



**Worker Rights Consortium  
Factory Assessment Update**

December 19, 2006

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**Chong Won (Philippines)**

In late September of this year, the WRC received a worker complaint alleging the use of violence by management and export processing zone authorities against employees participating in a legal strike at a factory known as Chong Won Fashion Inc. ("Chong Won"). In response, the WRC conducted an emergency assessment between October 28 and November 2, 2006. The factory is located in the Cavite Export Processing Zone in Rosario, Philippines. According to university disclosure data, Chong Won has been a producer of logo apparel for the licensee Oarsman Sportswear over a period of several years, including as recently as October 2006. However, Oarsman has informed the WRC that the disclosure data submitted is not accurate and that it cannot verify whether Oarsman has ever used this factory because it was disclosed by its former owner, Hartwell Industries, with which Oarsman no longer has a relationship. Chong Won's primary customer at this time is Wal-Mart, which does business with the factory through a domestic supplier known as One-Step-Up.

The WRC's assessment found very serious violations of worker rights including violent suppression of a

lawfully constituted strike, nonpayment of the legally mandated minimum wage, regular forced overtime, excessive use of contract labor status in violation of the Philippine Labor Code, failure to provide health care and leave benefits as required by law, the illegal mass termination of trade union members, and failure to meet legally mandated health and safety standards. The use of violence against trade unionists at Chong Won is particularly concerning given the high rate of politically motivated violence and killings in the Philippines, which has included the murders of 64 trade unionists since 2001, making the Philippines the second most dangerous country for union members according to Amnesty International and other human rights organizations. Many of the violations identified will require immediate attention from the factory, its buyers, and relevant local authorities if ongoing, irreparable harm to worker rights is to be avoided.

The WRC has notified Oarsman of our preliminary findings and concerns at Chong Won, but because Oarsman has stated that it does not intend to do business with the factory in the future, there has been no discussion of remediation. It is worth noting that Chong Won management has indicated to the WRC that it recognizes Oarsman as a past buyer and potential future customer, and as such, the WRC believes it likely that Oarsman's engagement in remediation efforts could have a positive impact on the outcome at this factory. The WRC has also been in contact with Wal-Mart, which has conducted its own investigation of the case. Thus far Wal-Mart has been helpful in sharing some of its findings with the WRC, but has been unwilling to commit to any concrete steps to remediate the violations.

The WRC's full assessment report and recommendations on Chong Won will be released shortly.

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### **PCCS Garment and Beauty Silk Screen (Cambodia)**

In response to a complaint from workers, the WRC undertook an assessment of labor conditions at the PCCS factory in March 2006. According to university disclosure data, the factory produces licensed goods for VF Imagewear, but VF does not acknowledge having sourced from PCCS. The factory currently produces clothing for adidas, Gap, and Puma. More recently, the WRC has also undertaken a preliminary inquiry into a related factory known as Beauty Silk Screen (BSS). BSS is owned by the same parent company as PCCS, is located next door to PCCS, and performs silk screening also for adidas, Gap, and Puma. PCCS and BSS employ approximately 4,000 and 300 workers, respectively.

The principle areas of concern identified in the worker complaint regarding PCCS were inappropriate use of contract labor and occupational health and safety. With regard to the use of contract labor, the WRC found that many workers at PCCS were employed as short-term contract laborers regardless of the amount of time they had worked at the factory. The factory accomplished this by initially hiring workers for a fixed period of two to three months and upon expiration of this initial contract period, simply providing the worker with a new contract of a similar (two to three month) duration. This has the effect of making it impossible for workers to accrue seniority at the factory because they are not technically considered to have been employed there any longer than each short-term contract indicates. Because a number of benefits and production bonuses accrue to workers on the basis of seniority, the use of contract labor effectively makes these benefits unavailable to many workers at PCCS. The use of contract labor to perform the primary work of a factory is illegal under Cambodian law and constitutes a violation of ILO principles. In the area of health and safety, the WRC also found serious violations, including frequent flooding of the factory and factory doors that were regularly locked during working hours.

The WRC met with PCCS management in March 2006 to discuss our findings and recommendations for remedial action. With regard to the issue of contract labor, PCCS indicated that the use of short term contracts was not the factory's preference, but a practice they felt was necessitated by the seasonal

fluctuations in orders from their buyers. This fluctuation of production was confirmed by workers who testified that nearly 1,000 workers were laid off by PCCS each February and rehired in May or June. PCCS management told the WRC that they had expressed their concerns regarding seasonal fluctuations and their preference for a stable workforce to adidas and Gap. Nonetheless, PCCS acknowledged the need to address the use of three-month contracts and offered to replace the current contracts with six-month contracts, and that workers would be offered permanent employment at the end of this period if the factory had sufficient business. The WRC viewed this as a positive step forward, although the continued use of temporary contract labor clearly did not constitute full remediation of the violation in question. PCCS also agreed to take steps to address the health and safety violations in the factory.

Unfortunately, PCCS did not follow through on the key commitments made in these remediation discussions. When the WRC met with management in August to express our concern that the change in policy regarding employment contracts had not been implemented, PCCS representatives denied that the factory had committed to implementing any changes or that the factory was violating the law. Representatives of adidas confirmed that they had received a similar response from the factory and that they would be taking steps to press the factory further on this issue. In the area of health and safety, PCCS addressed the issue of factory flooding by raising the level of the floor, but workers still report that a number of the factory doors are locked during the work day. Reports of new violations have also surfaced recently at the factory. To complicate remediation efforts further, the WRC has received reports from workers that PCCS management has been attempting to discourage employees from talking to the WRC and to monitors representing the factory's buyers.

At the BSS factory, the WRC's initial inquiry found violations in the areas of freedom of association, including workers fired for their involvement in a local women's rights NGO, and occupational health and safety, related to the improper use and storage of hazardous chemicals. BSS management has responded positively to the WRC thus far, and we will continue to work with the factory to address all issues that have been identified.

TOP

### **Bright Sky, Suntex and Rainbow Screen Printing (Cambodia)**

In late May 2006, the WRC began a compliance assessment of three factories in Cambodia, all owned by a company called Ocean Sky. Together, Ocean Sky's three factories, known as Bright Sky, Suntex, and Rainbow Screen Printing, employ approximately 8,000 workers, making it one of the largest garment manufacturers in the country. Ocean Sky produces university logo goods for Team Edition Apparel and other products for Gap, Sears, Disney, Philips Van Heusen, and Eddie Bauer, among other brands. The WRC has contacted a number of Ocean Sky's buyers in the course of our work on this case, including Team Edition, but thus far only Gap has been responsive to our entreaties.

The WRC's work at Ocean Sky has involved two phases. First, we conducted an emergency assessment, followed by remediation work, in late May and early June of this year. This assessment was launched in response to reports of violence against workers at the Bright Sky facility. A further assessment and remediation effort, which is ongoing, was initiated in October, after a sharp deterioration of the situation at Bright Sky, involving a series of illegal actions by management and repeated instances of serious violence at the factory. The WRC's work has focused on Bright Sky, where the most serious, pressing violations have taken place, although we have conducted assessments of all three plants.

The acts of violence in May and June were directed against the leadership of an independent union at Bright Sky affiliated with the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC). On

May 3, the president of this union was brutally beaten with an iron pipe and sticks by a group of men while on his way home from the factory at 5:30 a.m., after completing his evening shift. The worker sustained serious head and eye injuries. This worker returned to work the following week, despite not having fully recovered from his injuries, because his family was dependent on his wages. On at least two occasions later that month he was approached again by a similar group of attackers, once narrowly escaping by hiding inside the factory until daylight and the second time taking refuge in his home, avoiding work for several days out of fear of being attacked. On a separate occasion, another leader of the same union was violently assaulted by an unknown person on his way home from work. The FTUWKC union had recently been very active in pressing the factory for improvements in working conditions, including organizing a brief strike in March 2006 which resulted in changes in the factory's piece rate pay system to allow workers to better understand the basis of their compensation.

Unfortunately, violence against worker activists is not uncommon in many countries where university logo apparel is produced. By creating an environment of fear and intimidation, such violence has a deep chilling effect on workers' ability to exercise their associational rights as protected by university codes of conduct. This is true regardless of whether the violence is supported by factory management or is the work of government elements or other political groups. As a monitor tasked with ensuring that worker rights are protected, the WRC has a responsibility to work with all parties to ensure that workers can exercise their right to advocate on their own behalf without facing violence or the threat of violence. Factory managers are responsible for taking such steps as are necessary and feasible to protect workers. When the WRC uncovers evidence that management is supporting violence against union leaders or other worker activists at a factory, we demand that management immediately cease such actions. When the violence is the work of parties outside the factory, without management collusion, managers must still take all reasonable steps within their power to ensure a safe environment in and around the workplace and to shield workers from intimidation and risk of physical harm.

In the case of the violence at Bright Sky in May and June, while it was not clear who had perpetrated the violence against members of FTUWKC, the timing of the attacks, and other available evidence, indicated that they were in retaliation for the union's advocacy on behalf of its members. The WRC also found evidence that factory management contributed to the intimidation of workers by employing at the factory a local thug who has issued repeated threats against union members and leaders. The individual in question is well-known for his history of involvement with violent organized crime in the area. He was hired in early March of 2006, a time of heightened activism by the union.

