

To: WRC Affiliate Universities and Colleges
From: Tara Mathur and Ben Hensler
Date: October 27, 2020
Subject: Case Brief: Investigation and Remediation of Unlawful Dismissals at Varsity Pro Ltd. (El Salvador)

This memorandum summarizes the findings of the Worker Rights Consortium (WRC) concerning labor rights violations as well as recommendations for and current status of remedial actions at Varsity Pro Ltd. (“Varsity Pro”), a garment production facility in Ciudad Arce, La Libertad, El Salvador. Varsity Pro, which currently employs approximately 1,200 employees, produces collegiate licensed apparel for Varsity Brands and non-licensed apparel for adidas and Under Armour.

In May 2020, factory employees and their union representatives brought complaints to the WRC regarding the dismissal of employee union officers who were legally protected from termination, and other alleged violations of Salvadoran law and university codes of conduct. After investigating the workers’ complaints, the WRC found that the factory had, as part of a larger layoff at the facility, fired elected union officials in violation of provisions of Salvadoran law and university codes of conduct that protect workers’ right to freedom of association. With respect to the other labor rights violations that had been alleged, however, the WRC concluded that the factory’s actions had not, in fact, violated these standards.

The WRC engaged extensively with Varsity Pro concerning these terminations, and the factory ultimately agreed to reinstate the worker union leaders with full back pay from the dates of their dismissal to the date of their reinstatement. This case brief outlines the initial complaint received from factory employees and its investigation by the WRC, including both where the WRC did not determine there to be a violation of Salvadoran labor law and where the WRC did find such violations to have been committed. This memorandum concludes by discussing Varsity Pro’s implementation of the WRC’s recommendations for remediation of the latter violations.

I. Factual Background on Workers’ Complaints

In May and June 2020, Varsity Pro employees and the labor federation with which their in-factory union is affiliated, the Federación de Asociaciones y Sindicatos Independientes de El Salvador (FEASIES), filed complaints with the WRC with regard to several actions taken by the factory, which, they alleged, had violated emergency decrees issued by the Salvadoran government during the Covid-19 pandemic and, in one case, the Salvadoran Labor Code.

The first issue that the workers raised in their complaint concerned the company’s mass dismissal of workers during a period when the factory was temporarily closed as a part of a

national quarantine declared by the Salvadoran government in response to the Covid-19 pandemic. On March 14, 2020, the Salvadoran Legislative Assembly approved an emergency decree that, among other measures, prohibited employers from dismissing formal sector employees during the period of quarantine.¹

Despite the legislature having issued this decree, during the following month Varsity Pro conducted two mass dismissals of employees. On March 17, the factory dismissed 372 of its workers and, on April 20, terminated an additional 252 employees. The factory reported, and workers confirmed, that the employees who were dismissed in March and April were paid legally required severance compensation and other terminal benefits. Workers charged, however, that, under the legislature's emergency decree, the factory was not allowed to carry out these dismissals.

In the same March 14 emergency decree, the legislature also prohibited employers from reducing workers' pay during the quarantine period.² On March 19, 2020, the legislature issued a second decree that ordered all factories in the country to close (except those factories producing masks and other essential medical equipment).³

Varsity Pro paid workers' salaries for the first month that the factory was closed, from March 20 to April 19, 2020. From April 20, 2020, until the factory reopened in June 2020, however, workers were not paid any wages. Workers, in their complaint to the WRC, charged that this failure to pay wages during the temporary factory closure violated the March 14 emergency decree's prohibition on lowering workers' wages during the quarantine.

On June 14, the Salvadoran Ministry of Health issued a decree that authorized factories to reopen but, in light of the fact that the country's public transportation system was not yet resuming operations, also required employers to provide free transportation to their employees between their homes and their workplace.⁴ Workers at Varsity Pro reported to the WRC that, while, after factories were allowed to reopen, Varsity Pro did provide them with transportation, contrary to the Ministry of Health's decree the factory charged employees for this transportation rather than providing it free of charge.

The WRC investigated and communicated with Varsity Pro concerning each of the issues that were the subject of the workers' complaints that the company had acted unlawfully by violating the government's decrees. On June 8, 2020, however, the Salvadoran Supreme Court declared that all three of the government decrees discussed above were unconstitutional and, therefore, beyond the government's power to issue and enforce.⁵

¹ Legislative Assembly, Republic of El Salvador, *Decree Number 593*, Article 5, March 14, 2020, <https://www.asamblea.gob.sv/sites/default/files/documents/decretos/B40E89A3-1308-4DE9-AE3D-5524DA9EE2C4.pdf>.

² Legislative Assembly, Republic of El Salvador, *Decree Number 593*.

³ Executive Office, Health Branch, *Decree Number 10*, Article 3, March 18, 2020, <https://www.diariooficial.gob.sv/diarios/do-2020/03-marzo/18-03-2020.pdf>.

