WORKER RIGHTS CONSORTIUM ASSESSMENT re PT KOLON LANGGENG (INDONESIA)

FINDINGS AND RECOMMENDATIONS
OCTOBER 8, 2003

5 Thomas Circle NW Fifth Floor Washington, DC 20005
(202) 387-4884 Fax: (202) 387-3292
wrc@workersrights.org www.workersrights.org

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WORKER RIGHTS CONSORTIUM ASSESSMENT OF PT KOLON LANGGENG, KBN CAKUNG, INDONESIA

Introduction

PT Kolon Langgeng is a factory in Jakarta, Indonesia that has manufactured skirts, pants, jackets and shirts bearing college and university logos for Nike, through Nike's broker Boolim. Located in the Cakung branch of the export processing zone Kawasan Berikat Nusantara (KBN), PT Kolon Langgeng employs between 800 and 900 employees. The number of employees fluctuates depending on orders at the factory: during times when orders are high, additional employees are brought in on short-term contracts. PT Kolon Langgeng is owned by Kolon International Corporation, a company based in Seoul, South Korea.

In November 2002, the WRC received a complaint from workers at PT Kolon Langgeng, including allegations that, if valid, would constitute violations of Indonesian law and of college and university codes of conduct primarily in the realm of wages and benefits, forced and uncompensated overtime, and occupational health and safety. After preliminary confirmation of the elements of the complaint, the WRC sent a letter to the president of the company on November 26, 2002, presenting a summary of the allegations and informing the factory that the WRC was considering whether to initiate a full investigation. The WRC did not receive any reply to this communication.

Preliminary research indicated that there was sufficient evidence of code of conduct violations to warrant a full assessment of PT Kolon Langgeng and, in February 2003, the WRC undertook this assessment. The WRC's Assessment Team, composed primarily of prominent Jakarta-based labor lawyers, labor rights professionals and experts in occupational health and safety, carried out its official investigation from February 21-27, 2003. This report documents the outcome of that process, as well as of the supplementary research conducted subsequently by WRC staff and partner organizations.

This assessment was carried out in the same time frame as the WRC's assessment of PT Dae Joo Leports, a factory also located in the KBN export processing zone. This timing was chosen both because concerns about the two factories arose concurrently and because the WRC had identified a need to examine potentially widespread code of conduct problems in the KBN zone.

The WRC is pleased to report that, in response to the findings of code of conduct violations outlined below, there has been some substantial progress at PT Kolon Langgeng, especially in the areas of freedom of association, legally mandated health benefits and the reinstatement of unlawfully terminated workers. It is also important to note that the evidence identified by the Assessment Team failed to substantiate some of the allegations made in the worker complaint. In the WRC's view, the efforts of Nike, and Nike's South Korea-based broker Boolim, have been central in persuading management to initiate some of the changes necessary to bring the facility into compliance with college and university codes of conduct. At the same time, there are

still several serious code of conduct violations at PT Kolon Langgeng that management has not addressed and others where remediation has been promised but not yet achieved. The WRC will review the situation at the factory again this fall. The degree of progress on these unresolved issues will be the key indicator of the success of remediation efforts at this facility. This report addresses and analyses these unresolved issues as well as the areas where remediation is substantially complete.

Sources of Evidence

During the course of the assessment, the WRC team gathered evidence from the following sources:

- Interviews with 34 current employees from the sewing, cutting, quality control, mechanics and packing divisions; seven recently terminated employees; and the family of a worker who died in January 2003. The employees (and former employees) whose experiences are reflected in the analysis below ranged in age from 20 to 32 years, and had put in between two and seven years of service at the factory at the time of the interviews.
- Interviews with upper- and mid-level management, including the President Director of the factory and the Assistant Manager of the Casual and Sportswear Team of Kolon International in Seoul, and a survey of the factory premises.
- Collection and review of company documents including letters of resignation, settlement agreements between management and terminated employees, health insurance records, payroll records, the collective bargaining agreement in place at the time of the investigation, and public notices issued by the company.
- Interviews with doctors and managers at the KBN zone health clinic used by workers at PT Kolon Langgeng.
- An interview with the Administration of the KBN export processing zone.
- Interviews with regional Serikat Pekerja Seluruh Indonesia (All Indonesian Workers Union; henceforth "SPSI") leaders.
- Interviews with Serikat Pekerja Tekstil, Sandang dan Kulit (Indonesian Textile, Garment, and Leather Workers Union; henceforth "SPTSK") national, regional, and factory level officers, and factory level members.
- Interviews with Gambungan Serikat Buruh Independen (Association of Independent Unions; henceforth "GSBI") factory–level members and officers, as well as national officers.
- Interviews with regional organizers from Serikat Buruh Sejahtera Indonesia (Indonesian Workers Welfare Union; henceforth "SBSI").
- Interviews with government officials from the Panitia Penyelesaian Perselisihan Perburuhan Daerah (Regional Committee for the Settlement of Labor Disputes; henceforth "P4D").
- Interviews with government officials from the Departmen Tenaga Kerja dan Transmigrasi (the Ministry of Manpower and Transmigration; henceforth "Depnakertrans" and the provincial branch, "Disnaker").
- Interviews with officials from PT Jaminan Sosial Tenaga Kerja (a government-operated social security firm; henceforth "JAMSOSTEK").

- A follow-up assessment of occupational health and safety standards at PT Kolon Langgeng led by the WRC in collaboration with Higiene Perusahaan Kesehatan dan Keselamatan Kerja (the Indonesian governmental agency for workplace health and safety; henceforth "HIPERKES").
- Extensive research of Indonesian law, including governmental and departmental regulations, guidelines and circulars.

Allegations Assessed in this Report

Based on the worker complaint and preliminary research by WRC staff and consultants, including extensive worker interviews, a number of potential violations of law and of codes of conduct were identified for investigation by the WRC Assessment Team. The concerns and allegations were as follows:

- *Freedom of Association & Collective Bargaining*. That the union at the factory existed only on paper, and only for the purpose of ratifying management's policies. It was also alleged that management placed restrictions on the operation of other unions.
- *Arbitrary Firings and Forced Resignations*. That terminations of workers were carried out in an arbitrary, discriminatory and legally deficient manner.
- *Religious and Gender Discrimination.* That the company discriminated against women wearing *hijab* (a head covering worn by some observant Muslim women) and against men in the hiring process.
- *Psychological and Physical Abuse*. The WRC investigated allegations that some supervisors subjected workers to abusive forms of discipline.
- *Access to Health Care*. That there was an absence of legally mandated health insurance.
- *Occupational Health and Safety*. That the factory failed to provide appropriate personal safety equipment.
- *Failure to provide essential work equipment*. That employees often felt compelled to purchase their own work tools without compensation from the company.
- *Forced Overtime/Overtime Compensation*. That workers had no option to refuse overtime and that overtime was improperly compensated.
- *Tax Forms*. That employees were required, annually, to fill out and pay for the notarization of forms containing information about their marital status and dependents, ostensibly in order for them to receive tax deductions, and that workers never received these deductions.
- *Access to Leave.* That the factory denied or restricted access to annual leave, sick leave and menstrual leave.
- *Mandatory Wage Deductions*. That the company deducted money from workers' wages in exchange for food and transport benefits, without workers' consent.
- *Water Quality*. That the drinking water available at the factory was dirty and undrinkable on a regular basis.
- *Body Searches*. That workers were subjected to body searches that were unnecessarily intrusive, with certain individuals being singled out for particularly degrading treatment.

The WRC's findings with respect to each of these areas of potential non-compliance are outlined below. Also outlined, where appropriate, are recommendations for remedial action, developed in consultation with workers, government agencies and experts in the field. As noted above, substantial remediation work has occurred at PT Kolon Langgeng over the months since the WRC Assessment Team's initial on-site investigation. This progress has taken place in the context of extensive and ongoing discussions among the WRC, the licensee, the licensee's broker and factory management. The status of these discussions and progress on remediation efforts to date are reviewed below.

Freedom of Association and Collective Bargaining

Allegations

The Assessment Team investigated allegations that the union, SPSI, at PT Kolon Langgeng was not a legally constituted union and did not, in name or in action, represent the employees of the factory. Workers also alleged that management refused to allow the operation of other unions.

Findings

The Assessment Team concluded that there were significant violations of Indonesian law and college and university code of conduct provisions in the realm of freedom of association and collective bargaining.

The Assessment Team confirmed that the membership of the SPSI union at PT Kolon Langgeng consisted of a single employee – the warehouse manager – who was cited by management as the legitimate representative of the workforce. However, SPSI officials interviewed at the regional and national level assert that this individual has not been a member, or even involved in union activities, for several years. Nevertheless, factory management referred to him as the "chairman" of the union and the official representative of all factory employees. This employee was also the only signatory, on behalf of labor, to the Kesepakatan Kerja Bersama (collective bargaining agreement; henceforth "KKB") in force in the factory at the time of the WRC assessment.[1] In interviews with the Assessment Team, most workers indicated that they were unaware of the existence of any union whatsoever in the factory. Those who had heard of the union described it as ineffectual and/or as being in collusion with management. This false representation of workers violated Indonesian law protecting workers' associational rights from management interference.[2]

The Assessment Team reviewed a copy of the KKB provided by PT Kolon Langgeng management. The document further supported the conclusion that the SPSI union at the factory did not represent workers and that the "chairman" of SPSI had no authority to sign the agreement. No employee negotiation team was mentioned in the contract, nor were there any signatures of workers and/or union representatives other than that of the aforementioned chairman.[3] There was no attached statement from workers, granting the union "chairman" the authority to represent them in negotiations.[4] The KKB also failed to mention any details regarding the union's registration with Disnaker. Moreover, none of the workers interviewed by the Assessment Team had, according to

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[1] KKB, PT Kolon Langgeng, Jakarta July 3, 2001
Note: Indonesian laws and regulations fall into four general categories: Peraturan Menteri (Ministerial Regulations; henceforth "PER-/MEN/"), Keputusan Menteri (Ministerial Decrees; henceforth "KEP-/MEN/"), Undang-Undang (Acts or Ordinances; henceforth "UU"), and Peraturan Pemerintah (Government Regulations; henceforth "PER-/MEN/")
[2] UU-21/2000
[3] *See* PER-01/MEN/1985 Chapter VII (Articles 1, 9)
[4] *See* PER-49/PEM/1954, Article 3

their testimony, ever seen a copy of the KKB, or had its contents explained to them either by management or by the union "chairman."