In mid-June, the WRC made two primary recommendations to Bright Sky management designed to protect workers from further acts of violence. We recommended that the factory 1) terminate the employee who had been threatening workers in the factory and, 2) improve security arrangements near the entrance to the factory in order to ensure the safety of workers leaving the factory after dark. Bright Sky accepted and implemented both of these recommendations. The WRC also contacted a number of Ocean Sky's buyers concerning the attacks against workers and maintained communication with Gap throughout this period. After the factory took the requested actions, violence at the factory subsided for several months.

Unfortunately, reversing the progress achieved in June, factory management committed a series of violations of law and codes of conduct beginning in August. These violations included the unlawful invalidation of the employment contracts of 650 permanent employees and the reduction of these workers to short-term contract status, with an attendant loss of key benefits and employment security, and, subsequently, an unlawful mass termination of union members. Of even greater concern, as the union launched a strike in October in response to the unlawful cancellation of work contracts, the factory was seized by a paroxysm of violence, involving serious injury to a number of workers. This violence was perpetrated in part by police, whose actions have been condemned by local human rights groups. There are also accusations of involvement, direct or indirect, by management, the striking union members, the leaders and members of other unions at Ocean Sky, and political groups outside the factory. The precise authorship of some of these acts of violence is a matter of intense dispute and contradictory evidence.

This has posed difficult challenges to the WRC's monitors as they have sought to intervene to ensure workers' safety, and to investigate the facts, amidst a chaotic strike and a tense political environment, in a country where the rule of law remains weak. The WRC is in ongoing communication with factory management, workers and union officials, and leaders of the Cambodian human rights community. We continue to seek assistance from buyers. Work on this case is proceeding urgently and a more detailed public report is forthcoming.

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## **Double Star (Thailand)**

The WRC has been working since November 2004 to correct code of conduct violations at the Double Star factory. Double Star is a producer of towels and bed sheets and also performs embroidery and screen printing. Until mid 2005, the factory produced collegiate logo golf towels for the licensee Team Effort through a license agreement with another company, McArthur Sportswear. The factory's current buyers include Kohl's, JC Penny, Target and Kmart.

In response to a worker complaint, the WRC began an initial assessment at Double Star in November 2004. Our assessment identified serious code of conduct violations in the areas of freedom of association, wages and hours of work, and occupational health and safety. Findings included anti-union discrimination and the denial of access to benefits to workers who chose to associate with a trade union at the factory; the payment of sub-minimum wages to workers contracted through an outside employment agency; regular forced overtime; and health and safety issues including the use of industrial waste water in the factory's restroom facilities and an unusually high rate of workplace injuries. When the WRC contacted Team Effort regarding these concerns, the licensee informed us that they had recently made a decision to discontinue sourcing from Double Star due to issues of quality and delivery time, but nonetheless offered initially to assist with our assessment by accompanying WRC staff in our first meeting with Double Star management. Unfortunately, Team Effort's presence in this meeting did not prove helpful (the Team Effort representative debated the WRC's findings and remedial recommendations rather than supporting our effort to press the factory to address the violations) and the licensee was unwilling to intervene further because it was discontinuing business with the factory. Given the serious violations identified at Double Star, the WRC continued our assessment and remediation efforts, hoping to resolve key issues by working directly with the factory as well as its other buyers in the absence of the university licensee.

In the months following the WRC's initial assessment, workers reported an increased incidence of code of conduct violations at Double Star. Most notably, in the area of freedom of association, a series of unchecked actions on the part of management resulted in an increasingly hostile workplace environment for workers who had chosen to support the union at Double Star. In December 2004, almost immediately after the WRC's initial investigation, factory management began encouraging supervisory employees to dissuade workers from supporting the union. These supervisors regularly held anti-union demonstrations during the work day as well as at the lunch hour, used the factory public address system to denounce the union, posted anti-union materials within the factory, and assembled outside the factory each afternoon to threaten union members as they left work. Union members reported fearing for their personal safety upon encountering these demonstrations, which were apparently sanctioned by Double Star management. Workers also reported being subject to intimidation by a group of temporary workers contracted through an agency known locally for its employment of recently incarcerated violent criminals. In addition, supervisors began pressuring employees to sign statements denouncing the union. The statements in question specifically condemned the group of employees who had contacted the WRC regarding violations at the factory, stating that these employees had "provided false information" to the factory's buyers which had caused those buyers to remove their business from the

factory. Such acts of retaliation against workers who filed a complaint with the WRC represent an unusually brazen effort on the part of Double Star management to undermine code enforcement efforts. While these threats against the union subsided in January 2005, additional actions by management to interfere with workers' associational rights continued throughout the year and included retaliation against known union leaders through a series of actions including denying union leaders access to overtime and leave, demotion and termination of union activists, and requiring union supporters to work in a dangerous area of the factory; and pressuring workers to withdraw their support for the union in an effort to avoid the factory's obligation to negotiate collectively.

In addition to the concerns regarding freedom of association discussed above, the WRC identified a number of serious, ongoing violations in other areas. The WRC found that Double Star continued to hire increasing numbers of employees through temporary employment agencies that were frequently compensating workers at rates below the legal minimum wage and denying workers overtime pay and sick leave. Numerous health and safety violations persisted at the factory. Double Star experienced three substantial fires during August and October of 2005; in each case, no fire alarm was sounded and employees were not evacuated from the building, despite the third fire being substantial enough to require the assistance of the fire department before it was extinguished. The WRC Assessment Team also noted a pattern of severe work-related injuries at the factory which Double Star had failed to properly report to the relevant government agency and for which workers were not fully compensated by the factory as required under Thai law.

Double Star has thus far refused to cooperate meaningfully with the WRC's assessment or to take sufficient remedial action. After meeting with the WRC early in the assessment process, Double Star began refusing to grant access to WRC investigators and ignored our recommendations for remediation. After the licensee Team Edition left the factory, the WRC contacted Double Star's other primary buyers, Kohl's and Kmart, to seek their assistance in pressing the factory to resolve the violations. While both brands agreed to look into the situation at Double Star, neither was willing to work with the WRC in pursuing remediation, and we were not made aware of the results of their inquiries with the factory.

Management has taken several promising steps since late 2005, including allowing the union activists who had been moved to a dangerous area of the factory to return to their previous work posts in October 2005, and reversing its policy of banning union members from working overtime in June 2006. However, many serious issues identified remain unresolved. Most egregious is the continuous use of employment agencies that persist in paying sub-minimum wages.

For some time, the WRC has postponed issuing a public report on Double Star in the hope that we might eventually secure the cooperation of the factory or its buyers. Unfortunately, this has not occurred.

Double Star serves as an example of one of the challenges that licensee sourcing practices can pose to code enforcement efforts. When the WRC conducted initial research on this factory, Double Star workers reported embroidering towels with the logos of dozens of colleges and universities. The WRC undertook an assessment with the understanding that this was a collegiate supplier. Then, within a few months of initiating the investigation, the licensed production was pulled from the factory. While it is not clear whether Team Effort "cut and ran" from the factory in an explicit effort to avoid responsibility for the violations occurring there, the fact that the licensee did leave the factory, and that collegiate licensees can regularly change supplier factories without regard for the impact that these business decisions will have on code compliance efforts, seriously undermines the WRC's ability to use university codes of conduct to improve conditions at a large number of collegiate supplier factories.

## **Gina Form Bra (Thailand)**

In response to a request from worker representatives in Thailand, the WRC has been working to address issues surrounding the closure of a factory known as Gina Form Bra (hereafter referred to as "Gina"). The factory closed on October 20, 2006 and production was shifted to a new facility in China operated by Gina's parent company. Prior to the closure, the Gina factory employed roughly 1,600 workers. Gina has been a manufacturer of undergarments for the Limited Brands (whose labels include Victoria's Secret and La Senza), Gap, Calvin Klein, and Charming Shoppes among others.

Gina is a factory widely recognized within labor rights circles as a rare example of fair working conditions and positive industrial relations in the export apparel industry. Following a labor dispute that brought the factory to international attention in 2003, Gina made unprecedented improvements in the level of respect for labor rights. Most notably, following a decision by the majority of the workforce to affiliate with an independent trade union, factory management recognized the union and engaged in a process of good faith negotiations, leading to substantial improvements in conditions at the factory. This included significant increases in wages and benefits, important improvements in health and safety conditions in the factory, and the establishment of an effective grievance procedure and regular labor-management meetings which proved highly effective in addressing labor rights problems as they arose. Over the past several years, Gina has stood as an example of the positive improvements that can be made in workplace conditions as a result of collaboration among apparel brands, factory management, unions, and labor rights advocates in the enforcement of codes of conduct.

Although the factory has not been involved in the production of collegiate apparel, the WRC, in response to the news of the planned closure, decided for several reasons to become involved in this case: 1) because of the importance of Gina in the labor rights context; 2) because we were asked to intervene by the union that represents workers at the factory and by other concerned organizations in the United States, Thailand and Hong Kong (where Gina's parent company, Clover Group, is based); and 3) because we have a long-standing relationship with Gina's primary customer, Limited Brands, and we believed we were in a position to influence Limited's response.

The initial phase of our inquiry into this case focused on determining the reasons for Gina's closure and whether the decision could be reversed. The closure was announced to the workforce in September, at which time Gina management indicated the factory would close on October 31. Production was to be shifted to China where Gina's parent company was opening a new facility.

Management provided contradictory justifications for the closure, telling workers that the closure was due to a preference on the part of Clover's buyers for goods produced in China, while telling buyers that the factory was not profitable and had been operating at a considerable loss for some time.

