



WORKER RIGHTS CONSORTIUM

To: WRC Affiliate Colleges and Universities
From: Scott Nova
Re: Severance Dispute at BJ&B
Date: March 28, 2007

As we reported to you on March 20, there is an acrimonious dispute over severance at BJ&B, the cap factory whose closure was announced on February 22 by Nike and by the factory's parent company, Yupoong. The dispute is the result of inappropriate actions taken by Yupoong at the time of the closure announcement and in the ensuing days and weeks. We have been gravely concerned about Yupoong's actions and, also, about a lack of candor on the part of Nike in its public statements on the severance process. It is to be expected that a major brand like Nike, with a vigorous public relations apparatus, will put a positive spin on events at its factories when reporting on them to stakeholders. This is par for the course and we would normally not comment on it. In this case, however, we must regrettably report that Nike has gone beyond spin and has presented a version of events at the factory that is entirely at odds with the reality.

We do not understand why Nike has chosen this course. It may arise from positive statements Nike issued immediately after the closure announcement, based, presumably on assurances they received from Yupoong as to how the severance situation was going to be handled. Whatever assurances Yupoong did provide were entirely empty, because Yupoong quickly embarked on a course of action involving gross violations of workers' rights. It is possible that Nike, having already gone on record in praise of Yupoong, was reluctant to acknowledge its error and that, as the situation deteriorated at the factory, the positive spin to which Nike had committed itself began to diverge further and further from the facts on the ground. It also appears that Nike is very eager to pronounce an end to the BJ&B saga, thus avoiding an in-depth discussion of how the factory came to be at the brink of closure. This may be because Nike wishes to avoid scrutiny of its own role at the factory. In this regard, it is important to note that last June, when there were early indications of BJ&B's potential closure, the WRC wrote to Nike, on behalf of eight major universities, requesting basic data to substantiate Nike's claims about why it was reducing orders at the factory. Nike was unwilling to provide any of the requested data. Nike's eagerness to declare all issues at BJ&B moot may also reflect recognition on the company's part that any discussion of the closure of BJ&B is going to be unpleasant and is not going to put Nike's labor rights program in the most

positive light – and should therefore be ended as quickly as possible. Whatever the explanation, providing highly misleading information to stakeholders is not consistent with Nike’s code of conduct obligations.

Moreover, Nike’s claim that everything has been resolved in good faith at BJ&B has been cited by the company as a reason not to participate in a stakeholder dialogue that the WRC has been working to convene – the purpose of which is to explore the reasons for the factory’s predicament and potential strategies for keeping BJ&B open. Nike’s refusal to participate is now being used by adidas, which originally agreed to attend the meeting, as a justification for reversing that decision. Obviously, we find it deeply discouraging that neither of these companies is willing even to discuss the reasons for BJ&B’s crisis nor explore strategies for saving the factory – despite the fact that BJ&B represents one of the most significant labor rights breakthroughs that has been achieved through code of conduct enforcement.

It is now clear that in order for there to be any potential for meaningful dialogue about the crisis at BJ&B, it is necessary to correct the record about the severance debacle and to make sure all concerned parties understand that there is no resolution to the situation at the factory, contrary to what Nike has reported. If Nike and adidas are going to refuse to engage in dialogue about the crisis with other stakeholders, they should defend this position on substantive grounds, rather than insisting, as Nike has, that a dialogue is unnecessary because all issues at the factory have been resolved through good faith negotiation. In reality, nothing is resolved at the factory, no good faith negotiation has taken place, and workers at the factory continue to demand that the facility be re-opened.

The following lays out the actual events at BJ&B over the last month and contrasts the reality at the factory with the statements Nike has issued to stakeholders. I want to emphasize one point: the inaccuracies in Nike’s public statements have been so egregious that there is no subtle means of correcting the record. In other words, there is no pleasant way to say what needs to be said about huge gap between what has happened at BJ&B and what has been reported to stakeholders by Nike – hence the stern critique of Nike’s handling of the situation that you will find below.

Chronology of Events at BJ&B and of Nike’s Public Statements

The following is a chronology of the closure process at BJ&B and of Nike’s statements about that process, beginning with the date the closure was announced.

