



WORKER RIGHTS CONSORTIUM

**WORKER RIGHTS CONSORTIUM ASSESSMENT
re Lian Thai Apparel (Thailand)**

**FINDINGS, RECOMMENDATIONS, and
STATUS REPORT
October 1, 2004**

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REPORT OF WORKER RIGHTS CONSORTIUM ASSESSMENT AT LIAN THAI APPAREL, BANGKOK, THAILAND

Introduction

Lian Thai Apparel Co. Ltd. (hereafter “Lian Thai”) is a current producer of sportswear for Nike, Puma, Columbia, and Next, and has produced for university licensee Lee Sport (a division of the VF Corporation), as well as other brands. Lian Thai owns and operates a principal factory known as Lian Thai Apparel Company Limited in Nakhon Pathom, located in the outskirts of Bangkok, Thailand. The factory employed roughly 700 employees at the outset of the WRC’s Assessment and currently employs roughly 500 employees.

The WRC undertook an Assessment of Lian Thai in response to a complaint from workers alleging a range of code of conduct violations, primarily in the areas of collective bargaining, the provision of benefits, homework, and occupational health and safety. Because preliminary research indicated that serious code of conduct violations may have also occurred at two of Lian Thai’s subsidiaries in Thailand, the WRC included in its investigation an assessment of labor practices at these facilities as well. The two facilities are Pacific Thailand (now known as Six Sigma Apparel), located in Ubon Ratchathani, and Nangrong Pacific, located in Buriram. During the time period in which the alleged violations occurred, both facilities were owned, fully or in part, by the family of Mr. Tienchai Mahasiri, the current manager and one of the principal owners of Lian Thai, although both factories have since been sold to new ownership.

The Assessment was carried out during the period of January 26 through February 10, 2004 by a team of specialists with expertise in Thai labor issues, including a prominent labor attorney and several academic researchers. The WRC also carried out follow-up research and monitoring during the months of March through July of 2004.

It should be noted that the Assessment Team made several efforts to meet with Lian Thai management in order to develop a clear understanding of management’s point of view on the alleged violations and develop a remediation plan. Lian Thai management did meet briefly with the Assessment Team during an initial factory visit in February of 2004 and at this initial visit an agreement was reached for more extensive factory access. However, factory management subsequently reneged on this agreement and repeatedly refused to meet with the WRC Assessment Team in person again. Nike, one of the facility’s principal buyers, pressed Lian Thai to proceed with allowing greater access to the Assessment Team, but was unable to persuade Lian Thai to do so. Thus, following the brief in-person meeting, the Assessment Team was forced to ascertain management’s position concerning the allegations from several phone conversations and email exchanges, as well as from company documents obtained from buyers, the labor union in the facility, and government officials.

The WRC can report that while Lian Thai management did not respond directly to the WRC regarding many of the findings and recommendations presented here, the factory nevertheless has taken meaningful steps to address the majority of the violations identified. Many of the most important changes appear to have resulted from the aggressive intervention of one of the factory’s principal buyers, Puma. Puma acted

promptly when contacted by the WRC and should be commended for its involvement in this case. Nike also met with Lian Thai management privately to discuss the issues raised by the WRC.

Despite the substantial progress that has been made at Lian Thai and its subcontractors, some issues remain outstanding, particularly in the areas of homework, nonpayment of severance to employees laid-off by one of the former subsidiaries, and the violation of a reinstatement agreement at the other former subsidiary. The degree to which relations between management and the union are able to remain constructive remains the greatest test of the long-term sustainability of the positive changes made thus far. The WRC will continue to monitor developments to ensure that all violations are ultimately addressed. Vigilant monitoring on the part of licensees and all other buyers is encouraged.

Given the substantial progress that has been made towards code compliance at Lian Thai, it is important that buyers continue to place orders at the factory and do so on an ongoing basis (provided of course that Lian Thai continues to demonstrate a commitment to code compliance). When a buyer abandons a factory after a worker rights complaint, and does so despite meaningful corrective action taken by the factory, the fundamental underpinnings of code enforcement are undermined. Conversely, when factories that move toward compliance are rewarded with ongoing business, a clear message is sent by buyers that they are serious about their codes and that it is in the financial interest of factories to comply.

Sources of Evidence

The Assessment Team's findings are based upon the following sources of evidence:

- Interviews with 100 current and recently dismissed employees of Lian Thai Apparel, 30 current and former employees from Pacific Garment/ Six Sigma, and 10 current and former employees from Nangrong Pacific Garment.
- Discussions and email communications with Mr. Tienchai Mahasiri, current manager and one of the principal owners of Lian Thai, and former owner of Pacific Garment and Nangrong Pacific Garment.
- Interview with Dr. Premsak Pearyura, MP, Chairman of the Committee on Labour of Thailand's National Parliament.
- Interview with Panphot Bunnut, an occupational health and safety inspector from the Provincial Labor Department of Nakhorn Pathom, a division of Thailand's Ministry of Labor.
- Discussions and email communications with Nike compliance officers in the U.S.A. and Thailand.
- Discussions and email communications with Puma compliance officers in Germany and Southeast Asia.
- An occupational health and safety survey performed by an OHS expert and member of the WRC Assessment Team.
- Collection and review of documents, including: collective bargaining agreements, minutes from tripartite negotiations sessions, audit reports from government occupational health and safety agencies, employee salary surveys,

- and official documents from legal disputes.
- Analysis of Thai law in the areas of industrial relations and workplace standards.

Allegations

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

Lian Thai Apparel Company Limited:

- *Benefits, Policies, and Contractual Procedure:* That Lian Thai violated Thai law by unilaterally implementing a series of factory policies that curtailed employees' workplace rights and benefits, in such areas as access to overtime and access to sick leave, personal leave, and holiday leave.
- *Freedom of Association and Collective Bargaining:* That Lian Thai managers created a hostile environment for the exercise of associational rights through a variety of means, including anti-union harassment of employees during the course of collective bargaining negotiations and terminating a union leader in the course of contract negotiations, in violation of Thai law.
- *Health and Safety:* That the factory does not provide a safe working environment and adequate personal protective equipment.
- *Forced Overtime:* That employees have been reprimanded for refusing to work overtime; and that short-term, contract employees of Lian Thai and other employees in their probationary period have been frequently required to work overtime hours as a prerequisite of passing their probationary period and obtaining long-term employment.
- *Use of "Homework":* That Lian Thai contracts production of goods to workers to perform at their place of residence outside of working hours.

Pacific Thailand/ Six Sigma Apparel:

- *Failure to Pay Advance Notice and Severance Compensation:* That factory management has refused to comply with a Labor Department order to pay workers legally mandated severance and advance notice compensation.

Pacific Garment:

- *Failure to Adhere to an Agreement to Reinstate Dismissed Employees:* That the Nangrong Pacific is in breach of a legally binding agreement to reinstate a group of workers who were fired following a labor dispute and has failed to pay proper severance to those workers who do not wish to return.

We set out below our findings with respect to each area of potential non-compliance and, where appropriate, list recommendations for remedial action and provide a narrative of steps taken toward remediation to date.

Allegations Concerning Lian Thai Apparel Limited, Nakhon Pathom, Thailand

Benefits, Policies, and Contractual Procedure

Allegation

That Lian Thai violated Thai law by unilaterally implementing a series of factory policies that curtailed employees' workplace rights and benefits, in such areas as access to overtime and access to sick leave, personal leave, and holiday leave.

Findings

The Assessment Team found that Lian Thai violated Thai law by unilaterally implementing a series of measures that effectively curtailed workers' rights in areas that were legally governed by a standing agreement on terms and conditions of employment.

