

To: WRC Affiliate Colleges and Universities

From: Scott Nova and Jessica Champagne

Re: Remediation at Premium Apparel (Haiti)

Date: January 25, 2017

Following the intervention of the Worker Rights Consortium (WRC), collegiate supplier Premium Apparel, a factory located in Port-au-Prince, Haiti, has reinstated two wrongfully terminated workers. Premium, a cut and sew facility owned by Haitian businessman Clifford Apaid, employs approximately 1,700 workers. The factory supplies t-shirts to Gildan Activewear, which in turn provides blank shirts to licensees New Agenda and Cotton Gallery to be embellished as university logo apparel.

The terminated workers were members of the executive committee of the Haitian union known as Sendika Ouvriye Takstil ak Abiman (SOTA-BO), a regional union that represents garment workers at a number of factories in Port-au-Prince. The workers, Telemarque Pierre and Clerger Felixon, were terminated in retaliation for their leadership in garment worker protests to demand that the government raise the minimum wage. Following the dismissals, the factory initially refused to reinstate the workers. However, after the WRC investigated and pressed the company's primary buyer, Gildan, to intervene, Premium reinstated the two workers and paid them lost wages for the time that they were off the job. It was not necessary to contact the licensees sourcing from Premium via Gildan during the remediation process, but the WRC has informed them of the initial violation and subsequent remediation.

Dismissal of workers by their employers as a result of workers' decision to exercise their right to freedom of association is not an uncommon occurrence in Haiti. A similar dismissal of workers occurred five years ago, when three Haitian factories, including a factory owned by the Apaid family, terminated six of seven SOTA-BO executive committee members less than two weeks after the union formed.¹ During the same period of time that the dismissals occurred at Premium, Palm Apparel, a second factory supplying Gildan and its buyers, terminated two workers who were active in SOTA-BO.²

While the return of Pierre and Felixon to the workplace constitutes a successful application of university codes of conduct, it is concerning that factory owners supplying goods to major North American licensees still feel free to terminate union leaders in retaliation for their union activity, in violation of international norms of freedom of association and university codes of conduct. As

¹ Worker Rights Consortium, "Preliminary Report on Unlawful Dismissals at Genesis, S.A. (Haiti), October 11, 2011, <http://www.workersrights.org/freports/Haiti%20SOTA%20Preliminary%20Report%2010-11-2011.pdf>.

² The workers at Palm and their union did not file a complaint with the WRC, but rather negotiated and implemented an agreement directly with factory management. The workers have now returned to work.

factory managers are aware, retaliatory termination is a very effective way to intimidate all workers in a factory and to stifle their efforts to exercise their associational rights. Even when workers return to the job, it is difficult to reverse the effects of this intimidation. To truly protect workers' associational rights, it is imperative that university licensees *prevent* such terminations by making it clear to their suppliers that retaliation and other violations of workers' freedom of association will not be tolerated.

During the past year, the WRC has also successfully engaged with Gildan and Apaid regarding underpayment of the minimum wage at Premium. The WRC will report on this separately.

Findings

Telemarque Pierre

Premium terminated Pierre in response to his role in a garment worker protest calling for a higher national minimum wage, which took place in Port-au-Prince on May 11, 2016. As the General Coordinator of SOTA-BO, Pierre was among the leaders of the protest and the signatory of a letter to the Haitian Ministry of Social Affairs and Labor (MAST) announcing the intent of SOTA-BO and other unions to launch the protest. Participants in the march met early in the morning outside Premium and marched past several other garment factories, including a second factory owned by Apaid, known as Global Manufacturing Contractors (GMC). Additional workers joined the march as it passed each factory. Workers reported that more than 5,000 workers and supporters participated in the march. As the march occurred during work time, workers' participation caused a work stoppage in a number of plants.

While participants interviewed by the WRC reported that the march was largely orderly and peaceful, witnesses reported that some protesting workers did damage factory property.³ For example, workers reported that when the march reached the GMC factory, where the workday had already begun, workers sought to leave the factory grounds to join the march. As the main gates were locked, the workers broke through a gate in order to join the march.

Pierre was terminated on May 14. Pierre reported that, at the time of his dismissal, Premium owner Apaid asked him "why he was so difficult to work with" and said that Pierre had "given him too much trouble." According to Pierre, Apaid stated that this was the reason for the termination. In a meeting with the Haitian Bureau of Mediation of the Textile Sector (BMST) on May 23, Apaid characterized Pierre's actions as aggressive and violent and said that the termination was also in response to "other incidents" that had occurred in the past, though he did not provide specific information about the details of these incidents. In a letter sent to the BMST on June 1, 2016, Apaid stated that Pierre was terminated for organizing a demonstration that led to damage of factory property.

After receiving a complaint from Pierre and his union advisors on May 16, the WRC initiated an investigation into the case. When interviewed by the WRC, both Pierre and other individuals

³ See, Haiti Libre, "Haiti – Economy: Blocking of the textile sector, reaction of the U.S. Department of Labor", May 16, 2016. <http://www.haitilibre.com/en/news-17463-haiti-economy-blocking-of-the-textile-sector-reaction-of-the-us-department-of-labor.html>.

present during the protest reported that while Pierre had played a leadership role in the march, he had not engaged in any property destruction. As noted above, multiple witnesses provided mutually consistent testimony that the damage caused at the GMC factory occurred after factory officials instructed security guards to close the main gate to the factory, trapping workers who had left the production floor in support of the march inside the factory gates. In response, these workers moved to a smaller metal door factory entrance and forced their way through in order to leave the factory premises and join the march, damaging the door in the process.