Section One: Yupoong Announces Closure of BJ&B and Fires Virtually the Entire Workforce, Effective Immediately / Nike Praises Yupoong for Giving Workers Three Months’ Notice of Closure So They Have Time to Seek Alternative Employment

On Feb. 22, Nike issued a [statement to stakeholders announcing the closure of BJ&B](#). In this statement, Nike “commended” Yupoong for giving workers three months’ notice of the factory’s closure, as opposed to the legal minimum of one month. The following is a quote from Nike’s message to stakeholders: “While the Dominican Republic law requires 28 days advance notice of a facility closure to its employees, BJ&B has notified employees three months in advance of the closure date to provide employees with more time to plan for future employment. We commend this effort...”

In fact, the workers received no notice at all: virtually all were fired the same day, February 22. Yupoong announced an “official” closure date of May 22, but this date was irrelevant to the workers, whose termination was effective immediately. The workers received one month of notice pay, in lieu of actual notice, which is the legal minimum – although Yupoong placed illegal conditions on the payment of this mandatory sum (more on this below). Yupoong did nothing with respect to notice of closure that merited commendation.

It also important to note that fifteen of the sixteen members of the union directorate were fired, along with the rest of the workforce, on February 22. Under Dominican law, these firings were illegal, since union officials may not be fired without prior approval from the government (the purpose of this law is to protect union leaders from retaliatory dismissal). One union official continued to work at the factory.

The WRC informed Nike, on the same day, of what was actually happening at BJ&B. We asked Nike why the company was commending Yupoong for providing three month’s notice to workers when the company had done no such thing. It is worth quoting Nike’s response at length:

“It’s our understanding that by setting May 22 as the legal closure date, the management of BJ&B has indicated its willingness to provide severance benefits to workers beyond the mandatory 28 days, regardless of whether or not the factory is producing product. It was in that spirit that we commended BJ&B factory management for providing notice that may result in severance benefits to workers above and beyond minimum legal requirements. It is our understanding that management and union representatives are negotiating final severance terms...”

In reality, the closure date and the issue of whether Yupoong would pay terminal compensation above the legal minimum had absolutely nothing to do with each other. The workers were all fired on February 22. As of that date, Yupoong incurred the legal obligation to provide severance to each employee, based on length of service, and to provide a month of notice pay. Yupoong’s severance obligations were triggered, under Dominican law, by the dismissal of the workers; the actual date of the factory’s closure

had, and has, no bearing whatsoever on the amount of compensation to which workers are entitled. Whether Yupoong cited February 22, 2007 as the legal closure date, or May 22, 2007 (or May 22, 2025, for that matter), the company's obligation to the workers would have been exactly the same. Thus, by setting May 22 as the date for legal closure, Yupoong was not "indicating" anything about its intentions vis-à-vis severance negotiations. What mattered was not the date of closure, but the willingness of Yupoong to pay legal minimum severance without unlawful conditions and, beyond that, to negotiate in good faith for additional severance above the minimum. Nike's statement that it "commended BJ&B for providing notice that may result in severance benefits to workers...beyond minimum legal requirements" thus demonstrated either serious confusion about Dominican law or an attempt to mislead stakeholders.

Section Two: Yupoong Refuses To Negotiate Over Severance for the Workforce and Moves to Deprive Workers of Any Right to Bargain / Nike Claims that Good Faith Collective Bargaining is Taking Place

It was not, in fact, necessary for observers to divine Yupoong's intentions concerning severance from such "indications" as the factory's announced closure date. Yupoong made these intentions entirely clear in its actions and statements to workers and the union on February 22 and in the ensuing days. These intentions were the exact opposite of what Nike had claimed. Instead of entering negotiations with the union for a severance package for the factory's workforce, Yupoong sought to preempt such negotiations through illegal coercion: on February 22, Yupoong required each terminated worker to sign a legal contract in order to collect legally mandated severance and notice pay. This contract was a waiver of the worker's right to seek anything from the company above legal minimum severance, either individually or through collective negotiation. This was illegal – under Dominican law, a company may not place conditions of any kind on the payment of legally mandated severance and notice pay. Yupoong's purpose was obvious: to preempt any effort by the union to negotiate any compensation for workers above the minimum required by law. Faced with the immediate loss of their employment and their income, most workers agreed to sign away their right to negotiate (though it is not clear how many workers actually knew that this was the meaning of the document).