Thai law stipulates that employers cannot lawfully make a change in workplace rules or regulations in an area governed by a standing agreement on terms of employment that has the effect of diminishing employees' rights or workplace standards without negotiating such changes with the workers and/or labor union in question.¹ The Labour Court of Thailand has interpreted the clause "terms of employment" to refer to both written employment contracts (including collective bargaining agreements), as well as "other existing working conditions not stipulated in a collective bargaining agreement either written or oral"² and "conditions that have not been clearly stated to employees, but nevertheless have been executed by the employer".³ Thus, a consistent company policy assumes in the eyes of Thai law the status of a formal agreement on terms of employment, regardless of whether or not the policy has been stated explicitly or included in a written agreement. Employers may only make unilateral changes to terms of employment that "are more favorable to employees" than previous policies by improving workplace standards or granting new rights or benefits to employees.⁴ In the case of any policy that diminishes employees' rights or benefits, the employer must engage in negotiations with employees or their representatives before such a policy is enacted. Thai law also stipulates that if an agreement on terms of employment expires and a new agreement is not reached, the standing agreement is to remain in force for at least an additional year.⁵

The workers of Lian Thai Apparel have been represented by a trade union known as the "Lian Thai Labor Union" (hereafter "LT-Labor Union") since 1989. Roughly 570 of Lian Thai's 700 employees were members of the LT-Labor Union at the outset of the WRC's investigation. The union is the legitimate bargaining representative of the workforce and has negotiated a number of collective bargaining agreements with the factory on behalf of the workforce.

In November of 2003, the LT-Labor Union and Lian Thai management began a series of negotiations in anticipation of the expiration of a collective bargaining

¹ Thailand Labor Relations Act of 1975, Section 10-20

² Labour Court of Thailand, Case # 673/2536

³ Labour Court of Thailand, Case # 523, 531/2536

⁴ Thailand Labor Relations Act of 1975, Section 20

⁵ Thailand Labor Relations Act of 1975, Section 12

agreement during the following month of December. Direct negotiations between the two parties took place on November 12, November 14, and December 3 of 2003. Following an announcement by management to union representatives at the December 3 meeting that it would never agree to any of the union-proposed CBA changes, nor did it wish to engage in any additional negotiations, the union sought mediation with the Provincial Labor Department. A series of tripartite negotiating sessions convened by the Labor Department ensued. These sessions took place on December 8, December 19, December 24, and January 7. The meetings did not result in agreement between the union and management on issues related to the contract.

During the period of December of 2003 to February of 2004, including a period of time in which the aforesaid negotiations were taking place, Lian Thai management unilaterally imposed a series of substantive changes to company policy that curtailed workers' employment rights. These included the following:

- *Access to overtime:* Under past company practice, on each occasion in which factory management wished to offer overtime work to employees, supervisors offered workers the opportunity to sign a form agreeing to work overtime on that occasion. In January of 2004, the factory implemented a policy whereby workers were asked to fill out an overtime access form. Many workers were told that the forms applied not only to the immediate instance of offered overtime, but to all overtime opportunities in the future. Thus, many feared that by signing the form they would forgo the right to decline overtime opportunities in the future, or contrarily, if they did not sign the form that they would be denied all future opportunities to work overtime. Indeed, based upon extensive interviews conducted by the Assessment Team, the uncertainty regarding access to overtime has been a primary factor that contributed to the decision of nearly 200 employees to leave the factory for other employment during the first several months of 2004. The provision of homework (a finding discussed in a later section) has also served to diminish employees' access to proper overtime.
- *Provision of rice:* Under past policy dating back at least ten years, the factory provided employees working Sunday shifts and employees living in the factory dormitory with cooked rice each Sunday afternoon. In December 2003, the factory discontinued this provision of rice.
- *Dorm access and curfew:* Under past factory policy, dormitory residents were required to be within the dorm area gate by 12:00 midnight and were free to bring guests into the dorm until this time. At the end of December of 2003, Lian Thai implemented a new dorm access policy requiring dorm residents to be within the compound by 10:00 pm and forbidding employees to bring visitors inside the compound after 5:30 p.m. Many workers testified that the change has severely impacted their quality of life by curtailing the few opportunities they have to engage in social or civic life outside of the factory. The change has also curtailed the exercise of associational activities by employees. The LT-Labor Union's office is located inside the factory compound and most of the union's officers live in the factory dormitory; thus, the change in policy greatly reduced the access of employees and advocates to the union.

- *Lodging for new workers:* The opportunity to live in the compound dorm has long been a key benefit provided to Lian Thai employees that is of special importance to single workers. In January of 2004, factory management rescinded this policy, forbidding new employees from living in the dorms, despite a presence of vacant rooms.
- *Special skills bonus:* Under past factory policy, three senior employees formerly employed in the sweater division received a special monthly bonus of 500 Baht (12.10 USD) in recognition of their special skills in this area of production. In late 2003, the factory discontinued this bonus.
- *Holiday leave and personal business leave:* Under past factory practice, Lian Thai employees have been able to use personal business leave days and holidays based upon the employees' needs. Under the factory's new policy, management has imposed new restrictions on the use of personal business leave and holiday leave. First, under the new policy, management determines which days an employee may take as a holiday and all holidays must be taken by December 15 of each year. As a result of this change, and the lack of notice given to employees regarding the new policy, at least five employees were reprimanded for taking a day off as holiday leave at the end of December 2003. The workers were recorded as absent for these days and consequently lost a diligence bonus worth two days wages, as well as the income for the days they took off. Second, under the new policy, employees may not take personal business leave until the days allotted for holiday leave have been used. This new requirement has significantly diminished workers' livelihoods. Given that the diligence bonus is not provided during months in which workers take personal leave, workers were previously able to pursue a strategy to maximize their income by scheduling personal leave days during months in which their diligence bonus was already denied for other reasons. Under the new policy, workers may no longer schedule personal days as they wish and consequently must forgo a greater number of monthly diligence bonuses and corresponding income.
- *Sick leave:* Under past company policy, employees were able to take any of the allotted 30 days of paid sick leave at their will. Though the factory regulations stated that a written notice was required, in practice workers simply needed to call their supervisors in advance of the shift they were to miss (including simply calling before work the morning of the day one needed to take a sick day). However, in December, 2003, without warning, Lian Thai began to strictly require employees to provide a written notice. As a result, at least one employee was terminated for "failing to provide proper notice", though the employee had called her supervisor, as she and other coworkers had done on dozens of prior occasions. As discussed in the following sections, it also appears the policy was applied selectively in order to justify the dismissal of a union leader, making the policy discriminatory as well as in violation of predominant past practice.

- *Union leave:* The standing collective bargaining agreement stipulates that the union committee has access to 30 days of paid leave days and unlimited days of unpaid leave to distribute at its discretion to union committee members for the purpose of attending meetings and trainings to which they are invited by private organizations.⁶ In addition, union committee members have access to unlimited days of paid leave to attend activities arranged by governmental institutions or to engage in negotiation or dispute resolution within the factory. However, following the conclusion of negotiations of the new collective bargaining agreement in February of 2004, factory management instituted new conditions regarding attendance of committee members at activities arranged by private organizations, including presenting a written invitation one week before the activity. Additionally, management has inserted itself in the union's internal decision-making process with regard to how the union selects individuals to attend events that the union is invited to. On frequent occasions management has denied requests by committee members other than the president and the head of the union's educational department to attend meetings because management viewed the employees as "indispensable" to the factory's operations on that particular day. Many employees and outside observers have noted that the trainings and educational opportunities that the employees have sought to attend are necessary for the development of competent and efficient union leaders.
- *Funeral fund:* Under the standing collective bargaining agreement, the factory carried out a practice of establishing a financial support fund when an employee passes away or loses a close family member through the deduction of 10 Baht (0.24 \$USD) from each employee's monthly wage payment.⁷ The funds were then delivered to the family of the deceased to assist with funeral expenses. Under new policy, the factory discontinued this practice, instead requiring the union to collect funds by hand.

As noted above, Thai law forbids employers from unilaterally altering a common practice or an agreement on the terms of employment with employees in a way that diminishes employees' benefits or rights. In the case of the majority of the areas discussed, the changes violated a consistent though unwritten factory policy observed over a period of years, which as noted are tantamount under Thai law to a formal agreement on terms of employment. In the case of two areas discussed – union leave and funeral fund contributions – the change in policy violated a standing collective bargaining agreement between Lian Thai and the LT-Labor Union. In this regard, it is important to note, as mentioned above, that Thai labor law is clear that in cases in which a written agreement on conditions of employment expires and is not immediately replaced with a new agreement, the original agreement remains in force for at least an additional year.⁸ There is therefore no question that the collective bargaining agreement was in force in

⁶ Collective Bargaining Agreement between Lian Thai Co. Ltd. and Lian Thai – Labor Union. 2001. Article 3.2.

