

WORKER RIGHTS CONSORTIUM FACTORY ASSESSMENT

Premium Apparel (Haiti)

Findings, Recommendations, and Company Response



August 24, 2021



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I. Introduction and Executive Summary

This report discusses the Worker Rights Consortium's (WRC) investigation and remediation of a complaint regarding violations of workers' right to freedom of association in July 2020 at Premium Apparel, a garment factory in Port-au-Prince Haiti that supplies the Canadian company, Gildan Activewear ("Gildan"), with collegiate apparel that Gildan supplied to the university licensees, New Agenda and Top of the World (which, subsequent to these violations occurring, was purchased by the licensee, Fanatics, Inc.). The complaint, which concerned the mass retaliatory firing of nearly 50 workers from the factory, was submitted to the WRC by the Haitian trade union, Groupement des Travailleurs-eusses du Textile pour la Réexportation d'Assemblage (GOSTTRA), which represents workers in the country's garment sector, including at Premium Apparel.

The WRC determined that Gildan was the party directly responsible for sourcing from Premium Apparel on behalf of the licensees, New Agenda and Top of the World. For this reason and, because, subsequent to Top of the World being acquired by Fanatics in August 2020, Top of the World, for unrelated reasons, ceased sourcing from this factory, the WRC engaged directly with Gildan to investigate and secure remediations of the violations that had occurred.

The complaint filed with the WRC by the GOSTTRA union charged that on July 27, 2020, Premium Apparel fired 47 workers from the factory in retaliation for their having participated in a work stoppage and protest at the factory on July 22. The union reported to the WRC that a large number of the factory's employees participated in the work stoppage but that the company specifically targeted the employees who were the union's leaders and activists for retaliatory dismissal.

Gildan relayed to the WRC the factory's response to the union's complaint, which was to assert that it had terminated the workers in question because, during the protest, certain workers allegedly had confiscated the keys to the gate of the facility and locked the factory's exits while plant personnel were inside. The WRC's investigation, however, found that the factory had not actually determined that each of the 47 workers it fired had been involved in the gate-locking incident.

Instead, the conclusion of the WRC's investigation was that the factory's management had used the pretext of this incident to target GOSTTRA union leaders and activists at Premium Apparel for retaliatory collective punishment, in violation of their rights to freedom of association under international labor standards and university codes of conduct. This conclusion is consistent with the findings of the International Labour Organization and International Finance Corporation's (ILO-IFC) Better Work Haiti program ("Better Work Haiti"), which conducts monitoring of factories that participate in its program and issues annual reports on its findings and recommendations. In a report issued in September 2020, Better Work Haiti found that Premium Apparel's dismissal of at least 41 of the 47 workers violated workers' freedom of association rights.¹

The WRC engaged with Gildan, as the direct buyer of university-licensed apparel from the factory concerning remediation of these violations. As a result of this engagement, Premium Apparel reached out to workers and representatives of the GOSTTRA union to discuss settlement of its dispute concerning the 47 workers' termination.

¹ International Labour Organization, Better Work Haiti, *21st Compliance Synthesis Report Under the Hope Legislation: Haiti* (2020), https://betterwork.org/wp-content/uploads/2021/05/BWH_21th_Compliance_Report_Oct-2020_FR_v2.pdf.

In June 2021, union representatives and a number of the fired workers informed the WRC that the 47 workers did not wish to return to work at the Premium Apparel factory—and, therefore, were no longer seeking reinstatement—but that they were still seeking compensation from the company for having retaliatorily terminated them. Workers informed the WRC that they had met with Premium Apparel’s management which had agreed to make payments to all 47 of the dismissed workers.

Shortly thereafter, workers and the union reported to the WRC that all 47 dismissed workers had received payments from the factory. The factory’s buyer, Gildan, later reported to the WRC, and workers confirmed, that the average amount that the factory management paid to each of the dismissed workers was equivalent to eight months of salary.

However, the amounts of these payments were significantly less than the full amount of the back wages they were due and—in light of the fact that they were not returning to their jobs—the severance payments which the workers were due under applicable labor standards. The WRC communicated to Gildan that adequate remediation of the violations of workers’ freedom of association rights required that the terminated employees receive the full amount of back wages due for the period from their termination in July 2020 to June 2021, when they voluntarily waived their right to reinstatement—equal to 11 months’ pay—plus, statutory severance benefits for their prior years of service.

The WRC estimated that the average total payment that Premium Apparel should provide to each of the 47 dismissed workers was US\$1,800. Since, based on information received from both Gildan and the factory workers, the terminated employees had each already received from the company an average of US\$1,120, the WRC determined and informed Gildan that, in order to adequately resolve the freedom of association violations at the factory, the 47 dismissed workers should each receive an additional payment from the factory of \$680. Following further communications with the factory management, Gildan confirmed that these additional payments will be made to the dismissed workers by no later than August 30, 2021.

