



WORKER RIGHTS CONSORTIUM

To: Joseph Kim and Lon Garwood, SAE-A

From: Sarah Adler-Milstein

Date: March 8, 2013

Re: Serious Labor Rights Violations at SAE-A Tecnotex and EINS (Nicaragua)

The following memorandum discusses the findings and recommendations from the Worker Rights Consortium's preliminary investigation of violations of national labor laws and buyer and university codes of conduct at the SAE-A's Tecnotex and EINS factories in Tipitapa, Nicaragua. Because these violations include incidents of physical violence against factory workers, we urge you to take immediate action to remedy them and prevent their recurrence.

The Worker Rights Consortium (WRC) is an independent factory monitoring organization whose affiliates include 180 universities and colleges in the United States, Canada and the United Kingdom. A list of WRC affiliate institutions can be found here: <http://www.workersrights.org/about/Affiliatesud1.pdf>.

The WRC monitors compliance with the labor codes of conduct adopted by those universities for the manufacture of their licensed apparel. Where the WRC identifies violations of these codes, we work cooperatively with representatives of factory management, workers, government, brands, and our own constituents to achieve effective remediation.

Because the Tecnotex factory has been disclosed by Gear for Sports as a supplier of collegiate apparel under its Under Armour by Gear for Sports label, it is subject to university codes of conduct. As both Tecnotex and EINS also produce apparel for other US apparel firms, including Target, Wal-Mart, Kohl's and J.C. Penney, it is required to comply with those firms' codes of conduct as well.

I. Summary

On February 21, 2013, workers from the EINS and Tecnotex factories forwarded to the WRC a written complaint they had sent to the factories' buyers alleging that SAE-A management had committed serious violations of their associational rights, including the termination of 16 workers in retaliation for protected union activities. Subsequently, on Monday March 4, 2013, the WRC received a report that SAE-A's management fomented a violent mob attack on workers who were engaged in peaceful protest outside the Tecnotex and EINS facilities.

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The WRC's preliminary investigation of the latter incident finds that SAE-A brutally violated these workers' associational rights by directing and paying a mob of more than 300 other workers – while on paid company time – to attack these employees with scissors and metal pipes, and failing to instruct its managers and security guards to intervene and prevent this violence. Below is a detailed review of the allegations received by the WRC concerning these violations, the findings of our preliminary investigation, and our recommendations for their immediate remediation.

II. Violations Alleged

A. Retaliatory Termination of Employee Union Leaders and Members

In their February 21, 2013 communication to SAE-A's buyers, the trade unions, Sindicato el Esfuerzo Unido (United Effort Union) and Sindicato Carlos Fonseca Amador (Carlos Fonseca Amador Union), whose members are employees of the EINS and Tecnotex factories, respectively, allege that SAE-A management contested the validity of the unions' registrations with the Ministry of Labor, attempted to coerce employee union officers to resign from the union, and conducted retaliatory firings of many of the workers who were listed either as the unions' officers or founding members on the registration applications that the unions filed with the Ministry.

At the EINS factory, the complaint alleges that nine workers who are members of the Sindicato el Esfuerzo Unido were terminated between September 2012 and January 2013 in retaliation for their associational activities. Seven of these workers were named in the union's registration forms as its founders or officers.

The complaint also alleges that at the Tecnotex factory, which is located in the free trade zone adjacent to the EINS factory, seven workers were fired in retaliation for exercising their associational rights by forming the Sindicato Carlos Fonseca Amador. The union reports that the company terminated two of these workers in July and September during the period when the union was being formed, and that it fired the remaining five workers after the union had been officially registered.

The union alleges that the company terminated these workers as part of an explicit campaign by the company against union supporters that began immediately after the latter submitted the union's registration to factory management on October 25, 2012. Specifically, workers report that Human Resources Manager Jasmina Calvor informed employees that she would get rid of the union, as she claimed to have done in response to a previous unionization effort in 2009,¹ and met several times with factory supervisors and managers, instructing them to convince the workers to withdraw their union membership. The worker complaint also alleges that a factory manager named Daniel interrogated employee union officer Jeskin Betanco as to why he had joined the union, pressuring him to withdraw his membership.

¹ In 2009, the Nicaraguan Ministry of Labor found that Tecnotex had violated Nicaraguan law and ILO Conventions by firing 14 union leaders. Ministerio del Trabajo, "MITRAB deja sin efecto despido de 14 sindicalistas de SAE-A TEXTONEX," News Release (2009), <http://www.mitrab.gob.ni/news/2009/mitrab-deja-sin-efecto-despido-de-14-sindicalistas-d-e-sae-a-textonex>.