On the day after the closure announcement, Yupoong officially informed the union leadership that the company would not engage in any negotiation with the union over severance for the BJ&B workforce. Yupoong also stated this position to WRC staff, in a meeting at the factory three days later. Yupoong further stated in this meeting with the WRC that it had no intention of paying workers any severance above the legal minimum. In the following days, Yupoong reiterated, on multiple occasions, its refusal to negotiate over severance for the workforce.

Yet, on February 27, Nike sent another message to the WRC, reporting that a good faith negotiation over severance for the workforce was underway. Nike stated: "We appreciate the opportunity to provide additional clarification on...the negotiation for additional severance terms above and beyond country law requirements. We have been advised that BJ&B's management is committed to negotiate in good faith..." Thus, Nike, in public and private statements, repeatedly assured stakeholders that Yupoong was engaged in a good faith negotiation for above-minimum severance for the BJ&B workforce – even as Yupoong, acting with consummate bad faith, was moving systematically to prevent any such negotiation.

While Yupoong would not bargain over severance for the workforce, Yupoong did initiate negotiations with the union leaders over the subject of their own individual severance packages. On March 5 or 6, after several days of negotiation, Yupoong offered a deal to each of the union officials: a year of salary in exchange for an agreement not to seek additional severance for the rest of the workforce and not to campaign to keep the factory open. Yupoong had told the union officials that if they did not reach agreement, the company would break off discussions and deposit the severance legally owed to the officials with the Dominican Department of Internal Revenue. This would have meant a delay of months before they could gain access to these funds (and would have meant their losing part of their compensation to administrative fees).

At this point, the union officials had no source of income, having been illegally fired from the factory. Nor had the union leaders received the legal minimum severance and notice pay owed to them by the factory. As explained above, Yupoong had conditioned payment of these funds on workers relinquishing their right to negotiate for anything above the minimum and the union officials had refused to accept this illegal condition. The union officials also had no hope that the factory would agree to negotiate a severance agreement in good faith for the workforce, since Yupoong had made clear its refusal to do so and had successfully coerced most workers into signing away their right to negotiate. Deeply discouraged by the events of the last two weeks, and facing the prospect of getting no money for several months, the officials agreed to Yupoong's terms on March 6.

These individual severance deals were not part of a collective agreement. Instead, Yupoong signed a separate, personal agreement with each union official. Each official received the legal minimum severance that Yupoong had been withholding, plus one year of salary, in exchange for agreeing not to seek additional severance for the workforce, not to make any other future demands of Yupoong, and not to oppose the closure of the factory. These personal agreements were not shown to the union membership nor submitted for their approval. A separate agreement concerning a training and referral center for unemployed workers and severance for a small number of pregnant employees was also negotiated. This agreement was also neither shown to, nor approved by, the union membership. Like the individual agreements with the

union officials, this agreement provided no severance benefits beyond the legal minimum to 90% of the workforce.

Thus, as of March 6, Yupoong had succeeded in its efforts to avert any collective severance negotiation. It is important to understand that Yupoong's manipulations had major financial implications, both for the workers and for Yupoong. In other factory closure cases comparable to BJ&B – where the factory is widely-known for workers' successful efforts to unionize and improve conditions, where the buyers are high-profile brands, and where the factory's parent company wants to maintain an ongoing relationship with these brands – workers have been able to negotiate severance far above the legal minimum. For example, in the PT Dae Joo Leports case in Indonesia, workers received three to six months of additional severance. Most recently, the workers at Gina Form in Thailand obtained severance of four months above the minimum. Yupoong's illegal pressure tactics were not a random act of unkindness, but a calculated attempt to save hundreds of thousands of dollars by preempting a serious severance negotiation under the light of public scrutiny. Nike, by failing to report accurately to stakeholders about Yupoong's actions, has facilitated Yupoong's malfeasance.