On May 22 and again on June 9, 2016, the WRC contacted Apaid, the factory owner, requesting information as part of the investigation. Although Apaid responded on May 27 to the WRC's initial communication, he did not reply to the WRC's communication on June 9, and did not provide any evidence of Pierre's direct involvement in any property destruction or other criminal activity.

Given the absence of any evidence that Pierre had engaged in or directed any property damage, the WRC found that the termination was retaliatory and a violation of freedom of association as protected by Haitian law and international standards.⁴ While damage to property factory could, in some contexts, be a legitimate reason for dismissal, an employer cannot legitimately terminate a worker for leading a protest during which other workers chose to engage in such destruction. Terminating an employee who is a union leader because of the conduct of other employees who are union members, unless there is evidence that the union leader directed, incited, or actively condoned such conduct, is a violation of freedom of association as it singles out the union leader for termination solely on account of his position in the union. In such a case, the worker is being discharged because he is serving as a union leader, not because of any specific conduct on his part for which he can be rightly held responsible. Workers cannot exercise freedom of association if they must fear that their employer will terminate them simply for being guilty by association.

Moreover, to the WRC's knowledge, the company has not taken any disciplinary action against any of the workers who actually damaged the gate. Instead, it singled out Pierre for punishment (despite a lack of evidence of his involvement), which further indicates that the company was discriminating against him as a union leader via guilt by association, rather than on account of his own conduct. In addition, the factory's decision to physically restrain workers from participating in a protest by locking the gates raises concerns as to both worker safety and freedom of association in the factory.

Given this, the WRC recommended that, in the absence of any substantiated allegations of behavior that would justify termination, Premium reinstate Pierre with full payment for the days he was off the job.

⁴ International Labour Organization Conventions 87 and 98 and Haitian Labor Code, Article 7.

Clerger Felixon

On May 19, after Pierre's dismissal, the union coalition organized additional protests to continue the collective demand for a minimum wage increase. The next day, May 20, the union at Premium held a work stoppage to protest Pierre's termination. Felixon, a Premium worker serving as a member of the SOTA-BO executive committee, led workers inside the Premium factory chanting their demand that Pierre be reinstated, following which the workers conducted a work stoppage.

Felixon was fired the following day. On May 21, when Felixon reported for work at Premium, he was met at the entrance by the Plant Manager. The manager informed the worker that he was being dismissed and instructed him to report to the MAST office to collect his severance pay. The manager, assisted by security officials stationed at the entrance, used physical force to remove Felixon's identification badge and escort him away from the factory's entrance. Given that the termination occurred the day after he led a protest and work stoppage, Felixon believed that he was dismissed in response to these activities.

After being informed by the union of Felixon's termination, the WRC initiated an investigation. The WRC contacted Apaid on June 9 to inquire as to the reason for the termination and any relevant evidence. Apaid did not provide any such evidence or even a reason for the termination. Given the company's failure to present any evidence that this was a justified termination, the WRC found that the dismissal constituted a violation of freedom of association, as defined by international standards and Haitian law, and recommended that Felixon be reinstated with back pay for time off the job.

Remediation

The WRC initially contacted the factory's primary buyer, Gildan Activewear, on May 26 to convey our findings and recommendations and urge Gildan to ensure that the workers were reinstated and made whole.

Apaid initially refused to reinstate the workers. In attempts at mediation facilitated by the BMST's Special Ombudsperson on May 23 and 27, Apaid informed the union that he would allow the workers back to work only if they would agree to a transfer to a different factory and only if the union prepared and shared with the company a written plan outlining changes that the SOTA-BO union would make in its strategy that would ensure the prevention of future disruptions. The WRC communicated to Apaid and to Gildan that this proposal would merely aggravate the initial violation of the workers' associational rights. Transferring the workers to a different factory would prevent them from carrying out their representational duties as union officers, thus denying the other workers the right to have the leader of their choice. Requiring that the union formulate certain policies before allowing the unlawfully terminated workers to return to work is not only unjust to the terminated workers, who had the right to return immediately, but would have also violated workers' internationally respected rights to govern and administer their union's programs and activities.⁵

⁵ International Labour Organization, Conventions 87, Article 3.

After repeated communications from both the WRC and Gildan, Apaid agreed, on July 26, 2016, to reinstate both workers with full back pay for the time off the job.

Pierre and Felixon returned to work on August 1. One week later, Apaid provided a partial payment of back pay. However, on this date, workers received only half of the funds due to them. The WRC again contacted Gildan and pressed the company to require Apaid to make the workers whole. On October 1, 2016, Premium provided the workers with the remaining portion of their back wages. In total, Pierre received 19,500 HTG (US\$300) and Felixon received 17,450 HTG (US\$268).⁶

The WRC will continue to monitor compliance with freedom of association and other labor standards at Premium.

⁶ The exchange rate at the time of the final payment was \$64.88 Haitian Gourdes to the US Dollar.