The WRC further investigated the union's allegations at both factories. While most of the fired workers were reluctant to give testimony due to their fear of reprisal, the testimony provided by the Secretary General of the Sindicato el Esfuerzo Unido at EINS, Evertz Niño, corroborated the allegations detailed in the February 21, 2013 memo. Niño provided detailed testimony that, on September 24, 2012, he was called to a meeting with Human Resources Manager Yamileth Sequeira Vega and a manager known to the worker by the name Hoo, both of whom asked Niño if he was organizing a union, told him he was going to be dismissed and then attempted to bribe him to withdraw from the union. Niño says that Vega and Hoo told him that they had spoken with senior managers Michael Koon and Eduardo Mennicucci and that the company was in the position to offer the worker 90,000 córdobas if he would leave the company and break up the union. When Niño declined their offer, Vega told him, "You will be sorry." The worker was then terminated.

However, on October 6, 2012, Niño was called back to work at the plant, informed by the Human Resources Department that they no longer believed that there was any union organizing occurring at EINS. Four days later, on October 10, Niño visited the Ministry of Labor on behalf of the union to present the union's registration. Upon returning to the plant to resume his work, Niño was called into Human Resources. The worker reports that the manager Vega told him that he was fired and said to him, "Now we know the truth, you presented the union registration to the Ministry of Labor . . . I'm 100% sure because the Ministry of Labor notified me that you were there."

Niño was provided with no severance payment and subsequently left the factory. During the week of October 15, he received a call on his cell phone. The caller identified himself as Human Resources Manager Eduardo Mennicucci. Niño gave testimony that the caller told him, "You are missing out on a great offer, what more can you want than 90,000 córdobas? Stop screwing around and come and collect the money." The worker reported that he received another similar call later the same day telling him to come into the factory with three of the other workers who had also been fired from EINS as a result of their union organizing. That afternoon, Niño went to the plant together with the other workers and Mennicucci offered to reinstate them if they would drop the union organizing campaign. The workers refused the offer.

Later that same week, Mennicucci reportedly called Niño again and told him, "Look, if you don't take the 90,000 córdobas that I am offering you, you're going to be left without severance." On November 5, 2012 Niño went to the factory to collect the severance to which he was legally entitled and was told by Mennicucci and by Vega that he was not entitled to any severance. Niño reported to the WRC that Vega told the worker, "We told you that you would be sorry, now you are seeing the results, we already paid you your severance."

On Wednesday, November 14, the head of the Free Trade Zone Corporation, Ramiro Blanco, called Niño to a meeting with Mennicucci and Vega. Blanco told the worker that he understood that the worker had already received his severance and was now claiming that he had not. According to Niño, Blanco then threatened to call the police and accuse him of misrepresenting the situation, telling the worker that if he were found guilty he could go to jail for six months. The worker agreed to undergo a police investigation and informed the WRC that, in December

2012, the police investigation found in his favor, stating that the company had falsified the worker's signature and that, in fact, he had never received payment of his severance.

In the case of the EINS factory, the union held its constitutional assembly on September 22, 2012. Nicaraguan law protects the first 20 founding members of a new union and the union's registered leaders under a law known as *fuero sindical*.² *Fuero sindical* protects union leaders from retaliatory firings due to their union activities by requiring the employer to demonstrate just cause for firing a union leader and such firings may only take place after obtaining prior approval from the Ministry of Labor. For those workers not among the 20 founding members or part of the official leadership of a registered union, Nicaraguan law also prohibits the termination of any worker in retaliation for their exercise of freedom of association.³ The union reports that seven of the nine unionists fired were protected by Nicaraguan law under one of these two provisions and that the two other workers were fired after the union had filed its registration with the Nicaraguan Ministry of Labor. As reported above, the factory was clearly aware of the union's registration on this date.

At the Tecnotex factory, the union held its constitutional assembly on October 19, 2012. In the case of this factory, the union reports that four of the seven workers that were fired were protected by *fuero sindical* and the other three were union activists.

Both university and buyer codes of conduct require that employers comply with national labor laws and respect workers' rights to freedom of association.⁴ Nicaraguan labor law prohibits the termination of the members of a union's executive committee without a showing of just cause and approval from the Labor Ministry. The WRC has not yet reviewed the documentary evidence relevant to the union's registration, the management's subsequent appeal of the registration, and the documents related to the lawsuit still in process regarding the union's registration. As a result, the WRC's findings regarding violations of *fuero sindical* are not final.