The WRC sought to determine the veracity of these contradictory claims. With regard to the first explanation, that Clover's buyers had indicated they wanted their goods produced in China rather than Thailand, each of the brands involved denied having expressed a preference for Chinese-made goods. (Limited Brands did, however, claim that it was more expensive to ship their goods from Thailand compared to China, Sri Lanka, and some other countries in the region from which they source, and that they intended, going forward, to reduce their Thai sourcing). Clover did not provide any documentation demonstrating the brands' alleged preference for Chinese production. With regard to the second claim, Clover was unable to provide any documentation demonstrating Gina's alleged financial difficulties. In addition, the factory's behavior over the past year, including negotiating wage increases with the union, contradicted the claim that the factory had been losing money.

Given the lack of any apparent business necessity for closing the factory, and Clover's use of pretexts to justify the closure, the WRC concluded that there was a substantial likelihood that a desire to escape the obligation to respect workers' associational rights was a significant motivator for Clover's actions –

which is a violation of the freedom of association provisions of the codes of conduct of Clover's customers. Along with other stakeholders, the WRC urged the factory's buyers to press Clover to keep the Gina factory open. Their efforts were unsuccessful, in our view because the brands failed to bring sufficient pressure to bear.

The factory eventually closed on October 20, nearly two weeks before the closure date that Clover had originally announced. The closure occurred while a delegation of union leaders from Gina was in Hong Kong attempting to negotiate an agreement with the Clover Group to keep the factory open. Gina management brought ten police officers and approximately twenty people in plain clothes (some of whom had previously been identified to Gina workers as government soldiers by Ministry of Labor staff) to forcibly remove workers from the facility. In the presence of the military personnel, factory management also pressured workers to sign letters of resignation, rather than be terminated (under Thai law, the factory's severance obligations would be far less if workers voluntarily resigned their positions, something that was clearly not in the workers' interest to do). It is important to bear in mind that management's use of military intervention to pressure workers occurred in the context of the recent military coup in Thailand. The coup has led to strict limitations on dissent and protest of any kind, severely restricting the Gina workers' ability to contest the closure within the Thai context. Under these circumstances, Clover's use of the military to coerce workers who had themselves engaged in no unlawful activity, which would be unacceptable under any circumstances, is particularly egregious. The WRC notified Clover's customers of these violations and urged them to demand an immediate cessation of Clover's efforts to use the military and police to intimidate workers.

Once the closure was final, the various labor rights organizations involved in the case turned their attention to severance payments. As in many countries, although significant severance payments are mandated by law in Thailand, workers often do not receive the money they are due when a factory closes. In the case of Gina, the issue of severance was particularly important because most of the workers are significantly older than the typical apparel worker, in their 30s and 40s, and cannot realistically expect to be reemployed in the industry.

The WRC engaged in a series of extensive discussions with Limited Brands in late October and early November, pressing the company to insist that Clover fulfill to the letter its legal obligations to the workers and that there also be consideration of compensation beyond that mandated by law. The latter was warranted in this case because of the anti-union motivation underlying the decision to close the factory and because of the particular hardships faced by this older group of workers. We also communicated with other buyers and coordinated our efforts with a range of organizations in Thailand, Hong Kong and elsewhere that were also working on this case. Among other steps, we 1) pressed Limited Brands to compel Clover to negotiate directly with the union, which Clover ultimately consented to do, after several weeks of resistance, and 2) asked Limited to send representatives to Thailand to participate directly in the negotiations, which they ultimately did. These efforts, combined with the union's advocacy, produced a positive settlement between the union and Clover, reached on November 12.

There are two Thai laws that regulate the payment of severance upon the closure of a business. The first, the Labor Protection Act, stipulates the amount of severance that employers must pay when workers are laid off. The required amount ranges from one to ten months' pay per worker, depending on seniority. Clover, under pressure from its customers, paid the amount required under this law in full immediately following Gina's closure on October 20; the payments totaled roughly \$2.3 million, or an average of eight months' salary per worker. The second law, the Labor Relations Act, regulates payment of contractual bonuses and other negotiated payments that are due workers in the case of a factory closure. According to this law, which is violated with great frequency by Thai employers, Gina workers were owed roughly \$500,000 in additional payments. Clover did not make these payments upon the closure of the factory, but ultimately agreed to do so as part of the November settlement. Under the terms of the settlement, Gina workers will receive additional compensation totaling \$1.6 million. This covers the \$500,000 the workers are owed under the Labour Relations Act, plus \$1.1 million in additional severance. This corresponds to roughly 3 1/2 months' additional salary for each worker. The

amounts involved are unprecedented for a factory closure in Thailand, where it is rare for workers to receive even the compensation to which they are entitled by law.

Overall, the results of the Gina case can only be viewed as mixed. On the one hand, it is very positive that workers will receive not only their full terminal benefits, and the other unpaid compensation, but also additional compensation above that, which should provide the workers and their families with at least a financial cushion as they undertake the difficult task of finding new employment. At the same time, Gina serves as another example of a factory that made great progress (and in this case was a recognized symbol of the potential for effective code enforcement) and then was shutdown within the space of a few years. The tendency for factories that genuinely respect the rights of their employees to lose business from brands and retailers and/or to be shut down by their parent companies so that production can be shifted to other facilities with lower labor costs and inferior labor conditions, is obviously highly damaging to code enforcement efforts in the apparel industry.

The performance of the key buyer in this case, Limited Brands, was also mixed. In our view, had Limited Brands applied greater pressure than they were ultimately willing to apply, Clover might have been compelled to keep the Gina facility open. Unfortunately, Limited Brands was itself unenthusiastic about maintaining production in Thailand of the type of underwear produced by Gina, despite the importance of Gina as a key example of the positive of impact of Limited's code of conduct enforcement efforts. This clearly dampened Limited's willingness to act aggressively to keep the factory open. At the same time, pressure from Limited was instrumental in achieving the severance settlement, which was a substantial accomplishment, even though the final amount was below what the NGOs involved in this case had hoped would be paid. It is also important to note that Limited Brands played a critical role in the efforts in 2003 that led to the labor rights breakthrough at Gina. It is fair to say that, relative to the industry norm, Limited's overall record at Gina is a clearly positive one. When measured against a different standard, the full protection of the rights of workers, including the right to form a union without fear that this will lead in relatively short order to factory closure and the loss of one's job, Limited's efforts at Gina cannot be viewed as a success. More could have (and under Limited's own code of conduct, should have) been done.

TOP

### **PT Panca Brothers Swakarsa (Indonesia)**

In [February](#), we reported to you on the WRC's ongoing assessment and remediation efforts at a factory known as PT Sarasa which was renamed PT Panca Brothers Swakarsa (PT PBS) when it was placed under new ownership last year. Following a lock-out and subsequent illegal mass termination of workers in early 2005, the factory reopened that summer, after substantial remediation efforts by the WRC, with an agreement to end the lock-out and reinstate the terminated workers.

After the vast majority of former workers were reemployed at PT PBS, after a constructive relationship between management and worker representatives was established, and after management expressed a willingness to resume contract negotiations with the union once business stabilized, the WRC was optimistic that a high degree of compliance could be achieved at this factory. Unfortunately, PT PBS management has not followed through on its commitment to respect its employees' rights of association. Although PT PBS reopened in mid-2005, because the factory was experiencing some difficulty in securing steady orders, management asked the union that had represented workers before the closure, known as FSBKU (Federasi Serikat Buruh Karya Utama or the First Union Federation), to postpone its formal reestablishment in the factory, and any demand for contract negotiations, until the company achieved a greater degree of economic stability. The union agreed to do so, with the understanding that once the factory became more stable, management would follow through on the commitment it made in reopening the factory to recognize the FSBKU union and negotiate a collective bargaining agreement. In

the meantime, FSBKU would be free to organize workers and build its membership. Unfortunately, while FSBKU kept its pledge to postpone formal reestablishment and a demand for bargaining, PT PBS management began affording preferential treatment to another union, known as SPN, that had emerged in the factory after it reopened. Throughout the spring and summer of 2006, factory management allowed the SPN union to speak to workers on factory grounds, post announcements on the premises and conduct union elections during break times. During this same time, management denied FSBKU permission to engage in similar organizing activities within the factory.

In early September of 2006, FSBKU formally reestablished itself at the factory. While top management publicly stated to the workforce that workers could join the union of their choosing, a very different message was conveyed to workers by middle managers and supervisors. Workers reported a series of incidents in which employees were advised by factory supervisors not to join the FSBKU union. These ranged from comments by supervisors that "newly-formed unions" were not desirable to a supervisor telling workers during a mandatory meeting that members of FSBKU were "acting like thieves" to an outright statement from a supervisor that workers who joined FSBKU would be dismissed. Workers also reported that on one occasion a representative of management confiscated membership forms that had been distributed by FSBKU.

The situation worsened in late September when PT PBS began a mass termination of FSBKU members. In total, 69 workers were unlawfully terminated in retaliation for their membership in the union. The first incident occurred on September 21 when sixteen officers of the FSBKU union were dismissed. The first worker to be fired, the president of FSBKU at the factory, was told he was being terminated for leaving the factory on the previous day without permission, despite having sought and obtained permission from the human resources department for this leave. The remaining fifteen workers were told they were being dismissed as part of a plan to improve factory efficiency (the factory would later change its position on the dismissal of the union president and claim that he too was fired for reasons of efficiency). The following day, FSBKU members held a protest outside of the management office calling for the reinstatement of their sixteen colleagues. In response, on September 25, the factory's human resources manager called a number of FSBKU members into the management office and threatened to have them arrested by the police. The manager also demanded that the workers sign letters stating that they had participated in an inappropriate protest against the factory and threatened them with dismissal if they refused to do so; the workers refused to sign these statements. The following day, 53 FSBKU members were suspended from the factory for one week.

