

To: WRC Affiliate Colleges and Universities  
From: Scott Nova and Jessica Champagne  
Re: Partial Remediation at Textiles Opico (El Salvador)  
Date: October 16, 2017

I am writing to you to update you on the partial remediation of violations that occurred at Textiles Opico, a garment production facility located in El Salvador.

In July, the Worker Rights Consortium (WRC) [reported](#) on the factory's retaliation against workers active in a labor union and its refusal to comply with commitments it had previously made to remedy earlier violations of a similar nature. At the time that the new violations occurred, the factory was disclosed as producing university licensed apparel by the licensee Team Beans; however, when approached, both Team Beans and the factory indicated that the latter was no longer producing for Team Beans and that the disclosure information Team Beans had provided was inaccurate. Because the WRC received a worker complaint based on workers' reasonable belief that university labor codes applied, we continued with our investigation. Textiles Opico produces non-collegiate apparel for Lululemon, REI, Academy Sports, Castelli, and Dick's Sporting Goods, which sources adidas-licensed product from the factory.

As is detailed in the July report, the violations documented by the WRC concern layoffs conducted in January 2017 in which Textiles Opico discriminatorily selected union members for dismissal. Furthermore, the WRC documented the factory's violation of a labor-management agreement on a layoff procedure intended to ensure that such layoffs were conducted in a fair and non-discriminatory manner – a procedure the factory had accepted as a remedy for violations of associational rights, including discriminatory terminations, that it committed in 2013 (as reported, at the time, by the Fair Labor Association (FLA), of which Textiles Opico is a Participating Supplier). Finally, the WRC noted that Textiles Opico refused to allow union members representation by their chosen representatives at the time of their dismissal.

While these violations have been partially remedied, the factory has refused to reinstate 12 workers who were selected for termination based on anti-union discrimination and to provide full back pay to the wrongfully terminated workers for the time off the job. Ongoing engagement by buyers will be important to ensure that the factory complies fully with its worker rights obligations going forward, to encourage constructive and lawful labor-management relations, and to avoid a recurrence of the factory management's pattern of engaging in retaliatory and discriminatory terminations.

## **Partial Remediation of Discriminatory Terminations**

After conducting an investigation and documenting freedom of association violations at Textiles Opico, the WRC engaged with the buyers and the factory to press for remediation. The FLA also reached its own findings in the case, which are discussed below, and engaged with the factory and buyers.

On August 21, seven months after the violations occurred, Textiles Opico signed an agreement with union leaders in which the factory management committed to rehire a portion of the workers who had been wrongfully terminated. The factory agreed to rehire the production workers who were interested in returning to work; nine out of the 15 sewing workers affected by the layoff accepted the company's offer of reinstatement. The factory did not provide full back pay to these workers; rather, it provided each of the 15 workers an amount equivalent to one month's salary, less than 15% of the amount recommended by the WRC.

The factory committed to rehire only one worker of a second group of 13 individuals affected by the discriminatory layoff, those who worked for the factory's "maintenance of installations" department. At the time of the January layoffs, management announced that it was completely eliminating this department. A total of 13 workers, more than half of the members of this department, were members of the union, the highest rate of unionization for any department in the factory. Prior to the elimination of the department, the workers had, through their union, been pushing the company to provide adequate protective equipment as required by law; the workers alleged that the company was requiring workers to provide their own protective footwear.

Factory management made a number of arguments, shifting over time, as to why the department had been eliminated. As detailed in our July memo, the WRC did not find these claims credible. The factory claimed that the maintenance department was a temporary arrangement established for specific construction projects and that the tasks assigned to these workers were no longer required. Separately, factory management reported that, going forward, the work was to be contracted out and noted that this brought significant cost savings. Finally, the factory combined these explanations, stating that the amount of work needed had significantly decreased and that the number of work hours per week required for this category of work was small and did not warrant full-time staff.

Evidence provided by workers contradicted these claims. The department had existed for more than seven years, rather than being established for a short construction project. The terminated workers testified that a number of functions they performed – including plumbing, gardening, carpentry, painting, floor cleaning, and other tasks – were still being performed at the factory following the elimination of this department.

The WRC also noted that, in this type of case, anti-union animus does not have to be the only reason for eliminating the department in order for the terminations to constitute a violation of workers' associational rights. Rather, if anti-union animus played any role in decision-making,

the terminations constitute a violation and must be reversed. In this case, the employer failed to provide a plausible explanation for the elimination of the department and had a demonstrated track record of anti-union animus and retaliation.

