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[1] Industrial Relations Act of 2000 (revised 2002), Section 42, "Recognition as collective employee representatives"

[2] Industrial Relations Act of 2000 (revised 2002). Sections 62 – 85 on the functioning of the Commission on Mediation, Conciliation and Arbitration. Under this procedure, if a dispute brought before CMAC is not settled voluntarily during the initial stages of conciliation and mediation, it is to be referred to either the Industrial Court of Swaziland or submitted by the parties for binding arbitration.

[3] Agreement on Recognition Process Between Swaziland Textile Exporters Association and Swaziland Manufacturers and Allied Workers Union and Swaziland Processing and Refineries Allied Workers Union, August 12, 2003, Mbababe, Swaziland. Copy on file with the WRC. It is important to note that the Memorandum of Agreement describes the responsibilities of all factories in the area, regardless of membership in STEA. As a statement of accepted industry practice, reduced to writing by the majority of apparel factories in the region, it creates obligations on all similarly-situated factory in the industry, whether or not they are members of STEA.

election will be determined by the Arbitrator/ Mediator and not subject to appeal by either party". The agreement also states that "the parties agree that the decision of the Arbitrator shall be final and binding".

In mid-2003, the Swaziland Manufacturing and Allied Workers Union (SMAWU) filed an application to represent employees of Unique Garments, asserting the support of a majority of the workforce. Pursuant to an agreement between management and the union, a verification count was conducted by an arbitrator appointed by CMAC and an initial ruling was made in favor of the union on February 6, 2004. Because of a dispute concerning employees not included in the initial verification count, the arbitrator conducted further balloting of employees. On the basis of the verification count and subsequent balloting, on March 17, 2004, the arbitrator delivered a final award in the case, finding that "the union had achieved more than the 50% threshold and therefore deserves mandatory recognition by the employer."[4]

However, in spite of the unambiguous nature of the Arbitrator's award and factory's obligation to abide by it, Unique Garments failed to recognize the union and subsequently failed to respond to letters from the union regarding the award. As of the date of the Assessment Team's meeting with management on August 3 – more than four months after the award was issued – the arbitrator's ruling continued to be disregarded. At this meeting, factory management acknowledged that the company had failed to comply with the award, claiming that recognition required the assent of top management at the company's headquarters in Taiwan and that this consent had not been given. The Assessment Team noted that Unique Garments was, in fact, legally required to abide by the outcome of the arbitration proceedings, regardless of the preference of company management.

In light of these facts, the Assessment Team concluded that Unique Garments violated employees associational rights under Swaziland law and applicable codes of conduct.

Recommendations

At its meeting with factory management on August 31, 2004, the Assessment Team recommended that Unique Garments:

- Immediately recognize SMAWU, in accordance with the March 18, 2004 Arbitrator's award.

- Provide sufficient access to union representatives to conduct an election of shop stewards and carry out other essential union functions.

- Work effectively with worker representatives to address employee grievances as they arise.

[4] Musa I.N. Hhlophe, Final Report on the Verification and Union Balloting at Unique International Garments and Swaziland Manufacturing and Allied Workers Union, March 18, 2004, Matsapha, Swaziland. Copy on file with the WRC.

- Commence good faith negotiations with worker representatives toward a collective bargaining agreement.

Response by Factory Management and Status of Remediation

In response to recommendations by the Assessment Team, Unique Garments engaged in prompt and meaningful remediation of violations in this area.

On August 10, one week after the Assessment's Team's meeting with management, Unique Garments signed a Memorandum of Agreement with SMAWU. Through this agreement, Unique Garments recognized SMAWU as the representative of the workforce, and agreed to allow the union to elect a shop steward committee to act on its behalf and to deduct union dues from employees who provided authorization.

The Assessment Team has confirmed that Unique Garments has since followed through on the commitments made in this agreement. The factory provided access to union representatives to carry out a shop stewards election and a functional shop steward committee has been established. In addition, the company has followed through with deducting union dues from employees who affiliated with the union, apparently without incident. The WRC has also received reports that, on several occasions, factory management has responded constructively to union representatives regarding employee grievances (involving allegedly illegal layoffs) and the problems have been addressed through dialogue.

The WRC acknowledges this prompt and constructive remedial action, which was undertaken without additional intervention from the WRC or buyers.

Further Recommendations

The WRC is aware that negotiations toward a master collective bargaining agreement for workers in the apparel sector are scheduled for late 2004, pursuant to the aforementioned Memorandum of Agreement signed in August of 2003 between the STEA and the two unions in the sector.[5] The WRC recommends that Unique Garments continue to deal in good faith with SMAWU through the period of collective bargaining and beyond, as per the STEA Agreement and the Memorandum of Understanding with SMAWU.

Improper Use of Temporary and Contract Worker Status

Allegation

That Unique Garments has violated Swaziland law by keeping workers on probation for longer that the law allows, and by reclassifying workers who had formerly enjoyed permanent status as contract workers.

[5] Agreement on Recognition Process Between Swaziland Textile Exporters Association and Swaziland Manufacturers and Allied Workers Union and Swaziland Processing and Refineries Allied Workers Union, August 12, 2003, Mbababe, Swaziland. Copy on file with the WRC.

Finding

The Assessment Team concluded that Unique Garments has maintained employees on probationary status for longer than the law allows and reclassified employees who had formerly enjoyed permanent status as contract workers. In doing so, Unique Garments violated the law of Swaziland.