Before returning to work, the FSBKU members requested a meeting with factory management to resolve the termination of their sixteen colleagues. The WRC also contacted the factory during this time to convey our concerns regarding what appeared to be targeted firings of union members. Meetings were held between the union and management, during which management continued to insist that the sixteen workers had been terminated for reasons of efficiency, not because of their union activities. On October 5, upon returning to the factory following their suspension, the 53 affected FSBKU workers were called to a meeting with the human resources manager in which they were again told that, as a condition of their resumed employment at the factory, they would need to sign a form stating that their participation in the September protest had been inappropriate. These workers were also told that if they participated in such protests against the company again they would be terminated. When the workers refused to return to work under these conditions, they were summarily dismissed.

The WRC contacted the factory immediately to express our concern over this second round of terminations. We explained to PT PBS management our conclusion that these workers had been terminated in direct retaliation for their affiliation with the FSKBU union and their protest of the dismissals of their sixteen coworkers, a finding based on the identities of the workers terminated (all members of FSBKU) and the circumstances leading up to their dismissals (workers were terminated after refusing to sign statements disavowing their protest of the terminations of other union members). Factory management responded that these workers had not been fired for their union affiliation, but in an effort to improve factory efficiency, the same reason given for the termination of the sixteen union leaders in September. The WRC asked management to provide an explanation as to why, if the workers

were indeed being fired for reasons of efficiency, the workers had also been asked to sign statements concerning their participation in a union-led protest immediately before they were terminated. The factory was unable to provide a credible response. The WRC recommended that the workers be immediately reinstated; the factory refused to do so.

The union subsequently took the case of these 69 dismissals to the local Regional Ministry of Manpower, the Indonesian government agency charged with regulating employment practices. On November 15, the Ministry issued a series of findings and recommendations stating that the terminations had not been carried out in accordance with Indonesian law, that all employees should be reinstated with back pay and unpaid bonuses, and that the group of 53 workers terminated in October should issue a statement of apology to the factory for their participation in the September protest. On November 21, the union communicated to factory management that all 69 terminated employees wished to return to work, that the union would deliver an official letter of apology to the company, and requested that the company reinstate the 69 workers and pay them the full bonuses and back wages due by law, as recommended by the Ministry of Manpower. PT PBS management has yet to respond to the union or offer reinstatement to any of the illegally dismissed workers.

The WRC has thus far refrained from contacting PT PBS's buyers regarding this recent series of violations at the factory out of concern that doing so might cause the buyers to withdraw their orders from the factory, given its history of serious compliance problems. However, if the factory fails to comply with the Ministry of Manpower recommendations and reinstate the workers, we will need to request the intervention of the factory's customers.

TOP

## **PT Panarub (Indonesia)**

We reported to you in [February](#) that major setbacks in labor rights compliance had taken place at PT Panarub. The situation has not improved. The WRC has been involved in assessment and remediation efforts at PT Panarub since 2004; in 2004 and 2005 the factory made notable improvements in working conditions in a variety of areas. Panarub is one of the world's largest suppliers of high-end athletic footwear and cleats for adidas and recently produced the majority of the soccer shoes worn by adidas-sponsored teams in the 2006 FIFA World Cup.

In July of 2006, the WRC released an [update](#) on PT Panarub, detailing our findings regarding the recent violations of workers' associational rights as well as the status of remedial efforts. In short, we reported that adidas had failed to send a clear and unequivocal message to PT Panarub regarding the unlawful termination of a group of union leaders. Furthermore, we concluded that the ineffectiveness of adidas' remediation efforts on this issue is due, at least in part, to adidas' decision to substantially reduce its sourcing from PT Panarub. In September, adidas decreased its orders at PT Panarub by 200,000 pieces per month, or roughly 1/6 of the factory's total output (adidas is PT Panarub's sole customer). By significantly reducing its business at the factory, for unrelated business reasons, in the midst of discussions regarding major labor rights violations (and when, in fact, the parties were near to reaching a satisfactory resolution), adidas effectively communicated to PT Panarub that labor rights compliance is not a meaningful factor in the brand's sourcing decisions. The decision to reduce production at this inopportune juncture significantly limits adidas' ability to compel effective remediation at this factory. Unfortunately, the status of the case remains essentially unchanged since this July update.

It should be noted that adidas' decision to reduce orders at PT Panarub, which has thus far resulted in retrenchment of roughly 1,000 workers, comes at a time of great instability for adidas and Reebok footwear workers in Indonesia (the two brands have merged into the "adidas Group"). In recent months, three large adidas/Reebok footwear supplier facilities have closed, laying off approximately 18,000

workers. Factory management and members of the National Footwear Manufacturers' Association have been quoted in Indonesia's leading newspaper stating that the financial difficulties that led to the factories' closure were the result of their inability to secure adequate prices from Reebok over the past five years and the unwillingness of adidas/Reebok to make commitments of orders going forward. The WRC is not in a position to test the veracity of these claims, since data on pricing and orders is not public.

TOP

### **Istmo (Nicaragua)**

The WRC has been working to remediate code of conduct violations at the Istmo factory, located in Masaya, Nicaragua, since receiving a complaint from worker representatives in April 2006. The Istmo facility is a current producer of clothing for Gap, Target, and Wal-Mart. Istmo is owned by the Korea-based Shinsung Tonsang, whose factories supply several major university licensees, including Nike and Columbia Sportswear. The primary issue of concern at the factory has been violations of workers' associational rights, including illegal firings of trade union members and threats against union supporters. Additional violations that have been uncovered in the course of the WRC's work at the factory include forced overtime, discrimination against pregnant workers, and failure to pay workers on time and other payroll irregularities that have the effect of denying workers full payment for hours worked, among other issues. We are pleased to report that there has been very significant progress in addressing these issues, thanks in large part to efforts by Gap.

The WRC's involvement at Istmo occurred in two phases. The first phase involved investigation and eventual successful remediation of the illegal, anti-union firings that triggered the worker complaint. The second phase included efforts to address subsequent violations of workers' associational rights, including threats made against workers and the imposition of a company-sponsored union, and violations in other areas, including forced overtime, and denial of legally mandated benefits and leave. There has been substantial progress with respect to these additional violations.

With respect to the initial issues of concern, the WRC received a complaint from the trade union federation representing workers at Istmo alleging that the factory had illegally fired the leadership of a recently established factory-level union affiliated with the federation known as FTVPC (Federación Nacional de los Sindicatos "Héroes y Mártires" de la Industria Textil, Vestuario, Piel, y Calzado or the National Federation of Unions of the Textile, Garment, Leather and Footwear Industries) in violation of Nicaraguan law and applicable corporate codes of conduct. The complaint alleged that shortly after workers formally filed to register a union, the factory fired eight out of the nine members of the union's Executive Board and a ninth worker who serves as a leader in the national union federation. During the week of June 3, the WRC conducted on-the-ground research consisting of meetings with Istmo management, including the facility's human resources director, administrative manager, local president and regional president; worker interviews; and review of relevant factory documents, including each of the employees' personnel files.

This inquiry concluded that the terminations in question were unlawful. In carrying out the terminations, the factory violated the so-called "Fuero Sindical" rule of the Nicaraguan Labor Code, which prohibits employers from terminating registered leaders of trade unions without just cause. As each of the workers was terminated without an assertion or demonstration of just cause, the terminations were illegal. In addition, the inquiry found evidence supporting the conclusion that at least two of the workers had been targeted specifically because of their union activities. Thus, in addition to constituting a legal violation on procedural grounds, these two terminations also violated Nicaraguan law and applicable codes of conduct which prohibit employers from terminating workers in retaliation for their exercise of associational rights. The WRC recommended that the factory move immediately to reinstate with back

pay those workers who were terminated unlawfully.

The WRC communicated our findings and recommendations to Gap, Target, and Wal-Mart in mid-July. Following this communication, Gap initiated its own investigation of the situation and began to engage with Istmo management regarding remediation. Gap's investigation confirmed the WRC's basic findings and on July 26 an agreement, brokered by Gap, was reached in which the factory offered reinstatement to the concerned workers. Seven of the nine workers chose to accept this offer of reinstatement and were rehired, with back pay, in the following weeks. Two of the workers chose to resign rather than accept reinstatement and were paid their proper terminal compensation. These actions represented, in the WRC's view, satisfactory remediation of the illegal firings.

Unfortunately, subsequent to this positive turn of events, the WRC continued to receive reports of labor rights violations at Istmo, involving both violations of associational rights and a variety of additional code compliance issues. These included frequent forced overtime, denial of work breaks as required by law, and denial of various legally mandated benefits. The WRC found that the factory regularly docked workers' vacation days when workers were unable to work due to electricity outages in the factory, failed to pay wages during sick leave as required by law, and denied benefits to workers who sought to take leave for reasons of sickness or emergency. Additionally, our inquiry found discrimination against and harassment of pregnant workers, frequent refusal to grant permission to leave the work post to use the restroom or visit the factory health clinic in the case of illness, and repeated late payment of wages and other payroll irregularities.

