



WORKER RIGHTS CONSORTIUM

Case Summary: Gina Form Bra (Thailand) December 19, 2006

In response to a request from worker representatives in Thailand, the WRC has been working to address issues surrounding the closure of a factory known as Gina Form Bra (hereafter referred to as “Gina”). The factory closed on October 20, 2006 and production was shifted to a new facility in China operated by Gina’s parent company. Prior to the closure, the Gina factory employed roughly 1,600 workers. Gina has been a manufacturer of undergarments for the Limited Brands (whose labels include Victoria’s Secret and La Senza), Gap, Calvin Klein, and Charming Shoppes among others.

Gina is a factory widely recognized within labor rights circles as a rare example of fair working conditions and positive industrial relations in the export apparel industry. Following a labor dispute that brought the factory to international attention in 2003, Gina made unprecedented improvements in the level of respect for labor rights. Most notably, following a decision by the majority of the workforce to affiliate with an independent trade union, factory management recognized the union and engaged in a process of good faith negotiations, leading to substantial improvements in conditions at the factory. This included significant increases in wages and benefits, important improvements in health and safety conditions in the factory, and the establishment of an effective grievance procedure and regular labor-management meetings which proved highly effective in addressing labor rights problems as they arose. Over the past several years, Gina has stood as an example of the positive improvements that can be made in workplace conditions as a result of collaboration among apparel brands, factory management, unions, and labor rights advocates in the enforcement of codes of conduct.

Although the factory has not been involved in the production of collegiate apparel, the WRC, in response to the news of the planned closure, decided for several reasons to become involved in this case: 1) because of the importance of Gina in the labor rights context; 2) because we were asked to intervene by the union that represents workers at the factory and by other concerned organizations in the United States, Thailand and Hong Kong (where Gina’s parent company, Clover Group, is based); and 3) because we have a long-standing relationship with Gina’s primary customer, Limited Brands, and we believed we were in a position to influence Limited’s response.

The initial phase of our inquiry into this case focused on determining the reasons for Gina’s closure and whether the decision could be reversed. The closure was announced to the workforce in September, at which time Gina management indicated the factory would

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close on October 31. Production was to be shifted to China where Gina's parent company was opening a new facility.

Management provided contradictory justifications for the closure, telling workers that the closure was due to a preference on the part of Clover's buyers for goods produced in China, while telling buyers that the factory was not profitable and had been operating at a considerable loss for some time.

The WRC sought to determine the veracity of these contradictory claims. With regard to the first explanation, that Clover's buyers had indicated they wanted their goods produced in China rather than Thailand, each of the brands involved denied having expressed a preference for Chinese-made goods. (Limited Brands did, however, claim that it was more expensive to ship their goods from Thailand compared to China, Sri Lanka, and some other countries in the region from which they source, and that they intended, going forward, to reduce their Thai sourcing). Clover did not provide any documentation demonstrating the brands' alleged preference for Chinese production. With regard to the second claim, Clover was unable to provide any documentation demonstrating Gina's alleged financial difficulties. In addition, the factory's behavior over the past year, including negotiating wage increases with the union, contradicted the claim that the factory had been losing money.

Given the lack of any apparent business necessity for closing the factory, and Clover's use of pretexts to justify the closure, the WRC concluded that there was a substantial likelihood that a desire to escape the obligation to respect workers' associational rights was a significant motivator for Clover's actions – which is a violation of the freedom of association provisions of the codes of conduct of Clover's customers. Along with other stakeholders, the WRC urged the factory's buyers to press Clover to keep the Gina factory open. Their efforts were unsuccessful, in our view because the brands failed to bring sufficient pressure to bear.

The factory eventually closed on October 20, nearly two weeks before the closure date that Clover had originally announced. The closure occurred while a delegation of union leaders from Gina was in Hong Kong attempting to negotiate an agreement with the Clover Group to keep the factory open. Gina management brought ten police officers and approximately twenty people in plain clothes (some of whom had previously been identified to Gina workers as government soldiers by Ministry of Labor staff) to forcibly remove workers from the facility. In the presence of the military personnel, factory management also pressured workers to sign letters of resignation, rather than be terminated (under Thai law, the factory's severance obligations would be far less if workers voluntarily resigned their positions, something that was clearly not in the workers' interest to do). It is important to bear in mind that management's use of military intervention to pressure workers occurred in the context of the recent military coup in Thailand. The coup has led to strict limitations on dissent and protest of any kind, severely restricting the Gina workers' ability to contest the closure within the Thai context. Under these circumstances, Clover's use of the military to coerce workers who had themselves engaged in no unlawful activity, which would be unacceptable under any

circumstances, is particularly egregious. The WRC notified Clover's customers of these violations and urged them to demand an immediate cessation of Clover's efforts to use the military and police to intimidate workers.