Section Three: Women Union Leaders and the Union Federation Denounce Yupoong for Employing “Bribery and Blackmail” and Tell Nike Nothing is Resolved at BJ&B / Nike Reports that All Has Been Resolved in Good Faith at BJ&B

On March 7, Yupoong's scheme began to fall apart. On this day, five of the sixteen union officials who had signed individual agreements with Yupoong, all of them women, renounced the agreements. They announced their decision publicly on March 8, stating that they had been coerced into signing. Ignacio Hernandez, general secretary of the FEDOTRAZONAS union federation, also denounced the agreements. He [wrote to Nike and adidas on March 9](#) expressing outrage over the tactics of “bribery and blackmail” employed by Yupoong. He stated that the union would not cease its efforts to obtain additional severance for BJ&B workers and would not cease its efforts to keep BJ&B open. He specifically cautioned Nike and adidas not to try to portray the “narrow and coerced agreement” with individual union officials as a resolution to the crisis at the factory, stating that the workers would continue to press their demands. He also criticized Nike and adidas for their failure to respond, in any way, to demands from workers and the international community that the brands take action to keep the factory open. He attached to his message a statement from the five union leaders who had renounced their agreements with Yupoong. His communication was copied to stakeholders around the world, bringing additional public scrutiny to the case.

The factory level general secretary, Fredy de los Santos, who did accept the one year of salary from Yupoong, also clarified his position in a letter to BJ&B management, on March 12. While not renouncing his own agreement with the company, he affirmed the

right of other union leaders, and the rest of the membership, to continue to fight to keep the factory open and to obtain additional severance for the workforce.

It is important to note that Nike made no comment to stakeholders about any of these developments as they were occurring.

With its machinations exposed, and pressure mounting, Yupoong, on March 12, deposited an additional one month of severance in the bank account of every fired BJ&B employee. This was done without any negotiation or any communication with the union. This action showed that effective pressure by the union and by international groups can compel Yupoong to reconsider its approach on severance. It also reflects Yupoong's realization that the deals it had struck with the union officials would not have legitimacy in the eyes of the international community. While the additional month of severance gained by workers through pressure on Yupoong was obviously a positive development, it was not the result of any collective negotiation – and it is a small amount relative to what workers might be able to achieve if a genuine negotiation were to take place.

On March 16, Nike issued [a new statement to stakeholders concerning the situation at BJ&B](#). I must say that when we received this statement at the WRC, we were shocked. Nike's statement contained no reference to the controversy at the factory: It contained no mention of Yupoong's refusal to bargain over severance for the workforce, no mention of the union federation's denunciation of Yupoong's tactics, no mention of the women leaders' renunciation of their agreements with Yupoong, no mention of the union's vow to continue to campaign to keep the factory open – indeed, no mention of any kind that any dispute or controversy existed.

According to the Nike statement, Yupoong had negotiated "final severance terms" for the workforce with the union, and the factory and the union had notified Nike of the terms. Nike appended a summary of these supposed "final severance terms". Of particular interest, Nike included the one month of pay, belatedly and unilaterally granted by Yupoong to the workers, on the list of the negotiated terms. It is essential to understand that no one representing BJ&B workers has approved the payment of one month of severance above the legal minimum as an adequate resolution to the severance issue. What the workers want is an opportunity to engage in an actual good faith negotiation. To portray the one additional month of severance paid unilaterally by Yupoong to the workers as the product of good faith negotiation – when, in fact, it is simply the latest maneuver by Yupoong to avoid such a negotiation – completely misrepresents the reality. This misrepresentation has the effect of relieving any pressure on Yupoong to negotiate in good faith and thus reduces the chances that the workers' right to bargain will ever be respected in the closure process.

Section Four: Labor Rights Groups Ask Nike to Attend A Meeting to Discuss Ways to Save the Factory / Nike Refuses, Arguing that Everything Is Resolved at BJ&B and that Attending Would Show Disrespect for the Workers' Right to Bargain Collectively

A number of organizations wrote Nike to challenge its misrepresentations of the severance battle at Yupoong, including the International Textile and Leather Workers Federation (ITGLWF), the Clean Clothes Campaign, and the American Center for International Labor Solidarity. These groups pointed out many of the inaccuracies in Nike's messages to stakeholders. FEDTRAZONAS also wrote again to Nike, asking the company to correct the record and reiterating the union federation's commitment to fight to keep the factory open. Despite all of these communications, Nike issued another statement on March 23, repeating the same misstatements of fact contained in its March 16 statement. Again, there was no acknowledgment of any controversy and no acknowledgment of any of the communications Nike had received challenging its version of events.

