



WORKER RIGHTS CONSORTIUM

Case Summary: New Holland (Nicaragua)

June 1, 2008

New Holland is an apparel factory in Managua, Nicaragua which produces goods for Under Armour, among other brands. It is owned by the Pennsylvania-based New Holland Lingerie, Inc., which has been disclosed as a supplier to university licensees Nike and adidas. During July 2007, the WRC conducted an inquiry in response to a complaint from workers at the factory alleging code of conduct violations.

At the time the WRC received the complaint, workers had recently organized a labor union to try address what they viewed as labor rights violations: the workers alleged verbal harassment of workers, forced overtime, and unclean restroom facilities, among other problems. The primary subject of the complaint was that the company had allegedly tried to eliminate the worker organization from the factory by illegally firing its founding leaders.

Workers had submitted union registration materials to the Nicaraguan Ministry of Labor on July 4. Five days later, on July 9, the factory dismissed three of the union's founding leaders; two additional founding leaders were dismissed over the next few days. The dismissals were officially justified by factory management as lay-offs necessitated by economic circumstances (not dismissals for cause). However, no other workers besides the union leaders were dismissed on the dates in question. All of the workers dismissed had been listed as leadership committee members in the registration documents.

The WRC concluded that the dismissals in question were unlawful, for two reasons: First, Nicaraguan law and applicable codes of conduct prohibit the dismissal of workers in retaliation for their lawful exercise of rights of association, including the right to join a union. The timing of the dismissals (days after the union registered) and the identities of workers dismissed (all founding union leaders) represented a clear *prima facie* case that the dismissals were motivated by anti-union animus.

Second, under Nicaraguan law, when a union is formed at a worksite, the members of the leadership committee of the union are protected by what is called "*fuero sindical*" (under Articles 231-234 of the Nicaraguan Labor Code). Under this law, as of the date of their election to a union's leadership committee, worker representatives cannot be dismissed without just cause; economic layoffs are not permissible. If an employer wishes to dismiss a member of the leadership body for just cause, the employer is obligated to obtain prior authorization from government authorities before it may do so. The law is designed to protect workers from retaliatory dismissals. In this case, the company

dismissed the workers in question without citing just cause. Although the company later claimed it did have just cause for the dismissals, it had not sought or obtained prior approval from the Ministry (and had, in fact, originally claimed that these were *not* dismissals for cause). Thus the firings would have been unlawful even in the absence of retaliatory intent.

The WRC communicated its findings to New Holland management on July 31, 2007. After reviewing the WRC's findings and recommendations, the company promptly agreed to reinstate the workers. Management provided only partial back pay, a product of negotiation with the workers, which did not in our view represent full remediation, but was not considered a major problem by the workers given that they had been out of the plant for a relatively brief period. The workers returned to work during the week of August 6. The company subsequently recognized the union and engaged in collective bargaining with worker representatives. These developments, and in particular the relatively prompt reinstatements following the submission of the complaint, was considered a positive outcome by the complainant workers.

The WRC also found a number of other labor rights violations, including sexual harassment (in the course of factory security checks), verbal harassment, unreasonable restrictions on access to restrooms, and a lack of adequate hygiene in restrooms. The WRC provided recommendations to factory management in these areas. Our follow-up monitoring subsequent to the reinstatements indicated that dialogue between management and worker representatives was serving as an effective means of addressing these and other worker grievances, leading to concrete improvements. Additionally, as of June 2008, worker representatives and management were in the process of negotiating a collective bargaining agreement, which would provide further structure to the grievance resolution process and potentially enhance workers' rights and benefits. The WRC continues to monitor the situation.