WORKER RIGHTS CONSORTIUM

To: Primary Contacts, WRC Affiliate Colleges and Universities
From: Scott Nova, Worker Rights Consortium
Date: August 3, 2006
Re: Crisis at BJ&B (Dominican Republic)

As you probably know, BJ&B, the cap factory in the Dominican Republic that has been the subject of substantial university code enforcement work, is on the verge of closing. I write to update you on the situation and to express the WRC's concerns about the approach that BJ&B's customers, including university licensees, and its parent company, Yupoong, have taken in this case.

Background on the situation at BJ&B

BJ&B represents one of the most significant achievements to date in the effort to improve working conditions in factories producing university logo goods. With the involvement of both the WRC and the FLA, and after many years of courageous efforts by workers, the factory went through a process of very significant change: eliminating long-standing worker rights abuses (such as constant forced overtime) and finally ending a years-long campaign of illegal retaliation against efforts by the workforce to unionize. At the end of 2002, BJ&B recognized workers' decision to form an independent union and, the following spring, factory management and the new union negotiated a contract which included substantial gains for workers. At that time, there were high hopes about BJ&B's future and about its potential to serve as a model for other factories.

Now, three years later, the workforce at the factory has been reduced from nearly two thousand to barely a few hundred. Several of the licensees that have used the factory in the past have left (these include Reebok, now owned by Adidas, Merge Left, Advon, Brine, and Town Talk). And the licensee that remains, Nike, appears to have substantially reduced orders. Based on factory management's recent statements to workers, closure now appears to be the likely outcome.

We recognize, of course, that factories do close and that sometimes such closures are unavoidable and unrelated to labor rights issues. We are concerned, however, that in the case of BJ&B, there may be a direct connection between the factory's imminent closure and the labor rights improvements that were achieved.

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Information on BJ&B's loss of orders

As the licensee with the largest amount of collegiate production at BJ&B from the outset, Nike bears the greatest responsibility for upholding worker rights standards at the factory and Nike is, therefore, the primary focus of this analysis.

Nike has explained BJ&B's failure to attract business as follows: Nike states that there has been a substantial decline in demand for the kind of cap BJ&B produces (a cap that Nike describes as having a "hard profile") and that BJ&B does not have the capacity to produce other types of caps. Nike further says that BJ&B's lead times (the time it takes from the date an order is placed to the date of delivery of the caps to the U.S.) are longer than those of other Nike cap suppliers. Nike has also stated that the price BJ&B charges is high relative to the price charged by other Nike cap suppliers. Nike says it has urged BJ&B's parent company, Yupoong, to diversify the factory's production capacity but that Yupoong has not done so.

Codes of conduct, as currently crafted, do not require a licensee to maintain production at a particular facility, even if that facility has made major strides on labor rights issues. In this case, however, I am concerned that Nike (and other licensees) may, in effect, be penalizing BJ&B *because* of the labor rights improvements the factory had made. If the relatively higher prices are, in part, a product of improved working conditions and respect for workers' associational rights; if the longer lead times are, in part, a product of the elimination of forced overtime; and if Nike (and other licensees) are now producing comparable caps at facilities that have not made such improvements and can therefore offer lower prices and faster delivery times, then this would indeed constitute a violation of the spirit, if not the letter, of university codes of conduct. If, on the other hand, declining demand for the type of cap in question is forcing Nike's hand and that of the other licensees; if Nike and the other licensees are not producing comparable caps at other facilities with inferior working conditions (either the other factories owned by BJ&B's parent company, Yupoong, or factories operated by other suppliers); and if the higher prices and longer lead times at BJ&B are entirely unrelated to improved respect for workers' rights; then, of course, the story would be different.