In the area of associational rights, in the month following the successful remediation efforts described above, workers testified that factory management continued to make anti-union threats to the workforce on an almost daily basis and that union supporters were subjected to harassment from supervisors. On one occasion on August 7, workers throughout the factory received a verbal message from their supervisors to the effect that any worker who associated with the union would be terminated; the timing of the statements and similarity of the message received by workers in various areas of the factory indicated that this communication represented a directive from higher management. Additionally, the WRC learned that within less than a week after the fired union leaders had been reinstated, Istmo had – unbeknownst to the union or other workers in the factory – negotiated a collective bargaining agreement with another union whose only membership in the factory appeared, with one exception, to consist of only managers and supervisors. The agreement contained no meaningful benefits beyond those already provided by Nicaraguan law. The imposition of the collective bargaining agreement without a meaningful bargaining process, or indeed without workers' awareness or consent, represented a serious violation of workers' rights of association as protected by applicable codes of conduct.

The WRC again communicated with the Istmo management and with the facility's buyers in August. Our recommendations focused on measures to address the full range of violations in the facility with an emphasis on ensuring respect for rights of association, a priority identified by the workers who had brought the complaint. Specifically, the WRC recommended that the factory make statements to the workforce both orally and in writing that their right to join a union would be respected, address discrimination against the union by allowing it to formally introduce itself to the workforce at the factory, make the existing collective bargaining agreement available to workers and monitors, and open collective negotiations with the representative union in the factory.

Following dialogue among representatives of the WRC, international labor representatives involved in the case, and Istmo's buyers, factory management took a number of important steps. These included making a public statement to the workforce explaining the factory's intention to respect workers' associational rights, allowing the union opportunity to address workers inside the facility, and arranging monthly meetings between worker representatives and management to discuss labor conditions. In late October, the factory began collective negotiations with the union. This process has already yielded improvements in working conditions, including the provision of paid sick leave, a benefit that Istmo workers had been previously unable to access. Further negotiations on the collective accord will take

place in the coming weeks.

A key difficulty encountered in this case has been the failure on the part of the Nicaraguan Ministry of Labor to enforce domestic labor law. A critical legal process for establishing the right of the union to represent workers for grievance handling and collective bargaining is the formal certification of the union by the Ministry of Labor. While Nicaraguan law requires the Ministry to process union registration materials within ten days of their submission or request further information, in this case the Ministry took more than five months to certify the FTVPC union, though no further information was requested and to our knowledge no problems with the certification materials were ever alleged. During the same period, while the FTVPC's registration materials were still pending, the Ministry acted within a few days of application to certify the bogus company-sponsored union and the collective bargaining agreement it signed with Istmo. The Ministry was similarly slow-footed in investigating and issuing a ruling concerning the FTVPC's complaint over the firings of union members. These delays provided Istmo management with an excuse to avoid reversing what were clearly unlawful firings and to refuse to recognize and bargain with the union. Factory management used the Nicaraguan government's failure to enforce the law in a timely fashion as political cover for its ongoing violations of worker rights – a problem the WRC has encountered in several other cases in Nicaragua during the past year. In this case, to its credit, Gap was willing to press the factory to address the situation while the registration materials were still pending. Gap later arranged a meeting with the Minister of Labor to express concerns regarding the Ministry's handling of this case and others in Nicaragua.

In addition to the WRC, several other international labor rights organizations played key roles in the Istmo case through identifying violations, developing recommendations, and pressing the factory and its buyers to take appropriate remedial steps. Of primary importance have been the American Center for International Labor Solidarity, the International Textile, Garment and Leather Workers Federation, and the NGO Witness for Peace.

We are pleased with the progress that has been made at Istmo and are optimistic that the functional industrial relations process that has now been established at the factory will be effective in addressing labor rights problems that arise and in achieving sustainable code compliance

TOP

### **Calypso, Atlantic and Manufacturas del Rio (Nicaragua and El Salvador)**

During July and September of 2006, the WRC received three separate complaints from worker representatives concerning three factories in Central America owned by a single multinational apparel corporation, known as the Argus Group. The Argus Group is a major supplier of sportswear and other apparel products for university licensees, including Adidas and Russell Athletic, as well as other brands and retailers such as Hanes, Landau, Cintas, Phillips van Heusen, Williamson-Dickie, Wal-Mart, and others. The three factories are Calypso and Atlantic (both located in Nicaragua) and Manufacturas del Rio (located in El Salvador).

The primary violations alleged at each of the factories were very similar. In each case it was alleged that workers who had associated with a trade union had been fired illegally. Other areas of concern included occupational health and safety and overtime. In response to the complaints, the WRC undertook preliminary assessments at each of the three factories. The evidence developed through this initial investigative work was sufficient to warrant the conclusion that practices in violation of the law and applicable codes of conduct had occurred at both Calypso and Atlantic, and that unlawful practices had likely occurred at Manufacturas del Rio. The presence of similar code of conduct violations at all three facilities indicated that the problem was one of corporate policy at the Argus Group.

Ultimately, a positive outcome was reached in each case. After initial resistance on the part of management of the individual factories to cooperate with the WRC's inquiry and carry out corrective action, the Argus Group ultimately took the constructive step of retaining a respected labor lawyer with experience facilitating positive labor relations. This individual was able to confirm the basic findings of the WRC and other organizations involved and address each of the core violations at each of the factories concurrently on behalf of Argus. The WRC contacted Argus' key buyers; although the buyers did not provide any specific information to the WRC as to the nature of their communications with Argus, we presume their intervention played a role in Argus' decision to take a constructive approach to address the situation. The American Center for International Labor Solidarity, the International Textile, Garment and Leather Workers' Federation, and the NGO Witness for Peace were also centrally involved in pressing for remedial action in these cases.

The findings and outcome of the WRC's assessment with respect to each facility are detailed below.

#### *Calypso (Nicaragua)*

As noted, the worker complaint centered on the alleged illegal termination of trade union members employed by Calypso. Between July 31 and August 4, the factory terminated at least nineteen workers who were members of a recently established plant-level union, known as the Sindicato Veintiuno de Julio, and who had participated in efforts to press for improvements in labor standards at the factory. Our investigation found that the firing of these workers was unlawful.

In terminating the workers in question, the factory violated a Nicaraguan law which requires an employer to obtain a ruling of just cause by a Nicaraguan Labor Court in order to terminate founding members of a trade union (a rule known as "Fuero Sindical"). The workers filed an application for union recognition on July 24, 2006; from this date forward, for a period of 90 days, all twenty-two founding members were protected from dismissal without cause. However, one week later, on July 31, the factory began terminating the union leaders, without seeking court approval. Within two weeks, nineteen of the union's twenty-two founding members had been summarily dismissed.

The WRC determined that, on their face, these dismissals were unlawful. This finding was confirmed by the Nicaraguan Ministry of Labor. After several weeks of delay beyond the statutory period for action, on August 24, the Ministry of Labor certified the union's leadership committee and on the following day released a report on the case, finding that each of the workers in question was fired in violation of the Fuero Sindical rule, and ordering Calypso to offer immediate reinstatement to all of the affected workers.

Additionally, while the firings would have been illegal under the Fuero Sindical rule even if management's reason for firing the workers was unrelated to their union activities, evidence demonstrated that anti-union animus was the motivating factor. This finding was based on the following evidence: 1) the dismissals were carried out immediately after the formation of the union became known to management; 2) nearly all of the union's founders were dismissed; 3) management officially told the workers that they were being dismissed because the factory was reducing the overall workforce due to reduced production needs; however, in the same time frame as the dismissals, management was actively recruiting and hiring new production workers; 4) workers provided credible testimony that some supervisors had informally communicated to workers that the firings were in retaliation for the unionization effort.

The WRC's inquiry also identified other significant code of conduct violations at Calypso, including forced and improperly compensated overtime; occupational health and safety infractions, including a failure to provide workers with personal protective equipment; and denial of legally mandated health benefits.

On the basis of these findings, the WRC recommended to Calypso management in August that the company offer reinstatement with back pay to the workers in question, take other measures to remediate the harm done to the rights of association of all Calypso workers, and take remedial action with respect to the health and safety, overtime, and health benefits violations. Calypso management, which had been unresponsive to the WRC's efforts to obtain its cooperation with the investigation, also failed to respond initially to the recommendations for remedial action.

However, after roughly five weeks of effort by the WRC to seek Calypso's cooperation, the parent company, Argus, responded by retaining a legal representative, former U.S. Deputy Secretary of Labor Andrew Samet, to handle the case. This development apparently reflected a decision by Argus to take a constructive approach to resolve the labor issues at Calypso; very positive progress was achieved soon after.

After being contracted, Mr. Samet visited Nicaragua and El Salvador on fact finding missions during September and confirmed the central findings of the WRC's inquiry. On October 10, an agreement was reached with the Argus Group regarding remediation at both the Calypso and Atlantic factories (see discussion below for details of the agreement as they pertain to Atlantic). With regard to Calypso, the agreement called for the reinstatement, at their previous positions, with back pay, of those workers who had been terminated inappropriately and who sought to return to the factory. Several of the workers chose to accept significant offers of compensation in lieu of reinstatement (ranging from four to ten months' wages). The agreement also called for management and worker representatives to work together to address worker grievances and labor code compliance issues through monthly meetings and other mechanisms and to arrange for the union to hold a founding assembly within the factory.