Given this, the WRC recommended that the workers be reinstated with back pay. The WRC also noted that if the need for the functions performed by the maintenance department had, in fact, decreased, this still did not preclude remediation. Implementing the WRC recommendation would only require the factory to reinstate 13 workers. In addition, the WRC suggested that, if the factory did not wish to assign these workers to maintenance tasks, it could also employ these workers in the packing department or other departments, positions that would not require significant retraining. For a factory of this size, 13 workers represents less than 1% of the workforce and reemploying these individuals would not create a significant hardship for the employer.

Unfortunately, Textiles Opico refused to comply with the WRC's recommendation to reinstate all workers with back pay. Instead, the factory rehired only one of the 13 maintenance workers and provided a sum equivalent to three months' salary to each of the unionized workers from this department.

### **FLA Investigation**

The FLA conducted its own investigation of the January 2017 layoffs. In its report, published on October 2, 2017, the FLA found that the factory had failed to abide by the layoff procedures to which it had committed. The FLA did not concur with the WRC's findings that the terminations were conducted in a discriminatory manner. The FLA recommended that the factory reinstate the unionized sewing workers; it did not recommend reinstatement of the maintenance workers. The FLA also made a number of additional recommendations that overlapped with the WRC's recommendations for improving the associational climate at the factory, including the resumption of regular labor-management meetings, the hiring of a mediator to facilitate these meetings, and freedom of association training for workers and management.

The FLA's findings were based on information provided by Textiles Opico, including claims that, as detailed in our July report, the WRC judged not to be credible. The WRC shared its findings with the FLA and sought to reach consensus on recommendations, but ultimately the two organizations were not able to agree fully on either findings or recommendations.

### **Additional Partial Remediation**

In keeping with the recommendations by both the WRC and FLA, factory management has committed to a number of additional remedial steps. Most important among these is that the union and management have already resumed monthly meetings to discuss workplace issues. In order to facilitate communication, the FLA worked with the parties to retain an outside facilitator for these meetings. The mediator selected for this purpose is the same individual who played this

role following the 2013 violations and both the factory and the union agreed to her involvement. Textiles Opico has also stated that it will comply with additional WRC recommendations, including making a statement to all factory employees affirming their right to exercise freedom of association and conducting training sessions for managers, supervisors, and workers on freedom of association.

Dick's Sporting Goods, on behalf of itself and its business partner adidas, discussed the case repeatedly with the WRC and with Textiles Opico management. Other buyers either sent very limited communications to the WRC and Textiles Opico or provided no substantive response.

The reinstatement of 10 workers and the resumption of labor-management dialogue as a result of Dick's engagement are positive steps. However, the fact that only one of the 13 wrongfully terminated maintenance workers was allowed to return to work means that not only will 12 individuals, and their families, continue to suffer the consequences of this violation of their associational rights, but also that the factory will have succeeded in sending a message to the remainder of the workforce that workers can be terminated, with impunity, in response to their participation in a union or for having pressed for safety improvements in the facility.

Given the factory's history, it will be important for factory buyers to continue to closely monitor developments and ensure that factory management complies fully with its legal obligation to respect workers' associational rights. The commitment to regular labor-management dialogue with the support of a mediator is a promising step. The WRC continues to urge buyers to require the factory to reinstate the remaining 12 discriminatorily fired workers and provide full back pay to all affected workers. We will continue to monitor developments.

### **Role of Licensee Team Beans (FOCO)**

When the WRC undertook this investigation, Team Beans, a licensee that has also used the names Forever Collectibles and FOCO, was disclosing the factory as a supplier of collegiate apparel. After the WRC initiated its investigation, both the licensee and the factory informed the WRC that the factory was no longer producing garments for Team Beans. This company's continued disclosure of Textiles Opico as a producer of licensed apparel, even though it was no longer using the factory, created the expectation among the affected workers that they enjoyed the protection of university codes of conduct. The fact that, ultimately, the WRC was not able to enlist the support of a university licensee limited our ability to press for full remediation. Team Beans has not yet provided an explanation for this error in its disclosure or explained how it will improve its disclosure process going forward. We continue to seek clarification from Team Beans on the disclosure issue.

Since Team Beans left the facility before the recent violations occurred, the company is not in a position to influence the factory's actions. Thus, our recommendations going forward pertain only to non-collegiate buyers. We have no further recommendations for the university licensee Team Beans regarding the outstanding labor rights issues at Textiles Opico.