Although the WRC has not been able to interview all of the affected workers, we find that the allegations of retaliatory and illegal dismissals in this case are sufficiently credible and of such seriousness to shift the burden to the company to either present evidence that it has not engaged in such retaliation or take remedial action to remedy the chilling effect on workers' associational

²Labor Code, Art. 231 (establishing "the right of union leaders to be neither sanctioned nor fired without just cause" and that workers protected by this right "cannot be fired without prior authorization from the Ministry of Labor;") Labor Code Art. 233 (adding that "workers who express their will to organize a union by notifying the Ministry of Labor will enjoy state protection against unjustified dismissal starting at the time of the notification during the periods determined by law for their enrollment for a maximum of ninety days....," and that, "if the employer considers that there has been just cause to fire or transfer someone [subject to this protection], he should obtain prior authorization from the Departmental Inspectorate.")

³Labor Code, Art. 46 (requiring as a remedy for "an[y] act which restricts the rights of a worker or has the characteristics of retaliation against him or her for having exercised or attempted to exercise his or her labor or union rights..." that the employer reinstate the worker "in the same position previously employed and with identical working conditions, with an obligation by the employer . . . to pay back wages").

⁴ See, e.g., Collegiate Licensing Corporation, Special Agreement on Labor Codes of Conduct (Jan. 2008)(requiring compliance with "all applicable legal requirements of the country(ies) of manufacture" and "respect [for] the right of employees to freedom of association and collective bargaining"); Wal-Mart, *Standards for Suppliers* ("Suppliers must respect the right of workers to choose whether to lawfully and peacefully form or join trade unions of their choosing" and "must fully comply with all applicable national and/or local laws and regulations."), <http://corporate.walmart.com/global-responsibility/ethical-sourcing/ethical-standards-resources>.

rights. Consistent with Nicaraguan law and established international jurisprudence concerning the protection of freedom of association, this remedial action must include, at a minimum, reinstatement of the terminated employees with full back pay from their respective dates of termination.⁵

B. Violence Against Employee Union Leaders and Members

Due to the particular severity of the violations alleged in this area, the WRC has focused its initial investigation on the violent attack on employee union leaders and members on March 4, 2013. The WRC has reached the following preliminary findings with regard to this incident:

In protest of the terminations of its leaders and members and other alleged acts of retaliation by the company, the Sindicato el Esfuerzo Unido and the Sindicato Carlos Fonseca Amador organized a rally outside the gates of the Tecnotex factory on March 4, 2013. The unions' members and leaders and several members of unions at factories in other free trade zones began to gather outside the factory at 5:00 a.m.

One of the former employees who participated in the rally testified to the WRC that, at approximately 7:00 a.m., he heard the company's public address system direct security guards at the Tecnotex factory that they should open the factory's gate to allow workers from EINS to cross the street to the Tecnotex factory. Workers interviewed reported that only General Manager Eduardo Mennicucci is authorized to use the public address system to communicate with the security personnel. Shortly thereafter, a large group of employees from the EINS factory crossed the street in groups of approximately 50 workers, with the Tecnotex security guards opening the factory gate for them.

Several employee union members who were attending the rally reported that during this time they received phone calls from workers inside the EINS factory informing them that supervisors in the Cutting Department and Human Resources Managers were instructing employees to go outside and break up the unions' rally, because the rally was threatening the company and the employees' jobs. These managers reportedly told workers that they would still receive their daily production bonus, would receive an additional 100 córdobas, and would be given a free lunch, if they would break up the union's rally.

Witnesses reported that at approximately 7:30 a.m. a group of roughly 300-350 workers, including both those workers who had previously come from the EINS factory and an additional 150 workers from the Tecnotex factory itself, violently attacked the roughly 30 employee union leaders and members who were holding the rally, striking them with metal pipes, belts and scissors.

Neither police, who had been called to the scene, nor company security guards intervened to stop the violence, and witnesses reported seeing security guards mocking the victims as they were

⁵ Ibid.; ILO, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* ¶ 837 (2006) ("No one should be subjected to anti-union discrimination because of legitimate trade union activities and the remedy of reinstatement should be available to those who are victims of anti-union discrimination.").

being beaten. The mob also broke the sound system that the union had rented for the rally as well as a video recorder and several cell phones.

Several of the employee union members reported that they attempted to escape by fleeing the area but were followed by their attackers who kicked them and beat them with metal pipes. One of the victims, who was badly beaten, also had his wallet, along with 1,500 córdobas and his personal identification documents, stolen by his assailants.