⁴ Official Diary, *Executive Decree Number 31*, June 14, 2020, <https://www.diariooficial.gob.sv/diarios/do-2020/06-junio/14-06-2020.pdf>.

⁵ Constitutional Court, Supreme Court of El Salvador, Resolution 21-2020/23-2020/24-2020/25-2020, June 8, 2020, https://www.jurisprudencia.gob.sv/pdf/I_21-2020.pdf.

Since, as a result of the Supreme Court's decision, the government's decrees no longer had legal force, the WRC concluded that the factory's conduct was lawful, so long as it did not violate any of El Salvador's existing labor laws. Accordingly, the WRC determined that Varsity Pro had not contravened the law or, by extension, university codes of conduct, by failing to follow the government's decrees with respect to the company's dismissal of workers, nonpayment of wages during the suspension of operations, or its subsequent failure to provide free transportation to factory employees following the factory's reopening.

The WRC's findings with respect to the one aspect of the company's actions that the WRC found to have violated Salvadoran law and university codes of conduct are discussed in the section immediately below. The third and final section of this case brief discusses the WRC's recommendations and the company's implementation of measures to correct this violation.

II. Finding: Violation of Freedom of Association – Unlawful Dismissal of Employee Union Officers

A separate issue that workers raised, with respect to which the WRC did find a violation of Salvadoran law and university codes of conduct, was the inclusion, among the workers whom the factory terminated on March 17 and April 20, of seven employees who were leaders of a newly formed union at the plant and, thereby, protected by law from dismissal.

On March 10, 2020, workers at the factory established a new union, the Sindicato de Trabajadoras y Trabajadores de la Industria del Trabajo Textil ("SITTEX"), which is affiliated with the Salvadoran labor federation, FEASIES, and elected seven workers as the union's officers. When, on March 17, the company terminated *en masse* 352 employees, six of the seven employee union officers were among those dismissed. Moreover, the new union's sole remaining employee leader was subsequently dismissed in the further layoff of 262 workers that the company conducted on April 20.

Under Salvadoran law, workers who are elected as union officers are protected from dismissal by their employer for a one-year term in office, plus an additional year, unless their employer obtains prior authorization from authorities to dismiss them, which Varsity Pro, in this case, undisputedly had not done.⁶ The Salvadoran Ministry of Labor issued the new union credentials certifying that the terms of office of the seven workers who were its elected leaders had begun on March 10, 2020, prior to the dates of their terminations, and would extend until March 9, 2021.

The WRC concluded that, as a result, Varsity Pro's termination of these seven workers, by including them among the more than 600 employees whom the company laid off on March 17 and April 20, violated Salvadoran law and, by extension, university codes of conduct. Moreover, the WRC found that, under the specific protections for workers' freedom of association established by university codes of conduct, which exceed those available under Salvadoran law,⁷

⁶ Labor Code of El Salvador, Article 248.

⁷ CLC, Special Agreement, Sched. I §§ II A ("Where there are differences or conflicts with th[is] Code and the laws of the country(ies) of manufacture, *the higher standard shall prevail....*") (emphasis added) and B ("Licensees shall recognize and respect the right of employees to freedom of association....").

remedying these terminations required the reinstatement of these workers with back pay from the date of their dismissal until the date reinstatement was offered to them.⁸

III. Recommendations for Corrective Action and Current Status

The WRC communicated our findings of violations of Salvadoran law and university codes of conduct, with respect to the termination of the seven employee union officers, and our recommendations concerning necessary corrective actions to the management of Varsity Pro. After extensive engagement by the WRC with the factory's management, Varsity Pro agreed to remedy the violations that the WRC had found the factory to have committed in terminating the seven union officers by offering them reinstatement with full payment of back wages.

On September 30, 2020, Varsity Pro provided all seven of the dismissed employee union officers with offers for reinstatement as well as back wages from their dates of dismissal to the date of their offers of reinstatement. Six of the seven terminated workers chose to return to work at Varsity Pro. The back wages paid to the seven workers totaled approximately \$13,000, the equivalent of six and one-half months of back pay for each of the six workers fired in March and five and one-half months of back pay for the one worker fired in April.



Four of the workers reinstated to Varsity Pro on September 30, 2020

The WRC finds, therefore, that Varsity Pro has taken the appropriate remedial action to fully correct the violations of Salvadoran labor law and university codes of conduct that the WRC identified with respect to the termination of the seven employee union officers.

⁸ International Labour Organization (ILO), Compilation of Decisions of the Committee on Freedom of Association § 1168 (emphasizing that, with respect to “reinstatement of trade union officials to their jobs,” respect for freedom of association requires “ensur[ing] that the persons in question are reinstated in their jobs *without loss of pay* or compensation.”) (emphasis added).