



WORKER RIGHTS CONSORTIUM

To: WRC Affiliate Universities and Colleges

From: Scott Nova and Jessica Champagne

Re: Flying Needle (Nicaragua)

Date: November 26, 2012

We write to you regarding violations of workers' associational rights and Nicaraguan law at Flying Needle, a garment factory located in Tipitapa, Nicaragua. Flying Needle is disclosed by adidas as a supplier of collegiate licensed apparel, and workers report that adidas is the largest buyer from the facility.¹ Worker testimony indicates that Flying Needle also supplies non-collegiate sports uniforms to Under Armour and Rawlings.²

On November 2, 2012, Flying Needle workers filed a complaint with the WRC and contacted adidas, Under Armour and Rawlings. The complaint alleged that factory management had carried out a series of illegal and retaliatory dismissals of union leaders from the Sindicato de Trabajadores Tomas Borge Martinez (the Tomas Borge Martinez Workers' Union). The workers alleged that twelve members of the union's executive committee were dismissed shortly after the union's formation on May 16, 2012, and that, shortly after the union held an assembly to elect new leadership, additional union members were terminated, in October and November 2012. The workers' complaint also alleged that General Manager Luis Ortega and other managers stated on multiple occasions that they will not accept a union in the factory, and that such comments were accompanied by explicit threats to fire any union leaders.

The WRC carried out an initial inquiry including interviews with dismissed workers, a review of documentary evidence including official union registration documents and a Ministry of Labor report, and a review of Nicaraguan labor law. The WRC contacted Flying Needle, which is based in Chesterfield, Missouri, on November 6 to request its cooperation with this investigation. Flying Needle has not responded to this request.

This memorandum presents the findings of the WRC's initial investigation, reviews the response by the licensees and the factory, and provides recommendations. While the WRC

¹ University disclosure for adidas includes Flying Needle's United States address. However, adidas' own supplier list indicates that the Flying Needle facility in Nicaragua, not the United States facility, is carrying out adidas production. Adidas disclosure is available at: http://www.adidas-group.com/en/sustainability/assets/factory_list/2012_Jan_Global_Factory_List.pdf.

² Under Armour has not disclosed Flying Needle as a supplier factory for collegiate licensed apparel. However, worker testimony and press coverage indicate that Under Armour may have also produced university licensed goods at Flying Needle. The WRC is investigating this question and will be contacting Under Armour to request further information.

investigation at Flying Needle is still ongoing, we are aware that concerns about this factory have been raised on some campuses and therefore want to inform you of what we have found to date and update you about recent developments at the facility and the prospects for sustainable remediation.

The WRC is contacting adidas and Under Armour to inquire as to their plans to ensure that the violations are fully remediated and clarify what collegiate products were produced in the plant. We will update universities regarding this response.

Findings

Illegal, Retaliatory Terminations of Union Leaders and Threats by Managers

The WRC's investigation concludes that the termination of all executive committee members of the Flying Needle union in May and June constituted a clear violation of Nicaraguan law and collegiate codes of conduct. Flying Needle violated the law by terminating all twelve of the elected union leaders on May 30 and June 2 without obtaining prior authorization from the Ministry of Labor as required under the laws regarding *fuero sindical*, a form of legal protection specifically designed to protect union leaders from retaliatory dismissal (explained below). In addition, Flying Needle compounded these violations by failing to comply with a Nicaraguan Ministry of Labor directive stating that these illegal firings were null and void and that the workers must be reinstated.

The Nicaraguan Labor Code provides the members of a union's executive committee with *fuero sindical*, legal protection from dismissals and transfers without cause. As stated by Article 231 of the Nicaraguan Labor Code, "fuero sindical is the right of union leaders to be neither sanctioned nor fired without just cause. The worker that is protected by fuero sindical cannot be fired without prior authorization from the Ministry of Labor, based on just cause foreseen by the law... Any dismissal carried out against this article will constitute a violation of fuero sindical." Article 233 adds that, "workers who express their will to organize a union by notifying the Ministry of Labor will enjoy state protection against unjustified dismissal and the unjustified transfers starting at the time of the notification during the periods determined by law for their enrollment for a maximum of ninety days...." Article 233 continues that, "if the employer considers that there has been just cause to fire or transfer someone, he should obtain prior authorization from the Departmental Inspectorate." It is important to understand that any dismissal of a worker enjoying this protection, without prior authorization by the government, is illegal, regardless of the motive.