Once these additional payments have been made to the 47 former employees of Premium Apparel, the WRC will consider the freedom of association violations resulting from their retaliatory terminations to have been significantly remedied. This is due, in the main part, to engagement by Gildan with the factory’s owner, following extensive communications between Gildan and the WRC. However, the WRC notes that the fired workers’ ultimate decision not to return to the factory was a result, to a large degree, of the factory management’s refusal to reinstate them to their jobs in a timely fashion, an intransigence which both exacerbated the original violations and undermined the potential for achieving further remediation.

II. Methodology

The findings in this report are based on the following sources of evidence:

- Interviews with former employees of Premium Apparel and with representatives of the GOSTTRA union;
- Phone calls with and written communications from representatives of Gildan Activewear, including concerning the responses of the management of Premium Apparel;
- Minutes of meetings between representatives of Premium Apparel, the dismissed workers, and the GOSTTRA union;
- A review of relevant reports, correspondence, and documentation from the ILO-IFC's Better Work Haiti program, the Haitian Ministry of Labor, and the Haitian Justice of the Peace; and
- A review and analysis of applicable Haitian labor law.

III. Findings, Recommendations, and Factory Response

A. Background Information: Worker Protest at Factory on July 22, 2020

With the onset of the global Covid-19 pandemic in early March 2020, many Haitian garment factories were forced to shut down operations for many weeks, both as a public health measure and as the result of many apparel brands reacting to sudden downturns in retail sales (due to store closures and other economic disruption) by canceling orders or delaying deliveries. Over the subsequent weeks and months, Haitian garment factories began to reopen in a limited capacity and to recall their employees to work.

However, many factories still did not have enough orders to make it possible to recall their entire workforce.² At the Premium Apparel factory in Port-au-Prince, the management began to call employees back to work on a rotating schedule. Workers were asked to return to work on a partial schedule, for which they were being paid a prorated portion of their regular monthly wages.

Workers interviewed by the WRC reported that on Tuesday, July 21, 2020, factory managers at Premium Apparel issued a communication to workers indicating which portion of the factory's workforce should report to work on the following day. However, on the morning of the following day, July 22, 2020, many of the workers who were told to report were told, upon arriving at the factory, that there was not work for them to perform and that they should return home.

Workers who were among those told to return home later told the WRC that they were upset by this news, because it meant they would forfeit not only the day's wages but also the expense of transport to and from the factory. Upon learning that employees were being sent home without pay after having been told to report to work, many factory employees, including both those who were being sent home and those who had been given work, began a work stoppage and protest at the factory.

By late morning that day, discussions between management and workers resulted in the management agreeing to pay the workers who had been called to the factory but not given work their regular daily wage, and the workers and their union agreeing to end the work stoppage and return to work.

Gildan provided a written statement from three of its local auditors who reported that, at the time that the workers' protests occurred on July 22, they were at the Premium Apparel factory conducting an audit for Gildan. In this statement, the Gildan auditors reported that, at approximately 10:00 a.m., while they were inside the factory, they learned that the main gate connecting the factory to the road had been locked by one or more of the protesting workers. The Gildan auditors reported that as a result they were unable to leave the factory during the protest.

Gildan also provided a written statement from a fourth Gildan representative, who, while he described the protest as peaceful, related that, when he arrived at the factory gate, he was told by workers who seemed to be controlling access to the premises that they would let him inside but that no one would be allowed to exit. The Gildan representative proceeded to enter the premises where he met up with the other Gildan employees.

² Solidarity Center, AFL-CIO, *Back at Work, Haiti Garment Workers Risk Covid-19*, April 24, 2020, <https://www.solidaritycenter.org/back-at-work-haiti-garment-workers-risk-covid-19/>.

The fourth Gildan representative stated that, although he was told by protesting workers at the time that he entered the premises that he would not be able to leave, he and the other three Gildan employees were able to leave the factory premises at approximately 12:00 p.m. when the management was able to open the main gate of the factory to bring a shipping container onto the premises. This is consistent with the workers' testimony that the protest had concluded, and both the gate-blocking and the work stoppage had ended by late morning the same day.

The WRC also reviewed reports concerning the workers' protest that were issued by the Haitian Justice of the Peace and the Haitian Ministry of Labor, both of which had sent representatives to the Premium Apparel factory on the morning of July 22 while the protest was still ongoing, and by the ILO-IFC Better Work Haiti factory monitoring program which conducted its own investigation after the fact. The Justice of the Peace's report stated that, upon arriving at the factory, its representatives were initially told, apparently by one of the employee union leaders and two other unnamed workers, who, this report states, were controlling the factory gates, that no one was allowed to enter the factory premises.