In addition to the illegal manner through which it was negotiated, the contents of the contract were legally deficient, in several areas. For example, the factory created a list of "serious mistakes" for which employees could be terminated; this is impermissible, because valid reasons for termination are defined by government regulations and cannot be altered by private contract (see the case of Hermanto and Supriyanto below for details). According to law, a KKB with "regulations contrary to the law… shall be considered null and void."[5] As an official from Disnaker told the Assessment Team, workers in Indonesia cannot sign away basic legal protections such as those regulating dismissal.

The KKB was routinely relied upon by management – for example, when justifying the termination or disciplining of workers (see the section concerning alleged arbitrary dismissals). Indeed, management told the Assessment Team that it considered the contract to be legally valid and in force.

During a meeting with the Assessment Team on February 24, management asserted that the KKB was in compliance with the law – regardless of any defects in its contents or the negotiation process – on the grounds that the document bore the official stamp of Disnaker. However, the position of Disnaker, as noted by government officials to the Assessment Team, is that Disnaker's current process of approving KKBs does not include a procedure to determine whether the contents of the contract meet the requirements of law (a new system is planned, but will not go into effect for several years). Thus, a Disnaker stamp cannot be taken as proof that the contents of a KKB are legally acceptable.

In addition to using the SPSI "chairman" to lend the semblance of legitimacy to this invalid KKB, management also routinely invited him to play a central role in the settlement of labor disputes in the factory. According to testimony received by the Assessment Team, he consistently urged workers (or their family members) to accept compensation (for example, severance) significantly lower than that to which they were entitled under law.

The WRC also found that workers' requests to involve other unions in dispute resolution were rejected by management. For example, during a strike that occurred in June 2002, workers informed management that they wished to be represented in negotiations by the local office of SBSI. A government official from Disnaker notified management that SBSI had standing to play such a role. Nonetheless, management refused to negotiate with SBSI, despite its legal obligation to negotiate with the workers' chosen representative.

Based on the evidence outlined above, the WRC concluded that PT Kolon Langgeng was in violation of Indonesian law and university codes of conduct governing freedom of association and, specifically, that the existing KKB was illegal and could not be used as a basis for management policy or practice.

Recommendations

On April 1, the WRC submitted an outline of findings and a list of recommended remedial actions to PT Kolon Langgeng management and to Nike and its broker Boolim.

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[5] UU-13/2003 Article 124 (2) and (3)

With respect to freedom of association, WRC recommended that the management acknowledge that the KKB did not have legal validity and cease using the contract as a basis for policy and practice and for determining the respective rights and obligations of workers and management.

The WRC further recommended that the company post a written, public statement that all unions were allowed access to PT Kolon Langgeng, and that workers were free to affiliate with any union of their choice without fear of reprisal. The WRC further recommended that management reinforce this announcement by communicating its contents to all supervisors, line leaders, personnel staff, factory security, and all other staff who might influence whether, and to what extent, workers exercised this right.

The WRC felt this step was of substantial importance because workers cannot exercise their associational rights freely if they have reason to believe this will result in a coercive response by management. By imposing an unlawful KKB on the workforce through the mechanism of a sham union, and by summarily dismissing outspoken leaders among the workforce (a practice documented in the following section of this report), PT Kolon Langgeng management produced a chilling effect that required not just a cessation of past practices but an active effort to make clear that the factory intended to respect workers' rights in the future.

Response from PT Kolon Langgeng and the Licensee and Status of Remediation

Subsequent to receiving the WRC's communication of April 1, PT Kolon Langgeng management did shift away from their initial insistence that the KKB was legally valid. However, while this was a positive step, management did not set out clearly how they intended to change their practices.

Management had not posted any announcement regarding freedom of association by the end of May. Management did post a new non-discrimination policy, dated April 21, 2003, which pledged no discrimination on the basis of ethnicity, skin color, gender, origin, age, religion and marital status; however, the policy omitted any reference to union affiliation or political belief.

However, there were some indications of progress. The KKB was due to expire at the beginning of July and management informed the WRC that they understood that if a new KKB was to be renegotiated, it would have to be with a legitimate, lawfully constituted union. Also, it is worthy of note that, several weeks after the assessment, on April 16, 2003, approximately 20 workers at PT Kolon Langgeng felt hopeful enough about changes in management's perspective on associational rights to register as a factory-level union with Disnaker, affiliated with GSBI.

Nike agreed from the outset that based on the evidence the KKB was invalid and should not have standing. The WRC believes that the prompt intervention of Nike and its broker Boolim played a considerable role in moving management to reconsider its stance on this issue.

New Developments

Unfortunately, beginning in May, management chose to resolve the problem of its illegitimate KKB by seeking to organize a company union. This process began with management identifying two workers from each production line to serve as worker representatives. The effort escalated, with management assembling these favored

workers as a group, urging them to form a union, and supplying them the use of company meeting space and equipment, while denying these same privileges to the newly formed GSBI union. This group of workers, many of whom were supervisor and office employees, then formed and registered a union, affiliated with SPTSK. On June 11, during work hours, SPTSK was granted the run of the factory to distribute membership forms and recruit members – with SPTSK representatives, primarily supervisors, telling workers that management expected them to join. (When GSBI members subsequently tried to distribute literature inside the factory, they were stopped by managers.) In this coercive environment, a significant number of workers, though not a majority, signed SPTSK membership forms in the week after June 11. During this time, management began holding formal meetings with SPTSK to discuss workplace issues, while refusing to meet with GSBI.

Responding to allegations from workers about these activities, WRC staff investigated, interviewing workers, management and union leaders and reviewing relevant documents, including a sign-in sheet from the meeting where the SPTSK union was formed, which listed a senior manager of the factory as a participant. The evidence strongly supported the conclusion that management was acting in violation of law and applicable codes of conduct.

The WRC expressed its concern to PT Kolon Langgeng management and, on June 18, communicated with Nike and urged action to compel management to cease these activities and take remedial action. It was particularly disturbing that these activities were taking place at a time when the factory was under special scrutiny from Nike and Boolim as well as the WRC. The WRC recommended a number of remedial steps to the factory management and urged Nike and Boolim to insist that management undertake these steps. These included:

- Considering SPTSK membership forms signed on or after June 11 to be void, given the coercive circumstances under which they were obtained, and not seeking to use these memberships to justify negotiating with SPTSK as a representative union.

- Posting notices throughout the factory informing workers of their right to join any union of their choice (or no union) and stating that management would neither reward nor punish any worker for the choice they made; requiring every line and/or department supervisor to read this statement out loud to the employees under his or her authority.

- Holding a joint meeting with both unions to work out fair and mutually agreeable ground rules for access to the factory for union business; and refraining from holding any further discussions about workplace issues except with the participation of both unions.

These recommendations led to a meeting at the factory, on June 20, involving factory management and representatives of the WRC and Nike. At this meeting, management agreed to take the recommended remedial action as well as additional steps that were suggested during the discussion. PT Kolon Langgeng management:

- Agreed to discount all SPTSK membership forms, except those belonging to the group of ten individuals who had initially registered the union with the Ministry of Manpower.

- Produced, in consultation with both unions and the WRC, an appropriate statement pledging to respect workers associational rights, posted this statement, and, on June 21, required supervisors to read the statement aloud.

- Instructed all supervisors and administrative staff that they were obligated to refrain from any coercive action with respect to workers' choices about union representation.

- Agreed that the two unions should meet and decide on ground rules for union activities inside the workplace. This meeting took place on June 23. Management decided not to attend the meeting, but agreed to accept, and did accept, the ground rules decided on by the unions. This included the identification of a workday where both unions would be able to distribute membership forms to all members of the workforce and workers could use this as an opportunity to join the union of their choice or refrain from joining any union.

- Agreed to invite representatives from both GSBI and SPTSK to any further meetings concerning workplace issues.

All of these commitments were fulfilled. These very significant steps constituted substantial remediation of violations of workers' associational rights and of the chilling effect of these violations.

The free and lawful contest for union membership facilitated by the ground rules agreement among the unions and the factory led to a successful effort by GSBI to recruit a majority of the workforce. As the majority union, GSBI recently submitted to management a collective contract proposal and requested that negotiations begin. It is the WRC's understanding that management is currently discussing a timetable for negotiations with GSBI.

If PT Kolon Langgeng proceeds with contract negotiations as the law requires and refrains from further favoritism or other violations of associational rights, remediation should be considered complete in this area. In the view of the Assessment Team, intervention by Nike and its broker, particularly during the meeting of June 20, played a central role in achieving this result.

Arbitrary Firings and Forced Resignations

Allegations

The Assessment Team examined allegations that termination of employment frequently took place in ways that contravened provisions of Indonesian law designed to protect workers from arbitrary and retaliatory dismissals.

Findings

Based on review of relevant materials from personnel files and extensive worker interviews, the Assessment Team identified a clear pattern of disregard by factory management of the laws mandating progressive discipline and due process prior to the termination of employees, the law protecting employees from dismissal for minor infractions, and the laws concerning severance. In addition, the Assessment Team concluded that management regularly used coercive means to compel workers to resign, thus relinquishing the rights granted under these laws. In some cases, the Team concluded, management used arbitrary dismissals as a means to get rid of workers who were outspoken about workplace issues.

The Team found that dismissals at PT Kolon Langgeng were, characteristically, not preceded by even one of the three warning letters that an employee must receive before being fired, according to Indonesian law (when there is not a gross violation).[6] The Assessment Team found that management would typically rely on a clause in the KKB that described minor transgressions ranging from falling asleep during work hours to annoying management as "serious mistakes" for which an employee may be fired without prior disciplinary notice.[7] Many of the infractions listed are not defined as gross violations under Indonesian law and therefore cannot lawfully be used as the sole basis for termination, regardless of the contents of the KKB. As noted earlier, management may not, under the Indonesian labor code, use a KKB to deny protections to workers that are mandated by law. Minor production errors were also treated with excessive severity. Many workers believed that management would impose disproportionate punishment on one worker for a slight production mistake as a tool to motivate the broader workforce.