⁷ Collective Bargaining Agreement between Lian Thai Co. Ltd. and Lian Thai – Labor Union. 1996. Note that, under Thai labor law, the provisions of past collective bargaining agreements remain in force, unless they are specifically altered or nullified by a provision of a subsequent agreement.

⁸ Thailand Labor Relations Act of 1975, Section 12

December of 2003 when Lian Thai started to introduce new policies and procedures (less than one month following the expiration of the previous agreement). Because each of the changes were made by factory management unilaterally, without negotiations with workers or their representatives, and because the changes diminished rather than enhanced workers' terms of employment, the Assessment Team concluded that policy changes carried out by Lian Thai management violated Thai law.

Recommendations

The WRC recommended that Lian Thai immediately rescind each of the new factory policies implemented unilaterally during November 2003 – February 2004, to return to past practice until negotiations on any changes are complete, and to commence good faith negotiations with LT-Labor Union on a new collective bargaining accord and factory regulations.

The WRC communicated this recommendation directly to Lian Thai management, as well as important buyers of the facility, including Nike and Puma.

Response from Lian Thai and Buyers and New Developments

While Lian Thai management did not respond directly to the WRC's recommendations and requests for clarification, the factory did eventually act on the recommendations in this area. In February 9, 2004, the factory and the LT-Labor Union reached an agreement on terms for a collective bargaining accord whereby the factory would withdraw the new, unilateral policies and return to the provisions of the previous collective bargaining agreement and past practices; in return, the union agreed to accept an minimal annual wage increases of 1 to 3 Baht (0.024 to 0.073 \$USD) per day per worker, dependent on seniority, in both 2005 and 2006. The first policy to be rescinded in accordance with the February 9 agreement was the policy concerning provision of rice on Sundays. Under a compromise agreement reached on March 28, the factory will no longer provide cooked rice, but will rather provide uncooked rice to employees and utensils for preparing the rice.

Despite the initial portents of progress, however, by May and June of 2004, Lian Thai management had yet to repeal the majority of the new unilateral policies, thus violating the new collective bargaining agreement and management's commitment to abide by all previously existing agreements and past practices. Instead, management took the unilateral policies a step further by including the policies in a set up of new "company regulations" and submitting them formally to the Nakhon Pathom Department of Labor Protection and Welfare for approval. This list of proposed regulations was not negotiated with workers or their representatives. Indeed, officials of the LT-Labor Union only found out about the proposed regulations indirectly when they received a phone call from staff members of the Department of Labor Protection and Welfare who were inquiring as to why their signatures were not on the documents. As discussed below, many of the new regulations substantially curtailed employees' rights. The new regulations included, among numerous others, the following:

- *Limitations on unpaid sick leave:* Under the former company policy, which essentially followed the state Social Insurance scheme, an employee who became ill was entitled to maintain employment at the factory until he or she had used up to 365

days of unpaid sick leave.⁹ Article 41.1.(1) of the proposed regulations changed this policy, stating that “a worker who has been sick for more than 60 days in a year can be laid off”. The impact of the new policy is most dramatically illustrated by the case of a veteran female Lian Thai employee named Pluenphana Phyakkhajorn. Pluenphana was one of the many Lian Thai workers who were injured in an automobile accident that took place November 16, 2003. She broke her left leg and maimed her right hand. During the months following the accident, she has been under continuous treatment and rehabilitation with support from Thailand’s Social Insurance program, for which she has been eligible due to her employment at Lian Thai. After seven months of rehabilitation, she was given an optimistic prognosis by her doctor: with a few more months of treatment, her injury might heal itself and prevent the need for an operation. However, soon after hearing this news, on June 16, Pluenphana was called into the personnel manager’s office and told that she had to resign from the factory because she has been on sick leave for more than 90 days and she had therefore violated the new company regulation that sets the maximum amount of time an employee can be ill and remain employed at 60 days. If Pluenphana lost her job at Lian Thai, she faced losing access to health care under the Social Insurance program and housing in the factory dormitory, both of which were contingent on her continued employment. Without continued medical treatment, she faced the prospect of becoming permanently disabled or having to pay for costly surgical operation at a later time.

- *Limitations on paid sick leave:* Under previous factory regulations, employees had a right to 30 days of paid sick leave, “except in cases in which workers have sustained an injury from work”, in which the workers’ rights would be extended beyond the 30 limit. Article 28 of the proposed regulations omits this exception and thereby curtails the access of injured employees to sick leave.
- *Disciplinary Procedure and Termination:* Under previous factory policy, employees would receive three warning letters before termination could be considered as a disciplinary option (absent committing any offense that is considered a criminal act under Thai law). The proposed regulations substantially altered this policy in two important respects. First, Article 35 of the new regulations states that a factory can terminate employees for any one of four violations, including “corrupt practices and criminal offences”, “intending to inflict losses on the employer”, “reckless behavior that inflicts losses on the employer”, and “violation of the rules of work or the Company’s Regulations and Orders. The provision states that the factory will follow the law and first issue a written warning, “except in strong cases in which it will not be necessary to give warnings first”. The article provides no definition or clarification about what would amount to a “strong case”. Together, the clause allowing for termination of any violation of the factory’s rules or regulations in combination with the clause allowing for termination without a warning letter in case of “strong cases” render any offence of any company policy a potential ground for immediate

⁹ According to the Social Insurance Act an employee is entitled to free medical treatment for 365 days. Full coverage entails not only free medical treatment but also a monthly compensation amounting to half of one’s wages provided by the Social Insurance Agency.

termination without warning. Second, Article 36 of the new regulations sets out potential “disciplinary punishments” for violations of company policy. These include: 1) verbal warnings; 2) unpaid leave; 3) written warnings; 4) lay-off. The article goes on to state that, “It is not necessary for the company to follow any particular order of punishment, but rather the punishment will be given depending on the behavior and intention of the wrongdoing”. As in the case of the previous clause, this rule gives factory management the right to terminate an employee for any violation of any rule, without first progressing through a system of escalating discipline. In addition, the rule does not specify a maximum number of days on which an employee can be placed on unpaid leave. Both rules have the distinct impact of curtailing rights previously enjoyed by employees.

- *Personal Leave:* Under past factory policy and practice (prior to the policies unilaterally introduced by management in December 2003) workers were generally allowed to decide the days which they wished to take as unpaid personal leave. Article 27 of the proposed regulations alters this practice by explicitly providing management with the right to determine whether or not a worker has sufficient grounds to take a day off in any particular case. If management determines that the workers’ stated grounds are insufficient, it can record the workers as “absent” for that day. The criteria for determining what constitutes “sufficient” grounds is left undefined and up to the discretion of managers or supervisor personnel. The new policy thus puts each worker at risk of being recorded as absent each time he or she seeks to take personal leave.
- *Access to overtime and work on Sundays:* As noted above, under previous past practice, workers were given the choice of whether or not to work overtime each time an opportunity for overtime work arose. On such occasions, supervisors simply circulated an overtime sign-up sheet among workers prior to each occasion. Article 22 of the proposed regulations establishes that “work divisions that need to work overtime or on Sundays must fill out a detailed form to ask for permission to work overtime or work on Sundays and give it to the personnel manager via their superiors. This is to be used as grounds for further action”. Based upon previous experience with a new overtime policy and form that was temporarily implemented in January of 2004, union officials and many workers interpreted this provision to mean that those who signed the form would give up the right to decline overtime in the future, and those who did not sign the form would be denied future opportunities to work overtime.

In addition to the proposed regulations described above, Lian Thai continued on a sporadic basis during the period between February and June to implement some of the policies described in the first part of this section. These policies included those restricting dormitory access and requiring the union to collect funeral funds by hand. It is difficult, however, to determine whether or not each of the other policies were in place during this time period because many of the policies are contingent on particular circumstances which did not arise during this time. All policies regarding access to

overtime, for example, were essentially dormant given that the workforce carried out virtually no overtime during the period between February and August.