Calypso has followed through on the commitments it made in the October 10 agreement. The company did reinstate the workers concerned, with back pay, and provided compensation to those who were not reinstated. The company also allowed for the union's assembly. Calypso made good, for a time, on its commitment to holding periodic meetings with worker representatives to discuss labor issues, and it appeared that a working relationship between management and union representatives was being established. However, the situation has worsened somewhat in recent weeks: acts of anti-union harassment by supervisors have occurred and the company has failed to adhere to the schedule for union-management meetings. In addition, other issues remain to be addressed, including the need for a functional dispute resolution mechanism involving worker representatives in a proper role and the factory's obligation to negotiate a collective bargaining agreement in good faith. The WRC has pressed management to halt the harassment and follow through on its obligations.

#### *Atlantic (Nicaragua)*

In the complaint concerning Atlantic, workers alleged that the factory had terminated a group of 26 workers who had formed a trade union and had pressed factory management to improve labor practices. The allegedly unlawful firings occurred on August 1 and 2. Our inquiry found that the terminations were carried out in violation of Nicaraguan law.

As in the case of Calypso, Atlantic management violated the provision of the Nicaraguan Labor Code which prohibits employers from terminating the founding members of a trade union, unless the employer obtains prior authorization of just cause from Nicaraguan authorities. The facts on this issue were unambiguous. On June 15, 2006, each of the 26 workers in question submitted his or her name to the Nicaraguan Ministry of Labor as part of the union's founding documents. On August 1 and 2, the facility fired each of these 26 workers. The Nicaraguan Ministry of Labor ultimately confirmed the WRC's finding, issuing a report on August 31 finding that the terminations were in violation of the Fuerro Sindical law. (As in the Calypso case, the Ministry took longer to act on the case than is mandated by statute.) However, even after this ruling, the company refused to reinstate the workers.

Moreover, as in the Calypso case, the fact pattern demonstrated that the factory had knowingly singled out the workers for dismissal, in retaliation for their decision to form the trade union and press for reform in the factory. At the time of dismissal, the factory claimed that the terminations were due to a general need to reduce personnel as a result of a decrease in orders. A lay off for production reasons is not a plausible explanation for firing all 26 members of a union in the same two day period, while dismissing no other workers. The presence of anti-union animus related to the dismissals was further evidenced by the fact that, subsequent to the firings, factory representatives visited the dismissed workers in their homes and offered reinstatement on the explicit condition that they sign a form renouncing association with the union.

In view of these findings, the WRC recommended that the factory act swiftly to reinstate the dismissed workers. As in the case of the Calypso facility, neither management of Atlantic, nor the parent company Argus Group, was initially responsive to these recommendations. However, the situation at Atlantic was ultimately addressed as part of the same agreement with Argus Group that resolved the Calypso case. The agreement led to the reinstatement of all of the fired Atlantic workers who wished to return to the factory – at their previous positions, with back pay. The agreement also called for periodic labor-management meetings and adherence to an established process for addressing worker grievances and labor rights issues. Atlantic followed through with the commitment to reinstate the workers the following week. Since this period, the WRC's follow-up assessment work has indicated that rights of association are generally being respected in this facility and that ongoing, substantive dialogue between management and worker representatives is taking place. Given the history of this facility, there is clearly a need to for ongoing monitoring. The WRC will continue to assess the situation and provide additional recommendations or updates as appropriate.

#### *Manufacturas del Rio (El Salvador)*

At roughly the same time as the complaints were made by workers at the two Nicaraguan factories, the WRC also received a complaint concerning Manufacturas del Rio, in El Salvador. It was alleged that the factory had unlawfully terminated a group of workers in retaliation for their trade union activities. The violations alleged in this case proved somewhat difficult to investigate because, by the time the complaint was filed by the union federation, STIT (Sindicato de Trabajadores de la Industria Textil or Textile Industry Workers' Union) virtually all of the fired workers had decided to accept severance, were not seeking reinstatement, and, with limited exceptions, were not forthcoming with testimony. As a result, it was not possible to develop a complete picture of the situation at the factory, particularly with respect to events that occurred prior to the recent wave of dismissals that precipitated the complaint. Based on the information available, the WRC was able to construct the following chronology:

Roughly two years ago, workers in the facility formed a union and affiliated with a union federation known as ASTIASYC. Roughly half of the 80 workers who joined this union were terminated during the spring of 2006. Hard evidence of the exact timing and form of these dismissals, and of management's motivation, was not identified. By the summer of 2006, fewer than 45 workers associated with the union remained employed at the facility. At this time, a number of these workers, dissatisfied by the level of support provided to them by ASTIASYC, launched an initiative to disaffiliate with ASTIASYC and affiliate instead with STIT, which is known to both managers and workers in El Salvador as a more activist union. In early August, within weeks of the initiation of the disaffiliation effort, 36 of the union members, who had been spread out among a number of different production modules, were suddenly transferred into a single module. As a result of these transfers, all but a few of the remaining union members were now working in this module. Shortly thereafter, on Friday, August 18, the entire module was laid off (the only module in the factory to suffer this fate). Management told the workers that they were being dismissed because of a decision to reduce personnel as a result of decrease in production; however, the fact pattern revealed this claim as a pretext. Management's clear purpose was to rid the factory of the union. On the following Monday, August 21, additional firings took place. That morning, a group of seven members of the union (representing almost all of the union members still employed at the factory) visited the Ministry of Labor in order to present papers to disaffiliate with ASTIASYC (the first stage in affiliating with STIT). After returning to the factory at lunch time, all of these workers were called into the

administration office and fired; again, management offered declining production as a pretext for what were obviously retaliatory dismissals.

In pursuing the union's complaint, the WRC would normally have focused its immediate remediation effort on the issue of reinstatement. However, none of the fired workers were seeking reinstatement; instead, they accepted payment of severance and chose to look for work elsewhere. This outcome, while obviously unsatisfactory from a code of conduct standpoint, made the issue of reinstatement moot. The WRC therefore pressed management, and the Argus Group, on two issues: 1) a cessation of retaliatory actions against workers seeking to exercise their associational rights, and 2) the opening of discussions with STIT as a legitimate representative of workers at the factory. After initial resistance, Manufacturas del Rio management participated in a meeting with the STIT representatives on October 5; the meeting was facilitated by the Argus Group's legal representative. At this meeting, Manufacturas del Rio management committed to respect the right of workers to join the union, to respect the role of the union to act as a representative of its members, and to engage in ongoing, good faith dialogue with the union on workplace issues. This agreement was part and parcel of the Argus Group's decision to achieve a constructive resolution at all three facilities.

After this meeting was scheduled, but before it took place, the WRC identified and averted a serious threat to the remediation effort at Manufacturas del Rio. The WRC learned that a leader of the newly established chapter of the STIT union had been approached and threatened by the director of an organization that has a long and well-documented track record of coercive acts against trade unionists in El Salvador – including numerous instances violence, and threats of violence, directed toward workers and union representatives. Although the organization calls itself the Committee of Women Workers (Comité de Mujeres Trabajadoras or COMUT), it is well-known in El Salvador as an organization contracted by employers for the purpose of anti-union intimidation. The WRC has been involved in several recent cases in which, according to credible worker testimony, harassment of workers by COMUT has occurred. The appearance of the COMUT representative at the factory provoked fear among workers regarding the potential for violence. The WRC, along with several other labor rights organizations monitoring the case, urged the Argus Group to determine whether Manufacturas del Rio management had, in fact, contracted the services of COMUT and/or the individual who had appeared at the factory – and, if so, to ensure that the relationship was immediately severed and that COMUT was informed that its involvement would no longer be welcomed at the factory. In response, the Argus Group's legal representative confirmed that managers of the factory had recently been in contact with the individual, but that Manufacturas del Rio management would communicate with her again and make clear that it did not want her to continue to contact Manufacturas del Rio workers. Since this time, there have been no reports of further threats or involvement by COMUT.

To date, Manufacturas del Rio management has followed through on its commitment to deal in good faith with worker representatives and has not engaged in further retaliatory actions against union supporters.

There has been significant progress with respect to the issue of freedom of association at the three Argus Group facilities addressed by the WRC's assessments. The agreements reached for the reinstatement of the terminated union members at the two Nicaraguan facilities, and the establishment of formal relations between factory management and worker representatives at all three facilities, represented breakthroughs in the Nicaraguan and Salvadoran contexts, in which constructive industrial relations and respect for union rights are rare. Most importantly, the industrial relations systems birthed in these agreements, if it is maintained, will serve as an effective means for addressing other code of conduct compliance issues at these factories.

## **Evergreen (El Salvador)**

Pursuant to a complaint from worker representatives, the WRC investigated and engaged in efforts to remediate code of conduct violations at an apparel facility in El Salvador known as Evergreen. Prior to its closure in December 2005, the facility produced university logo goods for the university licensee Columbia Sportswear, as well as non-logo goods for a number of other U.S. brands. The initial complaint alleged that Evergreen had unlawfully terminated a group of roughly 300 workers in March 2005 in retaliation for efforts by workers to exercise their associational rights and had failed to pay these workers legally mandated back wages, benefits and severance. The WRC received a complaint, via the labor union that represented workers at the factory, after Evergreen failed to adhere fully to an agreement reached through domestic dispute resolution mechanisms to reinstate the workers and provide them with appropriate compensation.