In addition, Nicaraguan law provides legal protection to all workers against retaliatory firings due to the exercise of their associational rights. Article 46 of the Labor Code states that if a dismissal is found to "constitute an act which restricts the rights of a worker or has the characteristics of retaliation against him or her for having exercised or attempted to exercise his or her labor or union rights..." then the worker has the right to take legal action. If the judge finds in favor of their claim, then the employer is obligated to reinstate the worker "in

the same position previously employed and with identical working conditions, with an obligation by the employer, if ordered to reinstate, to pay back wages....”

The Tomas Borge Martinez Workers’ Union was founded on May 16 with twelve elected union leaders.³ Eleven of these union leaders were fired two weeks later on May 30 and the last of the leaders was fired on June 2. Dismissed workers reported to the WRC that management informed them that they “no longer need their services.” These twelve union leaders were covered by *fuero sindical* and thus could not legally be terminated without prior approval from the Ministry of Labor.

The Nicaraguan Ministry of Labor issued a resolution on June 8 finding that these firings violated Articles 231, 232, and 233 of the Labor Code of Nicaragua. The Ministry of Labor declared the dismissals to be null and void and ordered Flying Needle to reinstate the twelve workers to their previous positions “with identical working conditions, and salary.”⁴

However, despite the Ministry of Labor’s orders, Flying Needle refused to reinstate the workers – a position the factory maintained, in defiance of the law, for five months.

While the terminations of the union’s executive committee members were illegal regardless of management’s motives, because of the factory’s failure to seek notice, there is also substantial credible evidence demonstrating that the terminations were retaliatory and motivated by anti-union animus.

Mutually corroborative evidence provided by multiple workers indicates that the factory’s General Manager and other managers have repeatedly and specifically stated to the workforce that pro-union workers would not be allowed to continue their employment at Flying Needle. According to worker testimony, General Manager Luis Ortega made multiple statements to workers that he would never accept a union at Flying Needle. For example, workers reported that in March 2012, Luis Ortega stated on the factory floor that “in my company, no piece of shit union can exist.” Another worker reported that Luis Ortega stated that New Holland Apparel Nicaragua, another factory in the same free trade zone which has several registered unions, had “turned to shit, and that now it didn’t work because they let themselves be controlled by the union. No one from New Holland can work in my company.” Thus, Mr. Ortega stated not only his intent to break the law by refusing to allow workers to exercise their associational rights at Flying Needle, but also his intent to break the law by discriminating in hiring against workers from other factories who have chosen to do so.

Worker testimony also indicates that Mr. Ortega, as well as other managers, made repeated threats that union supporters would be fired, both before and after the dismissals of the leaders. According to worker testimony, Luis Ortega said in a meeting with workers: “Nobody can order me around in my company. I give the orders and if it is necessary to fire

³ A copy of the Ministry of Labor certification of the registration of the Tomas Borge Martinez Workers’ Union with its twelve elected officers is on file with the WRC.

⁴ Ministry of Labor of Nicaragua, Resolution No 244-122 (translation provided by the WRC).

all the workers and hire new ones, I will do it. It is totally prohibited for workers with fuero sindical to work here.” Mr. Ortega stated on another occasion that he would fire all workers who had been involved in any strikes. Workers testified that managers also interrogated various workers as to whether they were involved with the union.

Management’s clear demonstration of hostility to workers’ exercise of their associational rights, management’s explicit statements that union leaders would be fired, the fact that the dismissals of the union leaders occurred in close temporal proximity to the date of the union’s formation, and the fact that eleven of the twelve leaders were fired on the same day constitute overwhelming evidence of an illegal retaliatory motive. Moreover, there is no plausible alternative explanation for the firings: In the period surrounding the terminations, workers report, there were no economic layoffs on a substantial scale and Flying Needle was installing new sewing machines and *hiring* several dozen workers. Nor did Flying Needle management respond to the WRC’s request for an explanation of the reason for the dismissals. The only plausible motivation for these firings is management’s hostility to workers’ exercise of their associational rights, as protected by Nicaraguan law and university codes of conduct.

Additional Suspicious Terminations (Interim Findings)

The WRC is currently investigating additional firings that took place in October and November of 2012 at Flying Needle. On October 22, the union held an assembly to elect leaders to replace the leaders who had been illegally terminated. The union reports that the election was held after work at a restaurant close to the factory that was open to the public. Union leaders believe that one of the participants or an observer reported the election to management. On October 26, four of the workers who participated in the assembly were dismissed, at least one of whom was a newly elected union leader. On November 1, an additional participant in the union assembly was dismissed.

Workers report that in October and November, as in May, the factory was expanding production and hiring new workers, and that there were no production-related layoffs during this time.

This fact that such terminations occurred on the heels of a union election to replace the first leaders, who themselves had been subjected to retaliatory termination, constitutes strong evidence that these firings were also retaliatory and that management’s campaign of unlawful retaliation is a continuing enterprise.