Many workers testified, and document review further indicated, that the infractions cited as a basis for termination by factory management were often pretexts for the dismissal of workers who complained about working conditions and/or who had participated in legal strikes or protests. As one current employee of the factory stated, "They look for small mistakes, for any possible grounds to fire those who speak up." The Assessment Team identified several cases of workers who were known to management as outspoken in their concern about working conditions and who were coerced into resigning or fired without legally mandated due process. These are workers who had been involved in strikes and protests and/or who worked on a particular production line (Line 5) that had been identified by management (as acknowledged by management to the Assessment Team) as a locus of troublemakers. Given the circumstances of the individual cases, and the pattern of violations of associational rights described in the

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[6] KEP-150/MEN/2000

[7] KKB PT Kolon Langgeng Article 35(14), Jakarta, July 3, 2001

previous section of this report, the Assessment Team determined it was reasonable to conclude that some cases of unlawful dismissal were a product of management's desire to rid the plant of workers who were prone to speak out and to support labor protests. At the same time, there were also a number of cases of unlawful termination of workers who were not active participants in protests or outspoken critics of management policy. In these cases, it appears that a preference for unusually harsh discipline and an arbitrariness in its application were causal factors. It is important to note that, regardless of management's motive for a dismissal, it is illegal to fire workers without due process, to fire workers for an infraction that is not considered a gross infraction in Indonesian law, or to attempt to coerce workers into resigning.

Additionally, the Team found that PT Kolon Langgeng management did not comply with the provision in Indonesian law that requires management to obtain permission from the regional labor committee (P4D) before terminating an employee, *unless* that employee voluntarily accepts the termination and receives a severance settlement worth at least as much as the minimum severance due to workers who are laid off or terminated (for reasons other than gross misconduct).[8] Until permission is granted by P4D, or a mutually agreed-upon settlement is reached, the employee is not considered "terminated" but rather "on probation" and the employer is obligated to continue paying the worker his or her normal salary.[9] In order to circumvent these requirements, PT Kolon Langgeng management attempted in a number of cases to coerce workers into resigning. Indonesian law distinguishes between workers who resign – who are not entitled to severance – and workers who "accept termination," to whom management must pay severance in exchange for the worker's willingness to forego any challenge to their dismissal. Thus, by compelling workers to resign, PT Kolon Langgeng could avoid legal procedures *and* the obligation to pay severance. As the individual cases described below indicate, the factory on a number of occasions used threats and intimidation in an effort to compel workers to sign resignation letters (often blank letters, so that management could fill in whatever description of the circumstances it preferred). Workers were confronted by security personnel, held at the factory security post, and threatened with police action.

The Assessment Team found that, while the factory did not want to go through the process of requesting permission from P4D before dismissing workers, management did turn to P4D or to Disnaker in order to avoid or delay awarding severance to workers who refused to resign and had to be fired or who were otherwise entitled to severance. Under Indonesian law, workers who are fired for cause are entitled to severance (unless they have committed a gross violation, as defined in the law). Yet even in those cases where severance was clearly mandated, and where no issues of fact or law were in dispute, the documentation, and testimony from workers, demonstrates that PT Kolon Langgeng tried to challenge the workers' right to severance. This conclusion was further corroborated by an official from Disnaker, who told the Assessment Team that in all of the disputes involving PT Kolon Langgeng that had come to his attention, the circumstances were always very clear on paper, but the company nevertheless contested the workers' severance claims. It appears that the company's strategy was to wear down

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[8] KEP-150/ MEN/2000 Article 2(1) and 22
[9] KEP-150/MEN/2000

the will of workers to the point where, badly in need of money, they would settle for substantially less severance than they were entitled to by law.

The Assessment Team heard from multiple sources about a worker, described as "outspoken" and "bold," who was fired when she, along with many other workers, briefly interrupted a production meeting by shouting the name of a manager who was walking by the production line. Management challenged her severance claim. After mediation, Disnaker and P4D decided that she should receive 20 million Rupiah in severance ($2,400 U.S.). The company continued to challenge the claim and, after a long battle, the worker finally accepted 6 million Rupiah, 30% of the amount to which she was legally entitled. Other former employees of PT Kolon Langgeng recounted similar incidents to the Assessment Team. One attested that a manager had told her that even if the labor court ordered them to reinstate her, the company would appeal the decision all the way to the Supreme Court, if necessary. The 1996 case of a fired union leader, whose severance claim the company challenged until they finally lost in the Supreme Court, indicates that this approach is long-standing.

The Assessment Team heard testimony from several workers who agreed to be named in this report, hoping that this means of bringing their cases to the attention of the factory could help them secure either reinstatement or, in the alternative, the payment of severance to which they were entitled by law.

- **Siti Komaria ("Kokom")**, a sewing machine operator from production Line 5 who had worked for PT Kolon Langgeng for two years and seven months, was fired in September of 2002; she was eight months pregnant at the time. The factory alleged that she had tried to steal a length of cloth, hiding it under her clothes as she left the production building. Kokom testified that what she had taken was a discarded scrap of cloth, removed from a trash can, and that she had made no attempt to conceal it, but had held it openly in the palm of her hand (based on her belief, she stated, that no one would object to her leaving with a small piece of scrap). She testified that when the security guard informed her that workers were not allowed to remove anything from the factory premises, not even trash, she immediately gave back the scrap. Several eyewitnesses corroborated Kokom's account of the incident; no eyewitness corroboration could be found for the account of the security guard, on which management claimed to rely. Kokom had been a prominent participant in strikes and protests at the factory, including the 2002 strike, which had ended roughly two months before her dismissal. Kokom testified that she had received a number of verbal threats and accusatory comments from supervisors in the months preceding her dismissal. She also reported facing consistent low-level harassment, ranging from denial of the annual leave to which she was entitled, to the blanket refusal to allow her to bring any food into the factory, even though she was pregnant and in particular need of regular nourishment. Kokom's testimony on these points was corroborated by multiple witnesses. On September 4, the day after the incident, upon trying to enter the factory for work as normal, Kokom was detained at the security post. She was forced to stand on her feet for several hours, which she found both humiliating and, given the advanced state of her pregnancy, extremely uncomfortable. She was also threatened with arrest if she did not sign a blank resignation letter. Ultimately, she agreed to sign. She was paid her salary for the

period of her maternity leave, including her *tunjangan hari raya* (holiday bonus), but she did not receive any severance pay or a *surat pengalaman kerja* (letter of experience), which is almost a prerequisite for obtaining employment elsewhere (though she subsequently called and visited the factory to ask for it). Kokom told the Assessment Team that she wanted to be reinstated at PT Kolon Langgeng.

- On September 28, 2002 **Roslan**, a sewing machine operator – also from Line 5 and also a prominent participant in the June 2002 strike – clocked in for a friend who had told her that he was going to be arriving at work just before the bell rang, and that he did not want to have a confrontation with security guards. (Several workers stated that anyone who arrives less than ten minutes before the bell rings for the start of the workday is guaranteed a confrontation with plant security). When the personnel manager discovered what she had done, he initially asked her to resign, then agreed to issue her a third warning letter instead, as a compromise. This meant that if she violated any other regulation during the following six months, she could be terminated. Roslan accepted the letter and signed it. After two more days, and without any other infraction or incident, the personnel manager called Roslan into his office and asked her to sign a letter of resignation. After lengthy confrontation with the personnel manager, she refused to sign the letter and was fired. Roslan had worked at PT Kolon Langgeng for two years. Clocking in for another worker is clearly an infraction of factory rules and merited discipline. However, the law is clear that if a worker receives a third warning letter, he or she may not be fired for cause until and unless another infraction is committed. Roslan was not provided with severance pay, to which she was entitled. She was escorted bodily out of the factory by security. Roslan subsequently sought mediation from Disnaker. Factory management failed to appear at two scheduled mediation sessions, on November 11 and November 15. The personnel manager appeared at a third session on November 22. On December 20, Disnaker concluded that Roslan should be rehired by PT Kolon Langgeng, noting first her error was not the kind of "serious mistake" that warranted dismissal in and of itself, and that, because she had engaged in no further misconduct after her warning letter, the dismissal could not be justified.[10] Rather than reinstate Roslan, management chose to appeal the decision to P4D. Roslan informed the Assessment Team that she desired reinstatement.
- In late July of 2002, **Sukarni**, a three-year employee at PT Kolon Langgeng, was stopped by a security guard when she tried to leave the factory with what she described as a half-finished skirt removed from a trash box. After the item was confiscated, the chief of security permitted Sukarni to leave without further incident. The next morning, however, Sukarni was stopped outside the gates of the factory and interrogated by the personnel manager and two security guards, including the chief of security. She was informed that upper management had demanded that she resign and she was presented with a standard resignation letter and pressured to sign it. When she told the personnel manager he would have to fire her, he reportedly threatened: "Don't try to make any problems. If you keep complaining, we will take you to the police because you're a thief." In response

[10] Disnaker Jakarta Utara Anjuran 866-11-838; Jakarta December 20, 2002

to this threat, Sukarni agreed to sign the letter of resignation. She did not receive severance payments (and had been informed, falsely, by management that she would have had to have worked five years at the factory in order to be eligible for severance whether she resigned or was fired). As with Roslan's case, it was reasonable for the factory to cite Sukarni for an infraction. It is debatable whether the incident was grounds for dismissal, particularly in light of the fact that the item taken had been discarded and was of no value to the factory. However, regardless of the justification for discipline, by coercing her into resigning, instead of terminating her, the factory violated Sukarni's rights under Indonesian law. As an employee who was terminated against her will, similar to Kokom and Roslan, she was entitled to receive 100% of her wages as probationary wages for the first six months of the interim period before her case was resolved.