By the time the WRC became involved in the case, the factory was in financial trouble. After a series of lay-offs, it ultimately shut down in December 2005, terminating the employment of roughly 525 workers. The factory's closure at this juncture was precipitated in large part by the removal of orders by Columbia Sportswear, which had been the factory's primary customer for a period of years. This decision to remove orders was justified by Columbia as a legitimate response to labor rights issues; however, slashing orders without a commitment to reinstate them in the event of full remediation of labor rights violations was not the correct approach at Evergreen, nor the one recommended by the WRC. Moreover, it appeared that economic concerns, including a desire to obtain a lower price for the particular product in question, were the primary factor motivating Columbia's decision. The WRC urged Columbia, unsuccessfully, to restore orders at the factory to their previous level.

By January 2006, it was clear that the closure of the facility was irreversible. At this point, that the terminated workers were paid the legally mandated terminal compensation due to them became the focus of the WRC's work on this case. At the time of the closure, the factory failed to pay severance, back pay, and various accrued legally mandated benefits to the workers and also owed a substantial amount of money to two employee pension funds to which it was legally obligated to contribute. In total, the factory owed \$1,293,000, including roughly \$506,156 in severance, wages, and benefits to the workers, and roughly \$786,844 to the pension funds. Evergreen's U.S.-based parent company, Campus Sports, asserted that it had no funds to pay these debts and that it owed substantial additional debt to the company's creditors.

Worker representatives and support organizations pressured the Salvadoran government to implement a recently established law which gives workers precedence over other claimants in the event that a factory closes with unpaid debts. These efforts ultimately resulted in the workers receiving roughly \$250,000 through the liquidation of machinery and other materials owned by Evergreen. These funds were disbursed to the workers by an ad hoc commission comprised of representatives of the workers, factory management, and the Salvadoran Ministry of Labor. However, these funds represented only half of the compensation owed to the workers.

In the absence of any other source for the remaining funds, and in view of Columbia's long-standing relationship with the factory and its precipitating role in the closure, the WRC urged Columbia Sportswear to contribute to a fund to make the workers whole (although university codes of conduct do not explicitly require licensees to contribute funds under such circumstances). After a protracted set of discussion between Columbia representatives and the WRC, and further discussions facilitated by the WRC among all of the concerned parties (Columbia, Campus Sports, the workers, the Ministry of Labor, and the WRC), Columbia ultimately contributed a total of \$120,000. These funds included 1) \$75,000 that Columbia Sportswear owed Evergreen for product already delivered, and which Columbia chose to pay to the workers rather than to the factory, and 2) \$45,000 paid by Columbia to buy back fabric originally owned by Columbia and seized by the government upon the factory's closure. The final funds were wired by Columbia at the beginning of April 2006 and disbursed to workers by the ad hoc commission (disbursement was verified by the WRC).

In total, the funds generated through liquidation of the factory's assets and the funds contributed by Columbia totaled approximately \$370,000 – or roughly three-quarters of the total compensation owed to the workers for severance, wages and benefits (leaving aside the unpaid compensation to the pension funds). This outcome obviously fell short of the amount to which the workers were legally entitled. This was, however, a relatively positive result for a severance case in El Salvador, where workers frequently receive none of the compensation owed to them after a factory closure. And the funds were paid in a relatively timely fashion, given that efforts to compel payment in El Salvador often drag on for a year or more. By comparison, in the [Hermosa](#) case, eighteen months have passed since the closure of the factory and no compensation has been paid to any of the workers. Nevertheless, both the closure of the factory, which might have been avoided had Columbia offered Evergreen continued business in exchange for positive performance on labor rights, and the severance shortfall reflect negatively on Columbia's approach to code enforcement.

 TOP

## **Quality / Elderwear (El Salvador)**

In response to a complaint from workers in late August 2006, the WRC undertook an inquiry into alleged worker rights violations at a factory known as Quality, located in Soyapango, El Salvador. The factory was closed in August of this year and production was relocated to a different region of El Salvador. At the time of the closure, Quality employed roughly 340 workers. Both Quality and a new factory to which production was shifted after the closure are wholly owned by Elderwear School Clothing Company (hereafter referred to as "Elderwear") and produce school uniform products for Elderwear under the labels Tom Sawyer, Mark Twain, Becky Thatcher, and School Days, among others. Although Elderwear is not involved in the production of university logo goods, the WRC made the decision to pursue the complaint in part because we believed the increasing prevalence of codes of conduct at primary and secondary schools, as well as the recent affiliation with the WRC by a group of Catholic high schools in Ontario, Canada, meant it was likely that Elderwear would be responsive to our efforts to address labor standards violations.

The alleged violations were related to the closure of the Quality factory, which was announced to workers on August 18. The primary issue of concern identified in the complaint was the alleged refusal on the part of Quality management to pay legally mandated terminal compensation to workers upon the closure of the factory. The complaint also alleged that supervisors made threats to workers who joined a recently established trade union in the factory and that the closure of the factory was motivated by anti-union animus, both of which, if true, would constitute violations of workers' associational rights under Salvadoran law and applicable codes of conduct.

With regard to the payment of severance benefits, the company argued that it was not obligated to pay terminal compensation as required by law because it was simply relocating the business rather than closing the factory entirely. As mentioned above, Elderwear was opening a new facility, known as Tom Sawyer, in a town called Santa Ana on the outskirts of San Salvador. Management explained that Quality workers were welcome to work in the new plant and that those who chose not to were, in effect, resigning, not being laid off and therefore not entitled to severance pay.

The WRC inquiry into the situation determined, however, that employment in the Tom Sawyer plant was not, in fact, a viable option for most workers concerned. The town of Santa Ana is located between one and one half to two hours by bus from the Quality factory in Soyapango. The Elderwear company offered to provide buses leaving from the Quality plant in the morning and returning to the same location at night. However, because many workers had commuted substantial distances to the Quality factory via bus – including many from the opposite direction of the new facility – and because the latest available buses home left Soyapango before the company buses from Santa Ana would arrive at the site of the

old factory, it would not be feasible for many workers to get to and from work at the new plant, even if they were willing to accept the daily commute of between three and a half and five hours that would be required. Some workers were ultimately able to relocate closer to Santa Ana, but a great many were not. In light of this reality, the WRC found dismissals caused by the closure of the Quality factory (e.g. for those workers who chose not to relocate) to be effectively forced terminations without just cause, not voluntary resignations as the company argued. We recommended that the company offer to pay severance as appropriate under Salvadoran law in the case of terminations without just cause to those workers who were not able to relocate to the new plant.

In addition to the issue of severance payments, the WRC found that Quality had violated workers' associational rights by denying employment opportunities at the new facility to workers who protested Quality's closure. Specifically, workers testified that Quality and Tom Sawyer management indicated to the workforce that employees who had protested the factory's closure and failure to make severance payments would be considered to have resigned and therefore had forfeited the opportunity to accept positions at the new facility – a policy that effectively amounted to blacklisting workers for protesting the company's illegal failure to pay terminal compensation. In response, we recommended that the company provide transportation to all workers who did wish to relocate to the new plant – regardless of whether they had participated in protest activities – and to employ all of those workers who were able to relocate to the new plant at their previous job status, without the loss of seniority.

With respect to the question of whether the factory closure was motivated by anti-union animus, a firm conclusion was elusive. On the one hand, the timing of the factory closure relative to a decision by workers to associate with a union (which had been established in the factory several weeks before the closure), coupled with comments of a threatening nature regarding unionization made by the facility's production manager and other supervisory personnel prior to the closure, supported the conclusion that the closure was motivated, fully or in part, by anti-union animus. On the other hand, Elderwear officials argued with some credibility that the decision to close the factory was in response to business issues related to El Salvador's export trade rules and to a fire that occurred at the facility in early May. Ultimately, the WRC was not able to determine conclusively whether or not anti-union animus was a factor in the decision to close the Quality factory and lay off the workforce. However, we did recommend that the company take steps to demonstrate its commitment to recognize and deal in good faith with the workers' trade union and, in particular, ensure that elected leaders of the trade union be offered employment at the new facility without discrimination if they chose to relocate.

After initially refusing to adhere to each of the recommendations outlined above, representatives of Quality and Elderwear ultimately began a process of negotiation with worker representatives.

With respect to the payment of severance, the negotiation process yielded a compromise decision in which Elderwear agreed to pay 75% of the severance owed to the workers under typical circumstances and 100% of severance for pregnant workers. The package amounted to roughly \$375,000 for the approximately 350 workers combined – about \$1,070 per worker. While the compromise reached was short of what workers were lawfully owed, the resolution was considered by worker representatives and other observers to be a generally positive outcome to the situation, particularly in the context of the Salvadoran apparel industry in which fly-by-night closures all too frequently deprive workers of all of the severance compensation they are due.

On the issue of access to the new factory for those able to relocate, Elderwear also ultimately agreed to provide job opportunities and bus transportation to all interested workers – including those who had protested the circumstances surrounding the closure – under previous employment status, as long as positions in the factory remained available. The WRC will continue to monitor the situation to determine whether all former Quality workers who choose to do so are able to access positions at the new facility.

Finally, with respect to the issue of freedom of association, the company ultimately chose to pay out the remaining months of the employment contracts for each of the workers on the union's nine-member

founding board in exchange for an agreement by these workers not to pursue employment at the new facility. While the company's position may be permissible under Salvadoran law, it represents a clear violation of applicable codes of conduct, which dictate that employers may not use payment of severance or other financial inducements to rid the workplace of trade union members or limit trade union activity. The workers nonetheless chose to accept the proposal. The manner in which this issue was resolved serves as an example of the economic power employers can often wield for the purpose of discouraging the exercise of associational rights by their employees.