Once the closure was final, the various labor rights organizations involved in the case turned their attention to severance payments. As in many countries, although significant severance payments are mandated by law in Thailand, workers often do not receive the money they are due when a factory closes. In the case of Gina, the issue of severance was particularly important because most of the workers are significantly older than the typical apparel worker, in their 30s and 40s, and cannot realistically expect to be reemployed in the industry.

The WRC engaged in a series of extensive discussions with Limited Brands in late October and early November, pressing the company to insist that Clover fulfill to the letter its legal obligations to the workers and that there also be consideration of compensation beyond that mandated by law. The latter was warranted in this case because of the anti-union motivation underlying the decision to close the factory and because of the particular hardships faced by this older group of workers. We also communicated with other buyers and coordinated our efforts with a range of organizations in Thailand, Hong Kong and elsewhere that were also working on this case. Among other steps, we 1) pressed Limited Brands to compel Clover to negotiate directly with the union, which Clover ultimately consented to do, after several weeks of resistance, and 2) asked Limited to send representatives to Thailand to participate directly in the negotiations, which they ultimately did. These efforts, combined with the union's advocacy, produced a positive settlement between the union and Clover, reached on November 12.

There are two Thai laws that regulate the payment of severance upon the closure of a business. The first, the Labor Protection Act, stipulates the amount of severance that employers must pay when workers are laid off. The required amount ranges from one to ten months' pay per worker, depending on seniority. Clover, under pressure from its customers, paid the amount required under this law in full immediately following Gina's closure on October 20; the payments totaled roughly \$2.3 million, or an average of eight months' salary per worker. The second law, the Labor Relations Act, regulates payment of contractual bonuses and other negotiated payments that are due workers in the case of a factory closure. According to this law, which is violated with great frequency by Thai employers, Gina workers were owed roughly \$500,000 in additional payments. Clover did not make these payments upon the closure of the factory, but ultimately agreed to do so as part of the November settlement. Under the terms of the settlement, Gina workers will receive additional compensation totaling \$1.6 million. This covers the \$500,000 the workers are owed under the Labour Relations Act, plus \$1.1 million in additional severance. This corresponds to roughly 3 ½ months' additional salary for each worker. The amounts involved are unprecedented for a factory closure in Thailand, where it is rare for workers to receive even the compensation to which they are entitled by law.

Overall, the results of the Gina case can only be viewed as mixed. On the one hand, it is very positive that workers will receive not only their full terminal benefits, and the other unpaid compensation, but also additional compensation above that, which should provide the workers and their families with at least a financial cushion as they undertake the difficult task of finding new employment. At the same time, Gina serves as another example of a factory that made great progress (and in this case was a recognized symbol of the potential for effective code enforcement) and then was shutdown within the space of a few years. The tendency for factories that genuinely respect the rights of their employees to lose business from brands and retailers and/or to be shut down by their parent companies so that production can be shifted to other facilities with lower labor costs and inferior labor conditions, is obviously highly damaging to code enforcement efforts in the apparel industry.

The performance of the key buyer in this case, Limited Brands, was also mixed. In our view, had Limited Brands applied greater pressure than they were ultimately willing to apply, Clover might have been compelled to keep the Gina facility open. Unfortunately, Limited Brands was itself unenthusiastic about maintaining production in Thailand of the type of underwear produced by Gina, despite the importance of Gina as a key example of the positive impact of Limited's code of conduct enforcement efforts. This clearly dampened Limited's willingness to act aggressively to keep the factory open. At the same time, pressure from Limited was instrumental in achieving the severance settlement, which was a substantial accomplishment, even though the final amount was below what the NGOs involved in this case had hoped would be paid. It is also important to note that Limited Brands played a critical role in the efforts in 2003 that led to the labor rights breakthrough at Gina. It is fair to say that, relative to the industry norm, Limited's overall record at Gina is a clearly positive one. When measured against a different standard, the full protection of the rights of workers, including the right to form a union without fear that this will lead in relatively short order to factory closure and the loss of one's job, Limited's efforts at Gina cannot be viewed as a success. More could have (and under Limited's own code of conduct, should have) been done.