- **Hermanto** and **Supriyanto**, two employees from the packing division, were fired on August 9, 2002 for sleeping at work. Management informed them that termination was warranted, citing the clause in PT Kolon Langgeng's contract that classifies being asleep on the job as a "serious mistake" that justifies termination without the benefit of prior warning.[11] The employees appealed to Disnaker, arguing that they were sleeping during break time because they were ill, and they had never been given a warning letter or punishment of any kind prior to this incident.[12] In its opinion on the case, Disnaker noted that sleeping during work hours is not a "serious mistake" under Indonesian law,[13] and merits only a warning. Disnaker added that, regardless of the contract clause, the standard defined by law must hold, and "the employees should be paid their proper severance, service/merit pay, and [should be] reimbursed for any medical expenses."[14] The company appealed the recommendation to the P4D, and, while the matter was pending, urged their former employees to accept a settlement for a much smaller amount.

During an interview with management on February 24, the Assessment Team raised the cases of these five workers. The company refused to discuss Kokom or Sukarni, beyond repeating that they considered the alleged infractions to be serious and worthy of termination and would not address the question of whether these workers had been afforded due process, as required by law. Management was also unwilling to discuss the facts of Roslan's case, beyond noting that, regardless of Disnaker's decision, the company was entitled to fire Roslan on the basis of her actions. The position of PT Kolon Langgeng management was: "While what she did may not be a big problem according to the law, it is a big problem for us." When the Assessment Team asked whether Roslan was receiving her probationary pay, as required by law, or her severance, management noted that they would pay only if they lost the case, and not until then. With respect to Hermanto and Supriyanto, the two workers from packing, management cited the KKB's classification of sleeping at work as a "serious mistake" worthy of dismissal, as noted above.

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[11] KKB PT. Kolon Langgeng Article 35 point 14

[12] Anjuran 683/1-838, Jakarta, October 21, 2002

[13] KEP-150/MEN/2000 Article 18(5)

[14] Disnaker Jakarta Utara Ajuran 683/1-838, Jakarta October 21, 2002

As the meeting between the WRC and PT Kolon Langgeng was taking place, the company was in the process of firing four of its eight mechanics. These workers had requested a raise, which had been denied, and had just returned to work after engaging in a two-day work stoppage. (The factory had announced mandatory overtime, requiring all employees to work on the weekend, and the four mechanics had refused). Discontent within the mechanics division arose in part due to their realization that their salary was 50,000 Rupiah to 100,000 Rupiah ($6 - $12) less per month than other mechanics in the KBN with a similar amount of experience, and in part from the fact that, as *bulanan* ("monthly-paid" employees) they received a lump payment every month with no adjustment for overtime, no matter how many hours of overtime they worked. The mechanics alleged that they worked an average of two to five hours of overtime a day and that about once a month they would have to work until 2:00 a.m. in order to finish a shipment on time. On February 24, when the four mechanics returned to the factory, they were detained at the security desk and were informed by the personnel manager that the company had decided to fire them. They were offered half the severance to which they were entitled, and were pressured to accept it by the "chairman" of the SPSI union. They signed their termination papers and left the premises. The WRC did not pursue the case with management because the workers did not wish to pursue reinstatement or a claim for additional severance.

Recommendations

The WRC recommended that, at the level of general policy, the company must adhere to Indonesian law in terms of firing practices, rather than the rules as contained in the KKB, both because it is public law, not employment contracts, which takes precedence and because of the lack of the legitimacy of the KKB itself. In terms of individual cases, the WRC informed the company that, as workers with legitimate claims of unfair dismissal, all five had a right be offered the option of reinstatement at their previous salary, with back probationary wages as appropriate.[15] Workers who declined an offer of reinstatement would be entitled to receive a letter of termination, full severance pay (regardless of whether or not they had previously accepted a smaller amount), holiday bonus pay, and any other entitlements available under Indonesian law.

It should be noted here that, in urging factory management to reinstate workers as required by Indonesian law, the WRC was acting in support of compliance with domestic laws and regulations, rather than seeking to impose a foreign standard. The dismissals in question constituted violations of university codes of conduct because university codes require that suppliers obey domestic law. Officials charged with enforcing employment law in Indonesia expressed strong support for this use of codes of conduct. An official from Disnaker told the WRC that it was essential for private entities to put their weight behind the law as a means of swifter, surer enforcement, because there was a dearth of effective state enforcement mechanisms to do so.

Disnaker uses a non-adversarial process of alternative dispute resolution, producing recommendations rather than legally binding decisions with sanctions for non-compliance. However, parties that do not wish to accept Disnaker's recommendations must appeal them to P4D, and from there to higher courts if necessary. Parties seeking

[15] KEP-150/MEN/2000 Article 16 and 17 state that employees are eligible for 75-100% of their wages while they are on "probation," or while the decision over their termination is pending approval from P4D

enforcement of a Disnaker decision may also approach P4D; P4D will take the opinion of Disnaker as persuasive, not conclusive, in making its own findings. As the official from Disnaker asserted, and the Assessment Team's review of the legal documents verified, in terms of factories' appeals to P4D, these are routinely made in spite of having no legal merit, simply as a tactic of delay. An official of P4D who spoke with the Assessment Team confirmed the group's belief that companies frequently drag out labor disputes in the courts, even when the issues before the court are ones that have clearly been settled through previous judicial opinions, or through decrees of Depnakertrans. The official further asserted that, given the very limited capacity of the court and the heavy backlog of cases, private resolutions of disputes was formally encouraged.

Response from PT Kolon Langgeng and Licensee and Status of Remediation

Following the company's receipt of the WRC's summary of findings and recommendations on April 1, and subsequent intervention by Nike, PT Kolon Langgeng shifted its position on several of these cases. On April 16, Hermanto and Supriyanto received their severance payments as recommended by Disnaker, though they were not given probationary wages for the period of the dispute, or the holiday bonus to which they were entitled.[16] Management informed the WRC that it recognized the illegality of firing workers for sleeping during work hours and expressed a commitment to refrain for using this infraction as grounds for dismissal in the future. The company indicated that it would not seek to include language describing such conduct as a "serious mistake" in any future KKBs.

At the urging of the WRC and Nike, the company agreed to reinstate Roslan. The President Director of the factory, K.J. Lee, wrote her a letter in June offering reinstatement and Roslan came back to work on July 1, with no loss of seniority or employment status. Roslan was also entitled to her accrued holiday bonus and 75% of her base wage for the first six months of the time she was on probation.[17] The factory paid Roslan the money owed. This was a very positive resolution, for which both Nike and PT Kolon Langgeng deserve credit.

PT Kolon Langgeng was, for several months, unwilling to consider reinstatement for Kokom. At the WRC's urging, Nike's Indonesia compliance team interviewed a number of eyewitnesses to the incident that led to Kokom's dismissal. Subsequent to these interviews, in a communication on September 19, Nike informed the WRC that it considered reinstatement to be appropriate in Kokom's case. Managers at PT Kolon Langgeng's parent company in Seoul and the President Director of the factory agreed in a meeting on October 2 to reinstate Kokom and contacted her to inform her of this decision. By mutual agreement, Kokom will return to work on October 15. The WRC reminded all parties that Kokom is due back wages, in the amount of 100% of her base wage for six months,[18] because her resignation was coerced and because she would have been entitled to these probationary wages had she been lawfully terminated. She is also

[16] Persetujuhan Bersama (Mutual Agreement) between Hermanto and PT Kolon Langgeng; Surat Pernyataan (Clarifying Letter) regarding Supriyanto. Jakarta, April 16, 2003

[17] Roslan was entitled to receive 100% of her base salary for the first six months of this period, known as probation, because she had not been legally terminated and had demonstrated her willingness to continue working while the dispute was ongoing, but was denied access to the factory. (See KEP-150/Men/2000 Article 17 (2))

[18] In accordance with Kep150/MEN/200, Articles 16(a) and 17(2)

entitled to return to work at the seniority and wage levels she would have attained by now had she not been dismissed. These issues are under negotiation.

Assuming it proceeds as planned, Kokom's reinstatement will be an additional major step toward the resolution of the issue of arbitrary dismissals at PT Kolon Langgeng.

The factory has not been willing to consider reinstatement in Sukarni's case. Because Sukarni has found alternative employment, because of other pressing issues at the factory, and because Sukarni's case for reinstatement is not as strong as Kokom's and Roslan's, the WRC has decided not to pursue this matter further.

Religious Discrimination

Allegations

It was alleged that PT Kolon Langgeng discriminated against women who chose to wear the common Muslim head covering, called the "hijab." If true, this allegation would have constituted a violation of university code of conduct provisions prohibiting discrimination on the basis of religion or religious observance.

Findings

Several employees and former employees of PT Kolon Langgeng testified, in interviews early in the assessment, that the company had refused to hire women wearing the *hijab* and was more likely to terminate them at times of low orders. The WRC Assessment Team did not find either testimonial or documentary evidence to corroborate this testimony. Interviews with women workers wearing the *hijab* led the Team to conclude that discrimination, if any had occurred, had been sporadic and had not occurred for a year or more. The Team found that there were no violations of law or codes of conduct in this area.

Gender Discrimination

Allegations

It was alleged that the company would not hire men for the production line, on the alleged grounds that men would be "more likely to agitate." This would have constituted a violation of Indonesian law concerning gender discrimination and provisions in university codes prohibiting discrimination.

Findings

Several workers made this allegation in early interviews, but it was not borne out by subsequent testimony from current, former and prospective employees. The Assessment Team concluded that there were no violations of law or codes of conduct in this area.

Psychological & Physical Abuse

Allegations

The WRC investigated allegations that some supervisors subjected workers to abusive forms of discipline.

Findings

The Assessment Team found that workers were severely punished by some supervisors, often for minor production errors or for the failure of workers to fulfill patently unreasonable production demands, in ways that violate college and university code of conduct provisions prohibiting psychological and physical harassment and abuse. Mutually corroborative worker testimony described supervisors frequently ripping material out of workers' hands and throwing it in their faces. Workers described a particular supervisor who regularly thumped workers' foreheads with her forefinger when she perceived an error. In two cases of more egregious abuse, workers described an incident in which a production manager pushed a worker's head against her sewing machine in a fit of rage, and another in which a supervisor pushed a worker repeatedly across the factory floor while shouting insults at her.