Additional Recommendations and Status of Remediation

Upon learning of these developments and gathering information about each of the changes, the WRC recommended that, as was recommended in the case of the unilateral policy changes made during December of 2003 through February of 2004, Lian Thai should immediately suspend the list of new “company regulations” submitted to the Nakhon Pathom Department of Labor Protection and Welfare until management has negotiated and reached an agreement with workers and their representatives about the new regulations. In the interim, management should return to previously mutually agreed upon regulations and practices. The WRC communicated this recommendation directly to Lian Thai management, as well as to Puma and Nike.

In particular, the WRC sought assistance from the brands to address the situation of Pluenphana, described above, because of the potentially irreparable harm that would result from a failure by the factory to immediately rescind the policy that would result in the loss of her job, housing, and medical care. While Nike did not respond to the concerns raised about Pluenphana, Puma responded to these concerns rapidly by conducting its own investigation of the situation and then pressing Lian Thai management to rescind the new policy affecting her (limiting the number of days of sick leave with which a worker could remain employed to 60 days). Lian Thai management agreed to Puma’s request (and to additional intervention by the director of the Nakhon Pathom Department of Labor Protection and Welfare). On June 30, Lian Thai management provided a letter to Pluenphana, guaranteeing that she would not be terminated while under medical treatment and that she would be allowed to stay in the factory dorm.

Ultimately, Lian Thai management agreed to act on the WRC’s recommendations in this section more generally by commencing negotiations with the LT-Labor Union regarding the new company regulations. On July 22 and July 28, representatives from the union, management, and representatives of the Provincial Department of Labor Protection and Welfare met and came to an agreement on a set of new company regulations. Under the new regulation, the majority of provisions that workers viewed as problematic were rescinded or revised. These included policies affecting: access to overtime; provision of rice on Sundays; dormitory curfews; stipulations on holidays and personal business days; and limitations on sick and union leave. The five workers who were punished for taking holidays at the end of December of 2003 were paid the money they had been denied. An agreement was also reached between the union and management regarding disciplinary procedures similar to those initially proposed by management (Article 35 and Article 36, described above).

Subsequent meetings between Lian Thai management and the LT-Labor Union took place during late June and early August regarding the implementation of factory policies described in the first part of this section. As a result of these discussions, each of the other changes in factory policy have been resolved or are in the process of being resolved. On the issue of the “special skills bonus”, two of the senior employees who had previously received this bonus decided on their own accord to retire and both received

proper compensation. The remaining special-skilled employee was promoted to a higher position with a monthly salary totaling more than her previous wage with the skills bonus. On the issue of dorm rooms for new employees, management and the union are still negotiating the cost that new employees will pay to live in the dormitory, but management has indicated that it is open to the idea of returning to a policy whereby new employees may live in the dorms. On the issue of the funeral fund, both parties are waiting for a verdict from the Department of Labor Protection and Welfare of Nakhon Pathom regarding whether or not the automatic deductions can continue without first undergoing a process of collecting employees signatures (to confirm that workers approve of the deduction). The union collected such signatures several years ago; management has expressed concern that the list may not adequately represent the current employee base. In sum, it appears that, through constructive dialogue between management and the union, the primary remaining areas of concern are being addressed.

Freedom of Association and Collective Bargaining

Allegation

That Lian Thai managers created a hostile environment for the exercise of associational rights through a variety of means, including anti-union harassment of employees during the course of collective bargaining negotiations and terminating a union leader in the course of contract negotiations, in violation of Thai law.

Findings

The Assessment Team gathered evidence illustrating a pattern of behavior that demonstrates unwillingness on the part of Lian Thai management to recognize and engage in good faith negotiations with employees and their union. As alleged, these practices included anti-union harassment and an illegal termination of a union member during contract negotiations.

First, the Assessment Team gathered evidence of hostile and unreasonable behavior toward union members by the Lian Thai owner Mr. Tienchai Mahasiri and other managerial personnel. According to credible testimony, on each of six negotiation sessions between management and the LT-Labor Union which occurred between November 12 and December 24 of 2003, Mr. Tienchai refused repeated requests to attend and participate in negotiations and the management representatives he sent in his place were not empowered to make any decisions in the negotiations. On at least one of the days on which negotiations took place – a second tripartite negotiation session convened by the Provincial Labor Department held on December 19, 2003 – Lian Thai representatives indicated to the union's negotiating committee that Mr. Tienchai was not able to participate in negotiations because of conflicting obligations. However, according to testimony from numerous employees, while the negotiations were taking place with the union committee off-site, Mr. Tienchai remained in the factory and made a lengthy speech to workers through the factory's public address system. In this speech, he explicitly degraded and threatened the union. Employee testimony regarding these

comments was highly detailed as to the specific language used. Examples of these statements include:

- “Management will not continue previously given benefits as a result of the union’s stinginess.”
- “The union leaders are just greedy, wanting things for themselves and not thinking about what’s really best for everyone.”
- “Management has no intention of continuing contract negotiations.”
- “We want the union out of the factory.”
- “Don’t let the union pull you by the nose!” (In the Thai context, this a degrading remark that implies that one is behaving like a water buffalo.)

The Assessment Team concluded that these statements, and other similar statements by Mr. Tienchai, and other managerial personnel made over the factory’s loudspeaker system during this time period, contributed to the creation of a hostile environment for the exercise of associational rights and thereby violated provisions of Thai law¹⁰ and applicable codes of conduct that guarantee the right to collective bargaining and prohibit harassment and discrimination against employees in retaliation for the exercise of associational rights.

Secondly, the Assessment Team investigated allegations that at least one employee was illegally fired during the course of collective bargaining negotiations. Thai law specifically forbids the termination of any union member while labor-management negotiations are taking place.¹¹ The Assessment Team determined that Somboon Panmuk was terminated during the course of contract negotiations. Ms. Somboon is a strong union supporter with a long history of active involvement in union affairs. She is married to an elected union officer in the LT-Trade Union.

On December 16th 2003, four days after Somboon had taken a day of sick leave, a factory manager informed her that she was being terminated for “absence without proper notice”. Somboon had, in fact, telephoned her supervisor before taking the day of sick leave to inform her that she would be absent. Indeed, it was customary practice in the factory for workers to provide notice of absence via telephone, and no worker interviewed could recall an instance in which management had labeled the practice inadequate or punished an employee for doing it. However, the manager, in informing Somboon of her termination, stated that written notice of absence was now required, referring to a provision of the factory’s regulations, and then instructed Somboon to leave the factory and not come back. She was not provided with a termination letter or any other document concerning her termination at this time. Following the advice of union officials, she chose to return to the factory the next day (December 17th) fearing that she might be terminated without severance if she was recorded as absent for three consecutive days. However, on December 20th she was forcibly escorted out of the factory by supervisory personnel and given a letter of termination. In subsequent days, a

¹⁰ Thai Labor Relations Act of 1975, Section 121 and 122; Thai Constitution of 1997, Article 45

¹¹ Thailand Labor Relations Act of 1975, Section 31

notice was posted at the factory's front gate stating that she was not allowed into the factory compound.

Considering the identity of the employee (an outspoken union activist and spouse of an elected union officer), the timing of the workers' termination (during the height of collective bargaining negotiations), and the dubious reason given for the termination (a new sick leave policy implemented in violation of Thai law, as discussed in the preceding section), the Assessment Team concluded that there was a strong likelihood that the worker was terminated in retaliation for her and her spouse's organizing activities. In addition, regardless of the motivation involved, the Assessment Team concluded that the firing clearly violated the aforementioned Thai law barring employers from firing union members during contract negotiations, and the firing was therefore without question illegal.