The primary thrust of Nike's communications since March 16 has been that everything is now fully resolved at BJ&B and that there is nothing left to discuss. On March 19, Nike wrote to the WRC stating the company's refusal to attend a meeting on April 5 to discuss the reasons for closure and to explore ways to keep the factory open. The WRC has convened this meeting on the recommendation of the ITGLWF. In its message, Nike stated the following:

"Nike will not participate in the April meeting. Upon hearing from the local sources that the negotiation with the union leaders was concluded, we have made direct contacts with the workers, the union leaders, community leaders, and the local factory management and learned from them that the negotiation was conducted in good faith and the union leaders were satisfied with the negotiated terms. Therefore, we will honor the local union and the management of their right to collective bargaining..."

This is an extraordinarily disingenuous statement. There has been no collective bargaining over severance for the workforce, because Yupoong has refused to bargain and has used illegal means to deprive workers of their right to do so. Nike has failed to protect workers' right to collective bargaining, but has instead facilitated Yupoong's efforts to negate that right through misrepresentations of the events at the factory. After all of this, Nike says it cannot meet with stakeholders, because this would not honor the workers' right to collective bargaining.

Why the Coerced Agreements at BJ&B Cannot Bind Workers or the Union Leaders Who Continue to Act on Their Behalf

Because Yupoong has made such a monumental hash of what should have been a straightforward collective severance negotiation, it may be difficult for observers to sort through the practical implications of all that has transpired since February 22. The following points are particularly important for universities to bear in mind:

- Yupoong's use of unlawful coercion to compel workers to relinquish their right to seek severance above the minimum, and the company's illegal refusal to bargain collectively on the severance issue, gravely compromised the associational rights of the workers. No agreement concluded under these circumstances can be seen as a legitimate product of good faith negotiation – until and unless Yupoong agrees to nullify the workers' coerced surrender of their right to bargain. It is also important to understand that the union officials would likely not have signed agreements conferring severance benefits solely on themselves had Yupoong not already coerced the rest of the workforce into giving up their right to have the union bargain on their behalf.

It is worth quoting the language of the agreements that workers were forced to sign, at the time they were fired, in order to get the severance they were due by law:

“As a result of the above payment, the undersigned declares that he/she has nothing else to demand [of BJ&B] and, therefore, that he/she will cease from this time forward, in perpetuity, from making any past, present or future claim or demand, whether a labor demand, a civil demand, a commercial demand or any other kind, judicial or extra-judicial...related to the creation, execution or termination of his/her labor contract with BJ&B. For this reason I grant total and absolute waiver.”

In exchange for this sweeping surrender of their legal and bargaining rights, workers were granted nothing that was not already due them, unconditionally, under Dominican law. ([An example of these agreements, in the original Spanish, is here.](#))

- Nobody, other than representatives of Yupoong and Nike, is claiming that a legitimate collective severance agreement has been concluded on behalf of the workforce. All of the union leaders, both those who renounced their personal agreements with Yupoong and those who did not, agree on the obvious fact that Yupoong has never been willing to bargain over severance for the vast majority of workers. The union leaders also agree that the union membership, and the workforce as a whole, have the right to continue to press their demands that the factory be re-opened and that Yupoong negotiate in good faith over severance for the workers who have been dismissed.

It is important to understand that Nike, in pronouncing all questions amicably resolved at BJ&B, has incorrectly represented two distinct issues: severance, wherein the good faith negotiation reported by Nike has not occurred, and closure, wherein Nike has failed to acknowledge workers' ongoing demand that the factory be kept open.

One point should be noted about the relationship between the issue of severance and the issue of closure: In the BJ&B case, workers have had to pursue severance, even as they seek to re-open the factory, because they have already been dismissed and are without income. Obviously, workers would have preferred to have remained in Yupoong's employ, pending the outcome of efforts to avert final closure. Workers' pursuit of severance, when necessitated by their sudden and immediate dismissal, as at BJ&B, should not be viewed as an indication of a lack of interest in re-opening a factory.

Recommendation to Universities

We would recommend that universities that are concerned about the BJ&B case contact Nike – both on the severance issue and, more importantly, on the issue of Nike's unwillingness to engage in dialogue with other stakeholders about the causes of the BJ&B's crisis and about strategies for keeping the factory alive. We would recommend that concerned universities also contact adidas about the latter issue.