Recommendations

The WRC recommended that management communicate to all supervisors, line leaders, and production managers that physical and psychological harassment for production errors is not acceptable. The WRC also recommended that management provide workers with a confidential means to notify senior management of abuses occurring on the factory floor. Finally, the WRC recommended that a clear policy against abuse and harassment be posted widely and reviewed with all employees and that all supervisors undergo a training regarding appropriate disciplinary procedures, to be repeated on a regular basis.

Response from PT Kolon Langgeng and Licensee and Status of Remediation

Management has reported that a confidential grievance mechanism now exists (a complaint box) and that a notice regarding the procedure by which it may be used has been posted at the factory. The WRC has reviewed this posting and is concerned that the policy does not specify who will read the complaints or what the follow up procedure will be. Absent clearer information, it is unlikely that most workers will be comfortable using this mechanism. Nor is a complaint box alone a sufficiently robust grievance procedure.

It appears from company documents that a reasonably specific and detailed policy regarding abuse and harassment was developed by brands and the factory in mid-2001; however, it does not appear that a meaningful attempt has been made thus far to integrate the policy into workplace culture through training and education. While management has acknowledged that physical punishment of the type described by workers is impermissible, the problem persists. Prevention requires a systematic effort to train supervisors and educate the entire workforce about this issue and management's commitment to address it – a point the WRC reiterated at a meeting with management on

October 2. Management agreed at this meeting to arrange such a training in the near future.

With contract negotiations pending, PT Kolon Langgeng also has an opportunity to use the negotiation process to develop a comprehensive, mutually agreeable policy on the issue and a firm plan for implementing it. This is essential.

Access to Health Care

Allegations

The Assessment Team assessed the claim that PT Kolon Langgeng failed to provide adequate health insurance to its workers.

Findings

Indonesian law requires companies to provide health insurance to workers and their families, either by enrolling workers in the health insurance program provided by the government Social Security agency (JAMSOSTEK, henceforth "JPK;" the health insurance program is known as "JPK Packet B"[19]), or by providing workers with an alternative that is demonstrably superior to the government program. The Assessment Team found that PT Kolon Langgeng did not provide workers with JPK Packet B nor with a superior alternative. The only health care available to workers through PT Kolon Langgeng was provided by the health care clinic operated by the administration of the KBN export zone. However, the services provided by the clinic are vastly *inferior* to those available to workers through JPK, both in terms of accessibility (e.g. workers' family members, who are covered when an employer provides JPK Packet B, have no access to the factory clinic) and in terms of scope and quality of care. Staff from the Cakung branch of the KBN Administration reported, for example, that the clinic's complement of three trained doctors must treat an average of more than 200 patients a day and is responsible for a total patient population of 70,000 employees. Thus, the Assessment Team concluded that PT Kolon Langgeng was in violation of its legal obligations with respect to health insurance.[20]

The Assessment Team also found that PT Kolon Langgeng placed unreasonable restrictions on patient access to the zone clinic. Workers described having to acquire three signatures (that of the line supervisor, the personnel manager, and the production manager) before they were allowed out of the factory in order to go to the clinic. Many workers believed, based on their experience over a period of years, that the factory maintained an unofficial policy that no more than three or four workers were to be permitted to leave the factory to go to the clinic on any given day and that access would only be granted during the morning hours. Workers seeking access to the clinic outside working hours still had to acquire a letter from the personnel manager before the clinic would provide services.

The Assessment Team found that the factory restricted access to follow-up care at the zone clinic and referrals to outside specialists. Clinic staff informed the Assessment

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[19] PER-05/PEM/1993 Chapter VII lists the services available under JPK

[20] KEP-14/MEN/1993, Article 2 (4)

Team that, before recommending further care for a PT Kolon Langgeng worker, they are required to secure the permission of the personnel manager at that factory. (While many other factories in the KBN also require this, it is by no means the case that *all* factories engage in this practice). Because workers do not have access to JPK Packet B, the only means they have to access any health care beyond the minimal care provided by the zone clinic is if factory management grants permission for a referral and covers the cost.[21] Under JPK, every worker receives reimbursement for medical treatment for himself/herself, his or her spouse, and up to three children.[22] The Assessment Team found that in most cases, factory management was not willing to pay the cost of care beyond that provided by the clinic.

First aid facilities at the factory were found to be both inaccessible and inadequate. A number of workers described that they would dip their fingers in machine oil if they received a minor cut or puncture, rather than fruitlessly seeking iodine and a bandage. Several workers testified that they were verbally encouraged to use the machine oil in this way by supervisors, after being told that the factory was out of iodine and other first aid materials. The first aid boxes were, in any case, locked and under the control of the security officers at the factory. In a related issue, the Team found that management tended to be unwilling to make allowances for workers even on the basis of medical advice from the zone clinic. For example, a worker who was recovering from typhoid, another who had been diagnosed with a gastric problem, and a third who was pregnant, had all received letters from the clinic stating that they should be allowed to eat during work hours. In spite of this, they were still preventing from doing so.

The case of one particular worker, Reni, sadly exemplifies the potential consequences of management's failure to provide workers with the health insurance coverage mandated by law. A mechanic at PT Kolon Langgeng for seven years, Reni began experiencing severe lower back pain, headaches, and swollen extremities in the summer of 2002. She underwent urinalysis in August at the zone clinic, and the diagnosis – crystals in her urine and high blood pressure – indicated kidney problems. However, she received neither a follow-up appointment nor a referral for further diagnostic procedures. She was given a prescription for vitamins, enzymes and painkillers, and was sent back to work. Several further visits to the zone clinic, each at her own initiative, and in response to new or recurring symptoms, produced the same prescription. Reni's story is a lengthy one, but the fundamental issue – the fact that she should have been referred promptly to a specialist – is plain even at this level of detail. When she finally went to a private clinic four months after the symptoms began, she was diagnosed immediately with advanced kidney failure, and was told that it was too late for any treatment except dialysis, which she could not afford. Even without having a single dialysis treatment, Reni's care outside of the KBN clinic cost her family 15 million Rupiah ($1,800), an amount equivalent to 150% of her annual salary at PT Kolon Langgeng. Reni died of kidney failure on January 22, 2003, less than two months after her last visit to the zone clinic, which had still failed to produce a diagnosis other than hypertension.

[21] KEP-14/MEN/1993, Article 2 (4)
[22] PER-01/MEN/1998; UU-14/1993 Article 2 (1,3-4); UU-03/1992, Articles 3, 4, and 7; PER-07/DA/Jakarta/1989 Article 3 (m)

Recommendations

The WRC recommended, in terms of temporary measures, that management immediately change the policy regarding access to the KBN clinic. The WRC recommended that the new policy require one signature, which could be obtained from any supervisor, and that there should be no daily limit imposed on the number of PT Kolon Langgeng workers permitted to seek medical attention. In terms of care after hours, all workers should be provided with a letter, valid for one month, demonstrating continued employment at the factory and therefore permitting access to the KBN clinic without the need for an additional grant of permission. Furthermore, the WRC recommended that the factory make it clear to workers, as well as to the administration of the zone clinic, that it would not require additional signatures/ pre-approval for any follow-up appointments and/or referrals recommended by the clinic staff.

Most importantly, as a permanent solution to the problem, the WRC recommended that the factory enroll all workers in JPK Packet B. It should be noted that the factory had claimed, during the meeting with the Assessment Team, that all workers did receive JPK Packet B, but it was apparent, upon careful review of sample JPK forms, that only three of the four JPK packets were provided: life insurance, provident fund, and coverage for workplace accidents – but *not* packet B, which covers general health insurance. At this point, management responded that whether or not workers receive JPK is dependent, under Indonesian law, on the financial condition of the company. However, as noted above, this is not the case: the only exception allowed is for firms employing less than ten individuals, or those providing private health insurance better than JPK Packet B.[23]

The WRC pointed out that the factory's first aid boxes must remain unlocked and should contain a more stable supply of basic over-the-counter medicines, such as iodine, bandages, and painkillers. These medicines should not be held in one central location behind a security guard, but rather in small kits held by the supervisor of each line. The WRC suggested that the factory use trainings and public postings to encourage workers to use the first aid facilities, and to prioritize health-related concerns.

Response from PT Kolon Langgeng and Licensee and Status of Remediation

Management agreed to change its policy concerning permission to leave work to visit the zone clinic such that only *one* "senior staff person's signature" would be required. The new policy also permitted the doctors at the KBN clinic to refer workers to outside specialists without the company's approval.[24]

The factory appears to have maintained this new policy with respect to signatures for a time, but in recent weeks, according to reports from workers, managers have returned to the practice of requiring three signatures. In addition, requests to go to the clinic after the lunch hour have continued to be denied and workers were never provided with a letter of prior permission that would permit them to visit the clinic after hours without having to wait until the next morning to secure a signature. The only exception to this, permitting bypass of the signature procedure, is for an emergency, and this is not

[23] PER-01/MEN/1998; UU-14/1993 Article 2 (1, 3-4); UU-03/1992, Articles 3, 4, 7; UU-03/1992 Article 3 (1, 2, 4 (1))

[24] Tata Cara Pengambilan Ijin Sakit (Ketika Karyawan Sedang Bekerja), Jakarta, May 13, 2003

sufficient: health care for conditions that do not qualify as medical emergencies should not have to be delayed in this manner.

Management announced its commitment, on May 13, to enrolling all employees in JPK Packet B or a superior health insurance plan. Subsequently, management began the process of collecting the necessary paperwork from employees. The enrollment process got off to a slow start due to questions raised by employees regarding the application form and additional documentation requested. Nike and management resolved the situation by meeting with worker representatives and explaining the enrollment process in greater detail, as well as posting announcements within the factory about the documents requests and extending a planned deadline to allow for workers to gather some of the forms requested from distant home villages.

In late August, management decided upon a private health insurance agreement with Rumah Sakit Koja, a local hospital, in lieu of JPK Packet B. The process of negotiating a health insurance plan with Rumah Sakit Koja that will provide benefits superior to those provided by JPK is now near completion; the company hopes to wrap up negotiations by October 10. As soon as the agreement is signed, workers should be able to begin accessing services at Rumah Sakit Kojaassuming. Assuming management follows through, this will constitute an extremely important step toward code compliance for PT Kolon Langgeng and an enormous improvement in quality of life for workers and their families.