Recommendations

The WRC recommended that Lian Thai management engage in good faith negotiations with its employees and their union immediately, emphasizing that this is not only important in order to abide by legal and code of conduct requirements, but that by putting concerted effort into a collective bargaining agreement both parties could likely resolve most of the factory's issues without further outside intervention. The WRC further recommended that the anti-union announcements cease immediately along with all other hostile and discriminatory behavior toward union members. Among the remedial actions recommended were: giving all supervisors a refresher training on freedom of association and legal and code language applicable to Lian Thai; posting the company's policy on freedom of association throughout the factory; and allowing the union to make their own announcements over the loudspeaker system about the union's activities.

Regarding the illegal dismissal of the employee during contract negotiations, the WRC would have recommended that Somboon Panmuk be reinstated, given that her termination was illegal, but she did not seek reinstatement because her chronic illness persists and makes her uncomfortable performing factory work. She chose instead to take up work in a different workplace in which she is not required to stand and walk as much throughout the day. The WRC recommended that she be paid proper severance and back wages immediately.

Response from Lian Thai and Buyers and New Developments

While Lian Thai management did not respond directly to the WRC regarding the recommendations above, management did ultimately carry out the central recommended action by returning to the bargaining table and exhibiting a more constructive tone toward negotiations with the LT-Labor Union. Apparently in response to pressure from local government officials acting in the capacity as mediator and communications from the WRC and Nike, Mr. Tienchai returned to the bargaining table and signed a new collective bargaining agreement on February 9. However, as described in depth in the preceding section on "Benefits, Policies, and Contractual Procedure", factory management subsequently ceased good faith negotiations with the LT-Labor Union by attempting to unilaterally implement a set of new "company regulations" that curtailed employees'

rights. In response, the WRC, Nike, and Puma, exerted pressure on the factory for a second time, and Lian Thai ultimately agreed to return to negotiations with the union. An agreement was reached on July 28 on a set of new company regulations that addressed the vast majority of outstanding issues in the factory.

Workers have also reported that, as the quality of negotiations between management and the union has improved, anti-union harassment by managers and supervisors has ceased. Management now allows the union to make regular announcements over the factory's loudspeaker system about issues of concern to the workforce, particularly regarding occupational health and safety issues. Workers have since emphasized the importance of this creative means of correcting for past wrongful action.

The union leaders that were reprimanded for refusing to work overtime in November are now allowed to make a free choice about whether or not they wish to work overtime.

Somboon Panmuk was paid her due severance and back wages in full totaling 33,516 Baht (811.37 \$USD) on March 10th, 2004. Her husband also decided on his own accord to resign at the same time and was paid his due severance.

Occupational Health and Safety

Allegation

The Assessment Team investigated allegations that the factory does not provide a safe working environment.

Findings

The Assessment Team sought to investigate allegations concerning occupational health and safety at Lian Thai. Because Lian Thai management denied repeated requests by the Assessment to access the factory following its initial onsite visit, the Assessment Team was not able to carry out the full range of occupational hygiene tests available to assess compliance with applicable health and safety standards. The Assessment Team was able to gather substantial evidence from the following sources: an initial factory walkthrough of the factory by the Assessment Team; an extensive workshop with current Lian Thai workers conducted by an OHS expert and member of the WRC Assessment Team that included factory mapping and body movement analysis; an occupational health and safety survey with roughly 100 workers; and a review of available documents from governmental agencies concerning Lian Thai's compliance with health and safety standards. The Assessment Team identified the following problems, each implicating provisions in college and university codes of conduct or provisions of Thai law regarding the employer's obligation to ensure a safe and healthy working environment:

- *Health and Safety Committee:* Under Thai law, establishments such as Lian Thai are required to establish an Occupational Health and Safety Committee comprised of employees and management and to ensure that the committee meets on a monthly

basis.¹² In partial fulfillment of this obligation, Lian Thai does have an Occupational Health and Safety Committee that meets periodically. However, numerous workers, including members of the committee, provided credible testimony that, while the committee has successfully brought attention to a number of issues, the committee did not meet on a monthly basis and in certain key areas the committee's requests and recommendations have repeatedly been ignored by management. Areas in which factory management has failed to act, or failed to act adequately, on committee recommendations include the factory's drinking water facilities, maintenance of safety features on machines, and provision of personal protective equipment. Each area is described below. Because Lian Thai management did not comply with requests for documents related to the committee, the Assessment Team was not able to assess compliance with Thai laws mandating standards for the qualification, training, and responsibilities of Health and Safety Committee members and officers.¹³

- *Potable Water:* Problems with the factory's drinking water facility were evident based upon the Assessment Team's onsite observation and extensive testimony from workers. The water system consisted of several large tanks, most of them with rusted and corroded pipes and lids (allowing bugs and rodents to frequently crawl or fall in, according to substantial testimony), and several small household filters that are clearly too small for the tanks' capacity. Nearly all of the 100 employees interviewed by the Assessment Team testified that they avoid the water because of its odor, taste, and color. Given these findings, there is a clear need for renovation and more thorough and frequent tests to ensure workers are provided with safe drinking water. Because Lian Thai management refused the Assessment Team's requests for access to the facility following its initial onsite visit, the WRC was not able to perform a laboratory test of the water's content. The Assessment Team was also unable to rely on the most recent test available, carried out by the Department of Science Service (DSS) of Thailand between July 17 and August 16 of 2002, because while the report concluded that the water was fit for human consumption, the DSS did not perform a laboratory examination to test the water for Mercury, Calcium, Iron, and Magnesium, substances that may well be present at unsafe levels given the facility's state. It should also be noted that the water facility is an area in which the Health and Safety Committee has struggled to secure action by management. Committee members have requested more than ten times since 1997 that management replace the old drinking water tanks, add more or larger filters, and replace the filters more regularly. Members of the committee testified that the response of management has generally been to arrange for occasional tests and that, in some cases, the committee has been provided with verbal summaries of the tests but has not been allowed to view the results of the tests. In addition to a clear need for immediate maintenance and ongoing tests, the drinking water issue speaks to a need for greater engagement with the Health and Safety Committee.

¹² Notification of the Ministry of Labour and Social Welfare regarding Committee on Occupational Safety, Health, and Working Environment, 1995 (2538 B.E.)

¹³ Notification of the Ministry of Labour and Social Welfare regarding Committee on Occupational Safety, Health, and Working Environment, 1995 (2538 B.E.) and Notification of Ministry of Labour and Social Welfare regarding Working Safety of Employees, 1997 (2540 B.E.)

- General Work Environment and Ergonomics:* The Assessment Team found that the factory had not corrected for several ergonomics problems identified in an audit performed by the Institute of Occupational Health and Safety (IOHS, a division of Thailand's Department of Labour Welfare and Protection) conducted in 2002.¹⁴ Problems identified in the audit report include: in the cutting division, the facility's push cart was too low, forcing workers to bend over and causing shoulder and back pain; in the embroidery division, workers frequently experienced pain in their hands because they were not provided adequate tools to stretch cloth; in the packing division, workers packed products on the floor, resulting in frequent leg and lower back pain; and in the sewing division, tables were often too high or too low for the seamstresses. The Assessment Team determined that the factory had not taken actions recommended by the IOHS with respect to the packing division (providing a table on which workers could work), the sewing division (providing tables of the correct height), the cutting division (by altering the push cart) or the embroidery division (by providing improved machinery). In addition to areas identified by the IOHS, the Assessment Team also noted the following problems: the walkways were cluttered with standing racks, leading to tripping and collisions as workers enter and exit their stations, and a potential danger in the case of emergency evacuation; some racks in the cutting division had long metal rods sticking out from them at head level, presenting a clear hazard to workers walking by.
- Dust:* Because Lian Thai management refused the Assessment Team's requests for access to the facility, the WRC was not able to carry out a test of air content. An audit performed by Institute of Occupational Health and Safety in 2002 found that the factory did not exceed the legal maximum for airborne inert or nuisance dust of 15 milligrams per cubic meter. Nevertheless, the IOHS recommended that Lian Thai take several precautionary measures to address the issue, such as providing employees with cloth masks, increasing cleaning of work areas, cleaning the air-intake filters of the air-conditioners, reducing use of the ceiling fan in order to reduce dust circulation, and providing additional occupational safety and health examinations of employees. The Assessment Team found that in the period after the IOHS audit in 2002 Lian Thai took one of the recommended actions – providing weekly maintenance of the facility's air conditioners – but this maintenance had since become irregular and inadequate. Factory management had failed to take the other recommended actions. Excessive dust remained an irritant to workers and a potential hazard at the facility.
- Personal Protective Equipment and Safety Mechanisms:* During its walkthrough, the Assessment Team noted an absence of essential personal protective equipment and safety mechanisms throughout the factory, including a lack of masks (to filter out dust), finger guards (required on sewing machines to protect workers from puncture wounds), and ear and eye protection (to block dust, lint, and other objects). Testimony from workers confirmed that workers desire these items. An area of