In an effort to obtain a clear picture of what is happening at BJ&B and of the underlying causes, the WRC, on behalf of a number of major universities, submitted a request to Nike for basic information on Nike's relationship with BJ&B and Yupoong. We asked for the information (changes in order volume over time, changes in the prices paid by Nike to the factory, an outline of where Nike produces comparable caps around the world) that would be necessary to answer the questions outlined above (I have attached a copy of that data request to this message).

Unfortunately, Nike has not provided any of the data (the request was originally made in June). Nike representatives say they experienced difficulty receiving our emails, and

that this is why the company did not reply initially. However, Nike did ultimately acknowledge receipt of the request and, nonetheless, has neither provided the data nor offered us any indication as to when or if the data will be supplied. It would seem that if Nike considers its actions to be appropriate, and if the data bear this out, the company would have been forthcoming with this information – and, in view of the possible imminent closure of the factory, that they would have sought to provide it in a timely fashion.

WRC Analysis

Lacking the information that would allow the WRC, and the university community, to gain a complete understanding of the causes of BJ&B's crisis and the licensees' role, we are left to analyze the situation, as best we can, based on the limited information we possess.

With this caveat, I want to offer you our best sense of what is happening and why it is happening:

1. It now appears that neither Yupoong, nor Nike and the other university licensees that have used the factory, were ever enthusiastic about supporting BJ&B and ensuring its success after the labor rights breakthrough was achieved. In Yupoong's case, the likely reason is that the company concluded that a union factory in the cap industry was likely to be unprofitable – or at least not as profitable as Yupoong's non-union production facilities in Vietnam and Bangladesh. As for the licensees, it is not clear why they have provided so little support for BJ&B. Reebok/Adidas left somewhat more than one year after the labor rights gains were achieved at BJ&B. Other licensees that had used the factory provided little or no business in the years after the union was recognized. Nike, to its credit, stuck around longer than the others, but it did not reward BJ&B for its exemplary progress on labor rights by expanding orders or making any longer-term commitment to the factory.

2. BJ&B's viability was undermined by the apparent decision of Nike (and, we believe, Reebok/Adidas as well) to insist on price reductions for the factory's caps. We do not know for sure that this occurred; Nike has not been willing to provide the data on pricing that we requested on behalf of concerned universities. However, it is our best sense that these demands for price cuts did occur. BJ&B's laudable efforts to improve labor conditions, and its decision to negotiate in good faith with the union, inevitably increased the factory's production costs. The decision of customers to insist on lower prices even as the factory was incurring the higher costs of true labor rights compliance, if this is indeed what came to pass, would have dealt a serious blow to the factory's prospects. And it would have given Yupoong an incentive to reduce production

at BJ&B and ultimately close the factory in favor of its other facilities – both of which are located in countries where unions are effectively banned and lower costs can thus be achieved. Indeed, this is exactly what Yupoong appears to have done. Although Nike says that it encouraged Yupoong to improve and diversify BJ&B's production capacity, Yupoong made no such investments in the facility. Instead, the opposite occurred – Yupoong progressively disinvested from BJ&B. Machines were removed from the factory (including, at one point, the entire embroidery department), and production lines were shut down.

3. The higher costs and slower delivery times that Nike cites probably are, at least to some degree, a product of the positive changes the factory has made. Eliminating forced overtime necessarily reduces a factory's ability to deliver orders fast. Negotiating a union contract with better benefits necessarily raises a factory's costs. Clearly, even if all other things were equal, BJ&B, with its better labor conditions, could not compete purely on price with factories in China, Vietnam and the Bangladesh free trade zones, where unions are non-existent. Indeed, the only way a factory like BJ&B that substantially improves labor conditions can remain competitive over time is if its customers reward its exemplary progress on labor rights in some meaningful way – with better prices, and/or more reasonable demands on delivery time, and/or expanded orders.