With respect to Reni, PT Kolon Langgeng initially responded to the Assessment Team's questions by noting that the matter of reimbursing Reni's family for her care was under review. Several days later, however, after several discussions among the WRC, PT Kolon Langgeng management and Nike, PT Kolon Langgeng provided Reni's family with a lump sum payment of 11.5 million Rupiah ($1,380).

Occupational Health and Safety

Allegations

The Assessment Team investigated allegations that PT Kolon Langgeng failed to provide workers with essential safety equipment.

Findings

During the walkthrough, the Assessment Team observed many workers operating equipment at extremely high temperatures, or with naked blades, without gloves, and noticed that the sewing machines had no finger guards. The survey by the Occupational Health and Safety team led by HIPERKES (the Indonesian governmental agency for workplace health and safety) confirmed, on a subsequent visit, that very few workers were wearing personal safety equipment (PSE) such as masks, gloves, earplugs and goggles. Other health and safety problems at the factory, identified through worker interviews, the visit of the Assessment Team on February 24, and, primarily, the assessment by HIPERKES, conducted on March 14, included:

- The absence of an active and registered Occupational Health and Safety Committee in place, as required by Indonesian law.[25]

[25] PER-07/DA/1989 Jakarta Article 3 (a and e)

- The failure of the factory to provide anywhere for workers to eat their lunch, although municipal law in Jakarta requires this of all factories.[26] During the walk-through by the Assessment Team, workers were observed eating their lunch while sitting on the ground outside the entrance to the production area, or standing along the sides of the factory. The situation was not only uncomfortable but also unhygienic, given that the area is close to the factory's drains and that there are insufficient trash cans for workers to dispose of refuse after eating.

- Excessive temperatures (in excess of 32 degrees Celsius) in the sewing, ironing and packing areas.[27]

- Noise levels in the cutting, sewing, eyelet and *semprot* (spraying) divisions in excess of legal limits.

Recommendations

The WRC recommended several actions to bring the workplace into compliance with Indonesian law and college and university codes of conduct:

- The WRC urged the creation of an Occupational Health and Safety Committee, composed of workers and management representatives, in accordance with the requirements of Indonesian law.[28] The same law dictates the basic responsibilities of the Committee, including the dissemination of information to the workforce about general health and safety issues (such as the importance of complying with directives to use PSE while engaged in hazardous operations); the coordination of annual health exams; and the organization of fire drills.

- Because the company did not have a clinic, the WRC recommended that PT Kolon Langgeng set up a rest area inside the premises where sick workers could recuperate, as required by Indonesian law.[29] This space could also be used as an area for the application of first aid, or for routine health check-ups, which are also required by law.[30]

- The WRC recommended that management provide workers with a place to sit during the lunch hour, as required by Indonesian law.[31]

- The WRC recommended that additional fans be installed in the areas noted above in order to reduce the temperature below the legal maximum of 32 degrees Celsius.[32]

[26] PER-07/DA/1989 Jakarta Article 3 (d)
[27] Laporan Hasil Uji HIPERKES, PT Kolon Langgeng March 14, 2003
[28] KEP-02/MEN/1970; PER-03/MEN/1970; PER-07/DA/1989 Jakarta Article 3 (a and e)
[29] PER-07/DA/1989 Jakarta Article 3(j)
[30] ER-02/MEN/1980 Article 3
[31] PER-07/DA/1989 Jakarta Article 3(d)
[32] Laporan Hasil Uji HIPERKES, PT Kolon Langgeng March 14, 2003

- The WRC also recommended that management take appropriate measures to decrease the noise levels in the noted areas.[33]

Response from PT Kolon Langgeng and Licensee and Status of Remediation

PT Kolon Langgeng provided the WRC with its Safety and Health Policy, prepared in July 2001, but this policy contains few assurances that concrete action will be taken to ensure a safe working environment. More recently, management has informed the WRC that an Occupational Health and Safety Committee has been created and will be properly registered soon. PT Kolon Langgeng management has stated that it understands the importance of integrating this Committee into the company's internal health and safety programs and has pledged to develop a concrete work place for the Committee in the near future. The WRC hopes the Committee's work will lead to concrete progress in the near term and the WRC will monitor developments in this area.

It is positive that illustrated warning signs have been posted stating that it is mandatory that workers use metal gloves in the cutting division. The factory should maintain sufficient supplies of these gloves and should continue to require workers to use them.

PT Kolon Langgeng has begun to provide some benches for workers to sit on during lunch, but not enough yet for the entire workforce to sit comfortably and very few tables. It is positive to see some progress on this item, but more tables and benches are clearly needed.

The WRC Assessment Team has not received substantive responses to other health and safety recommendations. This issue has not been a major point of emphasis in the WRC's remediation efforts to date, because workers placed less of a priority on this relative to other issues. However, action is necessary on all of the problems identified by the Assessment Team and health and safety issues will be a focus of future discussions and remediation work.

Failure to Provide Essential Work Equipment

Allegations

The Assessment Team investigated the allegation that PT Kolon Langgeng did not provide essential tools and materials and equipment repairs in a timely fashion, making it necessary for workers to purchase these items for themselves.

Findings

Several workers stated that they often felt compelled to purchase their own scissors, spools, needle threaders, marking chalk, seam rippers and other tools and materials, because management was lax about replacing materials and broken or worn out tools in a timely manner, and because of their fear of supervisors harassing them for carelessness or stealing if they asked for new items. The Assessment Team did not find sufficient corroboration of these claims to warrant a clear finding. To the extent that the problem may exist, the Assessment Team hopes that management and the new majority

[33] Laporan Hasil Uji HIPERKES, PT Kolon Langgeng March 14, 2003

union, with support from the licensee, will work to improve management procedures in a way that will reduce friction and the arbitrary exercise of discipline on the factory floor.

Forced Overtime/Overtime Compensation

Allegations

The Assessment Team examined allegations that workers were not given the option of refusing work beyond the regular workday and regular workweek, and that overtime work was improperly compensated.

Findings

The Assessment Team found that PT Kolon Langgeng's practices with respect to overtime violated both Indonesian law and university code of conduct provisions governing hours of work. There are two practices at issue. First, workers were required to work on Sundays or weekday evenings to "compensate" for public holidays (when the factory is required to remain closed) or other days when management chose not to engage in production. Workers did not receive overtime compensation for this Sunday and evening work, which the law requires. Secondly, PT Kolon Langgeng followed the six-day workweek permitted under Indonesian law, but sometimes remained closed on Saturdays when orders are low. These Saturday hours were then "redistributed" as an additional one to three hours of work during the regular workweek, and were not treated as overtime in terms of wages, though the law requires this for all hours worked on a given day in excess of the normal eight-hour workday.[34]

In addition to failing to compensate workers properly for this overtime work, PT Kolon Langgeng's overtime practices were illegal because workers were not given the option to refuse overtime. Forced overtime is illegal in Indonesia.

During the period of the assessment, the Assessment Team had some difficulty meeting with workers from PT Kolon Langgeng outside the factory because they were working on Sunday, February 23, 2003 without overtime compensation, in "exchange" for leave on Tuesday March 4, the Islamic New Year. The company had decided to close the factory on both Monday, the day the government of Indonesia had designated as the official holiday, and Tuesday, the holiday day according to the Muslim calendar. During the meeting with the Assessment Team, management asserted that this instance of overtime work, and all other such instances, was completely voluntary, and described the mechanism for obtaining worker consent as follows: each line supervisor would discuss the possibility of overtime with workers in their production line, and seek their agreement. Only those workers who agreed, and signed a sheet indicating their consent, would work the extra hours. However, during the factory walkthrough, the Assessment Team observed a notice from management to staff announcing that workers in all divisions would be *required* to work on February 23.[35] Worker testimony was consistent

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[34] Work beyond seven hours on a standard workday should be compensated at 1.5 times the base wage for the first hour, and twice the base wage for the second and subsequent hours. If the overtime takes place on a rest day or holiday, employees should be paid twice the base wage for the first seven hours, three times the base wage for the next hour, and four times the base wage for subsequent hours. See KEP-72/MEN-1984; UU-13/2003 Article 78; UU-01/1951; PP-04/1951; PP-08/1981; KEP-45/RES/ 1983; KEP-24/M/1983, PER-55/MEN/1953; KEP-199/MEN/1983

[35] Kolon Langgeng Internal Document, Pengumuman No.14-U/Pers/KL/II/03

that managers and supervisors generally did not give workers the option of declining overtime.

Recommendation

The WRC made the following recommendations for remediation of overtime violations:

- The factory is obligated to allow workers the option of declining overtime, on any given day, permitting them to notify their immediate supervisor, either verbally or in writing, of their decision. This policy must be posted prominently in the factory premises and management must make it clear to supervisors that no workers can be disciplined or punished for refusing overtime.

- All overtime hours, on a given day or within a workweek, must be compensated at overtime rates in accordance with Indonesian law, regardless of whether workers receive a day off at a later point in time.[36]

Response from PT Kolon Langgeng and Licensee and Status of Remediation

PT Kolon Langgeng management responded to the WRC Assessment Team's findings on overtime by defending its approach. Management's rationale for these overtime practices, as described in the factory's written overtime policy, is not valid under Indonesian law and seems to indicate confusion as to the legal distinction between voluntary and mandatory overtime. The policy states that the factory has permission from Disnaker to operate the factory for up to 60 hours a week, with one day's rest, and the implication of the policy's wording is that any work up to 60 hours a week is considered mandatory. Only for work beyond that will the factory seek the acquiescence of workers. The policy states: "for more than 60 hours a week, we will ask workers if they want to volunteer for overtime, and will require that they show their voluntary approval by signing a form."[37] The factory appears to be confusing permission to operate beyond the standard eight-hour workday with permission to violate regulations regarding the right of each worker to choose whether or not to work overtime. Forcing workers to work beyond 40 hours a week is, regardless of permission from Disnaker, a violation of the law.[38] Whatever permission PT Kolon Langgeng has from Disnaker concerning hours of operation, the factory remains obligated to allow workers to refuse overtime and to pay overtime rates to all workers who work extra hours.[39] Overtime regulations, regarding both wages and hours, are fixed at the level of the national Ministry of Manpower, and the regional office, Disnaker, does not have the authority to exempt factories from these regulations.