Somewhat contradictorily, this report also states that the same employees actually did permit the Justice of the Peace's representatives to enter the factory. The Justice of the Peace's report cites the factory management, however, as stating that both their managers and the Gildan representatives were unable to leave the factory grounds during the workers' protest.

The Labor Ministry's report of its visit to the factory on the day of the workers' protest found that, given that employee union leaders (only two of whom were actually named in the Labor Ministry's report) would not let the Ministry officials through the factory gate until they had been waiting outside for 15 minutes and that the same union leaders reportedly had taken possession of the keys to the gate, these union leaders had held an illegal strike under Article 42 of the Haitian Labor code. The Ministry's report identified one of these union leaders as the "spokesperson" for the union but did not recommend that he be dismissed for participating in the incident on July 22.

The ILO-IFC Better Work Haiti program prepared its own report, based on (1) a visit to the factory by Better Work Haiti representatives, (2) their review of the reports issued by the Ministry of Labor and the Justice of the Peace, and (3) another report concerning the incident prepared by Premium Apparel's security supervisor. Better Work Haiti's report stated, "The security supervisor's report named [as responsible for the gate-blocking incident] the forty-seven union committee members [whom the company subsequently terminated *en masse*]. During interviews with Better Work advisors, [however,] the [factory's] security officers could only confirm six individuals' identities [as persons who had been involved in the incident]."³

The WRC requested, through Gildan, that the factory share the names of the six workers identified in the Better Work report as being involved in the gate-blocking incident, as well as any other evidence it had demonstrating the specific involvement of any other workers in the incident. While the factory and Gildan did provide the names of the six workers referenced in Better Work Haiti's report, only two of these workers were cited in the Ministry of Labor and/or Justice of the Peace report as having been involved in the incident. Moreover, despite multiple requests from the WRC,

³ International Labour Organization, Better Work Haiti, 21st Compliance Synthesis Report Under the Hope Legislation: Haiti.

the factory would not provide video footage from factory security cameras from the day of the incident which might show the event and those involved.

B. Mass Firing of 47 Workers in Retaliation for Nonviolent Protest

On July 27, five days after the worker protest on July 22, Premium Apparel's management called 47 of the factory employees, all of whom were GOSTRA union leaders or activists, to a meeting at the factory, where the owner of the factory appeared on a video projector to inform the workers that they were fired, effective immediately, with no payment of severance benefits. The affected workers reported to the WRC that there were police officers present at this meeting and, following the factory owner's announcement, the police officers escorted the 47 workers out of the factory premises.

The WRC made multiple attempts to communicate with the Premium Apparel factory's owner regarding the reasons for these workers' dismissals but received no response. The WRC then contacted Gildan, as the direct buyer of collegiate apparel from the factory, concerning the mass firing of employees.

In October 2020, Gildan responded by informing the WRC that the factory management had told Gildan that Premium Apparel had dismissed the 47 workers because, during the protest on July 22, these employees had locked exit doors to the factory with other factory personnel and Gildan representatives inside the building. Gildan stated to the WRC that the factory's position was that "the termination of the [47] workers ... follow[ed] a proper due process in accordance with local labour laws in Haiti."⁴

However, the ILO-IFC Better Work Haiti program, which, as noted, conducted its own onsite investigation of the mass firing on July 22 and reviewed the contemporaneous reports on the incidents that were issued by the Haitian Justice of the Peace and Ministry of Labor, concluded that the dismissals of 41 of the fired 47 workers violated their rights to freedom of association under international labor standards and Haitian law.

Better Work Haiti's public reporting of its factory monitoring during the period when the protest and subsequent mass firing took place includes a reference to "non-compliance [with respect to freedom of association] and anti-union discrimination" in July 2020 at a factory that, while unnamed in the report, is clearly Premium Apparel.

Better Work Haiti's report called for this factory to correct the violations by "reinstat[ing] 41 terminated workers" who were dismissed for a workplace protest on July 22, 2020.⁵ The report states that, while the factory terminated 47 workers for having blocked the entrance to the factory and prevented people from leaving or entering the premises on July 22, as noted above, factory security personnel were only able to identify six of the 47 fired workers as actually having engaged in this conduct. Therefore, Better Work Haiti concluded, the terminations of the other 41 workers were unlawful and must be remedied by the factory reinstating these employees and paying them back wages.

⁴ Letter from Gildan to the WRC, October 5, 2020 (on file with WRC).

⁵ International Labour Organization, Better Work Haiti, *21st Compliance Synthesis Report Under the Hope Legislation: Haiti*.