In summary, it appears that BJ&B is the victim of two related sets of actions:

1. The failure of university licensees (and the factory's other former customers) to reward BJ&B for its labor rights progress, or even to maintain order levels over time, and the expectation of these companies that BJ&B should somehow offer the same prices and turnaround times as factories unencumbered by any commitment to respect associational rights; and

2. Yupoong's progressive disinvestment at BJ&B, in response to the licensees' sourcing decisions.

Conclusions

Thus, the specific complaints about BJ&B that Nike offers as justification for its decision not to place more business there – higher prices, slower delivery, Yupoong's failure to invest in the factory – may well be facially valid. However, the important question to ask is why these circumstances exist. If they exist because BJ&B took codes of conduct to heart, while its competitors did not, and because licensees were not willing to take the higher costs of code compliance into account in their dealings with BJ&B, then it does not seem reasonable to blame Yupoong while letting the licensees off the hook.

The fact that BJ&B's crisis has developed slowly makes it more difficult to reach definitive conclusions about causation. Clearly, existing codes of conduct prohibit a

supplier from closing one of its factories because workers have chosen to unionize. Clearly, existing codes also prohibit a licensee from pulling orders from a factory because workers have chosen to unionize. If such actions were to occur immediately after unionization, the connection would be obvious.

A more difficult question, however, is what happens, as in the case of BJ&B, when licensees do pull out after unionization, and the parent company does disinvest – but all of this happens over a period of several years? If the mere fact that the process played out over a substantial period of time is a basis for absolving both the licensees and the parent company of responsibility, then this creates a very large loophole for licensees and suppliers. All a licensee has to do, when it does not want to continue dealing with a union factory, is reduce orders gradually, over time, thus hastening the factory's demise. All a supplier that wants to get rid of a union factory has to do is disinvest slowly – and eventually shut down the factory. Then, when the factory is on the verge of closure, the licensees can evade responsibility by blaming high prices, a failure by the parent company to invest in the facility, or reduced demand for the factory's product. If the licensees then refuse to provide data to support these claims, universities and their monitoring agents have no way to determine, definitively, whether these problems exist and, if so, whether there is a connection between higher prices and better labor practices or between declining orders and the decision of the parent company to disinvest. The factory, in turn, can evade responsibility by blaming everything on the licensees. The factory closes, the workers lose their jobs, the message is sent to workers and managers at other factories that unionization and respect for worker rights lead to economic failure – and no one is held accountable for the outcome. Our fear is that this is what has happened in the case of BJ&B.

Recommendation

BJ&B's closure would have major consequences, not just for the workers at the factory, but for the entire code of conduct effort. This is a very high profile case. If the factory does close, it will send a powerful message to other factories in the region, and around the world, that truly respecting worker rights, especially the right to unionize, is incompatible with economic survival in this industry.

I want to stress that it is not too late for BJ&B. At present, neither the licensees, nor Yupoong, seem disposed toward any serious effort to save the factory. However, if Nike and/or Reebok/Adidas were to reverse their position and make the survival and success of BJ&B a priority, if they were willing to offer Yupoong prices and commitments sufficient to make re-investment in BJ&B a feasible proposition, I am confident that Yupoong would respond by making whatever improvements at BJ&B the licensees might want, by rehiring workers, and by keeping BJ&B a going concern. It is our hope that the licensees will pursue this course. In view of the history, and for the reasons

outlined above, we believe it is reasonable for universities to expect the licensees to do so.

We recommend that universities that are in a position to influence the licensees contact Nike and Reebok/Adidas and urge them to recognize the importance of BJ&B to the broader labor rights effort and take meaningful and timely steps to ensure the factory's survival.

I am sorry that we cannot provide you with a more definitive analysis of this complex situation. Nike's unwillingness to supply the data we requested (and Reebok's earlier refusal to provide similar data at the time of its departure from the factory) has left us without clear answers to a number of questions. However, given the effort universities and their monitoring agents have invested in the factory over the years, and given the urgency of the present situation, we felt it important to provide you with an update and a recommendation at this time, based on a careful analysis of the information that is available to us.