TOP

### **Gildan (Honduras)**

As reported to you in [September](#), the WRC recently completed our verification of Gildan Activewear's compliance with the priority rehire agreement reached in 2005. The agreement was designed to address the unlawful mass termination of workers at Gildan's plant in El Progreso, Honduras, in August of 2004 by securing employment opportunities for former El Progreso workers at other Gildan facilities in Honduras. Gildan Activewear is a supplier of blank apparel products to numerous university licensees from its factories in Honduras and elsewhere.

In short, the WRC's investigation found that Gildan did not comply with the agreement during a key early stage of implementation, though Gildan's compliance with the accord improved in later stages and was accompanied by other constructive measures. Generally speaking, we found that the agreement did not lead to substantial remediation of the wrongful terminations that it was intended to address. Given the difficulties posed by the mass termination and the time that had elapsed between the closure and the agreement's adoption, it is unlikely that the harm done to the workers involved would have been fully remediated even if the Gildan fully adhered to the agreement. The difficulties encountered in this case illustrate some of the challenges that factory closures and mass layoffs, which occur with great frequency in the apparel industry, pose to efforts to ensure enforcement of codes of conduct.

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### **BJ&B (Dominican Republic)**

As we reported to you in [August](#), there has been substantial concern regarding the potential closure of BJ&B. BJ&B has been the subject of considerable university code enforcement work resulting in groundbreaking gains for workers in 2002 and 2003. Since that time, the factory's workforce has been reduced from nearly 2,000 to several hundred and factory management has indicated to workers on several occasions this year that it is likely to close in the near future. Concerns regarding an imminent closure were heightened when the facility laid off nearly 150 workers in the spring of 2006, bringing the workforce down to roughly 325 workers – an action that management indicated was related to a reduction in orders from buyers. However, in the past several months, order levels at the facility appear to have stabilized and it seems that closure has been averted in the short term, though the factory's future remains uncertain.

The WRC has received indication that Nike orders have increased modestly in the factory this fall and that Nike production levels are now equivalent to those of the same period last year. This has resulted in the rehiring of a small number of workers and represents at least a temporary halt in the hemorrhaging of the workforce. However, the number of workers remains a fraction of those employed by the facility in 2003, and the factory's ability to maintain steady orders in the future is uncertain. While we are encouraged to see that BJ&B's business appears to have stabilized, it is clear that a commitment of

substantially increased orders from Nike and/or other buyers will be necessary if the factory is to return to the employment levels that prevailed at the time of the successful remediation effort and if the factory is to remain viable in the long term.

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## **Sinolink (Kenya)**

The WRC has [reported](#) in the past on the Sinolink factory in Mombasa, Kenya, which underwent substantial improvements in working conditions as a result of university code enforcement efforts. We have also reported to you the WRC's concern that Sinolink's inability to secure sufficient orders following these improvements could jeopardize the sustainability of the gains made. We must unfortunately report that these concerns have been realized and that the situation at Sinolink has deteriorated.

In recent months, serious violations of worker rights have resurfaced at Sinolink, including forced and uncompensated overtime, failure to make legally mandated contributions to employee health care and pension funds, and health and safety concerns.

We believe there are two primary causes underlying these negative developments. The first and most critical factor was the factory's loss of customers following the labor rights breakthroughs in April 2005. As a result of a loss of orders, the factory was forced to close for several months. Despite the WRC's appeals to major licensees and other brands that had been producing in the factory prior to the improvements, none of the companies agreed to return. While the factory has been able to secure some new business subsequently, the unwillingness of the factory's former buyers to return in light of the labor rights improvements that had been made appears to have sent a message to the factory that code compliance would not be rewarded with continued business. Thus, the factory, whose current buyers are not in the facility due to their interest in the high level of code compliance, has no clear incentive to maintain the improvements that had been achieved.

A second, and related, factor underlying the negative developments is that the temporary shut down in 2005 had the effect of removing from the factory the key worker representatives involved in the original unionization effort. By the time the facility resumed production, many of these workers had been forced to take work in other facilities. While the company had formally recognized the union, the relationship between worker representatives and management that had been forged prior to the temporary closure – and which represented a viable ongoing means of addressing code violations – was never fully reconstituted.

The WRC has previously recommended Sinolink as a factory with superior labor rights practices. We unfortunately cannot continue this recommendation.

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## **Paxar (Turkey)**

In response to a complaint from worker representatives, received in February 2006, the WRC has been involved in efforts to remediate code of conduct violations at a factory in Turkey known as Paxar. As we reported to you in [June](#), serious violations of Turkish law and applicable codes of conduct have been identified at Paxar, primarily in the area of freedom of association. The factory is a subsidiary of the New

York based Paxar Corporation, one of the world's largest suppliers of garment labels, tags and printing systems for apparel brands and retailers. The Turkish facility in question manufactures labels and prints logos for a number of major apparel brands, including Nike, adidas, and Puma. The Paxar Corporation supplies labels and related services to numerous other university licensees.

As we have reported, the violations of worker rights identified at Paxar include the illegal termination of workers in retaliation for their association with a trade union and the company's refusal to negotiate with a union lawfully authorized to represent workers.

With respect to the unlawfully terminated workers, there has been no meaningful progress to date. The eleven workers in question were terminated in February 2005, in retaliation for union organizing efforts under the auspices of a Turkish trade union known as TEKS•F (Türkiye Tekstil Örme ve Giyim Sanayi •çileri Sendikası or the Textile, Knitting and Clothing Industry Workers' Union of Turkey). All eleven firings were ruled unlawful by the Turkish High Court of Appeals; however, Paxar refused to reinstate the workers. The WRC first contacted key buyers, including adidas and Gap, in March 2006, after receiving a complaint from TEKS•F. We outlined the undisputed facts that demonstrated that Paxar's actions were in violation of the brands' codes of conduct. TEKS•F also communicated its concerns and pleas for action directly to the brands and to various monitoring organizations, including organizations of which key Paxar customers are members (FLA, Ethical Trading Initiative, and Social Accountability International). Adidas, Gap and other buyers began shortly after these initial communications to pressure Paxar to reinstate the workers. For several months, Paxar resisted. In July 2006, Paxar finally offered reinstatement to five of the workers – seventeen months after the firings and twelve months after the High Court ruling. Unfortunately, by this time, all of these workers had been forced by economic circumstances to obtain work elsewhere and none of them ultimately returned to Paxar. With respect to the remaining six workers, Paxar continues to refuse to offer reinstatement, in violation of Turkish law and applicable codes of conduct. Thus, in twenty-two months since the unlawful terminations took place, none of the eleven workers have returned to work at Paxar.

With respect to the issue of union recognition and collective bargaining, after much delay, some significant progress has been achieved. The union was established by workers at Paxar in early February 2005, but Paxar refused to recognize the union or commence collective bargaining (instead, as outlined above, Paxar fired a number of the union leaders). The Turkish Ministry of Labor issued a ruling in December 2005 ordering Paxar to recognize and initiate bargaining with the union. Paxar continued to refuse to do so. After the union's complaint to the WRC, the other monitors, and the brands, substantial pressure was brought to bear on the company, beginning in March. Finally, in July 2006, Paxar sat down with the union to begin bargaining and agreement was quickly reached on several minor clauses of a collective bargaining agreement. However, the bargaining process was halted in mid-August amid a failure to reach agreement on basic economic issues. Since then, Paxar has agreed to resume negotiations, though the timeframe agreed upon for this process, October and November, has elapsed without any negotiations taking place. It now appears that negotiations will resume on December 21. We are hopeful that additional progress will be forthcoming – that Paxar will bargain in good faith toward a finished agreement and then honor that agreement. However, substantial caution is warranted, in view of Paxar's actions to date. Continued pressure from Paxar's customers is essential, both to press the company to conclude, and to abide by, a collective contract and to insist on reinstatement offers for the remaining six unlawfully fired workers.

The slow progress of the remediation effort at Paxar to date is an example of the difficulty of translating university and corporate codes of conduct into timely action at the workplace level, even in cases where substantial brand leverage and ample public scrutiny are applied. Paxar is a publicly traded American corporation with nearly a billion dollars in annual revenue, and a supplier to a long list of major international brands and retailers, many of which have well-articulated code compliance programs. Its failings cannot be attributed to a lack of knowledge on the part of senior management of the company's labor rights obligations, or to a lack of capacity on their part to manage a business in a manner consistent with applicable law. Nor is Paxar inexperienced in operating a unionized workplace; the company does so in several countries. Moreover, the violations at the Turkish facility have been the

subject of intensive and protracted public scrutiny, with numerous brands involved and a multitude of monitoring organizations weighing in, along with advocacy groups, such as the Clean Clothes Campaign in Europe. Yet, despite Paxar's maturity as a global corporation, despite all of the scrutiny and pressure, and despite the involvement of an experienced union federation that has devoted very substantial time to the case, no progress was achieved for more than a year after the initial violations occurred (including four months when the brands were actively engaged). Now, nearly two years after the initial violations and after nine months of brand engagement, there has been modest progress on the issue of collective bargaining, while remediation of the unlawful firings has failed. It is positive that negotiations have commenced and that a contract may be concluded, but codes of conduct should achieve progress far more rapidly than this, and with more substantial results.

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