The repeated mass firing of union leaders, with new leaders dismissed as soon as they step forward to replace their fired coworkers, is a classic pattern in Central America, one the WRC has identified in prior cases at university factories.⁵ The purpose of this tactic is twofold: 1) to swiftly eliminate from the factory all workers who are willing to serve as leaders, thus depriving workers of the leadership necessary for a union campaign to succeed,

⁵ See, for example, “Worker Rights Consortium Assessment re Jerzees Choloma (Honduras): Report of Findings and Recommendations” October 3, 2007. Available at http://workersrights.org/Freports/Jerzees_Choloma_Report_10-03-07.pdf.

and 2) to send an unambiguous message to the workforce as a whole that workers who get involved with unions will see their livelihood destroyed.

Licensee and Factory Response

Early this month, the fired workers, having concluded that management would never of its own volition honor the government's reinstatement order, issued communications to labor rights organizations in the United States and to the factory's customers.

After the abuses at Flying Needle became public, adidas and Under Armour, whose compliance operations had previously taken no action to aid workers, contacted factory management and pressed for reinstatement. This engagement led to an agreement, signed on November 13, to reinstate eight of the illegally dismissed workers, including seven of the twelve union leaders fired in May and June and one of the workers fired in October. The agreement was signed by Flying Needle; the factory level union, known as the Sindicato de Trabajadores Tomas Borge Martinez (Tomas Borge Martinez Workers' Union); its parent union federation, the Confederación Sindical de Trabajadores "Jose Benito Escobar" (Workers' Union Confederation Jose Benito Escobar-CST-JBE); and the Comisión Nacional de Zona Franca (National Free Trade Zone Commission-CNZF). The agreement included reinstatement for eight of the dismissed union leaders on November 14, with payment of back wages in two installments, on December 6 and February 7. The agreement also included a basic conflict resolution protocol between the union and management, and monthly union-management meetings.

Unfortunately, this agreement lacks key elements which are essential to remedy the damage to workers' associational rights due to the illegal dismissals. While the reinstatement of eight workers is a positive development, it does not adequately undo the harm done by the company's violations to date.

Retaliatory termination of union leaders and members results in a chilling effect in the workplace that suppresses workers' ability to freely exercise their associational rights; indeed, this is their primary purpose. Appropriate remediation in such a case must include mechanisms designed to remedy this effect. Such measures include freedom of association statements issued to all workers by factory management and the factory's customers (indicating management's intent to respect associational rights and refrain from any further acts of retaliation; trainings for workers and managers (particularly the latter, so that there is no confusion as to what constitutes lawful and proper management practice); disciplinary measures against managers that are responsible for past violations (because if the managers suffer no consequences for their illegal actions, this sends a highly destructive message both to managers and workers); and reasonable access to the factory for union representatives (so that the union can carry out its representational functions and so that the workforce can see concrete evidence that management's hostility toward the union and commitment to keep it

out of the factory have indeed abated).⁶ Several such measures were proposed to Under Armour and adidas by the Tomas Borge Martinez Workers' Union, but were not included in the final agreement signed by the parties.

The fact that this agreement does not include measures designed to undo the impact of the terminations on workers' associational rights, or sufficient measures to reduce the likelihood of future abuses by a management whose hostility to workers' exercise of their rights is manifest, raises serious concerns about the prospects that remediation at this facility will be sustained. The fact that not all of the illegally terminated workers were reinstated and provided with back pay is also cause for concern. The union reports that the remaining workers could not be reinstated because, over the months after the firings and before any corrective action, these workers had drifted out of contact with the workers remaining at the plant. This inability to implement full compliance with the law speaks to the urgency in such cases of a prompt response by management and licensees. Had Flying Needle responded promptly to the Ministry's orders, or been compelled to do so by licensees, all of the workers would likely have returned to the facility. Thus, through delay, and through the inaction of the licensees, Flying Needle management succeeded in permanently eliminating more than a third of the union's original leadership.

Recommendations

In order to complete the remediation of these violations, the WRC recommends that:

1. Unless Flying Needle can provide compelling evidence that the terminations of any union members dismissed in October and November were for legitimate reasons, these workers should also be reinstated promptly and provided back pay, with interest, for the time that they were illegitimately denied their income.
2. Flying Needle should, in coordination with the union, issue a verbal and written statement to workers that Flying Needle will respect their right to choose to affiliate to a union and that no workers will suffer any negative consequences for choosing to support the union. In order to ensure that this statement is effective for its desired purpose, the union and WRC should approve the statement before it is released. The licensees should each issue their own separate statements to workers, affirming their commitment to hold management accountable to its promises.
3. Flying Needle should identify and impose significant disciplinary action against all managers involved in illegal firings and anti-union threats, including Luis Ortega, the General Manager. Flying Needle should immediately instruct all managers that threats or intimidation against union leaders will not be tolerated.