At least six of the victims reported serious injuries including a broken nose, black eyes and stab wounds, and at least one case where the victim was stabbed in the face. Witnesses reported that the workers involved in the attack were permitted to return to the workplace after the rally broke up.

The WRC is currently investigating reports we have received of government harassment of union officers and members from the Sindicato el Esfuerzo Unido subsequent to the March 4, 2013 attack. The factory's attacks on these workers may be making them a target for such intimidation and harassment and SAE-A will bear a share of the responsibility if workers are so persecuted.

SAE-A's fomenting, facilitating, and, in essence, bankrolling a violent mob attack on employees engaged in peaceful exercise of associational rights constitutes a very severe violation of Nicaraguan law and buyer and university codes of conduct. Article 17 of the Nicaraguan Labor Code requires employers to "abstain[] from mistreatment of word, deed or omission and all acts which could affect their [workers'] dignity and decorum." As noted, the Labor Code also prohibits employers from engaging in "an[y] act which restricts the rights of a worker or has the characteristics of retaliation against him or her for having exercised or attempted to exercise his or her labor or union rights...."⁶ Because this violence was inflicted on workers for the very reason that they were engaged in associational activities, it represents a clear act of retaliation by the employer aimed at repressing the free exercise of this right.

III. Recommendations

Given the severity of the allegations arising in this case – with respect to both those allegations where the WRC has already reached preliminary findings of fact and those where we, as yet, have not, the WRC finds that immediate action is required to prevent further irreparable damage to workers' fundamental rights and physical safety. The WRC recommends that SAE-A take the following actions with regards to its Tecnotex and EINS facilities in Nicaragua:

- Identify and terminate any managers or supervisors involved in inciting or permitting the violence on March 4, 2013 and impose significant disciplinary action against all managers involved in illegal firings and anti-union threats. In addition, workers who directly committed an assault on March 4, 2013 should be terminated.
- Immediately instruct all managers and employees that any further violence, intimidation or threats will not be tolerated.

⁶Labor Code, Art. 46.

- Issue a public written apology to, and financially compensate, all persons injured during the mob attack on March 4, 2013 for any medical costs incurred due to the violence inflicted upon them, and for any economic harm suffered due to the damaging, destruction or theft of audio and video equipment, mobile phones, money and personal documents.
- Unless SAE-A can provide compelling evidence that these terminations were justified for business reasons unrelated the employees' associational activities, immediately reinstate the following workers with seniority and back pay with interest from the respective dates of dismissal:

- ***From Tecnotex:***

- Daysi Otilia Lozano Aragon
- Harrison Ezequiel Ortiz Flores
- Elena Flores Sequeira
- Edgar Gerardo Martinex Flores
- Jonathan Josue Comingez Alvarado
- Darmin Andres Lopez Alaniz
- Rudy Izan Garcia Ramirez

- ***From EINS:***

- Evertz Joel Niño Reyes
- Dulce Maria Castillo Galiano
- Pedro Jose Espinoza Gonzalez
- Edwin Raúl Salmerón Artola
- Claudia Ivania Centeno Galiano
- Yesenia Ortiz Ortega
- Rosa El Carmen Membreno
- Corina Adilia Diaz
- Brenda Huembes Rodriguez

- Unless SAE-A can provide compelling evidence that it has legitimate grounds for failing to do so, immediately cease any legal proceedings to contest the registration of the Sindicato el Esfuerzo Unido and the Sindicato Carlos Fonseca Amador and commence regular management-union meetings with their leadership.
- In coordination with the Sindicato el Esfuerzo Unido and the Sindicato Carlos Fonseca Amador, issue a verbal and written statement, reviewed in advance by the WRC, to workers at Tecnotex and EINS that SAE-A will respect their right to join the union of their choice and that no worker will suffer any negative consequences for doing so.
- Commit in writing to permit the Sindicato el Esfuerzo Unido and the Sindicato Carlos Fonseca Amador's parent union federation, FESTMIT, reasonable access to the Tecnotex and EINS factories to meet with employees and represent union members.

In light of the urgency of this situation, we request that you provide a response to our preliminary findings and recommendations by Tuesday March 12, 2013, so that we may inform the WRC's

affiliate universities and colleges of SAE-A's intentions in this regard. We look forward to meeting with your representatives to discuss the implementation of the very important remedial measures that we have identified.

CC:

Rajan Kamalanathan, Wal-Mart

Steven Brunn, Target

Adam Whinston, J.C. Penney

Sigrid Dyne, Kohl's

Michael Levine, Under Armour

Dana Schlemmer, Gear for Sports