¹⁴ Lian Thai Occupational Health and Safety Report, February 6, 2002. Institute of Occupational Health and Safety, Department of Labor Welfare and Protection, Ministry of Labor.

special concern to workers and to the Assessment Team was the lack adequate safety mechanisms on the machine used to stamp metal buttons to garments. According to substantial testimony, the machine has a history of causing injuries to workers using it. Management responded to requests made by members of the Health and Safety Committee by installing a finger guard on the machine, but problems have persisted as result of insufficient maintenance. In addition, the Assessment Team identified at least one case in which a worker injured her hand severely as a result of a loose plate on her sewing machine. These cases speak to a need for the provision and continued maintenance of personal protective equipment and safety mechanisms.

- *Flooding:* There has been occasional flooding in the compound dormitories and in the entrance area of the factory. Because the dorms have tile floors, the flooding causes the floors to become slippery, presenting a serious hazard to employees. In addition, holes in the factory's roof have allowed rain water to leak directly onto production machines, prompting fear among workers of electrical shock.
- *First Aid and Medical Care:* The Assessment Team heard extensive testimony from workers that the factory's first aid boxes are often empty. One reason identified for this problem is that workers appointed to replenish supplies for the first aid boxes were not given time during their work day to carry out this task, nor paid for the time the time they spent performing the task during breaks or after-hours. In addition, workers have often been encouraged to save the contents of the first aid boxes for employees working at night. Given that complete first aid kits are a basic component of a safe workplace, management interference in the maintenance of these items represents a severe violation of employees' rights. The Assessment Team also found that the factory's onsite "clinic" was substandard. The clinic was, in fact, little more than a corner of the factory's office that has been cordoned off with a thin curtain. In this noisy environment, workers have found it difficult to find the privacy and attention necessary for a proper medical examination or to rest. In addition, numerous workers testified that the onsite nurse is frequently busy with other obligations required of her by management and is frequently unavailable to treat workers. Workers who have sought treatment for what they believed were potentially serious illnesses have seldom, if ever, been provided basic diagnostic tests, such as tests for body temperature, pulse, and blood pressure. Improvements in the medical treatment provided by the facility are essential to ensure a safe and healthy working environment, as required by applicable codes of conduct.

Recommendations

The WRC recommended that the factory take the following corrective actions in this area:

- *Health and Safety Committee:* Lian Thai should strive to make its Health and Safety Committee proactive and functional, and ensure that it meets at minimum on a monthly basis. Management should ensure that committee members and officials

have the training and qualifications required by Thai law¹⁵ and that the committee and its officials are empowered to identify health and safety problems and develop and carry out concrete actions plans to address these problems in accordance with Thai law.¹⁶ The committee should be provided with all necessary support to carry out its responsibilities, including: the dissemination of information to the workforce about general health and safety issues (such as the importance of complying with directives to use PSE while engaged in hazardous operations); the supervision of machine maintenance; the coordination of OHS inspections; and the organization of fire drills. The employees' union should remain closely involved with the committee to avoid any redundancy of efforts.

- *Water:* The old drinking water tanks that are rusted or corroded should be replaced immediately. Industrial strength filters should replace the small household filters. All filters should be changed on a regular basis. The factory should arrange for ongoing comprehensive tests of the facility's water to ensure the water is safe to drink.
- *General Work Environment and Ergonomics:* Consistent with recommendations made by the Institute of Occupational Health and Safety, the WRC recommended that: the push carts in the cutting division be replaced with taller ones or a different system so that workers will not have to bend down as far to reach them; the embroidery machinery be adjusted so that workers do not have to pull so hard to stretch the cloth; waist-height tables be added to the packing division so that workers no longer have to sit on the floor while working; and the height of the sewing tables be made adjustable so that each employee's tables can be raised or lowered according to her need.
- *Dust:* The factory should take the precautionary measures recommended by the Institute of Occupational Health and Safety, such as: using of cloth masks, increasing cleaning of work areas, adding and cleaning dust filters on the factory's air-conditioner, reducing use of ceiling fans in order to minimize dust circulation, and carrying out additional training and health checks of workers.
- *Personal Protective Equipment and Safety Mechanisms:* The factory should carry out the recommendations made by the Institute of Occupational Health and Safety in its 2002 audit report, adhere to Thai law concerning factory obligations in this area,¹⁷ and provide any additional personal protective equipment or safety mechanisms identified as necessary by the Health and Safety Committee. Factory management should make special efforts to ensure that all personal protective equipment is functional and reasonably comfortable. Management should train workers on the importance, and the proper use of, personal protective equipment.

¹⁵ Notification of the Ministry of Labour and Social Welfare regarding Committee on Occupational Safety, Health, and Working Environment, 1995 (2538 B.E.) and Notification of Ministry of Labour and Social Welfare regarding Working Safety of Employees, 1997 (2540 B.E.)

¹⁶ Ibid.

¹⁷ Thailand Labor Protection Act of 1998 (2541 B.E.)

- *Flooding:* Additional drainage should be added to the factory compound to prevent flooding of the dormitories. The leaks in the factory roof should be repaired.
- *First Aid and Medical Care:* Replenishing first aid boxes should be made a priority, by giving any employee assigned with this task a specific time each day when they are to inspect the contents of the box and fill any items that are empty or running low. Employees should be compensated for any time spent carrying these tasks. Employees should be allowed to use the first aid boxes whenever they are needed regardless of the time of day. The factory clinic should be given its own room and a full-time nurse. The WRC further recommends that this nurse receive specific training in occupational health and safety.

Response from factory and status of remediation

As has been the case for most other areas of concern, although Lian Thai did not respond to the WRC directly concerning the above findings or recommendations regarding health and safety issues, the company ultimately took the majority of the actions recommended by the WRC and the Institute of Occupational Health and Safety.

One of the most important developments, and the one which may well have the broadest impact in terms of improving health and safety practices in the factory, is an invitation by management to the union officers in the Health and Safety Committee to make announcements about health and safety concerns over the loudspeaker system on a regular basis. The union has since used this opportunity periodically and workers report this practice has dramatically increased communication and awareness among the workforce about workplace safety issues.

The Health and Safety Committee has begun to meet on a more frequent basis, and has initiated steps to address the problem of potable water by changing the water facility's pipes and filters.

With regard to personal protective equipment, the company made the following formal announcement on May 4, 2004 committing to proper use of safety equipment¹⁸: "In order to be in compliance with the Labor Protection Act of 1998's paragraph on Occupational Health, Safety and Environmental Management in Enterprises and to follow our customers' rules, the company will provide to the employees all the safety equipment that is required by law and our customers. These include, for instance, cloth masks, earplugs, gloves, gas masks, needle locks, punch machine locks and safety locks." The WRC welcomes this important commitment and can verify that cloth masks are now provided on a regular basis to all employees.

With respect to the problem of clutter in the general work environment, the factory has established a practice that every morning at 10 AM music is played for five minutes while workers pause from their work to clean their immediate work area of dust and other debris.

Regarding ergonomics, the factory has taken each of the recommended actions, with the exception of adjusting machinery in the embroidery division. In the cutting division, rather than providing a different type of push cart, management has opted to add

¹⁸ Announcement No. 2/2547

several seats for employees in this division and direct workers to rotate job tasks more frequently. Although this action is different from the one initially recommended by the Institute of Occupational Health and Safety, the WRC welcomes this action as a better alternative to address the problem. In the related area of injury diagnosis, workers are now receiving X-rays when appropriate.