⁶ See, for example, the recommendations made by the WRC in "WRC Assessment Re: Gildan Dortex (Dominican Republic) Interim Report" January 20, 2011. Available at http://workersrights.org/Freports/WRC_Interim_Findings_re_Gildan_Dortex%201-20-11.pdf.

4. Flying Needle should work with the union and, a mutually agreed-upon third party, to implement training for both workers and management on workers' rights of association.
5. Flying Needle should commit to allow the union federation reasonable access to the facility for union representatives to speak with employees and represent union members, and to commence collective bargaining in good faith once the union has requested to do so as dictated by Article 238 of the Nicaraguan Labor Code.⁷ Such a commitment is most effective when memorialized in a clear agreement or statement by both management and the union.

Conclusion

It was not only the illegal actions of Flying Needle, but the inaction of the licensees, that allowed the firings to stand for five months, despite an official governmental reinstatement order. Adidas, which bears direct responsibility for this factory under university codes, as well as Under Armour, took no action until they were pressured to do so by the union's public letter on November 2.

Even a weak brand monitoring program could have and should have identified and corrected these abuses in a timely manner. No sophisticated investigative techniques are required; it would have sufficed for the licensees merely to have kept abreast of public regulatory actions against their contractors.

Adidas claims to have a strong monitoring program, which raises the question of how it is possible that they failed to detect violations this severe and obvious and, if they did detect them, why they did nothing until it became a source of public embarrassment.

This is not the first time in the Tipitapa free trade zone that adidas' monitoring program has been ineffective in preventing or remediating illegal dismissals of union leaders, in blatant violation of national laws, international norms and university codes of conduct. In April and May of this year, Troon Manufacturing (formerly Augusta Manufacturing), which is also located in Tipitapa and produces exclusively for adidas, illegally terminated four union leaders protected by *fuero sindical* just two weeks after the union elected its first executive committee. The Troon factory management and adidas did not act until pressured to do so and reached a very similar reinstatement agreement. In the case of Troon, the agreement did not even provide the bare minimum of complete back pay for the full period between the date of dismissals and reinstatement. This agreement has been ineffective in counteracting the chilling effect of the retaliatory firings. An initial investigation at Troon by the WRC indicates that illegal intimidation and harassment of union leaders persists to date even after the reinstatement of illegally dismissed union leaders. Adidas has yet to respond to a WRC communication dated October 26 regarding the continued violations at the plant.

⁷ Labor Code of Nicaragua, Article 238. "All employers who employ workers who are union members are required to negotiate a Collective Bargaining agreement with them when requested. If the employer refuses to negotiate, the union representatives can appeal to the Ministry of Labor's Director of Collective Bargaining and Conciliation, who will convene a process of negotiation. The employer has the same right."

It is also unclear why adidas, notwithstanding its clear obligations under university codes, is failing to educate and discipline its contractors on the issue of associational rights. If adidas has enough power over a contractor like Flying Needle to compel remediation in a timely fashion, when it chooses to do so, then it also has the wherewithal to prevent abuses by making it clear to contractors that illegal firings are intolerable. Adidas is well aware of the high risk of such abuses in Central America and has been for many years; it should be making it crystal clear to contractors in the region that they must not fire people for exercising lawfully protected rights. For whatever reasons, it has failed to do so, with damaging consequences for workers and university code compliance. The focus here is on adidas, since adidas is the licensee confirmed to be using this factory for university product. However, Under Armour, another major brand with ample resources to carry out an effective monitoring program, bears responsibility as well.

The WRC has serious concerns that Flying Needle union leaders will return to a hostile work environment where they will be unable to freely exercise their associational rights, unless the brands make a real commitment to ensure a genuine change in behavior on behalf of the management which will allow workers to exercise their associational rights without fear of further retribution. Given that the General Manager of the plant has directly stated that he will not allow workers to unionize, it is highly unlikely that the factory will come into full compliance without significant involvement by the buyers.

Workers in the Tipitapa industrial park have now seen workers at both Flying Needle and at Troon be terminated in the same year for exercising their associational rights. This sends a clear message to workers not only at Flying Needle and at Troon, but throughout the park, that they are at severe risk of retaliation if they form a union. Without prompt, thorough remediation, this will exacerbate a climate of fear that severely limits workers' ability to exercise their associational rights.

The WRC will follow developments closely and will update universities as to whether licensees and the factory are taking necessary actions to protect workers' rights.