PT Kolon Langgeng's other defense of its approach, conveyed to the WRC in an interview, was that many other factories engage in the same practices. It is, of course, a

[36] Surat Keputusan Menaker Nomor: Kep.72/Men/84;and UU-13/2003 Article 78, and UU No.1, 1951; and, PP No. 4 , 1951; and PP No. 8, 1981; and, Kepres RI No. 45/M/1983; and, Kep. RI No. 24/M/1983; and, Peraturan Menteri Perburuhan No. 55 tahun 195, and, Kepmenaker No. 199/Men/1983

[37] PT Kolon Kebijakan Tentang Lembur Karyawan, Jakarta, April 25, 2003

[38] UU13/2003 Article 78 (1.a.)

[39] KEP-72/MEN/84

fundamental tenet of code of conduct enforcement that the failure of one or more factories to comply with a code provision does not absolve any other factory of its obligation to comply.

Notwithstanding management's insistence on the propriety of all of the factory's overtime practices, the problem of failing to pay overtime rates to workers when they work on nights or Sundays in "exchange" for days off due to national holidays appears to have been corrected. In recent cases, the proper rates have been paid. Management has also shown a laudable willingness to negotiate the schedule for such work with the GSBI union.

However, the serious problem of forced overtime unrelated to holidays has not been addressed.

New Developments

According to recent worker testimony, on July 27, 39 workers were required to work for 19 hours (from 7:30 a.m. to 2:00 a.m. the following day). Management did not ask for the workers' consent. The workers were not given any rest period or food during an eight-hour span of time. When the long shift ended at 2:00 a.m., management failed to provide the workers (thirty of whom were women) with transportation home or a stipend for transportation, one of several occasions, according to worker testimony, when transportation had been denied to workers returning home in the early morning hours after performing mandatory overtime. The workers had great trepidation about having to return home at this hour on foot, particularly in view of a widely discussed incident two years earlier in which a worker walking home from the factory late at night was attacked and killed. However, workers ultimately had no choice but to walk home. Some of the workers succeeded in getting the assistance of a KBN administration patrol car that happened to pass by.

Subsequently, the affected workers demanded 50,000 Rupiah ($60) per person in compensation for being subjected to this excessive and compulsory overtime shift and for management's failure to provide safe transport home. The new majority union, GSBI, lead negotiations with management over this incident. Management defended the length of the shift and its refusal to provide workers with the option of leaving, and explained its failure to provide transportation, by citing the uncertain export schedule from buyers. Management claimed that the delivery order came at night when management had cancelled the usual transportation rented for employees. The Personnel Manager, Hardiyono, stated that this was the first time management had failed to provide legally required transportation, a claim contradicted by testimony from numerous workers. Management did ultimately acknowledge that transportation should have been provided and agreed to pay each worker 30,000 Rupiah.

It is positive that management agreed to compensate workers and that this problem was resolved through constructive union-management negotiations. And, in a subsequent instance of prolonged overtime, which occurred in September, management did provide transportation (though not the meal required by law and not the option to decline the overtime). These modest steps notwithstanding, there is a need for fundamental change in overtime policy and practice at the factory. This is an area where PT Kolon Langgeng has not made significant progress on remediation. The WRC will

urge continued efforts by Nike on this issue and considers it essential that the factory modify its position.

Tax Forms

Allegations

Employees explained that they are annually asked to fill out paperwork (which costs some money to prepare) for tax-deduction purposes; however, they asserted that they experienced no change in taxation after filling out the forms.

Findings

Several workers reported that they were required to fill out, and pay for the notarization of, forms containing information about their marital status and dependents, supposedly in order for them to receive tax deductions. The same workers complained that they had never received such deductions. The Assessment Team concluded that there was insufficient information to link workers' concerns in this area to a potential violation of college and university codes of conduct or Indonesian law. The WRC has solicited information from PT Kolon Langgeng regarding the purpose of such documentation, but has not received this information.

Access to Leave

Allegations

The Assessment Team investigated claims that the factory routinely denied and/ or restricted workers' access to annual leave, sick leave and menstrual leave.

Findings

On the basis of worker testimony, payroll slips, and personnel records, the Assessment Team found that the factory denied or restricted workers' access to leave in three ways, each of which violate Indonesian law.

- In terms of annual leave, the Assessment Team discovered that problems were long-standing. In previous years, workers routinely received 12 days of pay "in lieu of" the paid annual leave to which they are entitled under Indonesian law.[40] More recently, workers had been required to take the entire amount of their leave when management dictated, most frequently a combination of a few days during the year when there were temporary lulls in production and the remainder over Lebaran (the period preceding the religious festival of Id-ul-Fitri). In addition, the two official public holidays during the festival (for which workers are supposed to receive paid leave) were counted against each workers' annual leave allotment, effectively depriving workers of two days of paid leave.

[40] KEP-21/MEN/1954; and, Act. No. 1, 1951 Article 14(1)

- Where menstrual leave is concerned, PT Kolon Langgeng was found to be, in some ways, in greater compliance with the law than other similarly situated factories, because at least all women workers at the factory did receive two days' extra pay in lieu of leave. However, testimony clearly demonstrated that women workers were not permitted to exercise the option to take paid leave instead, as they are entitled to do under the terms of a law stating that women may choose not to work on the first and second days of their menstrual cycle.[41] Workers returning from maternity leave also complained that pay in lieu of menstrual leave did not re-start until five months after the birth of a child, though this policy has no scientific basis and management had never given a clear reason for the policy.

- The Team also found that the personnel manager frequently used his power to deny sick leave to workers who, in his opinion, were insufficiently diligent in their work. Many workers testified that sick leave, with few exceptions, was only granted to workers who were visibly ill (for example, vomiting or fainting on the job) and that even workers who were visibly ill were also sometimes denied leave.

Recommendations

The WRC recommended that:

- Management give workers the full 12 days of annual leave to which they are entitled and discontinue its policy of dictating when all employees will take their leave at the same time. Workers should be able to take leave after providing reasonable written notice. Permission to take this leave should not be dependent on an inquiry into whether the reason for wanting leave is valid, nor should it be dependent on current production levels in the factory, or how much time the employee has missed from work due to illness or union related issues. [42]

- Women workers wishing to take menstrual leave should be permitted to do so and be permitted to notify the company verbally or in writing the day before, the same day, or the day after taking such leave. As is currently the case at PT Kolon Langgeng, workers who decide to work rather than rest for those two days should continue to be paid at twice their base wage in lieu of leave. Access to this leave should not require either a doctor's note, or the invasion of privacy that would accompany *any* third party determination of whether or not a worker is menstruating. There is no legal requirement for such measures.

- Management should develop and circulate a policy regarding sick leave, based on objective criteria and on Indonesian law. The decision about whether or not a worker may take sick leave should not be left to the discretion of the personnel manager.

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[41] UU-13/2003 Article 81(1)

[42] Government Regulation No. 21, 1954 on Annual Leave for Workers states that the employer should "regard the interests of the worker" in deciding when to grant leave (Article 5(1). Furthermore, it is stated explicitly that "leave shall be uninterrupted [meaning consecutive days]" and that "there shall be one period of leave of at least six uninterrupted days." (Article 6 (1 and 3))

Response from PT Kolon Langgeng and Licensee and Status of Remediation

In initial conversations with the Assessment Team, management categorically denied that there were any problems with access to leave at the factory, though no documentation was supplied at the time to substantiate this claim. However, on May 14 the WRC received several newly posted announcements describing policies and procedures with respect to annual leave, sick leave, menstrual leave and maternity leave.

In terms of access to annual leave, management had initially asserted that workers had decided "collectively," through the SPSI union, that annual leave would be timed and taken in the manner described above. Because SPSI was not a legitimate union, this rationale is not valid. However, the company eventually acknowledged that the timing of annual leave at PT Kolon Langgeng was largely beyond the control of workers and that it was in the interest of the company to retire workers to their homes during times of low orders so as to avoid having to pay them later for unused annual leave days. However, they also pointed out that most workers *wanted* to return home during the religious holiday of Lebaran, and it was impractical to keep the factory open during those days in the interests of the very few who wished to stay and work and take their vacation at a later time. The new annual leave policy compromises in a way that appears to satisfy most workers, and to comply with law: workers are required to submit their request for annual leave to the personnel manager at least ten days in advance, and while management is permitted to refuse, it must also cooperate with the employee to set an alternative date for the leave that is acceptable to both parties.[43]

The company asserted that women workers at the factory could and did take paid menstrual leave when they wished to do so. However, management did not provide any documentary evidence of this, either during the meeting with the Assessment Team or later. The recently posted policy regarding the procedures for accessing menstrual leave addresses almost all of the concerns expressed by workers and by the WRC, except the issue of when menstrual leave starts again after the delivery of a child. The new policy, as recommended, does not mention any requirement for a doctor's letter or for a physical examination, and it allows workers to inform management about their intention to take leave prior to or on the day of their absence (in person, by a phone call, or through a friend or co-worker).[44] However, there have been problems with implementation. One worker complained to the WRC that when she had approached the personnel manager to claim leave, he had stopped her, stating that he did not believe that she was menstruating at the time. She had informed him that she was willing to be checked if necessary, but protested that she did not believe that she should be subjected to such an examination. Women workers at the factory explained that they should not have to submit to a medical exam, or have their privacy violated by the staff of the factory in order to claim menstrual leave. Since this incident, PT Kolon Langgeng has stated that it will no longer request that workers prove that they are menstruating and that it will monitor more closely those supervisors in charge of granting leave.

Under the new sick leave policy, workers may simply notify a supervisor or a manager that they will not be coming in. This can be done through a telephone call or by

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[43] Tata Cara Pengambilan Cuti Tahunan, Jakarta, May 13, 2003

[44] Tata Cara Pengambilan Ijin Haid, Jakarta, May 13th, 2003

asking a friend or co-worker to pass on the message. Upon their return to work, they must provide a doctor's letter.[45]

On their face, the new policies address many of the issues at hand, but, in the first few months after the policies were announced, relatively few employees exercised their right to leave, due either to a lack of implementation or insufficient education and training on the new policies. Education – and for supervisors, clear instruction and training – are necessary if employees are to feel free to access the leave due to them by law and if supervisors are to understand their obligation to respect the policies. The WRC has been advised that the factory is currently preparing a timeline for the completion of an information-sharing process regarding leave.