The Haitian Constitution and Labor Code protect the rights of workers to freedom of association.⁶ This right is further protected by ILO Conventions 87 and 98, both of which have been ratified by Haiti and thereby incorporated into national law.⁷ These rights are further protected by university codes of conduct⁸ and by Gildan's Code of Conduct.⁹

The right to freedom of association protects employees' rights to organize and engage in nonviolent workplace protest including the right to strike. This right is violated when, as in the case of Premium Apparel, an employer retaliates against such protests by targeting the workers who make up the leaders and activists of a union for collective punishment, even though there is only evidence of a few of these workers engaging in any actual misconduct and the remainder have merely exercised this fundamental right.¹⁰

The WRC concluded, consistent with the findings of Better Work Haiti, that Premium Apparel violated the freedom of association rights of its workers when, in retaliation for workers engaging in a nonviolent protest, its management terminated 47 union leaders and activists, even though the company failed to produce evidence that any more than, at most, a handful of these workers were involved in any misconduct in relation to this protest. As a result, the firing of these workers placed Premium Apparel in violation of Haitian law, international labor standards, and, by extension, university codes of conduct.

C. WRC Recommendations for Corrective Action

On February 24, 2021, the WRC communicated to Gildan the recommendation that Premium Apparel should immediately offer reinstatement and back pay to the 41 out of the 47 terminated workers whose dismissal Better Work Haiti had found to have violated employees' freedom of association rights. The WRC, at the same time, requested that Premium Apparel supply to the WRC whatever testimonial, documentary, or video evidence its factory management had with regard to the involvement in the gate-blocking incident of the other six workers who were terminated as part of the mass firing on July 27, in order to determine what further remediation was appropriate.

⁶ Constitution of Haiti, 1987, Section E; Labor Code of Haiti, Articles 225–228.

⁷ Haiti ratified ILO Convention 87 (Freedom of Association and Protection of the Right to Organise) on June 5, 1979, and Convention 98 (Right to Organise and Collective Bargaining) on April 12, 1957. International Labour Organization, “Ratifications for Haiti”, http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102671.

⁸ Collegiate Licensing Company (CLC), Special Agreement Regarding Labor Codes of Conduct Sched. I, §§ II (A) (“Licensees must comply with all applicable legal requirements of the country(ies) of manufacture in conducting business related to or involving the production or sale of Licensed Articles.”) and (B)(9) (“Licensees shall recognize and respect the right of employees to freedom of association....”).

⁹ Gildan, “Code of Conduct,” https://gildancorp.com/media/uploads/global/plugin/bcode_of_conduct_eng.pdf.

¹⁰ International Labour Organization, Digest of Decisions and Principles of the Freedom of Association Committee (6th ed. 2018), ¶¶ 756, 769, 784, 953, 957–958.

D. Factory Response and Remediation

The WRC first contacted Premium Apparel in August 2020 regarding the mass firing at the factory the previous month. However, after receiving no response from the factory, the WRC proceeded to engage with Gildan Activewear as the primary buyer of collegiate apparel from the factory on behalf of university licensees.

Following the WRC's subsequent extensive engagement with Gildan regarding the dismissal of the 47 workers, the owner of the Premium Apparel factory contacted the fired workers in order to reach a settlement agreement. However, Premium Apparel's owner did not offer the workers reinstatement and back pay but instead only offered to pay the workers statutory severance benefits. Significantly, though, Premium Apparel's owner agreed to make these payments to all 47 of the workers who had been dismissed.

As a result of the lengthy delay between their termination from the factory and this further engagement by the factory's owner, workers decided and informed the GOSTRA union that they did not wish to return to work at the factory. Given the workers' decision, the WRC determined that remediation of the violations of freedom of association resulting from the mass firing required payment to the workers of full back wages from the date of their dismissal, *plus* the severance benefits to which they were legally entitled.

Initially, the Premium Apparel factory only paid workers a part of the amount that the WRC determined they were due under this remediation standard. The WRC estimated, based on information received from Gildan and the dismissed workers, that the amount workers initially received from the factory was equivalent to approximately eight months' wages, or US\$1,180, per worker.

The WRC calculated and communicated to Gildan, however, that the total amount that each worker should receive in both back pay and severance was US\$1,800. Accordingly, the WRC recommended, and the factory subsequently agreed, that each worker be paid an additional US\$680 (i.e., US\$1,800 minus US\$1,180). Gildan has reported to the WRC that the factory has committed to complete these additional payments to workers no later than August 30, 2021. The WRC will monitor the situation to ensure that the factory fulfills this commitment to the dismissed workers.

Given that the dismissed workers indicated that they no longer wish to return to the factory, the WRC considers the payments to them by the factory to represent a significant degree of corrective action by its management and the factory's buyer, Gildan. However, the WRC notes that the fired workers' ultimate decision not to return to the factory was a result, to a large degree, of the factory management's refusal to reinstate them to their jobs in a timely fashion, an intransigence which both exacerbated the original violations and undermined the potential for achieving further remediation.