With respect to the first allegation, under Swaziland law employers may keep workers on probationary status for a period of no longer than three months.[6] At the end of the three-month period, employees on probationary status must either be made permanent or be terminated. It is considered a violation of the intent of the law for employees to be terminated and then be immediately rehired for a successive probationary period. The Assessment Team heard credible, mutually corroborative testimony from recently hired workers who stated that they had been fired at the conclusion of the three-month probation period, and had subsequently been rehired as new probationary employees. In a meeting with the Assessment Team, management admitted that these practices had taken place, in violation of Swaziland law.

With respect to the second allegation, Swaziland prohibits employers from unilaterally reducing entitlements to employees without respecting employees' due process rights by engaging in negotiation and review.[7] The Assessment Team heard substantial credible testimony from workers of longer standing, who had completed their probation and were employed at the factory as permanent employees, who stated that, in May of 2004, they were forced to sign a form stating that they were on contract, and that their contract was scheduled to expire in May 2005. Factory management admitted to the Assessment Team that this practice has occurred. It is important to note that, because workers were forced to sign the forms altering their employment status, and did not do so voluntarily, the change in the workers' employment status cannot be considered a result of negotiation as required by law. The Assessment Team thus concluded that, by unilaterally relegating workers who were regular, permanent employees to probationary and contract status, the factory diminished their entitlement to job security and other rights associated with permanent status, and thereby violated Swaziland law.

Considering the foregoing, the Assessment Team concluded that Unique Garments has violated Swaziland law with respect to the rights of employees on probationary and permanent status.

Recommendation

At its meeting with factory management on August 31, 2004, the Assessment Team recommended that Unique Garments take the following remedial actions:

- With respect to workers on probation, any worker who has been employed at Unique Garments for more than three months, as of the time of the Assessment Team's visit on August 3, 2004, should receive permanent status. Management may not dismiss any "probationary" worker in an attempt to resolve this issue.

- All workers who are on contract should be restored to permanent employee status.

[6] The Employment Act, 1980.
[7] The Employment Act, 1980.

Response by Factory Management and Further Recommendations

Subsequent to the WRC's onsite meeting, factory management made a verbal commitment, in keeping with its legal obligations, to make permanent all workers who have been employed on probationary status for longer than three months. Factory management did not, however, commit to returning all employees currently on contract basis to permanent status. The WRC remains concerned about this outstanding violation of codes of conduct, as well as domestic law. Worker representatives have expressed optimism that the issue can ultimately be addressed through negotiation in the collective bargaining process. Given that the issue of job security is one best addressed through negotiation between the parties, and that the factory has recognized the vast majority of workers to be members of the bargaining unit, there are strong grounds to believe the problem may be resolved through collective bargaining. However, a resolution of this issue through collective bargaining will require productive and timely negotiations. The WRC therefore strongly urges that Unique Garments management promptly schedule good faith negotiations with the union, toward the end of resolving this concern and other issues of concern to employees as rapidly as possible.

The WRC will monitor this area to ensure that full remediation is ultimately achieved. Further recommendations may be forthcoming as circumstances require.

Nonpayment of Benefits

Allegation

That the factory collected but failed to remit employee provident fund contributions to the SNPF.

Finding

The Assessment Team identified problems in the process of accounting for employee contributions to a national benefits program. However, the Assessment Team found that these problems are generally at the level of governmental bureaucracy, and that factory management did not commit the primary violations alleged of withholding employee benefit contributions.

The allegations concern contributions to the Swaziland National Provident Fund (SNPF). The SNPF is a nationally-administered employee pension program, into which employees and employers are required to provide matching contributions. Employee contributions are made each month through the automatic deduction of a portion of wages.

The Assessment Team heard testimony from numerous Unique Garments employees who stated they had obtained information from SNPF indicating that the substantial amount of money deducted over the past year from their pay checks was not reflected in their individual accounts. This finding led many workers to conclude that the factory was not remitting the funds to the SNPF administration. Workers also asserted that they had not received SNPF identification cards, which they believed were necessary for accessing their accounts. In an interview with the Assessment Team, factory management denied the accusations regarding unremitted deductions and asserted that all

employee deductions, as well as employer matching contributions, were being transferred appropriately each month.

In order to assess the veracity of these claims, the Assessment Team met with the SNPF administrators and obtained information about the contributions of Unique Garments. This information indicated the total amount of funds contributed by Unique Garments during each of the preceding twelve months, and was consistent with the Assessment Team's estimates of how much should have been present, on the basis of workforce levels during this period.

Additional information from SNPF officers indicated that the problems experienced by Unique Garments workers in accessing their accounts were probably a result of a severe backlog in the processing of workers' accounts by SNPF staff, as well as a backlog in the issuance of SNPF identification cards and permanent account numbers. In some cases, this delay has been exacerbated because employers failed to provide sufficient opportunity to SNPF staff to take photographs of employees for the identification cards, issue permanent identification numbers, and provide education to employees about the process of accessing SNPF accounts.

Recommendation

Since the Assessment Team's meeting with SNPF administrators confirmed that payments are in fact being made by Unique Garments, the WRC limits its recommendations at this time to urging management to ensure that all workers receive permanent identifying numbers and identification cards, and that the factory give SNPF officials the access that they need to workers during working hours to facilitate this process and to provide education to employees about how to access their accounts. The WRC also urges that the factory respond promptly to any requests by employees for information they may need, including temporary identification numbers, to access their SNPF accounts in the interim period until each employee is provided a permanent identification number and identification card.

Appendix

Members of WRC Assessment Team for Unique Garments

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Dr. Evance Kalula is professor of employment and social security law at the University of Cape Town. He is also chair of the South African Employment Conditions Commission, a statutory body which advises the Minister of Labour on minimum labour standards. He served as an ILO expert on the drafting committee of the Swaziland's Industrial Relations Act of 2000.

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