Despite this important progress, there are also several areas that have yet to be addressed and require immediate attention. These include: flooding of the factory grounds, inadequately stocked first aid kits, and limited access and inadequate treatment in the factory clinic. In addressing these issues, the factory should involve the Health and Safety Committee to the greatest extent possible.

Forced Overtime

Allegation

That employees have been reprimanded for refusing to work overtime; and that employees of Lian Thai with probationary status were obligated to work overtime on a daily basis for a period of several weeks.

Findings

Under Thai law, employers are prohibited from requiring employees to work overtime, except in cases in which an employee has provided prior consent.¹⁹ Based upon substantial, credible, and mutually corroborative worker testimony, the Assessment Team found that individual employees were reprimanded for refusing to adhere to a management ultimatum to perform overtime and that workers employed during their probationary period were required to work overtime on a daily basis for period of more than two months. Both practices violate Thai law, as well as provisions of college and university codes of conduct that explicitly prohibit forced overtime or require adherence to applicable domestic law.

The first allegation concerns the imposition by management of a new overtime policy on all employees during late November of 2003. During the week of November 18, Lian Thai management announced that all workers would be required to work overtime in order to complete an order in time for a shipping deadline. Many workers objected to this requirement because they wished to visit hospitalized coworkers who had been injured the previous week in a traffic accident involving a large number of Lian Thai workers and visit the families of several coworkers who had been hospitalized or were killed in the accident. A dispute ensued between management and union leaders over the overtime issue. On November 24, Lian Thai management announced in an ultimatum that workers would be required to work overtime during that week or lose the right to work overtime in the future. A number of workers, including several union leaders, refused to abide by the ultimatum to work overtime and instead chose to spend the time visiting hospitalized coworkers and the families of hospitalized or deceased coworkers. Factory management responded by reprimanding the union leaders for refusing overtime and announcing that these individuals, as a result of their decision, would be barred from working overtime in the future. Given the low wages earned by

¹⁹ Thailand Labor Protection Act, Section 24

workers in the Thai garment industry, and Lian Thai in particular, overtime work is often critical for enhancing workers' livelihoods. Depriving workers of access to overtime thus amounted to a severe form of punishment and a violation of code of conduct and legal prohibitions against forced overtime.

The second allegation of forced overtime concerns a management policy with respect to workers with probationary status implemented during the month of December of 2003 and January of 2004. The Assessment Team heard credible testimony from multiple workers that managers instructed employees with probationary status that they must work overtime and threatened that if they did not work overtime they would not pass their probation, and thus would not be taken on as permanent employees. This practice occurred on a daily basis for most work days during late December and throughout January, when overtime work was effectively ceased altogether. Workers on probation were also frequently required to perform work, such as repairing their operating machines, for roughly twenty minutes during their hour-long lunch break; thus, this overtime was not only forced but also insufficiently compensated. These practices constitute clear violations of Thai law and applicable codes of conduct with respect to forced overtime.

Recommendations

The Assessment Team recommended that all instances of forced overtime cease immediately and that the factory use the same procedure used with permanent employees (having employees sign a form) to indicate whether or not they want to work overtime on each day on which overtime work is offered.

Response from factory and status of remediation

During the month of February, at the outset of the WRC's Assessment of Lian Thai, the Assessment Team communicated to Lian Thai management and Nike that overtime should under no circumstances be mandated by the factory. As discussed above, management discontinued its use of overtime altogether and was shifting instead to a system of homework (a concern discussed in the following section). Since September, however, the factory has begun to offer regular overtime again and it appears thus far that employees are being given equal access to it and equal opportunity to decline it. The WRC will continue to monitor the situation and requests the assistance of buyers to do so as well.

Homework

Allegation

That the factory has replaced its traditional use of overtime with a practice of subcontracting work to employees to be performed outside of normal working hours.

Finding

The Assessment Team Found that Lian Thai factory subcontracts the sewing of garments to employees to perform outside of normal working hours, a practice known as

“homework”. As discussed below, this practice violates provisions of applicable codes of conduct.

The use of homework by Lian Thai has occurred since at least April 12 of 2004. Since that date, according to substantial worker testimony and first hand observation by Assessment Team members, workers have been provided by factory management with sewing machines and pieces of cloth to take home and work with after working hours on a subcontracted, piece rate basis. During roughly the same period of time, factory management has also installed sewing machines in the packing division of the factory, so that workers living in the factory dormitory can perform subcontracted piece work as well. The WRC estimates that, as of July, 2004, approximately 50 workers or 10% of Lian Thai’s workforce have performed homework.

It is important to note that during the time period since homework was introduced in April of 2004 until August of 2004, the factory ceased offering employees the opportunity to perform overtime work. The factory thus transferred the burden of production in excess of normal daily capacity from overtime to homework.

The use of homework as described violates applicable codes of conduct in two important respects. First, homework poses unacceptable obstacles to the meaningful enforcement of codes of conduct. When work is performed outside of the factory and outside of normal working hours, it is impossible for factory management, much less outside auditors, to ensure that provisions of law and of codes of conduct such as those concerning occupational health and safety, child labor, and the minimum wage, are respected in the production of its garments. In so far as the factory has formally committed to abiding by the codes’ standards, it cannot engage in a practice that rules out *a priori* the effective enforcement of these standards.

Second, there are areas in which the terms and conditions of homework are substantially worse than normal work in the Lian Thai factory. Most crucially, because workers performing homework are treated on a subcontractor basis for this work, they are not eligible for Social Insurance and resulting healthcare coverage in the case of workplace accidents. Workers would be entitled to the full scope of public services if the factory continued to assign this work as overtime, as it has previously done. The factory’s use of homework, in place of overtime, thus represents a curtailing of employees’ employment rights under the standing terms of employment. Because this shift was implemented by management unilaterally, without negotiations with workers or their representatives, the use of homework violated Thai law banning such unilateral changes (as discussed in the preceding section on “Benefits, Policies, and Contractual Procedure”).²⁰

Recommendation

The WRC recommended that Lian Thai cease the use of homework immediately. During instances in which production levels exceed normal daily capacity, the factory should offer overtime to employees, regulating and compensating this work in accordance with the law.

²⁰ Thailand Labor Relations Act of 1975, Section 10-20

Response from factory and status of remediation

Lian Thai has not responded directly to the WRC regarding this recommendation. Nor has the factory halted the use of homework. While the amount of homework has decreased and the factory has reinstated some amount of overtime, the WRC reiterates its concern about this area of non-compliance and reiterates its recommendation to Lian Thai to end the practice. Licensees and buyers are encouraged to communicate with Lian Thai about the problem and monitor this issue carefully.

Findings with respect to Lian Thai Subsidiaries and Subcontractors

In addition to investigating allegations of worker rights violations at the Lian Thai facility in Bangkok, Thailand, the Assessment Team also carried out an inquiry of alleged rights violations at two facilities formerly owned by the Lian Thai enterprise: Pacific Thailand (now known as Six Sigma) and Nangrong Pacific. During the time period since the alleged violations occurred, both facilities have been sold to new ownership. In each of the facilities, the Assessment Team focused its investigation on outstanding issues related to labor disputes arising from mass firings of employees that occurred while the facilities were owned in part by the Lian Thai enterprise.

Allegations Concerning Pacific Thailand / Six Sigma (Ubon Ratchathani, Thailand)

Pacific Thailand is an apparel manufacturing facility located in Ubon Ratchathani, Thailand. The factory was formerly a wholly owned subsidiary of the Lian Thai enterprise, but was sold to new management in September of 2003. The facility, now known as Six Sigma, continues to fill orders from Lian Thai on a subcontractor basis.

Failure to Pay Severance and Advance Notice Compensation

Allegation

That factory management has refused to comply with a Labor Department order to pay workers legally mandated severance and advance notice compensation.

Finding

The Assessment Team found that Pacific Thailand management terminated roughly 125 employees without paying the workers legally mandated compensation for severance and a failure to provide advance notice. In failing to pay workers, factory management has violated an explicit Labor Department order to do so.