New Developments

In June, several women who had recently given notice of their intent to take maternity leave were subjected to large, unannounced retroactive menstrual leave deductions from their salaries. Some of the deductions reached as high as 169,600 Rupiah ($20), roughly one third of a month's wages. These deductions were reported to workers under an abstruse pay slip line item "Lain-Lain 1" ("Other 1").

Only after several concerned workers stepped forward was the deduction explained as a retroactive menstrual leave deduction, due to the fact that workers had been receiving menstrual leave pay in lieu of leave when they were pregnant. It was reasonable for management to seek reimbursement for such payments under the circumstances. However, management should have notified workers before deducting wages, should have devised an appropriate repayment schedule in order to avoid subjecting workers to unnecessary economic hardship, and should not have made assumptions about how many months individual workers had been pregnant.

Additional Recommendations

The WRC recommended that PT Kolon Langgeng management meet with worker representatives as quickly as possible to resolve the issues of the economic shock these deductions had created in the short term for several employees, as well as to come up with a long-term policy that would address the overlapping issues of menstrual leave pay and maternity leave.

Response from PT Kolon Langgeng to the Additional Recommendations

PT Kolon Langgeng management, after discussions with the two unions at the factory, decided to reimburse the majority of the money and deduct the amount due over multiple pay periods. The parties also decided to reinstate the prior practice of not providing menstrual leave for a number of months after employees return from maternity leave, but with clearer timelines for this practice. PT Kolon Langgeng agreed to clarify these issues in the menstrual and maternity leave policies and then re-post the policies.

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[45] Tata Cara Pengambilan Ijin Sakit (Ketika Karyawan Sedang Berada Di Luar Pabrik) Jakarta, May 13, 2003

Benefits

Allegations

The WRC addressed allegations that the factory deducted workers' wages in exchange for food and transport benefits.

Findings

The WRC found that the wages of all employees were being deducted in exchange for food benefits, while some employees experienced deductions for the cost of transport. While there is no general obligation under Indonesian law to provide food, the cost of food at factories that do provide meals is generally not deducted from workers' pay. This practice, therefore, conflicts with the prevailing wage provisions in some college and university codes of conduct and in Nike's code of conduct. With respect to transportation, Jakarta law requires that factories provide this to workers, but the law is unclear as to whether employees may be charged for this service.[46] It is clear, however, that companies may not make transportation, and consequent deductions, mandatory. (An additional note on food benefits: in cases of extended overtime companies are obligated, under national law, to provide a meal, free of cost.[47])

Until January 2002, when the regional minimum wage was increased, workers at PT Kolon Langgeng received a free mid-day meal. Following the increase, management announced that they would no longer provide free food, and began deducting 1,500 Rupiah (18 cents) from workers' daily earnings for the catered lunch. At the same time, while some workers were receiving a transport allowance of 1,800 Rupiah a day, other workers, who were using company transport, continued to have between 3,000 and 5,000 Rupiah deducted from their daily wages (with the amount dependent on the distance they traveled). In many cases, workers sought to have their names removed from the list of those using company transport in order to avoid the heavy deductions from their wages, but they were not permitted to do so.

It should be noted that during the latter half of 2002, transportation benefits at PT Kolon Langgeng were governed by a Mutual Agreement entered into by workers and management, in settlement of the strike of June 2002. The workers did not succeed in convincing management to make any alteration to the system regarding food benefits; however, the transport allowance (for those workers who made their own arrangements for transport) was increased. Workers on the list for company transport were still unable to remove themselves from this list and continued to have money deducted from their wages. This agreement expired on December 31, 2002, and at the time of the assessment, management had not taken any steps to seek its renegotiation or extension.

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[46] Companies of 29 employees or more in the Jakarta region must provide transportation (PER-07/DA/89/ No. 74, 1989 Article 3(g))

[47] SE-07/MEN/1990. Furthermore, for enterprises employing workers for 9 hours a day and 54 hours a week, the employer has an *obligation* to provide meals of at least 1,400 calories, above the base wage. (Ministry of Manpower decision Kep.608/MEN/1989)

Recommendation

The company's policies with respect to food and transportation must take, as their baseline, the requirements of law. The WRC reported to management that it therefore should consider itself barred from citing negotiations with the SPSI union, or any other body, representative or otherwise, as a means of circumventing its legal obligations. The WRC recommended that the factory cease taking deductions for food and make deductions for transport fully voluntary.

Response from PT Kolon Langgeng and Licensee and Status of Remediation

Management has implemented the latter recommendation; deductions for transport are now voluntary. At present, however, management continues to make mandatory wage deductions for food. The WRC urges Nike and PT Kolon Langgeng to address this issue.

Water

Allegations

The Assessment Team sought to verify allegations that the drinking water available at the factory was consistently dirty and undrinkable.

Findings

The WRC Assessment Team found that the quality of the drinking water in the factory's dispensers was not consistent with the requirements of Indonesian law.[48] During the walkthrough visit, the Assessment Team found that most dispensers were empty, and that those that were not contained water that was hot and murky. Water samples tested by the Indonesian Department of Health Laboratory, at the request of the Health and Safety Team led by HIPERKES, revealed that the factory's drinking water contained elevated levels of organic matter (3.48 mg/l). While this figure was not above the legal standard, it was still considered high enough that, according to a lab technician, consumption could cause significant distress to workers whose immune systems were low or compromised.[49]

Recommendation

The WRC recommended that all water should be clean, safe and potable; as one means of ensuring this, the Assessment Team suggested that PT Kolon Langgeng use standard dispensers for filtered and bottled water, with both hot and cold taps, or create a cooling system that would at least bring water temperature down to room temperature before it is distributed to employees.

Response from PT Kolon Langgeng and Licensee and Status of Remediation

Management denied that the water was dirty, and stated that workers would not drink it if it was cold because they would not believe that it had been boiled and sterilized. The WRC disagrees with this assessment. The WRC understands that

[48] KEP-07/MEN/1964 Article 8 (5): "Water used for food and drink must fulfill the following conditions: […] the water must not smell and shall be fresh."
[49] Hasil Pemeriksaan Laboratorium DepKes RI, March 18, 2003 Jakarta

management is considering installing new dispensers or creating a cooling system, but the issue remains unresolved.

Body searches

Allegations

The Assessment Team initiated inquiries in response to allegations that workers were being subjected to body searches that were unnecessarily intrusive and that certain individuals were singled out during these searches for particularly degrading treatment.

Findings

The Assessment Team heard mutually corroborative testimony from numerous workers that body searches were often extremely intrusive, sometimes even involving security guards looking under and inside clothing, both to ensure that food or weapons were not being brought into the factory, and that cloth or clothing were not being taken out. Such searches constitute a *per se* violation of college and university codes of conduct, as a form of harassment. While the Assessment Team heard testimony that certain individuals were being targeted for humiliating and aggressive searches, allegedly based either on a security guard's personal animosity or on orders from the personnel manager, this specific allegation could not be confirmed during the investigative process.

Recommendation

Because workers at PT Kolon Langgeng were willing to accept the practice of body searches as long as they did not involve any displacement of clothing or aggressive touching, and treated all workers equally, the WRC recommended merely that management ensure that body searches were conducted in a less intrusive fashion and never as a means to humiliate or punish. The WRC recommended further that management set up a system whereby complaints about particular security guards could be received anonymously and investigated.

Response from PT Kolon Langgeng and Licensee and Status of Remediation

Management has conveyed to the WRC its commitment to end the practice of overly intrusive body searches. The WRC has not yet assessed progress on this issue.

Ongoing Remediation

PT Kolon Langgeng has made important progress on several fronts. There are, however, several serious issues where progress has been slow or where no action has taken place. Further efforts by Nike, and a firm commitment to continued remediation on the part of senior management at PT Kolon Langgeng, is necessary to advance the remediation process. The WRC will continue to monitor remediation at the factory and will conduct a follow-up review on key unresolved issues this fall.

Appendix

Members of WRC Assessment Team for PT Kolon Langgeng

Trevino Pakasi MD
Dr Pakasi has an MD in occupational medicine from the University of Indonesia and currently teaches occupational medicine at the University's Faculty of Medicine. He is also a consultant on occupational health and safety issues with the international NGOs Mercy Corps and World Vision. The industries where he has engaged in audits include cement factories, textile factories and communications operations. Dr Pakasi's team of experts from the Department of Community Medicine included:

- *Nuri Purwito Adi*, MBBS
- *Adianto Nugroho*, MBBS
- *Ronald E. Pakasi*, MD
- *Indah Suci Widyahening*, MD, MSc

Vony Reyneta Esq.
Ms. Reyneta serves as the director of the Jakarta office of Lembaga Bantuan Hukum Asosiasi Perempuan Indonesia untuk Keadilan (Indonesian Women's Association for Justice; LBH-Apik). The organization provides legal consultations, counseling and representation to women who have experienced injustice, including domestic violence, sexual violence, trafficking, and torture. LBH-Apik also provides trainings for women's groups, engages in research on gender issues, and undertakes research and documentation. Ms. Reyneta's team from LBH-Apik also included:

- *Dini Anitasari,* Coordinator of Education and Training LBH-Apik

Ecoline Situmorang Esq.
A lawyer in the Jakarta office of Perhimpunan Bantuan Hukum dan Hak Asasi Manusia Indonesia (Indonesian Legal Aid and Human Rights Association; PBHI), Ms. Situmorang has served as counsel in several internationally prominent cases in domestic labor law. She is involved in issues that range from the reform of labor law to the defense of basic civil rights.

Ashwini Sukthankar
WRC Director of Research and Investigations

Agatha Schmaedick
WRC Field Director/Southeast Asia

FX Supiarso
WRC Field Representative/Indonesia
Supiarso is also former staff member and continuing active volunteer of the Socio-Cultural and Economic Division at Yayasan Lembaga Bantuan Hukum Indonesia (Legal Aid Institute of Indonesia; YLBHI).