The Assessment Team identified the following facts that are relevant to allegations of labor rights violations in the areas of legally mandated severance and advance notice compensation:

- On September 30, 2003, Tienchai Mahasiri, manager of the Lian Thai Apparel facility in Bangkok, dissolved the Pacific Thailand company and sold a portion of its assets to Sunthi Yindeephop. Under the new ownership, the factory was renamed Six Sigma. As discussed below, the Provincial Labor Department later ruled that, due to irregularities in the transfer of ownership, Mr. Tienchai technically retained legal obligations as the workers' employer.
- On November 24, 2003, Six Sigma introduced a new piece rate compensation system. The vast majority of the facility's workers participated in a protest of the new system, which many believed resulted in compensation below the legal minimum.
- On November 27, 2003, in response to employee protests, Six Sigma management

told employees that, if they did not want to work under the new system, they could leave the factory and they would be paid severance. In response, 123 workers stopped working, while 24 continued working. Three days later, however, Six Sigma management informed workers that it was no longer willing to pay workers severance because, according to management, the workers had left the factory of their own free will and therefore were not owed severance. In the ensuing months, protest and dialogue occurred between the workers, advocates, and management of both Pacific Thailand and Six Sigma.

- On March 16, 2004 Mr. Tianchai offered a settlement payment of 1500 Baht (36.31 \$USD) to each worker, an amount substantially less than some workers and advocates estimated that the workers were entitled to. Roughly 75 of the workers accepted the settlement, while 46 workers filed a complaint with the Provincial Labor Department of Ubon Ratchathani.
- On March 26, 2004, the Provincial Labor Department issued a ruling in the case. The ruling is based largely on a finding that, on September 30, 2003, Pacific Thailand only transferred a portion of the company's assets to the ownership of Six Sigma, but never transferred its contractual relationship with employees as required by law,²¹ and thus Pacific Thailand technically dismissed the workers on this date and did so without providing the workers advance notice or severance. The Labor Department thus concluded:

“Following the § 124 of the Labor Protection Act of 1998, the investigative committee of Ubon Ratchathani Provincial Labor Department hereby orders Pacific Thailand Ltd. and Mrs. Tienchai Mahasiri: the manager and employer, to pay advance notice 79,837 Baht [1,932.72 \$USD] and severance pay of 876,320 Baht [21,214.30 \$USD] to Ms Bun-anan Sirinon and the other 45 petitioners within 15 days of this order”

However, despite the Labor Department's unambiguous ruling, to date the 46 employees who brought the complaint have not received either advance notice or severance payment in accordance with the order. Mr. Tienchai has refused to pay on the grounds that neither he himself nor Thailand Pacific has any money to pay. Mr. Tienchai has not appealed the ruling and the deadline for appeal has expired.

In response to this refusal, workers of Thailand Pacific have filed a civil lawsuit against Mr. Tienchai seeking monetary damages; hearings were held on August 16 and August 30 and a final ruling is scheduled for November 11, 2004. In addition, both a subgroup of workers and the Provincial Labor Department of Ubon Ratchathani have filed criminal lawsuits against Mr. Tienchai, seeking sanction for his failure to comply with the March 26 Provincial Labor Department order. The workers' case was filed on August 30 and the Labor Department's case was filed on September 16 of 2004. During this period, Mr. Tienchai has repeated a settlement offer of 1,500 Baht for each worker.

²¹ Thai Labor Protection Act of 1998, Section 13

This offer amounts to roughly one fourteenth of the total ordered by the Labor Department.

Recommendations

The WRC recommended that Mr. Tienchai Mahasiri, manager of Lian Thai, immediately comply with the Ubon Ratchathani Provincial Labor Department's order and pay the advance notice amount of 79,837 Baht and severance pay amount of 876,320 Baht to be divided among Ms. Bun-anan Sirinon and the other 45 petitioners. Given that the Labor Department's order was issued more than five months ago, and little progress has since been made, the WRC recommends that all buyers intervene to persuade Mr. Tienchai and Lian Thai management to resolve this issue.

Allegations Concerning Nangrong Pacific (Buriram, Thailand)

Nangrong Pacific is an apparel manufacturing facility located in Buriram, Thailand. The facility was a wholly owned subsidiary of the Lian Thai enterprise, until it was sold to new owners in mid 2004. The facility continues to fill orders from Lian Thai on a subcontractor basis.

Failure to Adhere to an Agreement to Reinstate Dismissed Employees

Allegation

That the Nangrong Pacific is in breach of a legally binding agreement to reinstate a group of workers who were fired following a labor dispute and has failed to pay proper severance to those workers who do not wish to return.

Findings

The Assessment Team concluded that, as alleged, Nangrong Pacific violated an agreement to reinstate a group of workers who were illegally terminated in October of 2002. A subset of this group no longer wish to return to the factory, and they have not been paid the severance and back wages to which they are legally entitled.

The Assessment Team identified the following facts concerning events at Nangrong Pacific over the past 24 months.

- On October 28, 2002, a group of 77 workers participated in a work stoppage to protest the imposition of a new piece rate wage system. Under the new system, workers would be paid the legally mandated minimum wage of 133 Baht (3.21 \$USD) per day only if they reached the factory's daily production target.
- An agreement was reached on October 29, 2002 between the workers who participated in the work stoppage and Nangrong Pacific management. The agreement stated that the workers would be permitted to return to the factory, and the company would be compensated for financial losses that resulted from the stoppage through the

deduction of workers' wages. However, immediately after agreeing to this arrangement, management told the workers' negotiating committee that all 77 workers would be fired. The factory made a public announcement of these firings on November 1, 2002.

- On November 11, 2002, several workers filed a complaint with the Labor Welfare and Protection Department (LWPD) on behalf of the 77 workers. At a meeting convened by LWPD in response to this complaint, on November 13, workers and management signed a formal memorandum whereby each of the 77 workers would be reinstated, and would return to work in clusters of roughly 20 workers to be spread out over the subsequent four months. The memorandum also stated that, should the factory be unable to accommodate any worker at the time that he or she was entitled to reinstatement, it would continue to pay wages until an appropriate vacancy arose.
- During subsequent weeks, the factory refused to reinstate 17 of the 20 workers who were to return on December 1, pursuant to the memorandum of November 13, and also refused to pay them wages. On January 9, 2003, the factory management issued a statement to the effect that none of the 77 workers would be reinstated.

The conclusions of the Assessment Team are based on a finding that the memorandum signed on November 13 by the workers and management in the presence of the LWPD is a legally binding statement of the obligations of both parties. The Assessment Team relied on the basic, internationally recognized private law principle that the negotiated resolution to a dispute, reduced to writing and voluntarily signed by both parties, must be considered a final settlement that each of the parties in dispute, as well as third parties, must adhere. Indeed, no party has disputed that the agreement is legally binding. On these facts, management has clearly breached the terms of the agreement by failing to reinstate the terminated workers.

It is important to note that this finding stands independent of a case brought before the labor court, where workers' attempt to seek back wages for work performed prior to their termination on October 29 was rejected, on the grounds that the memorandum of November 13 is a bar to their claims.²² The decision, which is currently under appeal, is not relevant to the findings of the Assessment Team cited above, because the court was concerned only with the status of entitlements that preceded the signing of the memorandum, and were arguably resolved in the terms of the memorandum. The findings above relate to workers' attempts to enforce the memorandum, rather than seek an exception to its provisions, and their claims arose subsequent to the signing of the document. There is nothing in the language of the memorandum that seeks to preempt these claims.

Recommendations

Given the absence of a negotiated modification to the agreement of November 13, 2002, or a legally sufficient excuse, workers are entitled to specific performance:

²² Central Labor Court (Nakhorn Ratchasima province), Case # 3333/2546

reinstatement, should they wish it, at the level of seniority at which they left the factory, as provided for by the Agreement. These workers should also receive appropriate back wages. For those workers no longer seeking to return to employment at the factory, an adequate remedy at law would be compensatory damages, such that workers would be paid wages for the period between the date of their scheduled reinstatement, and the time at which they found other employment, or otherwise left the labor market.

Appendix

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